



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL
ksmith@smithsersic.com

August 21, 2020

Kevin C. Smith
Smith Sersic
9301 Calumet Avenue, Suite 1F
Munster, IN 46321

RE: MUR 7667
McDermott for Congress,
and Robert Lendi, as treasurer
Thomas McDermott, Jr.
City of Hammond Indiana

Dear Mr. Smith:

On June 26, 2019, the Federal Election Commission (“Commission”) notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations. A copy of the complaint was forwarded to your clients at that time. On August 17, 2020, based upon the information contained in the complaint and information provided by respondents, the Commission voted to dismiss allegations that McDermott for Congress and Robert Lendi, in his official capacity as treasurer, Thomas McDermott, Jr., and the City of Hammond Indiana, violated provisions of the Act. The Commission then closed its file in this matter. A copy of the General Counsel’s Report, which more fully explains the basis for the Commission’s decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel’s Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff S. Jordan".

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure:
General Counsel’s Report

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 **ENFORCEMENT PRIORITY SYSTEM**
4 **DISMISSAL REPORT**

5
6 **MUR:** 7667

7 **Respondent:** McDermott for Congress
8 and Robert Lendi, as treasurer
9 (the "Committee")
10 Thomas M. McDermott
11 City of Hammond, Indiana

12 **Complaint Receipt Date:** December 9, 2019

13 **Response Date:** January 7, 2020

14
15
16
17 **Alleged Statutory/** **52 U.S.C. §§ 30116(f); 30120(a), (c), (d)(1)(A); 30125(e)(1)**
18 **Regulatory Violations:** **11 C.F.R. §§ 110.9; 110.11(b), (c); 114.2(d); 300.61**

19
20 The Complaint alleges that McDermott, currently the mayor of Hammond, Indiana, and a
21 House candidate in Indiana's first congressional district, used a newsletter included with the
22 bimonthly Hammond Water Department bills to advertise a radio show paid for by McDermott for
23 Congress, which benefits the Committee through the use of taxpayer funds.¹ The Complaint also
24 alleges that the radio show ad, mailed with the Water Department bills, does not contain a
25 disclaimer stating who paid for or authorized its placement.²



¹ Compl. at 1-2 (December 9, 2019). McDermott filed a Statement of Candidacy on November 6, 2019, and the Committee filed a Statement of Organization on the same day.

² *Id.* at 1-2, Ex. A.

1 Respondents note that the Hammond, Indiana, Parks Department prints an insert about
2 current events in Hammond, which is included with City water bills and distributed every two
3 months. Respondents state that the insert has mentioned the mayor's radio show for many years.³
4 Respondents further assert that only nine days elapsed between the date McDermott announced his
5 candidacy and the date the Water Department designed a new insert without the ad in response to
6 Complainant's objections.⁴ The Response asserts that neither McDermott nor the Committee
7 directed the city's park or water departments to advertise the radio show to promote McDermott's
8 congressional candidacy.⁵

9 Based on its experience and expertise, the Commission has established an Enforcement
10 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
11 assess whether particular matters warrant further administrative enforcement proceedings. These
12 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
13 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
14 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
15 potential violations and other developments in the law. This matter is rated as low priority for
16 Commission action after application of these pre-established criteria. Given that low rating, the
17 remedial efforts taken by the Respondents, and the probable lower dollar amount involved, we

³ Resp. at 2 (January 7, 2020). *See also* Thomas McDermott Aff. at ¶ 4 (January 5, 2020), Rick Baltsenberger Aff. at ¶ 3-4 (January 6, 2020), Mark McLaughlin Aff. at ¶ 3-4 (January 6, 2020), Donna Muta Aff. at ¶ 4-7 (January 6, 2020). The Response also asserts that no money was spent to add the radio show language to the insert, and states that the radio show language had been a part of the insert design dating back to 2007. Resp. at 3, Muta Aff. at ¶ 7.

⁴ Resp. at 3, McDermott Aff. at ¶ 11, Baltsenberger Aff. at ¶ 7-8, McLaughlin Aff. at ¶ 7-9, Muta Aff. at ¶ 8-9. The Response states that the time period when the insert containing radio show language coincided with McDermott's congressional campaign was only nine days (November 6, 2019 through November 15, 2019). Resp. at 3.

⁵ Resp. at 3, McDermott Aff. at ¶ 5, 6, Baltsenberger Aff. at ¶ 5, McLaughlin Aff. at ¶ 5, Muta Aff. at ¶ 8. An affidavit attached to the Response asserts that the insert was never meant to promote McDermott's congressional candidacy, and that it was simply included in the mailings as it always had been. Muta Aff. at ¶ 10.

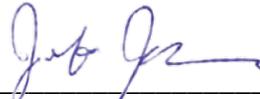
1 recommend that the Commission dismiss the Complaint consistent with the Commission's
2 prosecutorial discretion to determine the proper ordering of its priorities and use of agency
3 resources.⁶ We also recommend that the Commission close the file as to all Respondents and send
4 the appropriate letters.

5
6 Lisa J. Stevenson
7 Acting General Counsel
8

9
10 Charles Kitcher
11 Acting Associate General Counsel
12

13 5.19.20
14 _____
15 Date

16 BY: 
17 Stephen Gura
18 Deputy Associate General Counsel

19 
20 Jeff S. Jordan
21 Assistant General Counsel

22 
23 Donald E. Campbell
24 Attorney
25
26

⁶ Heckler v. Chaney, 470 U.S. 821, 831-32 (1985).