

**BEFORE THE FEDERAL ELECTION COMMISSION**

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2  
3 In the Matter of )  
4 )  
5 MUR 6610 )  
6 Clifford "Cliff" B. Stearns )  
7 Friends of Cliff Stearns )  
8 and Joan Stearns as treasurer )  
9

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY  
SYSTEM

**CELA**

**GENERAL COUNSEL'S REPORT**

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11 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a  
12 basis to allocate its resources and decide which matters to pursue. These criteria include without  
13 limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking  
14 into account both the type of activity and the amount in violation; (2) the apparent impact the  
15 alleged violation may have had on the electoral process; (3) the complexity of the legal issues  
16 raised in the matter; and (4) recent trends in potential violations of the Federal Election  
17 Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the  
18 Commission's policy that pursuing relatively low-rated matters on the Enforcement docket  
19 warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances  
20 and where appropriate, to find no reason to believe that a violation occurred. The Office of  
21 General Counsel has determined that MUR 6610 should not be referred to the Alternative  
22 Dispute Resolution Office.<sup>1</sup>

23 For the reasons set forth below, the Office of General Counsel recommends that the  
24 Commission find no reason to believe that Respondents Clifford B. "Cliff" Stearns<sup>2</sup> and Friends

<sup>1</sup> The EPS rating information is as follows: Mr. Stearns and Friends of Cliff Stearns Filed: September 7, 2012.

<sup>1</sup> Complaint Filed: July 20, 2012. Response from

<sup>2</sup> Stearns was an unsuccessful candidate for re-election in the 2012 Republican primary for Florida's 3rd Congressional District.

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1 of Cliff Stearns and Joan Stearns in her official capacity as treasurer<sup>3</sup> (collectively the  
2 “Committee”) violated the Act and underlying Commission regulations as to the allegations  
3 contained in the Complaint.

4 **I. BACKGROUND**

5 In this matter, the Complaint alleges violations of the Act and Commission regulations  
6 through May 2012 in connection with e-mails transmitted by the Committee and information  
7 displayed on its website. Compl. at 1, 4, 8, 12.<sup>4</sup> First, the Complaint alleges that three  
8 Committee “bulk electronic mail communication[s]” allegedly transmitted on February 7, 9, and  
9 10, 2012, do not comply with the Commission’s disclaimer provisions. *Id.* Specifically, the  
10 Complaint claims the e-mails violated 11 C.F.R. § 110.11(b)(1), *id.*, which states that if a  
11 communication that requires a disclaimer is paid for and authorized by a candidate’s authorized  
12 committee, the disclaimer notice must identify the committee that paid for the message. Copies  
13 of the three e-mails at issue are attached to the Complaint. *Id.* at 2-3, 5-7, 9-11. Second, the  
14 Complaint claims that, as of May 9, 2012, the Committee’s website lacked a disclaimer required  
15 by 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(b)(1). *Id.* at 12.

16 The Complaint also claims that the Committee’s website violated 11 C.F.R.  
17 § 102.5(a)(2)(ii) and (iii) by failing to “provide appropriate and compliant disclosure statement

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<sup>3</sup> According to the Committee’s amended Statement of Organization, filed on April 6, 2013, Joan Stearns replaced Juanita Ransom as treasurer. Ransom was the Committee’s treasurer during the time period covered in this Report and filed a Response on behalf of the Committee. *See Resp.* at 2.

<sup>4</sup> Complainant filed four separately notarized Complaints on the same day. Although each Complaint attaches different communications, we are treating them as a single Complaint since three contain similar text and the fourth alleges another disclaimer violation by the same Committee. None of the Complaints contain page numbers so, for the Commission’s convenience, we are including a paginated version of the combined Complaints as Attachment I.

1 [sic] pertaining to contributions to the federal campaign account.” Compl. at 12. The Complaint  
2 asserts that instead of providing the allegedly required “disclosure statement,” the “campaign  
3 website linked to an outside vendor” that “does not make an effort to ensure contributions are in  
4 compliance with FECA regulations prohibiting contributions from ‘corporations, labor  
5 organizations, federal government contractors and foreign nationals.’” *Id.*

6 In response, Respondents Cliff Stearns and his Committee state that the three e-mails  
7 “were all press releases, sent only to the Friends of Cliff Stearns press list, which at no time has  
8 had more than 57 recipients.” Resp. at 1. Respondents contend that disclaimers were not  
9 required because the applicable regulation applies only to e-mails “of more than 500  
10 substantially similar communications,” *Id.* (quoting 11 C.F.R. § 110.11(a)(1)).

11 With respect to disclaimers on the Committee’s website, Respondents state that the  
12 “proper disclaimer” was included on the “homepage and was clearly visible to anyone logging  
13 on to the website.”<sup>5</sup> Resp. at 1. According to Respondents, “[t]he fact that the complainant’s  
14 particular screenshots do not show a disclaimer fail to demonstrate that one did not exist.” *Id.*  
15 Finally, in reference to the Complaint’s allegation concerning the Committee’s outside vendor,  
16 Respondents take the position that the cited regulations apply to “a federal committee,” not an  
17 outside vendor. *Id.* at 1-2 (emphasis omitted).

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<sup>5</sup> The Response states that the “selected screenshots” appended to the Complaint were taken from a website that “no longer exists” and was “replaced by a new website” in June, 2012.” Resp. at 2. Neither the Complaint nor the Response includes a screenshot of the Committee’s homepage as it existed at the time of the Complaint. The homepage currently available on the Committee’s website displays the disclaimer, “Paid for by Friends of Cliff Stearns, Copyright 2012.” See <http://cliffstearns.net> (last visited August 14, 2013). However, using the internet archive “Wayback Machine” at <http://archive.org/index.php>, we were able to view Respondents’ website as of April 9, 2012. The website, which is available at <http://web.archive.org/web/20120409071107/http://www.cliffstearns.net>, includes the disclaimer “Paid for by Friends of Cliff Stearns” at the bottom of the page.

1    **II.    ANALYSIS**

2           Under 2 U.S.C. § 441d(a), political committees must provide disclaimers for certain  
3 communications. When a communication as described in 11 C.F.R. § 110.11(a), including a  
4 solicitation, is paid for and authorized by a candidate, an authorized committee of a candidate, or  
5 an agent of either, the disclaimer must clearly state that the communication has been paid for by  
6 the authorized political committee. *Id.* § 110.11(b)(1). These disclaimer requirements apply to  
7 political committee websites available to the general public and substantially similar e-mails  
8 numbering in excess of 500. *Id.* § 110.11(a)(1).

9           Respondents claim that none of their e-mails were sent to more than 57 recipients. As  
10 such, without any information submitted to the contrary, we cannot conclude that the  
11 e-mails at issue were required to contain disclaimers. In addition, regarding the Committee's  
12 website, there is no information to contradict Respondents' assertion that the home page included  
13 the requisite disclaimer. *See supra* n. 5. Thus, the Office of General Counsel recommends that  
14 the Commission find no reason to believe that Respondents' e-mails or website violated 2 U.S.C.  
15 § 441d(a) or 11 C.F.R. § 110.11.

16           The Complaint further alleges that the Committee violated section 102.5. That section  
17 covers "organization[s] . . . that finance[] political activity in connection with *both* Federal and  
18 non-Federal elections." 11 C.F.R. § 102.5(a)(1) (emphasis added). Such organizations that opt  
19 to create a separate federal account in a depository, *see* 11 C.F.R. § 102.5(a)(1)(i), may only  
20 deposit contributions into the federal account if one of three conditions is met: The contributions  
21 (i) were designated for the federal account; (ii) resulted from a solicitation that expressly states  
22 the contribution will be used in connection with a federal election; or (iii) were given by

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1 contributors who were informed that all contributions are subject to the prohibitions and  
2 limitations of the Act. 11 C.F.R. § 102.5(a)(2)(i)-(iii). See Explanation and Justification for  
3 *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg.  
4 49,064, 49,073 (July 29, 2002) (explaining that the purpose of section 102.5(a)(2) is to ensure  
5 that contributors to federal accounts know the intended use of their contributions). Here, there is  
6 no indication that the Committee “finances political activity in connection with both Federal and  
7 non-Federal elections.” 11 C.F.R. § 102.5(a)(1). The Committee therefore falls outside the  
8 scope of section 102.5.<sup>6</sup>

9 Thus, the Office of General Counsel recommends that the Commission find that there is  
10 no reason to believe that Respondents’ website violated 11 C.F.R. § 102.5(a)(2)(ii) and (iii).  
11 Also, the Office of General Counsel recommends that the Commission approve the attached  
12 Factual and Legal Analysis and the appropriate letters, and close the file.

### 13 III. RECOMMENDATIONS

- 14 1. Find no reason to believe that Clifford B. Stearns or Friends of Cliff Stearns and  
15 Joan Stearns in her official capacity as treasurer violated the Federal Election  
16 Campaign Act of 1971, as amended, and underlying Commission regulations, as  
17 alleged in the Complaint;
- 18 2. Approve the attached Factual and Legal Analysis and the appropriate letters;  
19 and  
20
- 21 3. Close the file as to all respondents.  
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<sup>6</sup> Moreover, although “Commission regulations require committee treasurers to examine ‘all contributions received for evidence of illegality . . . [see] 11 CFR 103.3(b),’ [t]his requirement applies to contributions once they have been *received* by the committee” (emphasis in original). Advisory Op. 2011-13 (Democratic Senatorial Campaign Committee) at 4. And when soliciting contributions online, federal political committees may post language “to ensure that contributions are not accepted from prohibited sources” as a safeguard, but “no particular notice of this type is required by the Act and Commission regulations.” *Id.*

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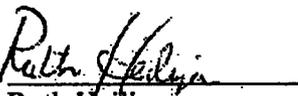
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Date \_\_\_\_\_

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