



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
League of Conservation Voters, *et al.* ) MUR 6697  
 )

**STATEMENT OF REASONS OF VICE CHAIR CAROLINE C. HUNTER AND  
COMMISSIONERS LEE E. GOODMAN AND MATTHEW S. PETERSEN**

The Complaint in this matter alleged that the League of Conservation Voters, Montana Conservation Voters, and the Montana Hunters and Anglers Leadership Fund paid for and authorized an anonymous postcard mailer to an unknown number of residents of Montana in the weeks leading up to the 2012 general election discussing two candidates, Dan Cox and Dennis Rehberg. The Complaint asserted that these organizations violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to include a disclaimer on the postcard. The Office of General Counsel raised a second potential violation – failure to file a 24- or 48-hour report for an independent expenditure.

The named respondents credibly denied any involvement in the postcard mailing. That left the Commission the possibility of pursuing "unknown respondents" to determine who was responsible for mailing the postcard. Before devoting resources to such an investigation, however, the Commission needed to make a threshold determination whether the postcard expressly advocated the election or defeat of a candidate, because if it did not, there was no legal violation to investigate.

The text of the postcard (quoted in the Office of General Counsel's First General Counsel's Report) applauded Cox and criticized Rehberg's record. But it did not exhort readers to vote for or against either candidate. Thus, the postcard's text did not expressly advocate the election or defeat of any candidate.

Beyond the main text, the postcard also contained the following sentence: "To learn more, visit: [www.DanCox4Senate.com](http://www.DanCox4Senate.com)." The question is whether the reference to "DanCox4Senate" in the URL address constitutes express advocacy by the sponsor of the postcard. The Commission has never previously concluded that a speaker's mere identification of a URL address like the one at issue here constitutes the speaker's own express advocacy. As observed in the Office of General Counsel's First General Counsel's Report (at p. 7), applying the Commission's definition of express advocacy to include all references to internet domain

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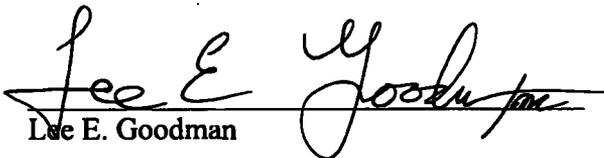
names would yield overly formalistic and even absurd results. Such a broad application would convert almost all references and citations to campaign websites to express advocacy. For example, a postcard that states "Visit [www.DanCox4Senate.com](http://www.DanCox4Senate.com) and educate yourself on the candidate's policy positions" would automatically be regulated as express advocacy. In light of the text presented here, we conclude that this speaker's mere identification of a URL address does not constitute the speaker's own exhortation to vote for or against a candidate.

Even were the Commission to go down this path, it would first need to fashion a rule to avoid absurd results. But doing so for the first time in the enforcement context would be unfair, and that militates in favor of exercising discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985).

For these reasons, we voted against finding reason to believe a violation occurred in this matter and to dismiss the matter.

  
Caroline C. Hunter

2/15/17  
Date

  
Lee E. Goodman

2/15/17  
Date

  
Matthew S. Petersen

FEB 15, 2017  
Date

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