



FEDERAL ELECTION COMMISSION
Washington, DC

June 30, 2021

VIA ELECTRONIC MAIL

Jeffrey T. Buley
50 State Street, 4th Floor
Albany, NY 12207

RE: MUR 7802
Nicole for New York
and Laura Schwartz, as treasurer
Nicole Malliotakis

Dear Mr. Buley:

On September 29, 2020, the Federal Election Commission (“Commission”) notified your clients, Nicole for New York and Laura Schwartz, in her official capacity as treasurer, and Nicole Malliotakis, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”). On June 25, 2021, based upon the information contained in the complaint and information provided by respondents, the Commission decided to dismiss allegations that Nicole for New York and Laura Schwartz, in her official capacity as treasurer, and Nicole Malliotakis 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,

Lisa J. Stevenson
Acting General Counsel

Stephen Gura

BY: Stephen Gura
Deputy Associate General Counsel

Enclosure:
General Counsel’s Report

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: MUR 7802

Respondents: Nicole for New York
and Laura Schwartz, as treasurer
(the “Committee”)
Nicole Malliotakis

Complaint Receipt Date: Sept. 21, 2020

Response Date: Oct. 13, 2020

Alleged Statutory/

52 U.S.C. §§ 30120;

Regulatory Violations:

11 C.F.R. §§ 110.11(c)

The Complaint alleges that two television advertisements paid for by the Committee in support of Nicole Malliotakis's campaign for New York's 11th Congressional district contained insufficient disclaimers.¹ Specifically, the Complaint alleges that the advertisements failed to include a written statement at the end of the advertisement, stating that the candidate approved the communication.² The Response asserts that the advertisements originally included a verbal disclaimer by the candidate and a written disclaimer disclosing the source of funding, but acknowledges that the original advertisements did not include a written disclaimer showing approval by the candidate.³ The Response further states that upon receipt of the Complaint, the Committee adjusted the advertisements to include a written disclaimer of approval from the candidate.⁴

¹ Compl. at 1-4 (Sept. 21, 2020).

² *Id.* at 2. The Complaint acknowledges that each advertisement included a verbal disclaimer by Malliotakis and included a written disclaimer at the end indicating who paid for the advertisement. *Id.*

³ Resp. at 1 (Oct. 13, 2020).

⁴ *Id.* at 1-2. The Response also states that the Committee will ensure that all future television advertisements will fully conform to 11 C.F.R. § 110.11. *Id.* The Response also attaches what it purports to be a corrected disclaimer showing the candidate's approval of the advertisement. *Id.* at Attach.

1 Based on its experience and expertise, the Commission has established an Enforcement
 2 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
 3 assess whether particular matters warrant further administrative enforcement proceedings. These
 4 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
 5 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
 6 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
 7 potential violations and other developments in the law. This matter is rated as low priority for
 8 Commission action after application of these pre-established criteria. Given that low rating, the
 9 technical nature of the violation, and the remedial actions taken by the Respondents, we recommend
 10 that the Commission dismiss the Complaint consistent with the Commission's prosecutorial
 11 discretion to determine the proper ordering of its priorities and use of agency resources.⁵ We also
 12 recommend that the Commission close the file as to all respondents and send the appropriate letters.

Lisa J. Stevenson
 Acting General Counsel

Charles Kitcher
 Acting Associate General Counsel

06.07.21

Date

BY: Stephen Gura
 Stephen Gura
 Deputy Associate General Counsel

Jeff S. Jordan by SG
 Jeff S. Jordan
 Assistant General Counsel

Donald E. Campbell
 Donald E. Campbell
 Attorney

⁵ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).