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November 26, 2018

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BY ELECTRONIC MAIL

Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7504

Dear Mr. Jordan:

We write on behalf of Elissa Slotkin for Congress and Janica Kyriacopoulos in her official capacity as treasurer (collectively, the "Committee" or "Respondents") in response to the Complaint in MUR 7504. For the reasons discussed below, the Federal Election Commission (the "Commission") must either find no "reason to believe that a person has committed, or is about to commit, a violation" of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 et seq. (the "Act"), or dismiss the complaint as a matter of prosecutorial discretion.

FACTUAL BACKGROUND

The Complaint alleges that Respondents failed to include a disclaimer on three signs displayed beside roads in the City of Brighton and Genoa Township.¹ The entire basis of the Complaint is the incorrect assumption that Respondents created and displayed these signs based solely on the fact that the signs used the campaign logo, and looked similar to yard signs distributed previously by Respondents.² However, the Complaint is simply mistaken. Respondents did not create or authorize the signs in advance.

In fact, a group of volunteers created and paid for the signs using their personal funds and did not inform the Committee of their activities ahead of time.³ The Committee learned about the signs

¹ Complaint at 1 (Sept. 26, 2018).

² *Id.*

³ While the Complaint did not provide a clear description of the signs, the signs are not billboards. They are slightly larger-than-normal yard signs made out of a plastic material and staked into the ground.

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by word-of-mouth from others in the district but was not aware that the signs lacked disclaimers until receiving the Complaint on October 9, 2018.

Immediately after receiving the Complaint, the Committee engaged with the volunteers concerning the missing disclaimers. Rather than having the volunteers pay to correct the signs, the Committee offered to pay for the costs of the signs itself and also pay to add stickers bearing a "Paid for by Elissa Slotkin for Congress" disclaimer. The volunteers agreed with this plan and Respondents immediately printed and applied the stickers to the signs. Respondents finished applying the stickers by October 11, 2018.⁴

The volunteers paid \$60 for each of the three signs, and Respondents have made the \$180 payment and will disclose it on the upcoming post-general report.

LEGAL ANALYSIS

Because the signs in question were not campaign communications, the Commission must find no reason to believe Respondents violated 52 U.S.C. 30120's disclaimer requirement. At the time of the violation, Respondents had neither paid for the signs nor authorized the volunteers to create or display the signs. Therefore, the Complaint named the wrong parties and failed to allege any violation against Respondents.⁵

Furthermore, even if the Commission took the incredible step of holding Respondents responsible for communications they did not pay for or authorize, there are several factors that warrant dismissing the Complaint under *Heckler v. Chaney*.⁶ First, Respondents remedied the disclaimer issue within two days of learning of the problem, despite having no obligation to correct a non-campaign communication. The signs therefore lacked disclaimers for only a small period of time and resulted in at most negligible public confusion. Second, at \$180 total, the cost

⁴ Respondents paid Allied Media Partners \$51.26 to professionally print stickers for the signs. Respondents paid the invoice on October 12, 2018 and reported the expense on the Committee's pre-general report. See Elissa Slotkin for Congress, 2018 Pre-General Report at 753 (amended Nov. 20, 2018).

⁵ See *Enf't Priority Sys. Dismissal Rpt.* at 1-2, MUR 7342 (Marie Newman for Congress) (dismissing a complaint filed against a campaign over a postcard that lacked a disclaimer, when it appeared that the postcard was an independent expenditure and the campaign was not involved in the violation). The Commission has even declined to pursue disclaimer violations when the relevant respondent maintained control over the communication and a third party introduced a disclaimer error. See, e.g., Factual & Legal Analysis ("F&LA") at 5-6, MUR 6125 (McClintock for Congress) (declining to find a violation involving robocalls, when the campaign approved a script that included a disclaimer, but the vendor later removed the disclaimer); MUR 5580 (Alaska Democratic Party) (assessing no penalty where a vendor inadvertently omitted the disclaimer after the Party sent the vendor a correct version of the mailer for mass reproduction); MUR 5133R (Stenberg for Senate 2000) (declining to pursue a disclaimer violation when the committee produced a postcard with a disclaimer but the copy center cut off the disclaimer). Respondents in this matter are even less culpable, as they had no control whatsoever over the content of the signs and never had the opportunity to approve the signs.

⁶ 470 U.S. 821 (1985).

of the three signs falls safely within the *de minimis* range.⁷ And third, the Commission should not pursue a technical violation where legally unsophisticated citizens were engaging in grassroots activism. To assess a penalty based on these facts would chill political speech and signal that public-spirited citizens, who do not have the resources to obtain legal advice on the Act's many complicated provisions, must avoid participating in the electoral process or risk paying a fine.

Because the Complaint completely fails to allege any violation against Respondents, and because of the extremely low dollar amount involved in the violation, Respondents' rapid remedial action, and the important First Amendment interests at stake, the Commission must find no reason to believe a violation occurred or dismiss the Complaint. To do otherwise would violate due process, as the Commission routinely disposes of potential disclaimer violations without pursuing a penalty, particularly where, as here, the communications are inexpensive and Respondents take swift corrective action.⁸

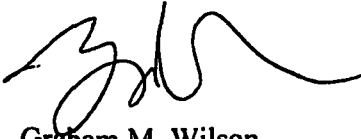
⁷ See F&LA at 1-3, MUR 6896 (Margie Wakefield for Kansas) (dismissing a complaint alleging that a campaign failed to include a disclaimer on yard signs, when the yard signs cost over \$6,000 and the campaign remedied the violation by affixing disclaimer labels to the signs).

⁸ See, e.g., F&LA at 3, MUR 7307 (Frederick Costello) (dismissing a complaint alleging that a committee failed to include a disclaimer on certain emails when the committee took steps to prevent the problem from happening again); Enft Priority Sys. Dismissal Rpt. at 1-2, MUR 7289 (Take Back the Tenth) (dismissing a complaint alleging that a committee failed to include a disclaimer on a mobile billboard truck when the committee stated that it would ensure the error did not happen again); MUR 7210 (Durkalski) (closing the file where two paid newspaper advertisements lacked a disclaimer and the newspaper later issued a "clarification" stating who paid for the ads); Enft Priority Sys. Dismissal Rpt. at 1-2, MUR 6871 (Tucker for Congress) (dismissing a complaint alleging that an automated telephone message lacked a disclaimer); F&LA, MURs 6799 & 6842 (Frank Scaturro for Congress) (dismissing allegations that an email and a mailing lacked disclaimers, where the committee remedied the problem with the mailing by resending a compliant communication); F&LA at 2-3, MUR 6832 (Grant Lally for Congress) (dismissing an allegation that a candidate's campaign website lacked a disclaimer when it appeared that the committee took remedial action and added the disclaimer later); F&LA at 3-4, MUR 6804 (Committee to Elect Randall Olsen) (dismissing allegations that the committee did not include disclaimers on bags, handouts, and fliers when it purchased disclaimer stamps and stickers to remedy the violation); F&LA at 4, MUR 6794 (Emmer for Congress) (dismissing a disclaimer violation where a television advertisement lacked a disclaimer but cost only \$850); F&LA at 2-4, MUR 6690 (Sobhani for Maryland) (dismissing a complaint alleging that robocalls lacked a disclaimer when the committee took remedial action); F&LA at 6-7, MUR 6665 (Alex Pires for U.S. Senate) (dismissing allegations that the committee's website and printed communications lacked disclaimers, where the committee added a disclaimer to the website after receiving the complaint and fixed one of the written communications prior to learning of the complaint); Statement of Reasons of Comm'rs Wold, Elliot, Mason, McDonald & Sandstrom at 2-3, MUR 4791 (Ryan for Congress) (dismissing a complaint alleging that a football schedule that expressly advocated Paul Ryan's election lacked a disclaimer when the schedules carried only minimal costs).

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Very truly yours,

A handwritten signature in black ink, appearing to be 'G. Wilson', written over the typed name.

Graham M. Wilson
Shanna M. Reulbach

Counsel to Respondents

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