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November 30, 2018

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VIA MAIL

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

Re: MUR 7509

OFFICE OF
GENERAL COUNSEL
2018 NOV 30 PM 2:22

Dear Mr. Jordan:

On behalf of Tim Ryan for Congress and Allen Ryan in his official capacity ("the Committee"), I write in response to the Complaint in MUR 7509. The Complaint's sole gravamen is that the disclaimer on a leaflet distributed by the Committee was not "in a printed box set apart from the other contents of the communication on the advertisement."¹ The Commission should follow the course it has taken in recent similar matters, close the file, and take no further action.

The Committee does not deny producing the leaflet identified by the Complaint as Exhibit A. The information available to the Committee indicates the leaflet was created in-house and the box omitted by simple error; that approximately 2,500 copies were printed; that approximately 1,000 of those copies were provided to third parties for grassroots distribution; and that the remaining copies were kept in Committee offices when the Complaint was filed. Upon learning of the Complaint and discovering the error, the Committee recovered the leaflets it could from third parties and destroyed those within its possession. The candidate publicly acknowledged the error.²

But for the omission of the printed box, the leaflet was correct. It included a disclaimer ("Paid for by Tim Ryan for Congress") stating that the Committee paid for it. That disclaimer was of a sufficient type size to be clearly readable and was printed with a reasonable degree of color contrast between the background and the disclaimer.³ A reasonable person would surely have known that the Committee paid for the leaflet.

¹ Compl., Matter Under Review 7509, at 1 (citing 52 U.S.C. §§ 30120(a)(1), (c)(2)).

² See David Skolnick, *Mahoning Republican chairman files complaint against Tim Ryan over 'minor infraction'*, THE VINDICATOR (Oct. 4, 2018 12:02 AM) (in which Representative Ryan "acknowledged the error and said it will be 'fixed immediately'"), <http://www.vindy.com/news/2018/oct/04/munroc-lodges-complaint-against-ryan/>.

³ See 52 U.S.C. § 30120(c)(1), (c)(3).

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The Commission has previously acknowledged "the *de minimis* nature" of omitting the printed box.⁴ It has repeatedly exercised its prosecutorial discretion to dismiss alleged violations of the box requirement, because of the requirement's "technical" and "de minimis" nature.⁵ Only rarely has the Commission pursued enforcement and penalties over omission of the "box": for example, when the requirement was in its infancy, when 100,000 copies were involved, when the disclaimer was alleged to be small and hard to read, and when the respondent initially did not answer the complaint.⁶

The Commission can and should follow its ordinary course and dismiss the Complaint in MUR 7509. Because of the box requirement's technical nature, the circumstances that caused the box to be omitted from this communication, the limited scope of the communication, and the Committee's prompt remedial measures, the Commission should dismiss the Complaint, close the file, and take no further action.

We appreciate the Commission's consideration of this response.

Very truly yours,



Brian G. Svoboda
Counsel to Respondents

⁴ Factual and Legal Analysis, Matter Under Review 6034, at 8 (Mar. 27, 2009) (exercising prosecutorial discretion and dismissing an allegation of an omitted printed box).

⁵ See *id.* See also Factual and Legal Analysis, Matter Under Review 7245, at 2, 4 (dismissing the complaint, despite failure "to include a printed box around a disclaimer on a campaign flyer," because the violations were "technical in nature," and because of their "*de minimis* nature"); First General Counsel's Report, Matter Under Review 6665, at 3, 9-10 (Oct. 9, 2014) (recommending dismissal despite failure to contain a required written disclaimer in a "printed box set apart from the other contents of the communication," because of the *de minimis* nature of the violation); Factual and Legal Analysis, Matter Under Review 5925, at 5 (Jan. 8, 2008) (dismissing the complaint, despite failure to put a printed box around the required written disclaimer, "due to the *de minimis* nature of the violation").

⁶ See First General Counsel's Report, MUR 5547, at 6-8 (Dec. 18, 2005). The matter was ultimately conciliated for \$6,000. See Conciliation Agreement, MUR 5547, at 3 (Jan. 16, 2007).