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2010 NOV 15 PM 12: 59

November 10, 2010

OFFICE OF GENERAL
COUNSEL

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 6392

Dear Mr. Jordan:

Please accept the following response filed on behalf of Kelly for Congress (Committee) and Kristen L. Smith, Treasurer (Respondents). Respondents received a Complaint filed with the Federal Election Commission (FEC) dated October 6, 2010 but received by them on October 19, 2010. Jesse Kelly was unsuccessful in his campaign for Congress. Your correspondence mistakenly identified Mr. Kelly, the candidate, as the committee's treasurer. The FEC assigned number MUR 6392 to the Complaint, filed against Respondents by Roger Salzgeber (Salzgeber or Complainant). Salzgeber is a political supporter of Gabrielle Giffords, Mr. Kelly's Democratic opponent for the U.S. House of Representatives for the 8th Congressional District of Arizona.

Although the original date to respond to this matter was November 2, 2010, we received a 15 day extension from the FEC on October 21, 2010 (enclosed). This response is submitted to your office within 15 days of receipt of that extension in accordance with 2 U.S.C. § 437g(a) and it therefore constitutes a timely response. For the reasons discussed herein, the Commission need not give this matter further investigation or action and the Complaint should be immediately dismissed as it pertains to the Respondents

Allegation Violation

The Complainant argues that multiple political advertisements located throughout the Arizona sponsored by Kelly for Congress did not contain the printed box around the disclaimer as required by the Federal Election Campaign Act (Act) and 11 CFR 110.11(c)(2)(ii).

Analysis

With respect to the one printed communication identified by the Complainant, the print of the disclaimer was of sufficient size to be clearly readable by the recipient of the communication and the print had a reasonable degree of color contrast between the background and the printed statement as is required by 11 CFR 110.11(c)(2)(ii) and (iii). However, due to an administrative but unintentional omission, the disclaimer was not contained within a printed box as is also required by 11 CFR 110.11(c)(2)(ii). Once the Committee became aware of this fact, it

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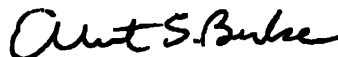
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immediately took corrective action. It instructed all volunteers to either draw a sufficient box around any disclaimers not contained within a box; or to remove the signs and replace them with those with disclaimers that complied with all relevant regulations. An example of such corrective action is evidenced by the Attachment to this letter.

Conclusion

The FEC should dismiss the Complaint and find no reason to believe that a violation of the Act or the regulations promulgated thereunder has occurred by Kelly for Congress or Kristen L. Smith, Treasurer, in her official capacity. The error was unintentional and when discovered, the Committee immediately took corrective action to comply with all relevant regulations. With respect to Ms. Smith's personal capacity, she did not knowingly or willfully violate the Act or intentionally deprive herself of the operative facts giving rise to the alleged violation. In addition, Mr. Kelly was unsuccessful in his campaign for Congress. Should you have any additional questions with regards to this matter, I may be reached at (202) 558.3452. Thank you.

Sincerely,



Elliot S. Berke

Enclosure

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Attachment to Response for Kelly for Congress and Kristen L. Smith, Treasurer
in MUR 6392

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