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IN AND BEFORE THE

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FEDERAL ELECTION COMMISSION

OFFICE OF GENERAL  
COUNSEL

Friends of Kelly Ayotte, H. Scott Flegal,  
Treasurer, in his official capacity

MUR 6431

Respondent

**RESPONSE AND MOTION TO DISMISS COMPLAINT**

Friends of Kelly Ayotte, H. Scott Flegal, in his official capacity as Treasurer of the Committee ("the Ayotte Committee") ("Respondent"), files this Response to the Complaint filed with the Federal Election Commission ("Commission") by an individual, Mr. Raymond Buckley, alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Respondent affirmatively states that there has been no violation of the Act, as evidenced by the exhibits to the Complaint.

It should be noted from the outset that the complainant, Mr. Buckley, did not file a complaint against the Ayotte Committee. Rather, the complaint names only a state entity, the Republican Senate Majority Committee, as the Respondent. The Commission has apparently added the Ayotte Committee *sua sponte* as a party respondent. However, the complaint sets forth no violation of the Act by the Ayotte Committee (or, for that matter, by the named Respondent in the complaint, the Republican Senate Majority Committee ("the State Committee")).

The complaint alleges that four newspaper ads in which appeared photographs of then-GOP nominee and now United States Senator Kelly Ayotte constitute a violation of the Act by the State Committee. That is incorrect.

Commission regulations exempt from the definition of Federal Election Activity ("FEA") a communication such as the ones at issue in this MUR.

"(c) *Exceptions.* Federal election activity does not include any amount expended by a State, district or local committee of a political party for any of the following activities:

- (1) A public communication that refers solely to a candidate for State or local office and that does not promote or support, or attack or oppose a clearly identified candidate for Federal office; provided, however, that such a public communication shall be considered a Federal election activity if it constitutes voter registration activity, generic campaign activity, get-out-the-vote activity, or voter identification." See 11 C.F.R. §100.25(c).

In the instant case, a local Republican party committee paid for ads in which Kelly Ayotte endorsed two state senate candidates, whose photographs also appeared in the ads.

At the direction of the Ayotte Committee, no reference to Kelly Ayotte's federal candidacy appears anywhere in the newspaper ads, nor is her status as a former Attorney General referenced in the ad. Only the name and photograph of Kelly Ayotte appears in the ad with no designation whatsoever indicating her candidacy.

The support and promotion of candidacy is a statement of support by Kelly Ayotte solely for the two state senate candidates. Conversely, the ads do not promote or support Kelly Ayotte for any office, state or federal.

Further, the Ayotte Committee did not review or approve the ads prior to their dissemination or publication. Kelly Ayotte agreed to endorse the two local candidates provided that there was no reference to or mention of her federal candidate status in any public communications. Such was the sole extent of the Ayotte Committee's involvement in the advertisements at issue.

Accordingly, because the Ayotte Committee was not involved in the preparation or publication of the ads referenced in the MUR, and because there was no reference in any of the advertisements to Kelly Ayotte's candidacy for any office or any effort to promote, attack, support or oppose her candidacy, the complaint is without merit and should be dismissed.

Respectfully submitted,



Cleta Mitchell, Counsel  
Friends of Kelly Ayotte  
H. Scott Flegal, Treasurer

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