



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEB - 2 2016

Via UPS 2-Day Service
Joseph Aosse

Cedar Rapids, IA 52402

RE: MUR 6838

Dear Mr. Aosse:

The Federal Election Commission ("Commission") is the regulatory agency that administers and enforces the Federal Election Campaign Act of 1971, as amended ("the Act"). Based on a complaint filed by Robert Rush on June 5, 2014, the Commission found reason to believe that Unknown Respondent violated the Act by failing to include a proper disclaimer on a mailer that contained express advocacy with regard to three federal candidates and failing to report expenditures or independent expenditures. See 52 U.S.C. §§ 30104(b), 30104(c), and 30120(a).¹ The Commission took no action at that time as to whether Unknown Respondent violated the Act by failing to disclose expenditures on a 24-hour report. See 52 U.S.C. § 30104(g). The Complaint and the Factual and Legal Analysis which formed the basis for the Commission's finding are attached for your information.

The Commission authorized the Office of General Counsel to conduct an investigation concerning the source and cost of the mailers in question. During our investigation, we obtained information indicating that you paid \$3,250 to distribute mailers in Linn County and Dubuque, Iowa, which contained the photographs and/or names of three federal candidates and the disclaimer "Paid for by Voters for Better Government," and that you may be the Unknown Respondent as to which the Commission made findings. We are now preparing to make a recommendation to the Commission in connection with that information. Prior to making our recommendation, we offer you an opportunity to provide in writing a response to the Complaint and the Commission's Factual and Legal Analysis. Should you choose to respond, you may also submit any materials—including documents or affidavits from persons with relevant knowledge—that you believe may be relevant or useful to the Commission's consideration of this matter.

Your submission, if you choose to make one, must be submitted within 15 days of receipt of this letter. You should address any response to the Office of General Counsel, and the

¹ A "reason to believe" finding is not a finding that any person violated the Act; rather, it means only that the Commission believes a violation may have occurred. See 52 U.S.C. § 30109(a)(2).

response should reference MUR 6838. After 15 days, we will prepare recommendations to the Commission, taking into account any response you submit in making our recommendations. For your information, I have enclosed a brief description of the Commission's preliminary procedures for processing possible violations discovered by the Commission.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.² If you intend to be represented by legal counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Tanya Senanayake, the attorney handling this matter, at (202) 694-1571. Information is also available on the Commission's website at www.fcc.gov.

Sincerely,



Kathleen Guith
Acting Associate General Counsel for Enforcement

Enclosures:
Complaint
Factual and Legal Analysis

² The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: Unknown Respondent

MUR 6838

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7 **I. INTRODUCTION**

8 The Complaint in this matter arises from a mailer distributed in Cedar Rapids, Iowa, that
9 expressly advocates the election of two federal candidates without a proper disclaimer.

10 Based on the available information, the Commission finds reason to believe that
11 Unknown Respondent violated the Federal Election Campaign Act of 1971, as amended (the
12 "Act"), by failing to include a proper disclaimer on the mailer and failing to report expenditures
13 or independent expenditures.¹

14 **II. FACTUAL BACKGROUND**

15 The Complaint stems from the distribution of a postcard, one side of which bears
16 photographs of two federal candidates and two state candidates, in progressively increasing size
17 from left to right in the following order: Bruce Braley (federal candidate); Jack Hatch (state
18 candidate); Andrea Jackson (state candidate); and Anesa Kajtazovic (federal candidate).² The
19 name of each of these candidates is printed below that candidate's photograph. The top of this
20 side of the mailer states, "Vote Tuesday June 3rd," and at the bottom – below the candidates'
21 photographs and names – it states, "Vote for Representation that works for YOU!" On the other
22 side of the mailer, to the left of the addressee information, it reads, "Pat Murphy" – the name of
23 another federal candidate – followed by a large question mark below this name. Below that, in

¹ See 52 U.S.C. §§ 30104(b), 30104(c), 30104(g), and 30120(a). The Commission takes no action at this time as to whether the expenditures associated with the mailer required the disclosure on a 24-hour report under 52 U.S.C. § 30104(g).

² Compl. at 3.

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1 smaller typeface is written, "After 22 years in the Iowa House[,] why are our roads so bad?"
2 Then, below those words, in smaller typeface, the mailer contains a disclaimer: "Paid for by
3 Voters for Better Government." Finally, the mailer contains a bulk mail permit imprint. The
4 mailer contains no return address. The Complainant, who identifies himself as a resident of
5 Iowa's First Congressional District, says he received the mailer on May 28, 2014,³ six days
6 before the June 3, 2014 Iowa primary election.

7 Voters for Better Government is not registered as a political committee with the
8 Commission, and the Iowa Ethics and Campaign Disclosure Board contains no accessible public
9 record of this organization.⁴ The Commission found no public record of an entity named Voters
10 for Better Government that is active in Iowa. Furthermore, there is no information available
11 before the Commission that indicates that the candidates identified in the mailer – Braley,
12 Kajtavovic, Hatch, and Jackson – or their respective campaigns have knowledge of the source of
13 the mailer or had any responsibility for the mailer. Because Voters for Better Government may
14 be a fictitious organization, the Commission makes its determinations as to an "Unknown
15 Respondent."

16 III. LEGAL ANALYSIS

17 A. Failure to Include a Compliant Disclaimer

18 Under the Act and Commission regulations, any "public communication" that "expressly
19 advocates" the election or defeat of a clearly identified candidate must include a disclaimer.⁵

³ *Id.* at 2.

⁴ *See* IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD, <https://webapp.iecdb.iowa.gov/publicview/NewContributionSearch.aspx> (last visited June 30, 2015).

⁵ 52 U.S.C. § 30120(a); *see* 11 C.F.R. § 110.11(a)(2).

1 A "public communication" includes a "mass mailing," which is defined as a mailing of
2 more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-
3 day period.⁶ The available information before the Commission indicates that the mailer at issue
4 here is a "public communication" because it is more likely than not that a minimum of 200
5 copies of the mailer were distributed. The bulk mail permit imprint on the mailer attached to the
6 Complaint indicates the mailers were sent by Standard Mail; the U.S. Postal Service requires a
7 minimum of 200 pieces (or 50 pounds) of mail be sent in order to qualify for the Standard Mail
8 bulk mail discount.⁷

9 A communication expressly advocates the election or defeat of a clearly identified
10 federal candidate if it

11 [u]ses phrases such as "vote for the President," "re-elect your
12 Congressman," "support the Democratic nominee," "cast your ballot for
13 the Republican challenger for U.S. Senate in Georgia," "Smith for
14 Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice"
15 accompanied by a listing of clearly identified candidates described as Pro-
16 Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by
17 a picture of one or more candidate(s), "reject the incumbent," or
18 communications of campaign slogan(s) or individual word(s), which in
19 context can have no other reasonable meaning than to urge the election or
20 defeat of one or more clearly identified candidate(s), such as posters,
21 bumper stickers, advertisements, etc. which say "Nixon's the One,"
22 "Carter '76," "Reagan/Bush" or "Mondale!"⁸

23 The mailer at issue here clearly identifies federal candidates Braley and Kajtazovic by
24 featuring their photographs as well as their names directly below the photographs and includes
25 the words "Vote for Representation that works for YOU!" As in *Massachusetts Citizens for Life*,

⁶ 52 U.S.C. § 30101(22), (23); see 11 C.F.R. §§ 100.26, 100.27.

⁷ See <http://pe.usps.com/businessmail101/getstarted/bulkmail.htm> (last visited June 30, 2015).

⁸ 11 C.F.R. § 100.22(a); see also *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (a communication is express advocacy when "it provides, in effect, an explicit directive" to vote for the named candidates).

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1 *Inc.* – where a publication that contained the statement “Vote Pro-Life” accompanied by
2 photographs of federal candidates was deemed express advocacy⁹ – the mailer at issue here
3 “provides in effect an explicit directive: vote for the[] (named) candidates,” Braley and
4 Kajtazovic.¹⁰ As such, under 11 C.F.R. § 100.22(a), the mailer constitutes express advocacy and
5 requires a disclaimer.

6 The disclaimer contained in the mailer, however, does not satisfy the Act’s requirements.
7 It states only that the mailer was paid for by Voters for Better Government, and thus it lacks any
8 statement regarding whether a candidate authorized it.¹¹ Therefore, the Commission concludes it
9 has reason to believe that Unknown Respondent violated 52 U.S.C. § 30120(a) by failing to
10 include a compliant disclaimer on the mailer.

11 **B. Failure to Report Expenditures/Independent Expenditures**

12 The expenditures for the mailers apparently never were reported to the Commission. If a
13 person other than a political committee made the expenditures and they exceeded \$250, then the
14 person should have filed an independent-expenditure report with the Commission under
15 52 U.S.C. § 30104(c).¹² If either an authorized or unauthorized political committee made the
16 expenditures, then that committee should have disclosed them in its regular disclosure report.¹³
17 The Commission thus concludes it has reason to believe that Unknown Respondent violated

⁹ *Massachusetts Citizens for Life, Inc.*, 479 U.S. at 243–44.

¹⁰ *Id.* at 249.

¹¹ Moreover, it appears that Voters for Better Government may be a fictitious organization. If, in fact, Voters for Better Government does not exist as an entity, the partial disclaimer stating that this entity paid for the mailer would be false.

¹² The Act defines “independent expenditure” as “an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate; and that is not made in concert or cooperation with or at the request or suggestion of such a candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.” *Id.* § 30101(17).

¹³ *Id.* §§ 30104(b)(4)(G), 30104(b)(4)(H)(iii).

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