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BY MESSENGER

Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Kim Collins, Paralegal
999 E Street, NW
Washington, DC 20436

Re: MUR 6911
Lois Frankel for Congress and Janica Kyriacopoulos, Treasurer

Dear Ms. Collins:

I write on behalf of Lois Frankel for Congress and Janica Kyriacopoulos, Treasurer ("the Committee") in response to the complaint in MUR 6911. Because the complaint presents no facts that describe any violation of any statute or regulation, *see* 11 C.F.R. § 111.4(d)(3) (2014), the Commission should find no reason to believe that the Committee committed any violation and close the matter.

FACTUAL DISCUSSION

The Complaint's sole factual allegation is that the Committee—like myriad other candidates and political committees—sent messages on Twitter, Inc.'s platform, and did not use 37 of the 140 available characters to display a notice stating "Paid for by Lois Frankel for Congress." Twitter's platform can be used for free by any registered user among the public at large.[1] When a user sends a message on Twitter, it sends a "tweet." When a user shares someone else's tweet with its own followers, it sends a "retweet." When a user begins a word with "#" within the tweet, it assigns a topic to that tweet called a "hashtag," so that users will find that tweet among others containing the same hashtag.[2]

The Complaint alleges no deception whatsoever by the Committee. The Committee's Twitter "handle" is "@LoisFrankel." Its profile—accessible through any tweet that it sends—shows a picture of Representative Frankel, says "Thank you for visiting my campaign twitter page" and provides a link to the campaign's web site at http://www.loisfrankelforcongress.com/.[3] That web site, in turn, contains a disclaimer that reads: "Paid for by Lois Frankel." That the complainant

[1] *See* https://twitter.com/tos?lang=en.
[2] *See* https://about.twitter.com/what-is-twitter/story-of-a-tweet. *See also* Advisory Opinion 2011-02 n.3.
[3] The Committee's Twitter profile can be seen at https://twitter.com/LoisFrankel.

filed the instant Complaint is proof enough that he was fully able to identify the tweets as sent by the Committee.

Still, the Complaint alleges that "Twitter accounts are public websites"; that all "tweets," "retweets" and "hashtags" must have Commission disclaimers when sent by political committees; and that because the Committee did not include these disclaimers in its tweets, Representative Frankel "should be disqualified" from office "and fined." Compl. at 1.

ANALYSIS

Amended most recently in 2002—more than five years before Twitter was formed[4]—the Federal Election Campaign Act of 1971's disclaimer statute requires certain communications to state who paid for them, whenever political committees make disbursements to finance them. *See* 52 U.S.C. § 30120(a) (2014). Commission regulations provide three relevant exceptions to this requirement. First, they entirely exclude communications over the Internet, except for those placed for a fee on another's Web site, and except for political committee Web sites and electronic mail of more than 500 substantially similar communications. *See* 11 C.F.R. §§ 100.26, 110.11(a)(1). Second, they exclude "small items upon which the disclaimer cannot be conveniently printed ..." *See id.* § 110.11(f)(i). Third, the regulations exclude advertisements "of such a nature that the inclusion of a disclaimer would be impracticable ..." *Id.* § 110.11(f)(ii).

The Commission has never found that the disclaimer requirement applies to Twitter communications. In one advisory opinion, the Commission held that the "small items" exception applied to wireless text messages which, like tweets, are limited to 160 characters per screen. *See* Advisory Opinion 2002-09 (Target Wireless).[5] In two other advisory opinions, the Commission approved requests by principal campaign committees to send tweets about books authored by the candidates, while giving no indication that a disclaimer requirement would apply. *See* Advisory Opinion 2011-02 (Scott Brown for U.S. Senate Committee), Advisory Opinion 2014-06 (Ryan for Congress, Inc.).

Because there is no authority to apply the disclaimer requirement to Twitter communications, the Complaint fails to present any violation of law. Because tweets, retweets and hashtags are

[4] *See* https://about.twitter.com/company.

[5] The Commission was unable to agree whether the disclaimer requirement applied to Google's "AdWords" program in Advisory Opinion Request 2010-19. However, the three Commissioners who would have applied the disclaimer requirement held that it could be met by displaying "the URL of the committee sponsor's website and a landing page that contains a full disclaimer meeting the requirements of 11 C.F.R. § 110.11." Concurring Statement of Vice Chair Bauerly and Commissioners Walther and Weintraub, Advisory Opinion Request 2010-19, at 2. As noted above, the Committee's Twitter profile follows this practice, providing a link to its web site URL, which in turn contains a full disclaimer. *See* https://twitter.com/LoisFrankel.

Internet communications, and because they are not placed for a fee, they are not "public communications," and are not subject to the disclaimer requirement generally. *See* 11 C.F.R. § 100.26. Because they are neither "Web sites" nor "electronic mail," they are not required to carry disclaimers when sent or used by political committees. *See id.* § 110.11(a)(1). Tweets are prima facie outside the scope of the disclaimer requirement.

Yet even if one were to treat tweets, retweets and hashtags as "Web sites" or "electronic mail" as the Complaint imaginatively does, then the "small items" and "impracticability" exceptions would still apply. A tweet cannot contain more than 140 characters. To include a Committee disclaimer in a tweet would have taken up 37 of those characters—a larger proportion than that from which the Commission recoiled in Advisory Opinion 2002-09. To include a disclaimer in a retweet would have taken up an even larger proportion of the communication. Neither the Complaint nor common sense offers any idea how a disclaimer might be appended to a hashtag. It was more than reasonable for the Committee—like almost everyone else in the regulated community—to rely on Advisory Opinion 2002-09 and omit disclaimers from their tweets.

Thus, there is no reason to believe that the Committee violated any statute or regulation. The Commission should find accordingly, close the file in this matter, and take no further action.

Very truly yours,

Brian G. Svoboda
Counsel to Lois Frankel for Congress and Janica Kyriacopoulos, Treasurer