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FIRST GENERAL COUNSEL'S REPORT

MUR: 6911
DATE COMPLAINT FILED: December 31, 2014
DATE OF NOTIFICATIONS: January 8, 2015
LAST RESPONSE RECEIVED: March 6, 2015
DATE ACTIVATED: June 10, 2015

EXPIRATION OF SOL: August 5, 2019
ELECTION CYCLE: 2014

COMPLAINANT:

Raymond Schamis

RESPONDENTS:

Lois Frankel for Congress and Janica
Kyriacopoulos in her official capacity as
treasurer
Paul Spain for Congress and Jane Pike in her
official capacity as treasurer
DNC Services Corporation/Democratic National
Committee and Andrew Tobias in his official
capacity as treasurer
Republican National Committee and Anthony
Parker in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30120¹
11 C.F.R. § 100.26
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that the Respondent committees have Twitter accounts² and have posted messages ("tweets") from those accounts without including disclaimers required under the Act and Commission regulations. Specifically, the Complaint alleges that disclaimers are

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

² The following unique Twitter usernames are the complained-of accounts associated with the Respondents: @LoisFrankel, @spain22congress, @theDemocrats, and @GOP.

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1 required but missing on each Respondent's Twitter profile³ and all tweets from each
2 Respondent's Twitter account. In support of this allegation, the Complaint argues that Twitter
3 profiles are like "websites" and tweets are like "electronic mail" as those terms are used in
4 11 C.F.R. § 110.11(a).

5 Respondents Lois Frankel for Congress, Paul Spain for Congress,⁴ and DNC Services
6 Corporation/Democratic National Committee ("DNC") acknowledge in their responses that the
7 identified Twitter usernames are theirs. Respondent Republican National Committee ("RNC"),
8 in its response, admits it has a Twitter account; the RNC's website (gop.com) directs users to the
9 Twitter username that is the subject of the Complaint. All Respondents deny the alleged
10 violations of the Act and regulations. Several Respondents further assert that even if their tweets
11 constituted public communications or e-mail communications, they would be subject to the
12 "small items" or "impracticable" exceptions to the disclaimer rule.⁵

13 As set forth below, we recommend that the Commission find no reason to believe the
14 Respondents violated 52 U.S.C. § 30120(a) by failing to include disclaimers on their Twitter
15 profiles or tweets, and close the file in this matter.

16 II. FACTUAL AND LEGAL ANALYSIS

17 When a political committee makes a disbursement for the purpose of financing certain
18 communications, those communications must clearly state who paid for them and whether the

³ With respect to this alleged violation, we understand the Complaint's use of the term "Twitter account" to refer to the public display of that account on the Twitter profile. The Twitter profile, along with the username, identifies a Twitter user. See Profile, Twitter Help Center: The Twitter Glossary, <https://support.twitter.com/groups/50-welcome-to-twitter/topics/204-the-basics/articles/166337-the-twitter-glossary> (last visited Sept. 3, 2015) ("Twitter Glossary"). A Twitter user's profile displays information a user chooses to share publicly, such as lists of who follows the user and who the user follows, the user's "bio"—which is "a short (up to 160 characters) personal description"—and all of the user's tweets. See *id.* (and at definition of "bio").

⁴ Frankel and Spain were candidates in the 2014 general election in Florida's 22d Congressional District.

⁵ See Lois Frankel for Congress Resp. at 3; RNC Resp. at 3; DNC Resp. at 4; 11 C.F.R. § 110.11(f)(i)-(ii).

1 communications are authorized by a candidate.⁶ Included in the scope of this disclaimer
2 requirement are: (1) all public communications by political committees; (2) all internet websites
3 of political committees available to the general public; and (3) electronic mail of more than 500
4 substantially similar communications when sent by a political committee.⁷

5 The Complaint does not allege that the Twitter profiles or tweets fall in the first of these
6 categories. Indeed, the Twitter profiles and tweets in this matter do not appear to constitute
7 "public communications," which include internet communications only when they are "placed
8 for a fee on another person's website."⁸ Twitter is a free service that does not charge users to
9 create accounts, display profiles, or send tweets.⁹ Though Twitter does sell advertising in the
10 form of "promoted tweets" and other communications that are placed on Twitter for a fee,¹⁰ the
11 Complaint does not allege and the available information does not suggest that any of the
12 accounts or tweets at issue in this matter were placed on Twitter for a fee. Consequently, as free
13 communications on Twitter, the complained-of Twitter profiles and tweets are not "public
14 communications" under 11 C.F.R. § 100.26.

15 Thus, the challenged communications are subject to the disclaimer rule only if, as alleged
16 in the Complaint, Respondents' Twitter profiles are "websites of political committees" or tweets
17 are "electronic mail of more than 500 substantially similar communications" under 11 C.F.R.
18 § 110.11(a). As detailed below, we recommend that the Commission conclude they are not.

⁶ See 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(a)-(b).

⁷ 11 C.F.R. § 110.11(a)(1).

⁸ *Id.* § 100.26.

⁹ See Twitter via SMS FAQs, <https://support.twitter.com/articles/14014-twitter-via-sms-faqs#> (last visited Sept. 3, 2015).

¹⁰ See Grow Your Business with Twitter, <https://business.twitter.com/> (last visited Sept. 3, 2015) (providing examples of advertising opportunities on Twitter); Twitter Glossary (entries for "Promoted Accounts," "Promoted Trends," and "Promoted Tweets").

1 **A. Respondents' Twitter Profiles Do Not Appear to Constitute**
2 **Committee Websites for Purposes of the Disclaimer Requirement**

3
4 The Complaint alleges that Respondents' Twitter profiles should be treated as websites
5 under section 110.11(a) because they are available to the public.¹¹ But section 110.11(a)(1)
6 applies not to all websites "available to the public," but to such websites that are websites "of
7 political committees." It is true that the Commission treats the websites of political committees
8 differently than those "created and paid for by an individual," which do "not have to include a
9 disclaimer."¹² The Commission has not previously addressed, however, whether a committee's
10 creation and placement of content on social media without payment renders that communication
11 a "website of a political committee" under 11 C.F.R. § 110.11(a).¹³

12 Social media website users create their "own" accounts, pages, profiles, or spaces—like
13 the complained-of Twitter profiles in this matter—within the larger environment of the social
14 media platform. But while Twitter content—including each Respondent's profile—is created by
15 users, it is placed on a single website: Twitter.¹⁴ Twitter, in turn, creates, pays for, and
16 maintains the right to restrict content on that website.¹⁵ For example, Twitter has created

¹¹ Compl. at 1.

¹² See Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,964 (Dec. 13, 2002).

¹³ The Commission recently concluded that the requirements of 11 C.F.R. § 102.14—the regulation that governs whether an unauthorized committee may use a candidate's name in its "communications, including a special project"—extend to the titles of websites and social media pages and accounts. See Advisory Op. 2015-04 (Collective Actions PAC). In reaching that result, however, the Commission did not conclude that a social media page or account is a website. Rather, the Commission noted only that websites, social media accounts, and other social media pages are "online activities" that constitute "projects" for purposes of Section 102.14. *Id.* at 3. That regulation is not at issue in this matter.

¹⁴ See Terms of Service, TWITTER (effective May 18, 2015), <https://twitter.com/tos?lang=en> (last visited Sept. 3, 2015) ("Twitter TOS") (stating that users must agree to Terms of Service that "govern [users'] access to and use of our Services, including our various websites . . . (collectively, the 'Services'), and any information, text, graphics, photos or other materials uploaded, downloaded or appearing on the Services (collectively referred to as 'Content')").

¹⁵ See *id.* ¶ 7 ("All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter"); *id.* ¶ 8 ("We reserve the right at all times (but will not have an

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1 advanced software to enable tweets and underlying data to be displayed, searched, and
2 transmitted on its website.¹⁶ Twitter controls the terms by which users may access the website.¹⁷
3 And Twitter retains its ownership interests in the website and underlying software, while merely
4 granting users a license to use that website, software, and other Twitter services.¹⁸

5 All of these factors support a conclusion that a committee creating and posting a Twitter
6 profile is posting that content on a third-party's website and not creating the committee's own
7 website. Accordingly, it does not appear that Respondents' Twitter profiles constitute committee
8 websites for purposes of the disclaimer requirement.¹⁹
9

obligation) to remove or refuse to distribute any Content on the Services, to suspend or terminate users, and to reclaim usernames without liability to you"); *cf.* Committee on House Administration, *Member's Handbook* (adopted Dec. 16, 2011), available at <http://cha.house.gov/handbooks/members-congressional-handbook> (allowing members of the House of Representatives to establish "profiles, pages, channels or any similar presence on *third-party* sites that allow individuals or organizations to offer information about themselves to the public (Social Media Accounts)" (emphasis added)).

¹⁶ See Cade Metz, *This Is What You Build to Juggle 6,000 Tweets a Second*, WIRED, Apr. 2, 2014, available at <http://www.wired.com/2014/04/twitter-manhattan/>; see also Twitter TOS ¶ 5 (Twitter "may modify or adapt [users'] Content in order to transmit, display or distribute it over computer networks and in various media and/or make changes to [users'] Content as are necessary to conform and adapt that Content to any requirements or limitations of any networks, devices, services or media..").

¹⁷ See Twitter TOS ¶ 8 (Twitter "reserve[s] the right at all times . . . to remove or refuse to distribute any Content on the Services, to suspend or terminate users, and to reclaim usernames"); see also *id.* at ¶10 (Twitter "may suspend or terminate your accounts or cease providing you with all or part of the Services at any time for any or no reason.").

¹⁸ See *id.* ¶ 6 (Twitter grants users only "a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software that is provided to you by Twitter as part of the Services. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Twitter, in the manner permitted by these Terms.").

¹⁹ See Lois Frankel for Congress Resp. at 2-3; RNC Resp. at 3; DNC Resp. at 3. Paul Spain for Congress states that its Twitter "[p]age" contains a disclaimer, and attaches a screenshot showing disclaimer language ("Paid for by Paul Spain for Congress") on the now-defunct @spain22congress Twitter profile. Paul Spain for Congress Resp. at 1, 2. Lois Frankel for Congress responds that its Twitter profile contains a link to the campaign's website that contains a disclaimer. Lois Frankel for Congress Resp. at 1.

1 **B. Respondents' Tweets Do Not Appear to Constitute Committee E-mails for**
2 **Purposes of the Disclaimer Requirement**
3

4 The Complaint alleges that Respondents' tweets should be treated as e-mails under
5 section 110.11(a) because they are both electronic (internet) messages.²⁰ As noted above, section
6 110.11(a) requires disclaimers for "electronic mail of more than 500 substantially similar
7 communications when sent by a political committee."

8 Respondents' tweets, like e-mails, facilitate communications to persons over the internet.
9 But tweets and e-mails are not the same. E-mail, like postal mail, is a communication sent to
10 addressees selected by Respondents. Respondents' tweets, by contrast, are not similarly targeted
11 communications—*i. e.*, communications sent to selected addresses. Public Twitter account
12 tweets can be read by any person on the internet, whether or not that person is a Twitter user and
13 whether or not that person follows any particular Twitter account. Moreover, the disclaimer
14 requirement applies when a committee "sends more than 500 substantially similar e-mail
15 communications."²¹ Unlike 501 e-mails, a singular tweet is not "more than 500 substantially
16 similar communications," even though that single communication may be read by at least that
17 many persons.²² In sum, Respondents' tweets, while in some ways similar to committee e-mails,
18 are not e-mails and thus do not appear to be committee "electronic mail of more than 500
19 substantially similar communications" subject to the Act's disclaimer requirement.²³

20 **C. Conclusion**

21 Respondents' Twitter profiles and tweets are content posted, for free, to a third-party's
22 website and thus appear to be neither committee websites, nor internet communications placed

²⁰ Compl. at 1.

²¹ See Internet Communications, 71 Fed. Reg. 18,589, 18,601 (Apr. 12, 2006) (emphasis added).

²² See 11 C.F.R. § 110.11(a)(1).

²³ See *id.*; RNC Resp. at 2-3.

1 for a fee on another person's website, nor e-mail of more than 500 substantially similar
2 communications.²⁴ Accordingly, Respondents' communications here do not appear to be subject
3 to the Act's disclaimer requirement. We thus recommend that the Commission find no reason to
4 believe that Respondents violated 52 U.S.C. § 30120(a).²⁵

5 **III. RECOMMENDATIONS**

- 6 1. Find no reason to believe that Lois Frankel for Congress and Janica
7 Kyriacopoulos in her official capacity as treasurer violated 52 U.S.C. § 30120(a);
8
9 2. Find no reason to believe that Paul Spain for Congress and Jane Pike in her
10 official capacity as treasurer violated 52 U.S.C. § 30120(a);
11
12 3. Find no reason to believe that DNC Services Corporation/Democratic National
13 Committee and Andrew Tobias in his official capacity as treasurer violated
14 52 U.S.C. § 30120(a);
15
16 4. Find no reason to believe that Republican National Committee and Anthony
17 Parker in his official capacity as treasurer violated 52 U.S.C. § 30120(a);
18
19 5. Approve the attached Factual and Legal Analysis;
20
21 6. Approve the appropriate letters; and


²⁴ See 11 C.F.R. § 110.11(a)(1).

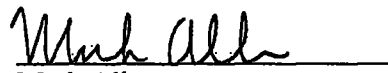
²⁵ In light of this recommendation, we do not address several of the Respondents' argument that the communications may fall under the "small items" or "impracticable" exceptions to the disclaimer rule. See 11 C.F.R. § 110.11(f)(i), (ii).

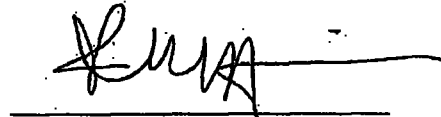
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7. Close the file.

09/03/15
Date


Daniel A. Petalas
Acting General Counsel


Mark Allen
Assistant General Counsel


Jessica Selinkoff
Attorney

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