



NEVADA
FEDERAL ELECTION
COMMISSION
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Heller for Senate; and)	MUR 7355
Chrissie Hastie,)	
in her official capacity as Treasurer)	

RESPONSE

Through counsel, Heller for Senate, and Chrissie Hastie, in her official capacity as Treasurer (collectively, "Respondents"), provide the following response to the complaint filed by the Nevada State Democratic Party ("Complainant") in the matter designated by the Federal Election Commission as MUR 7355.

Based on pure speculation, the Complainant wrongly asserts that the Respondents have violated the Federal Election Campaign Act of 1971, as amended ("FECA"), and Commission regulations. For the foregoing reasons, we respectfully request that the Commission find no reason to believe that the Respondents violated any provision of the FECA or Commission regulations.

I. BACKGROUND

According to the Complainant, there is an electronic billboard near a gas station in Las Vegas that displays ten advertisements in support of Senator Heller ("Billboard Advertisements") interspersed amongst commercial advertisements for that gas station. Those Billboard Advertisements, which apparently support Senator Heller, contain no disclaimer showing who paid for them.

The Complainant then relies on implicit assumptions to allege that the Respondents are in violation of the FECA and Commission regulations because either (i) they have failed to provide for adequate disclaimers on these Billboard Advertisements or (ii) they have accepted an impermissible corporate contribution. As explained below, however, both claims fail because the Respondents (i) do not know who the payor or sponsor of the Billboard Advertisements is and (ii) have not engaged in any conduct to make the Billboard Advertisements coordinated communications.

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II. LEGAL ANALYSIS

A. The Respondents Do Not Know Who Paid for the Billboard Advertisements

Taking the Complainant's factual assertions at face value, the Billboard Advertisements appear to be "public communications"¹ because they are "general public political advertising."² And because Commission regulations provide that a public communication that expressly advocates the election or defeat of a federal candidate must include a disclaimer,³ we presume the Billboard Advertisement should include a disclaimer. The material question is what form the disclaimer must take.

Pursuant to 11 C.F.R. §110.11(b), the form and content of the required disclaimer is dependent on the medium used and whether the communication is (i) paid for by a candidate (or an authorized committee of a candidate or an agent of either), (ii) not paid for but authorized by a candidate, or (iii) not authorized by the candidate.⁴ Printed communications, such as billboards, must be clearly readable and contained in a box.⁵

Here, the Respondents do not know who the payor or sponsor of the Billboard Advertisements is, and they did not authorize them. Therefore, the disclaimer on the Billboard Advertisements should be in the form described in 11 C.F.R. §110.11(b)(3), not in the other forms indicating that they were paid for, or authorized, by a candidate. Simply put, the Billboard Advertisements do not require a "Paid for by Heller for Senate" disclaimer as the Complainant suggests.

B. The Respondents Did Not Accept the Billboard Advertisements as In-kind Contributions

The Complainant asserts that if the Respondents did not pay for the Billboard Advertisements (which they did not), then they must have accepted a corporate contribution in the form of impermissible in-kind contributions. For this to be true, the Billboard Advertisements would have to be coordinated communications under 11 C.F.R. §109.21.

The Respondents did not engage in any of the "conduct standards" in 11 C.F.R. §109.21(d) with any outside entity, and the Complainant has failed to allege such conduct. Thus, because these Billboard Advertisements are not coordinated communications, they cannot be considered in-kind contributions to the Committee.

¹ 11 C.F.R. § 100.26.

² *Id.*

³ 11 C.F.R. § 110.11(a)(2).

⁴ 11 C.F.R. § 110.11

⁵ 11 C.F.R. § 110.11(c)(2).

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III. CONCLUSION

The Respondents do not know who paid for the Billboard Advertisements and have not accepted them as in-kind contributions. Thus, the Commission should find no reason to believe that the Respondents violated the FECA or Commission regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris K. Gober", with a long horizontal flourish extending to the right.

Chris K. Gober

Troy A. McCurry

Counsel to Heller for Senate and Chrissie Hastie, in her official capacity as Treasurer