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August 16, 2018

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BY MESSENGER

Federal Election Commission
Office of Complaints Examinations and Legal Administration
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20002

Re: MUR 7419

Dear Ms. Ross:

We write on behalf of Senator Bill Nelson, Bill Nelson for U.S. Senate (the "Committee") and Peggy Gagnon in her official capacity as treasurer of Bill Nelson for U.S. Senate (collectively, "Respondents") in response to the complaint in MUR 7419 (the "Complaint"). The Complaint's sole allegation is that signs printed by a campaign supporter and placed on residential property for a private Committee fundraising event lacked a disclaimer. However, signs that are displayed for decorative purposes on private property exclusively for a fundraising event attended by a small group of campaign donors are not "public communications" that require a disclaimer under the Federal Election Campaign Act (the "Act") and Commission regulations. As no disclaimer was required, the Commission should find no reason to believe a violation of the Act occurred and dismiss this matter immediately. Moreover, even if there were some issue with the Respondents' signage, the Commission should dismiss this matter under its prosecutorial discretion given the isolated nature of the event, the small number of signs involved, and the very low dollar amounts associated with the signage.

FACTUAL BACKGROUND

Senator Bill Nelson is a candidate for the United States Senate in Florida. The Committee is his principal campaign committee. The Committee held a fundraiser at a private home on May 29th, 2018. The event was open only to individuals who were invited and paid the ticket price to attend, not the general public. A volunteer campaign supporter arranged and paid for signs displaying the "Nelson for U.S. Senate" logo for use at the event. The Committee treated the cost of the signs as an in-kind contribution and reported the in-kind on the applicable report filed with the Commission. The host of the fundraiser displayed the signs at the event solely as decoration. The Committee has not used these signs for any other purpose.

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LEGAL ANALYSIS

Under Commission regulations, only certain types of communications require a disclaimer: (1) all public communications, as defined in 11 CFR § 100.26, made by a political committee; (2) electronic mail of more than 500 substantially similar communications when sent by a political committee; (3) all Internet websites of political committees available to the general public; (4) all public communications, as defined in 11 CFR § 100.26, by any person that expressly advocate the election or defeat of a clearly identified candidate; (5) all public communications, as defined in 11 CFR § 100.26, by any person that solicit any contribution; and (6) all electioneering communications by any person. 11 C.F.R. § 110.11.

The Complaint alleges that a set of decorative signs used for a fundraising event lacked a required disclaimer. Yet nothing in the Act or Commission regulations requires a disclaimer to be printed on signage at a private fundraising event. Private event signage is not a "public communication" and also clearly does not fall into any of the other covered categories of communications.¹ A "public communication" includes a "communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing², or telephone bank³ to the general public, or any other form of general public political advertising." 11 C.F.R. § 100.26. Fundamentally, private event signage does not amount to general public political advertising because it is not aimed at the general public. Signs at the entrance to a private fundraising event are only intended to be viewed by invited event guests. Further, they are not a form advertising, they are merely decorations used to make the event entrance visible and appealing to guests.

Put plainly, decorative event signs are categorically different from the types of communications that fall within the scope of a "public communication" and require a disclaimer. As the Commission has explained, "[t]he forms of mass communication enumerated in the definition of 'public communication [,]' . . . including television, radio, and newspapers, each lends itself to distribution of content through an entity ordinarily owned or controlled by another person." Final Rules on Internet Communications, 71 Fed. Reg. 18589, 18594 (Apr. 12, 2006). Therefore, "for an individual to communicate with the public using any of the forms of media listed by Congress, he or she must ordinarily pay an intermediary (generally a facility owner) for access to the public through that form of media each time he or she wishes to make a communication." *Id.*; see also FEC Adv. Op. 2016-21 (Great America PAC), Concurring Statement of Vice Chair Hunter and Commissioners Goodman and Petersen. Here, the signs

¹ A communication is only an electioneering communication if it is made by broadcast, cable or satellite. See 11 C.F.R. § 100.29(a).

² A mass mailing is "a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period." *Id.* § 100.27.

³ A telephone bank is "more than 500 telephone calls of an identical or substantially similar nature within any 30-day period." *Id.* § 100.28

were displayed at the entrance to the Committee's own private fundraising event, a forum controlled by the Committee itself. The Committee did not pay for access to the public to display the signs -- the only viewers of the signs were attendees that paid to attend the Committee's fundraiser. The signs do not fall within the definition of a public communication, and thus no disclaimer was required.

From a policy perspective, it would also serve no purpose to require disclaimers on the signs at issue. There was no question that every person who saw the signs knew who was responsible for them. The signs said, "Nelson for U.S. Senate" and were being displayed at a Bill Nelson for U.S. Senate fundraising event to a small group of Bill Nelson supporters. Everyone who saw them could not help but know that the Bill Nelson for U.S. Senate campaign was ultimately responsible for them.

The Commission also routinely dismisses, as a matter of prosecutorial discretion, complaints alleging isolated incidents of communications lacking a proper disclaimer, whether or not technically required by the Act. *See e.g.*, Matter Under Review Nos. 4559 (Bill Baker for Congress) (dismissing a matter where a congressional committee printed and placed roughly two hundred campaign signs without a disclaimer); 5156 (Mark Morton) (dismissing a complaint that alleged fourteen individuals paid for a sign expressly advocating for George Bush that hung from a cotton trailer on a public street); 7307 (Fredrick "Fred" Costello) (dismissing an allegation that a candidate committee failed to include required disclaimers on emails); 7245 (Shiva Ayyadurai) (dismissing allegations that a candidate committee failed to include required disclaimers on a campaign flyer, campaign emails and a campaign website). Similarly, even if there were some issue with the disclaimer, and there is not, the FEC should still close this matter immediately.

Pursuant to the foregoing, the Complaint alleges no facts that, even if taken as true, would result in a violation of the Act or Commission regulations. We therefore respectfully request that the Commission promptly find no reason to believe any violation occurred, dismiss the matter and close the file.

Very truly yours,



Marc E. Elias
Graham M. Wilson
Jacquelyn K. Lopez
Counsel to Respondents