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December 14, 2018

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BY HAND DELIVERY AND EMAIL

Jeff S. Jordan
Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463

2018 DEC 17 PM 1:12
OFFICE OF
GENERAL COUNSEL

Re: MUR 7521

Dear Mr. Jordan:

We write as counsel to Kathy Manning for Congress and Megan Brengarth, Treasurer, in her official capacity, (the “Respondents”), in response to the complaint filed by Dallas Woodhouse on October 24, 2018 (the “Complaint”). Because the Complaint fails to describe facts which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971 (“FECA” or “the Act”), as amended, or Federal Election Commission (“FEC”) regulations, the Commission should immediately dismiss the Complaint and close the file.

The Commission may advance an investigation only where it finds reason to believe that a violation of a statute or regulation under its jurisdiction has occurred or is likely to occur.¹ “The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”² Here, the Complaint erroneously alleges that political committee Swing Left made prohibited coordinated expenditures by coordinating its door to door canvassing efforts with the Respondents. Yet the Complaint is devoid of any factual allegations indicating that an impermissible expenditure was made by Swing Left, or that any impermissible contribution was received by the Respondents. Because the Complaint does not set forth a credible allegation of a violation of the Act or FEC regulations, the FEC should not find reason to believe a violation of the Act has occurred and should immediately dismiss the Complaint.

¹ 11 C.F.R. § 111.10(a).

² Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas at 1, Matter Under Review 4960 (Dec. 21, 2000).

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FACTUAL BACKGROUND

Kathy Manning for Congress (“the Campaign”) is the authorized candidate committee for Kathy Manning, the 2018 Democratic congressional candidate for North Carolina’s 13th congressional district.³ Swing Left is a federal PAC that engages in both coordinated and independent expenditure activity.⁴ During the 2018 general election, Campaign staff were in regular contact with representatives of Swing Left. Specifically, Ms. Manning met with Swing Left volunteers on May 19, 2018. Ashlei Blue, the Campaign’s Field and Political Director, worked with Abby Karp, the volunteer leader of Swing Left’s Greensboro, North Carolina volunteer efforts, to encourage Swing Left’s volunteer base to volunteer with the Campaign.⁵ It is the Campaign’s understanding that Ms. Karp worked in a volunteer capacity and was not paid by Swing Left for her work.⁶

Throughout the general election period, volunteers affiliated with Swing Left made phone calls, knocked on doors, and recruited and organized other volunteers to support the Campaign.⁷ To the best of the Campaign’s knowledge, Ms. Karp and other Swing Left volunteers recruited volunteers and advertised Campaign events over email and free social media websites such as Facebook.⁸ Volunteers would then sign up to knock on doors for the Campaign using the Campaign’s online volunteer management system,⁹ and attend door-to-door canvasses organized by the Campaign. The Campaign used its own voter contact lists and materials promoting Ms. Manning’s candidacy for these canvasses. In addition, the Campaign paid for all data and targeting, as well as the staff salaries for organizers who coordinated the canvassing activities.¹⁰ Swing Left made expenditures totaling \$205 for printing and GOTV services on behalf of the Campaign.¹¹ The Campaign is not aware of Swing Left making any other expenditures to support door-to-door canvassing or any other activities for the Campaign. Nor did Kathy Manning for Congress encourage Swing Left to make any such expenditures on its behalf.¹²

³ FEC Form 1, Statement of Organization, Kathy Manning for Congress (amended Oct. 15, 2018) <http://docquery.fec.gov/pdf/938/201810159125210938/201810159125210938.pdf>.

⁴ FEC Form 1, Swing Left, Statement of Organization at 7 (amended Aug. 20, 2018) <http://docquery.fec.gov/pdf/378/201808209121460378/201808209121460378.pdf>.

⁵ Declaration of Ashlei Blue, ¶ 2, 3, 6 (attached as Exhibit A).

⁶ *Id.*, ¶ 3.

⁷ *See id.*, ¶ 6-8.

⁸ *Id.*, ¶ 6.

⁹ *Id.*

¹⁰ *Id.*, ¶ 7.

¹¹ Kathy Manning for Congress, FEC Form 3 2018 Post-General 212, 215, 258, 264 (filed Dec. 6, 2018) <http://docquery.fec.gov/pdf/650/201812069135375650/201812069135375650.pdf>.

¹² Declaration of Ashlei Blue, ¶ 8.

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LEGAL ANALYSIS

The Complaint's sole legal allegation is that Swing Left made prohibited coordinated expenditures for the Campaign by coordinating "door to door efforts."¹³ However, the Complaint at no point alleges facts showing that Swing Left made, or Kathy Manning for Congress accepted, an impermissible coordinated expenditure as prohibited by the Act or Commission regulations. In fact, no such expenditure was ever made, and Swing Left's volunteers engaged solely in permissible volunteer activity on behalf of the Campaign.

The Complaint relies on 11 C.F.R. § 109.20, the FEC's definition of "coordinated." According to the Complaint "[i]t is an established principal of campaign finance law that . . . coordinated expenditures are strictly prohibited."¹⁴ However, this is a wholly inaccurate reading of that regulation and misses the point entirely. First, under the regulation, a coordinated expenditure is impermissible only if it exceeds the in-kind contribution or party expenditure limits or is not reported according to FEC regulations.¹⁵ Second, as a threshold matter, any coordinated activity needs to constitute an actual "expenditure" under the Act in order to be subject to the FEC's contribution limits and reporting requirements.¹⁶

The Campaign does not dispute that it worked in coordination with Swing Left. However, working in coordination with Swing Left by itself does not constitute a violation of any law or regulation. All expenditures made by Swing Left in coordination with the Campaign were accurately reported as in-kind contributions and were made within the Act's contribution limits. Swing Left made expenditures of \$205 for printing and GOTV costs in connection with the Campaign, and the Campaign properly reported these expenditures as in-kind contributions.¹⁷ Because these expenditures were properly reported as in-kind contributions and did not exceed Swing Left's \$5,000 contribution limit to the Campaign, they were fully permissible and did not violate the Act or Commission regulations.

The overwhelming majority of Swing Left's activities did not constitute "expenditures" that would be subject to the Act's reporting requirements or contribution limits. Under FEC

¹³ Complaint at 1. Though the Complaint makes passing reference to Swing Left's reports of conduit contributions to the Campaign, it does not allege any specific violation of the Act or Commission regulations in relation to these contributions.

¹⁴ Complaint at 1.

¹⁵ See 11 C.F.R. § 109.20(b) ("[a]ny expenditure that is coordinated within the meaning of paragraph (a) of this section, but that is not made for a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37, is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee. . .").

¹⁶ See *id.*

¹⁷ Kathy Manning for Congress, FEC Form 3 2018 Post-General 212, 215, 258, 264 (filed Dec. 6, 2018) <http://docquery.fec.gov/pdf/650/201812069135375650/201812069135375650.pdf>.

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regulations, an “expenditure” is any “purchase, payment, distribution, loan[], advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.”¹⁸ In general, “the provision of any goods or services without charge or at less than the usual and normal charge” is an expenditure.¹⁹ However, the value of services provided by an unpaid volunteer are not considered to be expenditures.²⁰ In addition, the use of a volunteer’s real or personal property in the course of volunteering personal services²¹ and any uncompensated Internet activities by an individual or group are not expenditures.²²

The canvassing and organizing activities of Swing Left and its volunteers did not qualify as expenditures or as in-kind contributions to the Campaign. The Complaint cites to public statements describing Swing Left’s door-to-door canvassing efforts.²³ As far as the Campaign is aware, none of the individuals who volunteered to go door-to-door on behalf of the Campaign were compensated by Swing Left.²⁴ Accordingly, these uncompensated personal services were not expenditures or in-kind contributions under the Act.²⁵ In addition, the Campaign, *not* Swing Left, bore the financial cost of the canvassing, including payment for data and targeting services, the printing of literature and canvassing lists, and staff salaries for organizers.²⁶ To the Campaign’s knowledge, these canvassing efforts therefore involved no impermissible expenditures by Swing Left, and did not result in an in-kind contribution to the Campaign.

It is the Campaign’s understanding that Swing Left used online platforms to recruit volunteers and organize volunteer activities, encouraging volunteers to attend events and volunteer their personal services to the campaign.²⁷ As far as the Campaign is aware, Swing Left conducted these activities via free online platforms, such as Facebook and over email.²⁸ The use of these platforms by volunteers has long been recognized as falling into the exception for unpaid internet activities and is not an expenditure that could constitute a violation under the law.²⁹ To the best of the Campaign’s knowledge, Swing Left’s efforts to encourage volunteers to participate in the Campaign’s canvasses involved no impermissible expenditures by Swing Left and are therefore not subject to the reporting requirements or contribution limits of the Act.

¹⁸ 11 C.F.R. § 100.111(a).

¹⁹ *Id.* § 100.11(e)(1).

²⁰ *Id.* § 100.11(e)(2). The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is also not a contribution to that candidate or committee. *Id.* § 100.74.

²¹ *Id.* § 100.135.

²² *Id.* § 100.155.

²³ Compl. at 1.

²⁴ Declaration of Ashlei Blue at ¶ 8.

²⁵ *See* 11 C.F.R. § 100.74.

²⁶ Declaration of Ashlei Blue at ¶ 7.

²⁷ *Id.*, ¶ 5-6.

²⁸ *Id.*

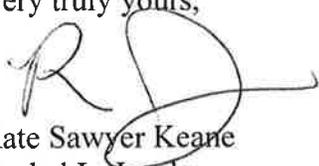
²⁹ 11 C.F.R. § 100.155.

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CONCLUSION

As described herein, the facts in the Complaint do not describe any violation of the Act or Commission regulations. Accordingly, the Commission should find no reason to believe that a violation of the Act or Commission regulations has occurred, and immediately dismiss this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be 'R D' with a long horizontal stroke extending to the right.

Kate Sawyer Keane
Rachel L. Jacobs
Elizabeth P. Poston

Counsel to Respondents

OFFICE OF
FEDERAL COUNSELBEFORE THE 2018 DEC 17 PM 1:12
FEDERAL ELECTION COMMISSION**DECLARATION OF ASHLEI BLUE**

I, Ashlei Blue, do declare and state as follows:

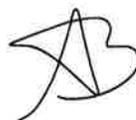
1. I was employed as the Field and Political Director for Kathy Manning for Congress (the "Campaign") from February 12, 2018 through the November 6, 2018 General Election. Through that position, I am familiar with the matters discussed herein.
2. During that time, I managed the volunteer and field operations for the Campaign. As part of my job, I coordinated with volunteers and outside groups who were interested in providing volunteer assistance to the Campaign.
3. Shortly before the North Carolina Democratic primary election, Abby Karp, the volunteer leader of the Greensboro chapter of Swing Left, contacted me and Tori Taylor, the Campaign Manager for the Campaign, to discuss Swing Left's intention to support the Democratic nominee for U.S. Representative for North Carolina's 13th Congressional District. To the best of my knowledge, Ms. Karp was a volunteer with Swing Left and was not compensated for her work on behalf of the organization.
4. On May 8, 2018, Kathy Manning won the Democratic nomination for Congress in the 13th Congressional District of North Carolina.

5. After Ms. Manning won the primary, Ms. Karp invited Ms. Manning and representatives from the Campaign to meet with Swing Left volunteers. The meeting was held on May 19. To the best of my knowledge, this meeting was open to the public and was advertised by Swing Left over email, on their online platforms and/or through free social media. At the meeting, Ms. Manning introduced herself to the attendees, who then had opportunities to ask Ms. Manning questions. Swing Left volunteers then encouraged attendees to assist the Campaign by participating in phone banks and door-to-door canvassing efforts leading up to the November 6, 2018 general election.
6. After that meeting, individual volunteers from Swing Left began signing up to volunteer on behalf of the Campaign. To the best of my knowledge, Ms. Karp and other volunteers from Swing Left contacted one another about volunteer opportunities with the Campaign over email and through the use of free social media websites such as Facebook. Many of these volunteers signed up for volunteer shifts directly with Campaign employees or through the Campaign's online volunteer management system, Mobilize. Mobilize allowed the Campaign to advertise about volunteer opportunities available to all members of the public.
7. When an individual signed up to volunteer for the Campaign, the Campaign would provide training and any relevant materials for the volunteer's activity. Specifically, if the volunteer would be engaging in door-to-door canvassing, the Campaign's paid organizers would coordinate the canvass and provide the Campaign's literature and canvassing lists of voters to contact. The Campaign would also pay for any data and targeting services

used for canvassing activity. After volunteers went door-to-door, the Campaign would collect the data related to individual voters contacted, and the Campaign would enter the data into its relevant database.

8. To the best of my knowledge, after the primary election, Swing Left volunteers engaged in door-to-door canvassing on behalf of the Campaign using data and targeting, canvassing lists, and literature provided by the Campaign. I am not aware of Swing Left paying volunteers to engage in door-to-door canvassing.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of December, 2018.



Ashlei Blue