

**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

October 6, 2021

By Email Only

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Kate Sawyer Keane, Esq.
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Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002

RE: MUR 7521
Kathy Manning for Congress and
Sue Jackson in her official capacity
as treasurer

Dear Ms. Keane and Ms. Poston:

On October 24, 2018, the Federal Election Commission notified your clients, Kathy Manning for Congress and its treasurer (“Committee”) of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On September 29, 2021, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe the Committee violated 52 U.S.C. § 30116(f) and 52 U.S.C. § 30104(b). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission’s finding, is enclosed for your information.

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Kate Sawyer Keane, Esq.
Elizabeth P. Poston, Esq.
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If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or drigsby@fec.gov.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Swing Left and Ethan Todras-Whitehill
in his official capacity as treasurer
Kathy Manning for Congress and Sue Jackson
in her official capacity as treasurer
Abby Karp

MUR 7521

I. INTRODUCTION

The Complaint alleges that multicandidate political committee Swing Left and its employee Abby Karp coordinated a “door-to-door” canvassing effort with the congressional campaign of Kathy Manning and her authorized committee Kathy Manning for Congress and its treasurer in their official capacity (“Manning Committee”) resulting in unreported and prohibited coordinated expenditures by Swing Left. All of the respondents filed responses to the complaint and deny that they violated the Federal Election Campaign Act of 1971, as amended (the “Act”).

For the reasons set forth below, the Commission finds no reason to believe that Swing Left violated 52 U.S.C. §§ 30116(a)(2)(A) and 30104(b), that the Manning Committee violated 52 U.S.C. §§ 30116(f) and 30104(b), and that Abby Karp violated the Act.¹

II. FACTUAL BACKGROUND

Swing Left is registered with the Commission as a “hybrid” political committee with a “Carey” non-contribution account.² Abby Karp is a Swing Left volunteer who led its canvassing

¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

² Swing Left Amended Statement of Organization (Aug. 20, 2018). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. See Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), available at <http://www.fec.gov/press/press2011/20111006postcarey.shtml>.

efforts in Greensboro, North Carolina in 2018.³ Kathy Manning for Congress is the principal campaign committee of U.S. Representative Kathy Manning, who was the Democratic candidate for Congress from the 13th Congressional District in North Carolina in 2018.

The Complaint alleges that Swing Left made unreported impermissible coordinated expenditures on behalf of the Manning Committee when it conducted a door-to-door canvassing effort.⁴ To demonstrate that the two committees were in communication, the Complaint points to an interview given by Karp, “the leader of Swing Left’s Gilford County contingent,” to the podcast *The Voter Project*.⁵ In the interview, Karp described communications she had with the Manning Committee. She acknowledged asking a staff member of the Committee, “how do you want to work together,” and the Committee staffer responded, according to Karp, “why don’t you keep doing what you’re doing, but can you take some guidance from us as far as where to go and do more targeted work?”⁶ To further support the coordination allegation, the Complaint cites to a general statement made by Swing Left’s founder, Ethan Todras-Whitehill, in a January 2017 magazine article, where he said that “we do want to support Democrats. We plan on being in touch with them, coordinating.”⁷ Finally, the Complaint points out that Swing Left has been collecting, and reporting, conduit contributions on behalf of Manning. While

³ Swing Left and Abby Karp Resp. at 2 (Dec. 18, 2018) (“Swing Left Resp.”).

⁴ Compl. at 1-2. The Complaint alternatively describes the activity as “door-to-door voter advocacy” and “canvassing.” *See id.* at 1, 2.

⁵ *Id.* at 1, citing Shirna Honig, *The Voter Project Episode #20* (Aug. 2, 2018); *see* <https://www.stitcher.com/podcast/the-voter-project> at 7:08.

⁶ Comp. at 1.

⁷ *Id.*, citing Jia Tolenti, *Swing Left and the Post-Election Surge of Progressive Activism*, *THE NEW YORKER* (Jan. 26, 2017).

acknowledging that these activities may be permissible, the Complaint says it points to “an even closer relationship.”⁸

Swing Left responds that the Complaint’s allegations are erroneous and that as a multicandidate Carey PAC, Swing Left is allowed to engage in both coordinated and independent activity as long as a firewall exists to prevent the flow of information between staff coordinating with candidates and those involved in independent activities.⁹ In this regard, Swing Left claims to have spent only \$205 for printing and get-out-the-vote activities on behalf of the Manning Committee, well below the applicable \$5,000 contribution limit, and that the canvassers were volunteers eligible for the volunteer exemption.¹⁰ In addition, Swing Left maintains that the Complaint fails to identify any other activity that could have qualified as expenses attributable to the \$5,000 limit.¹¹ With respect to the Complaint’s claim that Swing Left’s role as a conduit for contributions to the Manning Committee evidences a close relationship between the two committees, Swing Left responds that serving as a conduit is permitted.¹²

The Manning Committee acknowledges that during the 2018 general election, Ashlei Blue, its Field and Political Director, and Abby Karp, a Swing Left volunteer in Greensboro,

⁸ Compl. at 2.

⁹ Swing Left Resp. at 1. According to its disclosure reports, Swing Left did not make any independent expenditures during the 2018 election cycle.

¹⁰ Swing Left disclosed \$205 in in-kind contributions to the Manning Committee. *See* Swing Left Amended 2018 Post-General Report (Dec. 17, 2018) at 9,970, 11,422 and 13,741 (disbursements of \$55 and \$75 to Shopify for printing on October 19 and November 1, 2018, respectively, and disbursements of \$75 to Staples for GOTV supplies on November 1, 2018).

¹¹ Swing Left Resp. at 3.

¹² Swing Left states that it is permissible for it to accept contributions that persons have earmarked for candidates and to forward those contributions to the candidates. Swing Left Resp. at 3. *See* 11 C.F.R. § 110.6.

North Carolina, were in regular contact.¹³ The Manning Committee asserts that Swing Left’s volunteers made phone calls, knocked on doors, and recruited and organized other volunteers to support the Committee, and Swing Left’s recruitment of volunteers and advertising of events was done through email or on free social media sites such as Facebook.¹⁴ The Manning Committee claims that the majority of Swing Left’s activities did not constitute expenditures that would be subject to the reporting requirements or contribution limits of the Act.¹⁵ Referring to its disclosure reports, the Manning Committee claims that it properly reported in-kind contributions from Swing Left of \$205 for printing and get-out-the-vote activities.¹⁶ In her sworn declaration, Ashlei Blue averred that the Manning Committee used its own voter contact lists and materials for the canvasses, and paid for all data and targeting and staff salaries for persons who coordinated the canvassing activities.¹⁷

III. LEGAL ANALYSIS

The Act defines the terms “contribution” and “expenditure” to include “anything of value” made by any person for the purpose of influencing any election for federal office.¹⁸ The term “anything of value” includes in-kind contributions.¹⁹ In-kind contributions result when

¹³ Manning Committee Resp. at 2 (Dec. 17, 2018).

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* The Manning Committee disclosed \$205 in in-kind contributions from Swing Left. *See* Manning Committee 2018 Post-General Report (Dec. 6, 2018) at 212, 215 (\$55 for printing on October 19, 2018 and \$150 for “GOTV Consulting and Travel” on November 1, 2018).

¹⁷ *Id.* at 2, Declaration of Ashlie Blue (“Blue Decl.”) ¶ 7.

¹⁸ 52 U.S.C. §§ 30101(8)(A)(i), 30101(9)(A)(i).

¹⁹ *See* 11 C.F.R. § 100.52(d).

goods or services are provided without charge or at less than the usual and normal charge,²⁰ and when a person makes an expenditure in cooperation, consultation or in concert with, or at the request or suggestion of a candidate or the candidate's authorized committee or their agents.²¹

Under Commission regulations, expenditures for "coordinated communications" are addressed under a three-prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are addressed under 11 C.F.R. § 109.20(b).²² The Commission has explained that section 109.20(b) applies to "expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee."²³

No multicandidate committee shall make contributions to any candidate or his or her authorized committee with respect to any election for Federal office which in the aggregate exceed \$5,000.²⁴ No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 52 U.S.C. § 30116.²⁵ The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution.²⁶ The Act requires committee treasurers to

²⁰ *Id.*

²¹ *See* 52 U.S.C. § 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20(a) (defining "coordinated" as made in cooperation, consultation or concert with or at the request or suggestion of a candidate, a candidate's authorized committee or a political party committee).

²² A communication is coordinated with a candidate, authorized committee, a political party committee or an agent of the candidate and the committees when: (1) the communication is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee; (2) satisfies at least one of the content standards of 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the conduct standards of 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21.

²³ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003); *see also* Advisory Opinion 2011-14 (Utah Bankers Association).

²⁴ *See* 52 U.S.C. § 30116(a)(2)(A).

²⁵ *See* 52 U.S.C. § 30116(f).

²⁶ *See* 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74.

file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104, and the reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where required.²⁷

The Complaint alleges that Swing Left’s funding of its “door-to-door voter advocacy program” amounted to unreported and impermissible coordinated expenditures.²⁸ As a multicandidate committee, however, Swing Left is permitted to make contributions to candidate committees subject to the Act’s limitations.²⁹ While the Manning Committee and Swing Left acknowledge coordinating the door-to-door canvassing, they maintain that the costs incurred by Swing Left were minimal (\$205) and well below the applicable contribution limits. Further, Swing Left claims to have minimized its canvas expenses through the use of volunteers, including volunteer Abby Karp, the operative identified in the Complaint.³⁰ The claim of volunteer activity is further supported in a statement by the Manning Committee’s Field and Political Director, who described the details of how the volunteers were located and managed.³¹ The available information does not reflect anything to the contrary regarding Karp and other Swing Left associates who worked on behalf of the Manning Committee apparently as volunteers.³² Other than the canvassing activity, the Complaint did not identify any other

²⁷ 52 U.S.C. § 30104(a)(1), 30104(b); 11 C.F.R. § 104.3.

²⁸ Compl. at 2.

²⁹ *See* 52 U.S.C. § 30116(a)(2)(A).

³⁰ Swing Left Resp. at 3.

³¹ Blue Decl. ¶¶ 2, 5-8. *See* 52 U.S.C. § 30101(8)(B)(i) (the term “contribution” does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee); 11 C.F.R. § 100.74 (same).

³² Swing Left’s 2018 Pre-General and Post-General Reports do not reveal any payments to persons in North Carolina in October or November 2018. *See* MUR 6834 (Lynn Jenkins) (Commission determined that because there

expenditures for goods or services that could be attributable to Swing Left's contribution limit. Moreover, the Manning Committee appears to have incurred, and reported, its own costs related to the canvassing effort.³³ Finally, the committees disclosed Swing Left's \$205 in expenditures as contributions to the Manning Committee and thus appear to have complied with applicable reporting obligations for these expenditures.³⁴

Based on the foregoing, the Commission finds no reason to believe that Swing Left made, and the Manning Committee accepted, unreported excessive contributions and that Abby Karp, Swing Left's volunteer, violated the Act.³⁵

was no information indicating that William Roe received payment for the volunteer services he provided to the Committee, it appeared that the services at issue did not constitute a contribution).

³³ For example, the Manning Committee paid a salary of \$1,679.98 every two weeks to Ashlei Blue, who coordinated all volunteers in connection with her responsibility as the Field and Political Director. *See* Manning Committee Resp. at 2 and Blue Decl. ¶ 2; Manning Committee 2018 Post-General Report at 256 and 273.

³⁴ Swing Left also maintains that canvassing is not a "public communication" and that it could therefore be coordinated with candidates without triggering an in-kind contribution. *See* Swing Left Resp. at 4; 11 C.F.R. § 109.21(c)(2)-(5) (coordinated communications content standards requiring public communications). The available information is that Swing Left's canvassing costs were \$205, and thus it is unnecessary for the Commission to determine whether canvassing is a public communication in this matter.

³⁵ The Complaint also notes that Swing Left may accept conduit contributions that are earmarked for the Committee, but it is evident of a close relationship. *See* 11 C.F.R. § 110.6; 52 U.S.C. § 30116(a)(8). The Complaint has not made any specific allegations that Swing Left did anything impermissible while serving as a conduit for contributions earmarked for the Committee. The available information does not indicate any impermissible activity by Swing Left as a conduit for contributions to the Manning Committee.