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July 18, 2019

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Jeff S. Jordan, Esq.  
 Assistant General Counsel  
 Complaints Examination & Legal Administration  
 Federal Election Commission  
 1050 First Street, NE  
 Washington, DC 20463

**Re: MUR 7589**

Dear Mr. Jordan:

We write on behalf of Dean Phillips for Congress (the "Committee") and Terri Huml in her official capacity as treasurer of Dean Phillips for Congress (collectively, "Respondents") in response to the complaint in MUR 7589 (the "Complaint"). The Complaint's sole allegation is that the disclaimer on the Committee's website, [www.phillipsforcongress.org](http://www.phillipsforcongress.org), was insufficient.<sup>1</sup> There is no real substance to this Complaint; this is purely a nuisance matter filed by an organization that styles itself as a good government group, but, in reality, exists solely to file frivolous partisan complaints that waste the time and resources of the Federal Election Commission ("FEC" or "Commission"). Here, there was never any question that [www.phillipsforcongress.org](http://www.phillipsforcongress.org) was the website of the Committee and that this fact was plain to the public given the name, content, and other clear identifiers. Moreover, and as noted in the complaint, there were at least two disclaimers listed on the website that included the content required by the Commission's regulations. While this standard disclaimer did not, for a short period of time, appear on the bottom of every page of the site due to a technical glitch on the part of a vendor, the Committee addressed this as soon as it became aware of the issue. Accordingly, the Commission should find no reason to believe a violation of the Act occurred and dismiss this matter immediately, or even if the Commission does think there may have been some small technical violation, it should dismiss this matter under its prosecutorial discretion as it has in many similar matters.<sup>2</sup>

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<sup>1</sup> Complaint at 1 (March 21, 2019)

<sup>2</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

Jeff S. Jordan Esq.  
 July 18, 2019  
 Page 2

## FACTUAL BACKGROUND

Representative Dean Phillips has served Minnesota's third district since early 2019. The Committee is his principal campaign committee. On March 21st, the Foundation for Accountability and Civic Trust ("FACT") filed a complaint with the Commission alleging that the Committee's website, phillipsforcongress.org, "[did] not contain the required disclaimer on its web sites pages."<sup>3</sup> And yet, the Complaint noted that "the disclaimer information could be found ...on a photograph of a mailer posted on the website or in small print on the side of the "contact us" page."<sup>4</sup> Moreover, at the time, disclaimers were also on the "Internships" and "Media" pages. The name of the website, it's central content, and numerous identifiers on multiple pages of the site also made it very clear to any reasonable viewer that the this was the site of the Committee. The disclaimer required by the FEC's regulations was intended to be displayed at the bottom of every page of the website, but it appears that it was not for a period of time due to a backend software glitch on the part of one of the Committee's technical vendors. As soon as this issue came to the Committee's attention, it was immediately fixed, but at all times, the required disclaimer appeared somewhere on the site and the sponsor of the site was very clear to every visitor.

## LEGAL ANALYSIS

Commission regulations require the Committee's website to include a disclaimer that is "presented in a clear and conspicuous manner, to give the reader...adequate notice of the identity of the person or political committee that paid for...the authorized communication."<sup>5</sup> The Complaint argues that the website's inclusion of a disclaimer both on a photograph of a mailer posted on the website and on the "contact us" page of the website did not satisfy the aforementioned regulation.<sup>6</sup> Yet nothing in the Commission's regulations requires a disclaimer to appear at the bottom of every page on a Committee's website. A disclaimer only violates the regulations if it is "difficult to read...or if the placement is easily overlooked."<sup>7</sup>

The fact that the Complaint directly identifies the location of at least two disclaimers on the Committee's website proves that the Committee's disclaimers were not "difficult to read" or "easily overlooked."<sup>8</sup> Additionally, as noted in similar matters, the name of the Committee's web address clearly indicates the source of relevant funding.<sup>9</sup> Both the logo on the top left of the

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> 11 C.F.R. § 110.11(c)(1).

<sup>6</sup> Complaint at 1-2 (March 21, 2019).

<sup>7</sup> 11 C.F.R. § 110.11(c)(1).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> See [www.phillipsforcongress.org](http://www.phillipsforcongress.org); See MUR 7039 (Bernie 2016) (dismissing a complaint which alleged that a Committee failed to include a disclaimer on a Facebook advertisement, and noting that the Committee's web address

Jeff S. Jordan Esq.  
July 18, 2019  
Page 3

website and the Committee's URL "give the reader...adequate notice" that the Committee paid for the website. The public was not harmed by the absence of a disclaimer at the bottom of every webpage, because the information was otherwise listed. Everyone who visited the website, [www.phillipsforcongress.org](http://www.phillipsforcongress.org), could not help but know that Committee was ultimately responsible for the content. Also, the only reason that a disclaimer was not included on every page for a period of time was due to a vendor's technical glitch in the coding which was corrected as soon as it came to the Committee's attention. A disclaimer can now be found at the bottom of every page on the Committee's website.

Commission resources should not be expended to pursue allegations in this matter. The Commission routinely dismisses, as a matter of prosecutorial discretion, complaints alleging that there were inadequate disclaimers, when the issue has been remedied. *See* Matter Under Review Nos. 7504 (Elissa Slotkin for Congress) (dismissing, due to prosecutorial discretion, a complaint where the issue of failure to include a disclaimer on signs had been resolved); 6832 (Grant Lally for Congress) (dismissing a complaint alleging that a Committee website failed to include a disclaimer, because the Committee remedied the issue and pursuing allegations were "not worth the use of Commission resources."); 6665 (Alex Pires for U.S. Senate) (dismissing an allegation that a Committee's website lacked a disclaimer, where the Committee added a disclaimer as soon as the issue came to its attention). As stated by the Commission in MUR 4944, "[p]roceeding in this case at this time would be unfair to the Respondents because it would be exceedingly difficult, if not impossible, to explain why the Commission decided to proceed against them but not to proceed in at least some of the cases cited above. The Commission has an obligation to avoid disparate treatment of persons in similar circumstances."<sup>10</sup> Thus, even if there was a minor, technical violation of the regulations, and there is not, the FEC should close this matter immediately.

Pursuant to the foregoing, we respectfully submit that the Commission find no reason to believe any violation occurred or otherwise exercise its prosecutorial discretion, dismiss the matter, and close the file immediately.

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inconspicuously indicated the funding source); *See* MUR 6949 (Russ Ramsland) (stating that "the URL for the website clearly identifies the responsible entity."); *See* MUR 6842 (Frank Scaturro for Congress) (stating "communications were unlikely to have misled recipients due to the identifying information included in the communications.")

<sup>10</sup> *See* Statement of Reasons of Chairman Mason and Comm'rs Wold and Smith, MUR 4944 (New York Senate 2000)

Jeff S. Jordan Esq.  
July 18, 2019  
Page 4

Very truly yours,

A handwritten signature in black ink, appearing to read "Graham M. Wilson". The signature is fluid and cursive, with a prominent initial "G" and "M".

Graham M. Wilson  
Emma Olson Sharkey

Counsel to Respondents