

March 16, 2020

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VIA EMAIL

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

Re: MUR 7684

Dear Mr. Jordan:

We write as counsel to Kate for Congress (“the Committee”), Jay Petterson in his official capacity as treasurer, and Kate Schroder (collectively, “Respondents”), in response to a complaint filed with the Federal Election Commission (“Commission”) by Kelly Perine (“Complainant”) on January 20, 2020 (the “Complaint”) in the above-referenced matter. Because the Complaint fails to present a violation of the Federal Election Campaign Act, as amended, 52 U.S.C. § 30101 *et seq.* (2015), the Commission should find no reason to believe that the Respondents committed any violation, dismiss the Complaint, and close the file.

The Complaint contains twelve allegations (labeled “Incidents” in the Complaint) that certain Committee placards and a Committee banner (collectively, “Campaign Signs”) and unpaid posts on the Committee’s Facebook and Twitter pages (collectively, “Social Media Posts”) did not include a required notice stating, “Paid for by Kate for Congress.” As detailed below, the Respondents properly included a disclaimer on all the Campaign Signs and were not required to include a disclaimer on any of the Social Media Posts. Further, it was clear that the Committee authorized and sponsored each of the free Social Media Posts, and the Complaint does not allege otherwise.

LEGAL DISCUSSION

The Commission requires candidate committees to include a disclaimer on certain communications stating that the communication was paid for by the authorized political committee.¹ Specifically, disclaimers are required on all of an authorized committee’s “public communications;” emails of more than 500 substantially similar communications; and Internet

¹ 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1).

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websites available to the general public.² A public communication is “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.”³ Communications over the Internet, except for those placed for a fee on another’s Web site are not “general public political advertising,” and thus are not public communications requiring a disclaimer.⁴ Notably, the Commission has repeatedly dismissed complaints alleging a violation of the disclaimer requirement for free social media posts that themselves do not have a disclaimer.⁵ Specifically, the FEC has said that “social media posts” on Facebook and Twitter “do not appear to be public communications, given that they were not placed for a fee on another person’s website.”⁶

When a disclaimer is required, it must be “clearly readable...by the recipient of the communication,” “contained in a printed box,” and “printed with a reasonable degree of color contrast between the background and printed statement.”⁷

As detailed below, Respondents included disclaimers on each of the Campaign Signs visible in Incidents 1, 5, 6, 7, 9, 11, and 12. Further, Respondents were not required to include disclaimers on the Social Media Posts referenced in Incidents 2, 3, 4, 8 and 10 as they were excepted from the requirement.

A. Campaign Signs

In Incidents 1, 5, 6, 7, 9, 11, and 12, the Complaint incorrectly alleges that Campaign Signs visible in ten different photographs posted on the Committee’s social media pages do not contain

² 11 C.F.R. § 110.11(a).

³ *See id.* § 100.26.

⁴ *See id.*; *id.* § 110.11(a)(1).

⁵ *See* Fed. Election Comm’n, Matter Under Review 7216 (Concerned Constituents Action Group), Factual and Legal Analysis, at 5 (Nov. 16, 2017) (finding that organization’s unpaid posts on Facebook and Twitter were not public communications and therefore did not require disclaimers); Fed. Election Comm’n, Matter Under Review 7417 (Indivisible Washington’s 8th District), Factual and Legal Analysis, at 8 (May 9, 2019) (finding that group’s social media posts were not public communications and therefore did not require disclaimers).

⁶ Fed. Election Comm’n, Matter Under Review 7417 (Indivisible Washington’s 8th District), Factual and Legal Analysis, at 8 (May 9, 2019).

⁷ 52 U.S.C. § 30120(c); 11 C.F.R. § 110.11(c)(2)(i),(ii),(iii). The color contrast requirement is satisfied “if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication.” Further, a disclaimer is not needed on the “front or cover page of a communication as long as it appears within the communication.” 11 C.F.R. § 110.11(c)(2)(iv). The disclaimer must also be of sufficient type size to be “clearly readable”; a disclaimer that appears in 12-point type meets this requirement when used for signs and other printed material that measure no more than 24 by 36 inches. *Id.* § 110.11(c)(2)(i).

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a disclaimer. **Each of the Campaign Signs contains a disclaimer that says, “Paid for by Kate for Congress.”**

Exhibit A to this response provides a comparison of each alleged Incident to the actual Campaign Signs in the photographs, demonstrating why the Complaint fails to present a violation of law. In Incident 1, the Complaint references a photo of supporters from the Committee’s Twitter page that the Complaint alleges contains two different signs without a disclaimer.⁸ However, these are not two different signs, but two different sides of the same sign with a white and a blue side. The white side contains the disclaimer: “Paid for by Kate for Congress.” Incidents 9 and 11 reference photos featuring the blue side of this same sign, but the white side, with the disclaimer, is not visible in either photograph.⁹ The Committee complied with the law by including a disclaimer on the white side of the two-sided sign.

In Incidents 5, 6, 7, and 11, the Complaint incorrectly alleges that a blue campaign banner featured in photographs posted on the Committee’s Twitter and Facebook pages does not contain a disclaimer.¹⁰ As noted in Exhibit A, the banner contains a disclaimer that says, “Paid for Kate for Congress.” Incident 12 references another campaign placard shown in a photograph from the Committee’s Facebook page that the Complaint alleges lacks a disclaimer.¹¹ Again, as illustrated in Exhibit A, the placard has the required disclaimer.

That each of the disclaimers on the Campaign Signs was not entirely visible in low-resolution photos posted on the Committee’s social media is not a violation of the law. The Campaign Signs contained a disclaimer in a box that was clearly readable to the “recipients of the communication”—those in the room when the photographs were taken—and thus, these allegations should be dismissed. Because all of the Campaign Signs referenced in Incidents 1, 5,

⁸ See Complaint at 2; Kate for Congress (@kateforcongress), Twitter (July 25, 2019), <https://twitter.com/kateforcongress/status/1154421117509152768?s=21>.

⁹ See Complaint at 8; Kate for Congress (@kateforcongress), Twitter (Dec. 6, 2019), <https://twitter.com/kateforcongress/status/1203065851227836417?s=21>; Complaint at 10; Kate for Congress, Facebook (Jan. 5, 2020), <https://www.facebook.com/602828763544800/posts/736957620131913/?d=n>.

¹⁰ See Complaint at 4; Kate for Congress (@kateforcongress), Twitter (Aug. 3, 2019), <https://twitter.com/kateforcongress/status/1157692577082159104?s=21>; Complaint at 5; Kate for Congress (@kateforcongress), Twitter (Sept. 14, 2019), <https://twitter.com/kateforcongress/status/1172932436843536384?s=21>; Complaint at 6; Kate for Congress, Facebook (Oct. 4, 2019), <https://www.facebook.com/602828763544800/posts/658953157932360/?d=n>; Complaint at 10; Kate for Congress, Facebook (Jan. 5, 2020), <https://www.facebook.com/602828763544800/posts/736957620131913/?d=n>.

¹¹ See Complaint at 11; Kate for Congress, Facebook (Jan. 18, 2020), <https://www.facebook.com/602828763544800/posts/748224512338557/?d=n>.

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6, 7, 9, 11, and 12 contain a disclaimer, the Commission should dismiss the Complaint with respect to these Incidents.

B. Social Media Posts

The Complaint also incorrectly alleges in Incidents 2, 3, 4, 8 and 10 that the Social Media Posts lack a disclaimer. Specifically, in Incidents 2, 3, and 4, the Complaint references three different tweets posted by the Committee announcing endorsements for Ms. Schroder.¹² These tweets were all posted for free on Twitter. In Incident 8, the Complaint references a tweet posted by the Committee that says, “*I’m running for Congress.*”¹³ The tweet also includes a video that contains the Committee’s logo and provides a link to the Committee’s website. Again, this tweet and the video were all posted for free on Twitter. In Incident 10, the Complaint references a post made by the Committee’s Facebook page.¹⁴ The post includes a video also featuring the Committee’s logo. This post and video were posted for free on Facebook.

None of these Social Media Posts were placed for a fee on another person’s website; they were posted for free on the websites of Facebook and Twitter, and thus, they are not public communications requiring a disclaimer. Nor are the Social Media Posts emails or a website of the Committee, which would require a disclaimer. Just as the Commission has dismissed other complaints alleging a violation of the disclaimer requirement for free social media posts on Facebook and Twitter, the Commission must do the same here.

Further, even if the Commission were to find that the Social Media Posts required a disclaimer, it is clear the Committee sponsored these communications. On Twitter, the Committee posted under the “handle” “@kateforcongress.”¹⁵ Similarly, the Committee’s Facebook page name is

¹² See Complaint at 3; Kate for Congress (@kateforcongress), Twitter (July 30, 2019), <https://twitter.com/kateforcongress/status/1156188442528608261?s=21>; Kate for Congress (@kateforcongress), Twitter (July 30, 2019), <https://twitter.com/kateforcongress/status/1156189952150892549?s=21>; Kate for Congress (@kateforcongress), Twitter (July 30, 2019), <https://twitter.com/kateforcongress/status/1156189952511741957?s=21>.

¹³ See Complaint at 7; Kate for Congress (@kateforcongress), Twitter (Nov. 12, 2019), <https://twitter.com/kateforcongress/status/1194292499923247104?s=21> (emphasis added).

¹⁴ See Complaint at 9; Kate for Congress, Facebook (Dec. 29, 2019), <https://www.facebook.com/KateForCongress2020/videos/vb.602828763544800/2815216978500459/?type=2&theater>.

¹⁵ See Kate for Congress (@kateforcongress), Twitter, <https://twitter.com/kateforcongress>. Further, the Committee’s Twitter profile states that the account belongs to a “Candidate for Congress #OH01” and provides a link to the Committee’s website, which in turn includes a disclaimer that it was “Paid for by Kate for Congress.” See Kate for Congress, <https://kateforcongress.com/>. The Committee’s Twitter profile contains a blue verified badge, signaling that the profile was verified by Twitter as the authorized profile of the Committee. See Kate for Congress (@kateforcongress), Twitter, <https://twitter.com/kateforcongress>; Twitter, Verified account FAQs, <https://help.twitter.com/en/managing-your-account/twitter-verified-accounts>.

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“Kate for Congress.”¹⁶ Moreover, the Facebook page’s “About” section contains the disclaimer that it was “Paid for by Kate for Congress.”¹⁷ Thus, it was entirely obvious that each Social Media Post was posted by the Committee. In fact, Complainant was able to identify easily the Committee as the author of each post without any investigation.

Since the Social Media Posts are not required to include disclaimers, and include sufficient identifying information regardless, the Complaint fails to present a violation of law in Incidents 2, 3, 4, 8, and 10.

CONCLUSION

Because the Campaign Signs contained the required disclaimers, and the Campaign Social Media Posts are exempt from the disclaimer requirement but contain sufficient identifying information nonetheless, the Complaint fails to present any violation of law. As such, the Commission should find no reason to believe that Respondents violated the Act and dismiss this matter immediately.

Very truly yours,



Marc E. Elias
Rachel L. Jacobs
Sarah N. Mahmood

¹⁶ See Kate for Congress, Facebook, <https://www.facebook.com/KateForCongress2020/>.

¹⁷ *Id.*

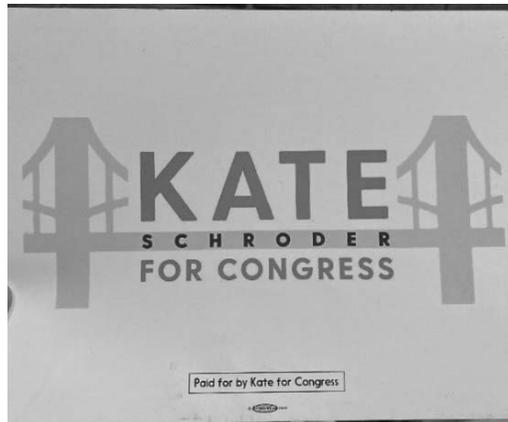
Exhibit A

Incident 1 (Two-Sided Blue and White Placard)

Photo from Complaint



Actual Sign



Incident 5 (Blue Banner)

Photo from Complaint



Kate Schroder
@KateForCongress

Awesome to be back in my home neighborhood of @PleasantRidgeOH for #RidgeDay! Thank you so much to the #kateforcongress contingent who came out to join us www.kateforcongress.com



12:39 PM · Aug 3, 2019 · Twitter for iPhone



Actual Sign



Incident 6 (Blue Banner)

Photo from Complaint



Thank you for the warm welcome, Warren County! We had a wonderful morning at @imaginemason's Heritage Festival Parade. We were so happy to be a part of this staple in the community 🙌 #KateForCongress



1:57 PM · Sep 14, 2019 · Twitter for iPhone



Actual Sign



Incident 7 (Blue Banner)

Photo from
Complaint



Kate For Congress updated their cover photo.

October 4, 2019 · 🌐



Actual Sign



Incident 9 (Two-Sided Blue and White Placard)

Photo from Complaint



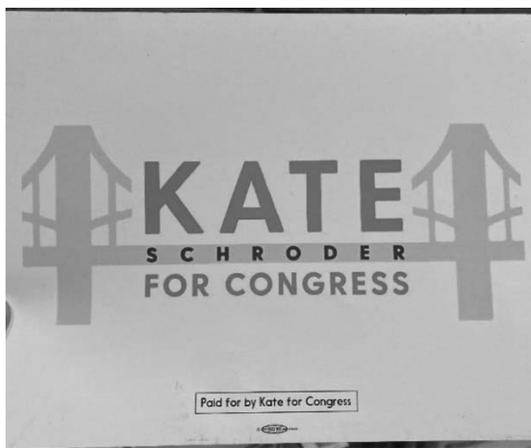
Kate Schroder
@KateForCongress

Thank you to everyone who joined us this morning at @kiddcoffeemason and for making our first Coffee with Kate a success! We look forward to our next coffee on December 17th!



4:37 PM · Dec 6, 2019 · Twitter for iPhone

Actual Sign



Incident 11 (Blue Banner)

Photo from
Complaint



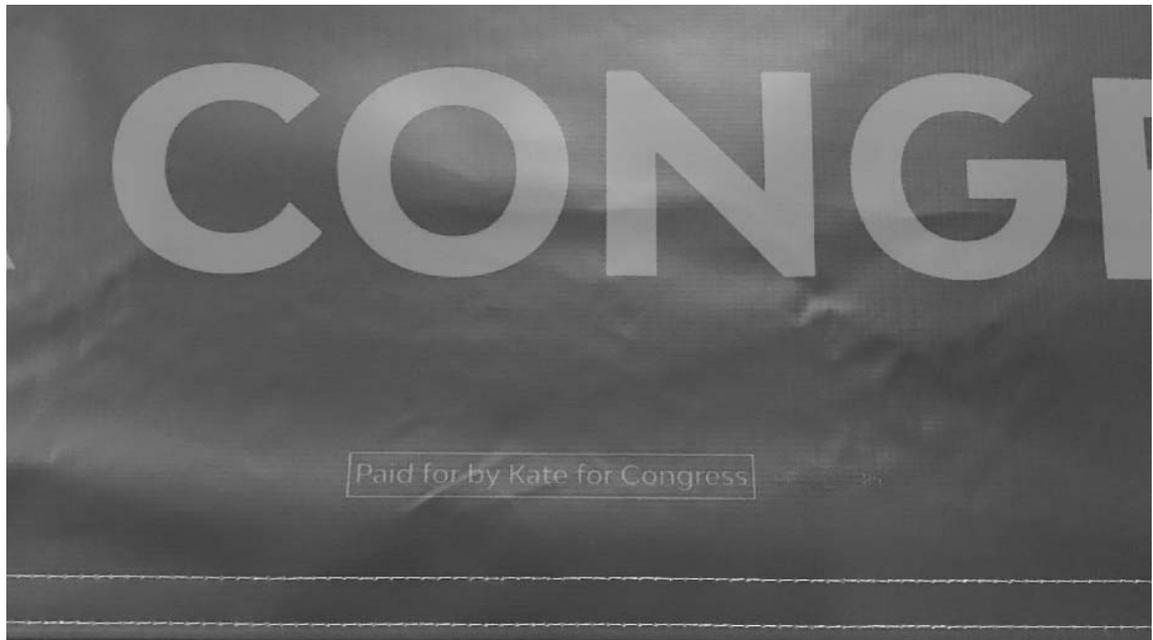
Kate For Congress

January 5 · 🌐

Every community I've met with while running for Congress has helped me to better understand the problems I'm trying to fix and who I'll be representing. Thank you for sharing your stories with me!



Actual Sign

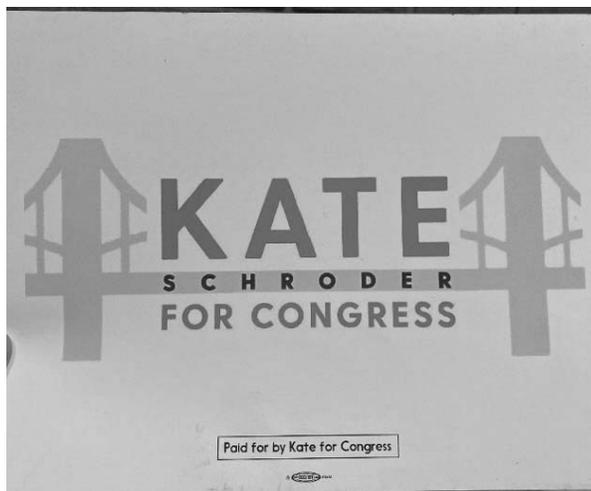


Incident 11 (Two-Sided Blue and White Placard)

Photo from Complaint



Actual Sign



Incident 12 (White Sign Held by Ms. Schroder)

Photo from
Complaint



Kate For Congress

January 18 · 🌐

For 4 years we have been marching for better representation in DC. Now it's our turn to show up, to vote, and to get elected! We need more women in office ready to get things done for everyday people. Let's do this!!
#KateforCongress @ Women's March on Cincinnati



Actual Sign

