FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 19, 2021

VIA EMAIL

Marc Elias
Perkins Coie
700 13th Street NW, Suite
600 Washington DC 20005
MElias@perkinscoie.com

RE: MUR 7684
Kate for Congress
and Jay Petterson, as treasurer

Dear Mr. Elias:

On January 28, 2020, the Federal Election Commission ("Commission") notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 9, 2021, based upon the information contained in the complaint and information provided by respondents, the Commission decided to dismiss allegations that Kate for Congress and Jay Petterson in his official capacity as treasurer violated provisions of the Act. The Commission then closed its file in this matter. A copy of the General Counsel's Report, which more fully explains the basis for the Commission's decision, is enclosed.

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). If you have any questions, please contact Kristina Portner, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Jeff S. Jordan
Assistant General Counsel

Enclosure:
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7684

Respondents: Kate for Congress
and Jay Petterson, as Treasurer

Complaint Receipt Date: January 23, 2020
Response Date: March 16, 2020
EPS Rating: [redacted]

Alleged Statutory Regulatory Violations:

52 U.S.C. § 30120(a)(1), (c)
11 C.F.R. §§ 100.26, 110.11(a), (b)(1), (c)

The Complaint alleges that Kate for Congress ("the Committee") distributed campaign signs, banners, and social media posts without required disclaimers stating that the Committee had paid for the items.[1] The Response asserts that all physical campaign signs and banners had the required disclaimers.[2] The Response further asserts that the social media posts at issue are not pubic communications because they were not placed for a fee on another person's website and, therefore, did not require disclaimers.[3]

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These

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1 Compl. at 1 (January 23, 2020). The Complaint attaches black and white pictures of the signs and banners taken at a distance. *Id*. at 2, 4-6, 8, 10-11. The alleged non-compliant items were available to the public beginning July 25, 2019 through at least January 18, 2020. *Id*.

2 Resp. at 2-3 (March 16, 2020). The Response includes color pictures of the signs at issue showing the signs had a disclaimer on one side of the two-sided signs and that the banners had a disclaimer. *Id*. at Ex. A.

3 Resp. at 2, 4. In addition, Respondents assert it was obvious that each social media post was posted by the Committee. *Id.* at 5.

criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the visible disclaimers on the banners and signs at issue, and the unlikeliness that the public was misled as to who paid for the signs and banners or was responsible for the social media posts,[4] we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file as to all respondents and send the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel

12.2.20
Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel

Jeff S. Jordan
Assistant General Counsel

Kristina Portner
Kristina M. Portner
Attorney

[4] Each of the social media posts was published by an account in either the candidate's name or the Committee's name.