

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7698

DATE COMPLAINT FILED: February 18, 2020

DATE OF NOTIFICATION: February 21, 2020

DATE OF RESPONSE: March 26, 2020

DATE ACTIVATED: May 7, 2020

EXPIRATION OF SOL: January 1, 2025

ELECTION CYCLE: 2020

COMPLAINANT:

Timothy J. Melchiors

RESPONDENTS:Republican National Committee and Ronald C.
Kaufman, in his official capacity as treasurer
Ronna McDaniel**RELEVANT STATUTE
AND REGULATIONS:**

52 U.S.C. § 30120(a)

11 C.F.R. § 100.26

11 C.F.R. § 100.27

11 C.F.R. § 110.11(a), (c)(2)(iv), (c)(2)(v)

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that the Republican National Committee (“RNC”) and Ronald C. Kaufman in his official capacity as treasurer and Ronna McDaniel, RNC Chairwoman (collectively, “Respondents”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations by failing to include a proper disclaimer on a letter within a package of campaign materials labeled “Congressional District Census” and disseminated via the U.S. mail.¹ For the reasons set forth below, we recommend the

¹ See Compl. (Feb. 18, 2020). The Complaint makes additional allegations that the communication improperly invokes the official 2020 Census and makes defamatory statements about Democratic Party candidates. See *id.* ¶¶ 5-10, 26-29. These allegations implicate matters outside the Commission’s jurisdiction and will not be

1 Commission exercise its prosecutorial discretion to dismiss the allegations that the RNC and
2 Ronald C. Kaufman in his official capacity as treasurer violated 52 U.S.C. § 30120(a) and
3 11 C.F.R. § 110.11(a),² and send a letter of caution. We further recommend the Commission
4 find no reason to believe that Ronna McDaniel violated 52 U.S.C. § 30120(a) and 11 C.F.R.
5 § 110.11(a).

6 **II. FACTUAL BACKGROUND**

7 The RNC is the national party committee of the Republican Party.³ Ronald C. Kaufman
8 is the treasurer of the RNC.⁴ According to the Complaint, as early as January 2020, the RNC
9 disseminated a package of materials entitled “2020 Congressional District Census” (the
10 “Package”) via U.S. mail to certain registered voters in the United States.⁵ The Package
11 included (1) a four-page letter, (2) a two-page survey, and (3) a reply envelope.⁶

12 The letter is titled “2020 Congressional District Census” in the header of the document’s
13 first page, followed by “Commissioned by the Republican Party” and “Ronna McDaniel,
14 Chairwoman” in smaller font immediately below.⁷ The body of the letter discusses the
15 upcoming 2020 presidential election and the importance of “re-elect[ing] President [Donald]

discussed further. *See* 52 U.S.C. § 30106(b)(1); *see also* 39 U.S.C. § 3001(h) (codifying the Prevent Deceptive
Census Look Alike Mailings Act); WIS. STAT. § 942.01 (codifying Wisconsin defamation statute).

² *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

³ *See* FEC Form 1, Republican National Committee, Amended Statement of Organization at 2 (Feb. 19, 2020), <https://docquery.fec.gov/pdf/467/202002199186528467/202002199186528467.pdf>.

⁴ *See id.* at 1.

⁵ *See* Compl. ¶ 1. The Complainant received the Package in January 2020 at his Wisconsin residence. *Id.*

⁶ *See id.* ¶ 4, Attach. A (letter), Attach. B (survey). The Complaint does not append a copy of the reply envelope or the Package’s exterior envelope.

⁷ Attach. A at 1.

1 Trump and Republicans at all levels,” warns against the policies of certain Democratic
2 politicians, requests the recipient complete the accompanying survey, and asks for campaign
3 contributions to underwrite the survey and elect Republican candidates.⁸ In a footer, the letter
4 lists the RNC’s mailing address, phone number, and website.⁹ Ronna McDaniel signed the letter
5 as Chairwoman of the RNC.¹⁰ The letter is paginated and does not contain a disclaimer on any
6 page.¹¹

7 The survey is likewise titled “2020 Congressional District Census” and marked as
8 “Commissioned by the Republican Party.”¹² It seeks the recipient’s opinions on public policy
9 and political issues over dozens of questions in five sections to support the RNC in its efforts “to
10 ensure President Trump and Republican candidates are re-elected” and at the end solicits
11 contributions to the RNC to foster those efforts.¹³ The survey does not appear to be paginated.¹⁴
12 It contains a disclaimer on the bottom of the second page stating that it was paid for by the RNC

⁸ *See generally id.*

⁹ *See id.* at 1. The letter’s footer is partially visible on the first page of the photocopy attached to the Complaint; it is unclear from that photocopy whether the remaining pages of the letter contain the same footer. The letter also lists the RNC’s website in a post-scriptum message as an alternate means of making the requested contribution. *See id.* at 4.

¹⁰ *See id.* at 1, 4.

¹¹ *See id.* at 2-4.

¹² *See Attach. B* at 1.

¹³ *See id.* at 1-2. The fifth section of the survey is a reply box with space for the recipient to include desired contribution amount, credit card information, occupation, employer, and contact information. *See id.* at 2.

¹⁴ *See id.* at 1-2.

1 and was not authorized by any candidate or candidate's committee, and includes the RNC's
2 mailing address, phone number, and website.¹⁵

3 The Complaint alleges that the RNC failed to include a disclaimer on the letter in the
4 Package as required by the Act and Commission regulations.¹⁶ The RNC responds that the
5 Complaint fails to recite facts constituting a violation of the Act, that there is no basis to name
6 McDaniel as a respondent, and that the Package contains a compliant disclaimer.¹⁷ Specifically,
7 the RNC claims the disclaimer need not appear on the front or cover page of a communication as
8 long as it appears within the communication and argues the Package contains numerous
9 statements identifying the Republican Party throughout the letter and survey.¹⁸

10 **III. LEGAL ANALYSIS**

11 The Act and Commission regulations require a disclaimer on all public communications
12 made by a political committee, all public communications by any person that expressly advocate
13 the election or defeat of a clearly identified candidate, and all public communications by any
14 person that solicit any contribution.¹⁹ Public communications include a "mass mailing," which
15 means more than 500 letters of an identical or substantially similar nature disseminated within a

¹⁵ See *id.* at 2; Resp. at 2-3 (Mar. 26, 2020). The disclaimer is only partially visible on the second page of the photocopy of the survey attached to the Complaint. See Attach. B at 2. The Response reproduces the disclaimer and states the "reply device" includes a compliant disclaimer. See Resp. at 3 & n.1. It is unclear whether the "reply device" the RNC is referring to is the survey or the reply envelope.

¹⁶ See Compl. ¶¶ 2, 5-7, 26-28. The Complaint also alleges the RNC failed to list categories of prohibited contribution sources alongside the solicitations in the Package. See *id.* ¶¶ 8, 22-25. The Complaint, however, does not allege a particular violation of the Act or Commission regulations and the available information does not indicate that the RNC solicited or received prohibited contributions in connection with the Package.

¹⁷ See Resp. at 2-3.

¹⁸ See *id.* at 3 & n.1 (citing 11 C.F.R. § 110.11(c)(2)(iv)).

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

1 30-day period.²⁰ The Commission's regulations provide that a disclaimer "need not appear on
2 the front or cover page of the communication as long as it appears within the communication,"
3 except for communications that contain only a front face.²¹ However, each communication that
4 would require a disclaimer if distributed separately that is included in a package of materials
5 must contain the required disclaimer.²²

6 While the record lacks information as to how many copies of the Package the RNC
7 mailed, the RNC acknowledges that the Package is a public communication sent by a political
8 committee and subject to the Act's disclaimer requirement.²³ The RNC argues that a compliant
9 disclaimer appears within the Package — on the survey — and such disclaimer is not required on
10 each page of the communication.²⁴ In support of that argument, the RNC cites Advisory
11 Opinion 2011-10 (POET PAC), where the Commission permitted the placement of the required
12 disclaimer on the back page of a double-sided document.²⁵ That Opinion is inapposite, however,
13 because the Package contains two separable, multi-page communications. The RNC's Response

²⁰ 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

²¹ 11 C.F.R. § 110.11(c)(2)(iv).

²² *Id.* § 110.11(c)(2)(v).

²³ *See* Resp. at 3; *see also* 11 C.F.R. § 110.11(a)(1) (disclaimer requirement applies to public communications by political committees). In addition, the letter and survey appear to expressly advocate the re-election of President Donald Trump and solicit contributions to the RNC. *See* 11 C.F.R. § 110.11(a)(2)-(3) (disclaimer requirement applies to public communications containing express advocacy and solicitations); *id.* § 100.22(a) (defining express advocacy).

²⁴ Resp. at 2-3.

²⁵ *Id.* at 3; Advisory Op. 2011-10 (POET PAC) at 5-7.

1 does not address the requirement that separable communications included in a package of
2 materials must each contain a compliant disclaimer.²⁶

3 Here, it appears that if the RNC had distributed the survey and the letter separately, each
4 would have required a disclaimer because they are public communications distributed by a
5 political committee, contain express advocacy in support of President Donald Trump, and solicit
6 contributions to the RNC.²⁷ The survey contains a compliant disclaimer,²⁸ the letter does not.²⁹
7 In similar circumstances in MUR 6993 (*Van Hollen for Senate, et al.*), the Commission observed
8 that a letter included within a package of materials would have required a disclaimer if
9 distributed separately, pursuant to 11 C.F.R. § 110.11(c)(2)(v), notwithstanding an
10 accompanying solicitation envelope with a compliant disclaimer.³⁰ The Commission ultimately
11 exercised its prosecutorial discretion and dismissed the disclaimer allegation, concluding that

²⁶ See 11 C.F.R. § 110.11(c)(2)(v).

²⁷ See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1)-(3), (c)(2)(v); *see also* 11 C.F.R. § 100.22(a) (defining express advocacy as any communication that “[u]ses phrases such as ‘vote for the President,’ ‘re-elect your Congressman,’ ‘support the Democratic nominee,’ ... or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)”).

²⁸ See *Resp.* at 2; *Attach. B* at 2. For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication. 11 C.F.R. § 110.11(c)(2). For communications not authorized by any candidate's authorized committee, the Act requires disclaimers that clearly state the name and permanent address, telephone number, or website address of the entity that paid for the communication and that state that the communication is not authorized by any candidate or candidate's committee. *Id.* § 110.11(b)(3). The disclaimer on the survey is set in a printed box, includes the RNC's contact information, and states that it was paid for by the RNC and not authorized by any candidate or candidate's committee. See *Attach. B* at 2; *Resp.* at 2. Therefore, the survey appears to contain the required disclaimer.

²⁹ See *Attach. A* at 1-4. The Complaint's photocopy of the letter partially omits the bottom of each page and does not appear to include a disclaimer. See *Attach. A* at 1-4. Moreover, the RNC does not represent a disclaimer appears anywhere on the letter and instead argues disclaimers need not appear on the front page of a communication. See *Resp.* at 2-3.

³⁰ Factual & Legal Analysis at 6, MUR 6993 (*Van Hollen for Senate*) (“F&LA”).

1 under the circumstances it was “unlikely that the general public would have been misled as to
2 who was responsible for the letter” because of the accompanying solicitation envelope’s
3 disclaimer.³¹

4 The Complaint alleges that the Package’s branding as a “Census” is deceptive and the
5 available information suggests that branding may have created some ambiguity.³² Nevertheless,
6 under the circumstances of this particular case, it is unlikely that the general public would have
7 been misled as to who was responsible for the letter. The letter was accompanied in the Package
8 by the survey, which contains a compliant disclaimer.³³ Furthermore, the RNC indicated it was
9 responsible for the letter by stating it was “[c]ommissioned by the Republican Party,” soliciting
10 contributions to the RNC, including the RNC’s website and mailing address, and appending
11 McDaniel’s signature as the Chairwoman of the RNC.³⁴ Therefore, we recommend that the
12 Commission exercise its prosecutorial discretion to dismiss the allegations that the Republican
13 National Committee and Ronald C. Kaufman in his official capacity as treasurer violated

³¹ *Id.*

³² Compl. ¶¶ 2, 28. The Package repeatedly characterizes itself as a “Census,” “2020 Census Document,” and “2020 Congressional District Census,” in the same year the U.S. Department of Commerce is conducting the constitutionally mandated decennial Census and at the same time of year that the Department was sending out Census response information. *See generally* Attach. A, B.

³³ *Cf.* F&LA at 6, MUR 6993 (Van Hollen for Senate).

³⁴ The Commission has dismissed similar allegations where communications without disclaimers were unlikely to mislead, based on the contents of the communications at issue. *See, e.g.*, First Gen. Counsel’s Rpt. at 8-9, MUR 5411 (Jackie Winters for Congress 2004, Inc., *et al.*) (recommending reason to believe, but taking no further action, where a separable letter within a package lacked a disclaimer because a compliant disclaimer was included on accompanying contribution card); Certification at 1-2 (Dec. 9, 2004), MUR 5411 (approving First GCR’s recommendations); Gen. Counsel’s Rpt. at 2, MUR 7159 (Trump Make America Great Again Committee, *et al.*) (concluding separable letter within a package would have required a disclaimer, but recommending dismissal because a compliant disclaimer was included on accompanying contribution form); Certification (Jan. 8, 2018), MUR 7159 (approving dismissal recommendation); *see also* F&LA at 7 & n.26, MUR 7004 (The 2016 Committee, *et al.*) (dismissing a disclaimer allegation for e-mails lacking full disclaimers, but including sufficient identifying information, such as committee chair’s signature and committee’s address).

1 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include a compliant disclaimer on
2 the letter mailed in the Package and send a letter of caution.³⁵

3 Finally, the Complaint alleges that RNC Chairwoman Ronna McDaniel violated the Act
4 along with the RNC.³⁶ McDaniel neither paid for the Package nor is the treasurer of the RNC,
5 and there is no information to indicate McDaniel was involved with the Package beyond her
6 signature as the Chairwoman of the RNC. Therefore, we recommend the Commission find no
7 reason to believe that Ronna McDaniel violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a).

8 **IV. RECOMMENDATIONS**

- 9 1. Dismiss the allegation that the Republican National Committee and Ronald C.
10 Kaufman in his official capacity as treasurer violated 52 U.S.C. § 30120(a) and
11 11 C.F.R. § 110.11(a) by failing to include a proper disclaimer on a public
12 communication, and send a letter of caution;
13
- 14 2. Find no reason to believe that Ronna McDaniel violated 52 U.S.C. § 30120(a) and
15 11 C.F.R. § 110.11(a) by failing to include a proper disclaimer on a public
16 communication;
17
- 18 3. Approve the attached Factual and Legal Analysis;
19
- 20 4. Approve the appropriate letters; and

³⁵ See, e.g., Certification at 2 (Feb. 6, 2018), MURs 7112 & 7115 (AJ Kern for Congress, *et al.*) (dismissing technical disclaimer violation and sending letter of caution); Certification (Mar. 15, 2017), MUR 7095 (RGA Right Direction PAC) (same).

³⁶ See Compl. ¶ 31.

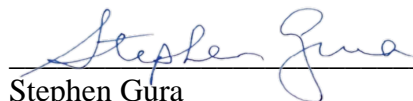
1 5. Close the file.

2
3 Lisa J. Stevenson
4 Acting General Counsel

5
6 Charles Kitcher
7 Acting Associate General Counsel for Enforcement

8
9
10 08.04.20

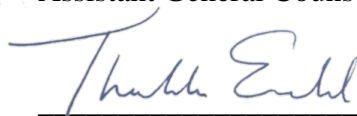
11 Date



12 Stephen Gura
13 Deputy Associate General Counsel for Enforcement

14
15 *Mark Allen*

16 Mark Allen
17 Assistant General Counsel

18
19 

20 Thaddeus H. Ewald
21 Attorney

22
23
24 Attachment:
25 Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Republican National Committee and Ronald C. Kaufman MUR 7698
in his official capacity as treasurer
Ronna McDaniel

I. INTRODUCTION

The Complaint alleges that the Republican National Committee (“RNC”) and Ronald C. Kaufman in his official capacity as treasurer and Ronna McDaniel, RNC Chairwoman (collectively, “Respondents”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations by failing to include a proper disclaimer on a letter within a package of campaign materials labeled “Congressional District Census” and disseminated via the U.S. mail.¹ For the reasons set forth below, the Commission exercises its prosecutorial discretion to dismiss the allegations that the RNC and Ronald C. Kaufman in his official capacity as treasurer violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a),² but cautions the RNC about the Act’s disclaimer requirements. The Commission also finds no reason to believe that Ronna McDaniel violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a).

II. FACTUAL BACKGROUND

The RNC is the national party committee of the Republican Party.³ Ronald C. Kaufman

¹ See Compl. (Feb. 18, 2020). The Complaint makes additional allegations that the communication improperly invokes the official 2020 Census and makes defamatory statements about Democratic Party candidates. See *id.* ¶¶ 5-10, 26-29. These allegations implicate matters outside the Commission’s jurisdiction and will not be discussed further. See 52 U.S.C. § 30106(b)(1); see also 39 U.S.C. § 3001(h) (codifying the Prevent Deceptive Census Look Alike Mailings Act); WIS. STAT. § 942.01 (codifying Wisconsin defamation statute).

² See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

³ See FEC Form 1, Republican National Committee, Amended Statement of Organization at 2 (Feb. 19, 2020), <https://docquery.fec.gov/pdf/467/202002199186528467/202002199186528467.pdf>.

1 is the treasurer of the RNC.⁴ According to the Complaint, as early as January 2020, the RNC
2 disseminated a package of materials entitled “2020 Congressional District Census” (the
3 “Package”) via U.S. mail to certain registered voters in the United States.⁵ The Package included
4 (1) a four-page letter, (2) a two-page survey, and (3) a reply envelope.⁶

5 The letter is titled “2020 Congressional District Census” in the header of the document’s
6 first page, followed by “Commissioned by the Republican Party” and “Ronna McDaniel,
7 Chairwoman” in smaller font immediately below.⁷ The body of the letter discusses the
8 upcoming 2020 presidential election and the importance of “re-elect[ing] President [Donald]
9 Trump and Republicans at all levels,” warns against the policies of certain Democratic
10 politicians, requests the recipient complete the accompanying survey, and asks for campaign
11 contributions to underwrite the survey and elect Republican candidates.⁸ In a footer, the letter
12 lists the RNC’s mailing address, phone number, and website.⁹ Ronna McDaniel signed the letter
13 as Chairwoman of the RNC.¹⁰ The letter is paginated and does not contain a disclaimer on any
14 page.¹¹

⁴ See *id.* at 1.

⁵ See Compl. ¶ 1. The Complainant received the Package in January 2020 at his Wisconsin residence. *Id.*

⁶ See *id.* ¶ 4, Attach. A (letter), Attach. B (survey). The Complaint does not append a copy of the reply envelope or the Package’s exterior envelope.

⁷ Attach. A at 1.

⁸ See generally *id.*

⁹ See *id.* at 1. The letter’s footer is partially visible on the first page of the photocopy attached to the Complaint; it is unclear from that photocopy whether the remaining pages of the letter contain the same footer. The letter also lists the RNC’s website in a post-scriptum message as an alternate means of making the requested contribution. See *id.* at 4.

¹⁰ See *id.* at 1, 4.

¹¹ See *id.* at 2-4.

1 The survey is likewise titled “2020 Congressional District Census” and marked as
2 “Commissioned by the Republican Party.”¹² It seeks the recipient’s opinions on public policy
3 and political issues over dozens of questions in five sections to support the RNC in its efforts “to
4 ensure President Trump and Republican candidates are re-elected” and at the end solicits
5 contributions to the RNC to foster those efforts.¹³ The survey does not appear to be paginated.¹⁴
6 It contains a disclaimer on the bottom of the second page stating that it was paid for by the RNC
7 and was not authorized by any candidate or candidate’s committee, and includes the RNC’s
8 mailing address, phone number, and website.¹⁵

9 The Complaint alleges that the RNC failed to include a disclaimer on the letter in the
10 Package as required by the Act and Commission regulations.¹⁶ The RNC responds that the
11 Complaint fails to recite facts constituting a violation of the Act, that there is no basis to name
12 McDaniel as a respondent, and that the Package contains a compliant disclaimer.¹⁷ Specifically,
13 the RNC claims the disclaimer need not appear on the front or cover page of a communication as

¹² *See* Attach. B at 1.

¹³ *See id.* at 1-2. The fifth section of the survey is a reply box with space for the recipient to include desired contribution amount, credit card information, occupation, employer, and contact information. *See id.* at 2.

¹⁴ *See id.* at 1-2.

¹⁵ *See id.* at 2; Resp. at 2-3 (Mar. 26, 2020). The disclaimer is only partially visible on the second page of the photocopy of the survey attached to the Complaint. *See* Attach. B at 2. The Response reproduces the disclaimer and states the “reply device” includes a compliant disclaimer. *See* Resp. at 3 & n.1. It is unclear whether the “reply device” the RNC is referring to is the survey or the reply envelope.

¹⁶ *See* Compl. ¶¶ 2, 5-7, 26-28. The Complaint also alleges the RNC failed to list categories of prohibited contribution sources alongside the solicitations in the Package. *See id.* ¶¶ 8, 22-25. The Complaint, however, does not allege a particular violation of the Act or Commission regulations and the available information does not indicate that the RNC solicited or received prohibited contributions in connection with the Package.

¹⁷ *See* Resp. at 2-3.

1 long as it appears within the communication and argues the Package contains numerous
2 statements identifying the Republican Party throughout the letter and survey.¹⁸

3 **III. LEGAL ANALYSIS**

4 The Act and Commission regulations require a disclaimer on all public communications
5 made by a political committee, all public communications by any person that expressly advocate
6 the election or defeat of a clearly identified candidate, and all public communications by any
7 person that solicit any contribution.¹⁹ Public communications include a “mass mailing,” which
8 means more than 500 letters of an identical or substantially similar nature disseminated within a
9 30-day period.²⁰ The Commission’s regulations provide that a disclaimer “need not appear on
10 the front or cover page of the communication as long as it appears within the communication,”
11 except for communications that contain only a front face.²¹ However, each communication that
12 would require a disclaimer if distributed separately that is included in a package of materials
13 must contain the required disclaimer.²²

14 While the record lacks information as to how many copies of the Package the RNC
15 mailed, the RNC acknowledges that the Package is a public communication sent by a political
16 committee and subject to the Act’s disclaimer requirement.²³ The RNC argues that a compliant

¹⁸ See *id.* at 3 & n.1 (citing 11 C.F.R. § 110.11(c)(2)(iv)).

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

²⁰ 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

²¹ 11 C.F.R. § 110.11(c)(2)(iv).

²² *Id.* § 110.11(c)(2)(v).

²³ See *Resp.* at 3; see also 11 C.F.R. § 110.11(a)(1) (disclaimer requirement applies to public communications by political committees). In addition, the letter and survey appear to expressly advocate the re-election of President Donald Trump and solicit contributions to the RNC. See 11 C.F.R. § 110.11(a)(2)-(3) (disclaimer requirement

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1 disclaimer appears within the Package — on the survey — and such disclaimer is not required on
 2 each page of the communication.²⁴ In support of that argument, the RNC cites Advisory Opinion
 3 2011-10 (POET PAC), where the Commission permitted the placement of the required
 4 disclaimer on the back page of a double-sided document.²⁵ That Opinion is inapposite, however,
 5 because the Package contains two separable, multi-page communications. The RNC's Response
 6 does not address the requirement that separable communications included in a package of
 7 materials must each contain a compliant disclaimer.²⁶

8 Here, it appears that if the RNC had distributed the survey and the letter separately, each
 9 would have required a disclaimer because they are public communications distributed by a
 10 political committee, contain express advocacy in support of President Donald Trump, and solicit
 11 contributions to the RNC.²⁷ The survey contains a compliant disclaimer;²⁸

applies to public communications containing express advocacy and solicitations); *id.* § 100.22(a) (defining express advocacy).

²⁴ Resp. at 2-3.

²⁵ *Id.* at 3; Advisory Op. 2011-10 (POET PAC) at 5-7.

²⁶ See 11 C.F.R. § 110.11(c)(2)(v).

²⁷ See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1)-(3), (c)(2)(v); see also 11 C.F.R. § 100.22(a) (defining express advocacy as any communication that “[u]ses phrases such as ‘vote for the President,’ ‘re-elect your Congressman,’ ‘support the Democratic nominee,’ ... or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)”).

²⁸ See Resp. at 2; Attach. B at 2. For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication. 11 C.F.R. § 110.11(c)(2). For communications not authorized by any candidate's authorized committee, the Act requires disclaimers that clearly state the name and permanent address, telephone number, or website address of the entity that paid for the communication and that state that the communication is not authorized by any candidate or candidate's committee. *Id.* § 110.11(b)(3). The disclaimer on the survey is set in a printed box, includes the RNC's contact information, and states that it was paid for by the RNC and not authorized by any candidate or candidate's committee. See Attach. B at 2; Resp. at 2. Therefore, the survey appears to contain the required disclaimer.

1 the letter does not.²⁹ In similar circumstances in MUR 6993 (Van Hollen for Senate, *et al.*), the
2 Commission observed that a letter included within a package of materials would have required a
3 disclaimer if distributed separately, pursuant to 11 C.F.R. § 110.11(c)(2)(v), notwithstanding an
4 accompanying solicitation envelope with a compliant disclaimer.³⁰ The Commission ultimately
5 exercised its prosecutorial discretion and dismissed the disclaimer allegation, concluding that
6 under the circumstances it was “unlikely that the general public would have been misled as to
7 who was responsible for the letter” because of the accompanying solicitation envelope’s
8 disclaimer.³¹

9 The Complaint alleges that the Package’s branding as a “Census” is deceptive and the
10 available information suggests that branding may have created some ambiguity.³² Nevertheless,
11 under the circumstances of this particular case, it is unlikely that the general public would have
12 been misled as to who was responsible for the letter. The letter was accompanied in the Package
13 by the survey, which contains a compliant disclaimer.³³ Furthermore, the RNC indicated it was
14 responsible for the letter by stating it was “[c]ommissioned by the Republican Party,” soliciting
15 contributions to the RNC, including the RNC’s website and mailing address, and appending

²⁹ See Attach. A at 1-4. The Complaint’s photocopy of the letter partially omits the bottom of each page and does not appear to include a disclaimer. See Attach. A at 1-4. Moreover, the RNC does not represent a disclaimer appears anywhere on the letter and instead argues disclaimers need not appear on the front page of a communication. See Resp. at 2-3.

³⁰ Factual & Legal Analysis at 6, MUR 6993 (Van Hollen for Senate) (“F&LA”).

³¹ *Id.*

³² Compl. ¶¶ 2, 28. The Package repeatedly characterizes itself as a “Census,” “2020 Census Document,” and “2020 Congressional District Census,” in the same year the U.S. Department of Commerce is conducting the constitutionally mandated decennial Census and at the same time of year that the Department was sending out Census response information. See generally Attach. A, B.

³³ Cf. F&LA at 6, MUR 6993 (Van Hollen for Senate).

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Factual and Legal Analysis

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1 McDaniel's signature as the Chairwoman of the RNC.³⁴ Therefore, the Commission exercises its
2 prosecutorial discretion to dismiss the allegations that the Republican National Committee and
3 Ronald C. Kaufman in his official capacity as treasurer violated 52 U.S.C. § 30120(a) and
4 11 C.F.R. § 110.11(a) by failing to include a compliant disclaimer on the letter mailed in the
5 Package, but cautions the RNC about the Act's disclaimer requirements.³⁵

6 Finally, the Complaint alleges that RNC Chairwoman Ronna McDaniel violated the Act
7 along with the RNC.³⁶ McDaniel neither paid for the Package nor is the treasurer of the RNC,
8 and there is no information to indicate McDaniel was involved with the Package beyond her
9 signature as the Chairwoman of the RNC. Therefore, the Commission finds no reason to believe
10 that Ronna McDaniel violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a).

³⁴ The Commission has dismissed similar allegations where communications without disclaimers were unlikely to mislead, based on the contents of the communications at issue. *See, e.g.*, First Gen. Counsel's Rpt. at 8-9, MUR 5411 (Jackie Winters for Congress 2004, Inc., *et al.*) (recommending reason to believe, but taking no further action, where a separable letter within a package lacked a disclaimer because a compliant disclaimer was included on accompanying contribution card); Certification at 1-2 (Dec. 9, 2004), MUR 5411 (approving First GCR's recommendations); Gen. Counsel's Rpt. at 2, MUR 7159 (Trump Make America Great Again Committee, *et al.*) (concluding separable letter within a package would have required a disclaimer, but recommending dismissal because a compliant disclaimer was included on accompanying contribution form); Certification (Jan. 8, 2018), MUR 7159 (approving dismissal recommendation); *see also* F&LA at 7 & n.26, MUR 7004 (The 2016 Committee, *et al.*) (dismissing a disclaimer allegation for e-mails lacking full disclaimers, but including sufficient identifying information, such as committee chair's signature and committee's address).

³⁵ *See, e.g.*, Certification at 2 (Feb. 6, 2018), MURs 7112 & 7115 (AJ Kern for Congress, *et al.*) (dismissing technical disclaimer violation and sending letter of caution); Certification (Mar. 15, 2017), MUR 7095 (RGA Right Direction PAC) (same).

³⁶ *See* Compl. ¶ 31.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Republican National Committee and Ronald C. Kaufman MUR 7698
 in his official capacity as treasurer
 Ronna McDaniel

I. INTRODUCTION

The Complaint alleges that the Republican National Committee (“RNC”) and Ronald C. Kaufman in his official capacity as treasurer and Ronna McDaniel, RNC Chairwoman (collectively, “Respondents”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations by failing to include a proper disclaimer on a letter within a package of campaign materials labeled “Congressional District Census” and disseminated via the U.S. mail.¹ For the reasons set forth below, the Commission exercises its prosecutorial discretion to dismiss with caution the allegations that the RNC and Ronald C. Kaufman in his official capacity as treasurer violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)². The Commission also finds no reason to believe that Ronna McDaniel violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a).

II. FACTUAL BACKGROUND

The RNC is the national party committee of the Republican Party.³ Ronald C. Kaufman

¹ See Compl. (Feb. 18, 2020). The Complaint makes additional allegations that the communication improperly invokes the official 2020 Census and makes defamatory statements about Democratic Party candidates. See *id.* ¶¶ 5-10, 26-29. These allegations implicate matters outside the Commission’s jurisdiction and will not be discussed further. See 52 U.S.C. § 30106(b)(1); see also 39 U.S.C. § 3001(h) (codifying the Prevent Deceptive Census Look Alike Mailings Act); WIS. STAT. § 942.01 (codifying Wisconsin defamation statute).

² See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

³ See FEC Form 1, Republican National Committee, Amended Statement of Organization at 2 (Feb. 19, 2020), <https://docquery.fec.gov/pdf/467/202002199186528467/202002199186528467.pdf>.

1 is the treasurer of the RNC.⁴ According to the Complaint, as early as January 2020, the RNC
2 disseminated a package of materials entitled “2020 Congressional District Census” (the
3 “Package”) via U.S. mail to certain registered voters in the United States.⁵ The Package
4 included (1) a four-page letter, (2) a two-page survey, and (3) a reply envelope.⁶

5 The letter is titled “2020 Congressional District Census” in the header of the document’s
6 first page, followed by “Commissioned by the Republican Party” and “Ronna McDaniel,
7 Chairwoman” in smaller font immediately below.⁷ The body of the letter discusses the
8 upcoming 2020 presidential election and the importance of “re-elect[ing] President [Donald]
9 Trump and Republicans at all levels,” warns against the policies of certain Democratic
10 politicians, requests the recipient complete the accompanying survey, and asks for campaign
11 contributions to underwrite the survey and elect Republican candidates.⁸ In a footer, the letter
12 lists the RNC’s mailing address, phone number, and website.⁹ Ronna McDaniel signed the letter
13 as Chairwoman of the RNC.¹⁰ The letter is paginated and does not contain a disclaimer on any
14 page.¹¹

⁴ *See id.* at 1.

⁵ *See* Compl. ¶ 1. The Complainant received the Package in January 2020 at his Wisconsin residence. *Id.*

⁶ *See id.* ¶ 4, Attach. A (letter), Attach. B (survey). The Complaint does not append a copy of the reply envelope or the Package’s exterior envelope.

⁷ Attach. A at 1.

⁸ *See generally id.*

⁹ *See id.* at 1. The letter’s footer is partially visible on the first page of the photocopy attached to the Complaint; it is unclear from that photocopy whether the remaining pages of the letter contain the same footer. The letter also lists the RNC’s website in a post-scriptum message as an alternate means of making the requested contribution. *See id.* at 4.

¹⁰ *See id.* at 1, 4.

¹¹ *See id.* at 2-4.

1 The survey is likewise titled “2020 Congressional District Census” and marked as
2 “Commissioned by the Republican Party.”¹² It seeks the recipient’s opinions on public policy
3 and political issues over dozens of questions in five sections to support the RNC in its efforts “to
4 ensure President Trump and Republican candidates are re-elected” and at the end solicits
5 contributions to the RNC to foster those efforts.¹³ The survey does not appear to be paginated.¹⁴
6 It contains a disclaimer on the bottom of the second page stating that it was paid for by the RNC
7 and was not authorized by any candidate or candidate’s committee, and includes the RNC’s
8 mailing address, phone number, and website.¹⁵

9 The Complaint alleges that the RNC failed to include a disclaimer on the letter in the
10 Package as required by the Act and Commission regulations.¹⁶ The RNC responds that the
11 Complaint fails to recite facts constituting a violation of the Act, that there is no basis to name
12 McDaniel as a respondent, and that the Package contains a compliant disclaimer.¹⁷ Specifically,
13 the RNC claims the disclaimer need not appear on the front or cover page of a communication as

¹² *See* Attach. B at 1.

¹³ *See id.* at 1-2. The fifth section of the survey is a reply box with space for the recipient to include desired contribution amount, credit card information, occupation, employer, and contact information. *See id.* at 2.

¹⁴ *See id.* at 1-2.

¹⁵ *See id.* at 2; Resp. at 2-3 (Mar. 26, 2020). The disclaimer is only partially visible on the second page of the photocopy of the survey attached to the Complaint. *See* Attach. B at 2. The Response reproduces the disclaimer and states the “reply device” includes a compliant disclaimer. *See* Resp. at 3 & n.1.

¹⁶ *See* Compl. ¶¶ 2, 5-7, 26-28. The Complaint also alleges the RNC failed to list categories of prohibited contribution sources alongside the solicitations in the Package. *See id.* ¶¶ 8, 22-25. The Complaint, however, does not allege a particular violation of the Act or Commission regulations and the available information does not indicate that the RNC solicited or received prohibited contributions in connection with the Package.

¹⁷ *See* Resp. at 2-3.

1 long as it appears within the communication and argues the Package contains numerous
2 statements identifying the Republican Party throughout the letter and survey.¹⁸

3 **III. LEGAL ANALYSIS**

4 The Act and Commission regulations require a disclaimer on all public communications
5 made by a political committee, all public communications by any person that expressly advocate
6 the election or defeat of a clearly identified candidate, and all public communications by any
7 person that solicit any contribution.¹⁹ Public communications include a “mass mailing,” which
8 means more than 500 letters of an identical or substantially similar nature disseminated within a
9 30-day period.²⁰ The Commission’s regulations provide that a disclaimer “need not appear on
10 the front or cover page of the communication as long as it appears within the communication,”
11 except for communications that contain only a front face.²¹ However, each communication that
12 would require a disclaimer if distributed separately that is included in a package of materials
13 must contain the required disclaimer.²²

14 While the record lacks information as to how many copies of the Package the RNC
15 mailed, the RNC acknowledges that the Package is a public communication sent by a political
16 committee and subject to the Act’s disclaimer requirement.²³ The RNC argues that a compliant
17 disclaimer appears within the Package and such disclaimer is not required on each page of the

¹⁸ *See id.* at 3 & n.1 (citing 11 C.F.R. § 110.11(c)(2)(iv)).

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

²⁰ 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

²¹ 11 C.F.R. § 110.11(c)(2)(iv).

²² *Id.* § 110.11(c)(2)(v).

²³ *See Resp.* at 3; *see also* 11 C.F.R. § 110.11(a)(1) (disclaimer requirement applies to public communications by political committees).

1 communication.²⁴ It appears that if the RNC had distributed the survey and the letter separately,
2 each would have required a disclaimer. The survey contains a compliant disclaimer; the letter
3 does not.²⁵

4 However, it is unlikely that the general public would have been misled as to who was
5 responsible for the public communication. There is a compliant disclaimer on the survey in the
6 Package.²⁶ Furthermore, the RNC indicated it was responsible for the letter by stating it was
7 “[c]ommissioned by the Republican Party,” soliciting contributions to the RNC, including the
8 RNC’s website and mailing address, and appending McDaniel’s signature as the Chairwoman of
9 the RNC.²⁷ Therefore, the Commission exercises its prosecutorial discretion to dismiss with
10 caution the allegations that the Republican National Committee and Ronald C. Kaufman in his
11 official capacity as treasurer violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing
12 to include a compliant disclaimer on the Package.

²⁴ Resp. at 2-3.

²⁵ See Attach. A at 1-4. The Complaint’s photocopy of the letter partially omits the bottom of each page and does not appear to include a disclaimer. See Attach. A at 1-4. Moreover, the RNC does not represent a disclaimer appears anywhere on the letter and instead argues disclaimers need not appear on the front page of a communication. See Resp. at 2-3.

²⁶ Cf. F&LA at 6, MUR 6993 (Van Hollen for Senate).

²⁷ The Commission has dismissed similar allegations where communications without disclaimers were unlikely to mislead, based on the contents of the communications at issue. See, e.g., First Gen. Counsel’s Rpt. at 8-9, MUR 5411 (Jackie Winters for Congress 2004, Inc., *et al.*) (recommending reason to believe, but taking no further action, where a separable letter within a package lacked a disclaimer because a compliant disclaimer was included on accompanying contribution card); Certification at 1-2 (Dec. 9, 2004), MUR 5411 (approving First GCR’s recommendations); Gen. Counsel’s Rpt. at 2, MUR 7159 (Trump Make America Great Again Committee, *et al.*) (concluding separable letter within a package would have required a disclaimer, but recommending dismissal because a compliant disclaimer was included on accompanying contribution form); Certification (Jan. 8, 2018), MUR 7159 (approving dismissal recommendation); see also F&LA at 7 & n.26, MUR 7004 (The 2016 Committee, *et al.*) (dismissing a disclaimer allegation for e-mails lacking full disclaimers, but including sufficient identifying information, such as committee chair’s signature and committee’s address).

1 Finally, the Complaint alleges that RNC Chairwoman Ronna McDaniel violated the Act
2 along with the RNC.²⁸ McDaniel neither paid for the Package nor is the treasurer of the RNC,
3 and there is no information to indicate McDaniel was involved with the Package beyond her
4 signature as the Chairwoman of the RNC. Therefore, the Commission finds no reason to believe
5 that Ronna McDaniel violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a).

²⁸ See Compl. ¶ 31.

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENTS: Republican National Committee and Ronald C. Kaufman MUR 7698
6 in his official capacity as treasurer
7 Ronna McDaniel

8 **I. INTRODUCTION**

9 The Complaint alleges that the Republican National Committee (“RNC”) and Ronald C.
10 Kaufman in his official capacity as treasurer and Ronna McDaniel, RNC Chairwoman
11 (collectively, “Respondents”), violated the Federal Election Campaign Act of 1971, as amended
12 (the “Act”), and Commission regulations by failing to include a proper disclaimer on a letter
13 within a package of campaign materials labeled “Congressional District Census” and
14 disseminated via the U.S. mail.¹ For the reasons set forth below, the Commission exercises its
15 prosecutorial discretion to dismiss with caution the allegations that the RNC and Ronald C.
16 Kaufman in his official capacity as treasurer violated 52 U.S.C. § 30120(a) and 11 C.F.R.
17 § 110.11(a)². The Commission also finds no reason to believe that Ronna McDaniel violated
18 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a).

19 **II. FACTUAL BACKGROUND**

20 The RNC is the national party committee of the Republican Party.³ Ronald C. Kaufman
21 is the treasurer of the RNC.⁴ According to the Complaint, as early as January 2020, the RNC
22 disseminated a package of materials entitled “2020 Congressional District Census” (the

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8 politicians, requests the recipient complete the accompanying survey, and asks for campaign
9 contributions to underwrite the survey and elect Republican candidates.⁸ In a footer, the letter
10 lists the RNC’s mailing address, phone number, and website.⁹ Ronna McDaniel signed the letter
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12 page.¹¹

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