

July 2, 2020

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

**Re: Matter Under Review 7720**

Dear Mr. Jordan:

We write as counsel to U.S. Representative Madeleine Dean; her principal campaign committee, Mad 4 PA PAC, and John Egner in his official capacity as treasurer; and her former nonfederal committee, Friends of Madeleine Dean (collectively, the “*Respondents*”) in response to the Complaint filed by Caitlin Sutherland (“*Complainant*”) on March 16, 2020 (“*Complaint*”) in the above-referenced matter.

In 2018, Representative Dean was a candidate for three different offices: Lieutenant Governor of Pennsylvania, State Representative, and U.S. Representative. She withdrew from the Lieutenant Governor’s race to run for U.S. Representative, but the Complaint ignores entirely the fact that she continued to run for *State Representative* while concurrently running for Congress. She won the 2018 primary for both offices, and only later withdrew from the State Representative race. The Complaint also ignores the fact that Representative Dean’s campaign for Lieutenant Governor incurred many of the disputed expenses before she dropped out of that race, and that the other disputed expenses were consistent with the concurrent running of a nonfederal campaign and the later wind-down of its operations.

The Complaint fails even to acknowledge the multiple statutes that expressly permit a federal candidate who is or was also a nonfederal candidate to spend nonfederal funds in connection with nonfederal campaigns. Instead, relying virtually entirely on Respondents’ own public disclosure of prima facie lawful activity, the Complaint merely speculates that Representative Dean sought “an early and unfair advantage in her bid for Congress” by using “prohibited funds from her state campaign account to benefit her congressional campaign.”<sup>1</sup>

Allegations of prima facie lawful conduct, even when garnished with speculation and innuendo, fail to present a valid complaint. Because the Complaint fails to allege any fact which, if true,

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<sup>1</sup> Compl., at 1.

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would constitute a violation of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 *et seq.* (“***the Act***”), the Commission should find no reason to believe any violation occurred, send the appropriate letters, and close the file. Moreover, because Respondents plainly filed the Complaint solely to damage Representative Dean’s reputation and current candidacy for re-election to Congress, the Commission should promptly dismiss it to diminish its intended and unwarranted prejudicial effect.

### FACTS

At the beginning of the 2018 election cycle, Madeleine Dean was a Pennsylvania state representative who planned to seek re-election to that office. In November 2017, she decided to run for Lieutenant Governor.<sup>2</sup> Friends of Madeleine Dean was her nonfederal campaign committee in connection with both nonfederal campaigns.<sup>3</sup>

However, on February 19, 2018, the Supreme Court of Pennsylvania redrew the state’s Fourth Congressional District, having ruled that the state’s then-existing congressional districts were an unconstitutional gerrymander.<sup>4</sup> Representative Dean ended her campaign for Lieutenant Governor and ran for the newly-configured seat in Congress instead.<sup>5</sup> She remained a candidate for re-election as State Representative. On February 21, 2018, she filed her Statement of Candidacy with the FEC.<sup>6</sup> She designated MAD 4 PA PAC as her principal campaign committee, and John Egner remains its treasurer.<sup>7</sup>

In the May 15, 2018 primary, Representative Dean won the Democratic nomination ***both*** for the Fourth Congressional District seat and re-election as State Representative in the 153rd District.<sup>8</sup>

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<sup>2</sup> See Liz Navratil, *State Rep. Madeleine Dean to run for lieutenant governor*, PHILA. INQUIRER (Nov. 29, 2017), <https://www.inquirer.com/philly/news/politics/state/pa-madeleine-dean-lieutenant-gov-20171129.html>.

<sup>3</sup> Pa. Dep’t of State, *Committee Information – Friends of Madeleine Dean* [hereinafter “Friends of Madeleine Dean”], <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=10207> (last visited July 2, 2020).

<sup>4</sup> See Nate Cohn, Matthew Bloch, & Kevin Quealy, *The New Pennsylvania Congressional Map, District by District*, N.Y. TIMES (Feb. 19, 2018), <https://www.nytimes.com/interactive/2018/02/19/upshot/pennsylvania-new-house-districts-gerrymandering.html>.

<sup>5</sup> John L. Micek, *Suburban Philly lawmaker drops lieutenant governor bid to run for Congress*, THE PATRIOT-NEWS (Feb. 22, 2018), [https://www.pennlive.com/opinion/2018/02/suburban\\_philly\\_lawmaker\\_drops.html](https://www.pennlive.com/opinion/2018/02/suburban_philly_lawmaker_drops.html).

<sup>6</sup> Madeleine Dean, FEC Form 2, Statement of Candidacy (Feb. 21, 2018), available at <https://docquery.fec.gov/cgi-bin/forms/H8PA04116/1210766/>.

<sup>7</sup> MAD 4 PA PAC, FEC Form 1, Statement of Organization (Feb. 21, 2018), available at <https://docquery.fec.gov/cgi-bin/forms/C00670844/1210762/>.

<sup>8</sup> See Pa. Dep’t of State, *2018 General Primary – Montgomery*, <https://electionreturns.pa.gov/Home/CountyResults?countyName=Montgomery&ElectionID=63&ElectionType=P&IsActive=0> (last visited July 2, 2020).

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She later withdrew from the State Representative campaign,<sup>9</sup> and won election to Congress in the November 6, 2018 general election.

However, Representative Dean's brief campaign for Lieutenant Governor and continued candidacy for re-election as a State Representative left the nonfederal committee with obligations for expenses previously incurred, to staff and vendors remaining to be paid, for refunds yet to be issued, and for continued compliance, winddown, and administrative costs. Accordingly, until its dissolution on June 20, 2019, Friends of Madeleine Dean continued to make necessary disbursements, which it disclosed on its Pennsylvania campaign finance reports.<sup>10</sup> Those reports provide virtually the only sources of the Complaint in this matter. Relying on mere speculation, the Complaint broadly alleged that Representative Dean's nonfederal committee made over \$17,000 in expenditures to support her federal campaign.<sup>11</sup>

### LEGAL ANALYSIS

The Complaint fails to allege any violation of the Act. Rather, it alleges only that Friends of Madeleine Dean continued to make expenditures after Representative Dean ended her bid for Lieutenant Governor, even though she remained a candidate for State Representative. It alleges also that Representative Dean's federal and state campaign committees shared some personnel and equipment—all of which federal laws and regulations clearly permit. The Complaint is accordingly meritless and thus should be dismissed.

A complaint before the Commission must allege “‘sufficient specific facts’ that, if proven[,] would constitute a violation of the Act.”<sup>12</sup> A complainant's “unwarranted legal conclusions from asserted facts[] will not be accepted as true.”<sup>13</sup> Further, statements in complaints that “are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements.”<sup>14</sup> Without such information, there is no actionable complaint.

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<sup>9</sup> See Pa. Dep't of State, 2018 Post-Primary Withdrawals (2018), *available at* <https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Documents/2018%20Post-Primary%20Withdrawals.pdf>; *see also* *August 2nd Playbook*, POLITICSPA, <https://www.politicspa.com/august-2nd-playbook/88384/> (last visited July 2, 2020).

<sup>10</sup> See Friends of Madeleine Dean, *supra* note 3.

<sup>11</sup> Compl. at 3.

<sup>12</sup> Fed. Election Comm'n, Matter Under Review 5972 (Iowa Christian Alliance), Factual and Legal Analysis, at 7 (Nov. 4, 2008) (citation omitted).

<sup>13</sup> Fed. Election Comm'n, Matter Under Review 5141 (Moran for Congress), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold (Apr. 17, 2002), at 2.

<sup>14</sup> 11 C.F.R. § 111.4(d)(2).

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While the Complaint cites the Act's prohibitions on spending nonfederal funds in connection with a federal election,<sup>15</sup> it ignores the Act's express allowances for candidates like Representative Dean to seek both federal and nonfederal offices, and to spend nonfederal funds for the nonfederal elections. The Act's nonfederal spending prohibition does not apply to "an individual who is or was also a candidate for a State or local office," when the spending is permitted under state law, is solely in connection with the state or local election, and refers only to the state or local candidate (or to an opposing candidate for the same office).<sup>16</sup> Commission regulations allow an individual who concurrently seeks federal and nonfederal office to maintain separate campaign organizations and allocate shared costs.<sup>17</sup> While no funds, goods, or services may be transferred between or used by the separate campaigns,<sup>18</sup> they "may share personnel and facilities, as long as expenditures are allocated between the campaigns, and the payment made from each campaign account reflects the allocation."<sup>19</sup>

When presenting the law, the Complaint entirely ignores these express allowances, citing only the general nonfederal spending prohibition. When presenting the facts, the Complaint does no better: it entirely ignores the fact that Representative Dean remained a candidate for State Representative after she dropped out of the race for Lieutenant Governor, and that she even won the May 15, 2018 primary for State Representative. It also ignores the inescapable reality that expenses incurred by the Lieutenant Governor campaign would be billed and paid after she dropped out, and that the nonfederal campaign would continue to incur winddown and compliance costs after both the Lieutenant Governor and State Representative campaigns had concluded.

A review of the specific costs highlighted by the Complaint reveals its deep flaws:

*First*, the Complaint alleges that Respondents violated the Act because Friends of Madeleine Dean paid \$4,216 to Kennedy Communications, Inc. for campaign literature and \$143.10 to Capitol Promotions, Inc. for campaign buttons, "[o]n the days that Representative Dean filed for U.S. Congress and announced that she would no longer be running for [L]ieutenant [G]overnor."<sup>20</sup> While the Complaint presents no specific facts, documentation or any other evidence to suggest the literature and buttons were intended to influence the federal election, the invoice and copy of the walk card enclosed in Exhibit A and email invoice and copy of the button enclosed in Exhibit B, clearly demonstrate that the state campaign committee made these expenditures in direct connection with Representative Dean's campaign for state office.

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<sup>15</sup> See 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.61.

<sup>16</sup> 52 U.S.C. § 30125(e)(2). See also 11 C.F.R. § 300.62.

<sup>17</sup> 11 C.F.R. § 110.8(d)(1).

<sup>18</sup> *Id.* § 110.8(d)(2).

<sup>19</sup> *Id.* § 110.8(d)(3).

<sup>20</sup> Compl., at 1-2.

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*Second*, the Complaint disputes the state campaign's aggregate \$3,000 payment to NGP VAN, Inc., whose software is used to prepare and file campaign finance reports.<sup>21</sup> It overlooks the state campaign's continued need to complete and submit financial and legal reports required under Pennsylvania law, and to account for the underlying activity. FEC disbursement records demonstrate that the federal campaign paid NGP VAN separately for these same services, as FEC rules obliged it to do.<sup>22</sup> Similar needs required the state campaign to hire David Floyd to provide accounting services, which the Complaint just as groundlessly disputes.<sup>23</sup> Mr. Floyd's concurrent provision of accounting services to the state campaign and congressional campaign is just the sort of arrangement Commission rules expressly contemplate, and presents no apparent or actual violation.

*Third*, the Complaint disputes the state campaign's March 30, 2018 payment of \$2,750 to Diane Gregg for "political and communication consulting."<sup>24</sup> However, as the invoice between Friends of Madeleine Dean and Gregg in Exhibit C demonstrates, the state campaign paid Gregg for her work collecting petitions to get Representative Dean on the ballot for Lieutenant Governor, thus belying the Complaint's speculative allegation.

*Fourth*, the Complaint alleges that the Respondents violated Federal laws and regulations, because the state campaign spent \$797.69 to reimburse four individuals after Representative Dean ended her bid for Lieutenant Governor, including three who were also paid by her congressional campaign.<sup>25</sup> Here, again, however, the payments were just the sort Commission regulations contemplate, in light of her multiple candidacies, and present no violation.

*Fifth*, the Complaint disputes the state campaign's payments to various retail and shipping companies for faxes, office supplies, postage, and shipping between February 22, 2018 and November 30, 2018. The Complaint does not at all state how any one of these expenses violates the Act. The Complaint entirely ignores the state campaign's legitimate, continued need to properly refund campaign contributions, pay vendors, and satisfy its remaining financial and legal obligations under state law.

*Sixth*, the Complaint further alleges that the nonfederal committee paid \$195.00 to VoterWeb Access on March 27, 2018 for access to a Pennsylvania voter database, for the benefit of the federal

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<sup>21</sup> See Compl., at 2. Note that NGP VAN, Inc. also does business as EveryAction, Inc.

<sup>22</sup> Fed. Election Comm'n, *Disbursements*, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00670844&recipient\\_name=NGP+VAN&two\\_year\\_transaction\\_period=2018](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00670844&recipient_name=NGP+VAN&two_year_transaction_period=2018) (last visited July 2, 2020).

<sup>23</sup> Compl., at 2.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 3.

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campaign. after Representative Dean ended her campaign for Lieutenant Governor.<sup>26</sup> It makes the claim of a prohibited contribution without any real evidence, except to speculate that the price was the “same rate paid by another congressional candidate.”<sup>27</sup> Here again, the true facts contradict the Complaint’s mere speculation. As the email invoice in Exhibit D demonstrates, VoterWeb invoiced the charge to Friends of Madeleine Dean after Representative Dean dropped out of the Lieutenant Governor’s race—but prorated the charge, acknowledging that Representative Dean ended that campaign during the month of February. The state campaign committee made these expenditures in direct connection with Representative Dean’s campaign for Lieutenant Governor, and thus its payment for accessing VoterWeb’s database does not violate the Act.<sup>28</sup>

Ultimately, the Complaint’s allegations regarding Friends of Madeleine Dean’s expenses ignore express provisions of the Act and Commission regulations that permit them, ignore the circumstances of Representative Dean’s multiple nonfederal candidacies, rely on unfounded speculation, and are contradicted by the true facts. Representative Dean’s federal and state committees followed well-established laws that provide for their concurrent operation, and the Complaint makes no cognizable allegation to the contrary.

### CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Commission promptly find no reason to believe any violation occurred, dismiss the Complaint, and close the file. We appreciate the Commission’s consideration of this response.

Very truly yours,



Brian G. Svoboda  
 Shane A. Grannum  
 Counsel to the Respondents

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<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.*

<sup>28</sup> On review of the Complaint’s sweeping and vague claims of more than \$17,000 in improper nonfederal spending, Mad 4 PA PAC has identified only two *de minimis* disbursements from the nonfederal committee totaling \$254.79 for which its records do not support the indicated allocation: \$201.79 to Network Solutions, LLC for web hosting services, and half of the nonfederal committee’s \$106.00 payment to the United States Postal Service for renting a postal office box shared with Mad 4 PA PAC. *See* Fed. Election Comm’n, Advisory Op. 1994-37, at 2-3 (Schumer); *see also* 11 C.F.R. §§ 106.1(a)(1), 110.8(d)(3). To avoid any question of compliance, and with the nonfederal committee terminated, Mad 4 PA PAC has issued a disgorgement in this amount to the U.S. Treasury. The Commission has consistently treated such *de minimis* amounts as meriting no further action. *See, e.g.,* Factual & Legal Analysis, MUR 6809, at 3 (Kultala for Congress) (exercising prosecutorial discretion and taking no further action over a \$1,000 contribution from a nonfederal campaign).



Invoice Date: 2/13/2018

**client:** Friends of Madeleine Dean  
Jenkintown, PA 19046

**attn:** Christopher McCann  
**job name:** Walk Card  
**job #:** 0001P18W

**service:** **Production Services for Walk Card**  
*Design Printing Management*

Walk Card	(0001P18W)
Total Pieces	5,000
Size	6 x 11", card
Stock	100# cover
Color	4/4

**Fees:**

Production Cost	\$2,824
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<b>Fee Subtotal:</b>	<b>\$2,824</b>
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<b>total balance due:</b>	<b>\$2,824</b>
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**please remit payment to:**

**SEND REGULAR MAIL TO:**  
Kennedy Communications, Inc.  
P.O. Box 51967  
Washington, DC 20091

**SEND FedEx/UPS TO:**  
Kennedy Communications, Inc.  
Attn: Andrew Kennedy  
926 N Street NW Rear - Studio R7  
Washington, DC 20001  
(202) 333-7889

**SEND WIRE TO:**  
Congressional Bank  
6701 Democracy Blvd #400  
Bethesda, MD 20817  
Acc#  
Routing/ABA#

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**Balance Due Upon Receipt**



Invoice Date: 1/30/2018

**client:** Friends of Madeleine Dean  
Jenkintown, PA 19046

**attn:** Christopher McCann  
**job name:** Walk Card  
**job #:** 0001P18W

**service:** **Production Services for Walk Card**  
*Design Printing Management*

<b>Walk Card</b>	<b>(0001P18W)</b>
Total Pieces	1,000
Size	6 x 11", card
Stock	100# cover
Color	4/4

**Fees:**

Production Cost	\$1,392
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<b>Fee Subtotal:</b>	<b>\$1,392</b>
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<b>total balance due:</b>	<b>\$1,392</b>
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**please remit payment to:**

**SEND REGULAR MAIL TO:**  
Kennedy Communications, Inc.  
P.O. Box 51967  
Washington, DC 20091

**SEND FedEx/UPS TO:**  
Kennedy Communications, Inc.  
Attn: Andrew Kennedy  
926 N Street NW Rear - Studio R7  
Washington, DC 20001  
(202) 333-7889

**SEND WIRE TO:**  
Congressional Bank  
6701 Democracy Blvd #400  
Bethesda, MD 20817  
Acc#  
Routing/ABA#

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**Balance Due Upon Receipt**



# Hard Work. Integrity. Results.

Born and raised in Glenside, PA –  
Madeleine represents her  
hometown in the statehouse.

She is an outspoken progressive  
working everyday for the issues  
that matter:

- ★ Education funding and  
strong public schools
- ★ The economy and jobs
- ★ Combatting the epidemic  
of opioid addiction and  
overdoses
- ★ Ethics and good government

Madeleine is a lawyer, teacher,  
writer – she and husband PJ live  
in Jenkintown and have three  
grown sons, two daughters-in-  
law, and granddaughter Aubrey.



DEMOCRAT  
*madeleine*  
**DEAN**

FOR  
**LIEUTENANT GOVERNOR**

[mad4pa.com](http://mad4pa.com) [f/Mad4PA](https://www.facebook.com/Mad4PA)

PAID FOR BY FRIENDS OF MADELEINE DEAN

0001P18W



# In it for the work, not the perks.

## **The best candidate with experience in the statehouse**

– speaking out against wrong-minded Republican, special interest policies — and speaking up for the common good.

- ★ Member of Appropriations, Judiciary, Finance and other committees
- ★ PA SAFE Caucus, Founder and Co-Chair
- ★ PA Commission for Women – appointed by Governor Wolf
- ★ Southeast Delegation, Chair

**Fighting for working families on issues that matter.**

**It's time for change. In the May 15<sup>th</sup>  
Democratic Primary, VOTE FOR**

DEMOCRAT  
*madeleine*  
**DEAN**  
FOR  
LIEUTENANT GOVERNOR

[mad4pa.com](http://mad4pa.com)  /Mad4PA



7/1/2020

Gmail - Fwd: Madeleine Dean order



Koh Chiba &lt;

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**Fwd: Madeleine Dean order**

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**Christopher McCann** <  
To: Koh Chiba <

Tue, Jun 30, 2020 at 5:28 PM

----- Forwarded message -----

**From:** Capitol Promotions <info@capitolpromotions.com>  
**Date:** Thu, Feb 1, 2018 at 12:18 PM  
**Subject:** RE: Madeleine Dean order  
**To:** <

Hi Chris,  
I hope all is well.

A proof is attached is attached for your review.

Please advise as to approval or changes.

The total for 250 is: \$143.10 (including tax and shipping)

They will be delivered by next Thursday, 2/8.

Thank you,  
Luke

Capitol Promotions  
800-884-3024

**From:** Christopher McCann [mailto:  
**Sent:** Thursday, February 01, 2018 11:11 AM  
**To:** art@capitolpromotions.com  
**Subject:** Madeleine Dean order

Attached you will find a proof of what Madeleine is hoping the button would look like -- sorry it is in PDF format. Also attached is the official logo, but without the bars and stripes she wants.

She is also hoping to get eh union bug on the front of the button wherever it least interferes with the design.

## EXHIBIT B

7/1/2020

Gmail - Fwd: Madeleine Dean order

Order would be for 2 x 3 inch rectangles, 250 total.

Additionally, is it possible to have that order done by next Thursday.

Thanks,

Chris McCann



2/14/2020

Friends of Madeleine Dean Mail - invoice



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Madeleine Dean <mad@madeleinedean.com>

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**invoice**

2 messages

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**Dianne Gregg** <Dianne@diannegregg.com>  
To: Madeleine Dean <mad@madeleinedean.com>

Wed, Mar 21, 2018 at 7:20 PM

Invoice

3/21/18

To Madeleine Dean for Lt Governor Campaign:

Eight weeks' work at \$325 each = \$2,600

Expenses = \$150

Total = \$2,750

Thank you,

Dianne Gregg  
Political and Communication Consulting  
148 Rock Hill RD, Centre Hall, PA 16828  
814.880.67724

2/14/2020

Friends of Madeleine Dean Mail - VoterWeb Invoice for Dean Lt Gov (One week of First Month)



Madeleine Dean &lt;mad@madeleinedean.com&gt;

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**VoterWeb Invoice for Dean Lt Gov (One week of First Month)**

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**David Diano** <dave@voterweb.org>

Thu, Mar 8, 2018 at 8:21 PM

Reply-To: dave@voterweb.org

To: mad@madeleinedean.com

Cc: Brad Kopinski &lt;

Dean Lt Gov Campaign-

Chris said to send the invoices to mad@madeleinedean.com. I've cc-ed Brad, since he set up the original deal, to tie up any loose ends.

As originally discussed the fee for VoterWeb is normally \$1000/month for statewide, but with my 78-cents on the dollar promotion for female candidates, it's only \$780/month for Madeleine's Lt Gov campaign.

However, since Madeleine switched to congressional race after 1/4 of a month, the adjusted/prorated fee is only \$195, for the time the campaign was active.

Please remit \$195 to:

DAVID DIANO  
236 CORNERSTONE DR  
NEWTOWN SQ, PA 19073-4049

Payment terms are upon receipt.

Sincerely,  
David Diano  
cell: