

VENABLE LLP

600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001  
T 202.344.4000 F 202.344.8300 www.Venable.com

November 20, 2020

Lawrence H. Norton

T 202.344.4541  
F 202.344.8300  
LHNorton@Venable.comJeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
1050 First Street, N.E.  
Washington, DC 20463

Re: MUR 7805

Dear Mr. Jordan:

On behalf of Congressman Timothy John ("Tim") Ryan, Tim Ryan for Congress, Congressman Ryan's principal campaign committee (the "Committee"), and Allen Ryan, in his official capacity as the Committee's Treasurer, (collectively the "Ryan Respondents"), we submit this response to a Complaint alleging that a video posted by the Ryan Respondents on YouTube and Twitter (the "Video") failed to include a disclaimer indicating who paid for or authorized the advertisement.

A political committee, including a candidate's principal campaign committee, must include a disclaimer prescribed by Commission regulations on all "public communications, as defined in 11 CFR 100.26," electronic mail of more than 500 substantially similar communications when sent by the committee, and all of the campaign committee's Internet websites available to the general public.<sup>1</sup> The Complaint does not concern email from the Committee or the Committee's Internet websites.

All other communications over the Internet, except those "placed for a fee on another person's Web site," are excluded from the definition of "public communication" and therefore do not require a disclaimer.<sup>2</sup> Here, the Video, a link to which is contained in the Complaint, was posted on YouTube without payment of any fee.<sup>3</sup> Thus, it is not a "public communication" and no disclaimer was required. The Complaint also alleges that the Video was posted on Twitter, though

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<sup>1</sup> 11 C.F.R. § 110.11

<sup>2</sup> 11 C.F.R. § 100.26

<sup>3</sup> Affidavit of Michael J. Morley ("Morley Aff.") ¶¶ 4, 6.



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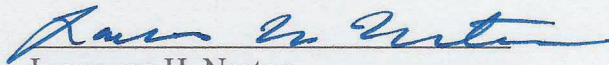
it provides no link or screenshot. This claim is also baseless as no fee was paid for that either,<sup>4</sup> and Twitter's own Content Policy does not permit *any* paid political advertising on its platform.<sup>5</sup>

The Complaint speculates that the "advertisement at issue must have cost more than \$1,000 to prepare and publish." Even if true, this would be irrelevant. The mere payment of production costs by a political committee for an ad posted on an Internet website does not make the ad a "public communication."<sup>6</sup> There must also be a fee paid for posting the ad, and here there was not.

Principles of prosecutorial discretion also counsel in favor of dismissal.<sup>7</sup> Even if a disclaimer had been required, it is unlikely that the general public would have been misled as to the party responsible for the Video. Immediately below the Video (as uploaded to YouTube), there is a statement that the Video was "Paid for by Tim Ryan for Congress" and a link to the Committee's website.<sup>8</sup>

For the reasons set forth above, the Ryan Respondents respectfully request that this matter be dismissed.

Respectfully submitted,



Lawrence H. Norton  
Christopher J. Climo  
Venable LLP  
600 Massachusetts Avenue, N.W.  
Washington, DC 20001  
(202) 344-4541

Attorneys for Respondents Timothy John Ryan; Tim Ryan for Congress; and Allen Ryan, Treasurer, in his official capacity

<sup>4</sup> Morley Aff. ¶¶ 5, 6.

<sup>5</sup> *Political Content*, Twitter Content Policy, <https://business.twitter.com/en/help/ads-policies/ads-content-policies/political-content.html> (last accessed Nov. 19, 2020).

<sup>6</sup> Advisory Opinion 2008-10 (VoterVoter) at 8.

<sup>7</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985); see also Factual and Legal Analysis, MUR 7071 (Mike Bishop for Congress) (Apr. 27, 2017) (dismissing as low-rated where landing page lacked disclaimer but provided information sufficient to inform contributors who paid for it).

<sup>8</sup> Further, the violations alleged in the Complaint provide no basis for finding personal liability as to Congressman Ryan.



**BEFORE THE FEDERAL ELECTION COMMISSION**

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GENO LEWIS DIFABIO, JR.,

*Complainant,*

v.

TIMOTHY JOHN RYAN; TIM RYAN FOR  
CONGRESS; MICHELE LEPORE-HAGAN;  
MICHELE LEPORE-HAGAN FOR STATE  
REPRESENTATIVE,

*Respondents.*

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**MUR 7805**

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**AFFIDAVIT OF MICHAEL J. MORLEY**

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I, Michael J. Morley, hereby declare the following:

1. My name is Michael J. Morley. I am the Campaign Manager for Tim Ryan for Congress. I am of legal age and competent to testify in this matter. I have personal knowledge of all facts stated in this declaration.
2. Timothy J. Ryan is the incumbent Member of the United States House of Representatives representing Ohio's 13<sup>th</sup> Congressional District. Congressman Ryan was re-elected during the 2020 general election, and Tim Ryan for Congress (the "Committee") is his designated Principal Campaign Committee.
3. The Committee paid all costs associated with producing the YouTube video described in the Complaint in the above-captioned matter (the "Video"). Exhibit 1 attached to the Complaint represents an accurate transcription of the Video's spoken content.
4. The Committee uploaded the Video as unpaid content to its YouTube channel on or around September 12, 2020. The Committee included the following language in the Description section of the Video's YouTube page:



Our opponent is running a deceptive campaign trying to piggy back off of the names of the Valley's most dedicated public servants, State Rep Michele Lepore-Hagan and her husband and former Legislator Bob Hagan.

State Rep Lepore Hagan [sic] wants to set the record straight.

[www.timryanforcongress.com](http://www.timryanforcongress.com)

Paid for by Tim Ryan for Congress

A true and correct copy of the Video's Description section on YouTube, as of November 19, 2020, is attached hereto as **Exhibit A**.

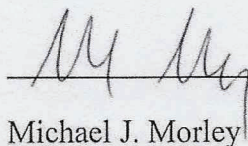
5. On or around September 13, 2020, the Video was uploaded directly to Twitter as part of an unpaid tweet by an individual affiliated with a vendor retained by the Committee. That tweet was retweeted by Congressman Ryan later that day.

True and correct copies of the referenced tweets are attached hereto as **Exhibit B**.

6. Neither the Committee, Congressman Ryan, nor any agent of Congressman Ryan's re-election campaign paid to promote the Video on YouTube or Twitter.

I declare under penalty of perjury under penalty of perjury that the foregoing is true and correct.

Executed on November 20, 2020.

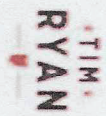


Michael J. Morley



# Exhibit A





Tim Ryan for Congress  
6 subscribers

SUBSCRIBE

Our opponent is running a deceptive campaign trying to piggy back off of the names of two of the Valley's most dedicated public servants, State Rep Michele Lepore-Hagan and her husband and former Legislator Bob Hagan.

State Rep Lepore Hagan wants to set the record straight.

[www.timryanforcongress.com](http://www.timryanforcongress.com)

Paid for by Tim Ryan for Congress

SHOW LESS



# Exhibit B





Andy Padrutt

@AndyPadrutt

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Youngstown State Rep. @MLeporeHagan takes Congressman @TimRyan's sneaky challenger to task for using her good name to deceive voters. Nice spot!



6:05 PM · Sep 13, 2020 · Twitter for iPhone

32 Retweets 4 Quote Tweets 48 Likes



**Tim Ryan**

@TimRyan

US House candidate, OH-13

...

I love the cameo appearance by @Repbobhagan putting the yard sign up. Bob's not for Right to Work/defunding cops/firefighters/teachers/nurses either. My opponent is. Led the charge on SB 5, tried 2 eliminate unions. This campaign is just getting fun. What til u c what's to come!

**Andy Padrutt** @AndyPadrutt · Sep 13

Youngstown State Rep. @MLeporeHagan takes Congressman @TimRyan's sneaky challenger to task for using her good name to deceive voters. Nice spot!



9:13 PM · Sep 13, 2020 · Twitter for iPhone

23 Retweets 2 Quote Tweets 72 Likes