

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR 7980**

DATE COMPLAINT FILED: Apr. 15, 2022

DATE OF NOTIFICATIONS: Apr. 20, 2022

LAST RESPONSE RECEIVED: May 3, 2022

DATE ACTIVATED: Nov. 15, 2022

EXPIRATION OF SOL: Apr. 11, 2027

ELECTION CYCLE: 2022

COMPLAINANT:

LJ Foley

RESPONDENTS:Deborah Adeimy for Congress and David
Satterfield in his official capacity as treasurer
Deborah Adeimy**RELEVANT STATUTES
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

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that 2022 U.S. House candidate Deborah Adeimy and her principal campaign committee Deborah Adeimy for Congress and David Satterfield in his official capacity as treasurer (the "Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by including a deficient disclaimer on a campaign mailer. Specifically, the Complaint claims that the disclaimer was too small. The Respondents deny

1 violating the Act. For the reasons set forth below, we recommend that the Commission dismiss
2 the matter pursuant to its prosecutorial discretion under *Heckler v. Chaney*.¹

3 **II. FACTUAL BACKGROUND**

4 Deborah Adeimy was a candidate to represent Florida's 22nd Congressional District in
5 the 2022 election cycle and lost the primary election in August 2022.² Deborah Adeimy for
6 Congress is her principal campaign committee.³ On April 11, 2022, the Committee paid Orion
7 Press a total of \$16,822.68 for "printing."⁴

8 The Complainant, LJ Foley, is the manager and member of Voter Infusion, LLC ("Voter
9 Infusion").⁵ Voter Infusion provides campaigns with, *inter alia*, data analytics, messaging,
10 distribution, and campaign strategy services.⁶ On April 13, 2022, the Committee paid \$4,000 to
11 Voter Infusion, LLC for "political strategy consulting."⁷

12 The Complaint alleges that the Committee paid Orion Press for a mailer that contained a
13 disclaimer that was "in as small of font as possible and hidden" in the 8.5x11 inch mailer's left
14 corner.⁸ The Complaint includes a picture of a mailer containing a small disclaimer at the

¹ 470 U.S. 821, 831 (1985).

² See Deborah Adeimy, Statement of Candidacy (Nov. 9, 2022),
<https://docquery.fec.gov/pdf/586/202211099546746586/202211099546746586.pdf>.

³ See Deborah Adeimy for Congress, Statement of Organization (May 5, 2022),
<https://docquery.fec.gov/pdf/139/202205059502669139/202205059502669139.pdf>.

⁴ See Deborah Adeimy for Congress, 2022 July Quarterly Report at 46 (July 15, 2022),
<https://docquery.fec.gov/pdf/684/202207159521494684/202207159521494684.pdf#navpanes=0> (showing
\$10,814.07 and \$6,008.61 paid on April 11, 2022).

⁵ Florida Department of State, Division of Corporations, Search for Corporations, Limited Liability
Companies, Limited Partnerships, and Trademarks by Name,
<https://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (search "Voter Infusion").

⁶ VOTER INFUSION, <https://www.voterinfusion.com/home.html> (last visited Jan. 10, 2023).

⁷ See Deborah Adeimy for Congress, 2022 July Quarterly Report at 47.

⁸ Compl. ¶¶ 5, 13 (Apr. 15, 2022).

1 bottom left.⁹ The disclaimer's text is black, is contained within a printed box, and says "PAID
2 FOR BY DEBORAH ADEIMY FOR CONGRESS."¹⁰ The mailer was allegedly sent to
3 approximately 32,000 individuals in Palm Beach County, Florida.¹¹ The Complaint further
4 alleges that the mailers were identical but for the addressee information.¹² The Complaint claims
5 the "General Consultant" — who, based on the attachments to the Complaint, appears to be the
6 Complainant working in his capacity as the manager of Voter Infusion — repeatedly warned
7 Adeimy and the Committee's treasurer about the disclaimer but that Adeimy ignored those
8 warnings.¹³

9 In their Response, Adeimy and the Committee deny violating the Act.¹⁴ The Response
10 asserts that the campaign properly adhered to disclaimer requirements and cites various
11 examples, such as the campaign's website, videos, signs, ads, invitations, and Facebook page.¹⁵
12 The Response also states that the image of the mailer included in the Complaint is "not true to
13 size."¹⁶ Finally, the Response asserts that the Complainant is "weaponizing" the Act's complaint

⁹ *Id.* at App. 4.

¹⁰ *Id.*

¹¹ *Id.* ¶ 5.

¹² *Id.* ¶ 6.

¹³ *Id.* ¶¶ 12-22.

¹⁴ Resp. at 1 (May 3, 2022).

¹⁵ *Id.* The Committee's website includes disclaimers at the bottom of the home page and on the contribution page. See DEBORAH ADEIMY FOR CONGRESS, <https://debadeimy4congress.com/> (last visited Jan. 10, 2023); DEBORAH ADEIMY FOR CONGRESS, <https://secure.winred.com/deborah-adeimy-for-congress/donate-today/thank-you/preview> (contribution page) (last visited Jan. 10, 2023). The Committee's Twitter page also includes campaign videos and signs containing disclaimers. See Deborah Adeimy for U.S. Congress (@DebAdeimy), TWITTER, https://twitter.com/DebAdeimy?ref_src=twsrc%5Etfw (last visited Jan. 10, 2023).

¹⁶ Resp. at 1.

1 process in response to a failed business relationship and requests redaction “wherever possible to
2 avoid encouraging such activity.”¹⁷

3 **III. LEGAL ANALYSIS**

4 The Act requires that mailings by authorized political committees “clearly state that the
5 communication has been paid for by such authorized political committee.”¹⁸ Commission
6 regulations require that “public communication[s]” by political committees include a
7 disclaimer.¹⁹ The term “public communication” is defined as a communication by means of any
8 broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility,
9 mass mailing, or telephone bank to the general public, or any other form of general public
10 political advertising.²⁰ “Mass mailing” means “a mailing by United States mail or facsimile of
11 more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-
12 day period.”²¹

13 A disclaimer notice must be clearly and conspicuously displayed, meaning it must “give
14 the reader. . . adequate notice of the identity of the person or political committee that paid for
15 and, where required, that authorized the communication. A disclaimer is not clear and
16 conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.”²²

17 In printed communications, the disclaimer must be contained within a printed box set
18 apart from the contents of the communications.²³ The print of the disclaimer must be of

¹⁷ *Id.*

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

¹⁹ 11 C.F.R. § 110.11(a)(1).

²⁰ *Id.* § 100.26.

²¹ *Id.* § 100.27.

²² *Id.* § 110.11(c)(1).

²³ *Id.* § 110.11(c)(2)(ii).

1 sufficient size to be “clearly readable” by the recipient of the communication, and the print must
2 have a reasonable degree of color contrast between the background and the printed statement.²⁴
3 Commission regulations contain a safe harbor establishing that a fixed, 12-point type size is a
4 sufficient type size for disclaimer text in newspapers, magazines, flyers, signs and other printed
5 communications that are no larger than 24 inches by 36 inches.²⁵

6 Because the Committee appears to have paid \$16,822.68 for the mailer to be sent to
7 approximately 32,000 individuals, the mailer appears to qualify as a mass mailing and, thus, a
8 public communication that requires a clear and conspicuous disclaimer. Here, the disclaimer’s
9 text was black against a white background, was contained within a printed box, and identified the
10 Committee as the payor.²⁶ The Complaint alleges that the font size of the disclaimer was less
11 than 12-point type size but does not specify the actual size of the font.²⁷

12 We note that the size of the disclaimer text appears very small in the screenshot included
13 in the Complaint.²⁸ On the other hand, other aspects of the disclaimer appear to satisfy the
14 disclaimer requirements for printed communications. For example, the disclaimer is contained
15 within a printed box.²⁹ The disclaimer likely meets the safe harbor for reasonable degree of

²⁴ *Id.* § 110.11(c)(2)(i), (iii). The regulations provide two safe harbor examples that would comply with the color contrast requirement: the disclaimer is printed in black on a white background; or the degree of contrast between the background and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication. *Id.*

²⁵ *Id.* § 110.11(c)(2)(i).

²⁶ Compl. at App. 4.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See* 11 C.F.R. § 110.11(c)(2)(ii).

1 color contrast (black print on a white background).³⁰ Finally, the placement of the disclaimer in
2 the bottom corner of the mailer appears to be in a place that would not be overlooked.³¹

3 But we do not believe that the Commission need draw any specific conclusion about
4 whether the mailer's disclaimer was clearly and conspicuously displayed, because the image of
5 the mailer attached to the Complaint appears to have reduced the mailer's size.³² In a recent
6 matter, the Commission exercised its prosecutorial discretion and dismissed allegations, in part,
7 because the complaint's support for its allegation (a video recording) had been edited.³³ Here, it
8 also appears that the image of the mailer has been edited in a way that makes the mailer's
9 disclaimer smaller than it actually appeared.

10 Under these circumstances, and given that the available information indicates that the
11 Committee may have spent less than \$17,000 on the mailer, we do not believe further use of
12 the Commission's resources is warranted.³⁵ Accordingly, we recommend that the Commission

³⁰ *See id.* § 110.11(c)(2)(iii).

³¹ *See id.* § 110.11(c).

³² The Commission has also declined to pursue violations where "a disclaimer is included in a communication, but there is a potential violation stemming from a technical deficiency." *See Factual & Legal Analysis at 8, MUR 6846 (DeFazio for Congress) (citing cases).*

³³ *See Statement of Reasons, Comm'rs. Dickerson, Walther, Broussard, Cooksey, Trainor III, and Weintraub, MURs 7826 & 7862 (Iowa Democratic Party, et al.).*

³⁵ To the extent that the Complaint alleges Adeimy and the Committee also failed to include a disclaimer in an audio recording "on 3/29," the available information does not indicate such a recording was ever disseminated, and the Response specifically asserts it was never sent. Compl. ¶ 19, App. 4, 6; Resp. at 1. Accordingly, we do not believe that this allegation warrants further use of the Commission's resources.

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1 exercise its prosecutorial discretion and dismiss the allegation that Deborah Adeimy and the
 2 Committee violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by including an improper
 3 disclaimer on a mailer.³⁶

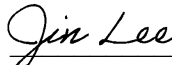
4 **IV. RECOMMENDATIONS**

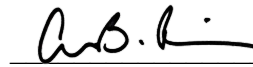
- 5 1. Dismiss the allegation that Deborah Adeimy and Deborah Adeimy for Congress and
 6 David Satterfield in his official capacity as treasurer violated 52 U.S.C. § 30120 and
 7 11 C.F.R. § 110.11 by including an improper disclaimer on a mailer;
 8
 9 2. Approve the attached Factual and Legal Analysis;
 10
 11 3. Approve the appropriate letters; and
 12
 13 4. Close the file.

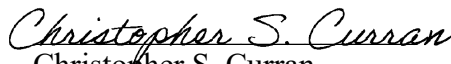
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 15 Lisa J. Stevenson
 16 Acting General Counsel

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 18 Charles Kitcher
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 23 Feb. 8, 2023
 24 Date

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³⁶ See *Heckler*, 470 U.S. at 831.