



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 14, 2013

VIA FIRST CLASS MAIL

Richard A. Forsten  
Saul Ewing LLP  
222 Delaware Ave, Suite 1200  
Wilmington, DE 19899

RE: MUR 6637

Dear Mr. Forsten:

On September 11, 2012, and September 14, 2012, the Federal Election Commission notified your clients, Kovach for Congress, Inc. and Christopher M. Marston as treasurer, and Kevin Anglim, of a complaint and amendment alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 25, 2013, based upon the information contained in the complaint, and information provided by your clients, the Commission found no reason to believe Kovach for Congress, Inc. and Christopher M. Marston as treasurer, or Kevin Anglim, violated the Act or Commission regulations with respect to the allegations in this matter, and closed its file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Kim Collins, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

General Counsel

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
Factual & Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Kovach for Congress, Inc. MUR 6637  
and Christopher M. Marston as treasurer  
Kevin Anglim

**I. INTRODUCTION**

This matter was generated by a complaint filed by Kevin Izzo, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by [www.wipeupthemess.com](http://www.wipeupthemess.com), Kovach for Congress, Inc., and Christopher M. Marston as treasurer, and Kevin Anglim (the "Respondents"). After reviewing the record, the Commission found no reason to believe that Respondents violated the Act.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

In this matter, Complainant Kevin Izzo, treasurer of Rose Izzo for Congress, alleges that a website ([www.wipeupthemess.com](http://www.wipeupthemess.com)) that included statements in opposition to Rose Izzo's campaign for Congress did not contain a necessary disclaimer. Compl. at 1. Specifically, he alleges that the website was a "political ad" and failed to identify "who is responsible for" the website. *Id.* In an amendment to the Complaint, Izzo alleges that Kovach for Congress, Inc. (the "Committee"), through a paid staffer, was responsible for the website. Amd. Compl. at 1. Izzo reaches that conclusion because the staffer, Kevin Anglim, posted two Facebook comments that linked to [www.wipeupthemess.com](http://www.wipeupthemess.com). *Id.* at 1.

On September 20, 2012, an individual named Ray Buchta filed a response, stating that "WipeUpTheMess.com is [his] personal website. It was not authorized by or paid for by any candidate or committee." Buchta Resp. at 1. Buchta states that he was under the impression that

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1 “uncompensated individuals may engage in Internet activities for the purpose of influencing a  
2 federal election without restriction” and cites to 11 CFR §§ 100.94 and 100.155. *Id.* Buchta  
3 argues that the “internet exemption” includes “creating, maintaining or hosting a web site and  
4 paying a nominal fee for the use of a web site. 11 CFR 100.94(b).” *Id.* Buchta further asserts  
5 that Commission regulations “clearly make a distinction between internet activities (such as  
6 websites) and traditional advertising (such as TV, radio and print ads). No money other than  
7 nominal fees was spent on this website. I did not spend any money promoting the website.” *Id.*

8 Kevin Anglim filed a response on October 17, 2012. He acknowledges that he worked  
9 for the Kovach campaign but denied any involvement with www.wipeupthemess.com. Anglim  
10 Resp. at 1. Anglim states that he last worked for the campaign the week of August 12-18 and  
11 that he was not in contact with the campaign afterward. *Id.* Regarding the Facebook posts that  
12 he made, Anglim states that he discovered the website independently and that the Facebook posts  
13 “were [his] personal decision and personal opinion. The Kovach campaign did not know I was  
14 engaging in these posts.” *Id.*

15 In its Response, the Committee asserts that “www.WipeUpTheMess.com was not created  
16 by, sponsored by, or affiliated with the Kovach campaign” and that “the Kovach Campaign does  
17 not know who created it.” Committee Resp. at 2. Additionally, the Committee notes that  
18 Anglim made his Facebook posts after he left the campaign. *Id.* The Committee asserts that at  
19 the time of the posts Anglim “was not working as a representative of the campaign and any  
20 actions he undertook were purely his own and not the actions of the Kovach Campaign.” *Id.*  
21 Additionally, the Committee asserts that, because a post on Facebook is not a public  
22 communication, no disclaimer was required. *Id.* at 1.

**B. Legal Analysis**

“[P]ublic communications . . . by a political committee” and public communications “by any person that expressly advocate the election or defeat of a clearly identified candidate” require disclaimers, as do “all Internet websites of political committees available to the general public.” *See* 11 C.F.R. § 110.11(a)(1)-(2). A “public communication” is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of “general public political advertising.” 11 C.F.R. § 100.26. The term “general public political advertising,” however, expressly excludes “communications over the Internet, except for communications placed for a fee on another person’s Web site.” *Id.*

The Commission concluded that the website was neither a public communication nor a political committee website. The Committee asserts that the website was not created by, sponsored by, or affiliated with the Kovach campaign. Committee Resp. at 1. Anglim asserts that he had no involvement with the website and that he merely referenced it in two Facebook posts—after he left the Kovach campaign. Anglim Resp. at 1. And Buchta states that [www.wipeupthemess.com](http://www.wipeupthemess.com) was his “personal website,” Buchta Resp. at 1; he thus did not place a communication “on *another person’s* Web site.”<sup>1</sup> 11 C.F.R. § 100.26 (emphasis added); *see also* Internet Communications, 71 Fed. Reg. 18589, 18607-10 (Apr. 12, 2006) (explaining the distinction between paying a fee to post a message on one’s own website and another’s website). Because the website was neither a political committee’s nor qualified as a public communication, the website did not require a disclaimer. Accordingly, the Commission found no reason to

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<sup>1</sup> Moreover, Buchta’s volunteer activity falls under the definition of uncompensated internet activity and does not constitute a contribution or expenditure. *See* 11 C.F.R. §§ 100.94, 100.155.

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- 1 believe Kevin Anglim, Kovach for Congress, Inc. and Christopher M. Marston as treasurer,
- 2 violated the Act or Commission regulations with respect to the allegations in this matter.

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