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December 13, 2016

Jeff S. Jordan  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 7154

Dear Mr. Jordan:

I write in my capacity as both Treasurer and Counsel to Beatty for Congress (FEC C00507368) in response to the complaint filed by Kathleen M. Eagan (the "Complaint"). I will initially note that neither Beatty for Congress, nor Congresswoman Joyce Beatty (FEC H20H03125) were named as Respondents in the Complaint.

Instead, the Complaint was filed against the Ohio Democratic Party ("ODP") generally alleging violations resulting from the publication and mailing of a brochure (Complaint Exhibit A) and the online posting of sample ballots and/or slate cards (Complaint Exhibit B, C and D); the allegations claim that ODP failed to include the applicable disclaimer(s) required under CFR 110.11 for public communications made by a committee.

Only two (2) of the exhibits (Complaint Exhibit A and D) contain a photo of Representative Beatty and indicate that Representative Beatty endorses the candidates identified in the Brochure and online sample ballot/slate card. Representative Beatty is not referenced in Complaint Exhibits B or C.

Because (1) Beatty for Congress is neither a named Respondent; and (2) Beatty for Congress did not pay for, nor is otherwise responsible for, the publication of Exhibits A - D, I will only address those allegations in the Complaint that relate to Beatty for Congress and *imply* a potential violation of the Federal Election Campaign Act of 1971 ("the Act") by Beatty for Congress.

Because Beatty for Congress is not named respondent in the Complaint, and because the Complaint fails to specifically "set forth sufficient specific facts, which, if proven true, would

constitute a violation of the [Act],”<sup>1</sup> by Beatty for Congress, the Complaint should be dismissed and the Commission should close the file as concerns Beatty for Congress.

Additionally, in addition to the brief legal analysis below, Beatty for Congress adopts ODP’s Response to MUR 7154 as filed with the Commission on or about December 12, 2016.

### **Brief Legal Analysis**

11 CFR 110.11(c)(1) requires that a disclaimer must give “adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication.”

**I. Beatty for Congress did not pay or publish Complaint Exhibits A – D, nor coordinate in their creation.**

As noted previously, and as recognized in Complaint Paragraph 4, the public communications represented by Exhibits A – D were created, published and/or paid for by ODP, not Beatty for Congress. Moreover, Beatty for Congress did not coordinate with ODP in Exhibits A – D’s creation or publication. Beatty for Congress did not exercise any control over Exhibits A – D, nor reviewed the communications before they were published to the public.

As such, Beatty for Congress was not responsible for placing any required disclaimer on the subject public communications, and thus cannot be in violation of the Act for any failure to do so by any third-party, including ODP.

**II. Complaint Exhibit A does not qualify as federal election activity, and thus do not require disclaimers or reporting by Beatty for Congress.**

Exhibit A does not qualify as federal election activity; therefore, it is not subject to federal disclaimer laws. Exhibit A advocated *exclusively* for the election of state and local candidates; it in no way promoted, supported, attacked or opposed (“PASO”) any clearly-identified federal candidate. Exhibit A contained persuasion material for state and local issues and candidates, and identified and contained pictures of federal candidates solely for the reason of publicizing the federal candidates’ endorsement of state and local candidates.

As this Commission has repeatedly stated, “the mere identification of an individual who is a federal candidate is not itself tantamount to promoting, supporting, attacking, or opposing that candidate.”<sup>2</sup> Other than requesting that the public vote for two candidates for Ohio Supreme Court, Exhibit A contains no other PASO language – certainly no federal PASO advocacy. Indeed, the purpose of Exhibit A as a state/local endorsement piece is indicated

<sup>1</sup> Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, MUR 4960 (Dec. 21, 2000).

<sup>2</sup> AO 2007-34 at 3 (Jackson Jr.), citing AO 2007-1 (Holt), AO 2006-10(Echostar), and AO 2003-25(Weinzapfel).

by the remaining communication "Join us in endorsing your state and local Democratic candidates."

Additionally, Beatty for Congress believes that Exhibit A does not qualify as federal voter registration or "get-out-the-vote" activity because the only references to voting are "incidental"<sup>3</sup> to the federal candidate's endorsements of the state and local candidates, and confined to the context of promoting endorsements of state and local issues and candidates.

**III. Complaint Exhibit D constitutes exempt party committee and/or endorsement activity, and thus do not require disclaimers or reporting by Beatty for Congress.**

11 CFR 110.11(e) expressly provides that a public communication that qualifies as "exempt activity under CFR 100.140, 100.147, 100.148, or 100.149" must contain a disclaimer, but "does not need to state whether the communication is authorized by a candidate, or any authorized committee or agent of any candidate." Complaint Exhibit D clearly qualifies as exempted "slate card and sample ballots" under 11 CFR 110.140 and the encouragement of the public to "download the sample ballot, post it to Facebook, or tweet it" as outlined in Complaint Paragraph 9 clearly constitutes "volunteer activity for party committee" under 11 CFR 110.147 and 110.149. Accordingly, Beatty for Congress is not responsible for ensuring that ODP placed any required disclaimers on Complaints Exhibit D indicating that the public communications were/were not authorized by Beatty for Congress, and cannot be held to be in violation of any provision of the Act for any alleged failure to do so. As noted above, Exhibit D was created, published and/or paid for by ODP, not Beatty for Congress; Beatty for Congress did not coordinate with ODP in the creation, publication or review of Exhibits A - D.

**IV. Complaint Exhibits A and D were not reportable in-kind contributions to Beatty for Congress.**

As noted above, Beatty for Congress did not coordinate with ODP to create, pay for or otherwise publish Exhibits A - D. The Complaint does not offer any evidence to support its allegations of coordination, let alone the evidence based upon the "personal knowledge and statements"<sup>4</sup> necessary to meet the standard for FEC Complaints.

Finally, with regards to Exhibit A, the 11 CFR 109.21(g) "safe harbor" makes it clear that any endorsement of Beatty for Congress and/or Representative Beatty by any other candidate for office identified in Complaint Exhibits A and D does not constitute in a contribution to Beatty for Congress. As such, neither Beatty for Congress nor Representative Beatty was not, and is not, required to report any portion of the ODP payment for publication of Exhibits A

<sup>3</sup> See, e.g., 11 CFR 100.24(2)(ii) and 11 100.24(3)(ii).

<sup>4</sup> See 11 CFR 111.4(c) and CFR 111.4(d)(2).

and D as an in-kind or other contribution, and cannot be held to be in violation of any provision of the Act for any alleged failure to do so.

With regards to Exhibit D, Complaint Section C states that "since the communication is apparently issued by the five federal candidates and some portion of the costs is paid for by the ODP, expenses for the mailing appear to be a contribution from the ODP to each candidate." Critically, however, 11 CFR 110.140 expressly states that with regard to "[t]he payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office [...] such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates."

Moreover, 11 CFR 110.148, and more specifically Section (e), provides that any costs paid for by a state or local committee of a political party for campaign materials used in connection with volunteer activities (such as posting on Facebook or tweeting) "need not be allocated to specific candidates in committee reports." Accordingly, Beatty for Congress was not, and is not, required to report any portion of the ODP payment for publication of Complaint Exhibit D as an in-kind or other contribution to Beatty for Congress, and cannot be held to be in violation of any provision of the Act for any alleged failure to do so.

#### Conclusion

For the reasons described herein, I respectfully request that the Commission dismiss this matter and take no further action.

Please do not hesitate to contact me if you have any questions or concerns about the foregoing.

Best regards,



Jeffrey A. Ruppert  
Treasurer & Counsel, Beatty for Congress