



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Yoder for Congress and Donald W. Kaiser, in his official)
capacity as Treasurer)

MUR 6399

**STATEMENT OF REASONS
CHAIR CYNTHIA L. BAUERLY AND
COMMISSIONER ELLEN L. WEINTRAUB**

This matter concerns allegations that Yoder for Congress (the “Yoder Committee”), the principal campaign committee of Kansas 3rd District Congressional candidate Kevin Yoder, used the name of his opponent, Stephene Moore, in the title of an anti-Moore website called www.StepheneMoore.com, and that the title did not unambiguously show that it was in opposition of Stephene Moore.¹ On April 26, 2011, the Federal Election Commission (“the Commission”) failed, by a vote of 2-3, to approve the Office of General Counsel’s recommendations to find reason to believe that the Yoder Committee violated 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a).²

The Federal Election Campaign Act of 1971, as amended (“the Act”), provides that “[t]he name of each authorized committee shall include the name of the candidate who authorized such committee.” 2 U.S.C. § 432(e)(4). Further, the Commission’s regulations provide that no unauthorized committee shall include the name of any candidate in its name. 11 C.F.R. § 102.14(a). This prohibition includes “any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation.” *Id.* However, a committee may include the name of a candidate in the title of a special project or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(3). *See* MUR 6213 (DUMPREID PAC). The operation of a website by a committee qualifies as a “special project or other communication.” *See* Advisory Opinion 1995-9 (NewtWatch PAC).

The Yoder Committee has made no secret of its involvement in the anti-Moore website and admits that it was responsible for all content on www.StepheneMoore.com. Response at 1-2. However, the Yoder Committee contends that it has not violated the prohibition on the use of a federal candidate’s name by an “unauthorized committee” because Yoder for Congress is the

¹ The website at issue is no longer available. The Yoder Committee states that it disabled www.StepheneMoore.com after the election. MUR 6399 (Yoder), Response at 2.

² Commissioners Bauerly and Weintraub voted affirmatively for the motion. Commissioners Hunter, McGahn II, and Petersen dissented. Commissioner Walther did not vote. Thereafter, the Commission closed the file in this matter. MUR 6399 (Yoder), Certification dated April 28, 2011.

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“authorized committee” of Kevin Yoder. *Id.* at 2. Yoder for Congress had its own campaign website called www.yoderforcongress.com. MUR 6399 (Yoder) First General Counsel’s Report, at 2, n.1.


“The rules prohibit the use of a candidate’s name in the title of any fundraising project or other communication by any committee that has not been authorized by the *named* candidate.” Explanation and Justification for “Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees,” 59 Fed. Reg. 17367. (Apr. 12, 1994) (emphasis added). The *named* candidate on the website was, as the respondent and our colleagues concede, Stephene Moore. The Yoder Committee is not the *authorized* committee for Stephene Moore. Certainly, the Yoder Committee is the authorized committee of Kevin Yoder, but it is not authorized to act on behalf of Stephene Moore, a fact the Yoder Committee readily acknowledges. Response at 1-2. Obviously, Stephene Moore did not authorize Kevin Yoder or the Yoder Committee to create a website using her own name to attack her. An authorized committee is only authorized to operate on behalf of the candidate who authorized it. Otherwise, any candidate committee could create misleading websites or undertake any activity purportedly on behalf of any other committee to attempt to confuse voters.

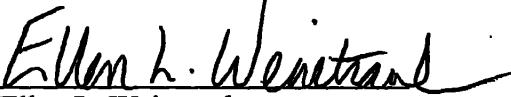
The fact that the Yoder Committee had its own website, www.yoderforcongress.com, provides further support for the notion that www.StepheneMoore.com was a special project. Moreover, because the title of the website itself does not clearly and unambiguously show opposition to candidate Moore, the www.StepheneMoore.com website does not qualify for the exception granted to unauthorized committee’s special projects by Section 102.14(b)(3). The regulations provide that the title itself – without reference to the content – of the special project must be clear and unambiguous. See Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees E&J, 59 Fed. Reg. at 17268-17269.

The Yoder Committee is an “authorized committee,” but it is not the authorized committee of Stephene Moore. Our colleagues are playing a word game to find that an authorized committee – one that is unauthorized by the candidate who has been attacked in its special project – is not subject to the prohibition on a committee’s use of a federal candidate’s name. This word game effectively guts the statutory prohibition for many committees. Here, where the respondent has admitted to operating a website using his opponent’s name to attack his opponent, it is particularly disappointing to have such misleading trickery encouraged by this deliberate misinterpretation of the statute. We supported the recommendations of the General Counsel because the prohibition against using another candidate’s name applies to authorized committees of opposing candidates.

6/24/2011
Date

6/27/11
Date


Cynthia L. Bauerly
Chair


Ellen L. Weintraub
Commissioner

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