



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6399
Yoder for Congress and)
Donald W. Kaiser, in his official capacity)
as treasurer)

**STATEMENT OF REASONS OF VICE CHAIR CAROLINE C. HUNTER AND
COMMISSIONERS DONALD F. McGAHN AND MATTHEW S. PETERSEN**

The complaint in this matter alleged that Yoder for Congress, the authorized committee for Congressman Kevin Yoder, violated the Federal Election Campaign Act of 1971, as amended (“the Act”), by operating a website located at <http://www.StepheneMoore.com> that contained attacks against Yoder’s general election opponent, Stephene Moore. The Office of General Counsel (“OGC”) recommended finding reason to believe that the Yoder committee’s use of this web address violated the law. In doing so, OGC applied regulatory requirements that govern *unauthorized* committees to actions taken by this *authorized* committee. We disagreed with the recommendation. As explained in greater detail below, the web address chosen by Congressman Yoder’s authorized committee for the website at issue violated neither the Act nor Commission regulations.

I. Background

Yoder for Congress ran a website located at <http://www.StepheneMoore.com> during the 2010 election cycle. The site included numerous statements, videos, and other interactive elements attacking Congressman Yoder’s opponent, Stephene Moore. Atop the website’s home page was a banner that read “No Stephene Moore.” The Committee did not hide its involvement in the venture, highlighting it in a press release entitled “Yoder for Congress Launches www.StepheneMoore.com” and including a “Paid for by Yoder for Congress” disclaimer on many of the site’s pages.

Friends of Stephene Moore, the authorized committee for Ms. Moore, filed a complaint against Yoder for Congress, arguing that the “misappropriation of Ms. Moore’s name violated federal campaign laws.”¹ According to the complaint, the Act

¹ Complaint at unnumbered p. 1.

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“strictly prohibits an authorized committee of a candidate to use the name of their opponent in any ‘name’ utilized by the candidate. ... [T]he only permissible use of a website URL would be by an unauthorized committee in a way that unambiguously shows opposition to the named candidate.”² Thus, according to complaint, “by failing to include Mr. Yoder’s name in the web URL, www.StepheneMoore.com, Yoder campaign has violated 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a).”³

Yoder for Congress replied that it had not violated the law, noting that besides requiring a candidate’s authorized committee to contain the candidate’s name, the Act and Commission regulations impose no other naming restrictions on an authorized committee. It further pointed out that the “special project” provision cited in the complaint applies only to unauthorized committees and that, in any event, the website’s disclaimer made clear that Yoder for Congress was operating it. Thus, because it complied with the requirement to include “Yoder” in its name, Yoder for Congress concluded it was subject to no further restrictions regarding its website’s URL.

OGC recommended finding reason to believe because “the Yoder Committee’s creation and operation of the www.StepheneMoore.com website is a violation of 2 U.S.C. § 432(e)(4) that is not subject to the special project or communication exception set forth in 11 C.F.R. § 102.14(b)(3).”⁴ We voted against OGC’s recommendation and, instead, voted to close the file.

II. Analysis

Under the Act and Commission regulations, an “authorized committee” is “the principal campaign committee or any other political committee authorized by a candidate ... to receive contributions or make expenditures on behalf of such candidate.”⁵ Each authorized committee must include, as part of its name, the name of the candidate who authorized the committee.⁶ “Name” is defined to include “any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation.”⁷

An “unauthorized committee,” by contrast, “is a political committee which has not been authorized in writing by a candidate to solicit or receive contributions on behalf

² *Id.* at unnumbered p.1-2 (citing Advisory Opinion 1995-09 (NewtWatch)).

³ *Id.* at unnumbered p. 2.

⁴ First General Counsel’s Report (“FGCR”) at 7-8.

⁵ 2 U.S.C. § 431(6); 11 C.F.R. § 100.5(f)(1).

⁶ 2 U.S.C. § 432(e)(4); 11 C.F.R. § 102.14(a).

⁷ 11 C.F.R. § 102.14(a).

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of such candidate.”⁸ In general, an unauthorized committee may not use a candidate’s name in its name.⁹ However, an unauthorized committee “may include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate.”¹⁰

Here, there is no dispute that Yoder for Congress was the authorized committee for Congressman Yoder during the 2010 congressional campaign. Nor is there any dispute that Yoder for Congress included Congressman Yoder’s name in its own name. Therefore, because the Act and Commission regulations impose no naming requirements on authorized committees other than those described above, nothing prohibited Yoder for Congress from using www.StepheneMoore.com as a web address. For us, this is dispositive and resolves this matter.

Notwithstanding the plain text of the statute and regulations, which impose special-project naming requirements only on unauthorized committees, OGC’s reason-to-believe recommendation concluded that such requirements apply to Congressman Yoder’s authorized committee. In reaching this conclusion, OGC first contended that while Yoder for Congress was an authorized committee with respect to Congressman Yoder, it was an *unauthorized* committee with respect to Stephene Moore and any other candidate for Federal office during the 2010 election cycle.¹¹ OGC then analyzed whether the website constituted a “special project” and, if so, whether the website was clearly and unambiguously in opposition to Ms. Moore.¹² OGC determined that the committee’s use of Stephene Moore’s name in its website’s URL converted the website

⁸ 11 C.F.R. § 100.5(f)(2).

⁹ 2 U.S.C. § 432(e)(4); 11 C.F.R. § 102.14(a). As the D.C. Circuit explained, this provision “is directed solely at disclosure of whether a political committee that solicits funds from the public is part of the authorized campaign machinery of a candidate,” and was enacted to “clarify for readers and potential contributors the candidate authorization status of the political committees who sponsor advertisements and fund solicitations.” *Common Cause v. FEC*, 842 F.2d 436, 446 (D.C. Cir. 1988).

¹⁰ 11 C.F.R. § 102.14(b)(3). This rule was adopted in response to a rulemaking record containing “substantial evidence that potential contributors often confuse an unauthorized committee’s registered name with the names of its fundraising projects, and wrongly believe that their contributions will be used in support of the candidate(s) named in the project titles.” Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees (Final Rule), 59 Fed. Reg. 17267, 17268 (Apr. 12, 1994). For example, the Commission was concerned about the possibility that “[p]otential donors may think they are giving money to the candidate named in the project’s title, when this is not the case.” *Id.* Ultimately, the Commission recognized that “the potential for fraud and abuse is significantly reduced” in the case of “titles that clearly indicate opposition” to the named candidate, and wrote a rule “narrowly designed to further the legitimate governmental interest in minimizing the possibility of fraud and abuse.” *Id.* at 17268-69.

¹¹ Interestingly, the definitions of “authorized committee” and “unauthorized committee” are not cited in the FGCR.

¹² In its analysis, OGC relied on Advisory Opinion 1995-09 (NewtWatch), which involved the name of a special project sponsored by an *unauthorized* committee.

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into a special project of Yoder for Congress, which, as mentioned above, OGC considered an unauthorized committee in this context. Therefore, since the title of this "special project"—www.StepheneMoore.com—did not "clearly and unambiguously show opposition" to Ms. Moore, OGC concluded that the committee violated the Act, even though the website's banner read "No Stephene Moore" and contained disclaimers indicating Yoder for Congress paid for the site.

We cannot subscribe to this argument. Nothing in the Act, Commission regulations, or Commission precedent permits the Commission to deem an authorized committee the functional equivalent of an unauthorized committee in certain contexts. OGC's argument in support of this proposition is a *non sequitur*.¹³ Either a committee is authorized by a candidate or it is not.¹⁴ Under 11 C.F.R. § 102.14(a), if a committee is authorized, the only applicable naming requirement is that the committee's name and any other name under which the committee conducts activities must include the name of the authorizing candidate. That is all.¹⁵ Only if a committee is *not* authorized by a Federal candidate does one then analyze whether the committee's name complies with 11 C.F.R. § 102.14(b)(3), which includes the "special project" provision.¹⁶

¹³ According to OGC, "The Yoder Committee's position that Section 432(e)(4) does not apply to it because it is an 'authorized committee' of Kevin Yoder, is without merit. As set forth in 2 U.S.C. § 432(c), an authorized committee is the committee designated by a candidate to receive contributions or make disbursements on that candidate's behalf; it must include the candidate's name in its title, and must file with the Commission as the candidate's authorized committee within 15 days of being so designated. A candidate may only have one such authorized committee. Since the Yoder Committee admits that it is not the 'authorized committee' of Stephene Moore, its use of her name in the www.StepheneMoore.com website is an action by an 'unauthorized committee' that is prohibited by 2 U.S.C. § 432(c)(4)." FGCR at 6-7 (internal citations omitted). The first three premises are mere restatements of the law regarding the definition of an authorized committee, the naming requirement applicable to authorized committees, and the limitation on the number of authorized committees that a candidate may have. The fourth premise is a simple matter of logic: Yoder for Congress, as the authorized committee for Congressman Yoder, is not the authorized committee for Stephene Moore. While we agree with the premises, it is entirely unclear how they lead to the proffered conclusion.

¹⁴ Were it otherwise, then under unspecified circumstances, a candidate's principal campaign committee could presumably also be considered an "unauthorized committee," in which case it could raise up to \$5,000 per election from individuals, which is \$2,500 higher than the current individual contribution limit for authorized committees. See 2 U.S.C. § 441a(a)(1)(C). Cf. 2 U.S.C. § 441a(a)(1)(A).

¹⁵ The title of Section 102.14 is "Names of political committees."

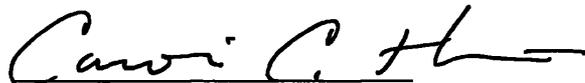
¹⁶ Even assuming *arguendo* both the theoretical possibility that, under Commission regulations, an authorized committee can at times be considered an unauthorized committee and that Yoder for Congress's website was the committee's "special project," there still would be no grounds for finding reason to believe that Yoder for Congress violated the law. No Commission precedent supports the notion that an unauthorized committee's web address constitutes the *title* of a special project. Advisory Opinion 1995-09 (NewtWatch), which OGC cites in its analysis, merely establishes that a website operated by an unauthorized committee can be considered a committee special project that is subject to the naming requirements in 11 C.F.R. § 102.14(b)(3). The opinion makes no statement that the site's web address is the project's title. (And even if it did, an advisory opinion cannot establish a new rule but only provides protection to a requester against potential liability. See 2 U.S.C. § 437h(b).) Adopting the assumptions above, the soundest conclusion would be that (1) the website's title was the name that appeared at the top

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III. Conclusion

Since neither the Act nor Commission rules prohibit an authorized committee from using an opponent's name in its website's URL, we rejected OGC's recommendation to find reason to believe a violation of the Act occurred in this matter and voted instead to close the file.

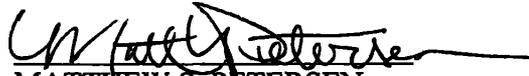
6/23/11
Date


CAROLINE C. HUNTER
Vice-Chairman

6/23/11
Date


DONALD F. MCGAHN II
Commissioner

6/23/2011
Date


MATTHEW S. PETERSEN
Commissioner

of the site—"No Stephen Moore"—and that (2) this title conveyed clear and unambiguous opposition to Yoder's opponent. Furthermore, the "name under which [the] committee conduct[ed] its [website] activities" was the name on the disclaimers—Yoder for Congress—not the website URL. Therefore, even under a strained reading of 11 C.F.R. § 102.14, the committee still would be in full compliance with the relevant legal naming requirements.

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