



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 6911
Lois Frankel for Congress, *et al.*)
)

**STATEMENT OF REASONS OF
COMMISSIONER ELLEN L. WEINTRAUB**

In this matter before the Commission, we were asked to determine whether the tweets and Twitter profiles of Lois Frankel for Congress (“Frankel Committee”), Paul Spain for Congress (“Spain Committee”), the DNC Services Corporation/Democratic National Committee (“DNC”), and the Republican National Committee (“RNC”) (collectively, “Respondents”)¹ required disclaimers under the Act.²

Commission regulations state that the following categories of Internet activity must contain a disclaimer:

- (1) All Internet websites of political committees available to the general public;
- (2) Electronic mail of more than 500 substantially similar communications when sent by a political committee; and
- (3) Political-committee communications placed for a fee on another person’s Web site.³

I write to address the question of whether Twitter profiles fall within these categories.

Twitter’s design includes an inherent transparency mechanism; all tweets have a clear path back to their creators. Clicking on the icon of the author of a tweet takes users to the

¹ Frankel and Spain were candidates in the 2014 general election in Florida’s 22nd Congressional District. Janica Kyriacopoulos and Jane Pike are respondents in their official capacity as Lois Frankel for Congress’s and Paul Spain for Congress’s treasurer, respectively. Likewise, Andrew Tobias and Anthony Parker are respondents in their official capacity as treasurer for the DNC Services Corporation/Democratic National Committee’s and Republican National Committee’s treasurer, respectively.

² Commissioners Goodman, Hunter, and Petersen voted to find no reason to believe respondents had violated 52 U.S.C. § 30120(a) by failing to include disclaimers. Commissioners Ravel and Walther and I dissented. Certification in MUR 6911 (Lois Frankel for Congress, *et al.*), dated Feb. 23, 2016.

³ 11 C.F.R. §§ 110.11(a)(1), 100.26.

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author's Twitter profile. This is where Twitter users would naturally look to learn more about the source of a tweet.

The disclaimer requirements both logically and legally apply here. Twitter profiles plainly fit into one of the categories of political communications requiring disclaimers. Twitter profiles consist of Internet website content available to the general public. Given the regulations' clear intent to encompass "all Internet websites of political committees available to the general public,"⁴ it is reasonable to count Twitter profiles as among a political committee's websites.

Twitter account holders create their own accounts, pages, profiles, and spaces, and are the only ones authorized to change them. Users maintain full ownership of all content they place on Twitter, and Twitter disclaims any responsibility for its users' content.⁵ All Twitter users maintain a profile page. Including a disclaimer there would in no way be burdensome.

It is of no consequence that Twitter content is placed within a single domain name, twitter.com, and that Twitter, Inc. in turn hosts, pays for, and maintains that domain name. This is true both at social-media services and at traditional web hosts (such as squarespace.com, blogspot.com, or wordpress.com⁶). Though it is unlikely for this to be the case with the Twitter service as it is currently configured, it is not unusual for a campaign's sole web presence to be its Facebook page. It is difficult to argue that such a page would not constitute a 'website of a political committee' for disclaimer purposes.

The Twittersphere has carved out for itself a unique and increasingly important role in American elections and political debate. On Twitter, as on other websites used by political committees to communicate with the public, the public has a right to know the source of the communication. The Supreme Court has stressed the importance of "transparency and accountability in the electoral process"⁷ which "enables the electorate to make informed decisions and give proper weight to different speakers and messages."⁸ By failing to require political committees to include disclaimers on their Twitter profiles, the Commission yet again has failed here to give meaning to these important concerns.

March 31, 2016


Ellen L. Weintraub
Commissioner

⁴ 11 C.F.R. § 110.11(a)(1) (emphasis added).

⁵ See *id.* ¶ 5 ("You retain your rights to any Content you submit, post or display on or through the Services.") and ¶ 4 ("All Content, whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Services and, we cannot take responsibility for such Content.")

⁶ See, e.g., WORDPRESS.COM, Terms of Service, <https://en.wordpress.com/tos/> (last visited March 10, 2016).

⁷ *Doe v. Reed*, 130 S.Ct. 2811, 2819 (2010).

⁸ *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 916 (2010).