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Litigation & Political Law

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RECEIVED
U.S. MAIL LETTER
2019 OCT -1 PM 2:27

September 27, 2019

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Hon. Christal Dennis
1050 First Street NE
Washington, DC 20463

2019 OCT -2 PM 2:09
OFFICE OF
GENERAL COUNSEL

Re: MUR 7628 – Response of Respondents Kris Kobach and Kobach for Senate

SENT VIA EMAIL AND U.S. MAIL

Dear Commissioners and Staff:

Kris Kobach and Kobach for Senate (hereinafter “Respondents”) hereby respond to the Complaint filed by Common Cause and Paul S. Ryan in Matter Under Review 7628. For the reasons set forth herein, the Commission should find no reason to believe that Respondents have violated the Federal Election Campaign Act, as amended (the “Act”), and accordingly should dismiss the Complaint.

As the Complaint avers, Mr. Kobach is a declared and duly registered candidate for the U.S. Senate in the state of Kansas, and Kobach for Senate is his authorized campaign committee. The Complaint levels three claims: that 1) We Build the Wall, Inc., a Section 501(c)(4) organization (and thus a corporation), made an impermissible in-kind contribution to Kobach for Senate in the form of a mass solicitation email for the benefit of Kobach for Senate; 2) Kris Kobach directed such use of corporate funds, in violation of the prohibition on a candidate’s direction of such an expenditure of funds outside the Act’s source prohibitions and/or amount limitations; and 3) Kobach for Senate authorized this public communication but did not so indicate with the inclusion of the requisite disclaimer. These claims are baseless.

Enclosed the Commission will find an affidavit executed by Mr. Dustin Stockton, president of Stockton Strategies, LLC, a digital fundraising company. As Mr. Stockton states, Kobach for Senate hired his company to perform fundraising services. The parties’ agreement included as a material term that “Stockton Strategies will get approval on all copy sent from the campaign or Kris Kobach before deployment.” (Exhibit 1 at 1.)

Stockton Strategies separately entered into an agreement with We Build the Wall, Inc., to rent from it, at a cost of \$2,000.00, use of its email address file for purposes of soliciting contributions to Stockton Strategies’ candidate clients. (Exhibit 1 at 1.) Stockton Strategies paid this amount in full to We Build the Wall, Inc., and in turn promptly was reimbursed in full by Kobach for Senate, notwithstanding the fact that the agreement between We Build the Wall, Inc.,

and Stockton Strategies was intended to benefit more than one candidate client of Stockton Strategies, not just Kobach for Senate. (Exhibit 1 at 1-2.)

Mr. Stockton also states that Mr. Kobach expressly instructed Mr. Stockton to include the required disclaimer to indicate that it was paid for by Kobach for Senate. (Exhibit 1 at 2.) Despite the express pre-authorization requirement in their agreement, and despite Mr. Kobach's clear instruction, Mr. Stockton then disseminated the communication at issue in this matter, which was deficient in two respects: 1) it did not include the appropriate disclaimer to indicate that Kobach for Senate paid for the communication; and 2) because Mr. Stockton mistakenly used a We Build the Wall email address to send the communication, it implied that We Build the Wall, Inc., was the sender of the communication rather than Kobach for Senate. (Exhibit 1 at 2.)

As Mr. Stockton notes, once Kobach for Senate became aware of the unauthorized, mistaken communication, it took immediate investigative and remedial action.¹ Mr. Stockton issued correction correspondence to all recipients, which explained that the initial communication had been made in error and provided a clear and conspicuous disclaimer to indicate that Kobach for Senate was the sponsor. (Exhibit 1 at 2-3.) Kobach for Senate also clarified its internal protocol for approval of fundraising solicitations to be sent by its vendor Stockton Strategies. (Exhibit 1 at 3.)

As the evidence shows, Kobach for Senate did not receive a contribution from We Build the Wall, Inc.; rather, it paid (and possibly overpaid) for the cost of the rental of We Build the Wall, Inc.'s email list. Mr. Kobach did not direct the use of "soft money," as We Build the Wall, Inc. did not make an expenditure on Kobach's behalf, let alone one directed by Mr. Kobach. Finally, Kobach for Senate did not authorize any agent to disseminate a mass solicitation email lacking a required disclaimer.

As to the disclaimer claim, in previous Matters Under Review, the Commission has dismissed complaints under similar circumstances. In MUR 6125, the Commission dismissed a complaint against U.S. Rep. Tom McClintock and McClintock for Congress where it appeared that the committee had approved a robocall recording featuring the requisite disclaimer but the committee's vendor erroneously had failed to include it. In turn, the Commission's General Counsel's report in that Matter cited MURs 5991 (U.S. Term Limits) and 5775R (Deborah Pryce for Congress), in which the Commission dismissed complaints against respondents where confirmed vendor error was the cause of non-compliant public communications made without authorization by the respondents.

The Commission should dismiss the Complaint as to, and take no action against, Respondents.

¹ In conducting this investigation, Kobach for Senate discovered another non-compliant communication issued by Stockton Strategies, which Kobach for Senate contemporaneously with this Response is reporting sua sponte to the Commission.

Respectfully submitted,

A handwritten signature in blue ink that reads "Michael G. Adams". The signature is written in a cursive style with a horizontal line underneath the name.

Michael G. Adams, Esq.
Chalmers & Adams LLC
1300 Penn. Ave. NW, No. 190-612
Washington, DC 20004
Counsel for Respondents Kris Kobach
and Kobach for Senate

Enclosure

AFFIDAVIT OF DUSTIN A. STOCKTON

I, DUSTIN A. STOCKTON, provide this Affidavit and, having been duly sworn, do hereby declare, to the best of my knowledge and belief, as follows:

1. I have personal knowledge of the facts set forth herein. I am over the age of 18, and I am otherwise competent to provide this Affidavit.

2. My current occupation is president of Stockton Strategies, LLC, a digital fundraising company registered in the State of Nevada and located at 3495 Lakeside Drive, #171, Reno, Nevada 89509.

3. In the second week of July 2019, on behalf of Stockton Strategies, LLC, I entered into an agreement with Kobach for Senate to do digital fundraising on behalf of that campaign. This agreement provided that “Stockton Strategies will get approval on all copy sent from the campaign or Kris Kobach before deployment.”

4. I do not hold any position in the Kobach for Senate campaign. I am an independent contractor retained to do fundraising work for the campaign.

5. Stockton Strategies, LLC, entered into an agreement with We Build the Wall, Inc. (“WBTW”), a section 501(c)(4) organization, to rent from WBTW, at a cost of \$2,000.00, use of its file of email addresses for purposes of prospecting contributions to Stockton Strategies’ candidate clients in 2019. In fulfillment of this agreement, Stockton Strategies, LLC, paid WBTW \$2,000.00 by check on July 15, 2019. A true copy of the check stub for this payment is attached hereto as an exhibit.

6. On August 3, 2019, Kobach for Senate reimbursed Stockton Strategies, LLC, \$2,000.00 by check for the full cost of this email list rental. A true copy of this check is attached hereto as an exhibit.

7. Shortly after Stockton Strategies, LLC, entered into a fundraising agreement with Kobach for Senate, I showed Kris Kobach a draft of one of the messages that I intended to use in a fundraising email that I was planning on sending to raise contributions for Kobach for Senate.

8. Kris Kobach reviewed the draft, suggested a few minor changes, and then he specifically told me not to forget to include on this message the paid-for-by disclaimer, telling recipients that it was paid for by the Kobach for Senate campaign, and that federal election law requires that such a disclaimer appear on such messages.

9. On August 1, 2019, I emailed a Kobach for Senate fundraising message to email addresses on the rented WBTW list, without securing the express prior approval required by the terms of the agreement between Stockton Strategies, LLC, and Kobach for Senate. Unfortunately, I sent a previous draft that failed to include the paid-for-by disclaimer on the message. A true copy of the email message is attached hereto.

10. I also made the mistake of sending the message from a WBTW email address, rather than from a Kobach for Senate email address.

11. Within approximately 24 hours of the August 1, 2019, email having been sent, Steve Drake, the campaign manager of Kobach for Senate, notified me that the campaign had become aware that the August 1, 2019, email was not in compliance with Federal Election Commission disclaimer rules. I apologized to Kris Kobach and Mr. Drake for the errors. Mr. Drake requested that I immediately take action to correct the errors and mitigate any confusion caused by my mistakes.

12. On August 2, 2019, I sent a correction email to all recipients of the original message, from a Kobach for Senate email address and with the disclaimer prominently displayed. A true copy of the correction email is attached hereto.


13. The Kobach for Senate campaign set up a new protocol to prevent such mistakes in the future: All outgoing email messages must be reviewed by Mr. Drake immediately prior to being sent.

14. Further, affiant sayeth naught.

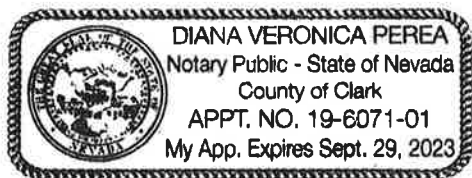
Nevada
State of ~~Colorado~~
County of Clark


Dustin Stockton

Subscribed and sworn to before me, a Notary Public in and for the above county and state, this 27 day of Sept, 2019.


Notary Public

My commission expires Sept 29, 2023





Stockton Strategies

Date	Type	Reference
7/15/2019	Bill	We Build the Wall Inc

Original Amt.
2,000.00

Balance Due
2,000.00

7/15/2019
Discount
Check Amount

Payment
2,000.00
2,000.00

2004

Nevada State Bank List Rental

2,000.00

Kobach, for Senate

Man Hon, 111 08053

8/3/19

Date

0099

55-2/212 8749

Pay to the
Order of

Stockton Strategies

\$ 2,000.00

Two Thousand & 00/100

Dollars

Security
Features
Details on
Back

© 2017 WELLS FARGO BANK, N.A.



Wells Fargo Bank, N.A.
New Jersey
wellsfargo.com

For Email list rental

Elizabeth D. Curran

RP



----- Forwarded message -----

From: **Kris Kobach - WeBuildTheWall, Inc.** <info@webuildthewall.us>

Date: Thu, Aug 1, 2019 at 2:13 PM

Subject: It's not over

To: [REDACTED]



Dear [REDACTED],

The "Wall Symposium" was a huge success, and President Trump scored a huge win for the wall at the Supreme Court. For those of us who are working to secure our border and keep Americans safe, things are finally getting done.

I was excited to welcome dozens of conservative leaders and media influencers like Donald Trump Jr, Michelle Malkin, Candace Owens, and Congressmen Louis Gohmert to the wall that we were only able to build because of your generous support. I got to show off what we accomplished together and it was incredible.

Our work to secure our border and protect the constitution is far from over.





As you may have heard, **I've decided to run for the United States Senate in 2020.** I'm working hard to earn the support I need to win and frankly, I need to get you on my team.

As a donor to WeBuildTheWall, I humbly ask you to support my run for the Senate.

As a United States Senator I will fight to make sure that **the federal government completes the entire wall with the speed and quality that we are implementing with WeBuildTheWall!**

Kobach For Senate

I'm making calls to potential donors and would be happy to answer any questions you might have. [You can schedule your call with me by emailing Jen@KrisKobach.com](mailto:Jen@KrisKobach.com)

If you don't want to talk on the phone but want to support my campaign with a financial contribution of \$50, \$100, \$250, \$500, or any amount up to the maximum of \$2800 per individual, you can do so by clicking [this link](#).

I'm want to represent you in the United States States the same way I'm going to continue to represent WeBuildTheWall as General Counsel. With your support I know we are going to get the job done!

Kobach For Senate

Sincerely,
Kris Kobach
General Counsel, WeBuildTheWall

WeBuildTheWall, Inc. | PO Box 131567, Houston, TX 77219-1567

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Sent by info@webuildthewall.us in collaboration with

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----- Forwarded message -----

From: **Kobach For Senate** <electkobach@kriskobach.com>

Date: Fri, Aug 2, 2019 at 3:28 PM

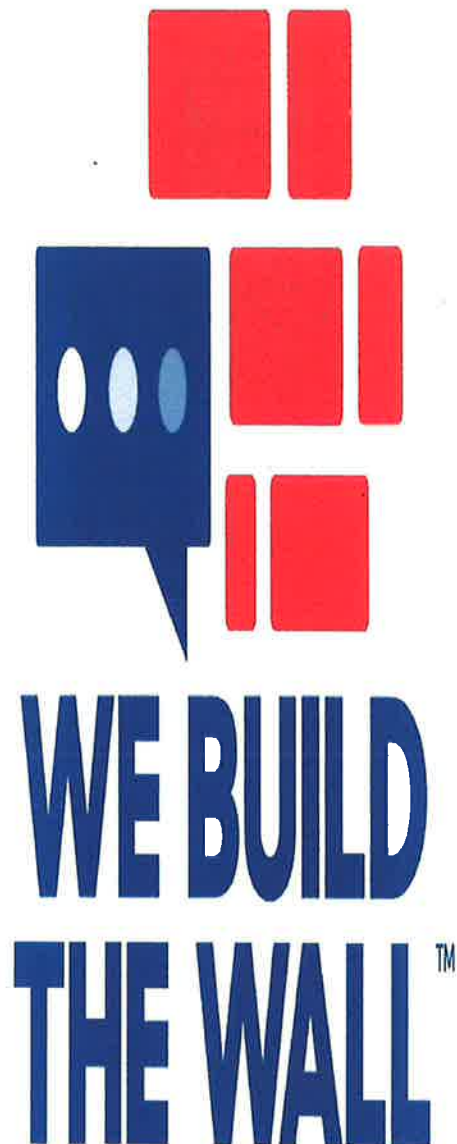
Subject: Correction: Running for the US Senate

To: <chairmandust@gmail.com>

The email below was sent to you recently. We are following up to confirm that that email, and this one, were both paid for by Kobach for Senate which is the principal campaign committee for Kris Kobach's campaign for the U.S. Senate. The vendor that sent the email mistakenly failed to include the notice that it was paid for by Kobach for Senate. WeBuildTheWall, Inc. is not affiliated with the Kobach for Senate Campaign. If you have any questions, or if you wish to receive a refund of any contribution you made, please feel free to contact our campaign at 913-735-4762.

PAID FOR BY KOBACH FOR SENATE





Dear Dustin,

The "Wall Symposium" was a huge success, and President Trump scored a huge win for the wall at the Supreme Court. For those of us who are working to secure our border and keep Americans safe, things are finally getting done.

I was excited to welcome dozens of conservative leaders and media influencers like Donald Trump Jr, Michelle Malkin, Candace Owens, and Congressmen Louis Gohmert to the wall that we were only able to build because of your generous support. I got to show off what we accomplished together and it was incredible.

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As a United States Senator I will fight to make sure that the federal government completes the entire wall with the speed and quality that we are implementing with WeBuildTheWall!

Kobach For Senate

I'm making calls to potential donors and would be happy to answer any questions you might have. You can schedule your call with me by emailing Jen@KrisKobach.com

If you don't want to talk on the phone but want to support my campaign with a financial contribution of \$50, \$100, \$250, \$500, or any amount up to the maximum of \$2800 per individual, you can do so by clicking [this link](#).

I want to represent you in the United States Senate the same way I'm going to continue to represent WeBuildTheWall as General Counsel. With your support I know we are going to get the job done!

Kobach For Senate

Sincerely,
Kris Kobach
General Counsel, WeBuildTheWall

PAID FOR BY KOBACH FOR SENATE

WeBuildTheWall, Inc. | PO Box 131567, Houston, TX 77219-1567

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