

LAW OFFICES
Trister, Ross, Schadler & Gold, PLLC

1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR

WASHINGTON, D.C. 20009

PHONE: (202) 328-1666

FAX: (202) 204-5946

www.tristerross.com

MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER
LAURENCE E. GOLD
ALLEN H. MATTISON†
†ALSO ADMITTED IN MARYLAND

KAREN A. POST
Senior Counsel

NEIL C. WEARE
JOSEPH W. STEINBERG‡
‡ONLY ADMITTED IN MINNESOTA

DAVID M. WACHTEL
Of Counsel
*ALSO ADMITTED IN
CALIFORNIA AND MARYLAND

Montana Office
LAURA L. HOEHN*
Of Counsel
*ALSO ADMITTED IN CALIFORNIA

November 15, 2016

VIA Electronic Mail.

Mr. Jeff. S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20436

CELA

2016 NOV 17 AM 8:11

Re: **MUR 7138, Floridians for a Strong Middle Class**

Dear Mr. Jordan:

I write on behalf of respondents Floridians for a Strong Middle Class and its treasurer, Jennifer May (together "FSMC"), to respond to the complaint dated September 6, 2016 filed by Foundation for Accountability & Civic Trust (the "Complaint"). FSMC respectfully requests that the Federal Election Commission (the "Commission" or the "FEC") promptly determine that there is no reason to believe FSMC violated the Federal Election Campaign Act ("FECA" or the "Act") as the Complaint alleges, or in any other manner that might be considered from the Complaint's factual allegations and legal contentions.

The Complaint does not allege any facts that amount to coordination. Rather, the Complaint is wrong on key legal points and recycles baseless claims from an earlier complaint filed by the same person. A communication is coordinated only if it: 1) is paid for by a third party; 2) satisfies one of the FEC's four "content" standards; and 3) satisfies one of the FEC's five "conduct" standards. 11 C.F.R. § 109.21(a). The Complaint fails to demonstrate that FSMC's actions satisfied any of the conduct standards. Because the Complaint provides no basis for finding that coordination occurred, we urge the Commission to find no reason to believe FSMC violated the Act. *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007).

The Complaint wrongly asserts that public postings on a candidate's website constitute coordination. According to the Complaint, Representative Patrick Murphy's Senate campaign used "obscure postings on his website" to "instruct[] organizations" to run advertisements. Complaint at 1. The Commission has been clear that public postings on a candidate's website do not give rise to coordination.

[A] communication resulting from a general request to the public or the use of publicly available information, including information contained on a candidate's campaign website, does not satisfy the conduct standards.

MUR 6821 (Senate Majority PAC), Factual and Legal Analysis at 8 (emphasis added). "The 'request or suggestion' conduct standard in [11 C.F.R. § 109.21(d)(1)] is intended to cover requests or suggestions made to a select audience.... For example, a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard." Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (hereinafter "Coordinated and Independent Expenditures") (emphasis added).

Contrary to the Complaint's allegations, the website content was not "obscure." The information was widely and publicly available on the Murphy campaign website, with a "Media" link at the bottom of every page of that website. *See, e.g.*, "About Patrick," at <https://www.murphyforflorida.com/about-patrick/>, accessed Nov. 15, 2016. It was not hidden by a password-protected wall nor "sent via electronic mail directly to a discrete group of recipients." Coordinated and Independent Expenditures at 432. That the information was public is demonstrated by the multiple media articles the Complaint itself includes as exhibits, reporting on the publicly available website content. While the Complaint alleges the website "instruct[s] organizations" to make communications, nowhere has the Murphy campaign website made a request, suggestion or instruction to FSMC. Rather, the website text is "a request to the general public" that does not indicate coordination. *Id.*

Additionally, none of the communications by FSMC included material involvement, substantial discussion, common vendors, or former employees or independent contractors of the Murphy campaign. *See* 11 C.F.R. §§ 109.21(d)(2)-(5). The Complaint rests on publicly available internet communications as the basis for claiming coordination, but such communications fall within the FEC safe harbor for publicly available sources. *See* Explanation and Justification, Coordinated Communications, 71 Fed. Reg. 33,190, 33,205 (June 8, 2006). The Complaint alleges no other grounds for finding these conduct prongs were satisfied, and no such grounds exist.

The Complaint intimates that republication occurred, but fails to make any specific allegations of such activity. The Complaint mentions "b-roll," but does not allege FSMC misused such video. *See* Complaint at 2. While it says the Murphy campaign website included detailed information about Senator Marco Rubio's poor Senate attendance record, the Complaint points to no communications by FSMC that so much as mention Rubio's attendance, let alone republish campaign materials.

In fact, the Complaint's allegation of coordination consists only of this: Both the Murphy campaign website and FSMC's communications touted the President's endorsement of Murphy. Complaint at 3. It should be expected that when a President popular in his party endorses one candidate over another in a primary election, the candidate and his supporters all will broadcast that news. But doing so does not indicate coordination. Furthermore, the FSMC advertisement emphasized that President Obama praised Rep. Murphy for his work protecting Medicare, Social Security and reproductive rights; the Complaint does not allege that the Murphy campaign requested or suggested this messaging.

Separate from the allegation that the website constitutes coordination, the Complaint repeats its claim from MUR 7067 regarding contributions from the candidate's family. *Compare* Complaint at 3 ("Also indicative of coordination are the close financial ties between Murphy and the two super PACs ...")

1604745691

Mr. Jeff S. Jordan
Re: MUR 7138, Floridians for a Strong Middle Class
Page 3

with MUR 7067 complaint at 2 ("It is indicative of coordination that [FSMC] has received ... funding from ... his father with whom he is financially tied."). FSMC has the same response as in MUR 7067: Contributions by Thomas P. Murphy, Jr. and Coastal Construction Group do not indicate coordination. Coordination only occurs when a communication is created at the request or suggestion of a candidate, or when another prong of the conduct standard is evident. See 11 C.F.R. § 109.21(d). Contributions themselves are not evidence of coordination, even when they come from a person related to a candidate. The contributions are indicative only of the fact that a father wanted to support an entity advocating his son's election.

Because the Complaint fails to allege facts that give rise to a reasonable inference that FSMC's communications were coordinated with a candidate, we respectfully ask the Commission to determine there is no reason to believe a violation of the Act has occurred.

Respectfully submitted,



Allen H. Mattison
Counsel for Respondents
Floridians for a Strong Middle Class
and Jennifer May, as Treasurer

1004410001