

## JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113

TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700



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by Donna Rawls  
Date: 2016.11.18  
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DIRECT NUMBER: (202) 879-3732  
WMCGINLEY@JONESDAY.COM

November 17, 2016

VIA EMAIL

Jeff Jordan, Esquire  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Re: MUR 7153  
Boston Globe Media Partners, LLC

Dear Mr. Jordan:

Please find attached the response of our client, Boston Globe Media Partners, LLC, to the notification from the Federal Election Commission that a complaint was filed against them in the above-referenced matter.

Please do not hesitate to contact me with any questions.

Respectfully submitted,

  
William J. McGinley

Attachment

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the matter of	)	
	)	MUR 7153
	)	
Boston Globe Media Partners, LLC	)	
	)	

**RESPONSE OF BOSTON GLOBE MEDIA PARTNERS, LLC  
TO THE COMPLAINT**

This responds on behalf of our client, Boston Globe Media Partners, LLC (“Boston Globe”), to the notification from the Federal Election Commission (“FEC” or “Commission”) that a complaint was filed against it in the above-captioned matter. As the Commission is well aware, the Boston Globe is an established, respected media entity and is, therefore, protected by the media exemption from the definitions of contribution and expenditure under the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission regulations (collectively “FECA”). Moreover, the Complaint does not contain any factual or legal allegations that the Boston Globe violated FECA and, therefore, must be dismissed as legally deficient. Accordingly, the Commission must dismiss the Complaint, close the file, and take no further action against the Boston Globe.

**I. THE COMPLAINT IS LEGALLY DEFICIENT AND MUST BE DISMISSED BECAUSE IT FAILS TO CLEARLY AND CONCISELY RECITE ANY FACTS THAT CONSTITUTE A VIOLATION OF FECA BY THE BOSTON GLOBE.**

Under FECA, a complaint must satisfy specific requirements in order to be deemed legally sufficient. Specifically, a complaint must contain a “clear and concise recitation of the facts which describe a violation of statute or regulation over which the Commission has jurisdiction.” 11 C.F.R. § 111.4(d)(3). Absent such a “clear and concise recitation of the facts,” a complaint is legally deficient and must be dismissed. *See* MUR 6554 (Friends of Weiner),

Factual and Legal Analysis at 5 (“The Complaint and other available information in the record do not provide information sufficient to establish [a violation].”). Consistent with this requirement, the Commission has already made clear that simple speculation by a complainant is insufficient and does not establish that there is reason to believe a violation occurred. MUR 5467 (Michael Moore), First General Counsel’s Report at 5 (“Purely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred.”) (quoting MUR 4960 Statement of Reasons at 3)). Due process and fundamental fairness dictate that the burden must not shift to a respondent merely because a complaint is filed with the Commission. *See* MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (“[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents.”). This is especially the case where the complaint does not contain sufficient information to establish an alleged violation or provide the respondent with sufficient information to meaningfully respond to the allegations. *See* MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2 (“Unwarranted legal conclusions from asserted facts . . . will not be accepted as true.”).

In the instant matter, the only reference to the Boston Globe in the Complaint is in connection with the spurious claim that it agreed to “pump up” Secretary Hillary Clinton’s presidential campaign. Compl. at 3. The Complaint provides no explanation of the meaning of this phrase nor any evidence to support its misguided statement. Therefore, a four-corners reading of the Complaint demonstrates that it does not allege any facts that the Boston Globe

engaged in activity that constitutes a violation of FECA. For this reason alone, the Commission must dismiss the Complaint as legally deficient and find no reason to believe that a violation has occurred. *Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations”).

## **II. THE BOSTON GLOBE IS AN ESTABLISHED MEDIA COMPANY THAT QUALIFIES FOR THE MEDIA EXEMPTION UNDER THE ACT, COMMISSION REGULATIONS AND ITS PRECEDENTS.**

Under the Act, “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication” is exempt from the definition of “expenditure” “unless such facilities are owned or controlled by any political party, political committee or candidate.” 52 U.S.C. §§ 30101(9)(B)(i); *see also* 11 C.F.R. §§ 100.73 & 100.132. “When considering complaints against media entities, courts have insisted that the Commission restrict its initial inquiry to whether the media exemption applies.” MURs 4929, 5006, 5090 & 5117 (*In re* ABC, CBS, NBC, New York Times, et al.) at 2 (citations omitted). The media exemption “represents a fundamental limitation on the jurisdiction of the [Commission], and even an investigation of publishers can trespass on the First Amendment.” *Id.*

To determine whether the media exemption applies, the Commission applies a two-step process. First, the Commission determines whether the entity engaging in the activity at issue is a press entity as described in the FECA. FEC AO 2005-16 (Fired Up! LLC). Second, in determining the scope of the exemption, the Commission considers: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the press entity is acting as a press entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its “legitimate press function”). *See Reader’s Digest Association v. FEC*, 509 F. Supp.

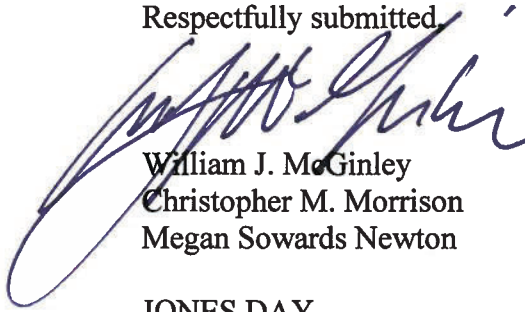
1210, 1215 (S.D.N.Y. 1981); *see e.g.*, FEC AO 2005-16 (Fired Up! LLC). “If the media entity is not owned or controlled by a political party, political committee, or candidate, and if it is acting as a legitimate media entity in conducting the activity in question, it is exempt from the Act’s restrictions on corporate contributions and expenditures and the Commission’s inquiry should end.” MUR 5928 (Kos Media, LLC, DailyKos.com & Marcos Zuniga), Office of the General Counsel Factual and Legal Analysis at 4.

In this matter, the public record clearly demonstrates that the Boston Globe is not owned or controlled by a political party, political committee or candidate and is a *bona fide* news organization. *See* MUR 5224 (The Boston Globe & WBZ-TV), Statement of Reasons of Chairman David Mason & Commissioners Karl Sandstrom, Bradley Smith and Michael Toner at 2 (“There is no doubt that the media respondents here are not owned or controlled by any candidate, political party or political committee. Thus, as a matter of law, The Boston Globe is a *bona fide* news organization that meets the press exemption . . .”). In addition, the Complaint does not contain a clear and concise recitation of any factual allegations describing activities that fall outside the scope of the media exemption under FECA. As the Commission is well aware, the Boston Globe frequently reports on election developments at the local, state and federal levels and publishes commentary and editorials on the same subjects. All of these are core First Amendment activities and legitimate press functions. Therefore, the Boston Globe satisfies the media exemption under FECA and the Commission’s inquiry in MUR 7153 must end.

**III. CONCLUSION.**

For all the reasons stated above, we respectfully request that the Commission dismiss the Complaint against the Boston Globe, take no further action, and close the file.

Respectfully submitted,

A large, stylized handwritten signature in blue ink, likely belonging to William J. McGinley, is written over the typed names.

William J. McGinley  
Christopher M. Morrison  
Megan Sowards Newton

JONES DAY  
51 Louisiana Ave., NW  
Washington, DC 20001  
P: (202) 879-3939  
F: (202) 626-1700

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