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September 28, 2018

CONFIDENTIAL
COMMUNICATION

VIA E-MAIL TO CELA@FEC.GOV

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Kathryn Ross
1050 First Street, N.E.
Washington, DC 20463

Re: Matter Under Review 7427

Dear Office of Complaints Examination & Legal Administration:

On behalf of Ron Johnson for Senate, Inc. and Treasurer James J. Malczewski, enclosed is a response to the Complaint in the above-captioned MUR.

Very truly yours,



E. Stewart Crosland

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

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MUR 7427

**RESPONSE OF RON JOHNSON FOR SENATE, INC.
 AND TREASURER JAMES J. MALCZEWSKI TO THE COMPLAINT**

Ron Johnson for Senate, Inc. and Treasurer James J. Malczewski (“the Campaign”) hereby submit this response to the Complaint in the above-captioned MUR, which the Commission should dismiss immediately as to the Campaign.

The Complaint never alleges that the Campaign has violated the Federal Election Campaign Act or FEC regulations – to the contrary, it openly recognizes that the Campaign did not engage in prohibited coordination under 11 C.F.R. § 109.21. *See* Compl. ¶ 53 n.103 (citing 11 C.F.R. § 109.21(b)). Complainants assert only that they believe something must be amiss because a former media vendor of the Campaign, OnMessage, Inc., appears to have formed another entity, Starboard Strategic, Inc., which conducted independent expenditures so they *may* have used non-public, strategic information derived from prior work for the Campaign to develop certain communications for two outside group clients.¹ *Id.* ¶¶ 53–54. None of this involves the Campaign, which obviously could have no basis to believe or deny these allegations about private companies.

Of greater significance as to why the Complaint against the Campaign should be dismissed is that, as the Complaint notes, the Campaign terminated its relationship with

¹ The Complaint alleges that one of the two outside groups, the National Rifle Association Political Victory Fund (C00053553), paid its vendor Starboard Strategic, Inc. \$315,066 for ads supporting Senator Johnson or opposing his opponent, Russ Feingold. Compl. ¶ 21.a).i. The Campaign’s review of the disclosures available on the FEC’s website, however, indicate that the group paid Starboard approximately \$125,000 in relation to such communications. *See* National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. in support of Ron Johnson or Opposing Russ Feingold (regularly scheduled reports), 2015–2016.

OnMessage in August 2016² – over two months before the making of any of the communications at issue in the Complaint. *Id.* ¶ 21 a).iv.³ The Complaint thus does not (and cannot) allege that the Campaign had a role in those communications, and there are no grounds for further action against the Campaign in this matter. *See* 11 C.F.R. § 109.21(b)(2); *see also* Explanation & Justification, *Coordinated & Independent Expenditures*, 68 Fed. Reg. 421, 427 (Jan. 3, 2003) (explaining that a candidate or authorized committee cannot “be held responsible for receiving or accepting an in-kind contribution that did not result from its conduct or the conduct of its agents”).

Accordingly, the Commission must dismiss the Complaint and close the file as to the Campaign.

² The Campaign’s final payment to OnMessage was on August 10, 2016. *See* Ron Johnson for Senate, Inc. Am. 2016 Oct. Quarterly Form 3 at 26,663, <http://docquery.fec.gov/cgi-bin/fecimg/?201701190200016744>.

³ A review of the disclosures on the FEC’s website indicates that the ads at issue were all disseminated in late-October 2016, beginning on October 19. *See* National Rifle Association of America Political Victory Fund & National Rifle Association Institute for Legislative Action, Independent Expenditures to Starboard Strategic, Inc. in support of Ron Johnson or Opposing Russ Feingold (regularly scheduled reports), 2015–2016.