

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

KATHERINE ELIZABETH ARRINGTON
308 Sumter Avenue
Summerville, South Carolina 29483;

KATIE ARRINGTON FOR CONGRESS
and Kathleen Randall in her official capacity
as Treasurer for Katie Arrington for Congress
P.O. Box 80177
Charleston, South Carolina 29416;

FIX OUR FLOODING, INC.
c/o Incorp Services Inc., as its Registered Agent
919 North Market Street, Suite 950
Wilmington, Delaware 19801

c/o 1st Street Foundation, Inc., as its Principal
247 Water Street, Suite 401
Brooklyn, New York 11201;

MUR No. 7510

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OFFICE OF
GENERAL COUNSEL

Respondents.

COMPLAINT

1. The undersigned Complainant hereby seeks an immediate investigation and enforcement action by the Federal Election Commission (the “Commission”) against the above-referenced Respondents, pursuant to Title 52, United States Code, Section 30109(a)(1), for apparent violations of the Federal Election Campaign Act (the “FECA”) and the Commission’s duly promulgated regulations pursuant to it. This Complaint is based on personal knowledge as to facts specifically referencing Complainant and upon information as to all others.

2. This complaint alleges that Katie Arrington and her campaign engaged in a coordinated communication with Fix Our Flooding, Inc., and in so doing violated federal election laws and regulations when they jointly created, produced, and distributed a television

advertisement featuring Katie Arrington that aired on August 23, 2018. Fix Our Flooding had reportedly purchased at least \$75,000 worth of ad space to air the commercial over two weeks, but immediately abandoned those plans in response to complaints that the advertisement constituted a coordinated communication in violation of federal election laws and regulations.

3. Based on the facts alleged in more detail below, it is apparent that Fix Our Flooding, Inc. and Katie Arrington engaged in coordinated communication, and in so doing, Fix Our Flooding, Inc. made and Katie Arrington accepted an illegal in-kind contribution under the FECA and Commission regulations. Because Fix Our Flooding, Inc. is a corporation, its in-kind contributions to Katie Arrington as a federal election candidate were illegal. By engaging in the coordinated communication with Fix Our Flooding and accepting the illegal in-kind contribution from the corporation, Katie Arrington and her campaign violated federal election laws and regulations.

I. COMPLAINANT AND RESPONDENTS

4. Complainant Badge Humphries is a citizen and resident of Charleston County, South Carolina. At all times relevant to the complaint, he has been and remains a citizen of the United States and a registered voter and resident of South Carolina, residing within 1st Congressional District of South Carolina.

5. Respondent Katherine Elizabeth Arrington (“Katie Arrington” or “Arrington”) is currently running to represent South Carolina’s 1st Congressional District in the U.S. House of Representatives.¹ She won the Republican primary on June 12, 2018 by defeating Representative

¹ Katherine Elizabeth Arrington, FEC Form 2, Statement of Candidacy (Apr. 18, 2018), *available at* <http://docquery.fec.gov/pdf/596/201804189110342596/201804189110342596.pdf>.

Mark Sanford and has since been campaigning against Democratic candidate Joe Cunningham ahead of the general election on November 6, 2018.

6. Respondent Katie Arrington for Congress is Arrington's federal election campaign,² and Kathleen Randall is the Treasurer for Katie Arrington for Congress.

7. Respondent Fix Our Flooding, Inc. ("Fix Our Flooding") is a Delaware corporation that was incorporated on August 10, 2018. Although it has no website, Fix Our Flooding is reportedly a "new advocacy arm" of 1st Street Foundation, Inc. (or "First Street"). First Street is a District of Columbia corporation that was incorporated on October 27, 2016. On October 19, 2017, it registered the trade name "First Street Foundation," and that name is featured on the corporation's website <https://firststreet.org>.³ Matthew Eby is one of three corporate governors (directors) in charge of First Street, and the corporation's website identifies him as its Executive Director. Neither Fix Our Flooding nor First Street appear to be registered with the Commission in any capacity.

II. ADDITIONAL FACTUAL BACKGROUND

8. On August 21, 2018, Katie Arrington held a press conference to make a major announcement regarding her plans to address flooding in the Lowcountry of South Carolina. Her plan included

[F]looding has been and continues to be a top concern for residents and businesses alike.

That is why I am honored to have standing with me, leaders from municipal, county, and state governments. . . .

² Katie Arrington for Congress, FEC Form 1, Statement of Organization (Aug. 9, 2017), *available at* <http://docquery.fec.gov/cgi-bin/forms/C00653204/1179159/>.

³ Upon information and belief, First Street's website was been operable for approximately a year. According to Internet Archive's Wayback Machine, the domain firststreet.org was listed for sale for \$3,995 as of mid-June 2017.

Today, I am announcing three major initiatives to address the flooding problem in the Lowcountry.

First, starting next Thursday, we will be holding a series of Flooding Solutions Roundtables. . . . Most importantly, when I am elected, I will be holding monthly Flooding Solutions Roundtables for my term in office.

Second, as Congresswoman, I will have a dedicated staff member working on flooding issues throughout the district. . . .

And, third, over the course of the coming weeks and months, we are going to be drafting a full proposal to be ready on the day I am sworn into office. . . .

For example, we need better ditch and retaining pond maintenance. This is something the federal government can and should help with, both by helping to cover the costs for state and municipal maintenance and by increasing education for HOAs and homeowners about how individual actions contribute to the problem.

We need to look at specific flooding projects throughout the district such as upsized and more uniform storm drains, water diversion projects, and an expanded seawall for the Peninsula. . . .⁴

9. Two days later on August 23, 2018, FOX's Charleston, South Carolina affiliate, WTAT-TV FOX 24,⁵ aired a thirty-second television advertisement paid for by Fix Our Flooding that featured Arrington—directly facing the camera—recounting the story of being hit by a drunk driver while a passenger in a vehicle interspersed with images of flooding in downtown Charleston and headlines about the accident (“Arrington in critical but stable condition, to face more surgery after car crash” and “Arrington had two ‘major’ surgeries Sunday, but ‘full recovery’ expected”).⁶

⁴ Press Release, Katie Arrington for Congress, Katie Arrington Announces Lowcountry Plan (Aug. 21, 2018), available at <https://www.votekatiearrington.com/2018/08/21/arrington-announces-flooding-plan/>. See also Heather Olinger, *Katie Arrington announces Lowcountry flooding plan*, WCBD-TV News 2 (Aug. 21, 2018), available at <https://www.counton2.com/news/local-news/katie-arrington-announces-lowcountry-flooding-plan/1385722824>.

⁵ According to its website, the television station's address is 4301 Arco Lane; Charleston, South Carolina 29418.

⁶ See *Issue/FixOurFlooding Katie Arrington*, Kantar Media (Aug. 23, 2018) (hereinafter “Fix Our Flooding Ad”), available at http://mycmag.kantarmediana.com/KM1cmagvidbin2/ISSUE_FIXOURFLOODING_KATIE_ARRINGTON.html (hereinafter, the “Fix Our Flooding

10. During the advertisement, Arrington connects her accident with flooding around the Charleston hospital district by stating that she would have died before reaching the hospital if there had been “high tide and a decent rain.” She further states that “the biggest issues that face the Lowcountry are our infrastructure, flooding. Sea levels are rising. We need to build a sea wall, protect the hospital district, and South Carolina. This community, the Lowcountry, our life is worth it.”⁷

11. The advertisement ends by displaying Fix Our Flooding’s logo above the text “Watch Katie’s full story at FixOurFlooding.org.”⁸ The text at the bottom of the advertisement’s final scene reads, “Paid For By Fix Our Flooding, Inc.”⁹

12. The same day that the advertisement aired, Charleston-based newspaper *The Post and Courier* revealed that Fix Our Flooding “had purchased at least \$75,000 worth of ad space to air the commercial [from August 23 through September 6] on three major TV stations in Charleston.”¹⁰

Ad”). Katie Arrington and Fix Our Flooding also produced a sixty-second version of the advertisement, which is available on *The Post and Courier*’s website. *See Fix Our Flooding Katie Arrington ad*, (Aug. 23, 2018), available at https://www.postandcourier.com/fix-our-flooding-katie-arrington-ad/video_b7525732-a712-11e8-b7a2-4f2446d5f418.html.

⁷ *See id.*

⁸ *Id.*

⁹ *Id.* Infrastructure and flooding are similarly connected in one of nine key issues for Arrington, according to the campaign’s website: <https://www.votekatiearrington.com/2018/08/02/invest-in-critical-infrastructure/>.

¹⁰ *See Jamie Lovegrove, Flooding advocacy group pulls TV ad featuring Katie Arrington ahead of election, The Post and Courier* (Aug. 24, 2018), available at https://www.postandcourier.com/politics/flooding-advocacy-group-pulls-tv-ad-featuring-katie-arrington-ahead/article_d310ef68-a25f-11e8-84ea-33ed7e3cd0ad.html.

13. In the same article, Fix Our Flooding is identified as “the new advocacy arm of the New York-based flooding research nonprofit First Street Foundation.”¹¹ The article identifies Matthew Eby as “Fix Our Flooding’s founder” and reports that Eby “said they created the ad campaign, which will also feature testimony from other Charleston residents, to highlight the problem of sea-level rise and chronic flooding in the Charleston region.”¹²

14. The article further directly quotes Eby as stating, “Our goal was never to engage in electoral politics, which is why when we heard her specific story would be seen by some as such, we decided to pull that particular video and save it for after the election, regardless of the outcome.”¹³ According to the article, Fix Our Flooding, through Eby apparently, claimed it “tried to pull the ad before it aired [on August 23] but said they do not know how it ended up airing anyway.”¹⁴

15. The article also reports that the “ads were created by Charleston-based Push Digital, a national GOP political and business consulting firm that Fix Our Flooding hired to manage the creative aspects of the ad campaign.”¹⁵ It concludes by noting that “Arrington paid Push Digital \$2,500 for ‘digital consulting’ in September, according to federal campaign finance records. She has not enlisted the company’s services since then.”¹⁶

16. The next day (August 24, 2018), Katie Arrington posted on her campaign’s Facebook page a link to *The Post and Courier* article and a full sixty-second version of the Fix

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Our Flooding video. In addition to posting the link to the article and video, Arrington states the following in response to the article:

How dare they?

Once again, Joe Cunningham is trying to score political points by using the June accident that killed a woman and seriously injured my friend Jackie and me.

Flooding is a serious issue for the Lowcountry. For me – and for many others – it is a matter of life or death.

If the area around MUSC had been flooded – a common occurrence – on the night of my accident, I would have died. The margin between life and death for me was 45 seconds. If I had arrived at the MUSC trauma center 45 seconds later, I would have died in the ambulance.

Yes, this is personal for me.

So when a non-profit group dedicated to fixing the flooding problems around MUSC asked me to sit down and tell my story on camera - I didn't hesitate. I want to fix this problem. It's why I'm running for Congress in the first place. . . .

17. As of this writing, this post with its link to the full sixty-second version of the Fix Our Flooding video and *The Post and Courier* article about it are still posted on Katie Arrington's Facebook.

18. Outside of this article, there does not appear to be any information online discussing Fix Our Flooding's mission, objectives, and projects. It also does not appear that Fix Our Flooding has paid for public communications prior to or since buying airtime for the advertisement that prominently featured Respondent Arrington.

19. During the television advertisement at issue, Fix Our Flooding listed its website as <http://www.fixourflooding.org>. As of this writing, no website exists for at this link. In fact, Fix Our Flooding does not appear to have any online presence but for a Facebook page. That Facebook page has one like, one follower, two photos (including one of the same logo used in the television

advertisement at issue), and a twenty-second video of clips that Fix Our Flooding also used in the advertisement.

20. There is no reference to Fix Our Flooding on First Street’s website. Also notably missing from First Street’s website is any reference to David M. Powers (“Powers”), even though he is one of the three governors (directors) in charge of First Street. Powers is former Senior Counsel to the Republican National Committee, and he held that position during the last midterm election in November 2014.¹⁷

III. APPARENT VIOLATIONS

21. Under federal law, an expenditure made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his or her authorized political committees, or their agents, is considered an in-kind contribution to a campaign if it meets three criteria: (1) it is *paid for* by an entity other than the campaign; (2) it meets certain *content* standards, including by expressly advocating the election or defeat of a clearly-identified federal candidate; and (3) it meets certain *conduct* standards regarding the coordination between the entity that paid for the ad and the campaign or an agent of the campaign.¹⁸ This advertisement meets all three of these requirements.

22. First, the television advertisement satisfies the *paid-for* prong of the coordinated communications standard described above. The advertisement displays Fix Our Flooding’s

¹⁷ Complainant’s research into First Street and review of public records maintained by the District of Columbia, the State of New York, and the Commission revealed that Powers has been a governor of First Street since its formation until at least March 29, 2018 and most likely until the present. Powers currently practices law in the District of Columbia for Powers Compliance, PLLC and “advises tax-exempt organizations and political committees on lobbying compliance and registration, campaign finance, government ethics and gift rules,” according to his profile on LinkedIn.com. Powers’ connection with First Street is also conspicuously missing from his LinkedIn.com profile.

¹⁸ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. §§ 109.20(b), 109.21.

purported logo and states at the bottom, “Paid for by Fix Our Flooding, Inc.”¹⁹ Additionally, in an interview with *The Post and Courier*, Fix Our Flooding’s purported founder and Matthew Eby confirmed that his organization “created the ad campaign.”²⁰

23. Second, the advertisement satisfies the *content* prong of the coordinated communications standard, as it is a public communication broadcast within 90 days of the general election that refers to a clearly-identified candidate for the U.S. House of Representatives. A public communication includes “a communication by means of any broadcast, cable, or satellite communication . . . or any other form of general public political advertising.”²¹ Such public communication satisfies the content prong if, *inter alia*, it “refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate’s jurisdiction 90 days or fewer before the clearly identified candidate’s general . . . election . . .”²²

24. Here, the Fix Our Flooding television advertisement constitutes a public communication: the organization publicly distributed the advertisement on a broadcast television station based in South Carolina’s 1st Congressional District. The advertisement also refers to a clearly identified candidate for the U.S. House of Representatives: it identifies Katie Arrington, who looks directly into the camera and speaks for the duration of the advertisement. Further, the advertisement aired within 90 days of the November 6, 2018 general election, on August 23, 2018.

25. Third, the television advertisement satisfies the *conduct* prong of the coordinated communications standard because Katie Arrington and her campaign were materially involved in

¹⁹ Fix Our Flooding Ad, *supra* note 6.

²⁰ Lovegrove, *supra* note 10.

²¹ 11 C.F.R. § 100.26.

²² *Id.* § 109.21(c)(4)(i).

its creation, production, and distribution. A public communication satisfies the conduct prong if, *inter alia*, “[a] candidate, authorized committee, or political party committee is materially involved in decisions regarding: (i) [t]he content of the communication; (ii) [t]he intended audience of the communication; (iii) [t]he means and mode of the communication; (iv) [t]he specific media outlet used for the communication; (v) [t]he timing or frequency of the communication; or (vi) [t]he size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.”²³ In explaining the material involvement standard, the Commission has stated that “[g]iven the importance of and potential campaign implications for each appearance by a federal candidate, it is highly implausible that a Federal candidate would appear in a communication without being materially involved in one or more of the listed decisions regarding the communication.”²⁴

26. There is clear and convincing evidence that Arrington and her principal campaign committee were materially involved in numerous decisions regarding the advertisement’s creation, production, and distribution. During the advertisement, Arrington looked directly into the camera and appeared to read scripted lines. As the Commission has explained, it is highly implausible that Arrington would appear in a communication without being materially involved in its creation.

²³ *Id.* § 109.21(d)(2)(i)-(vi). As the Commission has explained, “[t]he factual determination of whether a candidate’s or authorized committee’s involvement is ‘material’ must be made on a case-by-case basis.” 68 Fed. Reg. 433 (2003). ‘Material involvement’ neither requires a showing of “direct causation” nor “but-for” causation; rather, the Commission intended the standard to “focus[] . . . on the nature of the information conveyed [by the candidate or her authorized committee] and its importance, degree of necessity, influence or effect of involvement by the candidate, authorized committee, political party committee, or their agents in any of the communication decisions enumerated [under the standard].” *Id.* at 434.

²⁴ Fed. Election Comm’n Adv. Op. 2004-1 (Bush/Kerr) at 4 (quoting Fed. Election Comm’n Adv. Op. 2003-25 (Weinzapfel) at 6).

27. Further, after *The Post and Courier* published an article about Fix Our Flooding pulling the advertisement,²⁵ Katie Arrington confirmed her material involvement on her campaign's Facebook page, where the image of her staring into the camera from the advertisement is still prominently displayed. She has maintained that posting on her Facebook page since August 24, 2018 with its link to the article, which contains a longer sixty-second video of the television advertisement. In the text of her Facebook post, she further admits: "when a non-profit group dedicated to fixing the flooding problems around MUSC [the Medical University of South Carolina] asked me to sit down and tell my story on camera - I didn't hesitate. I want to fix this problem. It's why I'm running for Congress in the first place."²⁶

28. The facts demonstrate that Arrington knew and intended for Fix Our Flooding to use the taped sit-down in a television advertisement.²⁷ No candidate for federal office, nor his or her campaign, could reasonably construe Arrington's sit-down with Fix Our Flooding as anything less than express approval of the organization's plans. Arrington's Facebook post also confirms that she intended—and still intends—her participation in the advertisement to bolster her candidacy for the U.S. House of Representatives, all without spending a dime of her campaign's funds.

29. There is also strong evidence that Arrington and her principal campaign committee were materially involved in the timing of the advertisement's release. As *The Post and Courier* reports, "[t]wo days before the ad's planned release, Arrington held a press conference about

²⁵ See Lovegrove, *supra* note 10.

²⁶ See *supra* note 17.

²⁷ See, e.g., Lovegrove, *supra* note 10 (in which Katie Arrington's campaign spokesman "insisted Arrington had no idea that the interview would be featured in a TV ad, let alone that it would air before the election"); *id.* (in which Fix Our Flooding's founder Matthew Eby claims that "the group did not tell Arrington how the interview would be used").

flooding in [the congressional district].”²⁸ The press conference focused *only* on flooding issues in the district and featured “municipal, county[,] and state leaders.”²⁹ Arrington discussed in her press conference (“[the] need [for] . . . an expanded seawall”) many of the issues she spoke about in the Fix Our Flooding advertisement (“We need to build a seawall”).³⁰

30. It is highly implausible that the evidence of Katie Arrington’s material involvement is just a coincidence. Therefore, because Arrington and her campaign were materially involved in creating, producing, and distributing Fix Our Flooding’s television advertisement, the Respondents’ conduct appears to have satisfied the *conduct* prong of a coordinated communication.

31. Ultimately, Fix Our Flooding cannot—as corporation—make any contributions or expenditures in connection with a candidate for federal office.³¹ Fix Our Flooding’s television advertisement constitutes a coordinated communication under 11 C.F.R. § 109.21(a) and, thus, must be treated as an in-kind contribution to Katie Arrington for Congress.³² As a result, Fix Our Flooding has violated federal law by making an illegal in-kind contribution to Katie Arrington’s campaign; and Katie Arrington and her principal campaign committee have violated federal law by receiving and accepting such an illegal contribution.³³

²⁸ Lovegrove, *supra* note 10.

²⁹ See *supra* note 4.

³⁰ *Id.* Flooding and infrastructure are also linked in one of Arrington’s nine key issues, according to her campaign’s website. See *supra* note 9.

³¹ See 52 U.S.C. § 30118(a). The amount of Fix Our Flooding’s in-kind contribution also undoubtedly exceeded the \$2,700 limit for individual contributions to a federal candidate.

³² See 11 C.F.R. § 109.21(b).

³³ See 52 U.S.C. § 30125(e)(1)(B)(ii). Note that the advertisement also appears to violate disclaimer requirements under federal law and regulations. See 52 U.S.C. § 30120(a); 11 C.F.R. §§ 110.11(b)(2), 110.11(c)(3)(iii).

IV. REQUESTED ACTION

32. Federal restrictions on coordination between candidates for federal office and outside groups exist to minimize corruption and undue influence in our nation's campaign finance system. It is precisely in moments like these—when a freshly minted corporation acting as a “new advocacy arm” of another recently created nonprofit corporation coordinates with a candidate for federal office to pay for and broadcast a public communication that references the candidate within 90 days of her election—that the Commission should step in to protect the integrity of our nation’s democratic institutions. As such, Complainant respectfully requests that the Commission immediately investigate these apparent violations and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

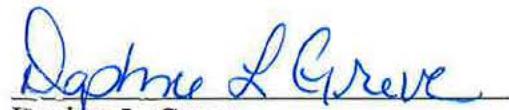
Respectfully submitted, swearing under penalty of perjury and subject to the provisions of 18 U.S.C. § 1001, upon information and belief that the foregoing statements and assertions of fact are true and correct to the best of my knowledge and belief,



 Badge Humphries
 2113 Middle Street, Suite 305
 Sullivan's Island, South Carolina 29482
 COMPLAINANT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

SIGNED AND SWORN to before me by
 Badge Humphries on this 4th day of October, 2018.



 Daphne L. Greve
 Notary Public, State at Large

My Commission Expires: May 21, 2020