

# CLARK HILL

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November 7, 2018

Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**VIA EMAIL: [cela@fec.gov](mailto:cela@fec.gov)**

**Re: MUR 7510: Response to Complaint from 1<sup>st</sup> Street Foundation, Inc., et al.**

Dear Mr. Jordan:

We are writing this letter on behalf of 1<sup>st</sup> Street Foundation, Inc. (“First Street”) and Matthew Eby, in his capacity as Executive Director (collectively the “Respondents”), in response to the Complaint filed in the above-referenced matter by Badge Humphries. The Complaint suggests that Fix Our Flooding Inc.’s (“Fix Our Flooding”) policy interview of South Carolina State Representative Katie Arrington, regarding coastal flooding, was coordinated with Katie Arrington, a candidate for U.S. Congress in South Carolina, and her campaign committee. Because the Complaint does not list First Street or Matthew Eby as Respondents, much less assert that they participated in any of the alleged violations, and because First Street is a separate corporate entity from Fix Our Flooding, this Complaint should be immediately dismissed in regard to the named Respondents.

The Federal Election Commission (the “Commission”) may find “reason to believe” only if a Complaint sets forth sufficient, specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971 (the “Act”).<sup>1</sup> Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true.<sup>2</sup> Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence.<sup>3</sup> As explained in more detail below, the allegations made in the Complaint

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<sup>1</sup> See 11 C.F.R. § 111.4(a), (d).

<sup>2</sup> See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001).

<sup>3</sup> See *id.*



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do not support a reason to believe finding in this matter. The Complaint should be immediately dismissed.

### **Factual Background**

First Street is a Section 501(c)(3) organization formed to mitigate the risk of sea level rise. First Street focuses on educating those affected by sea level rise, and does so by creating tools that break down the complex subject into easy to understand topics and visualizations. Matthew Eby is the Executive Director of First Street.

Fix Our Flooding is a social welfare organization formed under Section 501(c)(4) of the Internal Revenue Code of 1986. As a Section 501(c)(4) organization, Fix Our Flooding devotes its resources to activities consistent with its tax-exempt purpose, including issue advocacy focused on educating citizens in coastal areas about sea level rise and the associated flooding, along with practical solutions that can be implemented to prevent it.

### **The Complaint**

The Complainant incorrectly contends that Fix Our Flooding, the advocacy arm of First Street, along with Rep. Arrington and her campaign, engaged in a coordinated communication, “and in so doing violated federal election laws and regulations when they jointly created, produced, and distributed a television advertisement.” In support of this claim, the Claimant cites the interview of Rep. Arrington, which supposedly ran on August 23, 2018. The Claimant alleges that because the interview was a public communication broadcast within 90 days of a general election and because Rep. Arrington and her campaign were allegedly “materially involved in its creation, production, and distribution,” a coordinated communication occurred and thus, the campaign received a prohibited in-kind contribution from Fix Our Flooding. The Complaint does not set forth any wrongdoing on the part of the Respondents, but instead provides several conclusory allegations and assumptions that are irrelevant to whether a violation of the Act occurred.

### **Legal Analysis**

The facts of the Complaint do not justify a reason to believe finding against the Respondents. Coordination complaints must provide specific facts that, if true, would permit a reasonable person to infer coordination.<sup>4</sup> The fact that Fix Our Flooding conducted a policy interview with Rep. Arrington, which the Complainant alleges resulted in a coordinated communication, is not, without additional factors, sufficient to find reason to believe that a violation has occurred with regard to above-named Respondents. Fix Our Flooding and First Street are separate entities, responsible for their own distinct corporate and Internal Revenue Service filings. An allegation that one entity may have violated the Act, does not, without additional information, implicate the other.

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<sup>4</sup> See 11 C.F.R. § 111.4(d).



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Because the Complaint does not assert that the Respondents were involved in the conduct that resulted in the alleged violations, the Complaint should be dismissed as to the above-named Respondents. Further, the Respondents have no reason to believe that the policy interview conducted by Fix Our Flooding resulted in a coordinated communication.

### **Conclusion**

Badge Humpries' attack on an interview documenting a woman's personal experience regarding the potentially fatal impacts of Lowcountry flooding is nothing more than a political stunt. In the case of the Respondents, there is no accusation or even theory whereby they could have violated the Act, as they are not listed as Respondents in the Complaint. Further, Respondents have no knowledge of coordination between Fix Our Flooding and Katie Arrington for Congress. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact us directly at (202) 572-8663 with any questions.

Respectfully submitted,



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