



**FEDERAL ELECTION COMMISSION**  
Washington, DC

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
Katie Arrington for Congress	)	MUR 7510
and Kathleen Randall in her official capacity as treasurer	)	
Katherine E. Arrington	)	
Fix Our Flooding, Inc.	)	
1st Street Foundation, Inc.	)	
Matthew Eby	)	

**STATEMENT OF REASONS OF CHAIRMAN ALLEN DICKERSON AND  
COMMISSIONER JAMES E. “TREY” TRAINOR, III**

This Matter arose from a complaint alleging that Fix Our Flooding, Inc. (“FOF”) and Katie Arrington for Congress (the “Arrington Committee”) jointly produced and distributed a television advertisement that qualified as a coordinated communication under Commission regulations, resulting in a prohibited corporate in-kind contribution from FOF to the Arrington Committee.<sup>1</sup> The Complaint also alleges that the advertisement lacked the proper disclaimer required by the Federal Election Campaign Act of 1971, as amended (“the Act”).<sup>2</sup> On November 9, 2021, the Commission voted to dismiss these allegations.<sup>3</sup> Although we agree with our Office of General Counsel (“OGC”) that dismissal was the correct course of action in this Matter, our reasoning regarding the alleged coordinated communication differs from the analysis contained in the First General Counsel’s Report.

The advertisement at issue—which one press outlet reported as airing on television on August 23, 2018,<sup>4</sup> outside the 60-day electioneering communication period for the 2018 general election—featured an interview of then-federal candidate and sitting state representative Katie Arrington discussing the dangers of coastal flooding in South Carolina’s Low Country, which is largely located within the state’s first congressional district. Both the Arrington Committee and FOF acknowledge that Arrington participated in a videotaped interview with FOF, which in turn used the footage to create the ad, but they collectively deny that Arrington had any involvement with the creation of the ad after the interview

<sup>1</sup> Compl. at 1–2, MUR 7510 (Oct. 5, 2018).

<sup>2</sup> *Id.* at 12 n.23.

<sup>3</sup> Certification, MUR 7510 (Nov. 9, 2021).

<sup>4</sup> Jamie Lovegrove, *Flooding Advocacy Group Pulls TV Ad Featuring Katie Arrington Ahead of Election*, THE POST AND COURIER (Aug. 24, 2018).

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occurred.<sup>5</sup> FOF further asserts that it cancelled its broadcast media buy before the advertisement ever aired and that it did not authorize or pay for placement of the ad.<sup>6</sup>

In its recommendation to the Commission, OGC maintains that FOF's ad qualified as a coordinated communication under Commission regulations, but recommends dismissal based on FOF's assertion that the ad was preemptively cancelled and the lack of evidence that the ad aired for more than a single day.<sup>7</sup> OGC also recommends dismissal of the disclaimer-related allegations on the basis that FOF is not a registered federal political committee and the ad did not contain express advocacy or solicit contributions to Arrington.<sup>8</sup>

We agree with OGC's dismissal recommendations, but we disagree that the FOF ad qualified as a "coordinated communication" under Commission regulations. In our view—even leaving aside the unresolved questions of whether FOF expended funds for its quickly-cancelled ad, or whether the ad actually aired on broadcast television—the ad, to the extent it relies upon filmed interview footage, falls within 11 C.F.R. § 109.21(f)'s safe harbor for candidates' responses to inquiries about their position on legislative or policy issues that do not involve campaign plans, projects, activities, or needs. Additionally, the Complaint seeks to ground a violation in Arrington's discussion of coastal flooding at a press conference preceding the airing of the advertisement, and her campaign website's listing of coastal flooding as a key issue for her campaign. Both the press conference and the information on the website, however, fall within the coordination regulation's safe harbor for information obtained from a publicly available source.

FOF's advertisement is pure issue speech addressing a topic of significant public concern: coastal flooding arising from severe thunderstorms, hurricanes, and other weather-related conditions, which has plagued South Carolina's Low Country in recent years. The coordinated communication regulations are not in place to restrict communications or discussions regarding pending legislation or other issues of public policy,<sup>9</sup> and OGC's view that the non-electoral speech of public figures on issues of public importance should be subject to the Act ultimately collapses a key practical distinction between regulated political speech and unregulated issue speech. Because FOF's advertisement represents the latter, which falls outside the reach of the Act, we voted to dismiss.

## I. FACTUAL BACKGROUND

Katie Arrington served as a South Carolina State Representative between 2017 and 2019,<sup>10</sup> and was a candidate in the 2018 general election for the U.S. House of Representatives in South Carolina's first congressional district.<sup>11</sup> Katie Arrington for

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<sup>5</sup> FOF Resp. at 4, MUR 7510 (Nov. 2, 2018); Arrington Resp. at 2, MUR 7510 (Dec. 6, 2018).

<sup>6</sup> FOF Resp. at 2–3.

<sup>7</sup> First Gen. Counsel's Report at 2, MUR 7510.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 441 (Jan. 3, 2003) (Explanation and Justification) ("E&J").

<sup>10</sup> See <https://www.scstatehouse.gov/member.php?code=0052272721>.

<sup>11</sup> Katie Arrington, FEC Form 2, Amended Statement of Candidacy (Oct. 23, 2018). Arrington defeated Mark Sanford in the Republican primary but lost the general election to Democratic candidate Joe Cunningham. <https://www.enr-sevotes.org/SC/92124/Web02-state.222648/#/>.

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Congress is her principal campaign committee, and Kathleen Randall is the committee's treasurer.<sup>12</sup>

Fix Our Flooding, Inc. is a Delaware nonprofit corporation that was incorporated on August 10, 2018.<sup>13</sup> FOF states that it is a § 501(c)(4) social welfare organization, and that its activities include "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."<sup>14</sup> Matthew Eby is FOF's Director.<sup>15</sup> FOF is the advocacy arm of First Street,<sup>16</sup> a § 501(c)(3) organization registered in the District of Columbia and in New York.<sup>17</sup> First Street focuses on providing education on issues related to sea level rise.<sup>18</sup> Eby is also the Founder and Executive Director of First Street.<sup>19</sup>

On August 21, 2018, Arrington held a press conference with municipal, county and state leaders to discuss the topic of flooding in South Carolina's Low Country.<sup>20</sup> On August 23, 2018, two days after the press conference, FOF's advertisement featuring Arrington reportedly aired on WTAT Fox 24, a local Charleston television station, and possibly other Charleston area stations, according to the Complaint.<sup>21</sup> A transcript of the ad<sup>22</sup> follows:

On Screen	Audio
Katie Arrington Speaking on Screen  Graphic next to Arrington: Katie Arrington South Carolina Representative	Katie Arrington:  My friend and I were driving down to Hilton Head and we're in a head on collision with a drunk driver. Time was of the essence.
Graphic: <i>The Post and Courier</i> Newspaper Headline:	Katie Arrington:  If that team at MUSC were not able to take us, how rapidly they were able to get to us that

<sup>12</sup> Katie Arrington for Congress, FEC Form 1, Amended Statement of Organization (Oct. 23, 2018).

<sup>13</sup> See State of Delaware, Division of Corporations, Entity Info. (Fix Our Flooding).

<sup>14</sup> FOF Resp. at 2.

<sup>15</sup> See Designation of Counsel for FOF (Oct. 24, 2018).

<sup>16</sup> First Street Resp. at 2, MUR 7510 (Nov. 7, 2018).

<sup>17</sup> *Id.* First Street was incorporated in DC on October 27, 2016 and in New York on February 6, 2019. See DC Department of Consumer and Regulatory Affairs, Filing, First Street Foundation, Inc.; NYS Department of State, Division of Corporations, Entity Info. (First Street Foundation).

<sup>18</sup> See First Street Resp. at 2.

<sup>19</sup> *Id.*

<sup>20</sup> See Compl. at 3 (citing Press Release, Katie Arrington for Congress, Katie Arrington Announces Lowcountry Plan (Aug. 21, 2018), available at <https://www.votekatiearrington.com/2018108121/arringtonannouncesfloodingplan/>; Heather Olinger, *Katie Arrington announces Lowcountry flooding plan*, V/CBD-TV News 2 (Aug. 21, 2018), available at <https://www.counton2.com/news/local-news/katie-arrington-announces-lowcountry-flooding-plan/>).

<sup>21</sup> See Compl. at 4–5 (citing Jamie Lovegrove, *Flooding Advocacy Group Pulls TV Ad Featuring Katie Arrington Ahead of Election*, THE POST AND COURIER (Aug. 24, 2018)).

<sup>22</sup> 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](https://www.postandcourier.com/fix-our-flooding-katie-arrington-ad/video_b7525732-a712-11e8-b7a2-4f2446d5f418.html).

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<p>Katie Arrington, in critical but stable condition, to face more surgery after crash. By Schuyler Kropf, June 23, 2018</p> <p>Graphic: <i>The State</i> Newspaper Headline:</p> <p>South Carolina lawmaker Arrington had two major surgeries Sunday, but ‘full recovery’ expected. By Noah Feit, June 24, 2018</p> <p>Images of Flooding in Charleston While Arrington is Speaking</p> <p>Graphic: Fix Our Flooding logo</p> <p>Watch Katie’s full story at Fix Our Flooding.org.</p> <p>Text: Paid For By Fix Our Flooding, Inc.</p>	<p>night, neither one of us would have survived. High tide and a decent rain I wouldn’t be here. If they had to go around to avoid the cross town I wouldn’t be here. This is a problem. When seconds count and you don’t have that option. How do you save people’s lives? We have sea levels rising. We have some of the most valuable resources on the peninsula. We have MUSC. We have Roeper. We have the VA. Literally hundreds of yards from the harbor. We need to start looking at it in a pro-active manner. We don’t right now. It’s reactive. We need to build a sea wall. Protect the hospital district in South Carolina. It’s simple. This community. The low country. Our life is worth it.</p>
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According to a press report cited by the Complaint, filings with the Federal Communications Commission (“FCC”) indicate that FOF paid at least \$75,000 to air the ad from August 23 through September 6 on three different local television stations.<sup>23</sup> In addition, FOF reportedly hired Push Digital, a business and political consulting firm, to manage the creative aspects of the ad campaign.<sup>24</sup> The firm also provided services to the Arrington Committee, as reflected on the committee’s disclosure reports.<sup>25</sup> FOF purportedly sought to pull the ad before it was broadcast, but local media reported that it was aired by one outlet for one day, on August 23, 2018.<sup>26</sup> In its response, FOF concedes that it purchased a media buy but states it cancelled the buy on August 22, 2018 and that the ad was subsequently “leaked.”<sup>27</sup>

Publicly available filings from the FCC show that a media buyer, Tanya Renicker/GRP Buying LLC, filed an “Agreement Form for Non-Candidate/Issue Advertisements” on July 12, 2018, requesting broadcast time for FOF.<sup>28</sup> Eby is listed on the form as the officer/director for FOF. Additional filings for the ad buy include contracts with various broadcasters showing contract dates from August 22 through September 6, 2018, and cost information.<sup>29</sup> The scheduled start date for the ad campaign appears to have been changed from August 22

<sup>23</sup> See Compl. at 5 (citing Lovegrove, *supra* n.21).

<sup>24</sup> See *id.* at 6.

<sup>25</sup> Disclosure reports filed by the Arrington Committee show a \$2,500 disbursement to Push Digital on September 7, 2017. See 2017 October Quarterly Report, Schedule B (FEC Form 3) at 24.

<sup>26</sup> Lovegrove, *supra* n.21.

<sup>27</sup> FOF Resp. at 4–5.

<sup>28</sup> See FCC Filings at [https://publicfiles.fcc.gov/find/fix%20our%20flooding/page-offset-0/order-best-match/filter-\[\]/#files](https://publicfiles.fcc.gov/find/fix%20our%20flooding/page-offset-0/order-best-match/filter-[]/#files).

<sup>29</sup> *Id.*

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to August 23.<sup>30</sup> A document dated August 27, 2018, four days after the ad apparently aired, includes an instruction to cancel the ad buy order on WCSC-TV: “Cancel Order Before Start Per Buyer’s Direction, Total is \$0, Please Confirm Thanks Emily.”<sup>31</sup> The filing does not indicate when the cancel order was confirmed and acted upon.

The day after the ad allegedly aired, Arrington posted a link to the advertisement on her campaign’s Facebook page, along with an article describing the withdrawal of the ad.<sup>32</sup> In addition, Arrington posted a rebuttal to the newspaper article in which she defends her decision to provide the interview to FOF: “[s]o 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 ....”<sup>33</sup>

## II. APPLICABLE LAW

The Act prohibits corporations from making contributions to federal candidates or their committees, and corporate officers and directors from consenting to such contributions.<sup>34</sup> It also prohibits federal candidates or their committees from knowingly accepting corporate contributions.<sup>35</sup> Expenditures made by any person “in cooperation, consultation, or concert with, or at the request or suggestion of” a candidate or his authorized committee or agent qualify as an in-kind contribution to the candidate and must be reported as expenditures made by the candidate’s authorized committee.<sup>36</sup>

A communication that is coordinated with a candidate or his or her authorized committee is considered an in-kind contribution and is subject to the limits, prohibitions, and reporting requirements of the Act.<sup>37</sup> The Commission’s regulations provide that a communication is coordinated with a candidate, his or her authorized committee, or an agent of either if it meets a three-prong test: (1) it is paid for, in whole or in part, by a person other than the candidate or authorized committee; (2) it satisfies a content standard in 11 C.F.R. § 109.21(c); and (3) it satisfies a conduct standard in 11 C.F.R. § 109.21(d).<sup>38</sup> All three prongs must be satisfied for a communication to be considered coordinated.<sup>39</sup>

“Payment” occurs when a communication is paid for by a person other than the candidate (or his or her authorized committee) with whom it is coordinated.<sup>40</sup> A communication satisfies the “content” prong if it qualifies as an electioneering

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<sup>30</sup> *Id.*

<sup>31</sup> *See* First Gen. Counsel’s Report at 6 n.30.

<sup>32</sup> *See* Compl. at 6–7 (citing

[https://www.facebook.com/pg/VoteKatieArrington/posts/?ref=page\\_internal](https://www.facebook.com/pg/VoteKatieArrington/posts/?ref=page_internal)).

<sup>33</sup> *Id.*

<sup>34</sup> 52 U.S.C. § 30118(a).

<sup>35</sup> *Id.*

<sup>36</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(b).

<sup>37</sup> 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

<sup>38</sup> 11 C.F.R. § 109.21(d).

<sup>39</sup> 11 C.F.R. § 109.21(a); *see also* E&J at 453.

<sup>40</sup> 11 C.F.R. § 109.21(a)(1).

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communication; or as a public communication<sup>41</sup> that either (1) republishes campaign materials; (2) contains express advocacy or its functional equivalent; or (3) refers to a clearly identified House or Senate candidate, is publicly distributed or disseminated 90 days or fewer before an election, and is directed to voters in the jurisdiction of the clearly identified candidate.<sup>42</sup> A communication satisfies the “conduct” prong if it is created, produced, or distributed at the request, suggestion, or assent of a candidate or their authorized committee or agent; if a candidate, candidate committee, or their agent was “materially involved” in decisions regarding the communication; if the communication was the result of “substantial discussion” between the payor and the clearly identified candidate or their opponent (or their respective authorized committees) regarding specific campaign plans, projects, activities, or needs; if a common vendor or former employee paid for or conveyed material non-public information relating to the campaign plans, projects, activities, or needs of the clearly identified candidate or their opponent to the payor; or if the communication contains republished campaign materials.<sup>43</sup>

The coordinated communication regulation also contains several regulatory safe harbors with respect to the conduct standard, which encompass, *inter alia*, candidates’ responses to inquiries about legislative or policy issues and campaign information obtained from a public source.<sup>44</sup>

### III. LEGAL ANALYSIS

The threshold question in this Matter is whether FOF’s advertisement is governed by the coordinated communication regulation. As noted above, such communications must satisfy all three prongs—payment, content, and conduct—of the test set forth at 11 C.F.R. § 109.21.

With respect to the payment and content prongs of this test, the facts are disputed by the parties. The Complaint, citing a press report, asserts that FOF’s ad was aired on television for a single day (August 23, 2018) by FOX’s Charleston, South Carolina affiliate, and that FOF disbursed \$75,000 to air the commercial on three major Charleston area TV stations in addition to \$2,500 to a vendor for “digital consulting” attributable to the ad.<sup>45</sup> FOF, however, asserts that the ad buy was cancelled prior to broadcast and payment to the FOX affiliate was refunded, and therefore that the advertisement does not qualify as a “public communication” under our regulations.<sup>46</sup> FCC records do not definitively affirm either account: although FOF’s media buyer requested broadcast time on FOF’s behalf, FOF also submitted instructions to cancel that ad buy “Before Start”—and while the document

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<sup>41</sup> “Public communication” is a defined term that includes communications made by means of broadcast, cable, or satellite; newspaper; magazine; outdoor advertising facility; mass mailing; telephone bank, or any other form of general public political advertising. It does not include Internet communications, except if they are placed for a fee on another person’s website. 11 C.F.R. § 100.26.

<sup>42</sup> 11 C.F.R. § 109.21(c).

<sup>43</sup> 11 C.F.R. § 109.21(d).

<sup>44</sup> 11 C.F.R. §§ 109.21(d)(2)-(5); (f)-(i).

<sup>45</sup> Compl. at 5–6.

<sup>46</sup> FOF Resp. at 2.

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addressing the cancellation bears a date after the ad allegedly aired, it does not indicate when the cancel order was confirmed or acted upon.<sup>47</sup>

These facts offer meaningful—but, in our view, circumstantial and indirect—evidence suggesting that the ad may have aired on broadcast television for one day in August 2018. It is certainly possible that the ad was broadcast, thus qualifying it as a public communication under our regulations and satisfying the first two prongs of the coordinated communications test. But even if we were to stipulate to this evidence and agree with Complainant’s (and OGC’s) view that FOF’s ad satisfied the payment and content prongs, we believe that the ad—and the interview that generated its content—falls under 11 C.F.R. § 109.21(f)’s safe harbor for candidates’ responses to inquiries about their position on legislative or policy issues that do not involve campaign plans, projects, activities, or needs.

Although FOF’s Response cites this safe harbor as an affirmative defense,<sup>48</sup> OGC’s analysis summarily dismisses the possibility that it applies.<sup>49</sup> The basis for this conclusion is, apparently, the notion that because coastal flooding was a key issue for voters and a specific focus for Arrington’s campaign,<sup>50</sup> FOF’s interview necessarily represented a discussion between FOF and Arrington regarding her campaign’s plans, projects, activities, or needs. This position relies on an inherently imprecise determination as to which issues are sufficiently central to a campaign and which are legally unimportant. We doubt whether such a task could be accomplished consistently and objectively, or that the government should be in the business of parsing the campaign messages of federal candidates—especially when elevating an issue, as here, would not only silence some issue speech, but influence which issues are discussed at all. After all, the end result of OGC’s reasoning is that FOF’s advertisement was illegal but that another near-identical ad, discussing a less-salient issue, might be perfectly lawful under § 109.21(f).

These vagueness concerns are not new. As the Supreme Court recognized in *Buckley v. Valeo*, “the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions.”<sup>51</sup> Indeed, this insight is among the reasons § 109.21(f) exists. When the Commission promulgated that provision in response to the First Circuit’s decision in *Clifton v. FEC*, it noted that the coordinated communication regulations “are not intended to restrict communications or discussions regarding pending legislation or other issues of public policy,” and that although *Clifton* specifically related to voter guides produced by corporations or labor organizations, the safe harbor is explicitly more permissive than the regulations at issue in that case.<sup>52</sup> Section 109.21(f) is, therefore, specifically aimed at

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<sup>47</sup> See *supra* n.28–31 and accompanying text.

<sup>48</sup> FOF’s Response mentions the safe harbor for responses to inquiries about legislative or policy issues in the context of its rebuttal to the “content” prong, but the safe harbor is appropriately characterized as a defense to the “conduct” prong.

<sup>49</sup> First Gen. Counsel’s Report at 10–11.

<sup>50</sup> Arrington’s campaign, like many campaigns before and since, maintained a campaign website that listed her views and positions on certain key issues, and in Arrington’s case, “Infrastructure/Flooding” was one of the nine issues listed.

<sup>51</sup> 424 U.S. 1, 42 (1976) (*per curiam*).

<sup>52</sup> See E&J at 440–41; *Clifton v. Fed. Election Comm’n*, 114 F.3d 1309 (1st Cir. 1997).

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protecting the First Amendment right of public figures to talk about public issues, and for citizens and civil society groups to engage in discussions with elected leaders and engage in issue-based activism. FOF's ad was created and produced by a nonprofit advocacy group that specifically names coastal flooding awareness as one of its *raison d'être*. It did not discuss or even mention the 2018 general election or Arrington's status as a federal candidate, let alone engage in express advocacy for or against her candidacy. It involves and reflects precisely the sort of communications § 109.21(f) contemplates and protects.

The Complaint also argues that Arrington's statements at the August 21, 2018 press conference (*e.g.*, that her campaign planned to hold monthly coastal flooding roundtables), as well as her campaign website's listing flooding and infrastructure as one of nine key election issues, illustrate her "material involvement" in the creation, production, or distribution of FOF's advertisement.<sup>53</sup> However, our coordinated communication regulation provides that the "material involvement" factor within the conduct prong is not satisfied if the information in question "is obtained from a publicly available source."<sup>54</sup> Publicly available sources include candidate speeches and interviews, campaign press releases, and candidates' websites.<sup>55</sup> Arrington's statements at the press conference and on her campaign website plainly fall within this definition.

Finally, the Complaint and OGC also appear to offer Arrington's actions in the days following the ad—namely, the fact that her campaign posted the ad on its Facebook page—as after-the-fact justification for the view that she (or her campaign) were materially involved in its making.<sup>56</sup> However, the "request or suggestion" and "material involvement" portions of the coordinated communications regulation, which only address conduct occurring *before* the creation, production, or distribution of a communication, do not provide for such a presumption. There is simply no basis in the Act or Commission regulations for the notion that a candidate or campaign satisfies the conduct prong when it ratifies or endorses an outside group's communication after its initial dissemination. Apart from the existence of the FOF interview itself—which we view as falling under the safe harbor at section 109.21(f)—the Commission has not been presented with evidence indicating that Arrington and FOF discussed her campaign plans, projects, activities, or needs; that Arrington had material involvement in decisions relating to the ad's intended audience, means or mode of distribution, timing, frequency, or duration; or that a common vendor conveyed material information from the Arrington campaign to FOF.

#### IV. CONCLUSION

Coastal flooding arising from severe thunderstorms, hurricanes, and other weather-related conditions has been—and continues to be—an issue of concern in South Carolina's Low Country.<sup>57</sup> At the time of Arrington's interview with FOF, she was a sitting state official

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<sup>53</sup> Compl. at 11–12.

<sup>54</sup> See 11 C.F.R. §§ 109.21 (d)(2)-(5); *see also* Revised Explanation & Justification, Coordinated Communications, 71 Fed. Reg. 33,190, 33,205 (June 8, 2006).

<sup>55</sup> *Id.*

<sup>56</sup> First Gen. Counsel's Report at 13 (incorrectly described as posted on campaign website); Compl. at 11.

<sup>57</sup> See, *e.g.*, NAT'L WEATHER SERV., HISTORIC FLOODING - OCTOBER 1-5, 2015, *available at* <https://www.weather.gov/chs/HistoricFlooding-Oct2015>; Tori B. Powell, *South Carolina braces for*



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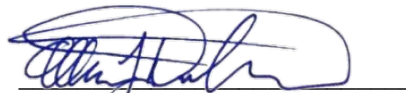
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in the South Carolina legislature. The idea that the Act could prohibit a sitting state official who happens to be running for federal office from discussing an issue of public concern with an advocacy group that specifically focuses on that issue is constitutionally suspect and runs counter to the Explanation and Justification provided by the Commission when it promulgated the safe harbor at 11 C.F.R § 109.21(f).

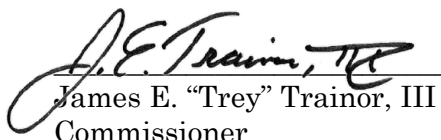
We agree that dismissal was the appropriate outcome in this Matter, but we are unconvinced that FOF's ad—which contains no electoral portion and does not identify Arrington as a federal candidate—satisfies the conduct prong of the coordinated communications test. Accordingly, we agreed with OGC's recommendation and voted to dismiss these allegations.

January 24, 2022

Date



Allen Dickerson  
Chairman



James E. "Trey" Trainor, III  
Commissioner

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*major coastal flooding and high tides*, CBS NEWS (Nov. 5, 2021), available at <https://www.cbsnews.com/news/flooding-south-carolina-tides/>.