



## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Josh Hawley;	)	
Josh Hawley for Senate;	)	MUR 7524
Salvatore Purpura,	)	
in his official capacity as	)	
Treasurer.	)	

## RESPONSE

Through counsel, Josh Hawley, Josh Hawley for Senate, and Salvatore Purpura, in his official capacity as Treasurer (collectively, “Respondents”), provide the following response to the complaint filed with the Federal Election Commission (“FEC” or “Commission”) by Brendan M. Fischer, on behalf of the Campaign Legal Center, together with Alison Damaskos, on behalf of Giffords (collectively, “Complainants”), and designated by the Commission as MUR 7524.

The facts detailed in this response confirm the Respondents conformed their conduct to the prescriptions and prohibitions of the Federal Election Campaign Act of 1971, as amended (“FECA” or “the Act”), as well as the Commission’s supplementary regulations, Commission guidance, and legal precedents. Despite the Complainants’ exhaustive, irrelevant discussion of nonparties and public filings unaffiliated with the Respondents, the Complainants have failed their most basic requirement to allege conduct satisfying all three prongs of the FEC’s definition of a coordinated communication at 11 C.F.R. § 109.21(a). Putting aside the Complainant’s wandering assessment of nonparties, the Complainants have alleged no direct conduct on the part of the Respondents that runs afoul of the Act or FEC regulations.

Even if the Commission grants the Complainants’ wish that all alleged conduct be viewed consistent with 11 C.F.R. § 109.21(d)(4), the Complainants have nonetheless failed to allege that any common commercial vendor conveyed the Respondents’ campaign plans, projects, or other activities to a party that used this material information as part of the preparation and dissemination of an independent expenditure. And, importantly, the Respondents have no reason to believe this occurred. Therefore, the Respondents trust the Commission to look past the Complainants’ unsubstantiated allegations and irrelevant information related to nonparties to determine that the facts do not support a “Reason to Believe” finding.

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## BACKGROUND

Senator-elect Josh Hawley was a 2018 U.S. Senate candidate from Missouri, and Josh Hawley for Senate is his authorized candidate committee. Mr. Hawley won Missouri's 2018 general election for U.S. Senate on November 6, 2018.

According to the documentation provided by the Complainants, the National Rifle Association Political Victory Fund ("NRA-PVF") is a tax-exempt organization that engages in political activity consistent with the policies of the National Rifle Association ("NRA"). To the best of the Respondents' knowledge and belief, the Respondents did not have any engagement or interaction with any agents of either NRA-PVF or the NRA during the 2018 election. Indeed, the Complainants do not allege any actual interaction between the Respondents and NRA-PVF or the NRA.

The crux of this complaint is the fact that independent expenditures reported by NRA-PVF (either in support of Mr. Hawley or in opposition to his opponent, Senator Claire McCaskill) included payments to Starboard Strategic, Inc. The Complainants, based on documents not previously reviewed by the Respondents, allege coordination because of a "common vendor" relationship between OnMessage, Inc. and Starboard Strategic. While the Respondents are in no position to make detailed assertions about the activities of these companies, the Respondents can attest that the first encounter between Josh Hawley for Senate and Starboard Strategic was initiated by this complaint. Not only have the Respondents never negotiated any engagements with Starboard Strategic, they are generally unfamiliar with the business operations of Starboard Strategic. To the best of the Respondents' knowledge and belief, they have conducted their campaign activities entirely independent of Starboard Strategic.

During the 2018 election cycle, the Respondents engaged the services of OnMessage for media and political consulting services. To the best of the Respondents' knowledge, OnMessage established and implemented the type of firewall policy, as detailed in 11 C.F.R. § 109.21(h), that prohibits the flow of information between certain client projects. Importantly, the Respondents have no reason to believe that OnMessage did not adhere to the terms of its firewall policy.

The Complainants also allege that NRA-PVF used an entity registered as Red Eagle Media to place independent expenditures (either in support of Mr. Hawley or in opposition to his opponent, Senator Claire McCaskill). The Complainants allege this entity is affiliated with both National Media Research, Planning, and Placement ("National Media") and American Media and Advocacy Group ("AMAG"). Similar to the relationship described above between OnMessage and Starboard Strategic, the Respondents contracted National Media and AMAG for placement services during the 2018 election; however, they are not familiar with Red Eagle Media. To the extent that Red Eagle Media is affiliated with any of the other

companies identified in the complaint, the Respondents must refer the Commission to those entities for more information.

### LEGAL DISCUSSION AND ANALYSIS

To avoid unintended candidate contributions that exceed the contribution limits, so-called “Super PACs” and other outside groups such as NRA-PVF are strictly prohibited from coordinating their activities with the candidate(s) they are supporting. As a practical matter, questions often arise as to what constitutes “coordination.” At the most basic level, coordination means the creation of an advertisement at the request or suggestion of a candidate or campaign, or with the approval of the candidate or campaign. From a more nuanced perspective, the Commission’s regulation has three elements—payment, content and conduct—all of which must be satisfied in order to constitute coordination.

The “Conduct Prong” is often the critical inquiry in any evaluation and examines the interactions between the person paying for the communication and the candidate, authorized committee or political party committee, or their agents. One way a communication satisfies this part of the test is if the person paying for the communication **employs a common vendor** to create, produce or distribute the communication, and that vendor:

- a. Is currently providing services *or* provided services within the previous 120 days with the candidate or party committee that puts the vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee; and
- b. Uses or conveys information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the candidate or party, and that information is material to the creation, production or distribution of the communication.<sup>1</sup>

This provision is further supplemented by the firewall safe harbor described at 11 C.F.R. § 109.21(h). This safe harbor explains that a communication is not coordinated simply by the use of a common vendor if a written firewall is designed and implemented by the common vendor so as to prohibit the flow of information between service providers of the candidate and those paying for a communication.

With respect to the allegations against the Respondents, the Complainants propose that the Respondents—together with NRA-PVF, OnMessage, National Media, and potentially other entities—have illegally coordinated NRA-PVF’s public communications, which

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<sup>1</sup> 11 C.F.R. § 109.21(d)(4).

necessarily means that the Respondents would have needed to satisfy the Conduct Prong of the Commission's three-pronged test for coordination. In making this allegation, the Complainants clearly rely on an incomplete understanding of the Act to assume conduct not otherwise alleged and they have offered no evidence to support a violation of 11 C.F.R. § 109.21(d)(4).

As stated above, because the Respondents are in no position to make detailed assertions about the activities of these companies, the Respondents believe that OnMessage, Starboard Strategic, and potentially the NRA are better suited to respond to the particular allegations of this complaint. With that said, the Respondents expected Josh Hawley for Senate's vendors to comply with the law, and the Respondents have no reason to believe that its vendors did not adhere to firewall policies that satisfy the safe harbor requirements of 11 C.F.R. § 109.21(h).

The Complainants' assertions are not aided by the presence of several individuals that performed work for multiple entities named in the complaint. The complaint cites Bradley Todd as receiving payments as a direct consultant to Josh Hawley for Senate as well as serving as a board member of Starboard Strategic. Regardless of any services performed by Mr. Todd on behalf of Josh Hawley for Senate, the Complainants do not allege that Mr. Todd acted either in the absence of a properly enforced firewall policy or contrary to such a policy. Indeed, no actual participation by Mr. Todd in any communications prepared or distributed on behalf of the NRA and NRA-PVF is known to the Respondents or otherwise alleged.

Similarly, the complaint notes that Jon Ferrell, Chief Financial Officer to National Media, signed placement orders on behalf of Josh Hawley for Senate as well as NRA-PVF. To best of the Respondents' knowledge, Mr. Ferrell is simply an administrative employee who affixes his signature to all third-party documents filed by National Media and any affiliated entities. No evidence has been provided that Mr. Ferrell provided strategic services to any entities identified in the complaint, or that he otherwise conveyed the Respondents' campaign plans, projects, or other activities to a party that used this material information as part of the preparation and dissemination of an independent expenditure. On the other hand, 11 C.F.R. § 109.21(d)(4) makes clear that a common vendor employee must have taken part in the development of strategy, polling, fundraising, production of communications, or other substantive strategic consulting.<sup>2</sup> The Respondents are not aware of any such activities, and Mr. Ferrell's signature alone does not equate to the level of participation envisioned by the Commission through this regulation.

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<sup>2</sup> 11 C.F.R. § 109.21(d)(4)(ii).

**CONCLUSION**

The facts detailed in this response confirm the Respondents conformed their conduct to the prescriptions and prohibitions of the Act, as well as the Commission's supplementary regulations, Commission guidance, and legal precedents. Therefore, the Respondents respectfully urge the Commission to dismiss this complaint with no further action.

Sincerely,



Chris K. Gober  
Counsel to Josh Hawley, Josh Hawley for Senate,  
and Salvatore Purpura, in his official capacity as Treasurer