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January 28, 2019

Federal Election Commission  
 Office of General Counsel  
 Office of Complaints Examination  
 & Legal Administration  
 attn: Kathryn Ross, Paralegal  
 1050 First Street, NE  
 Washington, DC 20002

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OFFICE OF  
GENERAL COUNSEL**Re: MUR 7553**

Dear Ms. Ross:

This response is submitted by the undersigned counsel on behalf of the following Respondents in connection with the above-referenced matter: National Rifle Association of America Political Victory Fund (NRA-PVF) and Robert G. Owens in his capacity as Treasurer; National Rifle Association Institute for Legislative Action (NRA-ILA); OnMessage, Inc.; Starboard Strategic, Inc.; National Media Research Planning and Placement, LLC (National Media), and Jon Ferrell in his capacity as Chief Financial Officer of National Media. (OnMessage, Inc. and Starboard Strategic, Inc. were notified of this Complaint as respondents, the Complaint does not allege any violations of the Act or Commission regulations by either.<sup>1</sup>)

This is the fourth in a series of politically-motivated, harassing complaints filed by the Campaign Legal Center and Giffords in conjunction with an activist reporter at the anti-NRA outlet *The Trace*. (*The Trace* published a new piece on January 11, 2019, containing new allegations of the same nature, indicating that a fifth round of complaints is forthcoming.) The Campaign Legal Center has used these complaints to advance its fundraising efforts.<sup>2</sup>

The Respondents have already filed responses thoroughly refuting the allegations made in MURs 7427, 7497, and 7524. Those responses are included here as Attachment G. Most of the allegations made in the present Complaint are of the same nature.

<sup>1</sup> OnMessage, Inc. and Starboard Strategic, Inc. are mentioned in Paragraph 15 of the Complaint, but neither is included in any of the Complainants' "Causes of Action" at Paragraphs 57-68.

<sup>2</sup> See, e.g., Attachment A, Campaign Legal Center, "Why We Watchdog," Dec. 20, 2018.

## I. Overview

In this Complaint, the Campaign Legal Center and Giffords allege that NRA-PVF and NRA-ILA made independent expenditures in connection with the 2016 presidential election that were coordinated with Donald J. Trump for President, Inc., through a common media placement vendor. The Complainants claim that “National Media officials made use of their knowledge about the ‘plans, projects, activities or needs’ of the Trump campaign to most effectively place the NRA-ILA and NRA-PVF ads supporting Trump.”<sup>3</sup> The Complainants contend that a “pattern of activity” it believes it has uncovered “provide[s] reason to believe that National Media employees used information about the ‘plans, projects, activities or needs’ of Donald J. Trump for President, Inc. in placing ads for the NRA-ILA and NRA-PVF.”<sup>4</sup>

The Complainants and the advocates at *The Trace* with whom they are working are wrong on all counts. National Media employees were appropriately firewalled at all times and the documents to which the Complainants point are either misunderstood, intentionally mischaracterized, or simply do not carry the significance the Complainants claim.

The Complainants’ allegations that advertising buys for two clients were “coordinated” are premised upon publicly-available advertising buy information obtained from the FCC’s online database.<sup>5</sup> In fact, every document included in the Complaint at Exhibits E – O was obtained from the FCC’s public database. The Complainants’ exhibits include several types of documents, including: (1) NAB Form PB-18; (2) “Traffic Instruction” documents; (3) Advertising Request Sheets; and (4) various invoicing and scheduling documents. The latter category includes detailed ad buy agreements that show when, where, and on what channel an advertiser’s commercial is scheduled to air. These documents generally are placed in the FCC’s public database either before or at the beginning of a scheduled “flight.”

The Complainants seem to pretend that ad buyers do not also have access to this very same publicly-available information when making ad buys. The Commission’s regulations provides that the “common vendor” conduct standard “is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source.”<sup>6</sup> *Anyone* who wants to

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<sup>3</sup> Complaint at ¶ 64.

<sup>4</sup> *Id.* at ¶ 65.

<sup>5</sup> Mike Spies, *Documents Point to Illegal Campaign Coordination Between Trump and the NRA*, *The Trace* (Dec. 6, 2018), <https://www.thetrace.org/2018/12/trump-nra-campaign-coordination/> (“Records in the FCC ‘public inspection files’ — files that television stations maintain in order to comply with transparency regulations around political advertising — show that Red Eagle and AMAG often bought ads around the same time, on the same stations, for the NRA and the Trump campaign, respectively.”)

<sup>6</sup> 11 C.F.R. § 109.21(d)(iii).

“match” or “complement” another person’s ad buy can easily do so using information that the FCC requires to be publicly disclosed “immediately.”

To connect various dots in these documents, the Complainants and the activist with *The Trace* concocted the most sensational, irresponsible story possible, with helpful quotes provided by “a former general counsel for the Federal Election Commission” (who is, or has been, an employee of one of the Complainants) and a cooperative “former chair of the Federal Election Commission.”<sup>7</sup> Both were presumably approached as “reliable quotes,” and their former titles used to lend credence to the story. Either both were willing to participate in this charade for political reasons, or neither has any idea what he or she is talking about. We suspect the former, but do not rule out the latter.

## II. Publicly Available Information Renders Ad Buy “Coordination” Obsolete

According to the Complainants, the sophisticated actors identified in their Complaint engaged in a coordination scheme that a handful of activists were able to uncover simply by searching publicly-available documents. Mr. Noble and former Commissioner Ravel pretend to accept this as plausible and repeat the ridiculous talking point that “coordination” routinely occurs, out in the open for all to see, because no one fears enforcement.<sup>8</sup> The Complainants persist in these claims even though it is plainly obvious that the FCC’s requirements, along with television station sales representatives’ business practices, render “common vendor” coordination through media buyers obsolete and a completely unnecessary proposition.

### A. FCC Regulations Require Broadcasters to Publicly Disclose Ad Buy Details “Immediately”

FCC regulations require broadcast, cable, and satellite stations to place ad buy information in the FCC’s online, publicly-accessible “political file” “as soon as possible,” which the FCC defines to mean “immediately absent unusual circumstances.”<sup>9</sup> In 2016, the FCC

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<sup>7</sup> Mr. Noble pronounces, “This is very strong evidence, if not proof, of illegal coordination.” Mike Spies, *Documents Point to Illegal Campaign Coordination Between Trump and the NRA*, *The Trace* (Dec. 6, 2018), <https://www.thetrace.org/2018/12/trump-nra-campaign-coordination/>. And former Commissioner Ravel declares, “I don’t think I’ve ever seen a situation where illegal coordination seems more obvious.” *Id.*

<sup>8</sup> Ravel: “It is so blatant that it doesn’t even seem sloppy. Everyone involved probably just thinks there aren’t going to be any consequences.” *Id.* Noble: “What this reflects is the FEC’s lack of enforcement and the lack of respect that the NRA and the vendor are showing toward the FEC and the law. You do this if you think no one is going to investigate.” Christopher Hooks and Mike Spies, *Documents Show NRA and GOP Candidates Coordinated Ads in Key Senate Races*, *The Trace* (Jan. 11, 2019), <https://www.thetrace.org/2019/01/nra-coordinated-ad-efforts-with-gop-senate-campaigns/>.

<sup>9</sup> See 47 C.F.R. § 1943(c) (“All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.”); 47 C.F.R. § 76.1701(c) (same requirement for cable television systems); 47 C.F.R. § 25.701(d)(2) (same requirement for direct broadcast satellite (DBS) providers).

explained: “The contents of the political file are time-sensitive. Therefore, it is essential that there be no delay in posting political file materials to the online file.”<sup>10</sup>

Comprehensive, easily-searchable television and radio ad buy information is required to be made publicly available by stations “immediately.”<sup>11</sup> This public, online political file database contains all the information that any advertiser, or that advertiser’s media buyers, would need to place an ad buy in response to another advertiser’s buy. Media buyers have access to the very same publicly-available information as the Complainants, and public disclosure information *can* be used for things other than complaining, misleading the media, and harassing others. One consequence of having access to this up-to-date, public information is that it renders “coordination” among advertisement placement vendors, as the Commission defines the term, either pointless or impossible. Political ad buys are not secret, and they are not supposed to be secret.<sup>12</sup>

Extensive information pertaining to political ad buys is made public after orders are placed, meaning the public generally has access to this information *before* the ads actually air.

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<sup>10</sup> *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 at ¶ 27 (Jan. 29, 2016). The Campaign Legal Center is very familiar with the FCC’s online public political file and its contents. In 2014, and again in 2016, the Campaign Legal Center carped to the FCC about more aggressively policing broadcast station compliance with the agency’s online political file requirements. *See, e.g.*, Campaign Legal Center, *Campaign Legal Center and Sunlight Foundation File FCC Complaints Against Broadcasters Nationwide for Failure to Disclose Required Information on Political Ads*, April 30, 2014, <https://campaignlegal.org/press-releases/campaign-legal-center-and-sunlight-foundation-file-fcc-complaints-against>; Campaign Legal Center, *FCC Has Failed to Protect Voters’ Right to Know Who Is Behind Political Ads in Election 2016*, Sept. 23, 2016, <https://campaignlegal.org/press-releases/fcc-has-failed-protect-voters-right-know-who-behind-political-ads-election-2016>.

<sup>11</sup> *See* Wilkinson Barker Knauer LLP, *Political Broadcasting: Questions and Answers on the FCC Rules and Policies for Candidate and Issue Advertising* (March 16, 2016), [https://www.wbklaw.com/uploads/file/Articles-%20News/Political%20Broadcasting\(2\).pdf](https://www.wbklaw.com/uploads/file/Articles-%20News/Political%20Broadcasting(2).pdf) at 27-28:

**When does information need to be placed in the public file?**

As the public file is the source of all information for candidates, the information should be placed in the file “immediately”, i.e. as quickly as possible - as soon as orders are placed or a “use” is made of the station, within a day, so that opposing candidates have access to up-to-the-minute information.

<sup>12</sup> *See* David Oxenford, *Beware of the Political File Obligations in this Hot Political Advertising Year*, Broadcast Law Blog, Oct. 1, 2018, <https://www.broadcastlawblog.com/2018/10/articles/beware-of-the-political-file-obligations-in-this-hot-political-advertising-year/> (“[T]he political file has two main purposes. First, it is designed to provide information to the public about who is trying to convince them to vote in a certain way or to take action on other political issues that may be facing their country or community. Second, the file is to inform one candidate of what uses of broadcast stations his or her opponents are making.”)

The information required to be disclosed by each television station includes the name of the advertiser, the “date and time that the ads are to be aired,” and “the rate charged for the ads.”<sup>13</sup> In other words, broadcasters are *required* to “immediately” make public all of the information that Advertiser A would need to “coordinate” an ad buy with Advertiser B.

### **B. Broadcaster Stations’ Media Representatives Make Ad Buy Details Available to All Media Buying Agencies and Ad Buyers**

In addition to the FCC database, media buyers and their agencies also receive advertising order information from the media representative (“media rep”)<sup>14</sup> firms that serve television (both broadcast and cable) and radio stations. (In some cases, this information may also be provided directly by the station.) When an advertising order is placed, the media reps notify ad buying agencies via widely-distributed emails that detail the following information about an ad buy: (1) advertiser, (2) market(s), (3) station(s), (4) date range, and (5) total dollar amount of the order. These notifications are sent to media buyers across the country as a form of marketing that is intended to prompt competitors to also make ad buys.<sup>15</sup> The media reps’ emails contain the same basic information that stations place in the FCC database, and information from both sources is aggregated by third parties and sold as a research tool. There is no shortage of public information about ad buying.

### **III. National Media Research Planning and Placement, LLC**

As previously explained in the response to MUR 7524, National Media Research Planning and Placement LLC (National Media) has offices in Alexandria, Virginia. “Red Eagle Media Group” and “American Media & Advocacy Group”<sup>16</sup> (AMAG) are both fictitious names used by National Media. (A fictitious name is more commonly referred to as a “DBA” or an “assumed business name.”) National Media, Red Eagle, and AMAG are the same company. National Media’s fictitious names were initially acquired, and continue to be used, to facilitate compliance with the Commission’s common vendor regulations by providing an easy mechanism by which clients can be separated.<sup>17</sup> To the best of our knowledge, the Act has

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<sup>13</sup> Wilkinson Barker Knauer LLP, *Political Broadcasting: Questions and Answers on the FCC Rules and Policies for Candidate and Issue Advertising* (March 16, 2016), [https://www.wbklaw.com/uploads/file/Articles-%20News/Political%20Broadcasting\(2\).pdf](https://www.wbklaw.com/uploads/file/Articles-%20News/Political%20Broadcasting(2).pdf) at 27-28.

<sup>14</sup> These “media reps” are intermediaries between stations and advertisers, and effectively serve as the stations’ sales managers.

<sup>15</sup> Attachment D, Affidavit of Ben Angle at ¶ 9.

<sup>16</sup> The Complaint refers to American Media & Advocacy Group, LLC (AMAG LLC) at Paragraph 46. AMAG LLC is a separate legal entity that was created by National Media’s principals but has never had any operations. The Complaint’s reference to “AMAG” at Paragraph 47 is a reference to the fictitious name used by National Media. AMAG LLC and AMAG (the fictitious name) are unrelated.

<sup>17</sup> Attachment B, Affidavit of Robin Roberts at ¶ 4.

nothing to say about how individuals may or must organize their business, and neither the Act nor Commission regulations purport to govern the use of registered fictitious names or DBAs by commercial vendors.

The Respondents do not contest that National Media, Red Eagle, and AMAG, by virtue of their being operated and controlled by the same individuals, may be treated as a “common vendor” in this matter with respect to the NRA-ILA and NRA-PVF and Donald J. Trump for President, Inc.<sup>18</sup>

The Complaint recounts various ad buys involving National Media, Red Eagle, AMAG, NRA-ILA, NRA-PVF, and Donald J. Trump for President, Inc., and identifies four National Media employees who allegedly “placed” ads for both the NRA-ILA/NRA-PVF and Donald J. Trump for President, Inc.

The NRA-ILA and NRA-PVF did not engage in ad placement discussions directly with National Media personnel. Rather, other consultants retained by NRA-ILA and NRA-PVF, namely Starboard Strategic, Inc., performed this role. The NRA-ILA and NRA-PVF were aware that both consultants (National Media and Starboard Strategic) operated with Commission-compliant firewall policies.

#### **A. National Media Employees Were Appropriately Firewalled**

National Media adopted a firewall policy on March 26, 2016,<sup>19</sup> to prevent common vendor “coordination” between its political clients. On September 15, 2016, this policy was supplemented with the “Trump Firewall Policy,”<sup>20</sup> which revised the existing firewall policy. All advertising placement decisions for the advertisements referenced in the Complaint were made in accordance with these policies. All decisions regarding placement of the advertisements referenced in the Complaint were made and implemented by firewalled media buyers (such as Ben Angle and Kristy Kovatch, discussed below), and not by management and administrative employees (such as Jon Ferrell and Caroline Kowalski, also discussed below).

The Trump Firewall Policy, included at Attachment F, set forth the following terms and requirements:

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<sup>18</sup> The Commission’s treatment of separate but related entities as “common vendors” was addressed in a prior response. *See* Attachment G, MUR 7427, Response at 6-7. As noted above, National Media, Red Eagle, and AMAG are the same company.

<sup>19</sup> *See* Attachment F, National Media (American Media and Advocacy Group) Firewall Policy. National Media’s 2016 Firewall Policy is titled “American Media and Advocacy Group Firewall Policy.” As explained above, National Media, American Media and Advocacy Group (AMAG), and Red Eagle are the same company. The 2016 firewall policies use the name “American Media and Advocacy Group” to refer to the single company.

<sup>20</sup> *See* Attachment F, National Media (American Media and Advocacy Group) Trump Firewall Policy.

1. All media buying efforts for DJT [Donald J. Trump for President, Inc.] will be undertaken through American Media & Advocacy Group (AMAG). No media buying for DJT can be undertaken through any other affiliated organization (e.g., National Media Research, Planning and Placement) until further notice.
2. The team leader for our work for DJT is Evan Tracey, who is responsible for all work assignments for this engagement. Do not have discussions with any other team leader with regard to your work for DJT.
3. Any employee providing services for DJT is prohibited (1) from working for an independent expenditure client or a party client in connection with the presidential election, and (2) from communicating with other company employees who provide services to an independent expenditure client or party client in connection with the presidential election regarding the substance of the DJT team member's work, or regarding the other employees' work for an independent expenditure client or party client. Of course, routine, nonsubstantive communications, such as exchanging pleasantries, are permitted.
4. Attached for your reference is a list of the employees who will be working on the DJT media buying efforts. Do not discuss DJT work with anyone whose name is not on this list, unless those discussions relate to administrative or management issues as addressed in Paragraph 5 of the [existing] Firewall Policy. This list will be updated as needed and will be provided to you.
5. Our media buying work for different clients is distributed through our affiliated entities (e.g., AMAG, National Media Research, Planning and Placement, or Red Eagle Media Group) as a way to reinforce firewall procedures. Therefore, do not assume that because you and another employee are undertaking work through different affiliated entities that you may discuss your work for DJT with him or her.
6. As noted above, an employee will not be permitted to buy media for DJT and an independent expenditure client or party client in connection with the presidential election. It is possible, however, due to resource constraints, that an employee may be assigned to buy media for DJT, and buy media for an independent expenditure client in connection with an entirely different election race (e.g., involving a House or Senate candidate).

7. Every media buyer is absolutely prohibited from accessing another media buyer's media files in our Strata database. You should not share your account password and login information with any other employee.

An attachment to the Trump Firewall Policy listed the following individuals as the "AMAG media buying team for Donald J. Trump for President": Evan Tracey, Team Leader; Ben Angle, Media Buyer; Tracey Robinson, Media Buyer; Michelle Lawrence, Media Buyer; and Kristy Kovach.<sup>21</sup>

## **B. Management and Administrative Staff Did *Not* Make Ad Buying Decisions**

### **1. Jon Ferrell and NAB Form PB-18**

The role of one National Media employee, Jon Ferrell, was addressed in the response to MUR 7524. Mr. Ferrell is the longtime Chief Financial Officer (CFO) of National Media.<sup>22</sup> Mr. Ferrell is a Certified Public Accountant (CPA) who manages accounting and financial matters for National Media, including billing and paying broadcast stations for advertisement buys.<sup>23</sup>

#### **a. The Complainants' Allegations**

The Complainants make the following claims about Mr. Ferrell:

1. "On July 11, 2016, Ferrell signed an agreement form on behalf of the NRA-PVF and Red Eagle for ads pertaining to the '2016 Presidential Election, 11/8/2016 Hillary Clinton & Donald Trump.'"<sup>24</sup>
  - The referenced "agreement form" is included in the Complaint at Exhibit G and is NAB Form PB-18 (Agreement Form for Non-Candidate Advertisements). The form identifies the station and location as WTVD Raleigh-Durham, NC, and the date as July 11, 2016. The issue is identified as "2016 Presidential Election, 11/8/2016 Hillary Clinton & Donald Trump." The ad buy details are not included, and "see schedule" is noted in that section. No details are listed in the "Agreed Upon Schedule" schedule; instead, "As Attached" is noted. The form identifies the advertiser as the National Rifle Association of America Political Victory Fund and NRA-PVF.

<sup>21</sup> Attachment F, National Media (AMAG) Trump Firewall Policy.

<sup>22</sup> See Attachment C, Affidavit of Jon Ferrell at ¶ 2.

<sup>23</sup> See *id.* at ¶ 3.

<sup>24</sup> Complaint at ¶ 22.



2. “On August 5, 2016, Ferrell signed another agreement form on behalf of the NRA-PVF and Red Eagle related to ‘Hillary Clinton for U.S. President, Nov. 8, 2016 General Election, Gun Control’ and slated to run August 8 through August 14, 2016.”<sup>25</sup>

- The referenced “agreement form” is included in the Complaint at Exhibit H and is NAB Form PB-18 (Agreement Form for Non-Candidate Advertisements).

3. “Ferrell signed a check paid to the station, and signed an agreement form” relating to mid-August “NRA-PVF ad purchase on a Florida station.”<sup>26</sup>

- Mr. Ferrell’s signature appears on the referenced check, which is included in the Complaint at Exhibit I.
- The referenced “agreement form” is included in the Complaint at Exhibit I and is NAB Form PB-18 (Agreement Form for Non-Candidate Advertisements).

4. “Ferrell signed the accompanying agreement form” relating to a NRA-ILA ad buy placed by Red Eagle on Raycom Sports Network on September 15, 2016, for airings in September, October, and November 2016.<sup>27</sup>

- The referenced “agreement form” is included in the Complaint at Exhibit L and is NAB Form PB-18 (Agreement Form for Non-Candidate Advertisements).

5. “On October 4, 2016, Ferrell signed a Trump campaign/AMAG agreement form as an ‘agent for Donald J. Trump for President, Inc.’”<sup>28</sup>

- The referenced “agreement form” is included in the Complaint at Exhibit O and is NAB Form PB-18 (Agreement Form for Non-Candidate Advertisements).

6. “On October 19, 2016, Ferrell signed on behalf of Red Eagle and the NRA-PVF for a ‘pro-Trump anti-Clinton’ ad buy on the Norfolk, VA ABC affiliate, WVEC. The ads were scheduled to run from October 25 to October 31, 2016.”<sup>29</sup>

- The document that Mr. Ferrell “signed” is included in the Complaint at Exhibit Q and is NAB Form PB-18 (Agreement Form for Non-Candidate Advertisements).

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<sup>25</sup> *Id.* at ¶ 23.

<sup>26</sup> *Id.* at ¶ 25.

<sup>27</sup> *Id.* at ¶ 31.

<sup>28</sup> *Id.* at ¶ 35.

<sup>29</sup> *Id.* at ¶ 39.

7. “Five days later, on October 24, 2016, Ferrell signed on behalf of AMAG and Donald J. Trump for President, Inc. for ‘pro-Trump anti-Clinton’ ads on the same Norfolk, VA station. The ads were scheduled to run from October 25 to October 31, 2016.”<sup>30</sup>

- The document that Mr. Ferrell “signed” is included in the Complaint at Exhibit R and is NAB Form PB-18 (Agreement Form for Non-Candidate Advertisements).

8. “Also on November 4, 2016, Ferrell signed an agreement form for presidential election ads placed by AMAG as an ‘agent of RNC/Trump for President.’”<sup>31</sup>

- The referenced “agreement form” is included in the Complaint at Exhibit X and is NAB Form PB-18 (Agreement Form for Non-Candidate Advertisements).

The handwritten notes that appear on the above-referenced NAB Form PB-18 documents were made by the broadcast stations. Mr. Ferrell did not make handwritten notes on any of these forms.

**b. Mr. Ferrell’s Position Is Not One That May Facilitate Coordination**

As National Media’s Chief Financial Officer, Mr. Ferrell is not involved in the creation, production, or distribution of any advertising.<sup>32</sup> He does not make decisions regarding the development of media strategy, including the selection of advertising slots.<sup>33</sup> He does not select advertising audiences, develop the content of advertising, produce public communications, identify voters, or otherwise provide consulting or media advice.<sup>34</sup> Mr. Ferrell’s position does not involve any of the services identified at 11 C.F.R. § 109.21(d)(4)(ii)(A) – (I), and he is not involved in any of the creative or discretionary activities that implicate the Commission’s coordination regulations. Mr. Ferrell’s interaction with National Media’s media buyers generally consists of receiving billing and invoicing instructions from those buyers,<sup>35</sup> and his involvement in the purchasing of advertising is limited to this administrative function.

Mr. Ferrell’s role is addressed on Page 2, Paragraph 5 of National Media’s (AMAG’s) 2016 Firewall Policy which provides that “employees who perform management functions (e.g., financial, strategic, or corporate leadership) which affect all AMAG clients” are not subject to

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<sup>30</sup> *Id.* at ¶ 40.

<sup>31</sup> *Id.* at ¶ 45.

<sup>32</sup> Attachment C, Affidavit of Jon Ferrell at ¶ 5.

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

<sup>34</sup> *Id.* at ¶¶ 6-7.

<sup>35</sup> *Id.* at ¶ 3.

the firewall restrictions. However, “these management employees will not be provided access to information material to the creation, production or distribution of the clients’ communications.”<sup>36</sup>

As explained in the Response to MUR 7524, Mr. Ferrell often signs NAB Form PB-18 on behalf of his employer’s clients *after* that form is prepared by others;<sup>37</sup> this act is a purely administrative one.

### c. NAB Form PB-18 Is Not Evidence of Coordination

As was the case in MUR 7524, the “agreement forms” that bear Mr. Ferrell’s signature, and to which the Complaint repeatedly refers, are NAB Form PB-18. Despite what the Complainants assert in MURs 7524 and 7553, and despite their intentional misrepresentations to the media, **these “agreement forms” are not contracts and they have nothing whatsoever to do with the selection of audiences and time slots. NAB Form PB-18 is not a contract that has the effect of “buying ads.”<sup>38</sup> NAB Form PB-18 does not authorize the airing of ads. One does not “place an advertisement” by signing NAB Form PB-18.**

NAB Form PB-18 is a disclosure form that broadcasters use to place basic information about an ad buy into their FCC-mandated public political file. The actual details of an ad buy are included on other documents that the broadcaster places in its political file. The Campaign Legal Center knows that Mr. Ferrell’s signature on NAB Form PB-18 in no way suggests that he is involved in some sort of coordination scheme. In the past, the Campaign Legal Center has presented itself as knowledgeable on this subject. In 2016, for instance, the Campaign Legal Center explained:

When uploading political files, most broadcasters use an industry-standard form provided by the National Association of Broadcasters (NAB). . . . However, a number of broadcasters use a personalized variation of the NAB form that fulfills the same requirements.<sup>39</sup>

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<sup>36</sup> See Attachment F, National Media (American Media and Advocacy Group) Firewall Policy at ¶ 5.

<sup>37</sup> Attachment C, Affidavit of Jon Ferrell at ¶ 4.

<sup>38</sup> See, e.g., Chuck Raasch, *New report alleges illegal ad-buying coordination between NRA and Hawley Senate campaign*, St. Louis Post-Dispatch (Jan. 13, 2019), [https://www.stltoday.com/news/local/govt-and-politics/new-report-alleges-illegal-ad-buying-coordination-between-nra-and/article\\_da164ac3-ed85-5f16-8d71-24a8d792fcee.html](https://www.stltoday.com/news/local/govt-and-politics/new-report-alleges-illegal-ad-buying-coordination-between-nra-and/article_da164ac3-ed85-5f16-8d71-24a8d792fcee.html) (“Here you have the exact same person *buying ads* on behalf of both the NRA and the Hawley campaign, in some instances on the same day, so it is impossible to understand how that vendor could have established a firewall,” [Campaign Legal Center employee Brendan] Fischer said.”) (emphasis added).

<sup>39</sup> Campaign Legal Center, *Who’s Behind That Political Ad? The FCC’s Online Political Files and Failures in Sponsorship Identification Regulation* (Sept. 2016) at 5, <https://campaignlegal.org/sites/default/files/Who%27s%20behind%20that%20political%20ad.pdf>.

Also in 2016, the Campaign Legal Center provided the following information to the Center for Responsive Politics:

Most stations use the NAB form — but not all. And beyond that, there is absolutely no standardization in filing.

According to a Campaign Legal Center consultant’s analysis of the whole archive, broadcasters nationwide were using about 80 different forms to report the same type of information, making it difficult for anyone to sort the information.<sup>40</sup>

While the “Agreement Form” heading may suggest otherwise, NAB Form PB-18 is *not* a contract of any sort – as is obvious from its contents and which the Campaign Legal Center has noted in the past.<sup>41</sup> Rather, it provides basic information about an advertisement sponsor, which the signer represents as accurate, and is placed by the broadcaster in the broadcast station’s public file along with other documentation produced by the broadcaster. NAB Form PB-18 does not itself include details of an ad buy schedule; that information is added separately by the broadcaster, as the Campaign Legal Center has noted in the past. In the space provided for those details, the form uploaded by the broadcaster typically reads “see attached” or “see schedule.” According to the Campaign Legal Center:

The NAB Agreement provides the space *for stations* to meet the disclosure requirements of section 315 of the Communications Act. The form asks whether the ad communicates a “message relating to any political matter of national importance.” If yes, then *the station* must, in the next section, disclose the name of the candidate, the office being sought, the date of the election and/or the issue to which the ad refers. The form gives several examples of legislative issues of national importance, including the “Affordable Care Act.”<sup>42</sup>

NAB Form PB-18 is intended to fulfill the broadcaster’s public disclosure obligation; it is not a contract between the broadcaster and the ad sponsor. Most importantly for present purposes, NAB Form PB-18 does not contain or reveal *any* information about the particulars of an ad buy, including the so-called “flight,” or airing schedule. Those details are contained in the actual purchase contract, a version of which is uploaded to the broadcaster’s public file

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<sup>40</sup> Soo Rin Kim, *Gaping holes, confusion mar FCC’s data on political ad buys*, Center for Responsive Politics, Sept. 27, 2016, <https://www.opensecrets.org/news/2016/09/gaping-holes-confusion-mar-fccs-data-on-political-ad-buys/>.

<sup>41</sup> See Complaint of Issue One and Campaign Legal Center Against Cox Media Group, licensee of WSB-TV, Atlanta, GA For Violations of the Communications Act § 315 and FCC Regulation § 73.1212 at 6, <http://www.campaignlegalcenter.org/sites/default/files/8-21-17%20FCC-WSB-Patriot%20Majority.pdf> (The NAB Agreement provides the space for stations to meet the disclosure requirements of section 315 of the Communications Act.).

<sup>42</sup> *Id.* (emphasis added).

separately *by the broadcaster* in accordance with FCC requirements.<sup>43</sup> (Documents related to orders and advertising requests may also include these details.) As the Center for Responsive Politics explained:

Under the Section 315 of the Communications Act, all broadcasters have to maintain a complete record of requests to purchase air time that includes ad buyer and content information. Forms drawn up by the National Association of Broadcasters usually contain the same information. **Contracts and invoices generally detail dates and times ads were aired and amount paid to purchase broadcast time.**<sup>44</sup>

The Complainants include several versions of these “contracts and invoices” as exhibits. Before the FCC, the Campaign Legal Center has noted that these separate contract and invoicing documents “disclose[] rates, dates, and times the ad ran.”<sup>45</sup> Contrary to the Complainants’ claims, the act of “placing an advertisement” is accomplished via the purchase contract; NAB Form PB-18 is just a basic *broadcaster* disclosure form. The Campaign Legal Center is fully cognizant of this distinction, and until now has offered itself to the media as an “expert” on the subject. Only recently has the Campaign Legal Center found it politically convenient to act as if it is totally ignorant about the subject.

As was the case in MUR 7524, the Complainants’ dishonesty on this issue is intended to create the misimpression that Mr. Ferrell signed contractual agreements to purchase air time for National Media clients and that he was therefore involved in the selection of media outlets, target

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<sup>43</sup> See Campaign Legal Center, *Who’s Behind That Political Ad? The FCC’s Online Political Files and Failures in Sponsorship Identification Regulation* (Sept. 2016) at 5 (“This NAB form is uploaded alongside broadcasting details to the FCC’s online portal.”); Complaint of Issue One and Campaign Legal Center Against Cox Media Group, licensee of WSB-TV, Atlanta, GA For Violations of the Communications Act § 315 and FCC Regulation § 73.1212 at 5 (“WSB-TV uploaded a number of documents to its online political file for the sale of airtime for ‘Yard,’ including but not limited to: the contract, which discloses rates, dates, and times the ad ran, in compliance with section 315(e)(2)(A)-(D); and the National Association of Broadcasters (NAB) Form PB-18, ‘Agreement Form for Non-Candidate/Issue Advertisements’ (‘NAB Agreement’). The NAB Agreement acknowledged that the ad related to the election in Georgia’s Sixth Congressional District.”) (citations omitted).

<sup>44</sup> Soo Rin Kim, *Gaping holes, confusion mar FCC’s data on political ad buys*, Center for Responsive Politics, Sept. 27, 2016, <https://www.opensecrets.org/news/2016/09/gaping-holes-confusion-mar-fccs-data-on-political-ad-buys/>.

<sup>45</sup> See *Complaint of Campaign Legal Center and Sunlight Foundation Against The Gannett Company, licensee of WCNC-TV, Charlotte, NC, For Violations of the Communications Act § 315 and FCC Regulation § 73.1212* at 6 (May 1, 2014), <https://campaignlegal.org/sites/default/files/WCNC-PMP.pdf> (“WCNC-TV uploaded the following to its online political file for the sale of airtime for ‘Bad Company’: the contract, which discloses rates, dates, and times the ad ran, in compliance with section 315(e)(2)(A)-(D); and the National Association of Broadcasters (NAB) Form PB18, ‘Agreement Form for Non-Candidate/Issue Advertisements.’”).

audiences, and advertising time slots for multiple clients. The Complainants assert that “Jon Ferrell signed documents on behalf of AMAG placing placing [sic] ads for Donald J. Trump for President, Inc. on October 4, October 24, November 3, and November 4, 2016, and on behalf of Red Eagle for NRA-PVF ad buys on July 11, August 5, and October 19, 2016, and for an NRA-ILA ad buy on September 15, 2016.”<sup>46</sup> The Complaint also asserts that Mr. Ferrell’s signature of NAB Form PB-18 means he “purchased ads.”<sup>47</sup> The Complainants make claims about Mr. Ferrell that are knowingly false.

In summary, the basis for all of the Complainants’ claims about Mr. Ferrell is his signature on several NAB Form PB-18 filings. However, a signature on NAB Form PB-18 does not constitute “placing an advertisement” or “buying an ad.” Based upon the Campaign Legal Center’s own past writings, the Campaign Legal Center knows this, but makes false claims anyway. It is also plainly evident from even a cursory review of these forms that they contain no information whatsoever that would lead a reasonable person to conclude “coordination” had occurred. The Complainants know this as well, meaning any allegations of coordination they make on the basis of NAB Form PB-18 are made in bad faith.

## 2. Caroline Kowalski, “Traffic Instructions” Forms, and Rate Requests

Caroline Kowalski worked for National Media from March 2016 to May 2017. Ms. Kowalski was hired as an entry-level employee and worked as an assistant to the firm’s media buyers, providing administrative and clerical services. Her job duties included requesting rates from stations, transmitting orders to stations, and transmitting traffic instructions to stations. Ms. Kowalski had no role in making decisions regarding ad placement and did not provide any strategic advice to clients; she simply transmitted the orders and traffic instructions provided by National Media’s media buyers (who, in turn, typically receive that information from a media director or other media consultant).<sup>48</sup>

According to the Complaint, Ms. Kowalski is listed as a “contact person” in documents relating to the following ad buys:

1. NRA-PVF, on or about August 11, 2016.<sup>49</sup>
  - The “Traffic Instructions” document to which the Complaint refers is included in the Complaint at Exhibit I.
  - Other documents included in the Complaint at Exhibit I very clearly identify “Megan Burns” as the “buyer” for this advertisement.

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<sup>46</sup> Complaint at ¶ 63(c).

<sup>47</sup> *Id.* at ¶ 64 (“Jon Ferrell purchased ads”).

<sup>48</sup> Attachment B, Affidavit of Robin Roberts at ¶ 5.

<sup>49</sup> Complaint at ¶ 25.

2. Donald J. Trump for President, Inc., on or about September 28, 2016.<sup>50</sup>
  - The “Traffic Instructions” document to which the Complaint refers is included in the Complaint at Exhibit N.
3. NRA-PVF, on or about October 28, 2016.<sup>51</sup>
  - The referenced “Station Issue Advertising Request Sheet” is included in the Complaint at Exhibit S. Ms. Kowalski is listed as the contact person for Red Eagle Media Group.
4. Donald J. Trump for President, Inc., on or about November 3, 2016.<sup>52</sup>
  - The referenced document is included in the Complaint at Exhibit U and is the template “Traffic Instructions” cover sheet discussed above.
5. Donald J. Trump for President, Inc., on or about November 4, 2016.<sup>53</sup>
  - The referenced document is included in the Complaint at Exhibit W. It is titled “Political Inquiry Form; Request for Political Candidate Ratecard.” It appears that Ms. Kowalski submitted the request that led to the creation of this form, and she is listed as the “agency contact.” As noted above, one of Ms. Kowalski’s job duties was to request advertising rates from broadcast stations. The referenced “Political Inquiry Form” is used for that purpose.

**a. “Traffic Instructions”**

The “Traffic Instructions” document is sent to television and radio stations to tell them what advertisement to air and when. The “Traffic Instructions” document at Exhibit I in the Complaint serves as a good example. Here, Ms. Kowalski received the information contained on the Traffic Instructions document from others. The form is directed to the broadcast station’s “TRAFFIC MANAGER,” and advises that person to air an advertisement coded “NRAHDV111216.” The instructions indicate that this ad should air according to rotation schedule referred to as “NRATV080316H.” (This rotation code was incorrect as it indicated a television schedule whereas the advertisement at issue was a radio ad.) Both codes must be “translated” – *i.e.*, matched – to other materials and documents before the traffic instructions can be executed. At the bottom of the form, the station has initialed to indicate its receipt and acknowledgement. The form is a single page and does not include any attachments. With respect to this form, Ms. Kowalski received the code from others and her position did not require

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<sup>50</sup> *Id.* at ¶ 34.

<sup>51</sup> *Id.* at ¶ 42.

<sup>52</sup> *Id.* at ¶ 44.

<sup>53</sup> *Id.* at ¶ 45.

her to know what that code actually meant. Her job was to place the information she received from others onto this form and send it to the appropriate station.

The Complainants perceptively observe that the “Traffic Instructions” document used by *both* AMAG and Red Eagle “very closely resemble[]” each other, and “are formatted identically, both list Kowalski, and both list the same mailing address, phone number, and fax number in the header.”<sup>54</sup> This is because it is a template form used by both AMAG and Red Eagle, which are the same company. What the Complainants have uncovered through their close examination of Traffic Instructions documents is a template form. If the Traffic Instructions document provides evidence of “coordination,” then it means that the administrative assistants of a firewalled common vendor may not use the same forms for different clients. This level of nonsense from the Complainants is difficult to take seriously.

#### **b. Rate Requests**

The Complainants also found Ms. Kowalski’s name on two documents related to advertising rate requests.

The document included in the Complaint at Exhibit S, titled “Station Issue Advertising Request Sheet,” is a document produced by the broadcast station’s media representative (“media rep”) firm after receiving a request for rates from an agency such as National Media. Any information on that document was input by the station’s media rep. The agency address, phone number, and contact person listed often reflects what is in the media rep’s files at the time and may or may not be current.

The document included in the Complaint at Exhibit W, titled “Political Inquiry Form; Request for Political Candidate Ratecard,” is another version of the form discussed in the paragraph above. It was also produced by the broadcast station’s media representative (“media rep”) firm after receiving a request for rates from an agency such as National Media. Any information on that document was input by the station’s media rep. As was the case above, the agency address, phone number, and contact person listed often reflects what is in the media rep’s files at the time and may or may not be current.

As noted, both documents were created in response to receiving a request for advertising rates. One of Ms. Kowalski’s job duties was to submit ad rate requests and she may have submitted one or both of the requests that led to the creation of the documents discussed above. (It is also possible that she did not and the person who created each form simply had her name in their system already.) In any event, submitting an advertising rate request at the direction of others in no way implicates the Commission’s coordination regulations. None of the referenced documents establish, or even suggest, that Ms. Kowalski was in any way involved with the development of media strategy, including the selection or purchasing of advertising slots, the selection of audiences, the development of communication content, or the provision of media

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<sup>54</sup> *Id.* at ¶ 34.



advice.<sup>55</sup> The documents reflect only that Ms. Kowalski, at some point in time, performed administrative duties on behalf of National Media.

**C. National Media’s Ad Buyers Were Firewalled and Did Not Engage in “Coordination”**

**1. Ben Angle**

Ben Angle works for National Media as a media buyer. A “media buyer” purchases advertising time on behalf of a client. In some cases, the media buyer has a role in selecting media outlets and time slots, while in other cases, these decisions are made in whole or in part by other persons representing the advertiser.<sup>56</sup>

Mr. Angle performed media buying services for the NRA-PVF and NRA-ILA in 2016 until mid-September, when he began providing media buying services to the Trump campaign. (National Media first discussed providing media buying services with Trump campaign representatives on or about September 10, 2016, and the Trump campaign retained National Media on September 16, 2016.) On September 15, Mr. Angle ceased all work for the NRA-PVF and NRA-ILA, and was not involved in any ad buys for the NRA-PVF and NRA-ILA from that date through Election Day. Mr. Angle began work for the Trump campaign the following day, September 16, 2016. Mr. Angle did not share any information pertaining to his prior work for the NRA-PVF and NRA-ILA with any Trump campaign personnel.<sup>57</sup>

During the period between September 10 – 16, 2016, National Media sought the advice of, and was informed by, qualified counsel (an attorney who previously had a lengthy career in the Commission’s Office of General Counsel) that Commission regulations allow vendors to “switch clients” in this manner (*i.e.*, move from an outside organization to a candidate committee).<sup>58</sup> This is, of course, correct as the Commission’s regulations at 11 C.F.R. § 109.21(d)(5) impose restrictions only on former employees or independent contractors moving in the opposite direction (*i.e.*, moving from a candidate committee to an outside organization), and for purposes of 11 C.F.R. § 109.21(d)(4), National Media employees would remain appropriately firewalled. (In other words, Commission regulations restrict the use of campaign-related information by outside organization, but there is no similar restriction on the use of outside organization-related information by campaign organizations. In any event, National Media personnel did not convey any NRA-PVF or NRA-ILA information to any representation of the Trump campaign, or otherwise use NRA-PVF or NRA-ILA information in connection with Trump campaign work.)

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<sup>55</sup> See 11 C.F.R. § 109.21(d)(4)(iii).

<sup>56</sup> Attachment D, Affidavit of Ben Angle at ¶ 2-3.

<sup>57</sup> *Id.* at ¶ 4-6.

<sup>58</sup> Attachment B, Affidavit of Robin Roberts at ¶ 6.

According to the Complaint, Mr. Angle is listed as a contact person or representative on documents relating to the following ad buys:

1. “On June 28, 2016, Angle was listed as a Red Eagle representative for a Political Inquiry Form for NRA-PVF ads labeled ‘Anti-Clinton (D)’ and ‘Pro-Trump (R).’”<sup>59</sup> (These labels were presumably added by someone associated with the station. They were not included on the form by Mr. Ferrell or Mr. Angle.)

2. “[O]n September 20, 2016, AMAG placed \$30,000 in Donald J. Trump for President, Inc. ads on Raycom Sports Network, with the ads slated to run during six football games, with Angle listed as AMAG’s contact on the accompanying invoice.”<sup>60</sup>

3. “On an October 14, 2016 Station Issue Advertising Request Sheet for NRA-ILA ads mentioning Clinton, Trump, and the 2016 General Election, Angle is listed as Red Eagle’s contact person.”<sup>61</sup>

As explained in the section above, the “contact person” listed on these forms may or may not reflect current information. In these cases, Mr. Angle may be a “contact” in the sense that he works for National Media, but he was not the person who submitted the initial rate request that resulted in the creation of these documents. National Media’s media buyers do not submit initial rate requests; that task is performed by media assistants (such as Ms. Kowalski). (Ad buyers may make follow-up inquiries to request updated rates, but these inquiries do not typically yield the forms included in the Complaint.)

The first document noted above, from June 28, 2016, is included in the Complaint at Exhibit F. This document is similar in nature to the documents discussed above in connection with Ms. Kowalski. Mr. Angle did not submit this rate request, but even if he had, it would be irrelevant. On June 28, 2016, the Trump campaign was not yet a client of National Media, so this advertisement could not have been coordinated with the Trump campaign.

The second document referenced above is included in the Complaint at Exhibit M. This “INVOICE” shows a print date of “October 29, 2018” [sic] and an invoice date of November 30, 2016. As noted above, Mr. Angle began work for the Trump campaign on September 16, 2016 and operated under the firewall policy referenced above.

The third document referenced above is included in the Complaint at Exhibit P. This document was produced by KMGH’s “media rep” firm. While Mr. Angle is listed as the “contact,” Mr. Angle did not request ad rates for the NRA-ILA on or about October 14, 2016. As explained above, submitting initial rate requests is not a function performed by National

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<sup>59</sup> Complaint at ¶ 20.

<sup>60</sup> *Id.* at ¶ 32.

<sup>61</sup> *Id.* at ¶ 37.

Media's media buyers. Mr. Angle was working on behalf of the Trump campaign at the time and was firewalled accordingly. Furthermore, KMGH is a television station in Denver, Colorado. Even while he was working for the NRA-ILA and NRA-PVF, prior to September 16, 2016, Mr. Angle did not buy any advertising for the NRA-ILA or NRA-PVF in the Denver market in 2016.<sup>62</sup> (The National Media buyer for any NRA ads in the Denver market in 2016 was Chris Kinton, who was never part of the buying team for the Trump campaign.)

## 2. Kristy Kovatch

Kristy Kovatch also works for National Media as a media buyer. As noted above, Ms. Kovatch was assigned to the "AMAG Media Buying Team For Donald J. Trump For President." According to the Complaint, Ms. Kovatch is listed as a contact person or representative in documents relating to the following ad buys:

1. "On May 24, 2016, Kovatch appeared as Red Eagle's contact person on a Station Issue Advertising Request Sheet for a flight of NRA-PVF ads mentioning 'Hillary Clinton' and pertaining to the 'Presidential General Election 11/8/16.'"<sup>63</sup>

- This document is included in the Complaint at Exhibit E.
- This document was created by the broadcast station's media rep firm using information in its own system. Ms. Kovatch did not submit the rate request that resulted in this document. Any such rate request would have been submitted by one of National Media's media assistants.
- In any event, on May 24, 2016, the Trump campaign was not yet a client of National Media, so this advertisement could not have been coordinated with the Trump campaign.

2. "On a September 16, 2016 NBC/Telemundo Political Inquiry Record, Kovatch appeared as AMAG's contact person purchasing the ads on behalf of "Donald Trump, RNC/Trump for President."<sup>64</sup>

- This document is included in the Complaint at Exhibit J.
- This document was created by the broadcast station's media rep firm using information in its own system. Ms. Kovatch did not submit the rate request that resulted in this document. Any such rate request would have been submitted by one of National Media's media assistants.<sup>65</sup> In any event, Ms. Kovatch did not begin placing advertisements on behalf of the Trump campaign until September 18, 2016.

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<sup>62</sup> Attachment D, Affidavit of Ben Angle at ¶ 7.

<sup>63</sup> Complaint at ¶ 19.

<sup>64</sup> Complaint at ¶ 27.

<sup>65</sup> Attachment E, Affidavit of Kristy Kovatch at ¶ 7.

- National Media believes the document at Exhibit J was created by the television station *after* September 16, 2016, and backdated. The document refers to party coordinated expenditures, and National Media was not asked to place any coordinated spending this early. (Coordinated advertising aired from October 31 – November 8, 2016.)

3. “On a Station Issue Advertising Request Sheet dated three days later, September 19, 2016, Kovatch also appeared as Red Eagle’s contact person for a flight of NRA-ILA ads mentioning Clinton and Trump and pertaining to the 2016 presidential election.”<sup>66</sup>

- This document is included in the Complaint at Exhibit K.
- This document was created by the broadcast station’s media rep firm using information in its own system. Ms. Kovatch did not submit the rate request that resulted in this document. Any such rate request would have been submitted by one of National Media’s media assistants.<sup>67</sup>
- On September 19, Ms. Kovatch was performing services for the Trump campaign subject to the firewall referenced above.
- Any advertising bought by National Media for the NRA-ILA on WEWS on or after September 19, 2016, was bought by Melissa Sharp.<sup>68</sup> Ms. Kovatch had no involvement with NRA ad buys after being firewalled with the buying team for the Trump campaign.<sup>69</sup>

4. “On a November 3, 2016 contract for a Donald J. Trump for President, Inc. ad flight scheduled [to air in Florida] the first week of November, Kovatch was listed as the ‘buyer’ for AMAG.”<sup>70</sup>

- This document is included in the Complaint at Exhibit T.
- As noted above, Ms. Kovatch began placing ads for the Trump campaign on September 18, 2016, subject to the firewall policies referenced above.

5. “On a November 4, 2016 CBS Political Inquiry Form for ads purchased by Donald J. Trump for President, Inc. and the Republican National Committee (RNC), Kovatch again appeared as AMAG’s agency contact.”<sup>71</sup>

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<sup>66</sup> Complaint at ¶ 28.

<sup>67</sup> Attachment E, Affidavit of Kristy Kovatch at ¶ 7.

<sup>68</sup> Attachment B, Affidavit of Robin Roberts at ¶ 7.

<sup>69</sup> Attachment E, Affidavit of Kristy Kovatch at ¶ 6.

<sup>70</sup> Complaint at ¶ 43.

<sup>71</sup> *Id.* at ¶ 45.

- This document is included in the Complaint at Exhibit V. This is the same form as discussed above in connection with Exhibit W.
- As noted above, Ms. Kovatch began placing ads for the Trump campaign on September 18, 2016, subject to the firewall policies referenced above.

#### **IV. Ad Buys Referenced in Complaint Were Not The Result of Common Vendor Coordination**

The Complainants assert that two sets of advertisements aired by the NRA-ILA and NRA-PVF were coordinated with the Trump campaign through National Media. The Complainants' assertions are incorrect.

##### **A. Raycom College Football Ads**

According to the Complaint, “[o]n September 15, 2016, Red Eagle placed \$101,200 in NRA-ILA campaign ads on the Raycom Sports Network, a syndicator of sports programming, for seven college football games in September, October, and November 2016.”<sup>72</sup> Then “[f]ive days later, on September 20, 2016, AMAG placed \$30,000 in Donald J. Trump for President, Inc. ads on Raycom Sports Network, with the ads slated to run during six football games ... between September 24 and November 5.”<sup>73</sup> “Five AMAG-placed Trump campaign ads and five Red Eagle-placed NRA-ILA ads were slated to appear the same afternoons, on the same stations, and during the same five games.”<sup>74</sup>

Even if all of this is true, the sequence does not suggest coordination. According to the Complainants, the NRA-ILA placed its ad buy five days *before* the Trump campaign. If accurate, this would mean the NRA-ILA's ad buy was placed in the FCC's database before the Trump campaign ad buy. Anyone buying ads for the Trump campaign would have had access to this public information and could have used that information to inform the campaign's ad buy. In short, the timeline proposed by the Complainants does not support a conclusion of “coordination.”

The Complainants' Exhibits and assertions notwithstanding, the NRA-ILA ad buy on Raycom Sports Network broadcasts of ACC footballs games was placed on August 25, 2016, by Ben Angle (well before he ended his NRA work on September 15 and began working for the Trump campaign on September 16, 2016).<sup>75</sup> (The September 15, 2016 date referenced by the Complainants comes from a NAB Form PB-18 document.) This ad buy was directed by the

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<sup>72</sup> Complaint at ¶ 31.

<sup>73</sup> *Id.* at ¶ 32.

<sup>74</sup> *Id.* at ¶ 33.

<sup>75</sup> Attachment D, Affidavit of Ben Angle at ¶ 8.

NRA-ILA's media consultants at Starboard Strategic, Inc.<sup>76</sup> Mr. Angle did not select the media outlet or the time slots; he simply placed the buy order and managed the ad placement process.

The Trump campaign's ad buy on Raycom was made nearly one month later, on or about September 19, 2016. A Trump campaign official directed Mr. Angle to shift certain advertising scheduled for news programming to football programming. Available games featuring swing- or key-state schools were then selected (*i.e.*, ACC schools in Virginia, North Carolina, Georgia, Pennsylvania). Ads were also placed on Big Ten Net, for the same reason, during games featuring schools from Michigan and Wisconsin.

While advertising during football games may cause hysteria and hyperventilating at the Campaign Legal Center, it is nothing new or surprising to political advertisers:

[W]hen a national network televises a big game featuring teams from a campaign's home state, it can be cost-effective for them to run ads nationally during the game, instead of competing for costly local spots during the same broadcast.<sup>77</sup>

In other words, if a political advertiser wants its ads to be seen by voters in Virginia, North Carolina, Georgia, Pennsylvania, Michigan, and Wisconsin, an obvious tactic is to run ads during live broadcast sporting events featuring teams from those states. The NRA and the Trump campaign are hardly the only political advertisers to figure this out.<sup>78</sup>

In this instance, it is correct that Mr. Angle placed ad buys for both the NRA-ILA and the Trump campaign on Raycom Sports Network. However, the order in which those ads were placed alone removes any possibility of "coordination" under the Commission's regulations. For "coordination" to be found, an outside organization must somehow act at the direction of a campaign, or use information previously obtained *from a campaign* to inform its own decisions. Neither of these is possible given the timeline above, which shows the outside organization acted first and the campaign acted separately, roughly one month later. In any event, Mr. Angle acted

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<sup>76</sup> *Id.*

<sup>77</sup> Ben Kamisar, *Live sports is becoming the new political TV ad playground*, NBC News (Oct. 10, 2018), <https://www.nbcnews.com/politics/first-read/live-sports-becoming-new-political-tv-ad-playground-n917746>.

<sup>78</sup> *Id.* ("An increasing number of campaigns, including those for California Democratic congressional hopeful Katie Porter, Ohio Democratic Sen. Sherrod Brown, Georgia GOP gubernatorial candidate Brian Kemp and Florida Republican Gov. Rick Scott have all booked time on regional sports networks during September baseball games as teams battled for playoff spots, according to a recent competitive report provided to NBC News by a media buying source. The same report shows others are buying time during college football games on the Big Ten Network, the PAC-12 Network and the SEC Network — eyeing viewers in key states like Arizona, Ohio, Iowa and Tennessee.").

upon directions received from representatives of each client in each case after each client had independently made the decision to run ads during college football games. This is coincidental, but not especially surprising. Political campaigns frequently target live sports broadcasts for advertising.<sup>79</sup> College football is an especially popular target for Republican campaigns and organizations supporting Republicans, as the known viewing demographic generally skews Republican. There are a limited number of college football games and a limited number of stations that air them. There are even fewer that air college football in battleground states – in fact, the available inventory (*i.e.*, available ad slots) can be quite limited. This combination of factors very commonly leads to the kind of situation identified in the Complaint.

## B. Norfolk, Virginia Ads

As noted above, the Complaint alleges that on October 19, 2016, Mr. Ferrell signed NAB Form PB-18 on behalf of the NRA-PVF for advertising scheduled to run from October 25 to October 31, 2016 in Norfolk, Virginia.<sup>80</sup> Mr. Ferrell also signed NAB Form PB-18 on October 24, 2016, on behalf of Donald J. Trump for President, Inc. for advertising scheduled to run on the same Norfolk channel on the same dates.

The Complaint alleges that “Jon Ferrell *purchased ads* on the same ABC affiliate, to air during the same one-week period, on behalf of Donald J. Trump for President, Inc. and AMAG, and on behalf of the NRA-PVF and Red Eagle.”<sup>81</sup> As discussed above, Mr. Ferrell’s signature

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<sup>79</sup> See, e.g., Martha T. Moore, *Targeting evident in one day of Denver political ads*, USA Today (Oct. 1, 2012), <https://www.usatoday.com/story/news/politics/2012/10/01/political-ads-denver/1601057/> (“College football skews Republican”); Walt Hickey, *Your Politics Are Indicative Of Which Sports You Like*, Business Insider (March 19, 2013), <https://www.businessinsider.com/politics-sports-you-like-2013-3> (“Engaged Democrats like tennis and the WNBA. Engaged Republicans are really into the PGA tour, college football and NASCAR. Baseball, the NFL and college Basketball are political no-man’s lands, remaining generally moderate, if somewhat right-of-center.”); Reid Wilson, *Why campaigns should advertise during NFL games*, Washington Post (Sept. 12, 2014), [https://www.washingtonpost.com/blogs/govbeat/wp/2014/09/12/how-campaigns-should-advertise-during-nfl-games/?utm\\_term=.25c86703bbcc](https://www.washingtonpost.com/blogs/govbeat/wp/2014/09/12/how-campaigns-should-advertise-during-nfl-games/?utm_term=.25c86703bbcc); Abby Livingston, *The Best TV Shows for Political Advertisements*, Roll Call (Sept. 21, 2014), <https://www.rollcall.com/news/elections-2014-the-best-tv-shows-for-political-advertisements> (“Professional football, college football. It doesn’t matter: The Gridiron is ratings gold for political media buyers, even overshadowing Major League Baseball playoffs. What’s more, audiences almost always watch the game live, so they’re less likely to fast-forward through commercials. Even better for pols in peril: Women watch football, too.”); Alex Isenstadt, *Shelby to run ads during Cotton Bowl*, Politico (Dec. 28, 2015), <https://www.politico.com/story/2015/12/richard-shelby-ad-buy-cotton-bowl-217171> (“If the Crimson Tide advance to the national championship game on Jan. 11, Alabama viewers can expect another helping of Shelby ads.”); Ben Kamisar, *Live sports is becoming the new political TV ad playground*, NBC News (Oct. 10, 2018), <https://www.nbcnews.com/politics/first-read/live-sports-becoming-new-political-tv-ad-playground-n917746>.

<sup>80</sup> See Complaint at ¶ 39.

<sup>81</sup> *Id.* at ¶ 64 (emphasis added).

on NAB Form PB-18 does not constitute “purchasing ads” and Mr. Ferrell is not an ad buyer. Mr. Ferrell did not “purchase” any of the ads referenced by the Complainants.

As is the case with the Raycom Sports Network ads, the Complainants contend that the mere fact that both the NRA and the Trump campaign ran ads at the same basic times must necessarily mean coordination occurred. The Complainants do not consider the sequence of events, which makes their theory a legal impossibility. The Complainants also do not consider important, and rather obvious, context. In the case of the Norfolk ads, the Complainants pretend as if it is irrelevant that Norfolk, Virginia was a crucial market in a crucial swing state. There are only so many ad slots available on television stations in the Norfolk market in the days leading up to Election Day. *The Trace* article that forms the basis for this Complaint notes that both the NRA and the Trump campaign advertised during *Jeopardy!* and *Wheel of Fortune* on WVEC. According to National Media’s data, these are the fifth and eighth most popular shows for political and issue advertisers. That the Trump campaign and the NRA both ran ads on “the same ABC affiliate” in Norfolk “during same one-week period” at the end of October, days before the election, is completely unremarkable.<sup>82</sup> It would be more surprising if they had not. Viewers watching the same programs also saw ads from Hillary Clinton’s campaign.

While the Complainants’ “coordination” theory appears to rest on their bogus NAB Form PB-18 theory, the actual ad buyers for the referenced Norfolk ads operated consistent with National Media’s firewall policy. Ben Angle placed the WVEC Norfolk ads on October 4, 2016, as part of a larger ad buy for the Trump campaign covering Virginia markets from October 18 – November 7. The schedule for the week of October 25-31 was revised on October 20. (Mr. Angle did *not* place any ads in Virginia for the NRA-PVF or NRA-ILA in 2016.)

The NRA-PVF’s Norfolk ads for the first three weeks of October (October 4 – 24) were placed on September 15, 2016, by Tracey Robinson. The NRA-PVF’s Norfolk ads for the week of October 25-31 were placed by Melissa Sharp on October 18.<sup>83</sup>

### **C. The Raycom and Norfolk Ads Do Not Provide Evidence of Coordination**

According to the Complainants, the Raycom and Norfolk advertisements establish a “pattern of activity [that] provide[s] reason to believe that National Media employees used information about the ‘plans, projects, activities or needs’ of Donald J. Trump for President, Inc. in placing ads for the NRA-ILA and NRA-PVF, and that such information was ‘material to the creation, production, [and] distribution of the communication[s].”<sup>84</sup> This conclusion is wrong.

First, the decisions to place advertisements on behalf of the two clients were made by firewalled employees. These employees worked with representatives of their respective clients

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<sup>82</sup> *See id.*

<sup>83</sup> Attachment B, Affidavit of Robin Roberts at ¶ 8.

<sup>84</sup> Complaint at ¶ 65.



in making ad buys. Ad buys for both the Trump campaign and the NRA-PVF and NRA-ILA were the products of independent decision making. While it is coincidence that both entities aired ads on Raycom Sports Network and WVEC Norfolk, this coincidence is not surprising. Live broadcast college football games are popular advertising vehicles for political advertisers, and Norfolk, Virginia was a key market in a key state during the 2016 presidential election.

Second, in each case, the NRA's advertisements were placed *before* the Trump campaign's advertisements. Information about the NRA-ILA and NRA-PVF advertisements *would have been* publicly available via the FCC's online public file database for the Trump campaign to use. (It is unclear if anyone actually used this information, or a separate compilation of it, but doing so would be perfectly permissible under the Commission's regulations.) For common vendor coordination to have occurred in these cases, the Trump campaign's advertisements would need to be placed first, and *then* the common vendor would need to use that information (*before* it became public) to inform its placement of the NRA's advertisements. The common vendor coordination concept requires non-public information to flow *from* a campaign or party committee *to* an outside organization. Given the sequence of events described in the Complaint, the facts indicate that any flow of information could only have been in the opposite direction, meaning "coordination" was not even possible here.

### III. Conclusion

Aside from attempting to mislead the Commission about the nature and significance of NAB Form PB-18 and other administrative documents, the Complainants present no evidence that any nonpublic, material campaign information was shared through National Media, Red Eagle, and AMAG personnel, or otherwise improperly used by the foregoing. The Complainants simply assert that "coordination" *must have* occurred. To the contrary, National Media employees were properly firewalled, and in the specific instances identified in the Complaint, the NRA-ILA and/or NRA-PVF ads were placed *before* the Trump campaign ads. The NRA-ILA and NRA-PVF ad buys were public information available "immediately"<sup>85</sup> through the FCC's public database. *Even if* these ad buys were not public information, however, the sequence of events could not yield a coordination violation. Thus, there is no evidence of any qualifying conduct, only speculation and, mostly, an intentional effort to mislead.

For the reasons set forth in our response in MUR 7427, the Commission should reject the Complainants' invitation to find reason to believe solely on the basis that the "payor" and "content" standards are satisfied.<sup>86</sup> As explained previously, "[t]he approach urged by the Complainants (to find reason to believe where 'the first two parts of the common vendor test are

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<sup>85</sup> See 47 C.F.R. § 1943(c) ("All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances."); 47 C.F.R. § 76.1701(c) (same requirement for cable television systems); 47 C.F.R. § 25.701(d)(2) (same requirement for direct broadcast satellite (DBS) providers).

<sup>86</sup> See Attachment G, MUR 7427, Response at 9-16.

satisfied,' even in the absence of credible evidence pertaining to the third part of the test) has not been used since 2005, and since then the Commission has consistently required evidence of actual conduct in subsequent enforcement matters.”<sup>87</sup>

Here, the Complainants present no specific evidence that the third part of the “common vendor” test was satisfied. The Complaint contains no actual, unrebutted information or evidence showing or suggesting that a commercial vendor used or conveyed to the person paying for the communication any information about campaign plans, projects, activities, or needs of the clearly identified candidate, and the Complaint contains no information or evidence showing or suggesting that any such information was material to the creation, production, or distribution of the communication.<sup>88</sup> Rather, the Respondents were properly firewalled and made independent decisions informed by publicly-available information.

This Complaint should be dismissed, along with the three previous complaints filed by the Complainants. There is no evidence in support of the Complainant’s allegations that the Respondents engaged in any form of coordination under the Act or the Commission’s regulations.

After dismissing this matter, the Commission should consider available sanctions against the Complainants for violations of 18 U.S.C. § 1001 in connection with MURs 7427, 7497, 7524, and 7553. In filing these complaints, the Campaign Legal Center and Giffords have repeatedly demonstrated bad faith, and we believe the evidence makes clear they have sworn to statements they know to be false and misleading.

Sincerely,



Jason Torchinsky  
Michael Bayes  
Jessica Furst Johnson

Attachments

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<sup>87</sup> *Id.* at 13-14.

<sup>88</sup> *See* 11 C.F.R. § 109.21(d)(4)(iii).

**ATTACHMENT A**  
**Campaign Legal Center Fundraising Solicitation**

**From:** Brendan Fischer, Campaign Legal Center <info@campaignlegalcenter.org>  
**Sent:** Thursday, December 20, 2018 8:30 AM  
**To:** [REDACTED]  
**Subject:** Why We Watchdog

[View this email in your browser](#) | [Forward to a friend](#) | [DONATE](#)



Friend,

Campaign finance and ethics laws protect every American's right to participate fully in the political process.

**At Campaign Legal Center, we take our watchdogging mission seriously.**  
**[If you, like us, feel strongly that candidates and elected government officials should be held accountable for campaign finance and ethics violations, make your tax-deductible year-end gift to CLC today.](#)**

Upholding campaign finance and ethics laws are essential to a functioning democracy. That's never been more clear. These laws help ensure that elected officials are working for voters, not donors and special interests.

**Here's just some of the critical work we've done this year:**

- **Uncovered secret money and illegal contributions:** In the past few months alone, we've blown the whistle on illegal straw donor schemes and illegal contractor contributions in the 2018 election, filing Federal Election Commission complaints that caused the return or reattribution of \$760,000 in illegal campaign spending that might have otherwise gone unnoticed.
- **Exposed illegal coordination between the NRA and Trump campaign:** We've helped uncover shocking evidence of illegal coordination between the National Rifle Association (NRA) and several political campaigns in 2014, 2016 and 2018, including at least \$25 million spent by the NRA using the same four media consultants as used by the Trump presidential campaign.
- **Revealed cabinet members' conflicts of interest:** Interior Secretary Ryan Zinke now follows former EPA Administrator Scott Pruitt and former Veterans Affairs Secretary David Shulkin in resigning amid a flurry of ethics investigations. CLC has led rigorous ethics oversight since these officials took office, exposing their violations by filing complaints with government agencies and elevating the story in the media.

Our watchdog work requires intensive research and investigation. **But we do this work because we believe that it is absolutely essential to protect the integrity of our democracy. [If you're with us, please consider making a gift to Campaign Legal Center to support our work.](#)**

Your support of CLC gives us the resources we need to stay on the case.  
Thank you for being there for us.

Forward,

Brendan Fischer  
CLC Director, Federal Reform

[Donate](#)

Campaign Legal Center, a nonpartisan organization based in Washington, D.C., is home to the nation's premier election law experts. We are the lawyers for our democracy, fighting for your fundamental right to participate in the political process.

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Our mailing address is:  
Campaign Legal Center  
1411 K St NW, Suite 1400  
Washington, DC 20005

[Add us to your address book](#)

[Unsubscribe from this list](#)

**ATTACHMENT B**  
**Affidavit of Robin Roberts**

**AFFIDAVIT OF ROBIN ROBERTS**

PERSONALLY came and appeared before me, the undersigned Notary, the within named ROBIN ROBERTS, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Robin Roberts. I am a resident of Virginia.
2. I am the President of National Media Research Planning and Placement LLC ("National Media"). I have served in this capacity since 1985.
3. It is the policy of National Media that all employees operate in accordance with National Media's then-current firewall policy. National Media's firewall policies are developed in consultation with qualified counsel.
4. "Red Eagle Media Group" and "American Media & Advocacy Group" are fictitious names used by National Media Research Planning and Placement LLC. These fictitious names were initially acquired, and continue to be used, to facilitate compliance with the Federal Election Commission's common vendor regulations by providing an easy mechanism by which clients can be separated.
5. Caroline Kowalski worked for National Media from March 2016 to May 2017. Ms. Kowalski was hired as an entry-level employee and worked as an assistant to the firm's media buyers, providing administrative and clerical services. Her job duties included requesting advertising rates from stations, transmitting orders to stations, and transmitting traffic instructions to stations. Ms. Kowalski had no role in making decisions regarding ad placement, performed administrative tasks at the direction of others, and did not provide any strategic advice to clients.
6. Upon learning that National Media had the opportunity to place advertising buys for Donald J. Trump for President, Inc., I sought the advice of counsel with respect to coordination regulations and firewall requirements.
7. Any advertising bought by National Media for the NRA-ILA on WEWS on or after September 19, 2016, was bought by Melissa Sharp.



8. National Media employees placed advertisements for the NRA-PVF in the Norfolk, Virginia market for airing in October 2016. Tracy Robinson placed the NRA-PVF's Norfolk ads for the period October 4 – 24, 2016 on September 15, 2016. Melissa Sharp placed the NRA-PVF's Norfolk ads for the week of October 25 – 31, 2016 on October 18, 2016.

DATED this the 25<sup>th</sup> day of January, 2019

*Robin Roberts*

Signature of Affiant, Robin Roberts

SWORN to and subscribed before me, this 25<sup>th</sup> day of January, 2019

*Jessica Lynn Sanson*  
NOTARY PUBLIC

My Commission Expires:

9/30/2021



**ATTACHMENT C**  
**Affidavit of Jon Ferrell**

**AFFIDAVIT OF JON FERRELL**


PERSONALLY came and appeared before me, the undersigned Notary, the within named JON FERRELL, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Jon Ferrell. I am a resident of the State of Maryland.
2. I am the Chief Financial Officer of National Media Research Planning and Placement LLC ("National Media"). I have served in this capacity since 1998.
3. I am a Certified Public Accountant. I manage accounting and financial matters for National Media, including client invoicing and paying broadcast stations for clients' advertising buys. I receive and effectuate billing and invoicing instructions from National Media's advertisement buyers in connection with clients' advertisement buys.
4. I often sign NAB Form PB-18 on behalf of National Media clients after this form is completed by others, including National Media's advertisement buyers and assistants.
5. I do not "place advertisements" for National Media clients as that term is commonly understood and used in the Complaint (FEC MUR 7524). Specifically, I am not involved in any decisions pertaining to the selection of advertising time slots, nor am I involved in decisions related to the creation, production, or distribution of any advertising.
6. I am not involved in the development of media strategy, the selection of audiences for client's advertisements, the development of advertising content, the production of public communications, or the identification of voters on behalf of National Media and its clients.
7. I do not provide political strategy consulting or media strategy advice to National Media clients.

DATED this the 25<sup>th</sup> day of January, 2019

  
Signature of Affiant, Jon Ferrell

SWORN to subscribed before me, this 25<sup>th</sup> day of January, 2019

  
NOTARY PUBLIC

My Commission Expires:

9/30/2021



**ATTACHMENT D**  
**Affidavit of Ben Angle**

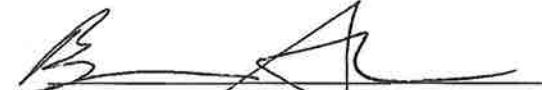
**AFFIDAVIT OF BEN ANGLE**

PERSONALLY came and appeared before me, the undersigned Notary, the within named BEN ANGLE, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Ben Angle. I am a resident of the Commonwealth of Virginia.
2. I am employed by National Media Research Planning and Placement LLC ("National Media") as a media buyer. I have served in this capacity since 2006.
3. A "media buyer" purchases advertising time on behalf of a client. In some cases, the media buyer has a role in selecting media outlets and time slots, while in other cases, these decisions are made in whole or in part by other persons representing the advertiser.
4. I performed media buying services for the National Rifle Association of America Political Victory Fund (NRA-PVF) and National Rifle Association Institute for Legislative Action (NRA-ILA) in 2016 until September 15, 2016. I was subject to, and performed all NRA-PVF and NRA-ILA work pursuant to, National Media's (AMAG's) 2016 Firewall Policies.
5. On September 15, 2016, I ceased all work for the NRA-PVF and NRA-ILA, at Robin Roberts' direction. I began working for Donald J. Trump for President, Inc. on September 16, 2016. From September 16, 2016 through Election Day, I was subject to, and performed all Donald J. Trump for President, Inc. work pursuant to, National Media's (AMAG's) 2016 Firewall Policies.
6. Beginning September 16, 2016, through Election Day, I was not involved in any NRA-PVF or NRA-ILA advertising buys. I did not disclose to any representative of Donald J. Trump for President, Inc. any information regarding any work I performed for NRA-PVF or NRA-ILA prior to September 16, 2016. As of September 15, 2016, when I ceased all work for the NRA-PVF and NRA-ILA, I did not review or participate in any NRA-PVF and NRA-ILA ad buying work.
7. I did not submit initial advertising rate requests in 2016; this function was performed by media assistants.
8. I bought and placed advertising for the NRA-ILA on Raycom Sports Network, for airing during various ACC college football games in late September and October 2016, on August 25, 2016. This ad buy was placed at the direction of the NRA-ILA's media consultants at Starboard Strategic, Inc.
9. Media buyers and their agencies receive advertising order information from the media representative firms that serve television (both broadcast and cable) and radio stations. In some cases, this information may also be provided directly by the station. When advertising orders are placed, media representative firms notify ad buying agencies via widely-distributed emails that

detail the following information about an advertising buy: (1) advertiser, (2) market(s), (3) station(s), (4) date range, and (5) total dollar amount of the order. These notifications are sent to media buyers and agencies across the country as a form of marketing that is intended to prompt competitors to also make ad buys.

DATED this the 28 day of January, 2019

  
Signature of Affiant, Ben Angle

SWORN to subscribed before me, this 28 day of January, 2019

  
NOTARY PUBLIC

My Commission Expires:

9/30/2021



**ATTACHMENT E**  
**Affidavit of Kristy Kovach**

**AFFIDAVIT OF KRISTY KOVATCH**

PERSONALLY came and appeared before me, the undersigned Notary, the within named KRISTY KOVATCH, and makes this her Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Kristy Kovatch. I am a resident of VA.
2. I am employed by National Media Research Planning and Placement LLC ("National Media") as a media buyer. I have served in this capacity since 1991.
3. A "media buyer" purchases advertising time on behalf of a client. In some cases, the media buyer has a role in selecting media outlets and time slots, while in other cases, these decisions are made in whole or in part by other persons representing the advertiser.
4. I performed media buying services for the National Rifle Association of America Political Victory Fund (NRA-PVF) and National Rifle Association Institute for Legislative Action (NRA-ILA) in 2016 until September 18, 2016. I was subject to, and performed all NRA-PVF and NRA-ILA work pursuant to, National Media's (AMAG's) 2016 Firewall Policy.
5. I was informed that I would begin working on behalf of Donald J. Trump for President, Inc. on September 18, 2016. From September 18, 2016 through Election Day, I was subject to, and performed all Donald J. Trump for President, Inc. work pursuant to, National Media's (AMAG's) 2016 Firewall Policies.
6. As of September 18, 2016, through Election Day, I was not involved in any NRA-PVF or NRA-ILA advertising buys. I did not disclose to any representative of Donald J. Trump for President, Inc. any information regarding any work I previously performed for NRA-PVF or NRA-ILA. As of September 18, 2016, when I ceased all work for the NRA-PVF and NRA-ILA, I did not review or participate in any NRA-PVF and NRA-ILA ad buying work.
7. I did not submit initial advertising rate requests in 2016; this function was performed by media assistants.

DATED this the 25 day of January, 2019

K. Kovatch  
Signature of Affiant, Kristy Kovatch

SWORN to subscribed before me, this 25 day of January, 2019

[Signature]  
NOTARY PUBLIC

My Commission Expires:

11/30/2019

Selome Mekonnen Tessema  
NOTARY PUBLIC  
REGISTRATION # 7004520  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES: 11/30/19



**ATTACHMENT F**  
**National Media (AMAG) 2016 Firewall Policies**

**American Media and Advocacy Group  
Firewall Policy**

March 26, 2016

It is the policy of American Media and Advocacy Group ("AMAG") to ensure that its operations do not cause, contribute to, or result in impermissible "coordination" (as defined by federal campaign finance laws and regulations) between its political clients. Political clients include candidate campaign committees, political party committees, political action committees, 527 committees, 501(c)(4) organizations, and other independent groups for which National Media develops content, buys time, or provides other media services in relationship to their public communications. To that end, the following policy is in effect immediately and must be followed by all AMAG employees and retained consultants:

1. All work engagements for prospective or existing political clients must be approved by a member of the Management Team of AMAG, (Robin Roberts, President or Evan Tracey, Sr. Vice President) before employees or consultants can perform work for the client. If AMAG employees or consultants are contacted by prospective or existing clients about performing media services, they should immediately contact Robin or Evan.
2. If Management Team determines that AMAG's engagement for a client could cause, contribute to, or result in coordination or the appearance of coordination between prospective, existing or prior clients in regard to political and issue-oriented communications, then work may not be performed by any AMAG employee or consultant for any affected client until AMAG implements appropriate "firewall" procedures to address those coordination concerns. If an AMAG employee or consultant has information suggesting that AMAG's engagement for a client could cause, contribute to, or result in coordination or the appearance of coordination between prospective, existing or prior clients in regard to political and issue-oriented communications, the employee or consultant must notify Management Team immediately. In that case, employees and consultants may not perform work on the affected matters until they are notified by Management Team.
3. The reason for firewall procedures is to prohibit the flow of information between employees or consultants providing services for one client and those employees or consultants currently or previously providing services to another client relating to the creation, production or distribution of communications. In establishing a firewall, AMAG will use appropriate resources and procedures to ensure the effectiveness of the firewall, which may include placing employees or consultants on separate teams, establishing separate work areas, using separate accounts in the media buying software program, and implementing work protocols, as discussed more fully below. In addition, in order to facilitate the firewall procedures, AMAG may, when appropriate, assign matters to different company entities including National Media Research, Planning and Placement, and Red Eagle Media Group. As mandated by our company firewall policy, management will determine the staff that will work on each account, and no employee working on an account or having access to pertinent information in one organization will be allowed to perform similar duties in the other organization for the same race.
4. Whenever AMAG determines that firewall procedures are required, all employees and consultants will be informed of the existence of the firewall, the identities of the affected clients, and the identities of the employees and consultants who will be assigned to work for the affected clients. Firewall procedures that apply in a particular matter will be set forth in a written memorandum that will be provided, along with a copy of this policy statement, to all relevant

## Firewall Policy – 2016

Page 2

employees, consultants, and clients in advance of any work being performed for the affected clients.

5. Two restrictions will apply to AMAG employees whenever coordination concerns are present and firewall procedures are in effect:

- The same AMAG employee or consultant cannot perform work relating to more than one client on opposite sides of the firewall, for the same election. This restriction does not, however, apply (1) to employees or consultants who provide exclusively administrative assistance (e.g., reception, clerical or IT support) or (2) to employees who perform management functions (e.g., financial, strategic, or corporate leadership) which affect all AMAG clients; however, these management employees will not be provided access to information material to the creation, production or distribution of the clients' communications. The specific measures used to ensure that management employees do not have access to the material information will be set forth in the firewall memorandum for a particular matter.
- Employees and consultants who provide services for a client subject to firewall procedures are, as a matter of company policy, prohibited from communicating with employees and consultants who provide services for any other client subject to the firewall regarding the substance of the work that AMAG is handling, or has been engaged to handle. Routine communications between co-workers, such as exchanging pleasantries, are permitted.

6. Please keep in mind that AMAG's clients are the beneficiaries of this firewall policy and the firewall procedures that will be implemented for particular engagements. The mere existence of this policy statement and specific firewall procedures will not protect our clients from allegations of impermissible coordination if, despite the firewall, information about the substance of our work is communicated between employees or consultants working for the affected clients. Therefore, it is essential that AMAG employees and consultants strictly adhere to this policy and comply with the firewall procedures that are put in place for a particular engagement. If employees or consultants become aware of any problems with the effectiveness of firewall procedures, Management Team must be notified immediately.

7. If you have any questions about this policy, you should contact Management Team.

8. Please sign and date this policy statement acknowledging that you have read and understand the Policy Statement. Return the signed copy to Robin. An additional copy has been provided for your records.

I have read and understand this policy statement:

---

Print Name:

Date:

**American Media & Advocacy Group**

TO: AMAG STAFF  
FROM: MANAGEMENT  
DATE: SEPTEMBER 15, 2016  
RE: TRUMP FIREWALL POLICY

---

We have been tasked to plan and buy media on behalf of Donald J. Trump for President. In an effort to ensure compliance with the Federal Election Campaign Act (FECA) and Federal Election Commission regulations, please be aware that our company Firewall Policy, dated March 26, 2016, is in effect for this representation.

Because we have a large media buying operation (and in keeping with our Firewall Policy), please be aware that work for different clients relating to the same election may be assigned to different company entities, including American Media & Advocacy Group, National Media Research, Planning and Placement, and Red Eagle Media Group. The specific staffing assignment for each client will be determined prior to any work commencing for such client. If work is assigned to separate company entities, please keep in mind that the employees working in different organizations for different clients are prohibited from working with or sharing any information regarding the same election race.

Regardless of which company entities are used, we want to stress the importance of working within the Firewall Policy, whenever different buyers are buying media in the same race for different clients. We have taken proper steps to ensure that our process, procedures, work flow, computer systems and software are in compliance with the current regulatory environment. As stated in Section 5 of our Firewall Policy, the same American Media and Advocacy Group employee or consultant cannot perform work relating to more than one client on opposite sides of the firewall for the same election race. As an example, if Tracey is the media buyer for the presidential candidate in a particular media market, she is prohibited from working for any independent expenditure client sponsoring communications in connection with the presidential election.

As always, please let Robin or Evan know if you have any questions.

## American Media & Advocacy Group

TO: AMAG STAFF  
FROM: MANAGEMENT  
DATE: SEPTEMBER 15, 2016  
RE: TRUMP FIREWALL IMPLEMENTATION

---

We have entered into a media buying agreement with Donald J. Trump for President. In an effort to ensure compliance with the Federal Election Campaign Act and Federal Election Commission regulations, we adopted a company Firewall Policy, dated March 26, 2016 (copy attached). The purpose of the Firewall Policy is to ensure that our company does not serve as a vehicle for coordination between our independent expenditure clients and our candidate and party clients who are active in the same election races.

As required by our Firewall Policy, this memorandum serves to inform you that the following procedures are in effect with respect to our work for Donald J. Trump for President (DJT).

1. All media buying efforts for DJT will be undertaken through American Media & Advocacy Group (AMAG). No media buying for DJT can be undertaken through any other affiliated organization (e.g., National Media Research, Planning and Placement) until further notice.
2. The team leader for our work for DJT is Evan Tracey, who is responsible for all work assignments for this engagement. Do not have discussions with any other team leader with regard to your work for DJT.
3. Any employee providing services for DJT is prohibited (1) from working for an independent expenditure client or a party client in connection with the presidential election, and (2) from communicating with other company employees who provide services to an independent expenditure client or party client in connection with the presidential election regarding the substance of the DJT team member's work, or regarding the other employees' work for an independent expenditure client or party client. Of course, routine, nonsubstantive communications, such as exchanging pleasantries, are permitted.
4. Attached for your reference is a list of the employees who will be working on the DJT media buying efforts. Do not discuss DJT work with anyone whose name is not on this list, unless those discussions relate to administrative or management

issues as addressed in Paragraph 5 of the Firewall Policy. This list will be updated as needed and will be provided to you.

5. Our media buying work for different clients is distributed through our affiliated entities (e.g., AMAG, National Media Research, Planning and Placement, or Red Eagle Media Group) as a way to reinforce firewall procedures. Therefore, do not assume that because you and another employee are undertaking work through different affiliated entities that you may discuss your work for DJT with him or her.
6. As noted above, an employee will not be permitted to buy media for DJT and an independent expenditure client or party client in connection with the presidential election. It is possible, however, due to resource constraints, that an employee may be assigned to buy media for DJT, and buy media for an independent expenditure client in connection with an entirely different election race (e.g., involving a House or Senate candidate).
7. Every media buyer is absolutely prohibited from accessing another media buyer's media files in our Strata database. You should not share your account password and login information with any other employee.

As always, please let Robin or Evan know if you have any questions regarding these procedures.

**AMAG MEDIA BUYING TEAM FOR  
DONALD J. TRUMP FOR PRESIDENT**

Evan Tracey, Team Leader  
Ben Angle, Media Buyer  
Tracey Robinson, Media Buyer  
Michelle Lawrence, Media Buyer  
Kristy Kovach

**ATTACHMENT G**

**Response in MUR 7524**

**(including Responses filed in MURs 7497 and 7427)**



**HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC**  
*Attorneys at Law*

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

December 17, 2018

Federal Election Commission  
 Office of General Counsel  
 Office of Complaints Examination  
 & Legal Administration  
 attn: Kathryn Ross, Paralegal  
 1050 First Street, NE  
 Washington, DC 20002

**Re: MUR 7524**

Dear Ms. Ross:

This response is submitted by the undersigned counsel on behalf of the following Respondents in connection with the above-referenced matter: National Rifle Association of America Political Victory Fund (NRA-PVF) and Robert G. Owens in his capacity as Treasurer; National Rifle Association Institute for Legislative Action (NRA-ILA)<sup>1</sup>; OnMessage, Inc.; Starboard Strategic, Inc.; National Media Research Planning and Placement, LLC (National Media), and Jon Ferrell in his capacity as Chief Financial Officer of National Media.

This is the third in a series of harassing complaints filed by the Campaign Legal Center and Giffords in conjunction with coordinated media coverage by the anti-NRA outlet *The Trace*. The Respondents have already filed responses in MURs 7427 and 7497. Those responses are included here as Attachment F.

In this Complaint, the Campaign Legal Center and Giffords allege that “[t]he NRA-PVF and Josh Hawley for Senate appear to have engaged in an elaborate scheme designed to evade detection of violations of the Commission’s common vendor coordination rules.”<sup>2</sup> The Complaints identify OnMessage, Inc. and Starboard Strategic, Inc. as the first common vendor, and National Media Research Planning and Placement, LLC as the second common vendor.

None of the vendors referenced in the Complaint facilitated any coordination between the NRA-PVF and the Hawley campaign. The NRA-PVF’s advertisements related to the 2018 U.S. Senate election in Missouri were independent expenditures; no in-kind contributions were made from NRA-PVF to Josh Hawley for Senate. Like the previous complaints, this Complaint is a

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<sup>1</sup> NRA-ILA is not identified as a respondent by the Complainants.

<sup>2</sup> Complaint at ¶ 2.

politically-motivated exercise in harassment, and is, unsurprisingly, without merit. The Commission should find no reason to believe a violation occurred and dismiss this matter.

#### **I. OnMessage, Inc. and Starboard Strategic, Inc.**

The relationship between OnMessage, Inc. and Starboard Strategic, Inc. was discussed in detail in the Respondent's first response (MUR 7427).<sup>3</sup> Most of the Complaint's allegations regarding "common vendor" coordination and OnMessage/Starboard are recycled from MUR 7427, as was also the case in MUR 7497. Pages 4 – 17 (Paragraphs 10 – 33) of the present Complaint are cut and pasted from the Complaint filed in MUR 7427, were addressed in a prior Response, and are not relevant to this matter.

OnMessage/Starboard employees did not perform work and services for the NRA-PVF or NRA-ILA in connection with the 2018 U.S. Senate election in Missouri. Pursuant to the OnMessage/Starboard firewall policy for 2018, Brad Todd, Curt Anderson, Wes Anderson, Timmy Teepell and six individuals not named in the Complaint provided consulting services to Josh Hawley for Senate. Guy Harrison and Joanna Burgos provided services to a national party committee IE Unit in connection with the Missouri election. No principals or employees were assigned to the NRA (or any other outside organization), and no employees performed any work or services for the NRA, including the NRA-PVF and NRA-ILA, in connection with the 2018 U.S. Senate election in Missouri.<sup>4</sup> The Missouri-related spending identified in the Complaint was not created, produced, or distributed by any of the aforementioned individuals, and the aforementioned individuals had no involvement in said spending.

The Complaint correctly notes that "NRA-PVF has reported \$973,411 in payments to Starboard [Strategic] for independent expenditures either supporting Hawley or opposing Claire McCaskill."<sup>5</sup> These payments were for media placement costs made through Starboard and were managed by Heather Doiron, an independent contractor retained by OnMessage/Starboard to provide certain media-related services to the NRA-PVF in 2018. Ms. Doiron was retained in July 2018 because the OnMessage/Starboard employees referenced above were unable to provide services to the NRA-PVF under the company's 2018 firewall agreement.<sup>6</sup>

Ms. Doiron provided certain budget management and media planning services to the NRA-PVF from her office in Louisiana; these services included serving as a liaison between the NRA-PVF and its media placement vendor, National Media/Red Eagle, for the purpose of facilitating advertisement buys.<sup>7</sup> Ms. Doiron managed the advertisement buys reflected in the

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<sup>3</sup> See Attachment F, MUR 7427, Response at 2-3, 6-7.

<sup>4</sup> See Attachment A, 2018 Firewall Policy of OnMessage, Inc.

<sup>5</sup> Complaint at ¶ 36.

<sup>6</sup> See Attachment B, Affidavit of Bradley Todd at ¶ 6.

<sup>7</sup> See Attachment C, Affidavit of Heather Doiron at ¶ 2-3.

independent expenditures referenced above.<sup>8</sup> Ms. Doiron understood she was “firewalled” from the OnMessage/Starboard principals and employees and did not discuss any of the services she provided to the NRA-PVF in connection with the 2018 U.S. election in Missouri with any OnMessage/Starboard principal or employee.<sup>9</sup> Furthermore, no principal or employee of OnMessage/Starboard communicated or conveyed to Ms. Doiron any non-public information concerning the plans, projects, activities, or needs of Josh Hawley for Senate or any national party committee.<sup>10</sup>

As noted in previous responses, Mr. Todd has consulted with the NRA on a variety of matters, which primarily include general public relations matters and matters involving federal and state legislation.<sup>11</sup> In 2018, Mr. Todd also consulted on election-related matters involving elections *other than* those in which he was retained by a candidate in such election (such as the U.S. Senate election in Missouri).<sup>12</sup> Mr. Todd did not communicate or convey any non-public information about the campaign plans, projects, activities, or needs of Senator Hawley to any representative of the NRA-PVF or NRA-ILA.<sup>13</sup> Mr. Todd was not involved in any decisions related to the creation, production, or distribution of any independent expenditures created by or on behalf of the NRA-PVF (or NRA-ILA) in connection with the U.S. Senate election in Missouri.<sup>14</sup>

The limited services provided by a contractor retained by OnMessage/Starboard to the NRA-PVF in connection with the 2018 U.S. Senate election in Missouri were properly segregated from the “firewalled” employees. The OnMessage/Starboard employees referenced above did not discuss any matters pertaining to their work for Josh Hawley for Senate with Ms. O’Donnell.<sup>15</sup> The Complainant presents no evidence that any nonpublic, material campaign information was shared through OnMessage, Inc. and Starboard Strategic, Inc. personnel, or otherwise improperly used by OnMessage, Inc., and Starboard Strategic, Inc. There is no evidence of any qualifying conduct, only speculation.

For the reasons explained in the Response to MUR 7427, the Commission should reject the Complainant’s invitation to find reason to believe solely on the basis that the “payor” and

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<sup>8</sup> *Id.* at ¶ 2-4.

<sup>9</sup> *Id.* at ¶ 5.

<sup>10</sup> *Id.* at ¶ 6.

<sup>11</sup> Attachment B, Affidavit of Bradley Todd at ¶ 3.

<sup>12</sup> *Id.* at ¶ 3.

<sup>13</sup> *Id.* at ¶ 4.

<sup>14</sup> *Id.* at ¶ 5.

<sup>15</sup> *See* Attachment C, Affidavit of Heather Doiron at ¶ 6.

“content” standards are satisfied.<sup>16</sup> As explained previously, “[t]he approach urged by the Complainants (to find reason to believe where ‘the first two parts of the common vendor test are satisfied,’ even in the absence of credible evidence pertaining to the third part of the test) has not been used since 2005, and since then the Commission has consistently required evidence of actual conduct in subsequent enforcement matters.”<sup>17</sup>

As was the case in MUR 7427, the Complainant presents no specific evidence that the third part of the “common vendor” test was satisfied. The Complaint contains no information or evidence showing or suggesting that the commercial vendor used or conveyed to the person paying for the communication any information about campaign plans, projects, activities, or needs of the clearly identified candidate, and the Complaint contains no information or evidence showing or suggesting that this information was material to the creation, production, or distribution of the communication.<sup>18</sup>

## II. National Media Research Planning and Placement, LLC

National Media Research Planning and Placement LLC (National Media) has offices in Alexandria, Virginia. “Red Eagle Media Group” and “American Media & Advocacy Group”<sup>19</sup> (AMAG) are both fictitious names used by National Media. (A fictitious name is more commonly referred to as a “DBA” or an “assumed business name.”) National Media, Red Eagle, and AMAG are the same company. National Media’s fictitious names were initially acquired to facilitate compliance with the Commission’s common vendor regulations by providing an easy mechanism by which clients could be separated. To the best of our knowledge, the Act has nothing to say about how individuals may or must organize their business, and neither the Act nor Commission regulations purport to govern the use of registered fictitious names or DBAs by commercial vendors.

The Respondents do not contest that National Media, Red Eagle, and AMAG, by virtue of their being operated and controlled by the same individuals, may be treated as a “common vendor” in this matter with respect to the NRA-PVF and Josh Hawley for Senate.<sup>20</sup>

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<sup>16</sup> See Attachment F, MUR 7427, Response at 9-16.

<sup>17</sup> *Id.* at 13-14.

<sup>18</sup> See 11 C.F.R. § 109.21(d)(4)(iii).

<sup>19</sup> The Complaint refers to American Media & Advocacy Group, LLC (AMAG LLC) at Paragraph 46. AMAG LLC is a separate legal entity that was created by National Media’s principals but has never had any operations. The Complaint’s reference to “AMAG” at Paragraph 47 is a reference to the fictitious name used by National Media. AMAG LLC and AMAG (the fictitious name) are unrelated.

<sup>20</sup> The Commission’s treatment of separate but related entities as “common vendors” was addressed in a prior response. See Attachment F, MUR 7427, Response at 6-7. As noted above, National Media, Red Eagle, and AMAG are the same company.

The Complaint recounts various transactions involving National Media, Red Eagle, AMAG, NRA-PVF, and Josh Hawley for Senate. The Complainants claim that Jon Ferrell signed “agreement forms” for both NRA-PVF and Josh Hawley for Senate and conclude that Mr. Ferrell “*placed advertisements on behalf of the NRA-PVF and Josh Hawley for Senate at the same station on the same day.*”<sup>21</sup> As it has in the past two Complaints, the Complainants then claim that this reflects an effort “to allow National Media to use or convey to the NRA-PVF information about the ‘plans, projects, activities or needs’ of Josh Hawley for Senate without detection, and that such information was ‘material to the creation, production, or distribution’ of the NRA-ILA’s [sic] communications supporting Hawley.”<sup>22</sup> The Complainants are, once again, wrong.

Jon Ferrell is the longtime Chief Financial Officer (CFO) of National Media. Mr. Ferrell is a Certified Public Accountant (CPA) who manages accounting and financial matters for National Media, including billing and paying broadcast stations for advertisement buys.<sup>23</sup> Mr. Ferrell is not involved in the creation, production, or distribution of any advertising.<sup>24</sup> He does not make decisions regarding the development of media strategy, including the selection of advertising slots.<sup>25</sup> He does not select advertising audiences, develop the content of advertising, produce public communications, identify voters, or otherwise provide consulting or media advice.<sup>26</sup> Mr. Ferrell’s position with National Media does not involve any of the services identified at 11 C.F.R. § 109.21(d)(4)(ii)(A) – (I). Mr. Ferrell’s position as CFO does not involve him in any of the creative or discretionary activities that implicate the Commission’s coordination regulations. Mr. Ferrell’s interaction with National Media’s media buyers generally consists of receiving billing and invoicing instructions from those buyers,<sup>27</sup> and his involvement in the purchasing of advertising is limited to this administrative function.

The Complaint vaguely refers to three “agreement forms” that Mr. Ferrell signed. The first of these is “[a]n ‘agreement form’ between Red Eagle and the Missouri station KYTV for NRA-PVF ads pertaining to the ‘Missouri General Election U.S. Senate,’” and dated September 6, 2018.<sup>28</sup> The second is “an agreement form” submitted by AMAG “on behalf of Josh Hawley for Senate, and signed by ‘Jon Ferrell, agent for Josh Hawley for Senate.’”<sup>29</sup> Third, the

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<sup>21</sup> Complaint at ¶¶ 70, 71, 72.

<sup>22</sup> *Id.* at ¶ 71.

<sup>23</sup> See Attachment D, Affidavit of Jon Ferrell at ¶ 3.

<sup>24</sup> *Id.* at ¶ 5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at ¶¶ 6-7.

<sup>27</sup> *Id.* at ¶ 3.

<sup>28</sup> Complaint at ¶ 44(a).

<sup>29</sup> *Id.* at ¶ 47(b).

Complaint references “an agreement form filed by AMAG dated September 6, 2018 for a ‘coordinated buy’ on behalf of ‘Josh Hawley for Senate/NRSC,’” also signed by Mr. Ferrell.<sup>30</sup> The Complainant subsequently concludes, repeatedly, that Mr. Ferrell “placed advertisements on behalf of both the NRA-PVF and Josh Hawley for Senate.”<sup>31</sup> While Mr. Ferrell generally signs these “agreement forms” referenced by the Complainants, this act does not have the significance the Complainants’ claim. In fact, it appears that at least one Complainant, the Campaign Legal Center, is well aware that a signature on this “agreement form” – NAB Form PB-18 – in no way suggests coordination. These “agreement forms” are not contracts and they have nothing whatsoever to do with the selection of audiences and time slots.

In other contexts, the Campaign Legal Center has shown that it knows exactly what this form represents. In 2016, for instance, the Campaign Legal Center explained:

When uploading political files, most broadcasters use an industry-standard form provided by the National Association of Broadcasters (NAB). . . . However, a number of broadcasters use a personalized variation of the NAB form that fulfills the same requirements.<sup>32</sup>

While the “Agreement Form” heading may suggest otherwise, NAB Form PB-18 is *not* a contract of any sort; rather, it provides basic information about an advertisement sponsor, which the signer represents as accurate, and is placed by the broadcaster in the broadcast station’s public file. According to the Campaign Legal Center:

The NAB Agreement provides the space *for stations* to meet the disclosure requirements of section 315 of the Communications Act. The form asks whether the ad communicates a “message relating to any political matter of national importance.” If yes, then *the station* must, in the next section, disclose the name of the candidate, the office being sought, the date of the election and/or the issue to which the ad refers. The form gives several examples of legislative issues of national importance, including the “Affordable Care Act.”<sup>33</sup>

This form is intended to fulfill the broadcaster’s public disclosure obligation; it is not a contract between the broadcaster and the ad sponsor. NAB Form PB-18 does not contain or

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<sup>30</sup> *Id.* at ¶ 47(c).

<sup>31</sup> *Id.* at ¶¶ 70, 71, 72.

<sup>32</sup> Campaign Legal Center, *Who’s Behind That Political Ad? The FCC’s Online Political Files and Failures in Sponsorship Identification Regulation* (Sept. 2016) at 5, <https://campaignlegal.org/sites/default/files/Who%27s%20behind%20that%20political%20ad.pdf>.

<sup>33</sup> See Complaint of Issue One and Campaign Legal Center Against Cox Media Group, licensee of WSB-TV, Atlanta, GA For Violations of the Communications Act § 315 and FCC Regulation § 73.1212 at 6, <http://www.campaignlegalcenter.org/sites/default/files/8-21-17%20FCC-WSB-Patriot%20Majority.pdf> (emphasis added).

reveal *any* information about the particulars of an ad buy, including the so-called “flight,” or airing schedule. Those details are contained in the actual purchase contract, a version of which is uploaded to the broadcaster’s public file separately *by the broadcaster* in accordance with FCC requirements.<sup>34</sup> (The Complainant includes several versions of these modified purchase contracts as exhibits. Before the FCC, the Campaign Legal Center has noted that these contracts “discloses rates, dates, and times the ad ran.”<sup>35</sup>) In other words, the act of “placing an advertisement” is accomplished via the purchase contract; NAB Form PB-18 is a basic disclosure form.

By playing dumb on this issue, the Complainants undoubtedly intend to create the misimpression that Mr. Ferrell signed contractual agreements to purchase air time for National Media clients and that he was therefore involved in the selection of media outlets, target audiences, and advertising time slots for multiple clients. The assertion in the Complaint at Paragraphs 70, 71, and 72 that “[i]n at least one instance, the same National Media official *placed advertisements* on behalf of both the NRA-PVF and Josh Hawley for Senate on the same stations and on the same day” (emphasis added) is a deliberate misrepresentation. The basis for this false claim is Mr. Ferrell’s signature on two NAB Form PB-18 filings (*see* Complaint Exhibits J and Q). But, based upon the Campaign Legal Center’s own past writings, it is absolutely clear that the Campaign Legal Center is aware that a signature on NAB Form PB-18 does not constitute “placing an advertisement.” It is also self-evident from even a cursory review of these forms that they contain no information whatsoever that would lead a reasonable person to conclude “coordination” had occurred. The Complainants undoubtedly know this and any allegations of coordination they make on the basis of NAB Form PB-18 are made in bad faith.

All advertising placement decisions for the advertisements referenced in the Complaint were made in accordance with National Media’s 2018 Firewall Policy.<sup>36</sup> Pursuant to that policy,

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<sup>34</sup> See Campaign Legal Center, *Who’s Behind That Political Ad? The FCC’s Online Political Files and Failures in Sponsorship Identification Regulation* (Sept. 2016) at 5 (“This NAB form is uploaded alongside broadcasting details to the FCC’s online portal.”); Complaint of Issue One and Campaign Legal Center Against Cox Media Group, licensee of WSB-TV, Atlanta, GA For Violations of the Communications Act § 315 and FCC Regulation § 73.1212 at 5 (“WSB-TV uploaded a number of documents to its online political file for the sale of airtime for ‘Yard,’ including but not limited to: the contract, which discloses rates, dates, and times the ad ran, in compliance with section 315(e)(2)(A)-(D); and the National Association of Broadcasters (NAB) Form PB-18, ‘Agreement Form for Non-Candidate/Issue Advertisements’ (‘NAB Agreement’). The NAB Agreement acknowledged that the ad related to the election in Georgia’s Sixth Congressional District.”) (citations omitted).

<sup>35</sup> See *Complaint of Campaign Legal Center and Sunlight Foundation Against The Gannett Company, licensee of WCNC-TV, Charlotte, NC, For Violations of the Communications Act § 315 and FCC Regulation § 73.1212* at 6 (May 1, 2014), <https://campaignlegal.org/sites/default/files/WCNC-PMP.pdf> (“WCNC-TV uploaded the following to its online political file for the sale of airtime for ‘Bad Company’: the contract, which discloses rates, dates, and times the ad ran, in compliance with section 315(e)(2)(A)-(D); and the National Association of Broadcasters (NAB) Form PB18, ‘Agreement Form for Non-Candidate/Issue Advertisements.’”).

<sup>36</sup> See Attachment E, National Media Research, Planning and Placement LLC Firewall Policy.

Ben Angle and John Jay served as the media buyers for Josh Hawley for Senate. Mr. Angle and Mr. Jay also served as the media buyers for party coordinated advertising produced by Josh Hawley For Senate and the National Republican Senatorial Committee. Kristy Kovach and Tracey Robinson served as the media buyers for NRA-PVF in Missouri in 2018. All decisions regarding media placement of the advertisements referenced in the Complaint were made by these firewalled media buyers.<sup>37</sup> Mr. Ferrell's role is addressed on Page 2, Paragraph 5 of National Media's 2018 Firewall Policy which provides that "employees who perform management functions (e.g., financial, strategic, or corporate leadership) which affect all [National Media] clients" are not subject to the firewall restrictions. However, "these management employees will not be provided access to information material to the creation, production or distribution of the clients' communications."<sup>38</sup> Mr. Ferrell often signs NAB Form PB-18 on behalf of his employer's clients after the form is prepared by others;<sup>39</sup> this act is an administrative one.

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<sup>37</sup> The Complainants posit some sort of third-rate coordination scheme by sophisticated actors that a handful of activists were nevertheless able to uncover by searching publicly-available documents. It does not seem to occur to the Complainants that "common vendor" coordination through media buyers is utterly unnecessary. Federal Communications Commission regulations require broadcast, cable, and satellite stations to place ad buy information in the FCC's online, publicly-accessible "political file" "as soon as possible," which the FCC defines to mean "immediately absent unusual circumstances." See 47 C.F.R. §§ 1943(c), 76.1701(c), 25.701(d)(2); see also *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 at ¶ 27 (Jan. 29, 2016) ("[W]e will require that new political file material be uploaded to the online file 'immediately absent unusual circumstances.' The contents of the political file are time-sensitive. Therefore, it is essential that there be no delay in posting political file materials to the online file."). In other words, comprehensive, easily-searchable television and radio ad buy information is made publicly available in more-or-less real time.

In response to a complaint filed by the Campaign Legal Center, the FCC wrote: "[P]ursuant to Section 315(e)(1)(B), licensees are required to make available for public inspection a 'complete record' of each request to purchase broadcast time that 'communicates a message relating to any political matter of national importance, including (i) a legally qualified candidate; (ii) any election to Federal office; or (iii) a national legislative issue of public importance.'" *Order In The Matter of a Complaint Involving the Political Files of Scripps Media, Inc.* at ¶ 4 (Jan. 6, 2017). The "complete record" includes, among other things, "the date and time on which the communication is aired." *Id.* at ¶ 5.

As noted, the Complainants themselves have urged the FCC to police station compliance with the agency's online political file requirements. See, e.g., Campaign Legal Center, *Campaign Legal Center and Sunlight Foundation File FCC Complaints Against Broadcasters Nationwide for Failure to Disclose Required Information on Political Ads*, April 30, 2014, <https://campaignlegal.org/press-releases/campaign-legal-center-and-sunlight-foundation-file-fcc-complaints-against>. One result of the online political file requirements is that with respect to television, radio, and satellite ad buyers, the FCC's "common vendor" coordination rules are effectively obsolete. "[T]he information material to the ... distribution of a communication used by the commercial vendor" – i.e., station, date, and time information – may always be "obtained from a publicly available source." 11 C.F.R. § 109.21(d)(4)(iii).

<sup>38</sup> See Attachment E, National Media Research, Planning and Placement LLC Firewall Policy at 2.

<sup>39</sup> See Attachment D, Affidavit of Jon Ferrell at ¶ 4.



Aside from attempting to mislead the Commission about the nature and significance of NAB Form PB-18, the Complainants present no evidence that any nonpublic, material campaign information was shared through National Media, Red Eagle, and AMAG personnel, or otherwise improperly used by the foregoing. There is no evidence of any qualifying conduct, only speculation and an intentional effort to mislead.

As with OnMessage, Inc. and Starboard Strategic, the Commission should reject the Complainant's invitation to find reason to believe solely on the basis that the "payor" and "content" standards are satisfied.<sup>40</sup> As explained previously, "[t]he approach urged by the Complainants (to find reason to believe where 'the first two parts of the common vendor test are satisfied,' even in the absence of credible evidence pertaining to the third part of the test) has not been used since 2005, and since then the Commission has consistently required evidence of actual conduct in subsequent enforcement matters."<sup>41</sup>

The Complainant presents no specific evidence that the third part of the "common vendor" test was satisfied. The Complaint contains no information or evidence showing or suggesting that the commercial vendor used or conveyed to the person paying for the communication any information about campaign plans, projects, activities, or needs of the clearly identified candidate, and the Complaint contains no information or evidence showing or suggesting that this information was material to the creation, production, or distribution of the communication.<sup>42</sup>

### III. Conclusion

For the reasons set forth above, this Complaint should be dismissed, along with the two previous complaints filed by the Complainants. There is no evidence in support of the Complainant's allegations that the Respondents engaged in any form of coordination under the Act or the Commission's regulations.

Sincerely,



Jason Torchinsky  
Michael Bayes  
Jessica F. Johnson

Attachments

<sup>40</sup> See Attachment F, MUR 7427, Response at 9-16.

<sup>41</sup> *Id.* at 13-14.

<sup>42</sup> See 11 C.F.R. § 109.21(d)(4)(iii).

**Attachment A**  
**2018 Firewall Policy of OnMessage, Inc.**

**HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC***Attorneys at Law*

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

**March 8, 2018**

**To: OnMessage, Inc.**

**From: Jessica Furst Johnson**

**Re: Internal Firewall Policy of OnMessage, Inc.**

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The purpose of this memorandum is to memorialize the implementation of an internal firewall policy adopted by OnMessage, Inc. (“OMI”), in advance of the 2018 elections.

OMI wishes to implement a firewall policy that satisfies and complies with the safe harbor requirements set forth at Federal Election Commission (FEC) regulation 11 C.F.R. § 109.22(h). By meeting these requirements, this policy will effectively prevent OMI personnel from conveying nonpublic, material information from one client to another and thereby prevent information obtained from one client from being used on behalf of another in a manner that may implicate the FEC’s coordination regulations.

Accordingly, OMI has designed and implemented a firewall that will effectively prevent “common vendor” coordination, as that term is used at 11 C.F.R. § 109.21(d)(4), among OMI’s various clients.

Specifically, this firewall is intended to prevent any OMI personnel (i) from conveying to a client who may produce and distribute public communications in connection with Election X, or (ii) using on that client’s behalf, any:

(a) information about the campaign plans, projects, activities, or needs of a second client who is a candidate in Election X, the second client’s election opponent, or a political party committee engaged in Election X, where that information is material to the creation, production, or distribution of the first client’s public communication; or

(b) information learned or used previously by OMI in the course of providing services to a candidate (or that candidate’s opponent) where that candidate is now clearly identified in the public communication of another client, and the information is material to the creation, production, or distribution of the client’s public communication.

In furtherance of this firewall policy, the principals of OMI have taken steps to “firewall” (or “silo”) certain clients to ensure that work and services are provided to those clients only by

specific OMI employees who will not share sensitive information regarding their firewalled clients with other OMI employees.

Please reference the 2018 OMI Firewall Chart, attached to this firewall policy.

With respect to each race, no OMI employee will provide work and services to clients in more than one category. Clients in Category 3 have been determined not to present a coordination risk with respect to other clients in that same category, and therefore an OMI employee may work with multiple clients in Category 3 who are active in the same race.

One or more OMI employees may have administrative duties that involve providing services to, or in support of, clients that are involved in the same race in more than one category. These employees will not perform work or services that involve creative or strategic decisions regarding the creation, production, or distribution of public communications, and will not convey information regarding any such creative or strategic decisions from one principal to another.

This policy is intended to supplement and reinforce OMI's existing policies regarding the safeguarding of client confidences and OMI's existing commitment to maintaining the highest professional standards.

OMI will consult regularly with counsel regarding the continued maintenance of its firewall policy, and this policy is subject to revision as a result of the addition or subtraction of clients.

This policy will be shared, as appropriate, with all current and future affected employees, consultants, vendors, independent contractors, and clients.

If you have any questions about this policy, you should contact Graham Shafer.

Please sign and date this policy statement acknowledging that you have read and understand the Policy Statement. Return the signed copy to Sarah Binion by March 15, 2018. An additional copy can be provided for your records.

I have read and understand this policy statement:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

RACE	CATEGORY 1: CANDIDATES	CATEGORY 2: NRSC IE	CATEGORY 3: NRA/OUTSIDE GROUPS
Missouri Senate	Timmy Teepell Brad Todd Wes Anderson Rick Heyn Kyle McGehrin Jacquie Brown Tom Dunn Sarah Binion Brian Lyle	Guy Harrison Joanna Burgos	

**Attachment B**  
**Affidavit of Bradley Todd**

**AFFIDAVIT OF BRADLEY TODD**

PERSONALLY came and appeared before me, the undersigned Notary, the within named BRADLEY TODD, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Bradley Todd. I am a co-founder of both OnMessage, Inc. and Starboard Strategic, Inc.
2. OnMessage, Inc. and Starboard Strategic, Inc. operate at all times with appropriate "firewall" policies that comply with the Federal Election Commission's requirements as set forth at 11 C.F.R. § 109.21(h).
3. During 2018, I provided consulting services to the National Rifle Association of America Political Victory Fund and National Rifle Association Institute for Legislative Action. These services consisted primarily of consulting with respect to general public relations matters and matters involving federal and state legislation. In addition, I provided consulting services to the National Rifle Association of America Political Victory Fund and National Rifle Association Institute for Legislative Action in connection with state and federal elections other than the 2018 United States Senate election in Missouri.
4. In 2018, I did not communicate or convey any non-public information about the campaign plans, projects, activities, or needs of Josh Hawley to any representative of the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action.
5. In 2018, no principal or employee of OnMessage, Inc. or Starboard Strategic, Inc. provided work or services to the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action in connection with the U.S. Senate election in Missouri, and, accordingly, no principal or employee of OnMessage, Inc. or Starboard Strategic, Inc. was involved in any decisions relating to the creation, production, or distribution of any independent expenditures created by or on behalf of the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action in connection with the U.S. Senate election in Missouri.
6. Pursuant to the 2018 firewall policy of OnMessage, Inc. and Starboard Strategic, Inc., no principals or employees of OnMessage, Inc. and Starboard Strategic, Inc. were assigned to provide work and services to the National Rifle Association in connection with the U.S. Senate election in Missouri.
7. OnMessage, Inc. and Starboard Strategic, Inc. retained Heather Doiron as an independent contractor to provide certain media-related services to the National Rifle Association of America Political Victory Fund in connection with the 2018 U.S. Senate election in Missouri.

DATED this the 17<sup>th</sup> day of December, 2018



Signature of Affiant, Bradley Todd

SWORN to subscribed before me, this 17<sup>th</sup> day of December, 2018

  
NOTARY PUBLIC

My Commission Expires:

9/30/2021





**Attachment C**  
**Affidavit of Heather Doiron**

**AFFIDAVIT OF HEATHER DOIRON**

PERSONALLY came and appeared before me, the undersigned Notary, the within named HEATHER DOIRON, and makes this her Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

1. I am Heather Doiron. I am a resident of the State of Louisiana.
2. In July 2018, I was retained as an independent contractor by OnMessage, Inc. In this capacity, I provided budget management and media planning services to the National Rifle Association of America Political Victory Fund on behalf of OnMessage, Inc. and Starboard Strategic, Inc.
3. These budget management and media planning services included serving as a liaison between the National Rifle Association of America Political Victory Fund and its media placement vendor for the purpose of facilitating advertisement buys in connection with the 2018 U.S. Senate election in Missouri.
4. I assisted the National Rifle Association of America Political Victory Fund with placing advertisements for distribution in Missouri, in connection with the 2018 U.S. Senate election, in October 2018.
5. I performed the services detailed above from my office in Louisiana. I understood I was firewalled from the principals and employees of OnMessage, Inc. and Starboard Strategic, Inc. with respect to all advertising distributed by the National Rifle Association of America Political Victory Fund in connection with the 2018 U.S. Senate election in Missouri. I did not discuss the services I provided to the National Rifle Association of America Political Victory Fund in connection with the 2018 U.S. Senate election in Missouri with any principal or employee of OnMessage, Inc. or Starboard Strategic, Inc.
6. No principal or employee of OnMessage, Inc. and/or Starboard Strategic, Inc. communicated or conveyed to me any non-public information concerning the plans, projects, activities, or needs of Josh Hawley for Senate or any national party committee.

*Signature page follows*

DATED this the 14 day of December, 2018

  
Signature of Affiant, Heather Doiron

SWORN to and subscribed before me, this 14<sup>th</sup> day of December, 2018

  
NOTARY PUBLIC

My Commission Expires:

at death



BRANDEN BARKER  
Notary Public  
Notary ID No. 151819  
East Baton Rouge Parish, Louisiana

Attesting To Signature Only  
Document Drafted By Others

**Attachment D**  
**Affidavit of Jon Ferrell**

**AFFIDAVIT OF JON FERRELL**

PERSONALLY came and appeared before me, the undersigned Notary, the within named JON FERRELL, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Jon Ferrell. I am a resident of the State of Maryland.
2. I am the Chief Financial Officer of National Media Research Planning and Placement LLC ("National Media"). I have served in this capacity since 1998.
3. I am a Certified Public Accountant. I manage accounting and financial matters for National Media, including client invoicing and paying broadcast stations for clients' advertising buys. I receive and effectuate billing and invoicing instructions from National Media's advertisement buyers in connection with clients' advertisement buys.
4. I often sign NAB Form PB-18 on behalf of National Media clients after this form is completed by others, including National Media's advertisement buyers and assistants.
5. I do not "place advertisements" for National Media clients as that term is commonly understood and used in the Complaint (FEC MUR 7524). Specifically, I am not involved in any decisions pertaining to the selection of advertising time slots, nor am I involved in decisions related to the creation, production, or distribution of any advertising.
6. I am not involved in the development of media strategy, the selection of audiences for client's advertisements, the development of advertising content, the production of public communications, or the identification of voters on behalf of National Media and its clients.
7. I do not provide political strategy consulting or media strategy advice to National Media clients.

DATED this the 12<sup>th</sup> day of December, 2018

  
Signature of Affiant, Jon Ferrell

SWORN to subscribed before me, this 12<sup>th</sup> day of December, 2018

  
NOTARY PUBLIC

My Commission Expires:

9/30/2021



**Attachment E**  
**2018 Firewall Policy of National Media**

**National Media Research, Planning and Placement LLC**  
**Firewall Policy**

January 18, 2018

It is the policy of National Media Research, Planning and Placement LLC ("NMRPP") to ensure that its operations do not cause, contribute to, or result in impermissible "coordination" (as defined by federal campaign finance laws and regulations) between its political clients. Political clients include candidate campaign committees, political party committees, political action committees, 527 committees, 501(c)(4) organizations, and other independent groups for which NMRPP develops content, buys time, or provides other media services in relationship to their public communications. To that end, the following policy is in effect immediately and must be followed by all NMRPP employees and retained consultants:

1. All work engagements for prospective or existing political clients must be approved by a member of the Management Team of NMRPP, (Robin Roberts, President or Kathleen Jones, Sr. Vice President) before employees or consultants can perform work for the client. If NMRPP employees or consultants are contacted by prospective or existing clients about performing media services, they should immediately contact Robin or Kathleen.
2. If Management Team determines that NMRPP's engagement for a client could cause, contribute to, or result in coordination or the appearance of coordination between prospective, existing or prior clients regarding political and issue-oriented communications, then work may not be performed by any NMRPP employee or consultant for any affected client until NMRPP implements appropriate "firewall" procedures to address those coordination concerns. If an NMRPP employee or consultant has information suggesting that NMRPP's engagement for a client could cause, contribute to, or result in coordination or the appearance of coordination between prospective, existing or prior clients regards to political and issue-oriented communications, the employee or consultant must notify Management Team immediately. In that case, employees and consultants may not perform work on the affected matters until they are notified by Management Team.
3. The reason for firewall procedures is to prohibit the flow of information between employees or consultants providing services for one client and those employees or consultants currently or previously providing services to another client relating to the creation, production or distribution of communications. In establishing a firewall, NMRPP will use appropriate resources and procedures to ensure the effectiveness of the firewall, which may include placing employees or consultants on separate teams, establishing separate work areas, using separate accounts in the media buying software program, and implementing work protocols, as discussed more fully below. Additionally, in order to facilitate the firewall procedures, NMRPP may, when appropriate, assign matters to different company entities including American Media & Advocacy Group (AMAG), and Red Eagle Media Group. As mandated by our company firewall policy, management will determine the staff that will work on each account, and no employee working on an account or having access to pertinent information in one organization will be allowed to perform similar duties in the other organization for the same race.
4. Whenever NMRPP determines that firewall procedures are required, all employees and consultants will be informed of the existence of the firewall, the identities of the affected clients, and the identities of the employees and consultants who will be assigned to work for the affected clients. Firewall procedures that apply in a particular matter will be set forth in a written memorandum that will be provided, along with a copy of this policy statement, to all relevant

## Firewall Policy – 2018

Page 2

employees, consultants, and clients in advance of any work being performed for the affected clients.

5. Two restrictions will apply to NMRPP employees whenever coordination concerns are present and firewall procedures are in effect:

- The same NMRPP employee or consultant cannot perform work relating to more than one client on opposite sides of the firewall, for the same election. This restriction does not, however, apply (1) to employees or consultants who provide exclusively administrative assistance (e.g., reception, clerical or IT support) or (2) to employees who perform management functions (e.g., financial, strategic, or corporate leadership) which affect all NMRPP clients; however, these management employees will not be provided access to information material to the creation, production or distribution of the clients' communications. The specific measures used to ensure that management employees do not have access to the material information will be set forth in the firewall memorandum for a particular matter.
- Employees and consultants who provide services for a client subject to firewall procedures are, as a matter of company policy, prohibited from communicating with employees and consultants who provide services for any other client subject to the firewall regarding the substance of the work that NMRPP is handling, or has been engaged to handle. Routine communications between co-workers, such as exchanging pleasantries, are permitted.

6. Please keep in mind that NMRPP's clients are the beneficiaries of this firewall policy and the firewall procedures that will be implemented for particular engagements. The mere existence of this policy statement and specific firewall procedures will not protect our clients from allegations of impermissible coordination if, despite the firewall, information about the substance of our work is communicated between employees or consultants working for the affected clients. Therefore, it is essential that NMRPP employees and consultants strictly adhere to this policy and comply with the firewall procedures that are put in place for a particular engagement. If employees or consultants become aware of any problems with the effectiveness of firewall procedures, Management Team must be notified immediately.

7. If you have any questions about this policy, you should contact Management Team.

8. Please sign and date this policy statement acknowledging that you have read and understand the Policy Statement. Return the signed copy to Robin. An additional copy has been provided for your records.

I have read and understand this policy statement:

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Print Name:

Date:



## Media Buying Clients / Media Buyers in Missouri, 2018

Josh Hawley for Senate

<b>Market</b>	<b>Buyer</b>	<b>Company</b>
Kansas City	Ben Angle	American Media & Advocacy Group (AMAG)
Springfield	Ben Angle	
Columbia	Ben Angle	
Statewide Cable	Ben Angle	
Addressable	Ben Angle	
Paducah	John Jay	
Joplin	John Jay	
St. Louis	John Jay	

NRSC/Josh Hawley (Coordinated Money)

American Media &amp; Advocacy Group

St. Joseph	Ben Angle
Ottumwa	Ben Angle
Springfield	Ben Angle
Quincy	John Jay

NRA PVF

Red Eagle Media Group

Kansas City	Kristy Kovach
Springfield	Kristy Kovach
Columbia	Tracey Robinson
Joplin	Tracey Robison

America First Action

Red Eagle Media Group

Kansas City	Kristy Kovach
Springfield	Kristy Kovach
Paducah	Kristy Kovach
St. Louis	Tracey Robinson
Columbia	Tracey Robinson
Joplin	Tracey Robinson
St. Joseph	Tracey Robinson
Quincy	Chris Kinton

NRSC-IE

NMRPP

St. Louis	Michelle Morie
Kansas City	Beth Stallings
Springfield	Chris Kinton
Columbia	Michelle Morie

**Attachment F**  
**Responses Filed in MURs 7427 and 7497**

**HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC**  
*Attorneys at Law*

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

November 12, 2018

Federal Election Commission  
Office of General Counsel  
Office of Complaints Examination  
& Legal Administration  
attn: Kathryn Ross, Paralegal  
1050 First Street, NE  
Washington, DC 20002

**Re: MUR 7497**

Dear Ms. Ross:

This response is submitted by the undersigned counsel on behalf of the following Respondents in connection with the above-referenced matter: National Rifle Association of America Political Victory Fund (NRA-PVF) and Mary Rose Adkins<sup>1</sup> in her capacity as Treasurer; National Rifle Association Institute for Legislative Action (NRA-ILA); OnMessage, Inc.; and Starboard Strategic, Inc. This is the second of three related, pre-election complaints filed by the Campaign Legal Center and Giffords, in conjunction with coordinated media coverage by the anti-NRA outlet *The Trace*.

The NRA-ILA advertisements referenced in this Complaint were independent expenditures and no in-kind contributions were made from NRA-PVF or NRA-ILA to the candidate referenced in the Complaint. The Complaint is without merit, substitutes unwarranted speculation for actual evidence, and should be dismissed.

In a letter dated October 11, 2018, nine Democratic Senators took the highly unusual step of writing to the Chair and Vice Chair in an effort to interfere politically with this matter by encouraging the Commission to investigate. Using official resources, these Senators repeated the baseless allegations made by their political allies in MURs 7427 and 7497. We urge the Commission to ignore this ethically questionable attempt to improperly influence a Commission enforcement matter.<sup>2</sup>

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<sup>1</sup> Please note that Robert G. Owens is now the Treasurer of NRA-PVF.

<sup>2</sup> See Attachment A, Letter to Chair Caroline C. Hunter and Vice Chair Ellen Weintraub from U.S. Senators Sheldon Whitehouse, Dianne Feinstein, Patty Murray, Richard Blumenthal, Christopher S. Murphy, Elizabeth Warren, Edward J. Markey, Chris Van Hollen, and Kamala D. Harris (Oct. 11, 2018), <https://www.whitehouse.senate.gov/news/release/senators-call-out-nra-for-using-shell-corporation-to-duck-campaign-finance-law>.

## **I. Background**

This Complaint alleges that approximately \$400,000 spent on independent expenditures by the NRA-ILA in connection with the U.S. Senate election in Montana was coordinated with one of the candidates in that election.<sup>3</sup> The Complainants' coordination allegations are premised on two theories: (1) the communications were coordinated through a common vendor; and (2) the communications were the product of one candidate's "assent" to an NRA representative's "suggestion." As explained in more detail below, both allegations are without merit.

Neither the NRA-PVF nor the NRA-ILA made any coordinated communications through a common vendor. OnMessage, Inc. and Starboard Strategic, Inc. maintained an effective firewall in accordance with 11 C.F.R. § 109.21(h) at all times relevant to this matter for the benefit of their clients. The Complainant presents no evidence that any nonpublic, material campaign information was shared through OnMessage, Inc. and Starboard Strategic, Inc. personnel, or otherwise improperly used by OnMessage, Inc., and Starboard Strategic, Inc. There is no evidence of any qualifying conduct, only speculation.

The NRA-PVF and NRA-ILA also did not make any coordinated communications under an "assent to a suggestion" theory. As explained below, no "suggestion" was made under 11 C.F.R. § 109.21(d)(1)(ii), and the candidate statement referenced in the Complaint does not constitute an "assent" under 11 C.F.R. § 109.21(d)(1)(ii).

## **II. "Common Vendor" Coordination**

Most of the Complaint's allegations regarding "common vendor" coordination are recycled from a previously filed Complaint (MUR 7427). Paragraphs 16 – 37 of the Complaint are cut and pasted from the Complaint filed in MUR 7427, were addressed in a prior Response, and are not relevant to this matter. The Response in MUR 7427 is included as Attachment B and incorporated by reference.

In the present matter, the Complainant asserts that NRA-ILA made independent expenditures of \$383,196 and \$21,300 in connection with the U.S. Senate election on September 6, 2018. The expenditure of \$383,196 was disbursed to Starboard Strategic. (The \$21,300 was disbursed to Redprint Strategy LLC.) The Complaint also contends that Matt Rosendale for Montana "has reported \$445,367 in disbursements to OnMessage ... as of September 13, 2018."<sup>4</sup> The relationship between Starboard Strategic and OnMessage was explained in detail in the Response to MUR 7427 (pages 2-3, 5-7).

As was the case in MUR 7427, OnMessage and Starboard Strategic have a firewall policy in place for the current election cycle.<sup>5</sup> OnMessage and Starboard Strategic maintained an

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<sup>3</sup> See Complaint at ¶¶ 2, 12, 14.

<sup>4</sup> Complaint at ¶ 15.

<sup>5</sup> See Attachment C, Firewall Policy of OnMessage, Inc. (March 8, 2018).

effective firewall in accordance with 11 C.F.R. § 109.21(h) at all times relevant to this matter for the benefit of its clients. With respect to the 2018 U.S. Senate election in Montana:

- Guy Harrison and Brad Todd, along with five individuals not named in the Complaint were assigned to provide work and services to Matt Rosendale's campaign.
- Curt Anderson, Timmy Teepell, and Wes Anderson, along with two individuals not named in the Complaint were assigned to provide work and services to NRA-PVF and NRA-ILA in connection with Montana's 2018 U.S. Senate election.

Consistent with this firewall policy, Mr. Todd has consulted with the NRA on a variety of matters, which primarily include general public relations matters and matters involving federal and state legislation.<sup>6</sup> Mr. Todd also consulted on election-related matters involving elections *other than* the U.S. Senate election in Montana.<sup>7</sup> Mr. Todd did not communicate or convey any non-public information about the campaign plans, projects, activities, or needs of Mr. Rosendale to any representative of the NRA-PVF or NRA-ILA.<sup>8</sup> Mr. Todd was not involved in any decisions relating to the creation, production, or distribution of any independent expenditures created by or on behalf of the NRA-ILA in connection with the U.S. Senate election in Montana.<sup>9</sup>

The Complainant presents no evidence that any nonpublic, material campaign information was shared through OnMessage, Inc. and Starboard Strategic, Inc. personnel, or otherwise improperly used by OnMessage, Inc., and Starboard Strategic, Inc. There is no evidence of any qualifying conduct, only speculation.

For the reasons explained in the Response to MUR 7427, the Commission should reject the Complainant's invitation to find reason to believe solely on the basis that the "payor" and "content" standards are satisfied.<sup>10</sup> As explained previously, "[t]he approach urged by the Complainants (to find reason to believe where 'the first two parts of the common vendor test are satisfied,' even in the absence of credible evidence pertaining to the third part of the test) has not been used since 2005, and since then the Commission has consistently required evidence of actual conduct in subsequent enforcement matters."<sup>11</sup>

As was the case in MUR 7427, the Complainant presents no specific evidence that the third part of the "common vendor" test was satisfied. The Complaint contains no information or evidence showing or suggesting that the commercial vendor used or conveyed to the person paying for the communication any information about campaign plans, projects, activities, or needs of the clearly identified candidate, and the Complaint contains no information or evidence showing or suggesting that this information was material to the creation, production, or distribution of the communication.<sup>12</sup>

<sup>6</sup> See Attachment D, Affidavit of Bradley Todd at ¶ 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at ¶ 4.

<sup>9</sup> *Id.* at ¶ 5.

<sup>10</sup> See MUR 7427, Response at 9-16.

<sup>11</sup> MUR 7427, Response at 13-14.

<sup>12</sup> See 11 C.F.R. § 109.21(d)(4)(iii).

### III. “Assents to the Suggestion”

The Complainant’s second coordination theory contends that the conduct prong is satisfied because the communications at issue were “created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assent[ed] to the suggestion.”

The Complaint’s theory relies on audio allegedly recorded “[a]t a July 2018 event in Washington, D.C.” and first publicized in a September 13, 2018 article appearing on *The Daily Beast* website.<sup>13</sup> (It is unclear how *The Daily Beast* reporter knows when and where the audio was recorded, and we have no way of verifying if the article’s claims are accurate.) The recorded audio is as follows:

Questioner: Outside groups started spending on your behalf?

Rosendale: Yes. So, the uh, the Club for Growth has already started. Umm, there’s another group that has already started. I can’t even remember the name of it now. They just started recently. Outside groups have already started to come in. I fully expect that the U.S. Chamber is gonna come in, and I fully expect the NRA is gonna come in. I think both of them are coming in, probably right here in August. Sometime.

Questioner: This is a big race for the NRA.

Rosendale: Yes. The, the uh, Supreme Court confirmations are big. That’s what sent the NRA over the line. Because in 12, with Denny, they stayed out. They stayed out. Chris Cox told me, he was like, “Well, we’re gonna be in this race.”

The Complaint contends that Mr. Rosendale’s statements about the NRA constitute an “assent” to Mr. Cox’s alleged “suggestion” that the NRA distribute public communication in connection with the U.S. Senate race in Montana.

Christopher Cox serves as the Executive Director of the NRA-ILA and Chairman of the NRA-PVF. In fulfilling these roles, he sometimes speaks to federal candidates about issues of concern to the NRA and its members, possible NRA-PVF endorsements, and possible NRA-PVF contributions. When he speaks with federal candidates, he routinely begins any conversation by explaining that he is unable to discuss any possible, planned, or ongoing NRA, NRA-ILA, or NRA-PVF communications in support of the candidates or in opposition to the candidate’s opponent.<sup>14</sup>

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<sup>13</sup> Complaint at ¶ 10; Lachlan Markay, *Exclusive: Audio Reveals Potentially Illegal Coordination Between NRA and Montana Senate Hopeful Matt Rosendale*, *The Daily Beast*, Sept. 13, 2018, <https://www.thedailybeast.com/exclusive-audio-reveals-potentially-illegal-coordination-between-nra-and-montana-senate-hopeful-matt-rosendale>.

<sup>14</sup> See Attachment E, Affidavit of Christopher Cox at ¶ 4.

The earlier conversation referenced in the quoted language above occurred on June 13, 2018.<sup>15</sup> Mr. Cox was introduced to Matt Rosendale, and Mr. Cox began by stating that he could not discuss any possible, planned, or ongoing NRA, NRA-ILA, or NRA-PVF public communications in connection with the U.S. Senate election in Montana.<sup>16</sup> Mr. Cox and Mr. Rosendale spoke briefly about issues of concern to the NRA and its members, namely national concealed carry reciprocity legislation and federal judgeships.<sup>17</sup> Mr. Cox recalls that he mentioned that the NRA was dissatisfied with Senator Tester's vote against the confirmation of Justice Gorsuch.<sup>18</sup> It was Mr. Cox's understanding that Mr. Rosendale was seeking the NRA's endorsement and a contribution from NRA-PVF.<sup>19</sup> Mr. Cox told Mr. Rosendale that the U.S. Senate election in Montana was a priority for the NRA, given the high-profile nature and importance of that race and the importance of the Supreme Court to the NRA and its members.<sup>20</sup> Mr. Cox was not prepared to formally commit to the NRA's endorsement of Mr. Rosendale's candidacy at the time, but Mr. Cox recalls that he may have said that the NRA anticipated that it would be engaged in the U.S. Senate election in Montana.<sup>21</sup> (The words attributed to Mr. Cox in Mr. Rosendale's statement above appear to be an after-the-fact paraphrasing. Mr. Cox does not recall using those exact words.) Mr. Cox did not indicate that this involvement would take any particular form, and Mr. Cox was in no way seeking Mr. Rosendale's approval or permission.<sup>22</sup> Mr. Cox and Mr. Rosendale did not discuss any communications that the NRA, the NRA-PVF, or the NRA-ILA might make in connection with the 2018 U.S. Senate election in Montana.<sup>23</sup> Mr. Cox first learned of the comments attributed to Mr. Rosendale that are featured in the Complaint on or about September 13, 2018, when *The Daily Beast* published the article referenced above.<sup>24</sup>

#### A. The Facts Do Not Evidence Either a "Suggestion" or an "Assent"

The Complaint alleges that the communications to which Mr. Rosendale allegedly "assented" were television advertisements aired "in the midst of confirmation hearings for U.S. Supreme Court nominee Brett Kavanaugh [and] criticized Tester for his votes on Supreme Court nominees."<sup>25</sup> The advertisement informed viewers about Senator Tester's record in Washington, DC, and noted that "in Montana he says he supports gun rights, but in Washington, DC, his votes tell a different story."<sup>26</sup> The advertisement stated that "[i]n all three votes on Supreme Court justices [Justices Kagan, Sotomayor, and Gorsuch], Tester sided with Chuck Schumer and the anti-gun liberal left, against your right to self-defense."

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<sup>15</sup> *Id.* at ¶ 5.

<sup>16</sup> *Id.* at ¶ 6.

<sup>17</sup> *Id.* at ¶ 7.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at ¶ 8.

<sup>20</sup> *Id.* at ¶ 9.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at ¶ 10.

<sup>24</sup> *Id.* at ¶ 11.

<sup>25</sup> Complaint at ¶ 13.

<sup>26</sup> The "Two Faces" advertisement is available at [https://www.youtube.com/watch?v=AuqwhCm\\_MZs](https://www.youtube.com/watch?v=AuqwhCm_MZs).

According to the Complaint, Mr. Rosendale said to an unidentified individual: “Chris Cox told me – he was like, ‘well, we’re gonna be in this race.’”<sup>27</sup> (As noted above, this statement appears to be an after-the-fact paraphrasing.) Mr. Rosendale also allegedly said, “I fully expect the NRA is gonna come in. I think both of them [the NRA and the U.S. Chamber] are coming in, probably right here in August, sometime.”<sup>28</sup> Mr. Rosendale allegedly made these statements at a July 2018 event, the following month after he and Mr. Cox spoke briefly. The Complainant does not allege that Mr. Cox or any other NRA representative was present at the July 2018 event. Furthermore, in the language quoted above, Mr. Rosendale said that *he* expected “the NRA is gonna come in. I think both of them are coming in, probably right here in August. Sometime.” The advertisements that are the subject of this Complaint were distributed in September, which demonstrates that Mr. Rosendale had no actual knowledge of the NRA’s advertising plans.

The Complainant claims that Mr. Rosendale’s statements demonstrate that he “assented” to Mr. Cox’s earlier “suggestion” “that the NRA-ILA planned to pay for the communications.”<sup>29</sup> Specifically, this “assent” came in the form of “Rosendale’s favorable reference to this planned activity on his behalf in response to a question about spending by ‘outside groups.’”<sup>30</sup> In other words, it is the Complainant’s theory that when Mr. Cox allegedly stated that the NRA anticipated that it would be involved somehow in the U.S. Senate election in Montana, this was a “suggestion” that invited a response, rather than a simple statement of fact. Mr. Rosendale then conveyed his response (the “assent”) to this “suggestion” not to Mr. Cox or any other representative of the NRA, and not even contemporaneously, but rather, to some other individual who asked him a question at a later date. Mr. Rosendale’s supposed “assent” was captured on an audio recording that Mr. Rosendale may or may not have known about. Under the Complainant’s theory, Mr. Rosendale must have hoped that his “favorable reference” would somehow be conveyed back to Mr. Cox. The audio of Mr. Rosendale’s comments was publicized by *The Daily Beast* one week after the advertisements at issue in this Complaint were distributed. Mr. Cox first learned of Mr. Rosendale’s comments from *The Daily Beast* article.<sup>31</sup> Thus, the Complainant’s theory must be that Mr. Rosendale’s “assent” became retroactively effective when Mr. Cox learned of Mr. Rosendale’s comments when they were published by *The Daily Beast* one week *after* the advertisements at issue were already distributed in Montana. (In response to the legal theory presented in this Complaint, former Commissioner Smith wrote in a list-serv email exchange: “This is the stupidest argument I’ve seen on campaign finance this cycle. I literally laughed out loud when I was first told about it.”)

Aside from claiming an impossible coordination scheme that defies the timeline of events, the Complainant fails to explain how the described conduct actually satisfies any conduct standard. Mr. Cox’s statement was not a “suggestion” that the NRA *could* finance advertising *if* the candidate was amendable. It was simply a statement of fact that that the NRA anticipated that it would be engaged *somehow* in the U.S. Senate election in Montana. Mr. Rosendale’s later comment to a different person in a semi-private setting was not in any way a response to Mr.

<sup>27</sup> Complaint at ¶ 11.

<sup>28</sup> *Id.* at ¶ 10.

<sup>29</sup> *Id.* at ¶ 56.

<sup>30</sup> *Id.* at ¶ 59.

<sup>31</sup> Affidavit of Christopher Cox at ¶ 11.



Cox's statement the previous month, and accordingly, cannot possibly constitute an "assent." Finally, Mr. Rosendale's supposed "assent" did not become known to Mr. Cox until *after* the advertising to which Mr. Rosendale was supposedly assenting had already been distributed. There is not a single aspect of the Complainant's theory that withstands scrutiny.

## B. The "Assent" Standard

Commission regulations provide that the "request or suggestion" standard may be satisfied two ways:

*First*, the third party may create, produce, or distribute a communication "at the request or suggestion of a candidate, authorized committee, political party committee, or agent of the any of the foregoing." 11 C.F.R. § 109.21(d)(1)(i). This is the "most direct form of coordination, given that the candidate ... communicates desires to another person who effectuates them."<sup>32</sup>

*Second*, the third party may suggest the creation, production, or distribution of the communication to the candidate, and the candidate then assents to the suggestion.<sup>33</sup> According to the Commission, this standard is "intended to prevent circumvention of the statutory 'request or suggestion' test ... by, for example, the expedient of implicit understandings without a formal request or suggestion."<sup>34</sup> The Commission acknowledged in 2003 "that the assent of a candidate may take many different forms," but disputed "that a standard encompassing assent to a suggestion is overly complex. Assent to a suggestion is merely one form of a request; it is 'an expression of a desire to some person for something to be granted or done.'<sup>35</sup> Notwithstanding these assurances, Commission regulations do not define the term "assent" or provide any examples of conduct that constitutes an "assent" to a "suggestion."

The Commission added that the "assent" standard is not inconsistent with *FEC v. Christian Coalition* and that it had not "propose[d] that coordination could result where a payor 'merely informs' a candidate or political party committee of its plans."<sup>36</sup> In *Christian Coalition*, the court rejected a coordination finding where "the Coalition advised the campaign of its plans for the volume of voter guides – 40 million – planned for the 1992 election," "[b]ut campaign staff did not initiate a discussion or negotiation in response."<sup>37</sup>

Mr. Cox's statement indicating that the NRA anticipated that it would be engaged somehow in the U.S. Senate election in Montana was not a "request" or a "suggestion." A "request" is something that is asked for. A "suggestion" is something introduced for consideration, or something offered as a possibility. Mr. Cox's statement was neither – it was a statement of fact or intention that served to "merely inform" another individual of that fact or intention. On its face, Mr. Cox's statement did not ask for anything, or seek any form of

<sup>32</sup> Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003).

<sup>33</sup> 11 C.F.R. §109.21(d)(1)(ii); Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. at 432.

<sup>34</sup> *Id.* at 432.

<sup>35</sup> *Id.* (citing Black's Law Dictionary, definition of "request").

<sup>36</sup> *Id.* at 432.

<sup>37</sup> *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 94 (D.D.C. 1999).

permission or approval from Mr. Rosendale. There is no indication that any response was solicited or given at all.

If no request or suggestion is made, then no “assent” to a request or suggestion is possible under 11 C.F.R. § 109.21(d)(1)(ii). The regulation presumes that two things must happen, in order: (i) one party asks (the request or suggestion) and then (ii) the other party answers (the assent). The Explanation and Justification explains that the “assent” standard is intended to prevent circumvention of the “request or suggestion” standard, and that “assent” may be conveyed implicitly.<sup>38</sup> Even assuming that “assent” may be conveyed implicitly or indirectly, at least in some circumstances, an “assent” must necessarily take the form of a response *to the person* making the suggestion, and an “assent” must necessarily be conveyed to that person *before* he or she creates, produces, and distributes the allegedly coordinated communications.

Even if we assume for the sake of argument that Mr. Cox’s statement could be construed as a “request” or “suggestion,” which it was not, the Complaint does not contain any facts suggesting that Mr. Rosendale in any way “assented” *to Mr. Cox’s statement*. “Assent” means “agreement, approval, or permission.”<sup>39</sup> Black’s Law Dictionary includes the following usage of “assent”: “The requirement of ‘assent,’ which is fundamental to the formation of a binding contract, implies in a general way that both parties to an exchange shall have a reasonably clear conception of what they are getting and what they are giving up.”<sup>40</sup>

The statement that the Complainant identifies as the manifestation of “assent” was a statement made to *some other* person at *some other* time under circumstances where there was no reasonable expectation that Mr. Cox or any other NRA official would ever learn of the statement. In fact, Mr. Cox did not learn of Mr. Rosendale’s comments until after the NRA-ILA produced and distributed the advertising in Montana. It seems readily apparent that neither Mr. Cox nor Mr. Rosendale had any idea they were involved in any sort of “exchange.” Mr. Cox’s statement did not solicit a reply, and Mr. Rosendale’s statements were in no way a response to Mr. Cox or the NRA, or even directed to them. Even *The Daily Beast* article on which the Complainant relies acknowledges, “Rosendale did not recount his reply to Cox in response to the questioner, meaning he could claim that no such assent was offered.”

### **C. Advisory Opinion Request 2016-12**

The Complainant argues that draft responses to an Advisory Opinion Request supports its position even though the Commission issued a close-out letter without adopting any response. The varying draft responses to Advisory Opinion Request 2016-12 make clear that very different facts were at issue. Draft A explained,

Citizen Super PAC has worked with a vendor to produce a video expressly advocating the election of a federal candidate. It has created a webpage on which persons may view that video advertisement alongside a donation button to effectuate Citizen Super PAC’s detailed distribution strategy. Citizens Super

<sup>38</sup> Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. at 432.

<sup>39</sup> Black’s Law Dictionary (7th ed. 1999), p. 111 (definition of “assent”).

<sup>40</sup> *Id.*

PAC proposes to now email the candidate to ask that he notify his supporters about the advertisement, and that he solicit contributions in support of the advertisement's paid distribution.<sup>41</sup>

The facts alleged in the Complaint are not remotely comparable. NRA-ILA did *not* create an advertisement and share it with Mr. Rosendale so that Mr. Rosendale could promote it with his supporters and ask them to fund it.

During the Commission's consideration of the Request on October 27, 2016, it was observed that no prior advisory opinions or enforcement matters had considered what constitutes "assent" to a request or suggestion. The Commission's 3-3 votes on two draft responses do not purport to provide an answer to that question.

The Commission's consideration of Advisory Opinion Request 2016-12 does not support the Complainant's position. As noted above, the Requestor in that matter proposed to create an advertisement, share that advertisement with a federal candidate, and perhaps ask the candidate to assist with promotion, distribution, and fundraising for that advertisement. There was considerable confusion about what exactly the Requestor proposed, and if "all six Commissioners agreed" on some general restatement of the law, as the Complainant asserts, that agreement does not shed any light on the present matter.

#### **IV. Conclusion**

For the reasons set forth above, this Complaint should be dismissed. There is no evidence in support of the Complainant's allegations that the Respondents engaged in any form of coordination under the Act or the Commission's regulations, and the legal theories advanced by the Complainants lack all credibility.

Sincerely,



Jason Torchinsky  
Michael Bayes  
Jessica Furst Johnson

Attachments

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<sup>41</sup> Advisory Opinion Request 2016-12, Draft A at 5.

**ATTACHMENT A**

# United States Senate

WASHINGTON, DC 20510

October 11, 2018

The Honorable Caroline C. Hunter  
Chair  
Federal Election Commission  
1050 First Street, NE Washington, DC 20463

The Honorable Ellen Weintraub  
Vice-Chair  
Federal Election Commission  
1050 First Street, NE Washington, DC 20463

Dear Chairman Hunter and Vice-Chair Weintraub:

We are writing to encourage the Federal Election Commission ("FEC") to open an investigation into a potential campaign finance violation involving illegal coordination by OnMessage, Inc. ("OnMessage") through a subsidiary called Starboard Strategic, Inc. ("Starboard"). Based on published reports, we believe it is highly likely that OnMessage and Starboard violated current campaign finance law by exceeding campaign finance limits and sharing proprietary information related to candidates and campaign expenditures. The Campaign Legal Center filed a complaint on the matter in July, and we believe it warrants prompt attention from the FEC.

Candidates are prohibited from accepting contributions outside of the existing campaign finance limits during an election cycle. Moreover, any expenditure made in coordination with a candidate is considered to be an in-kind contribution to the candidate under 52 U.S.C. §30116(a)(7)(B)(i).

OnMessage currently serves as the primary vendor for advertisements for many federal candidates and campaigns, including many Senate candidates and party committees. In 2013, principals at OnMessage established Starboard expressly for the purpose of advertising for a single client: the National Rifle Association of America (NRA). Tens of millions in NRA advertising expenditures that once went to OnMessage were subsequently redirected exclusively to Starboard. There is little distinction between the two entities: OnMessage and Starboard are located at the same addresses in Annapolis and Virginia, and the firms are composed of the same staff and founders. It appears that Starboard is merely a shell company meant to disguise that the individuals working to direct campaign strategies and advertisements for Senate candidates were employees of OnMessage.

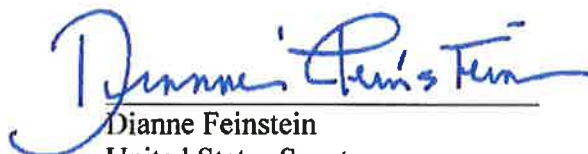
Given the lack of separation between the two entities, we are concerned that OnMessage employees shared inside information with their colleagues working on the Starboard accounts that would otherwise be prohibited if an appropriate firewall existed between these entities. It is possible that these communications allowed the campaigns to coordinate and strategically link their advertising messages and purchases in many competitive races throughout the country.

Every candidate for office has an interest in ensuring that elections are conducted fairly under our current campaign finance law. These reports of illegal coordination and flaunting of campaign finance limits deserve a full investigation by the Commission. We urge you to investigate this matter and hold those who violate our campaign finance laws accountable.

Sincerely,



Sheldon Whitehouse  
United States Senator



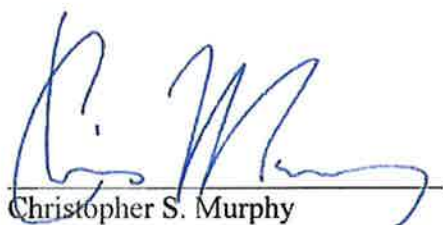
Dianne Feinstein  
United States Senator



Patty Murray  
United States Senator



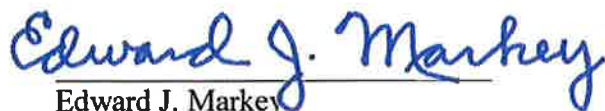
Richard Blumenthal  
United States Senator



Christopher S. Murphy  
United States Senator



Elizabeth Warren  
United States Senator



Edward J. Markey  
United States Senator



Chris Van Hollen  
United States Senator



Kamala D. Harris  
United States Senator

**ATTACHMENT B**

# HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC

*Attorneys at Law*

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

September 10, 2018

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
attn: Kathryn Ross, Paralegal  
1050 First Street, NE  
Washington, DC 20463

**Re: MUR 7427**

Dear Ms. Ross,

This response is submitted by the undersigned counsel on behalf of the following Respondents: National Rifle Association of America Political Victory Fund (NRA-PVF) and Mary Rose Adkins in her capacity as Treasurer; National Rifle Association Institute for Legislative Action (NRA-ILA); OnMessage, Inc.; and Starboard Strategic, Inc.

As set forth below, neither the NRA-PVF nor the NRA-ILA made any coordinated communications through the use of a common vendor. OnMessage, Inc. and Starboard Strategic, Inc. maintained an effective firewall in accordance with 11 C.F.R. § 109.21(h) at all times relevant to this matter for the benefit of its clients. The Complainant presents no evidence that any nonpublic, material campaign information was shared through OnMessage, Inc. and Starboard Strategic, Inc. personnel, or otherwise improperly used by OnMessage, Inc., and Starboard Strategic, Inc. There is no evidence of any qualifying conduct, only speculation.

The Complaint does not identify any particular advertisement that was allegedly coordinated, and it does not identify any information that was allegedly conveyed through OnMessage, Inc., Starboard Strategic, Inc., or any agent or employer of either. The Complaint's conclusions are unsupported by any actual evidence.

The Complainant acknowledges that it has no information on whether OnMessage, Inc. and/or Starboard Strategic, Inc. implemented a firewall policy.<sup>1</sup> As explained in more detail below, at all times relevant to the Complaint, the individual officers and directors of both

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<sup>1</sup> See Complaint at ¶ 51 n.102 ("there is no evidence of a firewall between Starboard and OnMessage").



companies adopted, implemented, and had in place an effective, written firewall policy that complied with the requirements of 11 C.F.R. § 109.21(h).

The NRA-PVF and NRA-ILA advertisements referenced in the Complaint were independent expenditures and no in-kind contributions were made from NRA-PVF or NRA-ILA to any of the candidates referenced in the Complaint. The Complaint is without merit, substitutes unwarranted speculation for actual evidence, and should be dismissed.

## **I. Factual Background**

The National Rifle Association of America Political Victory Fund (NRA-PVF) is the NRA's political action committee. NRA-PVF is registered with the Commission as a separate segregated fund connected to the National Rifle Association of America.

The National Rifle Association Institute for Legislative Action (NRA-ILA) is often referred to as the "lobbying" arm of the NRA.

OnMessage, Inc. and Starboard Strategic, Inc. are two related companies that operate beneath a parent company that incorporated as OnMessage Holdings, Inc. in 2013.

OnMessage, Inc. is organized as a for-profit corporation and filed Articles of Incorporation in Virginia on or about April 13, 2005. The three founders and original partners are Wes Anderson, Curt Anderson, and Brad Todd. Graham Shafer joined the company in 2008, Timmy Teepell joined in 2012, and Orrin (Guy) Harrison joined in 2013. The company's Articles of Incorporation and corporate annual reports listing directors and officers are publicly available from Virginia's State Corporation Commission.

OnMessage, Inc. has served as a paid vendor and consultant to many entities and organizations since its formation, including the entities identified in the Complaint at Paragraphs 9-11 (NRA-PVF and NRA-ILA), 17.a.ii (Thom Tillis Committee), 17.b.ii (Cotton for Senate), 17.c.ii (Cory Gardner for Senate), and 21.a.ii (Ron Johnson for Senate, Inc.). OnMessage, Inc. provided services to Thom Tillis Committee, Cotton for Senate, and Cory Gardner for Senate during the 2014 election season. OnMessage, Inc. provided services to Ron Johnson for Senate, Inc. in 2016, although this relationship ended in mid-August 2016.

Starboard Strategic, Inc. is organized as a for-profit corporation and filed Articles of Incorporation in Virginia on March 22, 2013. Those Articles of Incorporation list the company's initial directors: Curtis Anderson; Wesley Anderson; Bradley Todd; Graham Shafer; and Timothy Teepell. Orrin (Guy) Harrison was identified as a new director and officer on the company's 2015 corporate annual report filed with Virginia's State Corporation Commission. The company's Articles of Incorporation and corporate annual reports listing directors and officers are publicly available from Virginia's State Corporation Commission. Starboard Strategic has served as a paid consultant to NRA-PVF and NRA-ILA from 2014 to the present.

OnMessage, Inc. and Starboard Strategic, Inc. have offices in Virginia and Maryland. Generally speaking, the firms' media-based business is performed from the Virginia office, while polling work is performed from the Maryland office. (Brad Todd and Guy Harrison generally work from the Virginia office, while Curt Anderson, Graham Shafer, and Wes Anderson generally work from the Maryland office. Timmy Teepell generally works remotely.)

Both OnMessage, Inc. and Starboard Strategic, Inc. operate at all times with appropriate "firewall" policies that comply with the Commission's requirements set forth at 11 C.F.R. § 109.21(h). *See* Affidavit of Bradley Todd at ¶ 2. OnMessage, Inc. retained a qualified counsel to prepare a firewall policy for the company in 2014. This policy, included as Attachment A, provided:

**Principals and employees working on opposite sides of the "firewall" must not under any circumstances communicate any information whatsoever about their separate clients.** Being "firewalled" off means OMI principals/employees communicating with or generating content on behalf of each client must not share or discuss, in any way, their separate clients' private plans, projects, activities or needs, including messages. This "firewall" must be maintained to ensure that no principal or employee inadvertently provides or transmits non-public information to the others.

In order to implement this firewall policy, OMI has created a conflict review process whereby OMI will review each 2014 race in which it is engaged to determine whether the possibility exists that an outside group or political party committee IE Unit for whom OMI is currently working or could be engaged to work in the 2014 cycle could sponsor a public communication that references an OMI candidate client in the same race. If, after the review, OMI believes this possibility may exist, it has created or will create a firewall structure in that race that prevents the flow of information about different clients' private plans, projects, activities, or needs, including messages in such a way that the coordination rules are triggered.<sup>2</sup>

With respect to the 2014 U.S. Senate races referenced in the Complaint (North Carolina, Arkansas, and Colorado):

- The campaign committees of Thom Tillis, Tom Cotton, and Cory Gardner were serviced by Brad Todd and Guy Harrison.
- Wes Anderson provided polling services to Cotton for Senate, but was not involved in the Tillis or Gardner campaigns.

<sup>2</sup> *See* Attachment A (emphasis added). The documents attached represent the final version of the policy. Planning and implementation of the 2014 firewall began in April 2014. Information regarding clients not involved in this matter has been redacted.

- The NRA-PVF and NRA-ILA were serviced by Curt Anderson, Graham Shafer, and Timmy Teepell.

### 2014 Firewall Structure:

U.S. Senate Candidates (NC, AR, CO)	NRA-PVF & NRA-ILA
Brad Todd Guy Harrison One employee not referenced in the Complaint Wes Anderson (AR only)	Curt Anderson Graham Shafer Timmy Teepell Wes Anderson (NC only) <sup>3</sup>

Consistent with this firewall policy, Mr. Todd consulted with the NRA on a variety of matters, which primarily included general public relations matters and matters involving federal and state legislation. Affidavit of Bradley Todd at ¶ 3. Mr. Todd also consulted on election-related matters involving elections *other than* the U.S Senate elections in North Carolina, Arkansas, and Colorado. *Id.* Mr. Todd did not communicate or convey any non-public information about the campaign plans, projects, activities, or needs of Thom Tillis, Tom Cotton, or Cory Gardner to any representative of the NRA-PVF or NRA-ILA. *Id.* at ¶ 4. Mr. Todd was not involved in any decisions relating to the creation, production, or distribution of any independent expenditures created by or on behalf of the NRA-PVF or NRA-ILA in connection with the U.S. Senate elections in North Carolina, Arkansas, or Colorado. *Id.* at ¶ 5.

In 2016, the companies implemented a virtually identical firewall policy, included as Attachment B.<sup>4</sup>

### 2016 Firewall Structure:

U.S. Senate Candidates (WI)	NRA-PVF & NRA-ILA
Wes Anderson Guy Harrison Brad Todd Eight employees not referenced in the Complaint	Curt Anderson Graham Shafer Timmy Teepell One employee not referenced in the Complaint

In 2016, NRA-ILA made one payment of \$48,537 on October 30, 2016 to Starboard Strategic for an independent expenditure in opposition to Wisconsin Senate candidate Russ Feingold. NRA-PVF made payments totaling \$125,289.88 on October 19 and 21 to Starboard Strategic for independent expenditures in connection with the Wisconsin Senate election. All of these independent expenditures were made well after OnMessage, Inc. ceased providing services

<sup>3</sup> Mr. Anderson conducted one poll for the NRA-PVF in July 2014 with regard to the North Carolina U.S. Senate election.

<sup>4</sup> Information regarding clients not involved in this matter has been redacted.

to Ron Johnson for Senate, Inc. in mid-August 2016. (The Wisconsin Senate firewall remained in place even after mid-August 2016; no employee who previously provided services to Ron Johnson for Senate participated in the services provided to the NRA-PVF and NRA-ILA in connection with the Wisconsin Senate election.)

As was the case in 2014, and pursuant to the 2016 firewall policy, Mr. Todd consulted with the NRA on a variety of matters, which primarily included general public relations matters and matters involving federal and state legislation. Affidavit of Bradley Todd at ¶ 3. Mr. Todd also consulted on election-related matters involving elections *other than* the U.S. Senate election in Wisconsin. *Id.* Mr. Todd did not communicate or convey any non-public information about the campaign plans, projects, activities, or needs of Ron Johnson to any representative of the NRA-PVF or NRA-ILA. *Id.* at ¶ 6. Mr. Todd was not involved in any decisions relating to the creation, production, or distribution of any independent expenditures created by or on behalf of the NRA-PVF or NRA-ILA in connection with the U.S. Senate election in Wisconsin. *Id.* at ¶ 5.

## **II. Complaint Overview**

According to the Complainant, the same individuals serve as officers and directors of two political consulting firms, OnMessage, Inc. and Starboard Strategic, Inc. From publicly-filed reports, the Complainant has determined that NRA-PVF and NRA-ILA contracted with Starboard Strategic, Inc. in 2014 and 2016 for consulting services, including the production of independent expenditures in support of certain U.S. Senate candidates. The campaign committees of Senators Tillis, Cotton, Gardner, and Johnson are identified in the Complaint as campaigns that contracted with OnMessage, Inc. for consulting services.

The Complainant alleges that “Starboard was functionally indistinguishable from OnMessage.” On the basis of these facts, the Complainant draws the following conclusions:

- According to the Complainant, “OnMessage created Starboard for the purpose of disguising the NRA-PVF’s and NRA-ILA’s coordinated communications.”<sup>5</sup>
- According to the Complainant, “[i]n effect, the evidence indicates that Starboard was created as a shell company to hide OnMessage’s status as a common vendor between the NRA-PVF/NRA-ILA and the candidates supported by those entities.”<sup>6</sup>
- According to the Complainant, “the apparently deliberate routing of OnMessage’s NRA business through the corporate shell of Starboard provides reason to believe that the purpose of OnMessage’s creation of Starboard was to allow OnMessage to use or convey to the NRA-PVF and NRA-ILA information about the ‘plans, projects, activities or needs’ of the Tillis, Cotton, Gardner and Johnson campaign committees, and that such information was ‘material to the creation, production, or distribution’ of the NRA-PVF and NRA-ILA communications in support of those candidates.”<sup>7</sup>

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<sup>5</sup> Complaint at ¶ 2.

<sup>6</sup> *Id.* at ¶ 49.

<sup>7</sup> *Id.* at ¶ 51.

- And finally, Complainant declares that NRA-PVF and NRA-ILA “ha[ve] made illegal, excessive, and unreported in-kind contributions to the Thom Tillis Committee, Cotton for Senate, Cory Gardner for Senate, and/or Ron Johnson for Senate, Inc. by financing coordinated communications through the use of a common vendor.”<sup>8</sup>

As explained above, Starboard Strategic, Inc. is *not* a “shell company” and it was *not* created to disguise or hide coordination through a common vendor. These allegations are a red herring because the Commission’s coordination regulations do not inquire into a vendor’s business organization.

The Complainant acknowledges that it has no information regarding whether OnMessage, Inc. and/or Starboard Strategic, Inc. had a firewall policy in place.<sup>9</sup> The Complainant also acknowledges that the circumstances described in the Complaint may be entirely within the law: “‘With respect to the work being done for these particular campaigns, certain partners – not just employees – would have had to have been firewalled off from each other,’ [Brendan] Fischer, the director of the Federal Reform at the Campaign Legal Center, said.”<sup>10</sup> As explained below, this is exactly what occurred.

### **III. Legal Analysis**

#### **A. Common Vendor Status**

OnMessage, Inc. and Starboard Strategic, Inc. are two separate corporations run by many of the same people. Corporate annual reports filed by both companies list each company’s officers, directors, and place of business. These corporate annual reports are publicly available on the Virginia State Corporation Commission website for anyone to view. To the best of our

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<sup>8</sup> *Id.* at ¶¶ 41-42.

<sup>9</sup> See Complaint at ¶ 51 n.102 (“there is no evidence of a firewall between Starboard and OnMessage”).

<sup>10</sup> Mike Spies, *The Mystery Firm That Has Become the NRA’s Top Election Consultant*, *The Trace* (July 13, 2018), <https://www.thetrace.org/2018/07/nra-campaign-finance-onmessage-starboard-strategic/>. (Included as Attachment C.) The Complaint cites repeatedly to a *Politico Magazine* article to substantiate its claims. It is apparent, however, that the Complainant collaborated with the article’s writer for what is represented in the Complaint as a “Politico article.” See Complaint at ¶ 13 (“According to a recent POLITICO article ...”); Complaint at ¶ 26 (“According to POLITICO ...”); Complaint at ¶ 30 (“POLITICO reported ...”). The author of the article is Mike Spies. Mr. Spies does not work for either *Politico* or *Politico Magazine*; he works for *The Trace*. *The Trace*’s website published the same article as *Politico Magazine*, but noted that “*This story was reported in partnership with Politico Magazine.*” See Mike Spies, *The Mystery Firm That Has Become the NRA’s Top Election Consultant*, *The Trace* (July 13, 2018), <https://www.thetrace.org/2018/07/nra-campaign-finance-onmessage-starboard-strategic/>. *The Trace* receives funding from Everytown for Gun Safety Support Fund, among others. See *The Trace*, Donor and Financial Transparency, <https://www.thetrace.org/donor-financial-transparency/>. In other words, one liberal activist organization, the Campaign Legal Center, worked with another liberal activist organization, an anti-gun “news” organization, to produce an anti-NRA piece that was published by both the anti-gun organization and *Politico Magazine*, the latter of which did not fully disclaim the article’s provenance to its readers. The Complaint does not mention any of these details, which is odd for an organization that professes to be deeply concerned about disclosure and transparency.

knowledge, the Act has nothing to say about how individuals may or must organize their business, and individuals providing services through multiple legal entities has never before been treated as evidence of “coordination.”

For purposes of this matter, the Respondents acknowledge that the Commission has treated separate but “related” companies operated by the same individuals as a single “common vendor” in the past.<sup>11</sup> Respondents do not contest that OnMessage, Inc. and Starboard Strategic, Inc., by virtue of their being operated and controlled by the same individuals, may be treated as a “common vendor” in this matter with respect to the NRA-PVF and NRA-ILA and the federal candidate committees identified in the Complaint.

The Respondents note, however, that this threshold question has absolutely no impact on the underlying legal issue. The two companies were *not* established for the purpose of hiding a coordination conspiracy, as the Campaign Legal Center has represented to the media. More importantly, however, the Complainant presents no evidence that the “common vendor” failed to maintain an appropriate firewall policy or in any way “used or conveyed” any non-public, material information.

#### **B. Common Vendor Payor and Content Standards**

The Complainant alleges impermissible coordination between the two NRA Respondents and four federal candidates through a common vendor. Under this theory, three standards must be met to find a violation of the law. First, a public communication must be paid for by a person other than a candidate, political party, or an agent of either.<sup>12</sup> Second, the public communication must satisfy one of four content standards.<sup>13</sup>

The Respondents acknowledge that the payment and content standards of the Commission’s coordinated communications test are satisfied by the NRA-PVF’s and NRA-ILA’s payments for independent expenditures that advocated for the elections of Thom Tillis, Tom Cotton, Cory Gardner, and Ron Johnson.<sup>14</sup>

#### **C. Common Vendor Conduct Standard**

Most critically, the involved parties must satisfy one of five conduct standards.<sup>15</sup> The Complaint alleges coordination through a common vendor. Under 11 C.F.R. § 109.21(d)(4), the “common vendor” standard consists of three parts, and requires a showing of the following:

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<sup>11</sup> See, e.g., MUR 5502 (Martinez for Senate); MUR 5546 (Progress for America Voter Fund).

<sup>12</sup> 11 C.F.R. § 109.21(a)(1).

<sup>13</sup> 11 C.F.R. § 109.21(a)(2), (c).

<sup>14</sup> See 11 C.F.R. § 109.21(a)(1), (c)(3).

<sup>15</sup> 11 C.F.R. § 109.21(a)(3), (d).

(i) The person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor, as defined in 11 CFR 116.1(c), to create, produce, or distribute the communication;

(ii) That commercial vendor, including any owner, officer, or employee of the commercial vendor, has provided any of the following services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days:

- (A) Development of media strategy, including the selection or purchasing of advertising slots;
- (B) Selection of audiences;
- (C) Polling;
- (D) Fundraising;
- (E) Developing the content of a public communication;
- (F) Producing a public communication;
- (G) Identifying voters or developing voter lists, mailing lists, or donor lists;
- (H) Selecting personnel, contractors, or subcontractors; or
- (I) Consulting or otherwise providing political or media advice; **and**

(iii) That commercial vendor uses or conveys to the person paying for the communication:

- (A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or
- (B) Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

The "uses or conveys" requirement, at (iii) above, is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source.<sup>16</sup>

Furthermore, Commission regulations provide that the common vendor standard is not met if the commercial vendor has established and implemented a written firewall policy that

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<sup>16</sup> 11 C.F.R. § 109.21(d)(4)(iii).

prohibits the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee.<sup>17</sup>

An effective firewall prevents non-public information from being "used or conveyed" in the manner described at 11 C.F.R. § 109.21(d)(4)(iii). Commission regulations are clear that a firewall policy is a safe harbor and not a requirement.

#### D. Past Commission Treatment of Common Vendor Allegations

##### 1. Explanation and Justification Established That Existence of Common Vendor Is Permissible and Creates No Presumption of Coordination

When the common vendor provision was adopted, the Commission made clear that the mere existence of a common vendor does not violate any provision of the Act or Commission regulations, nor does it create any presumption of coordination. In other words, the use of a common vendor is not, in and of itself, impermissible or a violation of any regulatory standard. The Commission explained, "[e]ven those vendors who provide one or more of the specified services are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders."<sup>18</sup> The Commission noted that "[i]t disagrees with those commenters who contended the proposed standard created any 'prohibition' on the use of common vendors, and likewise disagrees with the commenters who suggested it established a presumption of coordination."<sup>19</sup> Finally, the Commission emphasized that "[t]he final rule does not require the use of any confidentiality agreement or ethical screen **because it does not presume coordination from the mere presence of a common vendor.**"<sup>20</sup>

Rather, the behavior targeted by the common vendor standard is "the sharing of information about plans, projects, activities, or needs of a candidate or political party through a common vendor."<sup>21</sup> The critical "requirement encompasses situations in which the vendor assumes the role of a conduit of information between a candidate or political party committee and the person making or paying for the communication, as well as situations in which the vendor makes use of the information received from the candidate or political party committee without actually transferring that information to another person."<sup>22</sup>

<sup>17</sup> 11 C.F.R. § 109.21(h).

<sup>18</sup> Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003).

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

<sup>20</sup> *Id.* at 437 (emphasis added).

<sup>21</sup> *Id.* at 436.

<sup>22</sup> *Id.* at 437.



The fact that a common vendor was used does not suggest any violation of the law because there is nothing impermissible about using a common vendor, and the Commission stated in the *Explanation and Justification* that it would draw no presumption that coordination occurred from the mere fact of a common vendor. Rather, a reason to believe finding requires that *some* evidence be presented in the Complaint showing or suggesting that the third part of the test has been met.

## 2. Early Enforcement Cases Improperly Found Reason to Believe Without Evidence of Any Coordination Conduct

In a small number of enforcement matters on which the Commission voted in 2005, both the General Counsel and a majority of the Commission failed to honor the 2003 Explanation and Justification. These examples, however, are outliers and subsequent matters corrected the Commission's error.

On April 19, 2005, the Commission voted 4-2 to find reason to believe in MUR 5502 (Martinez for Senate), although the Factual and Legal Analysis indicates a lesser standard was actually applied: "Because the first two parts of the 'common vendor' test are met, there is *sufficient basis to investigate* whether the use or exchange of information occurred as described in 11 C.F.R. § 109.21(d)(4)(iii)."<sup>23</sup> The Office of General Counsel deposed three individuals but then explained: "The information developed in the investigation indicates that neither Stevens-Schriefer nor Red October used or conveyed to the Martinez campaign information pertaining to the plans, projects, activities or needs of the Bush campaign that was material to the creation, production, or distribution of the Martinez advertisements."<sup>24</sup> Sixteen months after improperly voting to find "reason to believe" (or, more accurately, "sufficient basis to investigate"), the Commission unanimously voted to take no further action and closed the file.

On June 21, 2005, the Commission voted 4-1 to find "reason to believe" in MUR 5546, again applying the lesser "sufficient basis to investigate" standard.<sup>25</sup> The Office of General Counsel undertook an investigation and, once again, found no wrongdoing: "Our investigation revealed substantial information about the roles of Mr. Synhorst and the various vendors involved, but has produced no credible evidence that any coordination occurred."<sup>26</sup> Nearly two years after finding "reason to believe," the Commission unanimously voted to take no further action and closed the file in February 2007.

<sup>23</sup> MUR 5502 (Martinez for Senate), Factual and Legal Analysis at 8 (emphasis added).

<sup>24</sup> MUR 5502 (Martinez for Senate), General Counsel's Report #2 at 2.

<sup>25</sup> See MUR 5546 (Progress For America Voter Fund), Factual and Legal Analysis at 9 ("Because the first two parts of the 'common vendor' test are met, there is a *sufficient basis to investigate* whether the use or exchange of information occurred as described in 11 C.F.R. § 109.21(d)(4)(iii).") (emphasis added).

<sup>26</sup> MUR 5546 (Progress For America Voter Fund), General Counsel's Report #2 at 2.

In these cases,<sup>27</sup> the Commission voted to find that there was “a sufficient basis to investigate” the common vendor allegations but did not require the Complaint to include any evidence that the vendor actually “used or conveyed” information about a candidate’s campaign plans, projects, activities or needs. While there was no evidence that the common vendors in these cases facilitated any impermissible coordination, the respondents were nevertheless subjected to lengthy investigations. More recently, three Commissioners have rejected this approach, explaining that “[t]he RTB standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges.”<sup>28</sup> However, in MURs 5502 and 5546, the respondents were forced to demonstrate their innocence after the Commission presumed coordination on the basis of exactly the facts that it previously told the regulated community would not lead to any such presumption.

The stated basis for the “reason to believe” findings in MURs 5502 and 5546 is plainly inconsistent with the Commission’s 2003 Explanation and Justification. The Commission found reason to believe where the evidence showed only “the mere presence of a common vendor” after informing the regulated community that “the mere presence of a common vendor” would lead to no presumption of coordination. The absence of any evidence showing a violation of the law was apparently accommodated through use of the “sufficient basis to investigate” standard, which does not exist in the statute and is inconsistent with the “reason to believe” requirement.<sup>29</sup> Shortly after finding reason to believe in these two matters, the Commission adopted a different approach to “common vendor” allegations.

### **3. Evidence that “Common Vendor” “Used or Conveyed” Material Information Must Be Shown**

In August 2005, the Commission applied a notably different standard which hewed far more closely to the “common vendor” discussion in the 2003 Explanation and Justification and the “reason to believe” standard set forth in MUR 4960. In MUR 5609, the Commission voted unanimously to find no reason to believe after the General Counsel noted that “the available information provides no support for an inquiry into whether the third element of the coordinated communications regulation was satisfied – the conduct standard.”<sup>30</sup> In a footnote, the General Counsel explained that the vendor in this matter did not respond in detail to every allegation, “but in the absence of more specific allegations in the complaint, they constitute a sufficient

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<sup>27</sup> The Commission appears to have taken the same approach in MUR 5403/5466 (America Coming Together).

<sup>28</sup> MUR 6056 (Protect Colorado Jobs), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 n.12.

<sup>29</sup> See MUR 4960 (Clinton), Statement of Reasons of David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2 (“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 FECA. . . . Unwarranted legal conclusions from asserted facts, . . . or mere speculation, . . . will not be accepted as true.”).

<sup>30</sup> MUR 5609, First General Counsel’s Report at 6.

rebuttal that he engaged in conduct that would satisfy the coordinated communications conduct standard.”<sup>31</sup>

In 2006, the Commission voted to find no reason to believe where there was insufficient “specific information” to suggest that the conduct standard was met.<sup>32</sup> On January 11, 2007, the Commission unanimously voted to find no reason to believe where the First General Counsel’s Report noted that “the mere presence of a common vendor is not sufficient to satisfy the conduct prong of the coordinated communication test.”<sup>33</sup> In 2009, the General Counsel wrote, “the use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the ‘conduct’ prong of the coordination test.”<sup>34</sup>

In another 2009 case, the Commission reiterated that “the use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the conduct prong of the coordination test.”<sup>35</sup> In this matter, the Commission unanimously voted to dismiss the Complaint and explained that the commercial vendor “appears to satisfy only the first two of the three common vendor elements,” but “[t]he third common vendor element is not met ... because there is no information suggesting that SRCP used or conveyed material information about RCCNM or ‘Can’t Trust’ to Freedom’s Watch. The complaint only states that the use of a mutual vendor ‘further suggests’ information sharing, but does not indicate what information ... was actually shared.”<sup>36</sup>

In 2010, the Commission rejected the complainant’s “unsupported allegations” where “[t]he complaint ... provides no specific information indicating that conduct showing coordination based on a common vendor theory occurred, and only speculates that the common vendor ... ‘very likely’ used or conveyed to the payor information about the [candidate’s] campaign plans, projects, activities, or needs.”<sup>37</sup>

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<sup>31</sup> *Id.* at 7 n.4.

<sup>32</sup> See MUR 5754, Factual and Legal Analysis (“the complaint does not contain sufficient information on which to base an investigation into whether MOVF satisfied the ‘conduct’ standard of the coordinated communications test, nor does it even specifically identify which ‘conduct’ standard would apply to the activity complained of”). This document, available at <https://www.fec.gov/files/legal/murs/5754/000058F5.pdf>, is undated in the Commission’s database, but the Factual and Legal Analysis in MUR 6050 (Boswell for Congress) describes it as being dated December 12, 2006.

<sup>33</sup> MUR 5691, First General Counsel’s Report at 8.

<sup>34</sup> MUR 6050, First General Counsel’s Report at 9.

<sup>35</sup> MUR 6120, Factual and Legal Analysis at 11.

<sup>36</sup> *Id.* at 11-12.

<sup>37</sup> MUR 6269, Factual and Legal Analysis at 6.

In 2012, the General Counsel produced, and three Commissioners supported, an explanation of the “common vendor” standard that is consistent with the 2003 Explanation and Justification. The General Counsel wrote:

[T]he Complaint does not present any allegations of specific conduct, and we did not locate any publicly available information, including any press accounts, which assert any influence by the Berman Committee or any conveyed information. As several of the Respondents note, during the 2002 coordination rulemaking, the Commission specifically rejected the idea that use of a common vendor alone would establish a “presumption of coordination.” Instead, the regulation “focuses on the sharing of information ... through a common vendor to the spender who pays for a communication that could not then be considered to be made ‘totally independently’ from the candidate.” *See* E&J, 68 Fed. Reg. at 436. Given the conclusory nature of the Complaint’s allegations regarding the conveyance of information by a common vendor, the Complaint is essentially relying on a presumption of coordination, precisely the inferential leap the E&J disfavors. Accordingly, we do not believe the allegations are sufficient to find reason to believe a common vendor conveyed information as contemplated in the coordination regulation.

[\*\*\*]

Given the conclusory nature of the Complaint – made without personal knowledge or reference to supporting evidence – and the lack of information available from any other source that would support a reasonable inference that the activities here may have been coordinated within the meaning of the regulations, we conclude that the Commission lacks a sufficient basis to find that a violation occurred.<sup>38</sup>

This passage is significant because it correctly recognizes that without “any allegations of specific conduct,” a reason to believe finding must necessarily “rely[] on a presumption of coordination.” Finding reason to believe on the basis of this “presumption” is inconsistent with the 2003 Explanation and Justification.

Notwithstanding the divided vote in MUR 6570, the following year, the Commission approved a Factual and Legal Analysis that concluded: “the Complaint fails to present any information indicating that Mailing Pros used or conveyed to America Shining any information regarding Jay Chen or the Chen Committee, much less information material to the creation, production, or distribution of the mailers.”<sup>39</sup>

In summary, the Commission appears to have used different standards when approaching “common vendor” complaints at the “reason to believe” stage. The approach urged by the

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<sup>38</sup> MUR 6570, First General Counsel’s Report at 12-13, 14. The three Commissioners who voted against the General Counsel’s recommendation explained their support for a “limited investigation” in two Statements of Reasons. Neither Statement of Reasons suggested that “reason to believe” may be found on the basis of “the mere presence of common vendor.”

<sup>39</sup> MUR 6668, Factual and Legal Analysis at 8.

Complainants (to find reason to believe where “the first two parts of the common vendor test are satisfied,” even in the absence of credible evidence pertaining to the third part of the test) has not been used since 2005, and since then the Commission has consistently required evidence of actual conduct in subsequent enforcement matters. This latter approach is consistent with the 2003 Explanation and Justification and appropriately implements the requirement that coordination not be presumed from the “mere presence of a common vendor.”

#### **E. Application of Current Law to the Complaint’s Allegations**

OnMessage, Inc., Starboard Strategic, Inc., and the directors and officers of both companies deny using or conveying to NRA-PVF and/or NRA-ILA any information about the campaign plans, projects, activities, or needs of any of the identified candidates or candidate’s committees. The Complaint presents no evidence or information to the contrary. OnMessage, Inc. and Starboard Strategic, Inc. implemented a firewall policy that was specifically designed to prevent the flow of the information that the Complaint baselessly claims occurred.

The Complainant presents no specific evidence that the third part of the “common vendor” test was satisfied.<sup>40</sup> The Complaint contains no information or evidence showing or suggesting that the commercial vendor used or conveyed to the person paying for the communication any information about campaign plans, projects, activities, or needs of the clearly identified candidate, and the Complaint contains no information or evidence showing or suggesting that this information was material to the creation, production, or distribution of the communication. *See* 11 C.F.R. § 109.21(d)(4)(iii).

The Complainant presents nothing more than publicly available evidence showing that a common vendor provided services to multiple clients. The Complaint’s allegations that any part of 11 C.F.R. § 109.21(d)(iii) was satisfied are pure speculation. Rather, the dots that the Complainant connects have no logical connection to one another. For example, the Complainant writes:

Evidence shows that Starboard was functionally indistinguishable from OnMessage; in fact, On Message has repeatedly taken credit for advertisements that the NRA-PVF and NRA-ILA paid Starboard to produce (and has even won awards for such ads). Therefore, there is reason to believe that OnMessage/Starboard used strategic information derived from its work for the Cotton, Tillis, Gardner, and Johnson campaigns to develop NRA-PVF and NRA-ILA advertisements expressly advocating for those same candidates, and that the NRA-PVF and NRA-ILA made coordinated communications with those campaign committees through the use of a “common vendor.”

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<sup>40</sup> The Complainant’s legal argument frankly acknowledges that there is *no* specific evidence suggesting that information was improperly conveyed from one client to another through a common vendor. This is the reason that Complainant argues, at Paragraph 40 of the Complaint, that “[t]he Commission has found reason to believe that FECA has been violated if the first two parts of the common vendor test are satisfied.”

Complaint at ¶ 2. The Complainant argues that *because* the two companies are “functionally indistinguishable,” “there is reason to believe” they *must have* engaged in common vendor coordination, and “its appears” that OnMessage, Inc. *must have* created Starboard Strategic, Inc. “for the purpose of disguising” this. A serious person could not logically draw these conclusions. In past matters, the Commission has dismissed precisely this sort of baseless speculation.<sup>41</sup>

The Complaint does not contain any information that suggests any impermissible “common vendor” coordination. Specifically, the Complaint asserts that “POLITICO [sic] reported that Starboard’s/OnMessage’s [Brad] Todd is close friends with Chris Cox, the executive director of the NRA-ILA and the chairman of the NRA-PVF. NRA employees reported seeing Todd around their office, and noted ‘[t]here was consulting with [Todd] over high-end issues that were deemed controversial.’”<sup>42</sup> Complaint at ¶ 30.<sup>43</sup>

Neither the Complaint nor the article in *The Trace* contain any information regarding the timing of the referenced conversations, and neither the Complaint nor the article contain any information about the particular subjects discussed. In a recently concluded matter, the Commission unanimously voted to dismiss after finding that “[t]he Complaints do not establish how these alleged discussions involving Priorities USA, HFA, and the DNC satisfy the conduct prong *and do not link any particular discussions to any specific public communications*. The

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<sup>41</sup> See, e.g., MUR 5576 (New Democrat Network), Factual and Legal Analysis at 5 n.7 (rejecting as insufficient to support a reason to believe recommendation the Complainant’s claims that it “seems likely” that substantial discussion occurred, and that it was “not possible” the vendor was “not aware” of the campaign’s activities and also “not possible” that the vendor was not “materially involved” in the outside organization’s decisions).

<sup>42</sup> The Commission has previously determined that personal relationships are not relevant to the legal issue of coordination. See MUR 6277 (Kirkland), Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 5 n.14 (“The complaint raised two other bases for alleged coordination, both of which we reject. First, that Robert and Ronald Kirkland are brothers and that Robert previously sent a fundraising email are irrelevant and provide no evidence of coordination under 11 C.F.R. § 109.21(d). The Commission’s coordination regulations do not require heightened scrutiny to situations involving familial ties or other personal relationships, and we decline to do so here.”).

<sup>43</sup> Anonymous sources in genuine media reports should be viewed with skepticism at the reason to believe stage. See generally MUR 6002 (Freedom’s Watch), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 (“A reason-to-believe finding by the Commission must be based on specific facts from reliable sources. The New York Times article did not contain specific facts that the costs associated with the ‘Family Taxes’ advertisement were paid with funds that were donated by Mr. Adelson (or anyone else) for the purpose of furthering the electioneering communication. Moreover, the article relies predominantly on anonymous sources. Therefore, even if such facts had been included in the article, we still would be reluctant to make a reason-to-believe finding based solely on information culled from sources whose credibility and accuracy are difficult to ascertain.”); MUR 6661 (Murray Energy Corporation), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 7-8 (discussing anonymously sourced allegations in *New Republic*). Anonymous sourcing in the “reporting” of activist interest groups such as *The Trace*, which is known for its fervent opposition to the NRA, warrant further skepticism.

factual record, therefore, does not support a conclusion that the conduct prong is satisfied regarding Priorities USA's independent expenditures."<sup>44</sup>

In the present matter, the Complaint generally alleges common vendor coordination, but contains no specific information of any alleged conduct that would satisfy the third part of the common vendor test. The Complainant refers to an article that quotes two anonymous sources who claim that Mr. Cox and Mr. Todd spoke, but there is no specific information about what topics were discussed, or even when these discussions took place. The Complainant "do[es] not link any particular discussions to any specific public communications." More specifically, there is no evidence whatsoever suggesting that Mr. Todd conveyed any information to the NRA-PVF or NRA-ILA about the U.S. Senate elections in North Carolina, Arkansas, and Colorado in 2014, or in Wisconsin in 2016. To the contrary, Mr. Todd was "firewalled" with respect to these elections and there is no evidence to suggest that firewall was ineffective or in any way breached.

#### **IV. Conclusion**

The Commission receives baseless allegations of coordination on a routine basis. Generally, respondents correctly observe that the Complaint "does not ever attempt to explain how the Commission's 'conduct standards' were met and does not allege any actual coordination-related facts."<sup>45</sup> Lacking any actual evidence of coordination, the General Counsel recommends dismissal and the Commission usually votes accordingly. This is exactly what should happen in this case.

The Complainant presents no evidence that any person associated with OnMessage, Inc. and/or Starboard Strategic, Inc. used or conveyed any material information derived from any candidate client to any other client. No such evidence exists because OnMessage, Inc. and Starboard Strategic, Inc. had firewalls in place to prevent any such use or conveyance of material information. The Complaint presents no evidence that these firewalls were ineffective, and Mr. Todd affirms by affidavit that he had no discussions with (or otherwise conveyed information to) the NRA-PVF or NRA-ILA about the 2014 U.S. Senate elections in North Carolina, Arkansas,

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<sup>44</sup> MUR 7155 and 7157 (Hillary for America, et al.), Factual and Legal Analysis at 11 (emphasis added).

<sup>45</sup> MUR 6405 (Friends of John McCain), Response of Friends of John McCain (Dec. 13, 2010) at 2.

and Colorado, or about the 2016 U.S. Senate election in Wisconsin. The Complaint contains no evidence indicating there is any reason to believe a violation occurred and the Complaint should be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Torchinsky', with a long horizontal flourish extending to the right.

Jason Torchinsky  
Michael Bayes  
Jessica Furst Johnson

Attachments



**AFFIDAVIT OF BRADLEY TODD**

PERSONALLY came and appeared before me, the undersigned Notary, the within named BRADLEY TODD, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Bradley Todd. I am a co-founder of both OnMessage, Inc. and Starboard Strategic, Inc.
2. OnMessage, Inc. and Starboard Strategic, Inc. operate at all times with appropriate "firewall" policies that comply with the Federal Election Commission's requirements as set forth at 11 C.F.R. § 109.21(h).
3. During the period 2014-2016, I provided consulting services to the National Rifle Association of America Political Victory Fund and National Rifle Association Institute for Legislative Action. These services consisted primarily of consulting with respect to general public relations matters and matters involving federal and state legislation. In addition, I provided consulting services to the National Rifle Association of America Political Victory Fund and National Rifle Association Institute for Legislative Action in connection with state and federal elections other than the 2014 United States Senate elections in North Carolina, Arkansas, and Colorado, and the 2016 United States Senate election in Wisconsin.
4. In 2014, I did not communicate or convey any non-public information about the campaign plans, projects, activities, or needs of Thom Tillis, Tom Cotton, or Cory Gardner to any representative of the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action.
5. In 2014, I was not involved in any decisions relating to the creation, production, or distribution of any independent expenditures created by or on behalf of the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action in connection with the U.S. Senate elections in North Carolina, Arkansas, or Colorado.
6. In 2016, I did not communicate or convey any non-public information about the campaign plans, projects, activities, or needs of Ron Johnson to any representatives of the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action.
7. In 2016, I was not involved in any decisions relating to the creation, production, or distribution of any independent expenditures created by or on behalf of the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action in connection with the U.S. Senate election in Wisconsin.

*Signature page follows*

DATED this the 10<sup>th</sup> day of September, 2018

  
Signature of Affiant, Bradley Todd

SWORN to subscribed before me, this 10<sup>th</sup> day of September, 2018

  
NOTARY PUBLIC

My Commission Expires:

9/30/2021



**ATTACHMENT A**

### Federal Election Law Firewall Compliance Policy

To: On Message Inc. Principals & Employees  
From: The Partners  
Subject: Federal Campaign Finance Law Firewall Policy for 2014  
Date: August 15, 2014

This memorandum memorializes the firewall policy that On Message Inc. ("OMI") has been using during the 2014 election cycle. OMI has enjoyed success performing services for a wide range of clients, from Federal candidate committees to political parties and their IE units to outside groups making independent expenditures or conducting issue advocacy, and other election groups. Campaign finance laws place increasingly strict rules on the way we conduct our business; as such, it is important that you read and understand this memo. Our continued success depends on complying with the prohibitions, limitations and requirements of the Bipartisan Campaign Reform Act of 2002 and corresponding Federal Election Commission ("FEC") regulations (collectively "BCRA"). In its 2010 *Citizens United* ruling, the U.S. Supreme Court confirmed that the FEC's coordination rules which necessitate this firewall policy are still in effect.

BCRA provides that public communications by independent expenditure/issue advocacy groups or political party committee independent expenditure units may be considered in-kind contributions to the candidate or party committee they support if the communications are coordinated between the independent expenditure group and the candidate or party committee. See 11 C.F.R. § 109.21. Common vendors working for different types of clients in the same election can trigger coordination unless the rules described in this memo are followed. As a result, we must recognize that BCRA places limits on vendors such as OMI who have a wide range of clients engaged in political activities, including candidate and party committees as well as issue advocacy and independent expenditure groups. That means that the partners and employees of OMI need to maintain "firewalls" to ensure that we do not inadvertently provide or transmit non-public information (1) about our independent expenditure/issue advocacy clients to our campaign or party committee clients, (2) about candidate committee clients to our independent expenditure/issue advocacy group or party committee independent expenditure clients, or (3) about party committee independent expenditure clients to our candidate committee clients, regular party committee or independent expenditure/issue advocacy group clients.

**Principals and employees working on opposite sides of the "firewall" must not under any circumstances communicate any information whatsoever about their separate clients. Being "firewalled" off means OMI principals/employees communicating with or generating content on**

behalf of each client must not share or discuss, in any way, their separate clients' private plans, projects, activities or needs, including messages. This "firewall" must be maintained to ensure that no principal or employee inadvertently provides or transmits non-public information to the others.

In order to implement this firewall policy, OMI has created a conflict review process whereby OMI will review each 2014 race in which it is engaged to determine whether the possibility exists that an outside group or political party committee IE Unit for whom OMI is currently working or could be engaged to work in the 2014 cycle could sponsor a public communication that references an OMI candidate client in the same race. If, after the review, OMI believes this possibility may exist, it has created or will create a firewall structure in that race that prevents the flow of information about different clients' private plans, projects, activities, or needs, including messages in such a way that the coordination rules are triggered. Personnel and client information is compartmentalized so that one client's information (e.g., federal candidate or political party committee) is not shared with, or used in, another client's communications on the other side of the firewall (e.g., issue ad group). OMI will ensure that personnel who may have access to the private plans, projects, activities or needs of our clients — and those involved in generating content for them — remain on opposite sides of the firewalls in order to maintain the degree of separation that guards against client information being improperly shared or used. Personnel must observe these firewalls when working for clients conducting political activities. The conflict review process will be conducted for each race when OMI is retained by a new client and the personnel assigned to each silo of the firewall will be updated. A current list of the OMI partners and personnel assigned to each side of the firewall in each race where a potential conflict exists is attached to the memorandum as Attachment A. If clients are added, the list will be updated and distributed to OMI partners and personnel and retained as part of this policy.

OMI employees must not perform services for any:

- Independent expenditure/issue advocacy client within 120 days of having performed services for any U.S. Senate or House of Representatives candidate or party committee client if the issue advocacy client's communications name the same or an opposing candidate or a political party in relation to the same electoral race or geographical area as the previous client.
- Party committee client doing independent expenditures (excluding the permissible coordinated expenditure work for that party) within 120 days of having performed services for any U.S. Senate or House of Representatives candidate committee client if the party committee's communications name the same or an opposing candidate.

Furthermore, OMI personnel must not:

- Discuss the private political plans, projects, activities or needs, including messages, of a Senate campaign, congressional campaign or party committee with an OMI principal or employee who is providing services to any independent expenditure, issue advocacy group, or national political party independent expenditure unit that may conduct a communication

mentioning that candidate/client; or

- Discuss the private political plans, projects, activities or needs, including messages, of any independent expenditure or issue group or a national political party's independent expenditure unit with a OMI principal or employee who is providing services to a Senate campaign, congressional campaign or party committee who may be mentioned (or their opponent may be mentioned) in a communication by that independent expenditure, issue group, or party independent expenditure unit.

In addition, OMI personnel shall not discuss the private political plans, projects, activities or needs, including messages of a national political party's independent expenditure unit with an OMI principal or employee providing services to an independent expenditure or issue advocacy group.

Additionally, due to his work with the [REDACTED] Guy Harrison is walled off from [REDACTED] in accordance with the applicable firewall policy governing his work.

These firewalls are not intended to prevent OMI from following its traditional business practice of providing its products to multiple clients – only that the private plans, projects, activities or needs of a client on one side of the firewall not be communicated or shared with a client on the other side of the firewall. The firewalls are also not intended to prevent OMI principals and employees from discussing administrative issues or procedures that will improve the services we provide to our clients. Similarly, these firewalls are not intended to prevent OMI principals from maintaining management and financial controls on the company's operations.

Obviously, OMI employees must maintain client confidentiality concerning each client's private plans, needs, strategies and activities. No OMI principal or employee should discuss any client matters with any unauthorized individuals or entities. OMI takes these issues seriously, and no individual client is worth exposing the firm to potential legal liability. To comply with these regulations, OMI is establishing firewalls, as we have in the past.






By signing below, you acknowledge that you have read and understand OMI's policy outlined above. If you have any questions or concerns about how this policy applies to a specific situation, please do not hesitate to contact us so that we may consult counsel and advise you in a comprehensive and efficient manner. We are continually in the process of reviewing additional changes to implement the safeguards necessary to be in compliance with the regulations and will keep you updated.

## OMI FIREWALL Attachment A


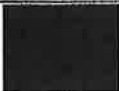
## ATTACHMENT A

Current Client / Firewall Breakdown (as of July 24, 2014)

2014 US Senate

	Candidates / Parties		Outside   Groups
Brad Todd	Arkansas Colorado North Carolina		Georgia Iowa Kentucky Louisiana Oklahoma Virginia
Guy Harrison	Arkansas Colorado North Carolina		Georgia Iowa Kentucky Louisiana Oklahoma Virginia
Wes Anderson	Arkansas		Georgia Iowa Kentucky Louisiana Michigan Montana North Carolina Oklahoma

OMI FIREWALL Attachment A

			Oregon --
	Arkansas Colorado North Carolina		Georgia Iowa Kentucky Louisiana Oklahoma Virginia
Timmy Teepell Graham Shafer Curt Anderson			Arkansas Colorado Georgia Iowa Kentucky Louisiana Michigan Montana North Carolina Oklahoma Oregon Virginia

OMI recognizes that work on any particular race for an organization in one silo will preclude that person from working on that race in any other silo, and has divided services provided in Senate races by state between the employees and partners as indicated above. Should OMI consider adding additional clients involved in 2014 Senate races, the list of specific races in which OMI has provided services will be consulted in accordance with the processes outlined in the 2014 Firewall Policy.





**ATTACHMENT B**

## On Message Inc. Firewall Compliance Policy

To: On Message Inc. Principals & Employees  
From: The Partners  
Subject: Federal Campaign Finance Law Firewall Policy for 2015-16  
Date: August \_\_\_\_, 2015

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This memorandum memorializes the firewall policy that On Message Inc. ("OMI") will utilize during the 2015-16 election cycle.

### Background

OMI has enjoyed success performing services for a wide range of clients, from Federal candidate committees to political parties and their independent expenditure units to outside groups making independent expenditures or conducting issue advocacy, and other election groups. Campaign finance laws place increasingly strict rules on the way we conduct our business; as such, it is important that you read and understand this memo. Our continued success depends on complying with the prohibitions, limitations and requirements of the Bipartisan Campaign Reform Act of 2002 and corresponding Federal Election Commission ("FEC") regulations (collectively "BCRA").

BCRA provides that public communications by independent expenditure ("IE") groups or political party committee IE units may be considered in-kind contributions to the candidate or party committee they support if the communications are coordinated between the independent expenditure group and the candidate or party committee. See 11 C.F.R. § 109.21.

Vendors such as OMI working for different types of clients making communications in the same election can trigger coordination under BCRA. Accordingly, the partners and employees of OMI must maintain and adhere to "firewalls" to ensure that we do not inadvertently provide or transmit non-public information (1) about our independent expenditure/issue advocacy clients to our campaign or party committee clients, (2) about candidate committee clients to our independent expenditure/issue advocacy group or party committee independent expenditure clients, or (3) about party committee independent expenditure clients to our candidate committee clients, regular party committee or independent expenditure/issue advocacy group clients.

## Policy

OMI has established a Firewall Compliance Policy to prevent the flow of information about different clients' private plans, projects, activities, or needs (including messages) in such a way that the federal coordination rules are triggered.

The essence of this Firewall Compliance Policy is that principals and employees working on opposite sides of a firewall must not communicate any material, non-public information about their separate clients. This means that OMI principals/employees communicating with or generating content on behalf of one client must not share or discuss their separate clients' private plans, projects, activities or needs, including messages. This firewall must be maintained to ensure that no principal or employee inadvertently provides or transmits non-public information to others.

In order to implement this Firewall Compliance Policy, OMI has created a conflict review process whereby OMI will review each 2016 race in which it is engaged to determine whether the possibility exists that an outside group or political party committee for whom OMI is currently working or could be engaged to work in the 2016 cycle could sponsor a public communication that references an OMI candidate client in the same race. If, after the review, OMI believes this possibility may exist, OMI will create a firewall structure in that race to prevent the flow of information about different clients' private plans, projects, activities, or needs, including messages, in such a way that the coordination rules are triggered.

Personnel and client information will be compartmentalized so that one client's information (e.g., federal candidate or political party committee) is not shared with, or used in, another client's communications on the other side of the firewall (e.g., IE-only group). OMI will ensure that personnel who may have access to the private plans, projects, activities or needs of our clients — and those involved in generating content for them — remain on opposite sides of the firewalls in order to maintain the degree of separation that guards against client information being improperly shared or used. Personnel must observe these firewalls when working for clients conducting political activities.

The conflict review process described above will be conducted for each new race in which OMI is retained, and the personnel assigned to each silo of the firewall will be updated. A list of the OMI partners and personnel assigned to each side of the firewall in each race where a potential conflict exists will be maintained. As clients are added, the list will be updated and distributed to OMI partners and personnel and retained as part of this Firewall Compliance Policy.

Pursuant to the Firewall Compliance Policy, OMI personnel must not perform services for:

- Independent expenditure/issue advocacy client within 120 days of having performed services for any federal candidate or party committee client if the issue advocacy client's communications name the same or an opposing candidate or a political party in relation to the same electoral race or geographical area as the previous client.
- Party committee client doing independent expenditures (excluding the permissible coordinated expenditure work for that party) within 120 days of having performed services for any federal candidate committee client if the party committee's communications name the same or an opposing candidate.

Furthermore, OMI personnel further must not:

- Discuss the non-public political plans, projects, activities or needs, including messages, of a federal candidate campaign committee or party committee with an OMI principal or employee who is providing services to any IE-only committee, issue advocacy group, or political party committee IE Unit; or
- Discuss the non-public political plans, projects, activities or needs (including messages) of any IE-only committee, issue advocacy group, or political party committee IE Unit with an OMI principal or employee who is providing services to a federal candidate campaign committee or party committee who may be mentioned (or their opponent may be mentioned) in a communication by that IE-only committee, issue advocacy group, or political party committee IE Unit.
- Discuss the non-public political plans, projects, activities or needs (including messages) of any political party committee IE Unit with an OMI principal or employee who is providing services to IE-only committee or issue advocacy group.

These firewalls are not intended to prevent OMI from following its traditional business practice of providing its services to multiple clients. Rather, it is that the private plans, projects, activities or needs of a client on one side of the firewall must not be communicated or shared with a client on the other side of the firewall. The firewalls are also not intended to prevent OMI principals and employees from discussing administrative issues or procedures that will improve the services we provide to our clients. Similarly, these firewalls are not intended to prevent OMI principals from maintaining management and financial controls on the company's operations.

In any event, OMI employees must maintain client confidentiality concerning each client's private plans, needs, strategies and activities. As a result, no OMI principal or employee should discuss any client matters with any unauthorized individuals or entities, and client files should be separately maintained so as not to commingle any client-specific information.

OMI takes these issues seriously, and no individual client is worth exposing the firm to potential legal liability. To comply with these regulations, OMI is continuing its policy of establishing firewalls as it has in previous election cycles.

By signing below, you acknowledge that you have read and understand OMI's policy outlined above. If you have any questions or concerns about how this policy applies to a specific situation, please do not hesitate to contact us so that we may consult counsel and advise you in a comprehensive and efficient manner. We are continually in the process of reviewing additional changes to implement the safeguards necessary to be in compliance with the regulations and will keep you updated.

If at any time you have questions regarding this policy, please contact Graham Shafer at [graham@onmessageinc.com](mailto:graham@onmessageinc.com) or (410) 591-1360.

**ACKNOWLEDGEMENT**

I have read the above Firewall Compliance Policy, and agree to abide by its terms:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

		<b>US SENATE: WISCONSIN</b>	
		N/A	
[REDACTED]		[REDACTED] NRA	
Curt Anderson		Ron Johnson	
Wes Anderson		Ron Johnson	
Guy Harrison		[REDACTED] NRA	
Graham Shafer		[REDACTED] NRA	
Timmy Teepell		Ron Johnson	
Brad Todd		Ron Johnson	
[REDACTED]		Ron Johnson	
[REDACTED]		Ron Johnson	
[REDACTED]		Ron Johnson	
[REDACTED]		Ron Johnson	
[REDACTED]		[REDACTED] NRA	
[REDACTED]		Ron Johnson	
[REDACTED]		Ron Johnson	
[REDACTED]		Ron Johnson	

**ATTACHMENT C**

7/25/2018

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NATIONAL RIFLE ASSOCIATION

## The Mystery Firm That Has Become the NRA's Top Election Consultant

**Since 2014, the gun rights group has paid more than \$60 million to a little known contractor for ads in must-win political races. Did it break campaign finance laws in the process?**

by Mike Spies · @mikespiesnyc · July 13, 2018

This story was reported in partnership with *Politico Magazine*.

Heading into the 2014 midterm elections, polls showed the Republican Party had an opportunity to retake control of the Senate. Such a change would severely limit President Barack Obama's legislative agenda during his final two years in office, an outcome that was especially attractive to the National Rifle Association. In the wake of devastating events like the 2012 mass shooting at Sandy Hook Elementary School, the president had become an aggressive promoter of new gun regulations.

To get its message out, the NRA turned to an unknown consulting firm, Starboard Strategic Inc., paying it \$19 million. More than a third of that money was invested in must-win Senate seats in Colorado, North Carolina, and Arkansas — three of the most expensive in the country — paying for a host of television, radio, and internet ads.

It was not unusual for the NRA to spend large sums of cash in an election cycle. What was odd was where the money was going. Before 2013, Starboard Strategic had never appeared in Federal Election



7/25/2018

## The Mystery Firm That Has Become the NRA's Top Election Consultant

Commission reports. Someone curious about the firm would have found a skeletal website that listed no staff, clients, address, phone number, or previous work. There was just some generic branding language ("Good advertising and good ground operations start with good strategy") and a basic email address: info@starboardstrategicinc.com. Yet at a moment when the stakes were high — Republicans needed six seats to claim a majority — the firm had come out of nowhere to become the NRA's top election contractor.

Acquiring business of this magnitude would be an incredible feat for a firm with no reputation. The question is whether it was really accomplished by Starboard, or another outfit called OnMessage Inc.

Well-established and well-connected, OnMessage is as transparent as Starboard is opaque. What the FEC and the public do not know is that the two entities appear to be functionally one and the same.

In 2014, among OnMessage's most prominent clients were three Republican challengers vying for Senate seats in the same races where the NRA would pay Starboard some of its biggest outlays of the cycle: Thom Tillis, in North Carolina; Cory Gardner, in Colorado; and Tom Cotton, in Arkansas. All of these candidates would defeat Democratic incumbents, cementing the result for which GOP leaders and the NRA had mobilized: a Republican majority in the upper chamber to match the one in the House. Each challenger paid OnMessage between \$5 million and \$8 million, far more than they paid any other vendors.

Campaign finance rules prohibit coordination between official campaigns and outside groups, like the NRA, who support the same candidate. Those restrictions, in turn, give force to a fundamental law governing political spending. Outside groups can independently disburse unlimited sums to influence elections. But they can give no more than \$5,000 when giving directly to a candidate.

Official campaigns and the outside groups supporting them may use a common vendor, such as a political ad firm. However, the rules mandate the vendor ensure employees and partners working for each client don't share information. There is no evidence of any meaningful distinction between Starboard Strategic and OnMessage. Public records show the two entities share corporate officers and identical office addresses — one in Alexandria, Virginia, and the other in Annapolis, Maryland. Internal emails indicate executives toggled between roles for both firms. A former OnMessage employee who worked out of the Alexandria location in 2014 says Starboard had no separate dedicated presence there. "Beyond some Starboard-labeled thumb-drives lying around, I don't recall anything within our office that was called or associated with Starboard," said the former employee, who requested anonymity to avoid retribution.

**Records show that Starboard Strategic and OnMessage share common founders, executives, and addresses. The NRA is effectively Starboard's sole client.**

	OnMessage, Inc.	Starboard Strategic
Address 1	705 Melvin Avenue, #105 Annapolis, MD 21401	705 Melvin Avenue, #105 Annapolis, MD 21401
Address 2	817 Slaters Lane Alexandria, VA 22314	817 Slaters Lane Alexandria, VA 22314
Leadership	Curt Anderson Wes Anderson Brad Todd Orrin "Guy" Harrison Graham Shafer Timothy "Timmy" Teepell	Curt Anderson Wes Anderson Brad Todd Orrin "Guy" Harrison Graham Shafer Timothy "Timmy" Teepell

7/25/2018

The Mystery Firm That Has Become the NRA's Top Election Consultant

	<b>OnMessage, Inc.</b>	<b>Starboard Strategic</b>
Clients	Dozens of Republican senators, congresspeople, and governors, plus special interest groups.	Just the NRA, plus one modest expense from the Republican National Committee.

Source: [OnMessage, Inc.](#); Federal Election Commission; Virginia State Corporation Commission

Two former FEC chairs, one Republican and the other Democrat, reviewed the findings of Politico Magazine and The Trace, and said they found them troubling. "This evidence raises substantial questions about whether OnMessage and Starboard Strategic were used as conduits for coordination between the NRA and the candidates it was supporting," Trevor Potter, the Republican, said. "It's pretty serious," added Ann Ravel, the Democrat. "It doesn't seem right." Both former chairs independently came to the same conclusion: "The FEC should investigate."

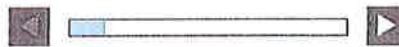
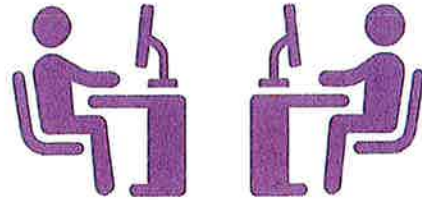
In a close race, coordination can provide a candidate with crucial advantages. "When a group like the NRA is operating independently, there's a potential for its messaging to conflict with that of the candidate it's supporting," Brendan Fischer, the director of the Federal Reform Program at the Campaign Legal Center, a nonpartisan watchdog group, said. "There's also a good chance inefficiencies will arise. The NRA could target the wrong set of voters, or the same voters as the candidate, which would make its spending redundant." Sharing information, Fischer went on, allows an outside group and an official campaign to unfairly operate in harmony. "So if candidates are spending a lot of money between 7 a.m. and 9 a.m., for example, then perhaps the NRA's money is better spent between 5 p.m. and 6 p.m."

Typically, a firm serving as a common vendor to campaigns and outside groups seeks to prevent its employees from inappropriately sharing information by requiring them to read and sign what's known as a firewall policy. The text amounts to an agreement to comply with the law, and makes clear the penalties for failing to do so. It is not known if, or how, OnMessage enforced firewalls in races where Starboard was active on behalf of the NRA. Neither the NRA nor OnMessage nor its partners responded to multiple requests for comment that included written sets of detailed questions about whether Starboard is a fully operational company or a shell company that exists principally on paper.

The FEC is widely considered a toothless agency, paralyzed by partisan infighting, and campaign finance laws are often honored in the breach. But listing a shell company in FEC filings, according to Brett Kappel, a campaign finance expert, "would be a violation of the reporting requirements." The filer "should have identified whoever was actually performing the work." Indeed, [according to a 2016 FEC General Counsel report](#), "The Commission has determined that merely reporting the immediate recipient of a committee's payment will not satisfy the requirements ... when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds."

7/25/2018

The Mystery Firm That Has Become the NRA's Top Election Consultant



**Here's how the FEC regulates payments to vendors shared by a campaign and an outside group. And here's why ex-FEC chairs say the agency should investigate the NRA's top election consultant.**

Click the arrow on the right to begin.

In May, the United States Court of Appeals for the Eighth Circuit issued an opinion that is consistent with the analysis of the FEC's top lawyer, and even goes a step further. According to the ruling, using the name of a shell company to report the recipient of money spent by a political committee could violate a criminal statute that prohibits the falsification of records to deceive a federal agency. Such a crime could result in a 20-year prison sentence.

Meanwhile, the NRA's relationship with Starboard persists. The gun group paid Starboard more than \$40 million in 2016, a sum that surpassed the total federal election payments made to OnMessage in the same year by all candidates and groups by more than \$10 million, according to campaign finance data. During that election cycle, Senator Ron Johnson, the Republican incumbent in Wisconsin, was defending his seat in a tight race. Johnson's campaign hired OnMessage. Later, the NRA, listing Starboard as its vendor, paid for ads boosting his candidacy. Johnson won his race by fewer than 100,000 votes.

This year, at least one of the contests that will determine control of the Senate features a candidate who has tapped OnMessage while benefitting from the firm's work on behalf of the NRA, according to the former OnMessage employee. In Florida, Governor Rick Scott is challenging Bill Nelson, the Democratic incumbent. In his last gubernatorial campaign, Scott hired OnMessage. The NRA, the former employee says, tapped the firm for pro-Scott work. But in Florida campaign finance records, which do not require filers to disclose the races in which money is spent, it's Starboard that appears as a vendor. Scott's chief political adviser is Curt Anderson, a partner at both OnMessage and Starboard, and Scott's Senate campaign has signed up OnMessage as a contractor. The NRA, which bashed the gun control package Scott signed in

7/25/2018

## The Mystery Firm That Has Become the NRA's Top Election Consultant

March after the Parkland school shooting, has yet to wade into the race, but its federal agenda depends on preserving a Republican majority in the Senate. The Florida race is likely to be the most competitive, and most expensive, of 2018, making any edge for either candidate potentially decisive.

OnMessage was founded in 2005 by three veteran Republican operatives: Curtis and Wesley Anderson, who are brothers, and Bradley Todd. Later, they added three more partners — GOP strategists Timmy Teepell, Guy Harrison, and Graham Shafer — and now have roughly a dozen employees. "If you want to talk about establishment Republican consulting firms, OnMessage is definitely one of the more prominent ones," Rick Wilson, a GOP strategist, said. "They've had a lot of wins over the last few years. They work the system in D.C. very effectively for their purposes."

A full-service political consulting shop, OnMessage is especially known for its award-winning, often cinematic ads. Its sizzle reel features a pounding soundtrack over snippets of emotionally charged campaign spots that alternately play for the heart or the gut. Candidates who OnMessage is retained to help elect are depicted jamming on a guitar or jawing with their dad on the family farm. Those it is hired to oppose may be portrayed by actors in elaborate scenarios, or more straightforwardly pummeled with unflattering juxtapositions and biting language. One of OnMessage's many industry accolades is for a merciless 2014 ad against Charlie Crist, Scott's opponent. The spot earned a Reed Award for "Best Bare-Knuckled Street Fight TV Advertisement."

Of all of the OnMessage partners, Todd has the most public profile. He writes editorials for major network news sites, including a recent piece on Fox Opinion that takes NFL players to task for kneeling during the national anthem. On Twitter, he derides the "loony left," and appears on cable news shows to explain the conservative electorate to a media that he views as out of touch and uncomprehending. In the summer of 2016, during an appearance on MSNBC, he famously stated, "The voters take Donald Trump seriously as a candidate, but they don't take him literally. The press takes Donald Trump literally, but they don't take him seriously." In May, Todd and Salena Zito, a syndicated columnist, co-authored *The Great Revolt: Inside the Populist Coalition Reshaping American Politics*. The book examines the mindset of Trump's supporters, and has been enthusiastically endorsed by the president, who said it "does much to tell the story of our great election victory."

Over the years, OnMessage has built an impressive roster of clients. In addition to Tillis, Gardner, Cotton, Johnson and Scott, the firm has worked with the National Republican Senatorial Committee; the National Republican Congressional Committee; the Republican National Committee; and former senators Scott Brown and Thad Cochran, among many others. Another high-profile client has been the NRA.

Todd and the NRA's top lobbyist, Chris Cox, both attended Rhodes College in Tennessee and graduated together in 1992. "They're buddies," said a former employee of Cox's, who worked in the group's lobbying wing, the Institute for Legislative Action, and spoke on the condition of anonymity out of concern for professional consequences. "I'd occasionally see Brad around the office, and sometimes, before sending out an email to NRA members, Chris would have me run the language by Brad." A second former ILA staffer, who requested anonymity for the same reason, said, "Brad was definitely around the office, not regularly, but when he was, he was in the executive suite. There was consulting with Brad over high-end issues that were deemed controversial. It was, 'How do we say this?' Or, 'What language do we use?'" (Cox did not respond to request for comment.)

In 2010, the NRA for the first time listed OnMessage as a vendor in its FEC filings. That year, the gun rights group paid the firm about \$3.19 million for its services, including the production of ads in support of Republican Senate candidates like Roy Blunt and Patrick Toomey. The following cycle, in 2012, the NRA's expenditures linked to OnMessage greatly increased, totaling \$11.25 million, making the firm the NRA's top federal election vendor by more than \$5 million. Large portions of the money went toward ads attacking President Obama, who was up for re-election. During those two election cycles, OnMessage also produced ads and other messaging for candidates' campaigns, but never in races where it was working for the NRA.

In January 2013, according to a website registration document, Wesley Anderson registered Starboardstrategicinc.com. The document provides an address for the "admin contact" and the "tech contact," which begins "OnMessage Inc. ATTN STARBOARDSTRATEGIC.COM." The site has never included any details about the new company. But some of the language it does employ is nearly identical to

7/25/2018

The Mystery Firm That Has Become the NRA's Top Election Consultant

language that can be found on the website of OnMessage. For example, each site has a tab for "Crisis Management." OnMessage's reads, "The political environment is constantly changing. Being prepared to respond to that change is an important part of any campaign and we are prepared to do it." On the Starboard site, the word "campaign" is replaced with "fight."

Two months later, in March 2013, corporate documents show that the partners at OnMessage — with the exception of Harrison, whose name would be added to filings in the years to come — incorporated Starboard Strategic Inc., and, as subsequent annual reports demonstrate, would function as its principals. OnMessage would never appear in the NRA's FEC reports again.

## OnMessage partners establish Starboard Strategic in 2013. It quickly becomes the NRA's top campaign firm.



Graphic: Daniel Nass. Source: Federal Election Commission.

Note: Data consists of payments made by the NRA Institute for Legislative Action and the NRA Political Victory Fund. Payments are grouped by month.

The following year, during the fall of 2014, as the midterm election season was well underway, the NRA paid Starboard millions of dollars for ads supporting Tillis, Gardner and Cotton. In the same period, money flowed from these candidates to OnMessage.

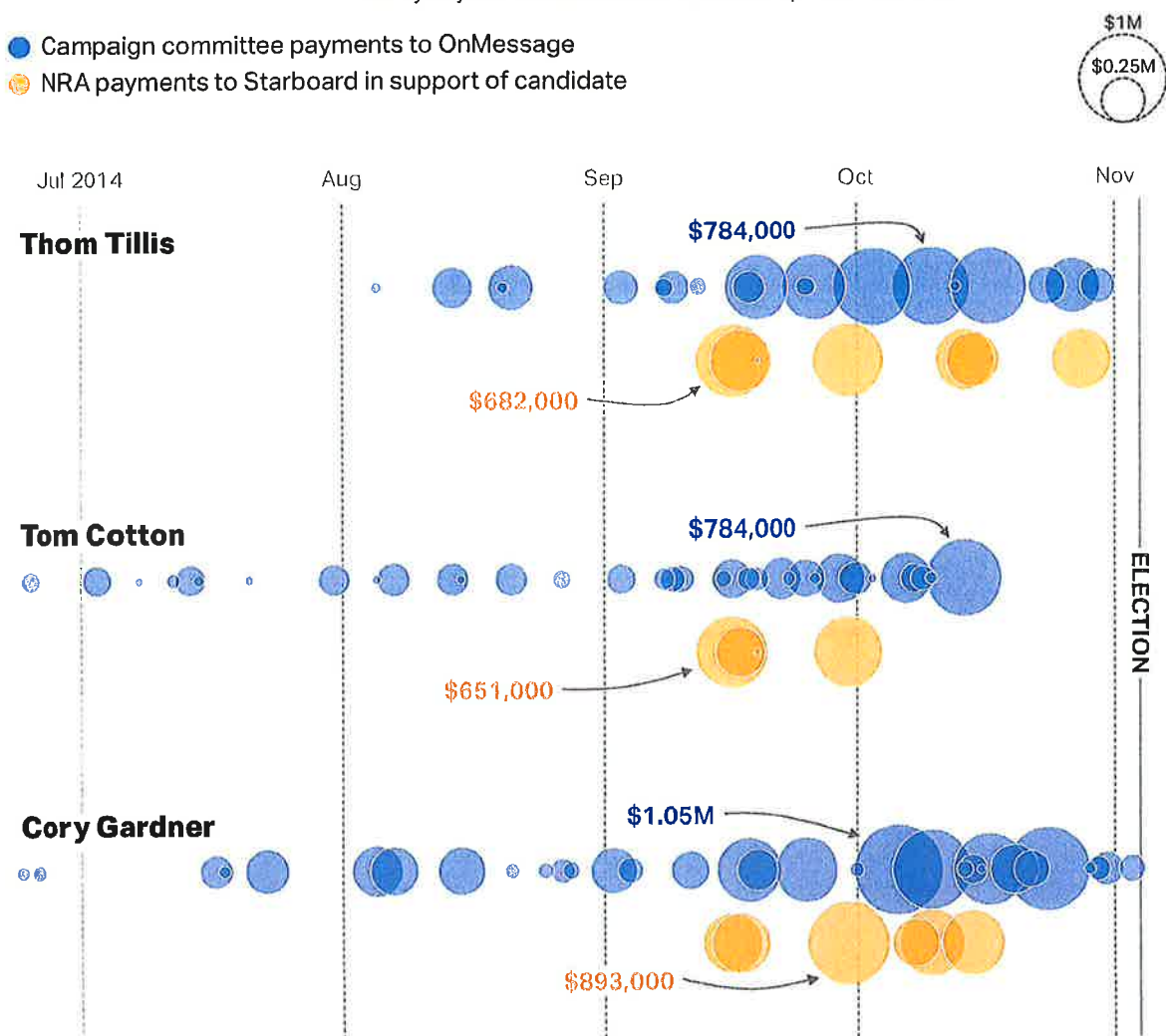
"With respect to the work being done for these particular campaigns, certain partners — not just employees — would have had to have been firewalled off from each other," Fischer, the director of the Federal Reform Program at the Campaign Legal Center, said. Kappel, the campaign finance expert, explained, "One way to guarantee separation is to keep employees working for the outside group at one office, and those working for the campaign at another."

In the three big 2014 Senate races, all expenditures made to Starboard carried one of two addresses where OnMessage maintains workspace. For Tillis and Cotton, the two companies supporting the same candidates would frequently appear in FEC reports at identical locations in Annapolis. Gardner's campaign sent work to OnMessage in Alexandria, where, shortly before Election Day, it overlapped with an NRA payment to Starboard of more than \$525,000. Representatives of Cotton, Tillis, Gardner, Johnson and Scott did not respond to requests for comment for this article.

## Republican candidates in key 2014 Senate races tap OnMessage. The NRA pays millions to Starboard Strategic to sway those contests.

7/25/2018

## The Mystery Firm That Has Become the NRA's Top Election Consultant



Graphic: Daniel Nass. Source: Federal Election Commission.

Note: Data consists of expenditures made by the NRA Institute for Legislative Action and the NRA Political Victory Fund. Payments in support of a candidate also include payments opposing that candidate's opponent. Payments are grouped by day.

After the three candidates won their races in November, and Republicans regained control of the Senate, the Onmessageinc.com biography page belonging to Todd — the partner who is friends with NRA lobbyist Chris Cox and well known to Cox's employees — was updated. It **now says**, "Todd's 2014 clients defeated three incumbent Democratic U.S. Senators in a single election cycle, a feat unmatched by any Republican media consultant in 34 years."

Despite Starboard's impressive run in 2014, there appeared to be no attempt to market the new company to other prospective clients. In fact, according to FEC reports, other than a small sum it received from the National Republican Congressional Committee — business worth less than \$20,000 — it has never had another federal election client besides the NRA. Moreover, none of Starboard's partners has publicly affiliated himself with the company; four of them have LinkedIn pages, for instance, and their profiles only mention OnMessage. One of them is Todd, who used the email address brad@starboardstrategicinc.com to offer the former OnMessage employee a job.

There is also no indication that Starboard has a distinct team of employees working within the offices of OnMessage. As with the partners, there are no staff members who publicly list themselves as working for Starboard, though a second email shows acknowledgement of double duty. Vicki Tomchik is OnMessage's longtime chief financial officer; the job is the only one she lists on her **LinkedIn** page. But in 2014, when the

7/25/2018

The Mystery Firm That Has Become the NRA's Top Election Consultant

former OnMessage employee received an email from Tomchik, there were two references below her signature. One was OnMessage, and the other was Starboard. (Tomchik did not respond to a request for comment.)

That same year, the NRA invested heavily in Scott's gubernatorial re-election effort in Florida, a race that the incumbent eventually won by a single percentage point. In the NRA's state campaign finance filings, more than a million dollars' worth of independent expenditures are attributed to Starboard, but none to OnMessage, which was working for Scott's campaign. Unlike the federal regulations, Florida law does not require outside groups to disclose whether money was spent to support or oppose a particular candidate. But an ad the NRA **published** online in the fall can be traced back to OnMessage by the former OnMessage employee. The ad tied Scott's Democratic opponent, Charlie Crist, to Michael Bloomberg, and accused the candidate of supporting the former New York City mayor's "gun control agenda." (Bloomberg provides funding to Everytown for Gun Safety, whose 501c3 arm makes grants to The Trace.)

"I remember seeing people from OnMessage work on this ad," the former OnMessage employee said. Yet none of the NRA's 2014 Florida expenditures was attributed to OnMessage. (It is not clear if there was any coordination in this race, but in Florida, coordination is generally permissible.)

## Share A Tip

### Here's how to contact our reporters securely.

In 2016, the NRA's federal election payments to Starboard ballooned to \$40 million, a massive portion of the gun rights group's total independent spending for the year, which came to almost \$53 million. That cycle, when Johnson was defending his Wisconsin Senate seat for the first time, his campaign paid OnMessage almost \$4 million. The payments stopped in August. Just over two months later, the NRA aided in the re-election effort, and tapped Starboard for nearly \$200,000 worth of advertising.

The sum the NRA paid to Starboard in 2016 was split between the group's Political Victory Fund and its Institute for Legislative Action. The transactions paid by the ILA accounted for roughly \$23.4 million. Unlike the Victory Fund, a free-standing organization affiliated with the gun group, the ILA is a component of the NRA's nonprofit corporation, which means its financial records are subject to oversight by the Internal Revenue Service. In the NRA's tax filings, it is required to disclose its top five independent contractors for any given year, and that includes contractors retained by its divisions, like the ILA. In 2016, Starboard was not **included** on the list, even though, based on what it received from ILA, it would have ranked as the NRA's second highest-earning contractor.

"If Starboard was paid by the Institute for Legislative Action for services, then Starboard was a contractor, and if Starboard was one of the NRA's largest contractors, then it should be listed on the NRA's 990," Marcus Owens, the former head of the IRS division overseeing tax exempt enterprises, said.

As far as the FEC and the public know, OnMessage did no campaign work for the NRA in 2016 — the firm is nowhere mentioned in the group's filings. More than half of the money the NRA paid Starboard that year, about \$25.7 million, was spent in the service of electing Donald Trump to the presidency. After the Republican candidate defeated Hillary Clinton, however, OnMessage celebrated the work it produced for the NRA.

On January 20, 2017, the day of Trump's inauguration, Brad Todd wrote a **blog post** on OnMessage's website. "When no other outside group on the Republican side of the aisle believed in this race, the NRA made its biggest investment in any Presidential election," he wrote. "They went in early and they went in big." Todd added, "OnMessage Inc. was proud to partner with the NRA and produce their ads in this election."

A month later, OnMessage received a **Reed Award** for an NRA spot it had created the previous year. The category was "Best Ad For Independent Expenditure Campaign — Presidential," and the winning entry features a woman in bed who is awakened by a burglar. In one hand she grips a phone, and with the other she opens a gun safe, which suddenly disappears before her eyes. "Don't let Hillary leave you protected

7/25/2018

The Mystery Firm That Has Become the NRA's Top Election Consultant

with nothing but a phone," a narrator warns. Currently, the ad can be viewed on OnMessage's website, by clicking the tab labeled "Our Work."

## Support Our Work

Help us tell the story of America's gun violence crisis.

Donate Now



**ATTACHMENT C**

**HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC***Attorneys at Law*

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

**March 8, 2018**

**To: OnMessage, Inc.**

**From: Jessica Furst Johnson**

**Re: Internal Firewall Policy of OnMessage, Inc.**

---

The purpose of this memorandum is to memorialize the implementation of an internal firewall policy adopted by OnMessage, Inc. (“OMI”), in advance of the 2018 elections.

OMI wishes to implement a firewall policy that satisfies and complies with the safe harbor requirements set forth at Federal Election Commission (FEC) regulation 11 C.F.R. § 109.22(h). By meeting these requirements, this policy will effectively prevent OMI personnel from conveying nonpublic, material information from one client to another and thereby prevent information obtained from one client from being used on behalf of another in a manner that may implicate the FEC’s coordination regulations.

Accordingly, OMI has designed and implemented a firewall that will effectively prevent “common vendor” coordination, as that term is used at 11 C.F.R. § 109.21(d)(4), among OMI’s various clients.

Specifically, this firewall is intended to prevent any OMI personnel (i) from conveying to a client who may produce and distribute public communications in connection with Election X, or (ii) using on that client’s behalf, any:

- (a) information about the campaign plans, projects, activities, or needs of a second client who is a candidate in Election X, the second client’s election opponent, or a political party committee engaged in Election X, where that information is material to the creation, production, or distribution of the first client’s public communication; or
- (b) information learned or used previously by OMI in the course of providing services to a candidate (or that candidate’s opponent) where that candidate is now clearly identified in the public communication of another client, and the information is material to the creation, production, or distribution of the client’s public communication.

In furtherance of this firewall policy, the principals of OMI have taken steps to “firewall” (or “silo”) certain clients to ensure that work and services are provided to those clients only by

specific OMI employees who will not share sensitive information regarding their firewalled clients with other OMI employees.

Please reference the 2018 OMI Firewall Chart, attached to this firewall policy.

With respect to each race, no OMI employee will provide work and services to clients in more than one category. Clients in Category 3 have been determined not to present a coordination risk with respect to other clients in that same category, and therefore an OMI employee may work with multiple clients in Category 3 who are active in the same race.

One or more OMI employees may have administrative duties that involve providing services to, or in support of, clients that are involved in the same race in more than one category. These employees will not perform work or services that involve creative or strategic decisions regarding the creation, production, or distribution of public communications, and will not convey information regarding any such creative or strategic decisions from one principal to another.

This policy is intended to supplement and reinforce OMI's existing policies regarding the safeguarding of client confidences and OMI's existing commitment to maintaining the highest professional standards.

OMI will consult regularly with counsel regarding the continued maintenance of its firewall policy, and this policy is subject to revision as a result of the addition or subtraction of clients.

This policy will be shared, as appropriate, with all current and future affected employees, consultants, vendors, independent contractors, and clients.

If you have any questions about this policy, you should contact Graham Shafer.

Please sign and date this policy statement acknowledging that you have read and understand the Policy Statement. Return the signed copy to Sarah Binion by March 15, 2018. An additional copy can be provided for your records.

I have read and understand this policy statement:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

RACE	CATEGORY 1: CANDIDATES	CATEGORY 2: [REDACTED]	CATEGORY 3: NRA/OUTSIDE GROUPS
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Montana Senate	Guy Harison Brad Todd Jacquie Brown Tom Dunn Sarah Binion Brian Lyle Joanna Burgos	[REDACTED]	Curt Anderson Timmy Teepell Wes Anderson Rick Heyn Kyle McGehrin
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**ATTACHMENT D**

**AFFIDAVIT OF BRADLEY TODD**

PERSONALLY came and appeared before me, the undersigned Notary, the within named BRADLEY TODD, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Bradley Todd. I am a co-founder of both OnMessage, Inc. and Starboard Strategic, Inc.
2. OnMessage, Inc. and Starboard Strategic, Inc. operate at all times with appropriate "firewall" policies that comply with the Federal Election Commission's requirements as set forth at 11 C.F.R. § 109.21(h).
3. During 2018, I provided consulting services to the National Rifle Association of America Political Victory Fund and National Rifle Association Institute for Legislative Action. These services consisted primarily of consulting with respect to general public relations matters and matters involving federal and state legislation. In addition, I provided consulting services to the National Rifle Association of America Political Victory Fund and National Rifle Association Institute for Legislative Action in connection with state and federal elections other than the 2018 United States Senate election in Montana.
4. In 2018, I did not communicate or convey any non-public information about the campaign plans, projects, activities, or needs of Matt Rosendale to any representative of the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action.
5. In 2018, I was not involved in any decisions relating to the creation, production, or distribution of any independent expenditures created by or on behalf of the National Rifle Association of America Political Victory Fund or National Rifle Association Institute for Legislative Action in connection with the U.S. Senate election in Montana.

*Signature page follows*

DATED this the 13<sup>th</sup> day of November, 2018

Bradley Todd  
Signature of Affiant, Bradley Todd

SWORN to subscribed before me, this 13<sup>th</sup> day of November, 2018

Jessica Lynn Sanson  
NOTARY PUBLIC

My Commission Expires:

9/30/2021



**ATTACHMENT E**



**AFFIDAVIT OF CHRISTOPHER COX**

PERSONALLY came and appeared before me, the undersigned Notary, the within named Christopher Cox, who is a resident of the Commonwealth of Virginia, and makes this statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

- (1) I, Christopher Cox, am the executive director of the Institute for Legislative Action (ILA), a division of the National Rifle Association of America (NRA), which is responsible for NRA's legislative, legal, and political efforts in furtherance of its mission. In this capacity I am involved making decisions concerning independent expenditures by NRA on behalf of candidates, as well as NRA communication to its members, expressly advocating the election or defeat of candidates.
- (2) I am also chairman of the NRA's federal separate segregated fund, the NRA Political Victory Fund (NRA-PVF), FEC ID C00053553. In this capacity I am involved in making decisions concerning, among other things, NRA-PVF endorsements, contributions and independent expenditures in support of and in opposition to candidates.
- (3) In fulfilling these roles I sometimes speak to federal candidates about issues of concern to the NRA and its members, and possible NRA-PVF endorsements and contributions.
- (4) When I speak to federal candidates on these matters, I routinely begin the conversation by explaining that I am unable to discuss any possible, planned, or ongoing NRA or

NRA-PVF public communications in support of the candidate or in opposition to the candidate's opponent.

- (5) Upon information and belief, I spoke with Matt Rosendale or a representative of Matt Rosendale's campaign only once during the 2018 election cycle. We had a brief conversation on June 13, 2018.
- (6) I began that conversation by stating that I could not that I could not discuss any possible, planned, or ongoing NRA or NRA-PVF public communications to influence his race.
- (7) The substance of the conversation included discussion of federal issues that are of great importance to the NRA and its members, namely national concealed carry reciprocity legislation and federal judgeships. I mentioned NRA's dissatisfaction with the vote against the confirmation of Justice Gorsuch cast by Rosendale's opponent.
- (8) It was my understanding that Mr. Rosendale was seeking the NRA's endorsement and of his candidacy and a contribution from NRA-PVF.
- (9) I informed Mr. Rosendale that his race was a priority for the NRA, given the high-profile nature and importance of that election and the importance of the Supreme Court to NRA members. I was not ready to formally commit to the NRA's endorsement of his candidacy at that time. I may have said that the NRA anticipated that it would be "in the race," but I did not indicate that this involvement would take any particular form and I was in no way seeking Mr. Rosendale's approval or permission.

(10) Mr. Rosendale and I did not discuss any communications that the NRA, the NRA-PVF, or the NRA-ILA might make in connection with the 2018 U.S. Senate election in Montana.

(11) On or about September 13, 2018, I became aware of an article in the *Daily Beast*, published on that date, which accused the NRA of having coordinated with the Rosendale campaign. That article contained the following quote attributed to Rosendale:

“I fully expect the NRA is going to come in... in August sometime,” Rosendale said in response to a question about independent political spenders in the race. “The Supreme Court confirmations are big. That’s what sent the NRA over the line. Because in ’12, with [Republican Senate nominee Denny Rehberg] they stayed out, they stayed out of Montana. But Chris Cox told me, he’s like, ‘We’re going to be in this race.’”

I was not aware of these comments by Mr. Rosendale before the *Daily Beast* published them.

DATED this the \_\_\_\_ day of November, 2018

  
Signature of Affiant, Christopher Cox

SWORN to subscribed before me, this 12<sup>th</sup> day of November, 2018

  
NOTARY PUBLIC

My Commission Expires:

11/30/2019

