

HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC*Attorneys at Law*

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

February 19, 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

2019 FEB 21 AM 11:51
 OFFICE OF
 GENERAL COUNSEL

Re: MUR 7558

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. Owens¹ in his capacity as Treasurer; National Rifle Association Institute for Legislative Action (NRA-ILA); National Media Research Planning and Placement, LLC (National Media), and Jon Ferrell in his capacity as Chief Financial Officer of National Media.

The Complainant in this matter makes the same allegation as the Complainants in MUR 7553: that the National Rifle Association Political Victory Fund (NRA-PVF) coordinated with Donald J. Trump for President, Inc. through a common vendor that placed television advertisements for both entities. Like the Complainants in MUR 7553, the Complainant here is wrong.

This Complaint centers on the same Norfolk, Virginia advertisements that were a subject of MUR 7553. The circumstances surrounding the placement of those advertisements were discussed in detail in our Response in MUR 7553 (pages 23-25). The Complainant similarly focuses on Jon Ferrell and NAB Form PB-18. Mr. Ferrell's position with National Media was explained in detail in the Responses to MUR 7524 (at pages 5-6, 8) and MUR 7553 (at pages 10-11), while NAB Form PB-18 was addressed thoroughly in the Response to MUR 7553 (pages 8-10, 11-14).

In this matter, the Complainant repeatedly claims that Mr. Ferrell "authorized" advertisement buys for various entities, citing to NAB Form PB-18 as evidence. As explained previously, Mr. Ferrell does not "authorize" the advertisement buys that National Media's media

¹ Mr. Owens became the Treasurer of NRA-PVF and NRA-ILA on or about September 5, 2018.

buyers place, and his signature on NAB Form PB-18 does not represent or constitute “authorization” to place an advertisement. *See* MUR 7524, Response at 5-9; MUR 7553, Response at 10-14.

The Complainant also misrepresents the cited NAB Form PB-18 documents as “contracts” in the Complaint’s footnotes. For example, at footnote 6, the Complainant misidentifies the document at Exhibit 2 as “Contract Agreement Between WVEC and Am. Media & Advocacy Grp. (Oct. 24, 2016).” The document included at Exhibit 2 is NAB Form PB-18, which is very clearly titled “Agreement Form For Political Candidate Advertisements.”² As explained in previous Responses, NAB Form PB-18 is not a contractual agreement and it does not “authorize” the airing of advertisements. NAB Form PB-18 is a template form that broadcast stations use to meet their public disclosure obligations. *See* MUR 7524, Response at 6-7; MUR 7553, Response at 11-13.

The Complainant offers two coordination theories. First, the Complainant contends that “[t]here is *overwhelming* evidence that Donald J. Trump and his presidential campaign were *materially involved* in numerous decisions regarding the creation, production, and distribution of NRA-PVF’s television advertisements.” Complaint at 6 (emphasis added). Far from being “overwhelming,” the Complaint presents *no* evidence of any such “material involvement,” but simply asserts that it must have been so.³ The Complaint does not identify any representative of the Trump campaign who was supposedly involved in the creation, production, or distribution of the NRA-PVF’s television advertisements and there is no evidence in the Complaint regarding how or when this “material involvement” supposedly took place.⁴

The Complainant’s second theory, that coordination occurred through a common vendor, if true, makes little sense in light of the Complainant’s first theory. The Complainant does not explain how the Trump campaign could have been “materially involved” in the NRA-PVF’s advertisements while at the same time deferring to a common vendor to facilitate the very same coordination, or why any campaign would ever attempt such a thing. These inconsistencies notwithstanding, the Complainant’s “common vendor” theory was previously addressed and shown to be incorrect in the Response to MUR 7553 (pages 21-25).

² The Complainant also apparently does not understand the template language that appears on NAB Form PB-18. At footnote 12, for instance, the Complainant claims that Mr. Ferrell’s signature on the form represents “that *he* is ‘authorized to announce the [air] time [reserved] as paid for by such person or entity [Donald J. Trump for President, Inc.]’” (emphasis added). The form, as it very clearly states on page 2, authorizes *the broadcast station*, not Mr. Ferrell, to announce the purchase of air time – *i.e.*, to make public the fact of the advertisement buy.

³ In past matters, the Commission has dismissed this sort of baseless speculation. *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).

⁴ The Response in MUR 7553 explains that firewalled National Media employees placed the Norfolk advertisements independently and at different times. *See* MUR 7553, Response at 23-25.

Finally, the Complainant asserts that “NRA-PVF and the Trump campaign did not maintain a firewall policy that ‘prohibit[ed] the flow of information’ between their purportedly distinct media vendors” because “the *same* person – Jon Ferrell – authorized both ad buys, NRA-PVF and Donald J. Trump for President clearly *permitted* the flow of information between their entities through the common vendor they shared.” Complaint at 8-9 (emphasis in original). National Media’s firewall policies were previously addressed in the Response in MUR 7553 (pages 6-8, 10-11). The Complainant knows absolutely nothing about those firewall policies and the only “specific information”⁵ the Complainant provides, regarding Mr. Ferrell, is wrong. Mr. Ferrell did not, and does not, “authorize” ad buys. Mr. Ferrell’s signature on NAB Form PB-18 does not mean what *The Trace* and the various Complainants have repeatedly claimed.

For the reasons set forth above, and in the Response to MUR 7553, 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.

Sincerely,



Jason Torchinsky

Michael Bayes

Jessica Furst Johnson

⁵ See Final Rule on Coordinated Communications, 71 Fed. Reg. 33,190, 33,207 (June 8, 2006) (“The safe harbor does not apply if there is *specific information* indicating that, despite the firewall, either (1) information about the candidate’s or political party committee’s campaign plans, projects, activities or needs that is material to the creation, production, or distribution of the communication was used by the commercial vendor, former employee, or political committee; or (2) the common vendor, former employee, or political committee conveyed this information to the person paying for the communication.”) (emphasis added).