March 21, 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

Re: MUR 7560

Dear Ms. Ross:

This response is submitted on behalf of the following Respondents: (1) National Rifle Association of America Political Victory Fund, and Robert G. Owens in his capacity as Treasurer; (2) National Rifle Association Institute for Legislative Action, and Robert G. Owens in his capacity as Treasurer; and (3) National Media Research and Placement, LLC.

This is the sixth complaint1 filed since late July 2018 against the National Rifle Association (“NRA”), its vendors, and the campaigns of candidates that were supported by the NRA’s independent expenditures. As set forth here and in past responses, the authors of The Trace article2 upon which this Complaint is based have repeatedly demonstrated that they do not know what they are talking about. The individuals who continue to provide supportive quotes to The Trace do not know what they are talking about. The individual who converted The Trace article into this Complaint, Brad Woodhouse, does not know what he is talking about. Together, the article and Complaint present a nonsensical jumble of facts and draw a series of legal conclusions that range from wrong to ridiculous. Much of what appears in this Complaint has been addressed before and we refer the Commission to our prior responses in several places below.

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1 This Complaint was preceded by MURs 7427, 7497, 7524, 7553, and 7558.


MUR 7560, Response
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According to the Complaint, the 2016 campaign committee of Senator Burr, and the 2018 campaign committees of Senator Hawley and Matt Rosendale, “disseminated television advertisements similar to the NRA’s advertisements, on the same networks, during the same weeks, during the same timeslots, and using the same media vendor to overwhelm voters with one-sided information. In fact, the same person authorized advertisement buys for the NRA and each respective Senate campaign.”3 As has been explained several times before, the NRA’s advertising was appropriately independent, its vendors employed appropriate firewalls, and the claim that “the same person authorized advertisement buys for the NRA and each respective Senate campaign” is simply false.

I. The Complaint’s Allegations

The Complaint asserts that the following television advertisement buys were “coordinated” through the use of a common vendor because, as the Complainant alleges, “the same person authorized the airtime buys.” In several instances, the date the Complainant cites for advertising buys is incorrect. As we have explained previously, the dates appearing on NAB Form PB-18 do not necessarily reflect the date an advertising buy is made; those details may be found in other documents (generally the actual contract) placed in the station’s public file. Accurate information is publicly available, but the Complainant did not bother to access it.

The Complainant makes the following allegations:

A. North Carolina, 2016 U.S. Senate Election

The Complainant makes the following allegations about the 2016 U.S. Senate election in North Carolina:

- “Acting on NRA-PVF’s behalf, media vendor Red Eagle Media Group (‘Red Eagle’) purchased airtime in September 2016 for television advertisements targeting Deborah Ross, Richard Burr’s opponent during the 2016 U.S. Senate election in North Carolina. The advertisements aired on NBC’s Wilmington, North Carolina affiliate, WECT.”4
- “Throughout September and October 2016, National Media Research, Planning & Placement (‘National Media’) also purchased airtime on behalf of Burr’s Senate campaign to air advertisements on WECT.”5
- “Jon Ferrell, the chief financial officer of National Media … authorized the airtime buys for Red Eagle on NRA-PVF’s behalf and National Media on Burr’s behalf, signing

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3 Complaint at 2.

4 Id. at 3-4.

5 Id. at 4.
required National Association of Broadcaster (‘NAB’) agreement forms for both entities.”

B. Missouri, 2018 U.S. Senate Election

The Complainant makes allegations regarding two sets of advertisements that aired in Missouri in 2018 in connection with the U.S. Senate election:

1. Early September (According to Complaint)

First, the Complainant alleges:

- “[O]n September 6, 2018, American Media & Advocacy Group (‘AMAG’) … purchased airtime on behalf of Josh Hawley’s Senate campaign for television advertisements. The advertisements aired on CBS-affiliated KOAM and FOX-affiliate KFJX … located in the Pittsburg, Kansas/Joplin, Missouri media market.”
- “One day later, Red Eagle made an almost identical airtime buy on NRA-PVF’s behalf for television advertisements targeting Senator Claire McCaskill, Josh Hawley’s opponent during the 2018 U.S. Senate election in Missouri. The advertisements aired on KOAM and KFJX as well.”
- “Jon Ferrell authorized the ad buys on KOAM and KFJX for both Red Eagle on NRA-PVF’s behalf and AMAG on behalf of Hawley’s campaign.”

2. Late September (According to Complaint)

Second, the Complainant alleges:

- “On September 24, 2018, AMAG purchased airtime on Hawley’s behalf for television advertisements on ABC’s Kansas City, Missouri affiliate, KMBC.”
- “Just over a week later, Red Eagle purchased airtime on NRA-PVF’s behalf for anti-McCaskill advertisements on KMBC.”
- “Again, Ferrell authorized the ad buys on KMBC for both Red Eagle on NRA-PVF’s behalf and AMAG on behalf of Hawley’s campaign.”

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6 Id.
7 Id.
8 Id. at 4-5.
9 Id. at 5.
10 Id. This ad buy was placed on September 20. September 24 is the date the ads began airing.
11 Id. This ad buy was placed on September 5.
12 Id.
C. Montana, 2018 U.S. Senate Election

The Complainant makes the following allegations about the 2018 U.S. Senate election in Montana:

- “In Montana, Red Eagle purchased airtime on September 4, 2018 on NRA-ILA’s behalf for television advertisements targeting Senator Jon Tester, Matt Rosendale’s opponent during the 2018 U.S. Senate election in Montana.” The advertisements aired on NBC’s Billings, Montana affiliate KULR.”13
- “Just one week later, AMAG made an almost identical purchase on behalf of Matt Rosendale’s Senate campaign.”14
- “Jon Ferrell also authorized the ad buys in Montana for both Red Eagle on NRA-ILA’s behalf and AMAG on behalf of Rosendale’s campaign.”15

II. Discussion

As has been explained in prior responses, National Media’s clients did not “coordinate” any advertising through Jon Ferrell, and Jon Ferrell does not “authorize” ad buys.

A. Mr. Ferrell Is Not an Ad Buyer, and He Does Not “Authorize” Advertisements

With respect to each allegation, the Complainant claims that Jon Ferrell “authorized” advertisements for both the NRA-PVF/NRA-ILA and a Senate campaign committee. The basis for each of these claims is the presence of Mr. Ferrell’s signature on NAB Form PB-18 documents (discussed below) relating to both sets of advertisements.

As has been the case in the preceding complaints, The Trace and the Complainant mistake Mr. Ferrell for an ad buyer. As we have explained before, Mr. Ferrell is National Media’s Chief Financial Officer. He is not involved in the creation, production, or distribution of any advertising. He does not make decisions regarding the development of media strategy, including the selection of advertising slots. He does not select advertising audiences, develop the content of advertising, produce public communications, identify voters, or otherwise provide consulting or media advice.16 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

13 Id. This ad buy was placed on August 31 and the ads aired September 6 – 19.

14 Id. Ad buys for the Rosendale campaign were placed on August 30, September 7, and September 12.

15 Id.

16 Attachment A, Affidavit of Jon Ferrell at ¶ 5-7.
interaction with National Media’s media buyers generally consists of receiving billing and invoicing instructions from those buyers, and his involvement in the purchasing of advertising is limited to this administrative function.

B. NAB Form PB-18 Is Not A Contract or Purchase Order Form

The Trace article refers incorrectly to NAB Form PB-18 as both an “order” and a “contract,” claims that by signing NAB Form PB-18 “Ferrell signed off on a Red Eagle order for NRA ads,” and also refers to “ads that Ferrell placed.” The Trace and the Complainant describe NAB Form PB-18 as virtually everything except what it actually is. NAB Form PB-18 is not a contract that has the effect of “buying ads.” NAB Form PB-18 is not an “order” form. NAB Form PB-18 does not authorize the airing of ads. One does not “place an advertisement,” or “order” the airing of ads, by signing NAB Form PB-18. NAB Form PB-18 is thoroughly explained and discussed in our Response to MUR 7553 at pages 11-14.

As explained previously, Mr. Ferrell often signs NAB Form PB-18 on behalf of his employer’s clients after that form is prepared by others. This act is a purely administrative one. The Complainant’s claim that “the same person authorized advertisement buys for the

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17 Id. ¶ 3.

18 Final Rule on Coordinated Communications, 71 Fed. Reg. 33,190, 33,207 (June 8, 2006) (“The Commission notes that common leadership or overlapping administrative personnel does not defeat the use of a firewall.”) (emphasis added).

19 See 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/ (“[t]he order was signed on September 7, 2018, by National Media’s Jon Ferrell” and “[r]ecords show that Ferrell signed off on a Red Eagle order for NRA ads”).

20 See id. The captions below the images taken from the various NAB Form PB-18 filings, and reprinted in The Trace article, mistakenly refers to each NAB Form PB-18 filing as a “contract.” The Complaint also refers to NAB Form PB-18 incorrectly as a “Contract” in footnotes 10-42 (on pages 3-8 of the Complaint).

21 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 (“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).

22 Attachment A, Affidavit of Jon Ferrell at ¶ 4.
NRA and each respective Senate campaign,” is not a “fact,” as the Complainant asserts, but rather, is entirely and completely wrong.24

C. National Media Maintained Appropriate Firewalls and Did Not “Coordinate” Any Ad Buys

The Complainant’s “common vendor” allegations rest on the alleged role of Jon Ferrell and the purported significance of NAB Form PB-18. (We have provided the Commission with copies of National Media’s applicable firewall policies in connection with prior complaints and incorporate those policies by reference. See MUR 7524, Response, Attachment E (Dec. 17, 2018); MUR 7553, Response, Attachment F (Jan. 28, 2019).)

The Complaint concludes that “since the same person – Jon Ferrell – authorized each of the aforementioned airtime buys, the NRA’s political and lobbying arms and Burr, Hawley, and Rosendale’s campaigns clearly permitted the flow of information between their entities through the common vendor they shared.”25 The Complainant also alleges that “[n]either NRA-PVF nor NRA-ILA maintained firewall policies with each respective Senate campaign that ‘prohibit[ed] the flow of information’ between their purportedly distinct media vendors, as federal regulations require.”26

First, as explained above, Mr. Ferrell did not “authorize” any ads; he is not an ad buyer or a political or media strategy consultant. There was no “flow of information between … entities” through Mr. Ferrell. Second, the Complainant does not appear to understand firewall policies. Neither sentence quoted in the paragraph above makes any sense. In the scenario described by the Complainant (in which a common vendor performs services for both a campaign and an outside organization), it is the vendor who maintains the firewall policy, not the vendor’s clients.27 Thus, because National Media performed work for the NRA-PVF and NRA-ILA in

23 See Complaint at 13 (“In fact, the same person authorized the airtime buys ….”).

24 Similarly, when Mr. Noble told The Trace that “[a]ll evidence points to coordination” because “[i]t’s hard to understand how you’d have [the] same person authorizing placements for the NRA and the candidate and it not be coordination,” he made clear he has no understanding whatsoever of the circumstances. See 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/. National Media did not have the “same person authorizing placements for the NRA and the candidate.”

25 Complaint at 12.

26 Id. at 11-12.

27 See 11 C.F.R. § 109.21(h) (“The conduct standards in paragraph (d) of this section are not met if the commercial vendor, former employee, or political committee has established and implemented a firewall that meets the requirements of paragraphs (h)(1) and (h)(2) of this section.”); Final Rule on Coordinated Communications, 71 Fed. Reg. 33,190, 33,206 (June 8, 2006) (“The Commission concludes that it is possible for a commercial vendor or other employer to create an effective firewall between different employees or between different units within its organization that prevents information obtained from one
connection with the U.S. Senate elections in North Carolina, Missouri, and Montana, while also providing services to candidates involved in those elections, National Media adopted a firewall policy to separate the staff providing these services to the company’s campaign and outside organization clients.

Thus, contrary to the Complainant’s apparent belief, the NRA-PVF and NRA-ILA were never required to maintain firewall policies with Senate campaigns because this is not how firewall policies work. To the extent the Complainant is trying to suggest that the NRA-PVF and NRA-ILA conspired with the Burr, Hawley, and Rosendale campaigns (or vice versa) to pass information through a common vendor, the Complaint presents no evidence of any such conspiracy (other than unsupported conclusory statements). National Media’s firewall policies make clear that this did not happen, and the existence of the FCC’s public database (discussed in more detail below) makes clear that there was absolutely no reason for it to happen.

Even if the Complainant was able to competently plead its case, the fact remains that National Media implemented and maintained an appropriate firewall policy with respect to all three Senate elections referenced in this Complaint. This policy effectively prohibited and prevented the flow of information as described at 11 C.F.R. § 109.21(h)(1) and no “information about the candidate’s … campaign plans, projects, activities, or needs that [was] material to the creation, production, or distribution of” any NRA-PVF or NRA-ILA advertisement “was used” for the benefit of, “or conveyed to” any NRA-PVF or NRA-ILA representative by any National Media employee.

D. The Complaint Presents No Evidence of “Material Involvement”

The Complainant claims “[t]here is overwhelming evidence that Burr, Hawley, and Rosendale’s Senate campaigns were materially involved in numerous decisions regarding the creation, production, and distribution of the NRA’s television advertisements.”28 The Complainant made the exact same allegations in MUR 7558 and has simply cut-and-pasted different campaign names in here. As was the case in MUR 7558, far from the evidence being “overwhelming,” the Complaint presents no evidence of any “material involvement.” Rather, the Complainant simply asserts that it must have been so because two advertisers ran ads on some of the same television channels.29 The Complaint does not identify any representative of any of the three Senate campaigns who was supposedly involved in the creation, production, or

client from being used on behalf of another, and thereby prevents its staff from conveying information from one client to another.”) (emphasis added).

28 Complaint at 9.

29 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).
distribution of the NRA’s television advertisements and there is no evidence in the Complaint regarding how or when this “material involvement” supposedly took place.

Instead, the Complainant claims that coordination must have occurred because “there is no discernible way that information material to the creation, production, and distribution of the NRA’s advertisements – including their strategic placement alongside advertisements benefitting Burr, Hawley, and Rosendale and during the same specific programs and timeslots – would have been publicly-available information prior to the NRA’s purchase of airtime on networks in various media markets.” The public availability of television and radio advertising buy information is discussed in detail in the Response to MUR 7553 at pages 3-5. The exact information to which the Complainant refers was required to be made public “immediately” by the television stations referenced in the Complaint. We find it exceedingly difficult to believe that the Complainant, who previously worked as the Communications Director at the Democratic National Committee, is completely unaware of the FCC’s public political file.

III. Conclusion

For the reasons set forth above, and in the Responses filed in MURs 7427, 7497, 7524, 7553, and 7558, 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

Attachment

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30 Complaint at 11.
ATTACHMENT A

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” or “authorize ad buys” for National Media clients as those terms are commonly understood and used in the Complaint (FEC MUR 7560). 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 18th day of March, 2019

[Signature of Affiant Jon Ferrell]

SWORN to subscribed before me, this 18th day of March, 2019

[Signature of Notary Public]

My Commission Expires: 07/30/2021