



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 14, 2022

**BY ELECTRONIC MAIL ONLY**

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Haymarket, VA 20169

RE: MUR 7606  
Committee to Elect Leigh Brown and  
Joseph Clark in his official capacity as  
treasurer  
Leigh Brown

Dear Mr. Bayes and Ms. Johnson:

On May 13, 2019, the Federal Election Commission notified your clients, Committee to Elect Leigh Brown and Joseph Clark in his official capacity as treasurer (“Brown Committee”) and Leigh Brown, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by your clients, the Commission, on March 8, 2022, voted to find no reason to believe that the Brown Committee violated 52 U.S.C. §§ 30116(f) and 30104(b), and no reason to believe that Leigh Brown violated 52 U.S.C. § 30116(f). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission’s finding, is enclosed for your information.

MUR 7606  
Michael Bayes, Esq.  
Jessica F. Johnson, Esq.  
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If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

*Mark Allen*

Mark Allen  
Assistant General Counsel

Enclosure

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

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4 RESPONDENTS: Leigh Brown MUR 7606  
5 Committee to Elect Leigh Brown and  
6 Joseph Clark in his official capacity  
7 as treasurer  
8 National Association of Realtors Political  
9 Action Committee and Nancy M. Lane in her  
10 official capacity as treasurer  
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**I. INTRODUCTION**

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14 This matter was generated by a Complaint filed with the Federal Election Commission  
15 (the “Commission”) by Daniel Rufty.<sup>1</sup> The Complaint alleges that the National Association of  
16 Realtors Political Action Committee (“NAR PAC”) coordinated television and print advertising  
17 with Leigh Brown and the Committee to Elect Leigh Brown and Joseph Clark in his official  
18 capacity as treasurer (“Brown Committee”), constituting unreported and illegal in-kind  
19 contributions by NAR PAC.<sup>2</sup> All of the Respondents filed responses to the Complaint and deny  
20 that they violated the Federal Election Campaign Act of 1971, as amended (the “Act”).

21 As set forth below, the Commission finds no reason to believe the allegations that NAR  
22 PAC violated 52 U.S.C. §§ 30116(a) and 30104(b), that the Brown Committee violated  
23 52 U.S.C. §§ 30116(f) and 30104(b), and that Leigh Brown violated 52 U.S.C. § 30116(f).

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<sup>1</sup> See 52 U.S.C. § 30109(a)(1).

<sup>2</sup> Compl. at 1, 3 (May 6, 2019).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 NAR PAC is registered with the Commission as a separate segregated fund connected to  
4 the National Association of Realtors (“NAR”).<sup>3</sup> It makes contributions to candidates and  
5 political committees and makes independent expenditures through a separate account.<sup>4</sup> Leigh  
6 Brown was a 2019 congressional candidate in North Carolina’s Ninth Congressional District for  
7 the special election held on May 14, 2019. The Brown Committee is her principal campaign  
8 committee.<sup>5</sup>

9 The Complaint alleges that Brown served as NAR Party Fundraising Liaison prior to her  
10 candidacy. The Complaint states that Brown resigned from her NAR position on March 13,  
11 2019, and announced her candidacy for the North Carolina Ninth Congressional District special  
12 election two days later.<sup>6</sup> The Complaint cites a press article in the *Charlotte Observer* reporting  
13 that NAR PAC was planning to spend as much as \$900,000 on ads supporting Brown and that  
14 Ninth Congressional District voters received letters from NAR urging them to “Vote Leigh  
15 Brown for [C]ongress [in the] Republican Primary May 14th.”<sup>7</sup> The Complaint concludes that  
16 the Commission’s three-part coordination test is satisfied because of Brown’s status as an NAR  
17 employee shortly before the NAR PAC communication in support of her candidacy.<sup>8</sup> The

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3 *See* NAR PAC Amended Statement of Organization (Jan. 7, 2019).

4 *Id.*

5 *See* Brown Committee Statement of Organization (Mar. 30, 2019).

6 Compl. at 1-2. Brown lost the primary election on May 14, 2019.

7 Compl. at 2, Ex. 3.

8 *Id.* at 2-3.

1 Complaint alleges that “the timing of the advertising makes the coordination obvious” and “the  
2 close proximity in timing makes the coordination self-evident.”<sup>9</sup>

3 From April 17 through April 19, 2019, NAR PAC filed three 48-Hour Notices of  
4 Independent Expenditures supporting Brown in amounts totaling \$1,296,905.<sup>10</sup> Among the  
5 disbursements are direct mail costs, Facebook advertisements, administrative consulting, TV  
6 buys and production costs, and polling costs.<sup>11</sup> On April 17, 2019, NAR PAC made a  
7 contribution to the Brown Committee in the amount of \$5,000.<sup>12</sup>

8 Respondents deny that they engaged in coordinated activity regarding the  
9 communications at issue. NAR PAC argues that Brown’s voluntary role as a Fundraising  
10 Liaison “in no way compromised the independence of [NAR PAC’s] independent expenditures  
11 in support of Leigh Brown’s candidacy,” as its decision to support Brown was “made following  
12 pre-established policies premised on preserving independence and weeks after Leigh Brown  
13 resigned her role as [Fundraising Liaison],” and Brown never possessed or had access to  
14 information related to the independent expenditures.<sup>13</sup> NAR PAC also attached a sworn affidavit  
15 from NAR Director of Public Advocacy Lisa Friday Scott, who described the process by which  
16 NAR PAC approved the making of the expenditures supporting Brown on April 5, 2019.<sup>14</sup> Scott

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> *See* 48-Hour Notices of Independent Expenditures (Apr. 17, 2019, Apr. 18, 2019, and Apr. 19, 2019).

<sup>11</sup> *Id.*

<sup>12</sup> *See* Brown Committee Amended 2019 Pre-Special Report at 184 (July 15, 2019).

<sup>13</sup> Response of the National Association of Realtors Political Action Committee (“NAR PAC Resp.”) at 7-8 (July 2, 2019).

<sup>14</sup> *Id.*, Ex. 1.

1 declares that Brown never participated in the process to review or approve any NAR PAC  
2 expenditures or disbursements.<sup>15</sup>

3 In her own affidavit, Brown attests that she did not discuss with any representative or  
4 official of either NAR or NAR PAC “prior to resigning her position, or after,” any public  
5 communications to be distributed by those entities in connection with the special election.<sup>16</sup>  
6 Brown also declares that she “did not share any non-public information about [her] campaign  
7 plans, projects, activities, strategies, or needs with any representative or official of the [NAR or  
8 NAR PAC].”<sup>17</sup> Brown further attests that she “did not see any such public communications prior  
9 to their public distribution” and first learned of the NAR PAC advertising buy for her election  
10 when a reporter contacted her on or about April 12, 2019, seeking comment.<sup>18</sup>

11 Respondents further assert that Brown was never an employee of NAR or NAR PAC but  
12 rather served as a volunteer role as NAR’s “Party Fundraising Liaison,” and her role was limited  
13 to fundraising activities.<sup>19</sup> Respondents NAR PAC further notes that while Ms. Brown was “not  
14 and never has been employed by NAR or NAR PAC...even if she had, the former employee  
15 conduct standard would not be triggered because the former employee conduct standard applies  
16 to former employees of a candidate campaign committee.”<sup>20</sup>

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<sup>15</sup> NAR PAC Resp., Lisa Friday Scott Aff. ¶ 16.

<sup>16</sup> Joint Response of Leigh Brown and the Committee to Elect Leigh Brown (“Brown Resp.”) at 3-4 (June 3, 2019), Leigh Brown Aff. ¶ 9.

<sup>17</sup> *Id.* at ¶ 13.

<sup>18</sup> *Id.* at ¶¶ 10, 12.

<sup>19</sup> NAR PAC Resp. at 1, 6; Brown Resp., Brown Aff. ¶¶ 4, 5, 6.

<sup>20</sup> NAR PAC Resp. at 6.

1           **B. Legal Analysis**

2           The Act defines the terms “contribution” and “expenditure” to include “anything of  
3 value” made by any person for the purpose of influencing an election.<sup>21</sup> The term “anything of  
4 value” includes in-kind contributions.<sup>22</sup> In-kind contributions result when goods or services are  
5 provided without charge or at less than the usual and normal charge,<sup>23</sup> and when a person makes  
6 an expenditure in cooperation, consultation or in concert with, or at the request or suggestion of a  
7 candidate or the candidate’s authorized committee or their agents.<sup>24</sup>

8           Under Commission regulations, a communication is coordinated and treated as an in-kind  
9 contribution when: (1) it is paid for by someone other than a candidate, a candidate’s authorized  
10 committee, a political party committee, or the authorized agents of either (the “payment prong”);  
11 (2) it satisfies one of the content standards (the “content prong”); and (3) it satisfies one of the  
12 conduct standards (the “conduct prong”).<sup>25</sup> A communication must satisfy all three prongs to be  
13 considered coordinated under Commission regulations.<sup>26</sup>

14           No multicandidate political committee shall make contributions to any candidate or his or  
15 her authorized committee with respect to any election for Federal office that in the aggregate

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<sup>21</sup> 52 U.S.C §§ 30101(8)(A)(i), 30101(9)(A)(i).

<sup>22</sup> 11 C.F.R. § 100.52(d).

<sup>23</sup> *Id.*

<sup>24</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20. *See also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976) (*per curiam*).

<sup>25</sup> 11 C.F.R. § 109.21(a); *see also id.* § 109.21(b) (describing in-kind treatment and reporting of coordinated communications); *id.* §§ 109.21(c), (d) (describing content and conduct standards, respectively).

<sup>26</sup> *See* 11 C.F.R. § 109.21; *see also* Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

1 exceed \$5,000.<sup>27</sup> No candidate or political committee shall knowingly accept any contribution  
2 or make any expenditure in violation of the provisions of 52 U.S.C. § 30116.<sup>28</sup> The Act requires  
3 committee treasurers to file reports of receipts and disbursements in accordance with the  
4 provisions of 52 U.S.C. § 30104, and the reports must include, *inter alia*, the total amount of  
5 receipts and disbursements, including the appropriate itemizations, where required.<sup>29</sup>

6 NAR PAC concedes that the first two prongs of the coordination test are satisfied because  
7 it paid for express advocacy communications in support of Brown’s candidacy.<sup>30</sup> As to the  
8 conduct prong, the Complaint alleges that NAR employed Brown within 120 days of the  
9 communication, thus, the “former employee” element of the conduct prong is implicated.<sup>31</sup>  
10 Under the Commission’s regulations, the conduct prong may be satisfied where the payor  
11 employed a former employee or independent contractor of the candidate who used or conveyed  
12 material information about the campaign’s plans, projects, activities or needs, or used material  
13 information gained from past work with the candidate to create, produce, or distribute the  
14 communication.<sup>32</sup>

15 Here, the Complaint does not allege any specific conduct by the parties that they shared  
16 information about the Brown campaign’s plans, projects, activities, or needs, and the  
17 Respondents have filed sworn statements declaring no such sharing occurred. Rather, the  
18 Complaint bases its coordination allegation on the timing of Brown’s involvement with NAR

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<sup>27</sup> See 52 U.S.C. § 30116(a)(2)(A).

<sup>28</sup> See 52 U.S.C. § 30116(f).

<sup>29</sup> 52 U.S.C. § 30104(a)(1), 30104(b); 11 C.F.R. § 104.3.

<sup>30</sup> NAR PAC Resp. at 5.

<sup>31</sup> See Compl. at 3.

<sup>32</sup> 11 C.F.R. § 109.21(d)(5).



1 and NAR PAC's communications. That conduct standard, however, applies to a situation in  
2 which the former employee or independent contractor of the candidate subsequently becomes  
3 employed by the payor, or is the payor.<sup>33</sup> Brown, on the other hand, stopped working for the  
4 payor to become a federal candidate, and the former employer later paid for the communications.  
5 Thus, by its terms, the former employee standard does not apply.

6 As to the other conduct standards, Respondents deny any coordination occurred and have  
7 submitted affidavits declaring that there were no discussions between Brown and either NAR  
8 entity that might support a coordination finding on any other aspect of the conduct prong.<sup>34</sup> The  
9 Commission is in possession of no information contradicting these sworn statements. Thus, in  
10 light of the lack of factual support in the Complaint or other available information, there is not a  
11 reasonable inference that the conduct prong was satisfied.

12 Accordingly, the Commission finds no reason to believe that the National Association of  
13 Realtors Political Action Committee and Nancy M. Lane in her official capacity as treasurer  
14 violated 52 U.S.C. §§ 30116(a) and 30104(b) by making and failing to report excessive in-kind  
15 contributions in the form of coordinated communications. The Commission also finds no reason  
16 to believe the allegation that the Committee to Elect Leigh Brown and Joseph Clark in his  
17 official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30104(b) by receiving and  
18 failing to report the alleged excessive contributions. Finally, the Commission finds no reason to  
19 believe the allegation that Leigh Brown violated 52 U.S.C. § 30116(f) by receiving the alleged  
20 excessive contributions.

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<sup>33</sup> See 11 C.F.R. § 109.21(d)(5)(i).

<sup>34</sup> See 11 C.F.R. § 109.21(d)(1), (2), (3) (conduct standards). See also NAR PAC Resp., Scott Aff. ¶ 16; Brown Resp., Brown Aff. ¶¶ 9, 11-13.