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May 30, 2019

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

Re: MUR 7606

Dear Ms. Dennis,

This Response is submitted by the undersigned counsel on behalf of Leigh Brown and the Committee to Elect Leigh Brown in connection with MUR 7606. For the reasons set forth below, the Complaint should be dismissed.

The Complaint's Allegations

The Complaint alleges that the National Association of Realtors Political Action Committee (NAR PAC) distributed public communications urging the election of Ms. Brown in a primary election held for North Carolina's Ninth Congressional District on May 14, 2019, and that these communications were coordinated with Ms. Brown.

Leigh Brown announced her Congressional candidacy on March 15, 2019. According to the Complainant, the National Association of Realtors (NAR) announced on March 19, 2019 that Ms. Brown had resigned from her position as "NAR Party Fundraising Liaison" on March 13, 2019, two days before her candidacy announcement. Complaint ¶ 4. Nearly one month later, the *Charlotte Observer* reported that NAR intended to run television advertisements in connection with the NC-09 Republican special primary election. Complaint ¶ 5. The Complaint alleges that "[s]oon after the NAR March 19, 2019 announcement of Leigh Brown's resignation from NAR, voters that reside in the 9th US Congressional District received letters from NAR urging them to 'Vote Leigh Brown for Congress Republican Primary May 14th.'" Complaint ¶ 6.¹

¹ The Complainant's characterization of the timing of the distribution of NAR PAC's mailers as "soon after" NAR's announcement of Leigh Brown's resignation, is an apparent attempt to allege a coordinated effort between Leigh Brown and NAR PAC based on timing alone. This characterization, however, is inaccurate in light of the facts. NAR PAC's May monthly report filed with the FEC, and associated 48-hour independent expenditure reports, indicate that the entity's independent expenditures supporting Leigh Brown were publicly distributed on April 15, 16, and 19 – one month later.

The Complaint claims “[t]he timing of the advertisement makes the coordination obvious,” and “[t]he close proximity in timing makes the coordination self-evident.” Complaint ¶ 16. According to the Complainant, the conduct prong “is satisfied because Leigh Brown was employed by NAR within 120 days of the NAR communication in support of Leigh Brown’s candidacy.” Complaint at ¶ 15.

The Complaint Presents No Evidence That Any Conduct Standard Was Satisfied

The Complaint fails to provide any evidence of actual “coordinating” conduct that is described in 11 C.F.R. § 109.21(d). Without any evidence of qualifying conduct, the Commission cannot find reason to believe a violation occurred.

First, Ms. Brown has never been an employee of either NAR or NAR PAC. *See* Affidavit of Leigh Brown ¶ 4. Her position was an unpaid volunteer one. *Id.* ¶ 5. Complainant’s “former employee” theory is both backwards² and wholly inapplicable.³

Second, the Complainant presents no evidence in support of the types of conduct that might actually apply to the situation described in the Complaint. Specifically, the Complainant does not allege or present any evidence of a request or suggestion (11 C.F.R. § 109.21(d)(1)), material involvement (11 C.F.R. § 109.21(d)(2), substantial discussion (11 C.F.R. § 109.21(d)(3)), or the impermissible use of a common vendor (11 C.F.R. § 109.21(d)(4)).

Conclusory allegations such as “[t]he timing of the advertisement makes the coordination obvious,” and “[t]he close proximity in timing makes the coordination self-evident,” cannot serve as substitutes for actual evidence of coordinating conduct. *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).

² Confusion about the basic application of the coordination rules permeates the Complaint. The “former employee” standard applies when a “communication is paid for by a person, or by the employer of a person, *who was an employee or independent contractor of the candidate* who is clearly identified in the communication ... during the previous 120 days.” 11 C.F.R. § 109.21(d)(5)(i). In other words, the restriction applies to a former employee of a campaign or political party who subsequently is hired by an outside organization. An “employee” who leaves an outside organization (such as NAR) to join a campaign (such as the Committee to Elect Leigh Brown) is not captured by the regulation.

³ In the first post-BCRA coordination rulemaking, the Commission noted Congress’s instruction “to address in its revised coordination rules ‘persons who previously served as an employee of a candidate or political party committee.’” The Commission justified its extension of this rather clear language to also include independent contractors on the grounds that “both groups receive some form of payment for services provided to the candidate, authorized committee or political party committee.” Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 437-438 (Jan. 3, 2003). Given this explanation, unpaid volunteers are clearly not included in the category of “former employee.”

As the Commission has explained in the past, “[u]nwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true.” MUR 4960 (Clinton), Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas at 2. In MUR 4960 (Clinton), the Commission determined that in order to meet the “reason to believe” threshold, “the complainant should have *provided some evidence* upon which one could reasonably conclude that third parties actually paid for the move (as opposed to merely speculating *that someone must have*)” (emphasis added). *Id.* at 3. The situation is no different here.”

Ms. Brown Did Not “Coordinate” Advertising With NAR PAC

The Complainant alleges that certain communications were coordinated, but instead of providing actual evidence in support of the allegation, the Complainant merely asserts that the violation is “obvious” and “self-evident.” Conclusory claims of this nature are insufficient to support a reason to believe finding, and, in any event, are baseless and incorrect.

Ms. Brown’s position as “REALTOR® Party Fundraising Liaison” was limited to fundraising activities. Affidavit of Leigh Brown ¶ 5-6. Ms. Brown was not a member of, or otherwise involved with, the “REALTORS® Political Action Committee (RPAC) Disbursements Trustees,” which is the body that considers candidate recommendations and determines whether and how to support federal candidates.⁴ *Id.* ¶ 8.

During 2018, Ms. Brown was a member of a North Carolina body (an associated state PAC) that evaluates candidates for office and makes endorsements and/or spending recommendations to the National Association of Realtors. Her term on this body ended on December 31, 2018, and she has had no contact with the body during 2019. *Id.* ¶ 7. (The North Carolina Board of Elections voted on or about February 21, 2019 to hold a new election in the Ninth Congressional District. Thus, the special election in which Ms. Brown was a candidate was not scheduled until well after Ms. Brown’s term expired and the body could not have considered the Ninth Congressional District special election while Ms. Brown was a member.)

Ms. Brown did not discuss, either prior to her resignation or after, any public communications to be distributed by either NAR or NAR PAC in connection with the North Carolina’s special election in the Ninth Congressional District. *Id.* ¶ 9. She first learned of NAR PAC’s television advertising buy in North Carolina when contacted by a reporter with the *Charlotte Observer* who was working on the article cited in the Complaint. *Id.* ¶ 10.

Either before or after resigning her position, Ms. Brown did not request or suggest that NAR or NAR PAC create, produce, or distribute any public communications in connection with

⁴ See generally *NAR Statement on Leigh Brown North Carolina Congressional Special Election Candidacy* (Mar. 19, 2019), <https://www.nar.realtor/nar-statement-on-leigh-brown-north-carolina-congressional-special-election-candidacy> (“NAR adheres to pre-established procedures for determining candidates to support in federal elections. The process starts with the state REALTOR® association objectively evaluating candidates and making a recommendation to NAR. The REALTORS® Political Action Committee (RPAC) Disbursements Trustees review the state REALTOR® association's recommendation and make a determination whether and how to support the federal candidate.”)

the North Carolina Ninth Congressional District special election. *Id.* ¶ 11. Ms. Brown was not involved, materially or otherwise, with the creation, production, or distribution of any of the NAR PAC communications referenced in the Complaint and did not see any such communications prior to their public distribution. *Id.* ¶ 12. Ms. Brown did not have any discussions, substantial or otherwise, with any official or representative of NAR or NAR PAC about any such communications. *Id.* ¶ 9. Finally, Ms. Brown did not share any non-public information about her campaign plans, projects, activities, strategies, or needs with NAR or NAR PAC. *Id.* ¶ 13.

As explained above, the Complaint contains no evidence indicating there is any reason to believe a violation occurred. Accordingly, the Commission should dismiss the Complaint.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Bayes", with a long, sweeping flourish extending to the right.

Michael Bayes
Jessica F. Johnson

Affidavit of Leigh Brown

PERSONALLY came and appeared before me, the undersigned Notary, the within named LEIGH BROWN, 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 Leigh Brown. I am a resident of the State of North Carolina.
2. I was a candidate for the United States House of Representatives in North Carolina's Ninth Congressional District in the special election held on May 14, 2019.
3. I have been a professional Realtor® since 2000.
4. I have never been an employee of either the National Association of Realtors or the National Association of Realtors Political Action Committee.
5. From January 1, 2019 to March 13, 2019, I served as "REALTOR® Party Fundraising Liaison" for the National Association of Realtors. This was an unpaid position. As "REALTOR® Party Fundraising Liaison," I engaged in fundraising activities on behalf of the National Association of Realtors Political Action Committee.
6. My position as "REALTOR® Party Fundraising Liaison" was limited to fundraising activities. I resigned from my position as "REALTOR® Party Fundraising Liaison" for the National Association of Realtors prior to announcing my federal candidacy on March 15, 2019.
7. I was previously a member of an associated North Carolina body that evaluates candidates for office and makes candidate endorsements and/or spending recommendations to the National Association of Realtors. My term on this body ended on December 31, 2018. During 2019, I have had no contact with this body.
8. I have never been a member of, or otherwise involved with, the "REALTORS® Political Action Committee (RPAC) Disbursements Trustees," which is the National Association of Realtors body that considers recommendations on candidates and determines whether and how to support federal candidates.
9. I did not discuss with any representative or official of the National Association of Realtors or the National Association of Realtors Political Action Committee, either prior to resigning my position or after, any public communications to be distributed by either the National Association of Realtors or the National Association of Realtors Political Action Committee in connection with North Carolina's special election in the Ninth Congressional District.
10. I first learned of a National Association of Realtors Political Action Committee advertising buy for the Ninth Congressional District special election when a reporter for the *Charlotte Observer* contacted me on or about April 12, 2019 seeking comment. The reporter referred to a

document he said had been filed with a local broadcast station, and which the reporter said indicated that the National Association of Realtors Political Action Committee had purchased advertising in support of my candidacy.

11. I did not request or suggest to any representative or official of the National Association of Realtors or the National Association of Realtors Political Action Committee that any public communications be created, produced, or distributed in connection with the North Carolina Ninth Congressional District special election.

12. I was not involved, materially or otherwise, with the creation, production, or distribution of any National Association of Realtors Political Action Committee public communications that mentioned me or any of my opponents. I did not see any such public communications prior to their public distribution.

13. I did not share any non-public information about my campaign plans, projects, activities, strategies, or needs with any representative or official of the National Association of Realtors or the National Association of Realtors Political Action Committee.

DATED this the 29th day of May, 2019



Signature of Affiant, Leigh Brown

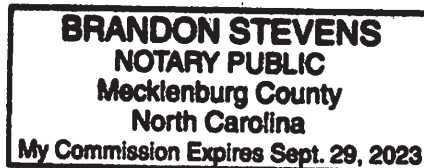
SWORN to subscribed before me, this 29th day of May, 2019



NOTARY PUBLIC

My Commission Expires:

Sept 29 2023





FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

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STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL: cela@fec.gov FAX: 202-219-3923

MUR # **7606**

Name of Counsel: Michael Bayes, Jessica F. Johnson

Firm: Holtzman Vogel Josefiak Torchinsky PLLC

Address: 45 North Hill Drive Suite 100

Warrenton, VA 20186

Telephone: 540-341-8808 Fax: 540-341-8808

E-mail: jmbayes@hvjt.law; jessica@hvjt.law

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

	<div style="border: 1px solid black; padding: 2px; display: inline-block;"> <p style="font-size: small; margin: 0;">C44980AA83DA4D4</p> <p style="font-size: small; margin: 0;"><i>Leigh Brown</i></p> <p style="font-size: small; margin: 0;">DocuSigned By: Leigh Brown</p> </div>	
05/30/2019	Signature (Respondent/Agent)	Title

RESPONDENT: Leigh Brown; Committee to Elect Leigh Brown
(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 4711 Myers Lane
(Please Print) Harrisburg, NC 28075

Telephone (H): _____ (W): _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.