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VIA ELECTRONIC MAIL ONLY

Christal Dennis
Federal Election Commission
Office of Complaints Examination & Legal Administration
1050 First Street, N.E.
Washington, D.C. 30463
cela@fec.gov; enfcomplaint@fec.gov; cdennis@fec.gov

MUR no. 7731

Re: Response on behalf of Michelle Fischbach, Fischbach for Congress, and Paul Kilgore in his official capacity as Treasurer

Dear Ms. Dennis:

The undersigned represent Michelle Fischbach, Fischbach for Congress, and Paul Kilgore in his official capacity as Treasurer (collectively, "Campaign Respondents") in MUR no. 7731.

We have reviewed the Complaint filed on April 28, 2020, by Hughes for Congress 2020,¹ the campaign committee for Mrs. Fischbach's opponent for the Republican nomination in Minnesota's seventh congressional district. Purely on the basis of marriage and close familial relation,² the Complaint alleges unlawful coordination by Campaign Respondents with two organizations engaged in independent expenditures. Despite its window dressing as a serious document, the Complaint does not meet the minimum requirements for a finding of reason to believe,³ and the Commission should dismiss it immediately according to the procedure described by five Commissioners in MUR no. 5461.⁴

¹ "Hughes for Congress 2020" is apparently the principal campaign committee for David Hughes, a candidate who is opposing Mrs. Fischbach in her campaign for the Republican nomination for Minnesota's seventh congressional district. However, despite Mr. Hughes' campaign's use of "Hughes for Congress 2020" on the Complaint and in its disclaimers (See, e.g., *About | Hughes*, Hughes for Congress 2020, <https://www.hughesforcongress.us>), no such committee exists. Rather, Hughes for Congress (no. C00610071), which Mr. Hughes first established during his previous, failed run for Congress, appears to be Mr. Hughes' only registered committee. See David Hughes, *Statement of Candidacy* (Feb. 19, 2019), <https://docquery.fec.gov/pdf/243/201902199145526243/201902199145526243.pdf>. As such, Campaign Respondents will assume Hughes for Congress 2020 and Hughes for Congress are the same entity.

² See *infra* note 5.

³ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, https://transition.fec.gov/law/cfr/ej_compilation/2007/notice_2007-6.pdf.

⁴ Statement of Reasons of Chairman Scott E. Thomas, Vice Chairman Michael E. Toner, and Commissioners David M. Mason, Danny L. McDonald, and Ellen L. Weintraub in MUR 5461 (Fan-the-Vote.com, John Kerry for President, MoveOn.org, MoveOn.org Voter Fund and MoveOn PAC) at 3 (*cited in* Response to MUR 6277 (Ronald Kirkland, Kirkland for Congress, and Robert Kirkland) for Robert Kirkland at 16-17, <https://eqs.fec.gov/eqsdocsMUR/10044283503.pdf>).

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The allegations contained in the Complaint have no basis in law or fact but rather grasp at straws in search of a political win for Mr. Hughes. Rather than found its frivolous allegations on supporting evidence, the Complaint rests exclusively on the theory that, by virtue of Mrs. Fischbach's marriage to her husband and close familial relationship to her mother,⁵ she is somehow responsible for all actions their employers have taken independently. Of course, the Commission has considered such "family coordination" theories in the past and rejected their application, finding no basis for them in law.⁶ As it has done in similar situations,⁷ the Commission should find no reason to believe and dismiss the Complaint immediately.

As a threshold issue, when considering a complaint filed under the Federal Election Campaign Act of 1971, as amended, the Commission must first determine whether it has "reason to believe that a person has committed, or is about to commit" a violation of the Act." 52 U.S.C. § 30109(a)(2) (*quoted in* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 52 Fed. Reg. 12545). In a policy statement, the Commission has explained that "reason to believe" findings indicate only that the Commission found **sufficient legal justification** to open an investigation[.] 52 Fed. Reg. 12545. No such justification exists here.

The Complaint alleges, solely on the basis of Mrs. Fischbach's marriage to her husband and close familial relationship to her mother, that Campaign Respondents engaged in unlawful coordination with two organizations making independent expenditures. The Complaint makes these allegations without providing sufficient supporting evidence or reference to a specific violation of law. "Coordination" is a term of art defined specifically by applicable statute and Commission regulations. Under the applicable framework, a communication is coordinated if the actions by the involved parties satisfy at least one requirement each of the payment, content, and conduct prongs. 11 C.F.R. § 109.21. Neither marriage nor close familial relationships constitute the basis for coordination under any of the three prongs. *Id.*

The Complaint offers six facts for the Commission's consideration, which variously describe Mrs. Fischbach's status as a candidate for the Republican nomination in Minnesota's seventh congressional district and her previous employment,⁸ her marriage to her husband and his employment, her close familial relationship to her mother and her employment, and the reported independent expenditure activity by her husband's employer and by her mother's employer.

⁵ The Complaint also makes a passing reference to Mrs. Fischbach's former employment by one of the entities that has engaged in independent expenditures. *See* Complaint at 3-4. However, without specific allegations of a violation of law or the inclusion of *any* allegation whatsoever beyond a recitation of basic facts (neither of which the Complaint provides), there is simply no basis for the Commission to find reason to believe this "allegation," to the extent one is even offered. As such, Campaign Respondents have not devoted space in their Response to this allegation beyond this footnote. To the extent necessary, Campaign Respondents hereby restate with respect to this allegation their arguments concerning arguments concerning the Complaint's failure to provide the Commission with sufficient legal justification to support a finding of reason to believe.

⁶ *See* FEC Advisory Op. no. 2003-10 (Reid). *See also* FEC MUR no. 6277 (Ronald Kirkland, Kirkland for Congress, and Robert Kirkland).

⁷ *Id.* *See also* Statement of Reasons of Chairman Scott E. Thomas, Vice Chairman Michael E. Toner, and Commissioners David M. Mason, Danny L. McDonald, and Ellen L. Weintraub in MUR 5461 (Fan-the-Vote.com, John Kerry for President, MoveOn.org, MoveOn.org Voter Fund and MoveOn PAC), <https://www.fec.gov/files/legal/murs/5461/00003676.pdf>.

⁸ Mrs. Fischbach ended her employment relationship with National Right to Life in August 2019. She has not had any involvement with National Right to Life Victory Fund since 1996.

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Complaint at 3-4. None of the offered facts points to a violation of 11 C.F.R. § 109.21,⁹ and the Complaint does not allege that Campaign Respondents violated any provision of the payment, content, or conduct prongs.

Rather than allege the violation of any specific provision, the Complaint alleges, based solely on the offered facts, that “. . . it is inconceivable that Michelle Fischbach did not coordinate with, or at a minimum was made aware of, either her mother’s or husband’s intended or actual independent expenditure related activity.” Complaint at 4. Without offering any evidence in support, the Complaint next alleges that “it is most likely that Michelle Fischbach was made very well aware of the intended independent expenditure activity prior to its placement supporting its candidacy.” Complaint at 4. Neither of these allegations is supported by evidence or describes the provision of applicable law that the Campaign Respondents are alleged to have violated.¹⁰ Simply put, the Complaint has not provided “sufficient legal justification”¹¹ for the Commission to find reason to believe its allegations.

Unfortunately for Complainant, it is not against the law for a candidate to be married or to have a mother, and those relationships do not constitute the basis for coordination under law. The Commission should find no reason to believe and dismiss this Complaint immediately under the procedure described by five Commissioners in MUR no. 5461.¹²

Should you have questions or require additional information, please contact us.

Sincerely,



Chris Winkelman

Caleb J. Hays

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⁹ The Complaint also offers a passing citation to 11 C.F.R. § 109.37, which discusses party coordinated communications. However, because no party committees were named in the Complaint, this reference is moot and is of no effect.

¹⁰ Historically, the Commission has rejected such “completely speculative” allegations. First General Counsel’s Report (adopted by Commission) for MUR 5576 (New Democrat Network) at 5 n. 7, <https://www.fec.gov/files/legal/murs/5576/000054CB.pdf> (reasoning that a complaint with similarly speculative and unfounded language (e.g., that it “seems likely” that respondent has engaged in impermissible coordination) could not and did not support a reason to believe recommendation because “[u]nwarranted legal conclusions from asserted facts . . . or mere speculation will not be accepted as true[.]” (Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas in MUR 4960 (Clinton for Senate), <https://www.fec.gov/files/legal/murs/4960/0000263B.pdf>)).

¹¹ See 52 Fed. Reg. 12545.

¹² Statement of Reasons of Chairman Scott E. Thomas, Vice Chairman Michael E. Toner, and Commissioners David M. Mason, Danny L. McDonald, and Ellen L. Weintraub in MUR 5461 (Fan-the-Vote.com, John Kerry for President, MoveOn.org, MoveOn.org Voter Fund and MoveOn PAC) at 3 (*cited in* Response to MUR 6277 (Ronald Kirkland, Kirkland for Congress, and Robert Kirkland) for Robert Kirkland at 16-17, <https://eqs.fec.gov/eqsdocsMUR/10044283503.pdf>).