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Kathryn Ross
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July 9, 2020

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: MUR 7750

Dear Ms. Ross,

This joint response is submitted by the undersigned counsel on behalf of Faith and Power PAC ("FPP") and Ezekiel Patterson in his capacity as Treasurer, and Senate Leadership Fund ("SLF") and Caleb Crosby in his capacity as Treasurer. FPP and SLF are both independent expenditure-only committees registered with the Commission.

According to the Complainant, "Faith and Power PAC submitted false reports to the FEC." Complaint at 3. The Complainant takes issue with the "support" and "oppose" designations included on FPP's independent expenditure reports and apparently believes these expenditures should have been reported as made in support of U.S. Senator Thom Tillis. The Complaint refers to "tv ads" and "mass mailers," but does not describe the actual contents of any of these communications or provide *any* information to support the assertion that the candidate "supported" or "opposed" by these expenditures was incorrectly reported.¹ In fact, the Complainant provides no information indicating that any of these communications even mentioned Senator Tillis.

Accordingly, the Complaint should be dismissed for the very simple reason that it fails to "set[] forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA." MUR 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas. The Complaint consists of a bare allegation supported with *no* "specific facts," documentation, or other information that would allow the Commission to assess the claims made.

¹ FPP's television advertisements are available here:
<https://www.youtube.com/channel/UC2JaMaetwqMgcQqLsElnXyw/videos>. FPP's three mail communications (including front and back images) are attached.

However, given the Office of General Counsel's typical reluctance to invoke the controlling reason to believe standard set forth in MUR 4960 as the basis for a dismissal recommendation, we provide the following additional details regarding FPP's independent expenditures.

FPP made three independent expenditures in connection with the March 3, 2020 Democratic primary election for U.S. Senate in North Carolina. These independent expenditures were reported to the Commission on 48- and 24-hour reports on February 8 and February 18, 2020, and were then included on FPP's pre-primary report filed February 12, 2020, and its April quarterly report filed April 15, 2020. Each of the three independent expenditures was paid to Neylan & Partners and included amounts for media placement, media production, printing, postage, and phone calls.

SLF made two contributions to Faith and Power PAC. These contributions are a matter of public record. The Complaint does not allege that SLF misreported any transaction, distributed any coordinated communication, or otherwise violated the Act. The Complainant's *ad hominem* attacks on SLF do not describe violations of the Act.

The Complainant alleges that FPP's independent expenditures were made for the purpose of supporting Senator Thom Tillis, and that FPP misreported its expenditures when it indicated that they were made either to support Erica Smith or oppose Cal Cunningham. However, FPP's independent expenditures did not mention, reference, or otherwise depict Senator Tillis *in any way*. As noted above, FPP's independent expenditures were made in connection with the March 3, 2020 Democratic primary election for U.S. Senate in North Carolina. Senator Tillis was not a candidate in this election. FPP's independent expenditures referenced Erica Smith and/or Cal Cunningham; none contained any reference to or depiction of Senator Tillis. Advertisements that expressly advocated the election of Erica Smith were reported as made in support of Ms. Smith, while advertisements that expressly advocated against the election of Cal Cunningham were reported as made in opposition to Mr. Cunningham. The vast majority of FPP's reported communications consisted of positive biographical references to Erica Smith, a candidate whom the Complainant did not endorse in that primary.

The Act requires a political committee's report of an independent expenditure to include, among other things, "a statement which indicates whether such independent expenditure is *in support of, or in opposition to*, a candidate, as well as the name and office sought by such candidate." 52 U.S.C. § 30104(b)(6)(B)(iii) (emphasis added). The Commission's corresponding regulation tracks the Act's language nearly verbatim. *See* 11 C.F.R. § 104.3(b)(3)(vii)(B); *see also* 11 C.F.R. §§ 104.4(b)(2) (regarding contents of 48-hour independent expenditure reports), 104.4(c) (regarding contents of 24-hour independent expenditure reports). By longstanding practice, the "support" and "oppose" language required in independent expenditure reporting has been tied to the reported advertisement's express advocacy. This approach is reflected in Advisory Opinion 2010-10 (National Right to Life PAC), which very clearly equates the "support" and "oppose" language on the Commission's reporting forms with an advertisement's express advocacy for or against a clearly identified candidate. For example, the Commission explained that "independent expenditures for communications that expressly advocate the election of a clearly identified Federal candidate and

that do not identify any other candidate may be reported as having been made in support of the candidate identified in the communication,” while “independent expenditures for communications that expressly advocate the defeat of one clearly identified Federal candidate and that do not identify any other candidate may be reported as having been made in opposition to the candidate identified in the communication.” Advisory Opinion 2010-10 (National Right to Life PAC) at 1-2. In the slightly more complex situation involving “independent expenditures for communications that expressly advocate the election of a clearly identified Federal candidate and that identify the opposing candidate in the same race,” the committee is advised to report the expenditure “as having been made in support of the advocated candidate.” *Id.* at 1. FFP adhered to these instructions when it reported the independent expenditures at issue in this matter. The Complaint contains no information whatsoever that could lead the Commission to conclude, or even suspect, otherwise.

The Act does not require or even suggest the “subjective intent” reporting claimed by the Complainant—especially not in a circumstance where the *objective* intent of the communications is so clear on its face, and when the alleged beneficiary candidate is nowhere referenced in the communications. Accordingly, even if the Complaint had “set forth sufficient specific facts” regarding the actual contents of FFP’s independent expenditures to allow the Commission to determine whether FFP’s reports were accurate, those facts would not demonstrate a violation of the Act. Rather, the facts demonstrate only that FFP properly reported its independent expenditures and that no reporting violation occurred. The Commission should find no reason to believe a violation occurred and dismiss the allegations.

To the extent the Complaint might also be read to allege impermissible coordination with “a major ‘political party committee,’” *see* Complaint ¶ 8, the Complaint similarly sets forth no actual facts in support of such allegation. SLF is not a party committee and it operates independently of all candidate and party committees. Aside from a general reference to the “Republican Party,” the Complaint does not identify any actual party committee with whom coordination supposedly occurred. Nor does the Complaint assert specific facts that would constitute impermissible coordination activity. As the Commission has previously explained, “[u]nwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true.” MUR 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas.

For the reasons set forth above, the Commission should find no reason to believe a violation of the Act occurred and dismiss the Complaint.

Sincerely,



Thomas J. Josefiak
Michael Bayes

ATTACHMENTS



When it comes to
your family's health care,
North Carolina has a choice between
ZERO or **HERO!**

Paid for by Faith and Power PAC. Not authorized by any
candidate or candidate's committee. www.faithpowerpac.com

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STE 214 PMB 1008
Jacksonville, NC 28540

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Issue Mail

ZERO

HERO



Cunningham OPPOSES Medicare for All, denying access to affordable health care for more than one million North Carolinians.



Cunningham took thousands in campaign contributions from **health insurance lobbyists** in Washington, DC.



STANDING FOR THE PEOPLE OF NORTH CAROLINA.



Smith SUPPORTS Medicare for All, giving millions of North Carolinians access to health care with no out-of-pocket costs.

Smith is **ONE OF US:** an educator, state legislator and ordained minister.



ON MARCH 3, VOTE FOR THE PEOPLE OF NORTH CAROLINA.

VOTE **NO** ON **CAL CUNNINGHAM**.

VOTE FOR **ERICA SMITH**.

321 Yopp Road
STE 214 PMB 1008
Jacksonville, NC 28540

PRSRT MKTG
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Issue Mail

**North Carolina Needs a
Hero in the U.S. Senate.**



**ENDORSED
BY:**
Unions
Civil Rights Groups
Progressives

Erica Smith

A PROVEN LEADER. A STRONG FIGHTER. A PROGRESSIVE VOICE.

Paid for by Faith and Power PAC. Not authorized by any candidate or candidate's committee. www.faithpowerpac.com

MUR775000023

Erica Smith

HAS ALWAYS FOUGHT FOR **you.**

Born and raised in North Carolina, **Erica knows the issues that matter most to you and your families** and she has spent her time in the State legislature fighting for them.



If elected, Erica would be the **first African American to represent North Carolina in the U.S. Senate.**



Our healthcare costs continue to rise every day. **That is why Erica supports Medicare for All.** Medicare for All will guarantee millions of North Carolinians access to healthcare with no out-of-pocket costs.

On March 3, vote for our future.
Vote Erica Smith for U.S. Senate.

EARLY VOTING: Please visit

www.ncsbe.gov/Voting-Options/One-Stop-Early-Voting
to find dates and locations for early voting.



MUR775000025

ERICA SMITH

**The PROVEN Progressive
North Carolina Needs**

321 Yopp Road
STE 214 PMB 1008
Jacksonville, NC 1008

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or candidate's committee. www.faithpowerpac.com

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FPPAC-1003





ERICA SMITH FOR U.S. SENATE



MUR775000026

THE EXPERIENCE

- ✓ **STATE SENATOR**
- ✓ **TEACHER**
- ✓ **ENGINEER**
- ✓ **ORDAINED MINISTER**

THE LEADERSHIP

- ✓ **Erica Smith SUPPORTS the Green New Deal** to fight climate change and economic inequality.
- ✓ **Erica Smith SUPPORTS Medicare for ALL** to give ALL working families access to the health care they need.
- ✓ **Erica Smith SUPPORTS the Impeachment of Donald J. Trump.**

The ONLY Proven Progressive Who Will Fight for Us!

On March 3, Vote Erica Smith for U.S. Senate.

EARLY VOTING: Visit www.ncsbe.gov/Voting-Options/One-Stop-Early-Voting to find dates and locations.



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

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

FAX 202-219-3923

MUR # 7750

Name of Counsel: Thomas J. Josefiak; Michael Bayes

Firm: Holtzman Vogel Josefiak Torchinsky PLLC

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Telephone: (540) 341-8808

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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.

6/25/20

Date

Signature (Respondent/Agent)

Treasurer

Title

RESPONDENT: Faith and Power PAC; Ezekial Patterson, Treasurer

(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 521 Yopp Road
(Please Print)

Jacksonville, NC 28540

Telephone (H): _____

(W): _____

E-mail: faithandpowerpac@gmail.com

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.



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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.

6/25/2020

Date

Caleb Crosby

Signature (Respondent/Agent)

Treasurer

Title

RESPONDENT: Senate Leadership Fund; Caleb Crosby, Treasurer

(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 45 North Hill Drive, Suite 100

(Please Print)

Warrenton, VA 20186

Telephone (H): _____ (W): (540) 341-8808

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