



INTERNATIONAL SQUARE
1825 EYE STREET, NW, SUITE 900
WASHINGTON, DC 20006
TELEPHONE: 202-457-0160
FACSIMILE: 844-670-6009
<http://www.dickinsonwright.com>

CHARLIE SPIES
CSpies@dickinsonwright.com
202 466 5964

August 12, 2020

Jeff S. Jordon, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street NE
Washington, DC 20463

VIA E-MAIL: CELA@fec.gov

Re: MUR 7758: Response of Scalise for Congress, and Ben Ottenhoff in his official capacity as Treasurer

We write on behalf of Scalise for Congress, and Ben Ottenhoff in his official capacity as Treasurer (collectively “the Respondents”) in response to a Complaint bizarrely alleging a massive coordination conspiracy between the Respondents, the Republican Senate Leadership Committee (RSLC), the Committee to Defend the President, America First Action, Inc, McConnell Senate Committee, Joni for Iowa, Cotton for Senate, Cory Gardner for Senate, Marco Rubio for Senate, and Trump Make America Great Again Committee (hereinafter “the Committees”). The Respondents, of course, have not engaged in any impermissible coordination activity with these (or any other) organizations. These entities all use a common vendor (Targeted Victory, Inc.), with which the Respondents entered into a commercial, arms-length agreement that included Targeted Victory establishing and implementing an internal firewall policy to prevent the *exact* sort of coordination activity alleged by the Complainant. To the extent an actual legal violation accusation can be discerned from the Complaint’s conspiracy theories, it is purely speculative and factually incorrect. For these reasons, we ask that the Commission promptly close the file.

I. Facts and Legal Analysis.

Steve Scalise is the Republican Whip for the House of Representatives and a candidate for Louisiana’s 1st Congressional District. He filed his Statement of Candidacy with the

Commission on November 4, 2019.¹ His official campaign committee is Scalise for Congress, which filed its Statement of Organization on the same day.²

Based solely on a collection of fundraising emails using the same domain name (info@keepingusgreat.com), the Complaint posits that the Committees must be engaging in a wide-ranging coordination conspiracy.³ This theory not only lacks any sort of merit, it also is not factually accurate.

When a committee, group or individual pays for a communication that is coordinated with a campaign or a candidate, the communication is considered an in-kind contribution to the campaign. “Coordinated” means that the activities were made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents.⁴

In order to determine whether a communication is coordinated, the Commission will consider a three-pronged test, which is (1) the source of the payment (“payment prong”); (2) the subject matter of the communication (“content prong”); and (3) the interaction between the person paying for the communication and the candidate or political party committee (“conduct prong”).⁵ *A communication must satisfy all three prongs of the test to be considered a coordinated under Commission regulations.*⁶ The Complaint fails to meet its burden of proof in this matter. Specifically, the Complaint provides no evidence to establish any violation of the “conduct prong”.

While it is unclear, based on the face of the Complaint, how the Respondents ever could have violated the conduct prong, we assume that the Complainant theorizes that Respondents and the Committees used a common vendor, based on the common use of an email domain. However, under the common vendor standard, the **Complaint would have to establish that the Respondents’ plans, projects, activities, or needs were being used by the payor of the communication, and that information was material to the creation, production or distribution of the communication.**⁷ Nothing in the Complaint evidences that. A common email address does not have any substantive significance, just as, for example, multiple political committees’ use of Google Mail email accounts (@gmail.com) does not mean that they are part of some grand coordination scheme. As explained below, there is no violation of the law, and no evidence to show otherwise.

Respondents are not involved in any sort of coordination scheme with the Committees, and have been in full compliance with FECA and Commission regulations in any activities it has done in the 2020 election cycle. Respondents entered into an arm’s length, commercial

¹ FEC Form 2, Statement of Candidacy, Steve Scalise (Nov. 4, 2019), *available at* <https://docquery.fec.gov/cgi-bin/forms/HOLA01087/1361648/>.

² FEC Form 1, Statement of Organization, Scalise for Congress (Nov. 4, 2019), *available at* <https://docquery.fec.gov/pdf/022/201911049165325022/201911049165325022.pdf>.

³ *See* Complaint, MUR 7758, at 1.

⁴ 11 C.F.R. § 109.20

⁵ 11 C.F.R. § 109.21(a)

⁶ *Id.*

⁷ 11 C.F.R. § 109.21(d)(4)(iii)

arrangement with Targeted Victory in which Targeted Victory would provide consulting services for Respondents, which included assisting in digital fundraising efforts.⁸ Per the Agreement, Targeted Victory would send any draft fundraising emails for review and approval by the Respondents.⁹ After the email language was approved, the Respondents had no further role in the email's dissemination.¹⁰ Respondents have no knowledge regarding Targeted Victory's presumably voluminous other clients, and has not communicated with any campaign committee, political party committee, or any other political committee through Targeted Victory.

Additionally, per its agreement with Respondents, Targeted Victory is responsible for implementing an internal firewall policy, which prevents the *exact* sort of coordination that is at issue in this matter. Per Commission regulations, none of the conduct standards are satisfied if the vendor implements a firewall policy.¹¹ This firewall policy meets the Commission's requirements, as can be seen attached as Exhibit A, and has been implemented and strictly followed by Targeted Victory and its staff.¹²

Given their business model, it would make sense that many of their clients would be political organizations. However, the common use of a digital fundraising service does not equate to a violation of FECA. The Complaint *still* has the burden of showing that non-public information about the Respondents' or the other Committees' plans, projects, activities, or needs were communicated to the others through Targeted Victory. Although the Complaint provided the Commission with extensive documentation, it fails to show *any* evidence that non-public information was being shared among the Respondents and the Committees.

II. Conclusion.

Based on the facts and supplemental information presented in this Response, it is abundantly clear that the Respondents did not engage in any illegal activity. Therefore, we ask the Commission to promptly find no reason to believe and close the file.

Respectfully submitted,



Charlie Spies
Katie Reynolds
Counsel to Scalise for Congress

⁸ See Declaration of Abe Adams at 2-3

⁹ *Id.*

¹⁰ *Id.* at 4 (“Targeted Victory provided the Campaign’s approved fundraising email copy to Right Country Lists to send to its list.”).

¹¹ 11 C.F.R. § 109.21(h).

¹² See Targeted Victory Internal Firewall Policy; see also Declaration of Abe Adams at 5, (“The Company has acted in accordance with this policy when providing services to the Campaign and any of its other clients.”).

DECLARATION OF ABE ADAMS

I, Abe Adams, give this declaration based on personal knowledge.

1. My name is Abe Adams. I am Managing Partner of Targeted Victory, LLC (hereinafter “Targeted Victory” or the “Company”).

2. As Managing Partner, I oversee Targeted Victory’s advertising and marketing services for its clients and ensure that the Company’s activities comply with applicable campaign finance laws. I have personal knowledge of Targeted Victory’s activities on behalf of Scalise for Congress (the “Campaign”) and Targeted Victory’s processes to ensure compliance with federal campaign finance law.

Targeted Victory has a contract with the Campaign to provide consulting services, including digital fundraising consulting. As part of this work, a team of Targeted Victory employees drafts fundraising email copy for review and approval by the Campaign. A separate team at Targeted Victory facilitates the rental of email lists from third party vendors and transmits the approved fundraising copy to the selected list vendor. As part of the list rental agreement between Targeted Victory and its list vendors, the list vendor is responsible for transmitting the fundraising email to its list.

With respect to the Campaign fundraising solicitation included in the Complaint, Targeted Victory, acting on behalf of the Campaign, rented a list of prospective donors from Right Country Lists. Targeted Victory provided the Campaign’s approved fundraising email copy to Right Country Lists to send to its list. Targeted Victory did not specify to Right Country Lists the domain through which it would transmit the approved fundraising copy.

On January 15, 2019, Targeted Victory implemented a written firewall policy for the 2020 election cycle on attached hereto as Exhibit A to prevent common vendor “coordination” between its political clients. The Company has acted in accordance with this policy when providing services to the Campaign and any of its other clients.

* * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 29th day of July, 2020.



Abe Adams

Exhibit A

1513901869_1_DECLARATION OF ABE ADAMS_Scalise (1)

Final Audit Report

2020-07-29

Created:	2020-07-29
By:	gina hwang (ghwang@targetedvictory.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA5BursjewKFUU jmmXe1yaYAKJTMnuIGK

"1513901869_1_DECLARATION OF ABE ADAMS_Scalise (1)" History

 Document created by gina hwang (ghwang@targetedvictory.com)

2020-07-29 - 7:04:33 PM GMT- IP address: 98.218.22.144



Document emailed to Abe Adams (aadams@targetedvictory.com) for signature

2020-07-29 - 7:04:53 PM GMT



Email viewed by Abe Adams (aadams@targetedvictory.com)



2020-07-29 - 7:45:38 PM GMT- IP address: 107.77.202.161

Document e-signed by Abe Adams (aadams@targetedvictory.com)

Signature Date: 2020-07-29 - 7:46:29 PM GMT - Time Source: server- IP address: 107.77.202.161

Signed document emailed to Abe Adams (aadams@targetedvictory.com) and gina hwang (ghwang@targetedvictory.com)

2020-07-29 - 7:46:29 PM GMT

Targeted Victory, LLC Firewall Policy Memorandum

To: TV Employees
 From: The Partners
 Subject: Federal Campaign Finance Law Firewall Policy: 2020 Election Cycle
 Date: January 2, 2019

Overview of Firewall Policy

Targeted Victory, LLC (“TV”) has enjoyed years of success providing strategy and marketing services for a wide range of clients, from Federal candidates to political parties to issue advocacy and independent expenditure groups. Campaign finance laws place difficult challenges on the way we conduct our business. It is important that you read and understand this memo, because our continued success depends on complying with the prohibitions, limitations and requirements of the Bipartisan Campaign Reform Act of 2002 Act and corresponding Federal Election Commission (“FEC”) regulations (collectively, “BCRA”).

Under the law, public communications by independent expenditure-only committees (also known as Super PACs), issue advocacy groups, or political party committees may be considered in support of a candidate or party committee (and, therefore, an in-kind contribution to the candidate or party) if the communications are coordinated between the Super PAC and the candidate or party committee, or between the issue advocacy group and the candidate or party committee, or between the party committee independent expenditure unit and the candidate committee. *See* 11 C.F.R. 109.21. Common vendors working for both outside groups and candidates or party committees in the same election can also trigger coordination, unless the rules described in this memo are followed.

As a result, we recognize that BCRA places limits on vendors such as TV who have a wide range of clients engaged in political activities, including candidate and party committees, as well as issue advocacy and independent expenditure groups. That means the Members and employees of TV need to maintain “firewalls” to ensure that we do not inadvertently provide or transmit non-public information (1) about our issue advocacy/independent expenditure clients to our campaign or party committee clients; (2) about candidate and party committee clients to our issue advocacy group, independent expenditure committee, or party committee independent expenditure unit clients; or (3) about party committee independent expenditure unit clients to our candidate committee clients, regular party committee, issue advocacy groups, or independent expenditure clients.

Principals and employees working on opposite sides of the “firewall” must not, under any circumstances, communicate any information whatsoever about their separate clients. Being “firewalled” off means TV Members and employees working on behalf of each client must not share or discuss, in any way, their separate client’s private plans, projects, activities or needs, including messages. This “firewall” must be maintained to ensure that no principal or employee inadvertently provides or transmits non-public information to the others.

Accordingly, TV has created a firewall structure that prevents the flow of information about different clients in such a way that the coordination rules would be triggered. Personnel and client information is compartmentalized so that one client’s information (e.g., a federal candidate or political party committee) is not shared with, or used in, another client’s communications (e.g., an issue ad group).

The firewalls are not intended to prevent TV Members and employees from discussing administrative issues or procedures that will improve the services we provide to our clients. Similarly, these firewalls are not intended to prevent TV Members from maintaining management and financial controls on the company’s operations – only that the private plans, projects, activities or needs of a client on one side of the firewall not be communicated or shared with a client on the other side of the firewall.

Targeted Victory, LLC Firewall Policy Memorandum

In addition, TV Members or employees that possess non-public, strategic client information must not perform services for any:

- Independent expenditure or issue advocacy client within 120 days of having performed services for any federal candidate (Presidential, House, or Senate) or federal campaign committee or party committee client if the issue advocacy/independent expenditure client’s communications name the same candidate or party or an opposing Presidential, House or Senate candidate or party.
- Party committee client making independent expenditures (excluding the permissible coordinated expenditure work for that party) within 120 days of having performed services for any federal candidate committee client (Presidential, House, or Senate) or party committee non-independent expenditure client if the party committee’s communications name the same or an opposing candidate.

With respect to communications disseminated within these windows, TV Members or employees must not:

- Discuss the private political plans, projects, activities, or needs, including messages, of a Presidential campaign, Senate campaign, Congressional campaign, or relevant state or national party committee with a TV Member or employee who is providing services to any independent expenditure or issue advocacy group whose communications mention the same candidate or party or their opponents; or
- Discuss the private political plans, projects, activities, or needs, including messages, of any independent expenditure or issue advocacy group with a TV Member or employee who is providing services to a Presidential campaign, Senate campaign, Congressional campaign, or a state or national party committee whose candidates or opponents may be mentioned in any issue advocacy or independent expenditure group’s communications.

TV takes these issues seriously, and no individual candidate or party committee or issue advocacy/independent expenditure committee client is worth exposing the firm to potential legal liability. These guidelines are not intended to prevent TV Members and employees from discussing procedures that will improve the services we provide to our clients.

By signing below, you acknowledge that you have read and understand TV’s policy outlined above. If you have any questions or concerns about how this policy applies to a specific situation, please do not hesitate to contact us so that we may consult counsel and advise you in a comprehensive and efficient manner. We are in continually in the process of reviewing additional changes to implement the safeguards necessary to be in compliance with the regulations and will keep you updated.

For Targeted Victory, LLC

Employee

By: _____

By: _____

Print Name

Print Name

Date: _____

Date: _____