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## VIA E-MAIL

Jeff S. Jordan  
 Assistant General Counsel  
 Complaints Examination & Legal Administration  
 Federal Election Commission  
 999 E Street, N.W.  
 Washington, D.C. 20463

**Re: MUR 7789**

Dear Mr. Jordan:

We write as counsel to ACRONYM, Courier Newsroom, Inc. (“*Courier Newsroom*” or “*Courier*”), and Tara McGowan (collectively, “*Respondents*”), in response to a complaint filed with the Federal Election Commission (“*FEC*” or “*Commission*”) by Americans for Public Trust on September 3, 2020 (the “*Complaint*”) in the above-referenced matter. Because the Complaint alleges facts that, if true, fail to allege a violation of the Federal Election Campaign Act (the “*Act*”), the Commission must dismiss the complaint and close the file.

## FACTUAL BACKGROUND

Courier Newsroom is a for-profit media company that disseminates news, commentary and editorials.<sup>1</sup> Courier Newsroom distributes several publications: *The Americano*, which is targeted to Latino Americans; *Cardinal & Pine*, which focuses on local news in North Carolina; *The Copper Courier*, which focuses on local news in Arizona; *Dogwood*, which focuses on local news in Virginia; *The 'Gander*, which focuses on local news in Michigan; *The Keystone*, which focuses on local news in Pennsylvania; and *UpNorthNews*, which focuses on local news in Wisconsin.<sup>2</sup>

Courier Newsroom is not owned or controlled by any candidate, political party, or political committee.<sup>3</sup> Instead, Courier Newsroom has a number of private investors, including its majority investor, ACRONYM, a nonprofit entity organized under section 501(c)(4) of the Internal

<sup>1</sup> Courier Newsroom, About Us, <https://couriernewsroom.com/about-us/>.

<sup>2</sup> *Id.*

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

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Revenue Code.<sup>4</sup> Tara McGowan is ACRONYM’s Chief Executive Officer.<sup>5</sup> ACRONYM is not a “political committee” under the Act.

Courier Newsroom retains full editorial control over all content that appears on its website, news publications, and social media properties.<sup>6</sup> “[N]o members of ACRONYM’s staff — nor any of Courier’s other investors — have a say in the final editorial product that emerges from [Courier’s] statewide and national newsrooms.”<sup>7</sup> Accordingly, “[l]ike other respected news organizations, Courier has a clear ‘church and state’ firewall between [its] owners/investors and [its] newsrooms. Its editor-in-chief and managing editors have sole discretion over what they choose to publish on their respective sites.”<sup>8</sup>

Each publication covers both electoral and non-electoral content, including politics, education, the economy, and health care.<sup>9</sup> The front page for each publication showcases this variety of topics, and the articles, regardless of subject matter, conform to each other in length and format and are targeted to the same audience.<sup>10</sup> Courier “hire[s] credentialed journalists on the ground” and now employs “nearly 50 reporters and editors from places like VICE, The Daily Beast, Quartz, Morning Consult, and The New York Times, and many local news outlets in the markets [Courier Newsroom] serve[s].”<sup>11</sup> Courier Newsroom’s editor-in-chief, Lindsay Schrupp, previously worked at VICE.<sup>12</sup>

Courier Newsroom was established to provide a trusted source of accurate local news coverage; – progressive, but always grounded in facts. As Courier’s Chief Operating Officer Rithesh Menon wrote on Medium, “[i]n the past decade, more than one in five local newspapers have shut down, and many others have been bought up by holding companies focused more on squeezing profits than producing quality reporting.”<sup>13</sup> And “[t]his is why Courier Newsroom exists.”<sup>14</sup> Courier Newsroom’s philosophy is simple: “the best way to counter misinformation is

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<sup>4</sup> *Id.*

<sup>5</sup> Tara McGowan, Medium, <https://medium.com/@taraemcg>.

<sup>6</sup> Courier Newsroom, *supra* note 1.

<sup>7</sup> Rithesh Menon, *Why Courier Newsroom Is Needed At This Moment in Time*, Medium (Oct. 7, 2020), <https://medium.com/@ritsmenon/why-courier-newsroom-is-needed-at-this-moment-in-time-e4e9693fe7c4>

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., Courier Newsroom, <https://couriernewsroom.com/>; The Dogwood, <https://vadowood.com/>; The Gander, <https://gandernewsroom.com/>; The Keystone, <https://keystoneneewsroom.com/>; UpNorthNews, <https://upnorthnews.com/>; The Americano, <https://theamericanonews.com/>; The Copper Courier, <https://coppercourier.com/>; Cardinal & Pine, <https://cardinalpine.com/>.

<sup>10</sup> *Id.*

<sup>11</sup> Menon, *supra* note 7.

<sup>12</sup> Lindsay Schrupp, Twitter, <https://twitter.com/LindsaySchrupp>.

<sup>13</sup> Menon, *supra* note 7.

<sup>14</sup> *Id.*

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to ensure that, no matter where one gets their news, they'll have access to relevant, fact-based local reporting.”<sup>15</sup>

Courier Newsroom is progressive in its viewpoint and its decisions about what topics to cover and how to cover them are shaped by that progressive worldview.<sup>16</sup> Mr. Menon described the wide range of stories that Courier Newsroom has spent the most time covering:<sup>17</sup>

In late 2019, we launched our first local site in Virginia, Dogwood, in an effort to fill the local news void in its coverage of the state legislative elections. In 2020, we extended our reach with local newsletters in places like Wisconsin that feature stories on the issues that most impact the communities they serve, e.g., the education gap, small businesses getting back on their feet, and the reality of unsafe working conditions at meatpacking plants.

More recently, we've reported on Black Lives Matter protests and the work that's continued in communities across our country long after the mainstream news crews packed up and went home. Throughout this pandemic, our local outlets have filled information voids by updating county maps with COVID infection rates and providing up-to-date information on how the pandemic has impacted local businesses, schools, and hospitals. Every one of our statewide sites is producing daily local coverage on voting rights and election security, helping readers understand and access the information they need to participate in our democracy.

It is no secret that the revenue model for quality local journalism is in jeopardy. By necessity, therefore, Courier Newsroom invests in paid advertising to deliver its news stories to target audiences. As Mr. Menon described, “[i]n order to meet audiences where they increasingly get their information and to counter the large-scale distribution network of misinformation, [Courier is] forced to advertise heavily on platforms like Facebook.”<sup>18</sup> Courier's aggressive advertising and targeting strategies appeal to devotees of traditional journalism who are “desperate to preserve and revive local news outlets,” such as Nicco Mele, a former executive at the *Los Angeles Times* and former director of the Shorenstein Center on Media, Politics, and Public Policy at Harvard University's Kennedy School of Government, who believes that “tactics for identifying and reaching readers could potentially work outside politics, helping traditional news organizations survive.”<sup>19</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> Courier Newsroom, *supra* note 1.

<sup>17</sup> Menon, *supra* note 7.

<sup>18</sup> *Id.*

<sup>19</sup> Joshua Green, *The Left's Plan to Slip Vote-Swaying News Into Facebook Feeds*, Bloomberg (Nov. 25, 2019), <https://www.bloombergquint.com/businessweek/acronym-s-newsrooms-are-a-liberal-digital-spin-on-local-news>.

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The Complaint omits these pertinent facts and makes a series of false representations regarding Courier Newsroom. The Complaint alleges that “ACRONYM’s President and CEO Tara McGowan said Courier Newsroom was created as the Democrat’s counter to the 2016 digital spending by the Trump campaign and the Republican National Committee.”<sup>20</sup> But the sources cited to by the Complaint do not include a statement to that effect. The Complaint also quotes extensively from a memorandum written by Ms. McGowan regarding a proposal for an “ACRONYM Newsroom.” But ACRONYM Newsroom was never established and, therefore, the statements in the memorandum cannot reasonably be attributed to Courier Newsroom, which operates under a different set of principles (described in the preceding paragraphs). The Complaint also relies on opinion statements from journalists, see Compl. ¶¶ 19-20, which are devoid of any factual underpinning and do not represent the views of Courier Newsroom itself.

In fact, the Bloomberg article to which the Complaint attributes the phantom statement by Ms. McGowan correctly notes that Courier “will supply objective, fact-based reporting no different from what appears in mainstream outlets” and that “[w]hile story selection may have tilted toward a progressive readership, none of these articles or the voter guide would have seemed out of place in a local paper.”<sup>21</sup> The article notes that “[t]he big differentiator [between Courier Newsroom and traditional media entities] was that [Courier] paid to ensure that these articles wound up in the feeds of Virginians whom her audience development team believed were likely to share and act on them.”<sup>22</sup> In other words, the *content* of Courier Newsroom’s news and commentary is squarely within the journalistic mainstream; it is in the distribution of said content – principally through paid advertising – where Courier is experimenting with new models to keep local journalism alive and financially viable.

## LEGAL DISCUSSION

A complaint must be dismissed unless it pleads “sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”<sup>23</sup> The Complaint does not plead facts which, if proven true, would establish that Courier qualifies as a “political committee” under the Act. Therefore, the Complaint must be dismissed.

### **I. Courier Newsroom does not meet the statutory or constitutional test for political committee status**

The Complaint incorrectly frames the legal issue before the Commission. Before the Commission reaches the question of whether Courier Newsroom qualifies for the “media

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<sup>20</sup> Compl. at ¶ 14.

<sup>21</sup> Green, *supra* note 19.

<sup>22</sup> *Id.*

<sup>23</sup> Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, Matter Under Review 4960 (Clinton for U.S. Exploratory Committee) (Dec. 21, 2000).

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exemption” – which it does for the reasons set forth below – the Complainant must allege facts that, if true, establish that Courier Newsroom meets the statutory *and* constitutional tests for political committee status. Complainant plainly fails to do so.

In the seminal case of *Buckley v. Valeo*, the U.S. Supreme Court held that the term “political committee” only “encompass[es] organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.”<sup>24</sup> Under federal law, therefore, a group qualifies as a political committee only upon meeting a two-part definition: the group must (1) “receive[] contributions aggregating in excess of \$1,000 or [make] expenditures in excess of \$1,000 during a calendar year”; *and* (2) have the “major purpose [of] Federal campaign activity (i.e., the nomination or election of a Federal candidate).”<sup>25</sup>

**A. The Complaint does not allege any facts showing that Courier made an “expenditure” or received a “contribution”**

The Complaint does not allege any facts to establish that Courier made an “expenditure” or received a “contribution” under the Act.

In determining whether an unregistered organization made an “expenditure,” the Commission “analyze[s] whether the organization[’s] ... communications ‘expressly advocated’ the election or defeat of a clearly identified Federal candidate under the two definitions of that term in 11 CFR 100.22.”<sup>26</sup> The Complaint does not identify *any* communications by Courier Newsroom that expressly advocate the election or defeat of a federal candidate. The Complaint references articles that Courier published regarding incumbent House members; but these communications did not contain express advocacy nor did they qualify as “electioneering communications.” The Complaint does not assert otherwise. Likewise, any articles disseminated in connection with Virginia’s 2019 legislative elections – an election where no federal candidate appeared on the ballot – are not “expenditures” under the Act. Accordingly, the Complaint does not allege any facts to show that Courier Newsroom made an “expenditure” under the Act.

Similarly, in determining whether an unregistered organization received a “contribution,” the FEC looks at whether the organization’s solicitations “clearly indicated that the funds received would be used to support or defeat a Federal candidate.”<sup>27</sup> The Complaint fails to identify any Courier Newsroom solicitations – after all, it is a for-profit company with investors, not donors –

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<sup>24</sup> *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

<sup>25</sup> 11 C.F.R. § 100.5(a); *Buckley*, 424 U.S. at 79 (1976); *see also* 72 Fed. Reg. 5597 (Feb. 7, 2007), <https://www.govinfo.gov/content/pkg/FR-2007-02-07/pdf/E7-1936.pdf>.

<sup>26</sup> 72 Fed. Reg. at 5604. The *Buckley* Court further explained that the term “expenditure” “reach[es] only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.” *Buckley*, 424 U.S. at 80.

<sup>27</sup> 72 Fed. Reg. at 5604.

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let alone any solicitations that result in a “contribution” under the Act. Having failed to allege any facts to show that Courier Newsroom made an “expenditure” or received a “contribution,” the Complaint must be dismissed for failing to allege facts that, if true, would establish that Courier Newsroom has met the statutory test for political committee status.

**B. The Complaint does not allege any facts showing that Courier has the major purpose of federal campaign activity**

Courier Newsroom also lacks a “major purpose” of federal campaign activity and therefore may not be regulated as a “political committee” under *Buckley*.

“The Supreme Court has made it clear that an organization can satisfy the major purpose doctrine through sufficiently extensive spending on Federal campaign activity.”<sup>28</sup> As noted above, the Complaint fails to establish that Courier Newsroom engaged in *any* federal campaign activity. While courts have recognized that federal campaign activity includes express advocacy and presumptively includes electioneering communications, it does not include *every* communication that merely refers to a federal officeholder or candidate.<sup>29</sup> The Complaint fails to marshal any evidence that the content of the articles regarding certain House freshman Democrats include express advocacy or are otherwise electoral in nature. The Courier articles about Congressman Rose referenced in the *Politico* story appeared in April and May, approximately six months prior to the November general election, and use information from *official-side* press releases to describe the Congressman’s work on COVID relief and his military deployment.<sup>30</sup> And the Twenty for 2020 series “follow[s] twenty freshman Democrats as they navigate their roles in the House” and asks readers to “[s]tick with us as we follow their triumphs, challenges, and all the events that typically don’t make national news but do have an effect on the lives of those they represent.”<sup>31</sup> These communications would “properly be deemed lacking an election-related purpose under *Buckley*.”<sup>32</sup>

The FEC has also noted that “[a]n analysis of public statements can also be instructive in determining an organization’s purpose.”<sup>33</sup> Courier Newsroom’s public statements – as opposed to public statements about hypothetical entities or statements made by reporters – underscore that it is a for-profit media company that distributes factual news stories and commentaries. It does

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<sup>28</sup> 72 Fed. Reg. at 5601.

<sup>29</sup> *CREW v. FEC*, 299 F. Supp. 3d 83, 97 (D.D.C. 2018), *appeal dismissed*, No. 18-5136, 2018 WL 5115542 (D.C. Cir. Sept. 19, 2018).

<sup>30</sup> Alex Thompson, *Newsroom or PAC? Liberal group muddies online information wars*, *Politico* (July 14, 2020), <https://www.politico.com/news/2020/07/14/newsroom-pac-liberal-info-wars-356800>.

<sup>31</sup> Courier, *Twenty for 2020: The Work of a Freshman Democrat*, <https://couriernewsroom.com/category/20-for-2020/>

<sup>32</sup> *CREW*, 299 F. Supp. 3d at 97 (D.D.C. 2018).

<sup>33</sup> 72 Fed. Reg. at 5601.

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not have the purpose, let alone the major purpose, of engaging in federal campaign activity.

Courier Newsroom does not qualify as a political committee and therefore is not required to register or file reports with the FEC.

### **C. Courier Newsroom would qualify for the media exemption**

Because the Complaint fails to establish that Courier Newsroom made any “expenditures” or accepted any “contributions,” the Commission need not address whether Courier Newsroom qualifies for the media exemption. Nonetheless, it clearly does.

The Act exempts from the definition of “contribution” any “news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.”<sup>34</sup> FEC regulations accordingly exempt from the definition of “contribution” any “cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication” unless “the facility is owned or controlled by any political party, political committee, or candidate.”<sup>35</sup>

For the media exemption to apply, a two-prong test must be met. First, the entity seeking the exemption must be a “media entity.” Second, the entity must show that it is not owned or controlled by a political party, political committee, or candidate, and that it is within its legitimate media function in conducting the activity at issue.<sup>36</sup>

In determining whether an entity is a “media entity,” the FEC has “focused on whether the entity in question is in the business of producing on a regular basis a program that disseminates news stories, commentary, and/or editorials.”<sup>37</sup> To arrive at this determination, the Commission has considered factors such as whether the news content is distributed regularly and available to the general public.<sup>38</sup> Recently, the FEC has extended the media exemption to entities that do not otherwise regularly distribute news as their principal business activity, so long as they distribute at least one news program on a regular basis, and where any editions of the publication featuring electoral content conform to the regular editions of the publication and are distributed to the

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<sup>34</sup> 52 U.S.C. § 30101(9)(B)(i).

<sup>35</sup> 11 C.F.R. § 100.73.

<sup>36</sup> See *Reader's Digest Association v. FEC*, 509 F.Supp. 1210 (S.D.N.Y. 1981); *FEC v. Phillips Publishing, Inc.*, 517 F.Supp 1308 (D.D.C. 1981).

<sup>37</sup> FEC Adv. Op. 2008-14 (Melothe); see FEC Adv. Op. 1980-90.

<sup>38</sup> See FEC Adv. Op. 1984-23, n. 1; FEC Adv. Op. 2000-13 (iNEXTV).

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same audience.<sup>39</sup> In one advisory opinion, the Commission acknowledged that “[w]hether an entity qualifies as a press entity does not necessarily turn on the presence or absence of any one particular fact” and confirmed that there is no “requirement that an entity seeking to avail itself of the press exemption first demonstrate that it has a track record of engaging in media activities.”<sup>40</sup> Notably, the Commission does not require an entity to have a neutral point of view to qualify as a media entity. A news publisher’s “content may be calculated to appeal especially to supporters, volunteers, or activists aligned with a particular party, campaign, candidacy, or other political cause” and still qualify as a media entity.<sup>41</sup>

Courier Newsroom plainly qualifies as a media entity. Courier Newsroom’s principal business activity is the regular distribution of news stories, commentary, and editorials. Courier Newsroom publishes eight publications and employs nearly fifty news reporters and editorial staff. Courier Newsroom publishes news stories on a daily basis on a variety of topics, ranging from politics to education. Courier Newsroom’s non-electoral articles conform with its electoral articles in length, format, and targeted audience. These articles are available to the general public through Courier Newsroom’s publicly-accessible websites. That Courier Newsroom has a progressive point of view is immaterial to this analysis. Accordingly, Courier Newsroom meets the first prong of the test to qualify for the media exemption.

Courier Newsroom further meets the second prong of the test to qualify for the media exemption. Courier Newsroom is not owned or controlled by a political party, political committee, or candidate. Neither ACRONYM nor any other Courier Newsroom investor is a political party, candidate, or political committee. Courier Newsroom does not accept funding from any political party, candidate, or political committee. Nor does it coordinate any of its paid ads with any political party or candidate. Furthermore, Courier Newsroom is exercising a legitimate media function by publishing news and editorial content. As such, even if Courier Newsroom were to publish articles that expressly advocate for the election or defeat of a federal candidate, such activity would qualify under the media exemption.

Finally, the allegations that Courier Newsroom accepts contributions from foreign nationals for electoral use or accepts contributions-in-the-name-of-another are wild, speculative smears

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<sup>39</sup> Statement of Reasons of Vice Chairman Bradley A. Smith and Commissioners Michael E. Toner and David M. Mason in Matter Under Review 5315 (Sam’s Club) (Aug. 25, 2003); Statement of Reasons of Commissioner Bradley A. Smith and Vice Chairman Michael E. Toner in Matter Under Review 5491 (Falwell Ministries, Inc. and Liberty Alliance, Inc.) (July 22, 2005); FEC Adv. Op. 2005-19 (Inside Track) (concluding that Paradigm Shift Productions is a press entity because it “is in the business of producing on a regular basis a radio program that disseminates news stories, commentary and/or editorials.”); FEC Adv. Op. 2007-20 (XM Radio) (“Because XM is in the business of producing on a regular basis a radio program that disseminates news stories, commentary, and/or editorials, the Commission concludes that it is a press entity.”).

<sup>40</sup> FEC Adv. Op. 2010-8 (Citizens United).

<sup>41</sup> See FEC Adv. Op. 2008-14 (Melothe).



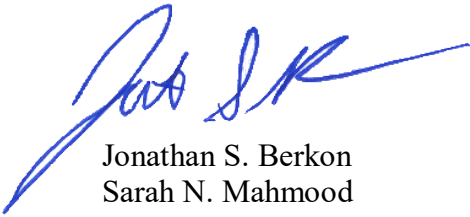
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lacking even a smidgen of factual basis in the Complaint.

### **CONCLUSION**

Because Courier Newsroom does not qualify as a political committee, and any of Courier Newsroom's federal campaign activity would fall under the media exemption regardless, the Complaint fails to present any violation of law. As such, the Commission should find no reason to believe that Respondents violated the Act and dismiss this matter immediately.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jon S. Berkon", with a long horizontal flourish extending to the right.

Jonathan S. Berkon  
Sarah N. Mahmood