

# BRIAN TED JONES

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October 22, 2020

Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
Office of Complaints Examination  
& Legal Administration  
1050 First Street, NE  
Washington, DC 20463  
Delivered by Email:  
cela@fec.gov

**RE: MUR 7809//ABBY BROYLES FOR US SENATE**

Dear Mr. Jordan:

I hope you and your family are doing well and staying healthy. Per the Designation of Counsel delivered with this letter, my firm represents Abby Broyles for US Senate (“the Committee”) and Danielle Ezell, in her official capacity as treasurer for the Committee, regarding the Complaint filed by the Oklahoma Republican Party and designated MUR 7809. Pursuant to 52 U.S.C. § 30109 (a)(1) and 11 C.F.R. § 111.6 (a), the Committee and Ms. Ezell offer this letter as a demonstration in writing that no action should be taken against either on the basis of the Complaint in this matter.

The Complaint alleges the Committee violated federal campaign finance law by accepting illegal corporate contributions, and undisclosed in-kind contributions, from Oklahoma broadcaster KFOR-TV (“KFOR”) in the form of advertising rates lower than those charged to Friends of Jim Inhofe (the authorized campaign committee for the Committee’s opponent) in violation of 47 U.S.C. § 315 (b)(1)

To be sure, 47 U.S.C. § 315 (b)(1) does prohibit broadcasters from charging any candidate an amount in excess of “the lowest unit charge of the station for the same **class** and amount of time for the same period,” (emphasis supplied), and this language, including the term “class,” is mirrored in 47 C.F.R. § 73.1942(a)(1).

Only one paragraph later, though, 47 C.F.R. § 73.1942(a)(1)(ii) says, “The [Federal Election] Commission recognizes non-preemptible, preemptible with notice, immediately preemptible, and run-of-schedule as distinct classes of time,” and 47 C.F.R. § 73.1942(a)(1)(iii)-(iv) makes clear broadcast stations can “establish and define their own reasonable classes of immediately preemptible time[,]” (47 C.F.R. § 73.1942(a)(1)(iii)) and “establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them, and make available to all candidates.” (47 C.F.R. §

73.1942(a)(1)(iv)).

That is exactly what happened here. The Committee simply purchased cheaper airtime, preemptible at less notice, than the more expensive airtime purchased by the Committee's opponent, which could only be preempted with more notice.

Here's a screenshot of the chart provided in the Complaint, purportedly to demonstrate unequal of the two campaigns during the week of September 14:

	Broyles Campaign <sup>4</sup>	Inhofe Campaign <sup>5</sup>
7AM – 8AM	\$300	\$425
8:30AM – 9AM	\$175	\$250
10:30PM – 12AM	\$175	\$325
12PM – 12:30PM	\$140	\$300
12:30PM – 1PM	\$145	\$300

On the next page are two screenshots of the KFOR Rate Card for this respective period, with highlighted rows corresponding to the timeslots provided in the Complaint's chart. Specifically, I've highlighted rows for the following timeslots, with the timeslot itself bolded to demonstrate correspondence with the Complaint's chart:

1. Monday-Friday **7AM-8AM** (NBC Today Show);
2. Saturday **8:30AM-9AM** (Sat News 4 EMN);
3. Saturday **10:30PM-12AM** (Saturday Night Live);
4. Monday-Friday **12PM-12:30PM** (News 4 @ Noon);
5. Monday-Friday **12:30PM-1PM** (News 4 @ 12:30p).

**KFOR Rate Card****3rd Quarter - 2020**

		Rates effective 7/1/20 - 9/27/20. Rates and programming are subject						
		Section/Priority Code	1	2	3	4	5	
Day	Time Period	Programming	Fixed	Preemptible with 72 hours notice	Preemptible with 48 hours notice	Preemptible with 24 hours notice	Immediately Preemptible	
EMN	M-F	7-8am	NBC Today Show	1,150	650	425	300	200
	M-F	8-9am	NBC Today Show	1,150	650	425	300	200
	M-F	9-10am	NBC Today Show 2	625	350	225	150	100
	SAT	6-7am	Sat NBC Today Show	425	275	175	125	75
	SAT	7-8am	Sat NBC Today Show	525	350	225	150	90
	SAT	8-830am	Sat News 4 EMN	575	375	250	175	125
	SAT	830-9am	Sat News 4 EMN	575	375	250	175	125
	SUN	6-630am	Sun News 4 EMN	350	225	150	100	65
	SUN	630-7am	Sun News 4 EMN	425	275	175	125	75
	SUN	7-8am	Sun NBC Today Show	525	350	225	150	90
	SUN	8-830am	Sun News 4 EMN	675	450	300	200	140
	SUN	830-9am	Sun News 4 EMN	750	500	325	225	150
	SUN	9-930am	Sun News 4 EMN	800	525	350	250	165
	SUN	930-10am	Flashpoint	875	575	375	225	150
SUN	10-11am	Meet The Press	975	650	425	300	200	
ET	M-F	10-11am	NBC Today Show 3	425	275	175	125	85
	M-F	11a-12n	Rachel Ray	350	225	150	100	70
	M-F	12-1230pm	News 4 @ Noon	675	450	300	200	140
	M-F	1230-1pm	News 4 @ 1230p	675	450	300	200	145

**KFOR Rate Card****3rd Quarter - 2020**

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		Section/Priority Code	1	2	3	4	5	
Day	Time Period	Programming	Fixed	Preemptible with 72 hours notice	Preemptible with 48 hours notice	Preemptible with 24 hours notice	Immediately Preemptible	
M-F	1230-1pm	News 4 @ 1230p	675	450	300	200	145	
M-F	1-2pm	Days Of Our Lives	525	350	225	150	100	
	2-3pm	The Doctors	350	225	150	100	70	
M-F	3-330pm	Inside Edition	525	350	225	150	115	
	330-4pm	Jeopardy	575	375	250	175	125	
M-F	4-430pm	News 4 EN at 4p	575	375	250	150	110	
	430-5pm	News 4 EN at 430p	575	375	250	150	115	
	5-530pm	News 4 EN at 5p	1,125	750	500	300	225	
	530-6pm	NBC Nightly News	3,725	2,475	1,650	1,000	700	
	6-630pm	News 4 EN at 6p	1,800	1,200	800	475	325	
	630-7pm	News 4 EXTRA Edition News	1,100	725	475	275	210	
	SAT	530-6pm	NBC Nightly News	3,725	2,475	1,650	1,000	700
	SAT	6-630pm	News 4 Sat EN	800	525	350	200	140
	SUN	5-530pm	News 4 Sun EN	875	575	375	225	150
	SUN	530-6pm	NBC Nightly News	3,725	2,475	1,650	1,000	700
M-F	10-1035pm	News 4 Late News	2,700	1,800	1,200	725	550	
	SAT	10-1030pm	News 4 Late News Saturday	1,450	900	600	350	265
	SUN	10-1035pm	News 4 Late News Sunday	2,400	1,500	1,000	600	450
M-F	1035-1135pm	Tonight Show w/Jimmy Fallon	750	500	325	200	135	
	1135-1235am	Late Night w/Seth Meyers	225	150	100	50	30	
	1235-105am	A Little Late w/Lilly Singh	125	75	50	25	15	
	M-F	105-2am	NBC Today - All Night	125	75	50	25	5
	SAT	1030p-12am	Saturday Night Live	675	450	300	175	115

As you'll see, the difference in the rates is accounted for by differences in preemptibility, specifically authorized by 47 C.F.R. § 73.1942(a)(1)(iv).

For timeslot 1 (NBC Today Show), the Committee purchased airtime preemptible at 24-hours notice at a \$300 rate, while the Committee's opponent purchased more expensive airtime preemptible at 48-hours notice, at a rate of \$425.

For timeslot 2 (Sat News 4 EMN), the Committee again purchased airtime preemptible at 24-hours notice, at a \$175 rate, while the Committee's opponent again purchased more expensive airtime preemptible at 48-hours notice, at a rate of \$250.

For timeslot 3 (Saturday Night Live), the Committee again purchased airtime preemptible at 24-hours notice, at a \$175 rate, while the Committee's opponent again purchased more expensive airtime preemptible at 48-hours notice (the Complaint gives the rate as \$325, and so does the Friends of Inhofe contract with KFOR, while the Rate Card shows \$300).

For timeslot 4 (News 4 @ Noon), the Committee purchased the least expensive airtime, that was immediately preemptible, at a \$140 rate, while the Committee's opponent once again purchased more expensive airtime preemptible at 48-hours notice, at a rate of \$300.

And for timeslot 5 (News 4 @ 12:30p), the Committee again purchased the least expensive airtime, that was immediately preemptible, at a \$140 rate, while the Committee's opponent once again purchased more expensive airtime preemptible at 48-hours notice, at a rate of \$300.

In short, no action should be taken on the Complaint since the alleged violations are explained entirely by differences in preemptibility.

Still, my clients are unsure why the Oklahoma Republican Party filed this Complaint in the first place, since the Party could simply have contacted the Committee's opponent, and asked the campaign staff whether differences in preemptibility explained the differences in rates.

In fact, it seems clear the Party either failed to contact Friends of Jim Inhofe to confirm the allegations in the Complaint, or they did, and the Friends of Jim Inhofe did one of two things: They told the Party the differences were explained by preemptibility, or they didn't.

If Friends of Jim Inhofe told the Party the differences were explained by preemptibility, then the Party filed a knowingly false complaint. If Friends of Jim Inhofe didn't tell the Party the differences were explained by preemptibility, then Friends of Jim Inhofe knowingly allowed the Party to file a false complaint. Or the Party just didn't check with Friends of Jim Inhofe, in which case the Party filed a negligently false complaint.

Please let me know if you require anything further. Thanks for your time, and take care.

Best,

BRIAN TED JONES

4



FEDERAL ELECTION COMMISSION
1050 First Street, NE
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STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

ARMUR/RR/P-MUR# 7809

Name of Counsel: Brian Ted Jones

Firm: Brian Ted Jones, PC

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Oklahoma City, OK 73103

Office#: 405-843-9909 Fax#: 405-842-2913

Mobile#:

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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.

10/08/2020
Date

DocuSigned by: Danielle Ezell
5609DC112D7C448...
(Signature - Respondent/Agent/Treasurer)

Treasurer
Title

Danielle Ezell
(Name - Please Print)

RESPONDENT: Abby Broyles for US Senate
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: P.O. Box 12716
(Please Print) Oklahoma City, OK 73157

Home#: Mobile#:

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E-mail: danielle@mettise.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.