

**ASHBY**

August 29, 2022

**VIA E-MAIL TO CELA@FEC.GOV**

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
1050 First Street, NE  
Washington, DC 20463

Attn: Christal Dennis, Paralegal

**MUR 8025: Response of Bryan Smith, Bryan Smith for Idaho Inc., and Ron Crane, its Treasurer**

To Whom It May Concern:

On behalf of Bryan Smith and Bryan Smith for Idaho Inc., and Ron Crane, its Treasurer, I submit this response to Stephanie Mickelson's speculative and threadbare complaint.

**Facts**

Bryan Smith was a candidate for Idaho's second Congressional seat in the primary that took place on May 17, 2022. He lost. Bryan Smith for Idaho was his federal candidate committee. At the time of the facts at issue in the Complaint, Bryan Smith was one of four co-Vice-Chairs of the Bonneville County Republican Party.

On April 18, 2022, Bryan Smith for Idaho accepted a \$1000 contribution from the Bonneville County Republican Party.

Prior to the primary date, the Bonneville County Republican Party ("County Party") printed a sample ballot with Bryan Smith as one of the 17 candidates that the county party recommended. Of the 17 candidates, Bryan Smith and one other federal candidate were listed, the remaining 14 were state and local candidates. Bryan Smith was aware that the County Party was vetting primary candidates but had no part in the County Party's decision to include his



name on the sample ballot. He discovered he was on the sample ballot only after the County Party voted on who was to be placed on the sample ballot. Bryan Smith did not participate in the vote, nor did he attend the meeting when the vote was taken. Bryan Smith did not send anyone on behalf of him or his campaign to advocate on his behalf.

## **Analysis**

### **1. It is not a violation of federal law for federal candidates to receive local party committee contributions when the contribution is from federally permissible funds.**

A federal candidate committee may receive contributions from local party committees, provided the contribution is from federally permissible funds. MUR 6170 (Tuscola Co. Dem. Comm.); MUR 7251 (Loudermilk for Congress, *et al.*); MUR 6683 (Fort Bend County Democratic Party). Further, the Commission has established that so long as there is a reasonable accounting method to determine that the contribution came from federally permissible funds, then no violation of the Act has occurred. 11 CFR 102.5(b)(1); Advisory Opinions 2007-26 (Schock) (where the Commission permitted a federal candidate to disburse funds from his state campaign committee to non-federal accounts of party and candidate committees, provided his state campaign committee used a reasonable accounting method to track the federally permissible funds); 2006-38 (Casey State Committee) (where the Commission stated it was permissible for a state campaign committee to use a reasonable accounting method to identify federally permissible funds in its state committee account and specifically cited two other Advisory Opinions, 2006-6 (Busby) and 2004-45 (Salazar) as the authority for two of those methods: "first in, first out" and "last in, first out"); MUR 6170 (Tuscola Co. Dem. Comm.) Factual & Legal Analysis at 5 (where the Commission stated federally permissible funds could be demonstrated through a reasonable accounting method); MUR 7251 (Loudermilk for Congress, *et al.*) Factual & Legal Analysis at 9 (saying that state committees may use a "reasonable accounting method" to separate permissible from impermissible funds and make contributions from the federally permissible funds); *see also* MUR 6970 (Peter Dicianni, *et al.*) Factual & Legal Analysis, FN 25.

Additionally, there are numerous examples of where the Commission has allowed federally permissible funds to be determined by a review of campaign finance reports. MUR 6170 (Tuscola Co. Dem. Comm.) Factual & Legal Analysis at 5-6. (where the Commission reviewed the local party committee's state campaign finance reports to determine whether the local party committee had sufficient federally permissible funds); MUR 6683 (Fort Bend County Democratic Party), Factual & Legal Analysis at 12 (where the Commission reviewed Fort Bend's state disclosures to find it had sufficient federal funds to finance activities related to a federal election); MUR 7251 (Loudermilk for Congress, *et al.*) Factual & Legal Analysis at 9 (the Commission reviewed the state committee's reports after the state committee did not present a reasonable accounting method and found sufficient federally permissible funds for its federal activity); MUR 5973 (Warren Co. Dem. Comm.), Factual & Legal Analysis at 10 (the Commission reviewed state campaign finance reports and applied a "first in first out" analysis to determine that the county party committee had sufficient federal permissible funds to pay for a public communication under the Act).



In MUR 6170, Complainant alleged a local party committee made contributions and expenditures in support of federal candidates without using federally permissible funds. Compl. at. 2. The Commission stated that federal contributions and expenditures must be made with federally permissible funds, which could be demonstrated through a reasonable accounting method. MUR 6170, Factual & Legal Analysis at 5. While the state limits and prohibitions were similar to the federal limits and prohibitions regarding contributions in MUR 6170, the Commission also reviewed the local party committee's state campaign finance reports and found that the local party committee had a sufficient amount of federally permissible funds at the time of the federal contributions. Factual & Legal Analysis at 5-6. The Commission found no violation had occurred since the local party committee had sufficient federally permissible funds. MUR 6170, Factual & Legal Analysis at 6.

Again in MUR 5973, the Commission reviewed the county party's state campaign finance reports after the complainant alleged a county party committee paid for a postcard that mentioned federal candidates with non-federal funds. Factual & Legal Analysis at 1, 10. Using a first in first out analysis, the Commission determined that the county party committee had sufficient federally permissible funds to pay for the post card, and therefore, the county party did not violate the Act as to 52 US §30125(b)(1). Factual & Legal Analysis at 10.

Similar to MUR 6170, a local party, the Bonneville County Republican Party made a contribution to Bryan Smith for Idaho, a federal candidate committee. And just as in MURs 6170 and 5973, where the Commission reviewed the local party committee's reports, a review of the County Party's April 2022 state campaign finance reports demonstrates that there was a sufficient amount of federally permissible funds for the County Party to make, and for Bryan Smith for Idaho to receive, the contribution on April 18, 2022. Specifically, from April 5<sup>th</sup>-15<sup>th</sup>, the County Party had received \$3,875 in contributions from individuals under the federal contribution limit of \$2900. *See* Attachment A. **Therefore, like in MURs 6170 and 5973, the Commission should similarly dismiss this allegation and find no reason to believe that Bryan Smith or Bryan Smith for Idaho violated the Act by accepting the \$1000 contribution from the local party committee, since the contribution came from federally permissible funds.**

**2. Complainant fails to present any evidence for its claim of coordination, but instead bases her allegation expressly on inference.**

Complainant states that solely because Bryan Smith held an officer role with the County Party that he was "presumably involved in the decision to expend non-federal money to print and mail the endorsement pieces." The "endorsement pieces" that Complainant references, we presume is the sample ballot that Complainant attaches in several forms to the Complaint.

A "coordinated communication" is one that is paid for by someone other than a candidate or a candidate's authorized committee, satisfies one of the enumerated "content" standards at 11 C.F.R. § 109.21(c), and satisfies one of the enumerated "conduct" standards at 11 C.F.R. § 109.21(d). A coordinated communication is an in-kind contribution to the candidate with whom it was coordinated, 11 C.F.R. § 109.21(b), and is subject to the Act's amount limitations and source prohibitions. 11 C.F.R. § 109.22.



MUR 8025: Response of Bryan Smith & Bryan Smith for Idaho Inc.  
August 29, 2022  
Page 4 of 4

Commission precedent makes clear that mere speculation and inference is not a sufficient basis to find reason to believe that coordination occurred around a communication. For instance, in MUR 5576, a complaint alleged that the New Democrat Network coordinated a television advertisement criticizing unnamed “Republicans” with Tony Knowles for U.S. Senate because it used the Knowles Committee’s media buying firm to place its ad. The complaint stated that “it is unclear whether the NDN has produced and distributed these ads at the suggestion or request of . . . or after substantial discussions with the Knowles Committee,” but posited that it was “‘not possible’ that the media buying firm was ‘not aware’ of various activities of the Knowles Committee and . . . also not ‘materially involved’ in certain discussions with NDN.” MUR 5576, Compl. at 2, First Gen’l Counsel’s Rpt. at 5 & fn. 7. The Office of General Counsel stated that “completely speculative” allegations are “not sufficient to support a reason to believe recommendation.” MUR 5576, First Gen’l Counsel’s Rpt. at 5 & fn. 7 (citing MUR 4960, Statement of Reasons of Comm’rs Mason, Sandstrom, Smith & Thomas (“Unwarranted legal conclusions from asserted facts . . . or mere speculation will not be accepted as true.”)). The Commission accepted the recommendations of the First General Counsel’s Report and found no reason to believe the New Democrat Network coordinated the TV ad at issue.

Similarly, in MUR 7169, complaints alleged “close and ongoing coordination” around fifteen television ads that aired during the 2016 election but did not provide any specific facts to support the allegation. MUR 7169, Compl. at 9, First Gen’l Counsel’s Report at 12. On that bare allegation, the Commission accepted the Office of General Counsel’s recommendation that there was “no basis” to find reason to believe the ads were coordinated. MUR 7169, First Gen’l Counsel’s Report at 12. Likewise, in MUR 6740, the Commission accepted the Office of General Counsel’s recommendation against finding reason to believe based upon “unsupported” and “speculative” allegations that a candidate “may have been coordinating expenditures or communications” with a Super PAC through a common donor. MUR 6740, First Gen’l Counsel’s Report at 3.

In this matter, Complainant offers no facts regarding the alleged coordination. Instead, she merely speculates that because Bryan Smith held a role with the Bonneville County Committee, he was “presumably involved” in the decision to include his name on the County Party’s sample ballot. Compl. at 2. This inference, standing alone as it does, is insufficient to establish reason to believe coordination has occurred. Nevertheless, Bryan Smith asserts that neither he nor any agent of his or his campaign was involved in the decision making to put his name on the County Party’s sample ballot. Please see the attached affidavit.

### **Conclusion**

For all of these reasons, I urge the Commission to dismiss this complaint, find no reason to believe, and close the file in this MUR accordingly.

Sincerely,

*Rebekah Marino*

Rebekah Marino

## Attachment A:

Provided below is a sample of contributions totaling \$3,875 that Bonneville County Republican Central Committee ("BCRCC") received leading up to its \$1,000 contribution to Bryan Smith for Congress on April 18, 2022, that qualify as permissible federal funds. This is available via a search of campaign finance reports at <https://sunshine.sos.idaho.gov/>.

### April 2022 Report:

- BCRCC reported that it had an ending cash balance of \$98,172.96 of which \$3,875 came from contributions by Mark Fuller, John Crowder, Alayne Bean, James Wright, and Victoria Wright before April 18, 2022.



## CAMPAIGN FINANCIAL DISCLOSURE REPORT SUMMARY PAGE

# C-2

SECTION 1: CANDIDATE/COMMITTEE INFORMATION			
Name of Candidate or Political Committee and Chairperson		Office Sought (if candidate)	District (if any)
Bonneville County Republican Party, Mark Fuller			
Mailing Address			
Address	City	State	Zip Code
PO Box 50935	Idaho Falls	ID	83405

SECTION 2: POLITICAL TREASURER INFORMATION			
Name of Political Treasurer			
Barbara Miller			
Mailing Address			
Address	City	State	Zip Code
P. O. Box 2668	Idaho Falls	ID	83403

SECTION 3: TYPE OF REPORT		
Type of Filing	Reporting Period	
<input type="checkbox"/> Original <input checked="" type="checkbox"/> Amendment	Start Date	End Date
	04/01/2022	04/30/2022

SECTION 4: SUMMARY		
	Column 1: This Period	Column 2: Calendar Year To Date
LINE 1: Cash on Hand January 1 (This Calendar Year)	\$ XXXXXX	\$ 91,675.98
LINE 2: Enter Beginning Cash Balance	\$ 69,820.98	\$ XXXXXX
LINE 3: Total Contributions (Enter amount from page 2, line 5)	\$ 93,984.64	\$ 108,809.64
LINE 4: Refund of Previous Expenditure(s) (Enter amount from page 2, line 6)	\$ 0.00	\$ 0.00
LINE 5: Subtotal (Add lines 1, 2, 3, and 4)	\$ 163,805.62	\$ 200,485.62
LINE 6: Total Expenditures (Enter amount from page 2, line 14)	\$ 65,632.66	\$ 102,312.66
LINE 7: Enter Ending Cash Balance (Subtract line 6 from line 5)	\$ 98,172.96	\$ 98,172.96
LINE 8: Outstanding Debt to Date (Enter amount from page 2, line 21)	\$ 0.00	\$ XXXXXX

Note: The closing cash balance for the current reporting period appears on the next report as the beginning cash on hand.



**SCHEDULE A:  
ITEMIZED CONTRIBUTIONS  
OF MORE THAN FIFTY DOLLARS (\$50) THIS PERIOD**

§67-6607(1a), Idaho Code

CANDIDATE/COMMITTEE INFORMATION	
Name of Candidate or Political Committee and Chairperson	Reporting Period
Bonneville County Republican Party, Mark Fuller	April 2022 Report

ITEMIZED CONTRIBUTIONS OF MORE THAN FIFTY DOLLARS (\$50) THIS PERIOD				
Date	Election Type	Contributor Name and Address	Amount	YTD Amount
4/5/2022		Tolson & Wayment Plc, 2677 E 17th St.#300, Idaho Falls, ID, 83406	\$1,250.00	\$1,250.00
4/5/2022		Mark Fuller, 560 Douglas Ave, Idaho Falls, ID, 83401	\$750.00	\$2,000.00
4/6/2022		Giddings 4 Idaho, P.O.Box 43, White Bird, ID, 83554	\$1,450.00	\$1,450.00
4/6/2022		John Crowder, 845 Barton Rd #40, Pocatello, ID, 83204	\$1,250.00	\$1,250.00
4/6/2022		Alayne Bean, 279 9th St., Idaho Falls, ID, 83404	\$625.00	\$625.00
4/11/2022		James Wright, 316 Stillwater Circle, Idaho Falls, ID, 83404	\$625.00	\$625.00

4/15/2022		Victoria Wright, 5223 E Sagewood Drive, Idaho Falls, ID, 83406	\$625.00	\$625.00
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STATE OF IDAHO )  
 )  
COUNTY OF BONNEVILLE ) to wit:

**AFFIDAVIT OF BRYAN SMITH**

1. I am Bryan Smith. I am at least 18-years-old, am of sound mind, make this affidavit based on my own personal knowledge, make it of my own volition, and am free from any duress, threats, intimidation or other undue influence.
2. I was a candidate in the Congressional Republican primary for the second district of Idaho in 2022.
3. I was formerly one of the four co-Vice Chairs of the Bonneville County Republican Party.
4. At the time of the events at issue in the Complaint, I was one of the four co-Vice Chairs of the Bonneville County Republican Party. About four weeks before the May primary, I learned that the Bonneville County Republican Party had formed a committee to vet names to be on a sample ballot prepared by the Bonneville County Republican Party. I was not on that vetting committee. I participated only as a candidate in a meeting where members of the committee asked me questions as part of their vetting process. The committee conducted similar meetings with numerous other candidates.
5. After the Bonneville County Republican Party's vetting process was completed, the Bonneville County Republican Party took a vote to determine who would be on the sample ballot. I did not participate in the vote. In fact, I was not present at the meeting where the vote took place, and I did not send anyone to the meeting to advocate on my behalf.

**Bryan Smith**

Subscribed and sworn before me, a Notary Public or other official authorized to administer oaths of and for the jurisdiction aforesaid, by Bryan Smith on August 29, 2022.

My Commission Expires: 04/11/2023

