

MARCUSBONSIB, LLC
 ATTORNEYS AT LAW
 CAPITAL OFFICE PARK
 6411 IVY LANE
 SUITE 116
 GREENBELT, MARYLAND 20770

BRUCE L. MARCUS
 ROBERT C. BONSIB*
 MEGAN E. COLEMAN
 SYDNEY M. PATTERSON

*ALSO ADMITTED IN DC

RECEIVED

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301-441-3000
 FACSIMILE 301-441-3003
 WWW.MARCUSBONSIB.COM

September 23, 2024

Via Electronic Mail (cela@fec.gov)

Wanda D. Brown
 Assistant General Counsel
 Complaints Examination & Legal Administration
 Federal Election Commission
 1050 First Street, N.E.
 Washington, DC 20463

RE: MUR 8189

Dear Ms. Brown:

This letter is submitted on behalf of the Prince George's County government (the "County") in response a Complaint filed by Tonya Wingfield on November 30, 2023.

The Complainant incorrectly alleges that the County made an impermissible in-kind contribution to Alsobrooks for Senate when it disseminated an advertisement ("Ad") in connection with the County's "Strengthening Prince George's" economic development initiative.¹

The allegations are without merit. The Ad is plainly unrelated to Ms. Alsobrooks' federal candidacy and fails to meet the elements of a "coordinated communication" within the meaning of the Federal Election Campaign Act of 1971, as amended (the "Act") and applicable Federal Election Commission ("Commission") regulations. For these reasons, and as explained more fully below, we ask the Commission to dismiss the complaint and reject the Complainant's request to open an investigation.

¹ The Complaint also alleges violations of the Prince George's County, Maryland Ethics Code. Though these allegations also lack merit, they are not discussed in this Response because they are outside the jurisdiction of the Federal Election Commission.

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I. Factual Background

Angela Alsobrooks was first elected as the County Executive of Prince George's County, Maryland in 2018 and was re-elected to a second term in 2022. On or about May 9, 2023, Ms. Alsobrooks announced her candidacy for the U.S. Senate.

In 2020, the Alsobrooks administration set in motion an initiative to secure public and private funding for transit-oriented development in the County, which the administration referred to as the "Blue Line Corridor project."² The project's vision is a consolidation of over 15 different community planning processes dating back to 2010. In April 2022, then-governor Larry Hogan signed legislation which, among other things, authorized the Maryland Stadium Authority to issue \$400 million in bonds to fund the project.³

In January 2023, the Maryland Board of Public Works approved the MOU that formally begins the process to issue up to \$400 million in bonds for economic development along the Prince George's County Blue Line Corridor. Coinciding with the approval of the MOU, the County began holding public meetings in the spring of 2023 to update the community on the project, share the overall vision for the future development of the corridor, and include the public in planning and design of the new Civic Plaza at the Wayne K. Curry Building in Largo, among other things.

The County also launched a public awareness and education campaign around the Blue Line Corridor project in 2023, called "Strengthening Prince George's County." As part of this campaign, the County created a website, <https://strengtheningpgc.com>, which provided an overview of the planned development projects and their economic impact on the County. The Ad promoted the education campaign and website. The Ad aired between August 2023 and October 2023 on cable, radio, digital streaming placements, and traditional social media channels.

Video of the Ad is available at: <https://www.youtube.com/shorts/xeTBEk3LjR8> and a transcript follows:⁴

² See Rachel Chason, *Pr. George's Officials Say Long-Awaited Transformation is Coming*, WASH. POST (April 18, 2022), <https://www.washingtonpost.com/dc-md-va/2022/04/18/prince-georges-blue-line/>.

³ See Brad Bell, *Prince George's Co. Secures 'Historic' \$2.5 Billion, Advances Blue Line Corridor Project*, WJLA.COM (April 13, 2022), <https://wjla.com/news/local/prince-georges-county-maryland-secures-historic-25-billion-dollars-state-aid-legislative-session-governor-larry-hogan-county-executive-angela-alsobrooks-blue-line-corridor-project-affordable-housing-cancer-center-largo>.

⁴ The Complaint also refers to "[s]imilar advertisements...running on social media platforms like Facebook and Instagram" with a dead link to what appears to be the Facebook ad archive and a parenthetical with the following quoted text: "Jobs. Housing. Amenities. Angela Alsobrooks is making sure \$1 billion in economic investments include everyone." See Complaint, at 3. To the extent an ad with such text was previously available at his link, the arguments and analysis in this response also explain why, with respect to such an ad, the Commission should find no reason to believe a violation of the Act has occurred and should dismiss the Complaint.

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Audio	Video
Everybody wants to do big things	Video of child staring outside bus window
But big things are the result	Still image of the University of Maryland campus
Of hundreds of small things	Video of child studying
Done well every day	Videos of an athlete running up the stairs of a stadium and victorious boxer raising his arm after a fight
And that takes vision	Video of child staring into the sky
County Executive Angela Alsobrooks' vision	Images from County Development Plan
is of a Prince George's County	Video of a man and woman embracing
Where everyone prospers	Videos of a man smiling and a girl on her father's back
Which is why she's teamed up with other County leaders to put the focus of more than one billion dollars in public-private investment where it belongs	Images from County Development Plan
On the people who live here because change only matters if you're a part of it	Videos of various smiling people
Strengthening Prince George's—progress, growth, community	Text reading "Strengthening Prince George's," "StrengtheningPGC.Com" and QR code for StrengtheningPGC.Com

II. Analysis

Under 11 C.F.R. § 109.21, a communication is a “coordinated communication” and therefore an in-kind contribution only if it satisfies all three prongs of the regulation: the payment prong, conduct prong, and the content prong. 11 C.F.R. § 109.21(a). Because the Ad does not meet any of the content prong standards, it is not a coordinated communication.

A communication meets the content prong standards only if it (i) is an “electioneering communication” (ii) disseminates, distributes, or republishes campaign materials prepared by a candidate or the candidate’s authorized committee; (iii) expressly advocates the election or defeat of a clearly identified candidate or contains “the functional equivalent of express advocacy;” or (iv) refers to a clearly identified Senate candidate and is publicly distributed in the clearly identified candidate’s jurisdiction within 90 days of the candidate’s primary or general election. 11 C.F.R. § 109.21(c). The Ad fails to satisfy any of these standards.

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The Ad is not an “electioneering communication,” because it was not disseminated within 30 days of a primary involving Ms. Alsobrooks or within 60 days before the general election for U.S. Senate. The Ad also was not disseminated in Maryland within 90 days of a primary involving Ms. Alsobrooks or the general election. Rather, the Ad aired between August 2023 and October 2023, at least six months before Maryland’s primary election on May 9, 2024, for U.S. Senate and at least twelve months before the November 5, 2024 general election.⁵

Additionally, the Ad does not disseminate, distribute, or republish any campaign materials prepared by the candidate or her campaign committee. Strengthening Prince George’s is a County public awareness and education campaign related to sharing information with the people of Prince George’s County about the County’s Blue Line Corridor project. As demonstrated by the County’s Strengthening Prince George’s website and the Ad itself, the Ad is unrelated to Ms. Alsobrooks’ campaign for the United States Senate.⁶ The Ad does not include any hallmarks of candidate campaign materials—it does not include Ms. Alsobrooks’ image⁷ or voice, and it does not refer to her candidacy, to voting, or to an election, much less expressly advocate for her election. Neither the candidate nor her campaign prepared any portion of the materials featured in the Ad.

Lastly, the Ad does not expressly advocate the election or defeat of a clearly identified candidate for federal office and does not include the functional equivalent of express advocacy. It does not include any of the so-called “magic words” such as “vote for,” “elect,” “defeat,” etc., or other words “which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s).” 11 C.F.R. § 100.22(a).

Furthermore, “[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election” it is not the case that the Ad “could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s).” 11 C.F.R. § 100.22(b). Nor is it the case that the Ad is “susceptible of

⁵ See Maryland Board of Elections, 2024 Election Calendar, <https://elections.maryland.gov/elections/2024/2024%20Elections%20Calendar.pdf>.

⁶ See also MUR 6376 (Lori Edwards), Factual and Legal Analysis at 3-4, (dismissing complaint where county officeholder and simultaneous federal candidate appeared in public service announcements disseminated by the county that met all three prongs of 11 C.F.R. § 109.21 because the communications did not focus on her role as a federal candidate and did not contain any electoral content regarding her candidacy); MUR 5770 (Laffey), Statement of Reasons of Chairman Lenhard and Comms. von Spakovsky, Walther and Weintraub at 2-3 (dismissing complaint where city mayor and simultaneous federal candidate was identified in communications disseminated by the city that listed accomplishments achieved by city while candidate was Mayor because of the nature of the communications).

⁷ The link to the Ad utilized in this response is a link to the Ad posted on the YouTube channel of the County Executive of Prince George’s County: @princegeorgescountyexecutive. The current profile photo for this channel is of Ms. Alsobrooks. The profile photo and account name appear below the Ad to indicate to the viewer what account posted the Ad. The user account name and photo is not itself part of the Ad. If the Ad were posted by a different YouTube account, that account name and photo would be indicated below the Ad.

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no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.” 11 C.F.R. § 109.21(c).

In fact, the only reasonable interpretation of the Ad is to highlight a significant County economic development initiative and direct the public to the County’s “Strengthening Prince George’s” website for more information and updates. This would be true even if the Ad aired close in time to an election, which it did not. Because the Ad does not refer to the candidacy of Ms. Alsobrooks for a federal office or to any other candidate, does not refer to voting or elections, and does not otherwise contain language which could reasonably be interpreted as advocating for her election or any other candidate’s defeat, it is clearly not the functional equivalent of express advocacy.

Given that the Ad fails to satisfy any of the content prong standards, it cannot be considered a coordinated communication in violation of the Act and the Complaint must be dismissed. Although it is therefore unnecessary for the Commission to evaluate whether any of the conduct prong standards have been met, the Complaint fails to identify a single fact that even suggests that there was any conduct that would constitute coordination under 11 C.F.R. § 109.21(d). Instead, the Complaint asks the Commission to infer coordination based on nothing more than Ms. Alsobrooks’ position as County Executive.⁸ Despite the absence of any specific factual basis, the Complaint encourages the Commission to undertake a fishing expedition, stating, “[f]urther investigation will doubtless show that Ms. Alsobrooks and her political advisers were deeply involved in the initiation and pursuit of this campaign.”⁹

The Commission has long made clear that unsupported allegations of coordination cannot provide the basis for a reason to believe finding.¹⁰ Instead, the Commission requires the Complainant to provide “probative information of coordination” to satisfy the conduct prong of the coordinated communications regulations.¹¹ The Complaint fails to meet this standard.

⁸ See Complaint at 5 (stating that “Ms. Alsobrooks is clearly involved with these advertisements, which are being offered through a campaign associated with her leadership.”).

⁹ *Id.*

¹⁰ See, e.g. MUR 6747 (Santorum for President), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 23 (“Instead of presenting facts, the complaint seems to rely on the ‘when there’s smoke, there’s fire’ speculation that the Commission has already determined is insufficient to justify an investigation.”); see also MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1-2 (“the Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented.”); see also 11 CFR § 111.4(d)(2).

¹¹ See, e.g., MUR 5999 (Freedom’s Watch), Factual and Legal Analysis at 6; MUR 6059 (Sean Parnell for Congress), Factual and Legal Analysis at 6.

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III. Conclusion

The Complaint's allegations of coordination with respect to the Ad are speculative and without merit. As set forth above, because the Ad fails to satisfy any of the content prong standards of 11 C.F.R. § 109.21(c), it is not a coordinated communication.

Therefore, the County did not make an impermissible in-kind contribution under the Act when it disseminated the Ad as part of its public awareness and education campaign around the County's important "Strengthening Prince George's" economic development initiative. For all of the reasons set forth herein, the County asks the Commission to dismiss the Complaint and decline the Complainant's request to open an investigation.

Respectfully submitted,

Bruce L. Marcus

Bruce L. Marcus
MARCUSBONSIB, LLC
6411 Ivy Lane, Suite 116
Greenbelt, Maryland 20770
(301) 441-3000
bmarcus@marcusbonsib.com
*Special Counsel to Prince George's
County Government*