



In the Matter of)
 Sam Brown for Nevada and)
 Chrissie Hastie,)
 in her official capacity as Treasurer) MUR 8313

INTRODUCTION

This matter involves a videotaped interview (the “Video”) of a Marine Corps veteran speaking positively of U.S. Senate candidate Sam Brown. The Video, which was apparently produced by the defunct Duty First Nevada PAC (“DFN”), was posted publicly on the video-sharing website Vimeo. Mr. Brown and his campaign committee Sam Brown for Nevada (the “Brown Campaign”) then took portions of the Video from Vimeo, rearranged them, and reposted the footage on X.

On its face, this common practice of sharing content on social media (obviously) does not violate the Federal Election Campaign Act of 1971, as amended (the “Act”) or Commission regulations. The Complaint manages to allege that this innocuous activity resulted in a prohibited in-kind contribution from DFN to the Brown Campaign only by grossly misrepresenting (or wholly disregarding) the plain facts, which are easily available to the complainant. Upon review of these plain facts, there is no basis for the alleged violation. Accordingly, the Commission should dismiss this Complaint.

ANALYSIS

1. The Video was publicly available material

According to the Complaint (at 3), DFN first used four seconds of footage from the Video in what was apparently a paid television advertisement that was disseminated on or about June 12, 2024. As the Complaint (at 4) further notes, DFN terminated on July 5, 2024. The entire 12 minutes and 31 seconds-long Video was publicly posted on the video-sharing website Vimeo¹ on July 25, 2024.

¹ <https://vimeo.com/990214677> (last visited Sep. 12, 2024).

More than a week later, on August 5, 2024, Sam Brown reposted 45 seconds of footage from the Video on X, along with some text thanking Redmond Barnes, the veteran featured in the Video, for his favorable remarks about Brown.²

The Commission considered a similar fact pattern in MUR 8009 (Protect Ohio Values PAC (“POV PAC”)). There, POV PAC allegedly made impermissible in-kind contributions to JD Vance for Senate by posting polling and voter-targeting information on Medium.³ The Commission dismissed the complaint “in light of the public nature of the communications at issue.”⁴ As the Commission explained:

anything of value at issue here . . . was ultimately made public after it was published to an online blog, where it was accessible to the candidate’s committee. There is no allegation or information indicating that POV PAC gave any information or materials directly to the Vance Committee . . . Additionally, the information at issue here was posted in ordinary language on a publicly available platform, Medium, where any information is searchable and available at no cost to the viewer.⁵

And so it is here. The entire Video was publicly available on Vimeo at no cost. Moreover, a simple search for “Redmond Barnes”⁶ on Vimeo easily turns up the Video:

² <https://x.com/captainsambrown/status/1820561818433229100> (last visited Sep. 12, 2024).

³ MUR 8009 (POV PAC), Factual and Legal Analysis at 1.

⁴ *Id.* at 2.

⁵ *Id.* at 12. The Commission’s decision in MUR 8009 (at 13) further noted that there was no evidence that the Vance campaign used any of the POV PAC materials. Nothing in the Commission’s reasoning, however, suggests that the publicly available materials doctrine would not have applied even if the Vance campaign *had* used the materials. Indeed, the publicly available materials doctrine would be irrelevant if it turned on whether a campaign committee uses the materials. If a campaign committee does not use publicly available materials, then the entity publicly posting the materials would simply be engaging in independent activity; there would be no need to analyze whether the materials are publicly available in the first place.


⁶ As the Complaint (at 3) notes, the initial DFN ad identified Mr. Barnes by his full name.

6 results for redmond barnes

Show results for


- Videos (6)
- On Demand (0)
- People (1)
- Channels (0)
- Groups (0)

Refine by:



Veterans interviews A cam

Charlot LLC | 15 views



Veterans interviews B Cam

Charlot LLC | 8 views

The Complaint cites several factors that it erroneously implies would render the publicly available materials doctrine inapplicable.

First, the Complaint falsely insinuates that the video footage Mr. Brown posted on X was not publicly available, but rather was obtained directly from DFN. The Complaint (at 4) notes that “the clip [posted on X] is much longer—clearly indicating that the Brown Campaign possessed additional video of Mr. Barnes’ interview beyond the four seconds posted by DFN.” The Complaint (at 7) reemphasizes this point: “the Brown Campaign had in its possession a much larger amount of video footage than what was posted in the original DFN advertisement.”

The Complaint’s argument is disingenuous and belied by its admission that the entire 12 minutes and 31 seconds-long Video was “posted publicly”⁷ on Vimeo.⁸ Indeed, the Complaint even provides *the exact URL for where the entire Video was publicly posted*.⁹ Moreover, insofar as the 45 seconds of footage that Mr. Brown posted on X does not follow the footage of the original Video contiguously, but rather was rearranged, it is important to note that every single frame of the footage posted on X is from the original video.¹⁰

⁷ Complaint at 7.

⁸ For this reason, the Complaint’s citation (at 6) to MUR 6792 (Sean Eldridge for Congress), where the content at issue was not publicly available, is unhelpful. Moreover, the Commission ultimately deadlocked on pursuing pre-probable cause conciliation in that matter. *See* MUR 6792, Vote Certification dated May 10, 2018.

⁹ Complaint at 4 n.14.

¹⁰ A chart indicating the time markers of the footage posted on X corresponding to the original Video posted on Vimeo is attached as Exhibit A.

Second, the Complaint (at 4) falsely alleges the Video was “shared online in a difficult to find corner of the internet.” As already established above, anyone can easily find the Video by searching Vimeo. By providing the exact URL for the Video, the Complaint shows that the complainant was able to find it. Indeed, with more than 350,000 videos uploaded daily, and more than 100 billion views of those videos,¹¹ Vimeo can hardly be considered “a difficult to find corner of the internet.”

Third, the Complaint (at 6) speculates that DFN may have given the Video footage directly to the Brown Campaign “by using a shared media vendor,” Pathfinder Strategic LLC (“Pathfinder”).¹² Commission rules, however, expressly permit DFN and the Brown Campaign to use a “common vendor” if the vendor has an internal firewall to prevent the type of sharing of information and materials the Complaint alleges.¹³ Indeed, Pathfinder has maintained an internal firewall pursuant to the Commission’s rules for its work with DFN and the Brown Campaign.

As discussed in the affidavit attached as Exhibit B from Richard Hernandez, the Pathfinder consultant for the Brown Campaign, he has complied with the firm’s firewall at all times while working for the Campaign. Consistent with the firewall, and contrary to the Complaint’s speculation,¹⁴ Mr. Hernandez and the Brown Campaign:

- Had no involvement in creating the Video;
- Had no prior knowledge of the Video until it was posted publicly on Vimeo;

¹¹ Vimeo, About, <https://vimeo.com/about> (last visited Sep. 12, 2024).

¹² See also Complaint at 7 (“While the video footage was posted publicly, it was done by the shared media vendor and after DFN terminated its operations.”).

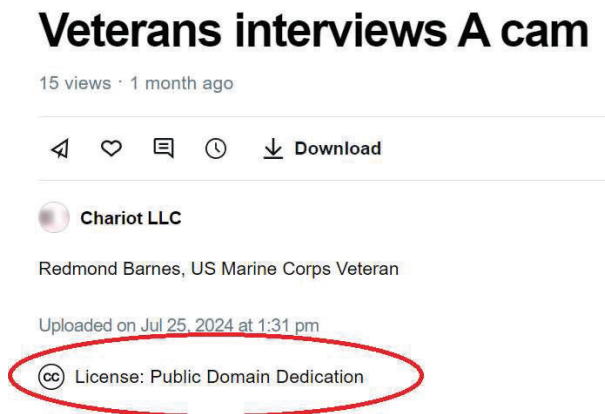
¹³ 11 C.F.R. § 109.21(h).

¹⁴ The Commission cannot find “reason to believe” on mere speculation, especially where, as here, it is directly refuted by a credible affidavit. See, e.g., MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Comm.), Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas at 2 (“Unwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true.”), 4 (“purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [Act] has occurred”); MUR 5467 (Michael Moore), Concurring Statement of Commissioners Smith and Toner at 2 (“The OGC therefore recommended dismissal because the complaint ‘presents nothing more than idle, unsupported speculation.’ We agree. We write here to stress the importance of this case as a matter of Commission policy not to entertain speculative complaints.”) (citation omitted).

- Did not request that DFN or any of its agents post the Video on Vimeo or otherwise provide the Video to the Brown Campaign or any of its agents; and
- Did not receive the Video directly from DFN or any of its agents.

The fact is, the Brown Campaign permissibly obtained the Video from Vimeo, a publicly available source, consistent with Commission precedent.

Fourth, the Complaint (at 7) claims “the [V]ideo is copyrighted material.” This is wrong. The very Vimeo page where the Video is posted,¹⁵ which the Complaint itself cites,¹⁶ expressly disavows any copyright, and states that the Video is in the “Public Domain”:



Because the Video was *not* copyrighted, it had no “fair market value,” as the Complaint (at 7) alleges, and therefore Mr. Brown’s reposting of portions of the publicly available Video could not have resulted in an in-kind contribution.¹⁷ Relatedly, as former Commissioners Petersen and Hunter recognized in MUR 6792 (Eldridge), this type of

¹⁵ <https://vimeo.com/990214677> (last visited Sep. 12, 2024).

¹⁶ Complaint at 4, n.14.

¹⁷ *See, e.g.*, MUR 7670 (Hickenlooper for Colorado), Statement of Reasons of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III at 4 (“the Video Footage had no more than *de minimis* value, given [the vendor’s] standard practice of permitting the public’s free use of small portions of videos available on its website”). In MUR 7670, a vendor purported to retain the copyright for the videos it produced. *See id.* at 1. Here, the license on Vimeo permitted the public’s free use of the Video in its entirety. Therefore, whether or not the Brown Campaign only used “small portions” of the Video is irrelevant.

“surplus footage” from a media consultant “likely ha[s] no market value.”¹⁸ Indeed, the Brown Campaign did not use the Video for any of its own paid advertisements and merely reposted snippets on social media.

2. The Internet exemption applies

The Complaint alleges that the Video, which was posted by DFN’s consultant and then reposted by Mr. Brown at no cost on public social media websites, resulted in an in-kind contribution from DFN to the Brown Campaign. As a matter of law, this cannot be.

The Commission’s Internet exemption generally exempts “any [] form of communication distributed over the Internet” from regulation as either a “contribution” or expenditure” unless it is in the form of a “public communication” (i.e., “communications placed or promoted for a fee on another person’s website, digital device, application, or advertising platform”).¹⁹ As the Commission explained when adopting this rule, “the vast majority of Internet communications are, and will remain, free from campaign finance regulation.”²⁰

The Video falls squarely within the Internet exemption:

- It was publicly distributed on Vimeo, a free and widely used website; and
- Neither its original posting by DFN or its consultant nor its subsequent reposting by Mr. Brown was in the form of a paid advertisement.

Accordingly, the posting of the Video on Vimeo simply could not have constituted an in-kind contribution, as the Complaint alleges.

CONCLUSION

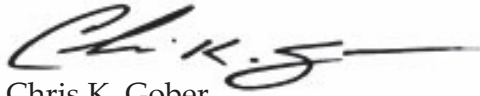
For the foregoing reasons, the Commission should dismiss this Complaint.

¹⁸ MUR 6792 (Eldridge), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter at 4.

¹⁹ 11 C.F.R. §§ 100.94(b), (e)(1); 100.155(b), (e)(1); 100.26.

²⁰ Explanation and Justification for Final Rule on Internet Communications, 71 Fed. Reg. 18589, 18590 (Apr. 12, 2006).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris K. Gober", with a long horizontal flourish extending to the right.

Chris K. Gober

Eric Wang

Anne Marie Mackin

Counsel to Sam Brown for Nevada

Exhibit A**Partial Transcript of Videos Posted on Vimeo and X**

X Video²¹	Vimeo Video²²
“I would describe the current ‘leadership’ as dysfunctional as best.” 0:00-0:04	<i>Verbatim</i> 11:38-11:42
“America needs responsible leaders that understand the consequences of their actions.” 0:05-0:10	<i>Verbatim</i> 11:30-11:35
“Sam Brown understands the struggles that all veterans feel at some point.” 0:11-0:15	<i>Verbatim</i> 4:13-4:17
“I think that’s exactly what we need now, someone who can get knocked down and come back stronger than ever.” 0:16-0:22	<i>Verbatim</i> 5:27-5:33
“We know that even if the cameras aren’t on him he’s still gonna do the right thing.” 0:23-0:26	<i>Verbatim</i> 6:29-6:32
“He’s still fighting for what’s right.” 0:27-0:29	<i>Verbatim</i> 11:52-11:54
“It really speaks to Sam’s character and how he’s gonna handle difficult problems down the road.” 0:30-0:35	<i>Verbatim</i> 5:35-5:40
“Out here in the civilian sector, it’s still, despite what some people think, one team, one fight, we’re all Americans, and Sam’s not gonna forget that.” 0:36-0:45	<i>Verbatim</i> 10:22-10:31

²¹ <https://x.com/captainsambrown/status/1820561818433229100> (last visited Sep. 12, 2024).

²² <https://vimeo.com/990214677> (last visited Sep. 12, 2024).

STATE OF NEVADA

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CLARK COUNTY

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AFFIDAVIT

BEFORE ME, the undersigned authority, Richard Hernandez, personally appeared who, upon first being duly sworn, deposes and states:

I, Richard Hernandez, a resident of Nevada, hereby certify, swear, or affirm that I am over the age of eighteen years and competent to give the following affidavit based on my personal knowledge, unless otherwise stated, and that the following facts and things are true and correct to the best of my knowledge.

1. I am the Senior Account Executive at Pathfinder Strategic, LLC ("Pathfinder"). I have been employed at Pathfinder since July 2022.

2. I have been retained through Pathfinder by Sam Brown for Nevada (the "Brown Campaign") since July 2023 for communications and strategy consulting. I have been the only Pathfinder employee who has worked for the Brown Campaign during the entire 2024 election cycle.

3. I am aware that Duty First Nevada PAC ("DFN") separately retained Pathfinder. However, due to the internal Pathfinder firewall discussed immediately below, I do not have knowledge of the scope of work that Pathfinder performed for DFN. I am aware that DFN supported Sam Brown's candidacy for the 2024 Nevada U.S. Senate primary.

4. As a professional political consulting firm, Pathfinder is knowledgeable about the Federal Election Commission's "common vendor" coordination rule. Accordingly, Pathfinder instituted an internal firewall policy on July 7, 2023. Under Pathfinder's firewall, I was, and remain, on the Brown Campaign side, while my colleagues at the firm who worked for DFN were, and remain, on the independent expenditures ("IE") side.

5. Under the Pathfinder firewall:

- (a) I am prohibited from sharing any non-public campaign plans, projects, activities, or needs of the Brown Campaign with my colleagues on the IE side of the firewall;
- (b) My colleagues on the IE side of the firewall are prohibited from discussing with me the non-public campaign plans, projects, activities, or needs of the Brown Campaign;
- (c) Pathfinder personnel on the IE side of the firewall are prohibited from discussing with me or conveying to me DFN's information. I am also prohibited from discussing with my colleagues on the IE side or conveying to them any of the Brown Campaign's information; and

(d) Pathfinder took measures to prevent the employees on either side of the firewall from accessing the client files of their colleagues on the other side of the firewall.

6. At all times during my work for the Brown Campaign, I have complied with Pathfinder's firewall. Based on the best of my personal knowledge, information, and belief as a principal of Pathfinder, my colleagues have also complied with the firewall.

7. Furthermore, I attest that:

(a) I had no involvement whatsoever in creating the video featuring Mr. Redmond Barnes that is the subject of the complaint in FEC MUR 8218. Based on the best of my personal knowledge, information, and belief as a consultant to the Brown Campaign, no other Brown Campaign agent had any role in creating the video either.

(b) I had no prior knowledge of the video in question until it was posted publicly on Vimeo. Based on the best of my personal knowledge, information, and belief as a consultant to the Brown Campaign, no other Brown Campaign agent had any prior knowledge of the video either.

(c) I did not request that DFN or any of its agents post the video in question on Vimeo or otherwise provide the video to the Brown Campaign or any of its agents. Based on the best of my personal knowledge, information, and belief as a consultant to the Brown Campaign, no other agent of the Brown Campaign made such a request to DFN or any of its agents either.

(d) The video footage of Mr. Barnes that Sam Brown posted on X was obtained from the publicly available Vimeo website.


 Affiant's Signature

Richard Hernandez
 Affiant's Printed Name

Further, affiant sayeth naught.

SUBSCRIBED AND SWORN TO before me on the 24 day of OCTOBER 2024,
by Richard Hernandez, who is personally known to me or who has produced
NV DL as the form of identification.

NOTARY SEAL:



Chris Manolidis
NOTARY PUBLIC, STATE OF NEVADA

My commission expires APRIL 1, 2028