



600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

July 11, 2018

James E. Tyrrell III

T 202.344.4522

F 202.344.8300

jetyrrell@venable.com



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Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street NE
Washington, DC 20463
VIA EMAIL: CELA@fec.gov

Re: MUR 7378; Response to Complaint from Conservative Leadership Now PAC

Dear Mr. Jordan:

We are writing this letter on behalf of Conservative Leadership Now PAC, and Paul Kilgore, in his official capacity as Treasurer (collectively, the “Committee”), in response to the Complaint filed in the above-referenced matter by Hagan for Congress, the principal campaign committee of failed Republican primary candidate Christina Hagan in Ohio’s 16th Congressional District. The Complaint, which was filed by Hagan’s campaign manager one week before the May 8th primary, is nothing more than a Hail Mary attempt to divert attention away from Hagan’s dismal poll numbers and to sling mud at her opponent, Anthony Gonzalez. The Complaint was clearly filed for publicity and political gain, as it is based solely on speculation and innuendo, and is centered around a gross misapplication of federal law. The asserted facts on their face do not support a reason to believe finding in this matter, and the Complaint should be dismissed.

The Federal Election Commission (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 Federal Election Campaign Act (the “Act”). *See* 11 CFR §§ 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

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The Complaint contains a single frivolous claim against the Committee. Specifically, the Complaint alleges that the Committee and Anthony Gonzalez for Congress, the principal campaign committee for Hagan's opponent in the Republican primary, "are colluding by coordinating messaging." As apparent evidence for this contention, the Complaint cites a mailer that the Committee disseminated several days before Gonzalez's campaign sent out an entirely different mailer that touched on some of the same general issues. While it is difficult to see the mailers because they are blurry and embedded within the body of the Complaint, it is crystal clear that they fail to offer any evidence of coordination under the Act or Commission's regulations.

Legal Analysis

In order for a communication to be "coordinated" with a candidate, and thus, an in-kind contribution to the candidate, the communication must: (1) be paid in whole or part by someone other than the candidate; (2) meet one of the content standards; *and*, (3) meet at least one of the conduct standards, as defined by the Act and Commission's regulations.¹

To show that coordination occurred, the Commission provides specific types of conduct that would meet the conduct prong of the coordination test. Three types of such coordinated conduct are: (1) the communication was made at the request or suggestion of a candidate; (2) the candidate had material involvement in the creation, production, or distribution of the communication; or (3) there was substantial discussion between the Committee and the candidate or his or her agents.² There is nothing within the Complaint that indicates any such conduct occurred.

The Commission's regulations provide that *neither material involvement nor substantial discussion may be satisfied "if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source."*³ The sources that the Complaint cites as apparent evidence of coordination are public websites consisting of news articles and Hagan's publicly available voting record while she was a member of the Ohio General Assembly. This is not to mention that the Complaint fails to demonstrate that both the Committee and the Gonzalez campaign used these public sources, because the campaign's mailer does not cite any sources. Thus, the Complaint fails to show that coordinated conduct occurred through its allegation that both the Committee and the campaign relied on the same sources because the sources in question only prove that coordination *did not occur*. And, although immaterial, there is simply no evidence that proves each party relied on these public sources.

¹ 11 CFR § 109.21(a).

² 11 CFR § 109.21(d)(1)-(3).

³ 11 CFR § 109.21(d)(2)-(3).

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In addition, a review of the sources cited in the Complaint makes clear that the criticisms of Hagan's candidacy contained in both mailers had been repeated by the media and general public since she announced her candidacy. The mere fact that the Committee and the campaign decided to echo such common criticisms in their mailers does not demonstrate that they were somehow coordinating in any manner. To the contrary, both entities were merely reading the news and parsing through Hagan's unfortunate and publicly available voting record.

The Complaint fails to allege other types of conduct that could constitute coordination between the Committee and the Gonzalez campaign. For instance, the Complaint neither claims nor offers evidence that there was a common vendor used by both the Committee and the campaign.⁴ The Complaint lacks an allegation either explicitly or implied that there was a former employee or independent contractor of the campaign who became an employee or independent contractor of the Committee.⁵ The Complaint alleges there is "similarity in bullet points" but neither mailer appears to have actual points that are bulleted, and the fact that both mailers have short statements to make a point does not evidence the same vendor was used, or that any other form of coordinated conduct occurred. Therefore, the Complaint in no way alleges or proves that the fourth or fifth types of conduct necessary to prove coordination occurred.

Lastly, the Complaint lacks an allegation and evidence that the sixth type of coordinated conduct occurred, as there was no dissemination, distribution, or republication of campaign material.⁶ The Complaint in part appears to base its allegation of coordination on the sequence of events, in that the Committee mailed a communication, and then the Gonzalez campaign mailed a communication that was allegedly similar. In this case, the Complainant convolutes the issue because if the Gonzalez campaign used something that the Committee had made public, then there would be no in-kind contribution made from the Committee to the Gonzalez campaign. Further, there is nothing to indicate that the Committee used anything of the campaign's that was not public, and even the photographs on both communications are different, so it is unclear what campaign material would have been republished here. Thus, the Complaint fails to prove any campaign material has been disseminated, distributed, or republished, and even if the same material had appeared in both mailers, the sequence of events would also run contrary to the Complainant's allegations because the Committee published its mailer before the campaign.

⁴ 11 CFR § 109.21(d)(4).

⁵ 11 CFR § 109.21(d)(5).

⁶ 11 CFR § 109.21(d)(6).

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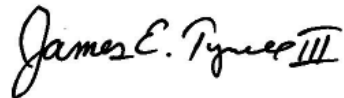
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Conclusion

In presenting politically-motivated and factually and legally unsubstantiated arguments, the Hagan campaign has failed to demonstrate that Conservative Leadership Now PAC has violated any provision of the Act or the Commission's regulations. Instead, Hagan has invoked an administrative process as a means to assault her political opponents. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 344-4522 with any questions.

Respectfully submitted,

A handwritten signature in black ink that reads "James E. Tyrrell III". The signature is written in a cursive, flowing style.

James E. Tyrrell III
Rachel T. Provencher
Counsel to Conservative Leadership Now PAC



VENABLE LLP

600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

September 13, 2018

James E. Tyrrell III

T 202.344.4522
F 202.344.8300
JETyrrell@venable.com

**BEFORE THE FEDERAL ELECTION COMMISSION
STATEMENT OF DESIGNATION OF COUNSEL**

MUR # 7378

Name of Counsel: James E. Tyrrell III
Rachel T. Provencher
Venable LLP
600 Massachusetts Ave. NW
Washington, DC 20001

Telephone: (202) 344-4522
Fax: (202) 344-8300

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.

9/13/18

Date



Respondent/Client Signature

Treasurer

Title

Respondent/Client: Paul Kilgore, Treasurer
Conservative Leadership Now PAC
824 S. Milledge Ave., Ste. 101
Athens, GA 30605

Telephone - Business: (706) 534-7780

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 52 U.S.C. 30109(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.