

Monroe A. Miller, Jr.  
2200 Camp Branch Road  
Waynesville, NC 28786  
March 15, 2020

**Subject:** You need a Lawyer to run for Congress in NC11?

The following letter from Cleta Mitchell of Foley & Lardner to Lindsey Wakely, Associate General Counsel for the North Carolina State Board of Elections, dated 3/4/2020 (one day after the primary election) appeared, where else, on Facebook.

The letter is evidently in response to a complaint filed against **Lynda Bennett**.

Cleta Mitchell apparently advises Lindsey Wakely that she doesn't have jurisdiction over whatever complaint was filed, so back off and dismiss the complaint.

Well, I don't have the complaint that was filed, as I have not made a Public Records request at this time, but I would be willing to bet that it has something to do with Joey Osborne's PRESS RELEASE dated 2/25/2020.

<https://www.haywoodtp.net/pubII/200225-JoeyOsbornePressRelease.pdf>

[**Editors Note:** If the link does not work, copy and paste it into your favorite browser.]

Who is Cleta Mitchell?

- A Google search of "Foley & Landner - mark meadows" reveals that Cleta Mitchell lights up like a Christmas Tree,
- Right Women PAC (<https://rightwomen.com/leadership/>) indicates Cleta Mitchell is Attorney, Foley & Lardner, LLP, Counsel to Right Women PAC.

Wow. This is some pretty gosh-darned high power legal stuff for **Lynda Bennett**. Since when do you need a lawyer to run for Congress in NC11?

Monroe A. Miller, Jr.  
Haywood County Taxpayer.

p.s. If anyone has access to this complaint before I get my hands on it, please forward to the above address.



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CLIENT/MATTER NUMBER  
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March 4, 2020

VIA Electronic Mail to: [lindsev.wakely@ncsbe.gov](mailto:lindsev.wakely@ncsbe.gov)

Lindsey Wakely, Esq.  
Associate General Counsel  
North Carolina State Board of Elections  
PO Box 27255  
Raleigh, NC 27611

Re: Response to February 27, 2020 Letter to Lynda Bennett for Congress

Dear Ms. Wakely:

The undersigned has been retained to serve as counsel to Lynda Bennett for Congress ("the Bennett Campaign") and to respond to your letter dated February 27, 2020 and the complaint filed with the North Carolina State Board of Elections ("NCSBE") enclosed with your letter.

The Complaint must be dismissed by the NCSBE for the following reasons:

**NCSBE Lacks Jurisdiction to Investigate the Complaint.**

The Complaint alleges no violation of North Carolina statutes or other provision of North Carolina law that would confer NCSBE jurisdiction over the Bennett Campaign. Further, federal law preempts state law for all purposes related to the operations of a federal candidate's campaign. The regulations of the Federal Election Commission ("FEC") clearly state: "The provisions of the Federal Election Campaign Act of 1971, as amended, and the rules and regulations issued thereunder, supersede and preempt any provision of State law with respect to election to Federal office." See 11 C.F.R. §108.7(a) and (b), (52 U.S.C. §30143).

The FEC has issued myriad advisory opinions over many decades affirming that federal law governs all matters related to contributions, expenditures, and operations of a federal candidate committee. The only areas of state law related to a federal candidate's committee that are not preempted by federal law are those state laws that pertain to the conduct of the election, such as the manner of qualifying to appear on the ballot, dates and places of elections, voter registration, and voting fraud and other similar offenses. See 11 C.F.R. §108.7(c).

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The FEC has opined on multiple occasions that “ ‘(i) it is clear that Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect State law as to the manner of qualifying as a candidate, or the dates and places of election.’ The House Report goes on to state that ‘[t]he provisions of the conference substitute make it clear that the Federal law occupies the field with respect to ... sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States’ rights to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law.’” See FEC Advisory Opinion 1978-66. (Emphasis added)

Here, the Complaint asserts that the Bennett Campaign ‘coordinated’ with a PAC. However, the determination of whether or not such an assertion is true (which the Bennett Campaign asserts it is not), the FEC has promulgated extensive regulations governing coordinated public communications (See 11 C.F.R. §109.20 – §109.23), and the NCSBE has no jurisdiction to review such matters as the subject matter relates to the operations of a federal candidate committee and, as such, federal law preempts state law in those matters.

**There are no facts giving rise to any violation of law by the Bennett Campaign.**

The Complaint sets forth no facts that constitute a violation of North Carolina law, but rather makes a blanket assertion that the Campaign “coordinated” with a PAC. Any determination of the existence of a coordinated public communication is governed by federal law, not the laws of North Carolina. However, the Complaint is baseless and provides no facts that demonstrate a violation of federal law. A violation of the FEC regulations governing coordinated public communications requires that a third party make expenditures, coordinated with a federal candidate committee, as those terms are defined by the FEC regulations. The complaint here states that “volunteers” distributed candidate literature along with other voting materials. On its face, the allegation fails to state a violation of law because it admits that volunteers were distributing the materials. There are further no facts present suggesting that the Bennett Campaign had anything to do with the materials that volunteers may have distributed. There is, therefore, no violation of law by the Bennett Campaign to be investigated by either the NCSBE or the FEC.

**Conclusion:** The NCSBE lacks jurisdiction to proceed further with regard to the complaint forwarded to the Bennett Campaign, and there are no facts supporting any violation of law by the Bennett Campaign. Accordingly, the Complaint must be dismissed.



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Please contact me at (202) 295-4081 should you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Cleta Mitchell".

Cleta Mitchell, Esq., Counsel  
Lynda Bennett for Congress

cc: Collin McMichael, Treasurer