FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SEP 30 2014

William B. Canfield, Esq.
General Counsel
Commission on Hope, Growth and Opportunity
1900 M Street NW, Suite 600
Washington, DC 20036

15044380118

RE: MUR 6391 & 6471
Commission on Hope, Growth and Opportunity

Dear Mr. Canfield:

On November 29, 2010, May 26, 2011, and May 2, 2012, the Federal Election Commission notified your client, the Commission on Hope, Growth and Opportunity, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaints and amended complaint were forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on September 16, 2014, found that there is reason to believe the Commission on Hope, Growth and Opportunity violated 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General

Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter, at (202) 694-1650.

15044580119

On behalf of the Commission,

Lee E. Goodman
Chair

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
4
5 RESPONDENT: Commission on Hope, Growth and Opportunity MUR 6391 & 6471
6
7 **I. INTRODUCTION**

8 This matter was generated based on a Complaint filed with the Federal Election
9 Commission ("Commission") by the Democratic Congressional Campaign Committee and a
10 second Complaint filed by Citizens for Responsibility and Ethics in Washington. *See* 52 U.S.C.
11 § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)).[1] This matter involves allegations that the
12 Commission on Hope, Growth and Opportunity ("CHGO") violated the Federal Election
13 Campaign Act of 1971, as amended (the "Act"), by failing to report and include proper
14 disclaimers on advertisements that cost more than $2 million. *See* 52 U.S.C. §§ 30104, 30120
15 (formerly 2 U.S.C. §§ 434, 441d).[2]

---

[1] On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

[2] The Complaint in MUR 6391 alleges that CHGO violated the Act by spending over $600,000 to air several advertisements that were either independent expenditures or electioneering communications. Specifically, the complaint alleges that CHGO (i) failed to report the ads pursuant to 11 C.F.R. §§ 109.10 or 104.20, and (ii) failed to include proper disclaimers pursuant to 11 C.F.R. § 110.11. *See* Compl., MUR 6391 (Oct. 7, 2010). Following the receipt of the MUR 6391 Complaint by the Commission, a notification letter and copy were sent to CHGO. Due to a clerical error, however, the letter and Complaint were not received by CHGO until November 29, 2010. At that time, CHGO filed with the Commission a motion to dismiss MUR 6391 on the basis that the delay in CHGO's receipt of the notification denied CHGO its due process. On April 21, 2011, the Commission unanimously determined that it would not grant the relief requested in CHGO's motion to dismiss, and CHGO was subsequently granted additional time to file a substantive response to the MUR 6391 Complaint.

The Complaint in MUR 6471 alleges that CHGO spent more than $2.3 million to broadcast fifteen advertisements in twelve Congressional races. *See* Compl. at 3, MUR 6471 (May 23, 2011), amend. (Apr. 26, 2012). The MUR 6471 Complaint includes among its attachments each advertisement identified in the MUR 6391 Complaint, as well as several other advertisements. As in MUR 6391, the MUR 6471 Complaint alleges that CHGO aired advertisements that were either independent expenditures or electioneering communications, and (i) failed to report them pursuant to 52 U.S.C. § 30104(g) (formerly 2 U.S.C. § 434(g)) or 52 U.S.C. § 30104(f)(1) (formerly 2 U.S.C. § 434(f)(1)), and (ii) failed to include proper disclaimers pursuant to 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d). This Complaint also alleges that the reporting violations were knowing and willful. *See* Compl. at 11. The available information, however, does not suggest that the reporting and disclaimer violations were knowing and willful. The Amended Complaint also alleged that CHGO failed to organize, register, and report as a political committee in violation of 52 U.S.C. §§ 30102, 30103 and 30104 (formerly 2 U.S.C. §§ 432, 433 and 434). *See* Compl., amend. (Apr. 26, 2012).

CHGO asserts that "no text in any of the communications complained of by the DCCC contained a single word or any phrase that would constitute 'express advocacy,' as that term is defined at 11 C.F.R. § 100.22(a)." Resp. at 6 (June 1, 2011). CHGO argues that it "may not and does not engage in electoral politics at the federal level and all communications made to the public by CHGO are specifically issue oriented and do not advocate the election or defeat of any identified federal candidate." *Id.* at 3.[3] CHGO maintains that the organization's sole purpose is to educate the public on matters of economic policy formulation, and that CHGO is not a political committee. *See* Supp. Resp. at 5-6 (Oct. 20, 2011). As discussed below, the Commission finds reason to believe that CHGO violated 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434) by failing to report the advertisements at issue.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

1. CHGO

CHGO is a non-profit organization formed in March 2010 that is recognized as an exempt organization under section 501(c)(4) of the Internal Revenue Code. Resp. at 2. CHGO describes itself as a social welfare organization "focused on macro-economic issues" and functioning "as an economic 'think tank'" on tax, trade, budget, and economic growth policies. *Id.* CHGO states that its sole purpose is "to educate the public on matters of economic policy formulation." Supp. Resp. at 5.

[3] Additionally, CHGO states that none of its communications was "'targeted' at any specific electoral constituency." Resp. at 3. The Response states that if CHGO made an error with respect to the reporting of electioneering communications, such error was made in good faith, and in any event, the underlying policy considerations of the electioneering communications reporting requirements were served in this case by a combination of the disclaimer contained in each advertisement and the publicly available daily logs of broadcasters required by the FCC. *Id.* at 3-5. CHGO also argues that the disclaimer contained in each advertisement was sufficient, on the basis that no broadcaster objected to the disclaimer's language and no member of the public complained that the identity of the communication's sponsor was unclear or misleading. *Id.* at 4.

1 2. CHGO's 2010 Activities

2 CHGO's activities appear to have consisted of maintaining its website,[4]
3 commissioning a policy paper,[5] fundraising for itself, and disseminating several broadcast
4 advertisements featuring at least 15 candidates for federal office leading up to the 2010 general
5 election. *See* Compl., MUR 6471, Attach.; *see also* Alison Fitzgerald, *Secret Donors Multiply*
6 *with Finances Dwarfing Watergate*, DAILY HERALD, May 23, 2011 [hereinafter Fitzgerald,
7 *Secret Donors*].

8 The following advertisements were attached to the MUR 6471 Complaint:

CHGO Advertisement	**Federal Candidate(s) Identified**	**Broadcast Area(s)**[6]	**Cost**[7]
"Collectible Coin" (7 versions)	John Spratt/Mick Mulvaney; Walt Minnick; Suzanne Kosmas/Sandy Adams; Baron Hill/Todd Young; C.A. Ruppersberger/Marcelo Cardarelli; Paul Kanjorski/Lou Barletta; Dan Maffei/Ann Marie Buerkle	"nine cities"	$635,910
"Make America Work" (2 versions)	John Salazar/Scott Tipton; Dan Maffei/Ann Marie Buerkle	Unknown	$362,810
"Song and Dance" (4 versions)	John Spratt/Mick Mulvaney; Kathy Dahlkemper/Mike Kelly; Frank Kratovil/Andy Harris; Allen Boyd/Steve Southerland	South Carolina, Maryland, Pennsylvania, Ohio, Florida	$793,150
"What She Believes"	Carol Shea-Porter	Manchester, NH; Portland, ME; Boston	$415,270
"Queen Nancy"	Allen Boyd	Unknown	$41,100

9

[4] CHGO included in its response screen-shots of each page of its publically available website. *See* Supp. Resp. at 5, Ex. B.

[5] Dan Mitchell, "An Agenda to Restore American Prosperity," Supp. Resp., Ex. B. Dan Mitchell is a Senior Fellow in Economics at the CATO Institute.

[6] *See* Fitzgerald, *Secret Donors*.

[7] *See Id.;* Compl. at 4-6, MUR 6471.

15044380122

Each of these advertisements is discussed further below.

i. "Collectible Coin"

The MUR 6471 Complaint includes seven versions of "Collectible Coin," six of which are mock advertisements for a collectible coin bearing the faces of President Barack Obama, Nancy Pelosi, and a specific Democratic congressional candidate, which is then followed by positive references to that Democratic congressional candidate's Republican opponent. *See supra* Section II.A.2.; Compl., MUR 6471, Attach. These six versions of the ad are the same except for the candidates featured in the ads.

One such version features Democratic candidate Dan Maffei and his Republican opponent, Ann Marie Buerkle, and states:

> Now you can own a piece of American history enshrining forever President Obama increasing the national debt to a staggering $13.4 trillion. Clad in 24-carat fool's gold, the coin commemorates Dan Maffei's unwavering votes for the Pelosi agenda an astounding 96% of the time. You can own this prized collectible for just your share of the national debt—plus all the taxes Pelosi can think of. Call Congressman Dan Maffei to order yours today.

The advertisement then abruptly switches narrators, and an image of Ann Marie Buerkle appears along with the written message: "Help Ann Marie Buerkle. Stop the Spending. Make America Work Again." The new narrator states: "Ann Marie Buerkle has a better idea: Stop the spending and get America working again." *See* Compl., MUR 6471, Attach.

One version of "Collectible Coin" differs slightly from the rest in that it casts a favorable light on a Democratic candidate (Walt Minnick. In the Walt Minnick version, no opponent is mentioned—only President Obama and Nancy Pelosi are featured on the fake coin—and thus there is no contrast drawn between Minnick and a competitor. Additionally, the final graphic features an image of Minnick and the text: "Walt Minnick. Stop the Spending. An Independent Voice for Idaho. Call [a phone number believed to be Minnick's office phone number at the

time]." The voice-over states: "Stop the spending. Stand with Walt Minnick: Idaho's independent voice."

ii. "Make America Work"

There are two versions of a CHGO ad entitled "Make America Work" that attack Democratic candidates and positively reference their Republican opponents. One version features John Salazar and his opponent, Scott Tipton, and the other features Dan Maffei and his opponent, Ann Marie Buerkle. The Salazar/Tipton version of the ad states:

> John Salazar says he's an independent voice. But he voted for the Pelosi agenda an astounding 97% of the time. Salazar squandered billions on a bogus stimulus bill as unemployment skyrocketed. And Salazar led the charge with Pelosi for Obamacare, further crippling rural Colorado's economy. As a local business owner, Scott Tipton believes Coloradans know best how to create jobs and grow our economy. Help Scott Tipton make America work again.

A graphic on the screen states, "The Tipton Plan," the pillars of which are "cut[ting] taxes and wasteful spending" and "creat[ing] jobs for Colorado." The text accompanying the final image of Scott Tipton also reads: "Help Scott Tipton Make America Work Again." *See* Compl., MUR 6471, Attach.[8]

iii. "Song and Dance"

There are four versions of a CHGO ad entitled "Song and Dance," which features a chorus line with three of the dancers' faces replaced with the faces of President Obama, Pelosi, and a specific Democratic Congressional candidate, and which is then followed by positive references to that Democratic Congressional candidate's Republican opponent. The four

[8] The first portion of the Maffei/Buerkle ad substitutes Maffei for Salazar but is almost identical in text. The Maffei/Buerkle ad continues, "Ann Marie Buerkle believes New Yorkers know best how to create jobs and grow our economy. She'll stand up to Nancy Pelosi, fight to create jobs, and lower taxes for all New Yorkers. Help Ann Marie Buerkle make America work again." Compl., MUR 6471, Attach.

15044380124

versions of the ad are the same except for the candidates featured in the ads. The Allen Boyd/Steve Southerland iteration of "Song and Dance" states:

> It's the worst economy in decades. And the folks in Washington are living it up, spending our tax dollars like there's no tomorrow. Leading this big song and dance: Obama, of course, and Nancy Pelosi. But there's one face you might not expect to see—our old friend Allen Boyd. Instead of looking out for us, Boyd approved billions in deficit spending without missing a beat. Let's pull the plug on this song and dance once and for all.

At this point in the advertisement, the music stops and the screen fades to black. An image of Steve Southerland then appears. A printed message reads: "Fight Back. Join Steve Southerland. Stop the Big Spenders in Congress." The narrator states: "Join Steve Southerland's fight against the big spenders in Washington." *See* Compl., MUR 6471, Attach.

iv. "What She Believes"

One CHGO ad (entitled "What She Believes") contains a split-screen image with text on the left side, and a clip of Congressional candidate Carol Shea-Porter at a podium addressing an unidentified group of people on the right side. The ad proceeds as follows:

On-screen text:	Porter:
Shea-Porter defends her votes for: $862 billion stimulus	"Now, I'm not going to pretend that I'm voting with the opposite party half the time. I'm not. I'm not.
Shea-Porter defends her votes for: $940 billion Obamacare	I think I have about a 90% rating with the President, and maybe 93...
It gets worse Shea-Porter voted for the Pelosi House agenda 93%!	...93% with the House.
Does she believe what we believe? Call Congresswoman Shea-Porter (603) 641-9536	All along, I have said, you know, 'This is what I believe.' This is what I believe." Narrator voice-over: "Call Congresswoman Shea-Porter. Let her know if what you believe is what she believes when it comes to spending your tax dollars."

15044380125

See Compl., MUR 6471, Attach.

v. "Queen Nancy"

There was a single CHGO ad entitled "Queen Nancy," which features images of candidates Allen Boyd and Nancy Pelosi, among others, and states:

> Once upon a time, there was a very demanding queen of the Congress named Nancy. Whenever Queen Nancy gave an order, it was obeyed. One of her most loyal followers was our Allen Boyd, voting for the queen's agenda 96% of the time. But one day, Allen rebelled and voted 'no' on Obamacare. Queen Nancy shouted, 'Off with his head!' and Allen quickly changed his vote to 'yes.' Call Allen. Urge him to vote 'no' again. Tell him you're not afraid of Queen Nancy, and he shouldn't be either.

Text on the screen reads: "Call Congressman Allen Boyd. (850) 561-3979. Tell him to repeal Obamacare." *See* Compl., MUR 6471, Attach.

B. Analysis

1. Reporting

Under the Act, every person who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall report such independent expenditures to the Commission. 52 U.S.C. § 30104(c)(1) (formerly 2 U.S.C. § 434(c)(1)); 11 C.F.R. § 109.10. An "independent expenditure" is an expenditure by a person expressly advocating the election or defeat of a clearly identified federal candidate that is not coordinated with a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents. 52 U.S.C. § 30101(17) (formerly 2 U.S.C. § 431(17)); 11 C.F.R. § 100.16.

In addition, under the Act, every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, report such

15044380126

electioneering communications to the Commission. 52 U.S.C. § 30104(f)(1) (formerly 2 U.S.C. § 434(f)(1)); 11 C.F.R. § 104.20. An "electioneering communication" is defined as any broadcast, cable, or satellite communication which (a) refers to a clearly identified candidate for federal office, (b) is publicly distributed within 60 days before a general election or 30 days before a primary election, and (c) is targeted to the relevant electorate. 52 U.S.C. § 30104(f)(3) (formerly 2 U.S.C. § 434(f)(3)); 11 C.F.R. § 100.29. The term "electioneering communication" does not include a communication that constitutes an expenditure or an independent expenditure. 52 U.S.C. § 30104(f)(3)(B)(ii) (formerly 2 U.S.C. § 434(f)(3)(B)(ii)). A communication is "targeted to the relevant electorate" when it can be received by 50,000 or more persons in the congressional district the candidate seeks to represent. 11 C.F.R. § 100.29(b)(5)(i).

Based on the available information, it appears likely that CHGO should have reported the advertisements identified in the complaint pursuant to 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434). Accordingly, the Commission finds reason to believe that CHGO violated 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434) by failing to properly report its advertisements.

2. Possible Political Committee Status

Political committees must register with the Commission and periodically disclose their receipts and disbursements. 52 U.S.C. §§ 30102, 30103 and 30104 (formerly 2 U.S.C. §§ 432, 433 and 434). The Act and Commission regulations define a "political committee" as "any committee, club, association or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year." 52 U.S.C. § 30101(4)(A) (formerly 2 U.S.C. § 431(4)(A)); 11 C.F.R. § 100.5. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court held that defining political committee status "only in terms of [the] amount of annual 'contributions' and

'expenditures'" might be overbroad, reaching "groups engaged purely in issue discussion." *Id.* at 79. To cure that infirmity, the Court concluded that the term "political committee" "need only encompass organizations that are under the control of a candidate or the *major purpose of which is the nomination or election of a candidate.*" *Id.* (emphasis added). Accordingly, under the statute as thus construed, an organization that is not controlled by a candidate must register as a political committee only if (1) it crosses the $1,000 threshold and (2) it has as its "major purpose" the nomination or election of federal candidates.

The Amended Complaint raises the additional question of whether CHGO satisfies the definition of "political committee." If CHGO satisfies the definition of "political committee," it would be subject to the political committee reporting requirements and the Act's disclaimer requirements for political committees. *See* 52 U.S.C. §§ 30104(a)(1), 30104(b), 30104(f), 30104(g), and 30120 (formerly 2 U.S.C. §§ 434(a)(1), 434(b), 434(f), 434(g), and 441d); 11 C.F.R. §§ 104.1(a), 104.3, 104.4, 104.20, and 110.11. However, the Commission takes no action on these issues at this time.

15044380128