

BEFORE THE FEDERAL ELECTION COMMISSION

2015 JUL 23 PM 3:09

1
2
3 In the Matter of)
4)
5 Commission on Hope, Growth)
6 and Opportunity)
7)
8)

MURs 6391 and 6471

CELA

9
10 SECOND GENERAL COUNSEL'S REPORT
11

12 I. ACTIONS RECOMMENDED

13 We recommend that the Commission: (1) find reason to believe that the Commission on
14 Hope, Growth and Opportunity violated 52 U.S.C. §§ 30102, 30103, 30104, 30120(a)(3), and
15 30120(d)(2); (2) enter into pre-probable cause conciliation with the Commission on Hope,
16 Growth and Opportunity; (3) approve the attached Factual and Legal Analysis; (4)
17 (5) approve the appropriate letter.

18 II. INTRODUCTION

19 The Commission previously found reason to believe that the Commission on Hope,
20 Growth and Opportunity ("CHGO") violated 52 U.S.C. § 30104 of the Federal Election
21 Campaign Act of 1971, as amended (the "Act"), by failing to report as electioneering
22 communications or independent expenditures several advertisements that it had disseminated
23 during the 2010 election cycle.¹ At that time, the Commission took no action with respect to
24 CHGO's alleged violations of 52 U.S.C. § 30102(a)(3) and (d)(2) by failing to include proper
25 disclaimers on its communications and 52 U.S.C. §§ 30102, 30103, and 30104 by failing to
26 organize, register, and report as a political committee.²

¹ See Amended Certification, MURs 6391, 6471 (Sept. 16, 2014).

² *Id.*

1 Our investigation regarding CHGO's expenditures for the advertisements at issue
2 confirmed that all of the media spending that CHGO had disclosed on its 2010 Form 990 filed
3 with the Internal Revenue Service ("IRS") related to the advertisements identified in the
4 Complaints. The evidence obtained during the investigation also tends to support our prior
5 conclusion that CHGO's major purpose was the nomination or election of federal candidates and,
6 thus, that CHGO failed to include proper disclaimers on its communications. Accordingly, we
7 recommend that the Commission find reason to believe that CHGO violated 52 U.S.C. §§ 30102,
8 30103, 30104, 30120(a)(3), and 30120(d)(2) and enter into pre-probable cause conciliation with
9 CHGO.

10 III. RESULTS OF INVESTIGATION

11 A. Background

12 The Complaints in this matter alleged that CHGO violated the Act by failing to report
13 and include proper disclaimers on advertisements that cost over \$2 million.³ Copies of the
14 following advertisements were attached to the MUR 6471 Complaint:

CHGO Advertisement	Federal Candidate(s) Identified	Broadcast Area(s) ⁴	Cost ⁵
"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

³ See 52 U.S.C. §§ 30104, 30120.

⁴ Alison Fitzgerald, *Secret Donors Multiply with Finances Dwarfing Watergate*, DAILY HERALD, May 23, 2011.

⁵ Compl. at 4-6, MUR 6471.

"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

1 At the reason-to-believe stage, the available information indicated that CHGO may have
2 raised and spent more than twice that amount on advertisements during the 2010 election cycle.
3 According to CHGO's 2010 Form 990, CHGO received \$4,801,000 in contributions from
4 fundraising events during calendar year 2010.⁶ For the same period, CHGO's tax return reported
5 \$4,770,000 in expenses, including \$4,319,825 to Meridian Strategies, LLC ("Meridian") for
6 media placement, \$275,000 to Meridian for media production, \$105,175 to Meridian for
7 advertising and technology, and \$70,000 in compensation to its President/Executive Director and
8 its General Counsel.⁷ It also appeared that CHGO engaged in no significant non-electoral
9 activity.

10 Based on the available information, the Commission found reason to believe that CHGO
11 violated 52 U.S.C. § 30104 by failing to report the advertisements identified in the Complaints.
12 The Commission conducted an investigation to determine CHGO's reporting obligations and to

⁶ Compl., MUR 6471, Ex. C (Form 990 – Return of Organization Exempt from Income Tax (Nov. 14, 2011)).

⁷ *Id.*

1 reconcile the amounts of the expenditures for the advertisements identified in the Complaints
2 with CHGO's total media spending as reported on its 2010 Form 990. The Commission also
3 notified CHGO of the additional issue raised in the MUR 6471 Amended Complaint concerning
4 whether it satisfies the definition of "political committee" and would thus be subject to the Act's
5 reporting and disclaimer requirements for political committees.⁸

6 **B. The Investigation**

7 After receiving notice of the Commission's reason to believe finding and decision to
8 investigate the apparent violations, CHGO's General Counsel, William B. Canfield III, contacted
9 the Office of General Counsel ("OGC"). Canfield initially represented that he had no relevant
10 information or records concerning the advertisements at issue and did not know who would have
11 that information.⁹ Further, Canfield stated that the disbursements reported in CHGO's tax filings
12 accurately reflected the group's spending and activities, but that he could not provide more
13 detailed information.¹⁰ In the absence of probative information from CHGO, we identified
14 additional witnesses who had worked for CHGO — President/Executive Director James S.
15 "Steve" Powell and Treasurer James D. Warring — and notified Canfield of our intention to seek
16 information from them.¹¹

⁸ Factual and Legal Analysis at 9.

⁹ Beginning in 2010, the period during which CHGO engaged in the alleged activity that was the subject of our investigation, the Commission provided several notices to Canfield that instructed CHGO to preserve records related to the Complaints as required by law. Letter to William B. Canfield, Commission on Hope, Growth and Opportunity (Oct. 15, 2010); Letter to William B. Canfield, Commission on Hope, Growth and Opportunity (May 26, 2011).

¹⁰ Report of Investigation of Telephone Contact with William Canfield, Esq. (Oct. 15, 2014).

¹¹ *Id.*

1 We first contacted Steve Powell, who was represented by Canfield during the interview.
2 Powell explained that, although he was listed as President of CHGO in the group's tax filings,
3 his role was limited to writing and producing the advertisements.¹² He explained that Michael
4 Mihalke, a principal at Meridian, was responsible for billing and invoicing the advertisements,
5 but believed that any relevant records would have been destroyed shortly after the
6 advertisements aired.¹³ Even without records, however, Powell and Canfield were able to
7 confirm both that the advertisements identified in the Complaints were the only advertisements
8 disseminated by CHGO and that these advertisements represented all of CHGO's media
9 spending.¹⁴

10 Next, we interviewed James Warring, Treasurer of CHGO and founder of Warring &
11 Company, LLC, the firm responsible for CHGO's accounting and tax filings.¹⁵ Warring
12 explained that an employee of the firm, not Warring, was personally responsible for preparing
13 CHGO's filings with the IRS.¹⁶ Warring stated that his firm typically returns to its clients the
14 financial records that it uses to prepare tax filings and that his file for CHGO contained little
15 information.¹⁷ Warring identified a spreadsheet in his file, however, that contained the figures

¹² Report of Investigation of Interview of James S. "Steve" Powell at 1 (Nov. 25, 2014) ("Powell ROI").

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ Report of Investigation of Interview of James D. Warring (Dec. 19, 2014).

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

1 disclosed as disbursements on CHGO's 2010 Form 990, including payments to Meridian totaling
2 \$4.7 million in August, September, and October 2010.¹⁸

3 Following these interviews, several witnesses indicated that they would provide
4 information regarding CHGO, but only if they were first served with compulsory process. In
5 light of these requests and the absence of even basic financial records in response to our informal
6 discovery efforts, the Commission approved compulsory process to obtain information and
7 documents related to the CHGO advertisements and to identify any additional potential sources
8 of information.¹⁹ Each of these individuals responded to the Commission's subpoenas and
9 orders, but none supplied information or produced any records that itemized CHGO's spending
10 on the advertisements.²⁰

¹⁸ *Id.* We requested and obtained from Canfield two versions of the spreadsheet. Report of Investigation of Telephone Contacts with William Canfield (Dec. 18, 2014); Report of Investigation of E-mails from William Canfield (Jan. 21, 2015). We identified Susi Cedillo, an employee of Warring & Company, LLC, as the spreadsheet's author and unsuccessfully attempted to arrange an interview with Warring and Cedillo regarding the spreadsheet. Report of Investigation of Telephone Contact with James Warring (Jan. 30, 2015); Report of Investigation of Telephone Contact with James Warring (Additional Information) (Feb. 4, 2015); Memorandum to File Re: Summary of Telephone Call with James D. Warring (Feb. 5, 2015). At that time, Canfield also stated that he no longer represented CHGO and, notwithstanding his involvement in this proceeding in his capacity as CHGO's designated counsel for these matters, that he considered his representation of CHGO to have ceased when CHGO filed its terminating 2011 Form 990 in the Spring of 2011. E-mail from William Canfield (Feb. 5, 2015).

¹⁹ Orders to Submit Answers to Questions and Subpoenas to Produce Documents to William B. Canfield III, James D. Warring, James S. Powell, Susi Cedillo, Meridian Strategies, LLC, and Michael H. Mihalke. (May 26, 2015).

²⁰ For instance, Canfield's response asserted that his role at CHGO was limited to legal compliance and that he does not possess documents related to the funding, production, and placement of the CHGO advertisements. Response of William B. Canfield to Order to Submit Answers to Questions and Subpoena to Produce Documents at 1 (June 29, 2015) ("Canfield Subpoena Resp."). Powell, for his part, stated that he was "the creative person" responsible for the content of CHGO's advertisements, but that he was not involved in the funding of the advertisements and has no documents related to the advertisements. Response of James S. Powell to Order to Submit Answers to Questions and Subpoena to Produce Documents at 2-3 (June 26, 2015) ("Powell Subpoena Resp.>").

The investigative record suggests that CHGO lacked a records retention policy, did not appear to otherwise attempt to retain records, and did not direct any of its vendors to retain records, despite notice from the Commission of the obligation to preserve relevant documents. None of the witnesses identified any records retention policy in place at CHGO or Meridian during the time CHGO conducted the activities at issue. Canfield Subpoena Resp. at 2; Powell Subpoena Resp. at 6; Response of Michael H. Mihalke to Order to Submit Answers to Questions and

1 Nonetheless, some of CHGO's vendors were able to provide responsive documents. For
2 example, Mihalke produced several documents that appeared to reflect production costs of the
3 advertisements but stated that he is no longer in possession of any other documents related to the
4 advertisements.²¹ Warring and Cedillo, on the other hand, produced a number of CHGO
5 financial and bank records, but none of the documents reflected a breakdown in spending on
6 specific advertisements.²² Finally, Mihalke, Warring, and Cedillo also produced several
7 documents that contain information relevant to CHGO's status as a political committee.²³

8 IV. ANALYSIS

9 A. Political Committee Status

10 The First General Counsel's Report in this matter recommended that the Commission
11 find reason to believe that CHGO violated the Act by failing to register and report as a political

Subpoena to Produce Documents at 5 (June 26, 2015) ("Mihalke Subpoena Resp."). Additionally, all of the relevant witnesses stated that they either did not receive notice or did not recall receiving notice to retain records relating to CHGO in light of the Commission's open matter. Response of James D. Warring to Order to Submit Answers to Questions and Subpoena to Produce Documents at 8 (June 29, 2015) ("Warring Subpoena Resp."); Powell Subpoena Resp. at 6; Mihalke Subpoena Resp. at 5. To the contrary, in response to the subpoenas Warring and Cedillo produced an April 16, 2012 e-mail from Mihalke to Warring and Canfield suggesting that CHGO be terminated "most quickly," because "[t]here is an outstanding matter at the Federal Elections [sic] Commission and my sense is that we ought to shut it down to make things less complicated moving forward." Warring Subpoena Resp. at FEC-481; Response of Susi Cedillo to Order to Submit Answers to Questions and Subpoena to Produce Documents (July 6, 2015) ("Cedillo Subpoena Resp.") at FEC-219.

²¹ Mihalke Subpoena Resp. at 5. Mihalke also stated that he "wrote memos, one or more PowerPoint presentations, proposed media buys, produced advertisements, including writing the scripts, and oversaw website development" for CHGO. *Id.* at 3, MHM-FEC-13-17. Meridian did not separately respond to the Commission's subpoena. Mihalke's counsel represented that Mihalke was solely responsible for Meridian and that Meridian had no additional information or records responsive to the subpoena. Memorandum to File Re: Summary of Telephone Call with Robert Kelner (July 9, 2015).

²² Warring Subpoena Resp. at FEC-275-300, FEC-366-382; Cedillo Subpoena Resp. at FEC-13-38, FEC-104-120. Warring and Cedillo described their roles as providing bookkeeping and tax filing services and stated that they had no role with respect to CHGO's advertisements. Warring Subpoena Resp. at 3; Cedillo Subpoena Resp. at 3.

²³ Although the subpoena responses identified several other individuals involved with CHGO or Meridian, the only such person who we believe reasonably might have possessed records related to the advertisements is Scott Reed, a strategist who was involved in the formation of CHGO. Powell Subpoena Resp. at 3; Mihalke Subpoena Resp. at 2. In response to our inquiry, however, Reed represented that he had no documents relevant to the Commission's proceeding. Report of Investigation of Interview of Scott W. Reed at 1-2 (July 7, 2015).

1 committee because it spent over \$2 million on independent expenditures and electioneering
2 communications and did not appear to have engaged in any significant non-electoral activity.²⁴
3 The evidence obtained in the course of the investigation — including confirmation that virtually
4 all of CHGO's 2010 spending was for the advertisements identified in the Complaints — further
5 supports the conclusion that CHGO violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to
6 organize, register, and report with the Commission as a political committee in 2010.

7 Political committees must register with the Commission and periodically disclose their
8 receipts and disbursements.²⁵ The Act and Commission regulations define a "political
9 committee" as "any committee, club, association or other group of persons which receives
10 contributions aggregating in excess of \$1,000 during a calendar year or which makes
11 expenditures aggregating in excess of \$1,000 during a calendar year."²⁶ In *Buckley v. Valeo*, the
12 Supreme Court held that defining political committee status "only in terms of [the] amount of
13 annual 'contributions' and 'expenditures'" might be overbroad, reaching "groups engaged purely
14 in issue discussion."²⁷ To cure that infirmity, the Court concluded that the term "political
15 committee" "need only encompass organizations that are under the control of a candidate or the
16 major purpose of which is the nomination or election of a candidate."²⁸ Accordingly, under the
17 statute as thus construed, an organization that is not controlled by a candidate must register as a

²⁴ First Gen. Counsel's Rpt. at 3.

²⁵ 52 U.S.C. §§ 30102, 30103, 30104.

²⁶ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

²⁷ 424 U.S. 1, 79 (1976).

²⁸ *Id.* (emphasis added).

1 political committee only if (1) it crosses the \$1,000 threshold and (2) it has as its "major
2 purpose" the nomination or election of federal candidates.

3 1. Statutory Threshold

4 It appears that CHGO made over \$1,000 in expenditures for independent expenditures
5 that contain express advocacy under 11 C.F.R. § 100.22 and thus surpassed the statutory
6 threshold for political committee status.²⁹ As recited in the First General Counsel's Report,
7 CHGO reportedly spent \$793,150 to disseminate four versions of "Song and Dance," \$561,790
8 to disseminate six versions of "Collectible Coin," and \$362,810 to disseminate two versions of
9 "Make America Work," all of which contain express advocacy and are thus independent
10 expenditures.³⁰ Further, the advertisements in the Complaints constituted the entirety of
11 CHGO's \$4.59 million in media costs disclosed on its 2010 Form 990.³¹ Accordingly, CHGO
12 most likely spent significantly more than the \$1.7 million identified in the Complaints on
13 independent expenditures to surpass the statutory threshold.³²

14 2. Major Purpose

15 The evidentiary record also demonstrates that CHGO had as its major purpose the
16 nomination or election of federal candidates in 2010. Under the Commission's case-by-case
17 approach to the major purpose inquiry, the Commission considers the organization's "overall
18 conduct," including its disbursements, activities, and statements.³³

²⁹ Political Committee Status, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007) (Supplemental Explanation and Justification) ("Supplemental E&J").

³⁰ First Gen. Counsel's Rpt. at 8-13.

³¹ Powell ROI at 2.

³² 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

³³ Supplemental E&J at 5597.

1 In assessing an organization's major purpose, the Commission has previously considered
2 how much the organization spends for "federal campaign activity" against "activities that [a]re
3 not campaign related."³⁴ Before the investigation, the record did not indicate the extent of
4 CHGO's spending or whether its \$4.77 million budget for 2010 included activities beyond the
5 advertisements referenced in the Complaints. The investigation has confirmed that nearly all of
6 CHGO's spending in 2010 — \$4.59 million out of a total of \$4.77 million in disbursements —
7 was for the advertisements identified in the Complaints. Therefore, since each of CHGO's
8 advertisements was either an express-advocacy independent expenditure or electioneering
9 communication, both of which are indicative of major purpose, we conclude that 96% of
10 CHGO's spending in 2010 involved federal campaign activity.³⁵

11 Although we were able to ascertain CHGO's overall spending, we were not able to
12 definitively itemize CHGO's spending on independent expenditures versus electioneering
13 communications. Nevertheless, the currently available evidence reflects that CHGO's spending
14 on express-advocacy independent expenditures appears to have been a significant majority of its
15 spending in 2010. The Amended Complaint included an analysis of the cost of CHGO's
16 spending by CMAG, an organization that tracks political spending on advertisements. Of the
17 \$2.2 million in CHGO advertisements tracked by CMAG, 77% were express advocacy

³⁴ Supplemental E&J at 5605; First Gen. Counsel's Rpt at 27.

³⁵ At the time of the First General Counsel's Report, the available information demonstrated that CHGO spent over \$1.7 million on express advocacy communications and over \$530,000 on non-express advocacy electioneering communications that supported or opposed a clearly identified federal candidate. First Gen. Counsel's Rpt. at 38. Although CHGO and its representatives were unable to produce records showing how much CHGO spent on each advertisement, all of the advertisements — including electioneering communications "What She Believes," "Queen Nancy," and "Collectable Coin" (Minnick Version) — are the type of communications that the Commission has considered indicative of major purpose. *Id.* at 33-35. While CHGO spent \$105,175 of its budget on other activities, including maintaining its website, commissioning a policy paper, and advertising and promotion, these arguably non-electoral activities represented only four percent of CHGO's spending. Compl., MUR 6471, Ex. C (Form 990 – Return of Organization Exempt from Income Tax (Nov. 14, 2011)). Indeed, of these activities, only the \$5,000 spent to commission a policy paper appears entirely unrelated to CHGO's advertisements.

1 advertisements.³⁶ Given that this analysis covered roughly half of CHGO's spending, it is
2 probable that CHGO spent the same general proportion of its total spending on express-advocacy
3 advertisements.³⁷ If so, at least 77% of CHGO's advertisements, or 74% of its total spending,
4 was for express advocacy. That such a significant proportion of CHGO's advertisements
5 involved express advocacy suggests that the organization's major purpose is in fact the election
6 of federal candidates.

7 Moreover, the Commission has stated that it will consider "public statements as well as
8 internal documents about an organization's mission" — including statements in organizational
9 planning documents, statements made to prospective donors detailing the organization's goals,
10 and fundraising solicitations — in construing the major purpose of an organization such as
11 CHGO.³⁸

12 In response to the Complaints, CHGO asserted that its entire purpose was to educate the
13 public on matters of economic policy formulation and that CHGO was not a political
14 committee.³⁹ This same characterization of the group's purpose is reflected in its Articles of
15 Association.⁴⁰ The Commission has noted, however, that an organization's public statements
16 about its intended purpose will not necessarily dispose of the major purpose question.⁴¹ Here,

³⁶ See First Gen. Counsel's Rpt. at 38.

³⁷ CHGO did not seek to refute CMAG's analysis despite its inclusion in the Amended Complaint and CHGO's receipt of notice that the Commission may be considering the political committee status of the organization.

³⁸ Supplemental E&J at 5605.

³⁹ See Supp. Resp. at 5-6 (Oct. 20, 2011).

⁴⁰ Warring Subpoena Resp. at FEC-452-454; Cedillo Subpoena Resp. at FEC-190-192.

⁴¹ Supplemental E&J at 5606; see *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at *14 (E.D. Va., Sept. 24, 2008) ("A declaration by the organization that they are *not* [organized] for an electioneering purpose is not dispositive.") (emphasis in original, alteration added), *aff'd*, 575 F.3d 342 (4th Cir.

1 other documentary evidence obtained as a result of the Commission's issuance of compulsory
2 process directly controverts CHGO's public disavowals of an electioneering purpose.

3 Several of CHGO's internal documents explicitly state that the group's purpose was to
4 influence the election of federal candidates. First, a planning document states that CHGO's goal
5 was "[t]o make an impact using express advocacy in targeted Senate races on key issues
6 including financial reform, energy, taxes, pharmaceuticals, health care and other key concerns";
7 it also identified twelve states as "potential targets."⁴² Similarly, a PowerPoint presentation
8 titled, "Commission on Hope, Growth & Opportunity: Supporting Pro-Growth, Free Enterprise
9 Candidates in Targeted Senate Races" identified CHGO's goal as "mak[ing] a measurable
10 impact on the election outcome in selectively identified Senate races by deploying advertising in
11 a targeted, cost efficient and discreet manner."⁴³ That CHGO may have later altered its strategy
12 to target candidates for the House rather than the Senate does not alter its plain intention to
13 influence the election of federal candidates. Moreover, a September 15, 2010 letter from Wayne
14 Berman, who Mihalke identified as a CHGO "consultant," to a potential donor described CHGO
15 as "an organization which focuses on running independent expenditure campaigns in key
16 districts to support the election of Republican candidates," and further assured the donor that
17 contributions to CHGO would not be disclosed.⁴⁴

2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311).

⁴² Mihalke Subpoena Resp. at MHM-FEC-1-2. The document discusses CHGO having "an impact in potential primaries either with positive or negative approach" and spending "\$5-10 million dollars for 4-6 races." *Id.* at MHM-FEC-2.

⁴³ *Id.* at MHM-FEC-7. The presentation identified planned advertising budgets for eleven states "for targeted, impact advertising to make measurable difference in key Senate races," and touted that donors would never be disclosed. *Id.* at MHM-FEC-10, 12.

⁴⁴ *Id.* at 3; Warring Subpoena Resp. at FEC-299; Cedillo Subpoena Resp. at FEC-37.

1 Notably, none of the documents received during the investigation reflect that CHGO's
2 purpose was, as it claimed in its Response, solely to educate the public on matters of economic
3 policy formulation. Rather, the relevant records reflect that CHGO's major purpose was to
4 influence the election of federal candidates.

5 In sum, CHGO made over \$1,000 in expenditures during 2010, and its spending during
6 that calendar year and its own records of its aims and objectives reflect that it had as its major
7 purpose the nomination or election of federal candidates. Accordingly, based on the more
8 extensive factual record now before the Commission, we again recommend that the Commission
9 find reason to believe that CHGO violated 52 U.S.C. §§ 30102, 30103, and 30104, by failing to
10 organize, register, and report as a political committee.

11 **B. Independent Expenditure and Electioneering Communications Reporting**
12 **Violations**

13 In addition to filing a Statement of Organization and regular disclosure reports with the
14 Commission as a political committee, CHGO should have filed 24- and 48-hour independent
15 expenditure⁴⁵ and electioneering communications⁴⁶ reports with the Commission in connection
16 with its expenditures for the advertisements.

17 Previously, the Commission found reason to believe that CHGO violated 52 U.S.C.

⁴⁵ Under the Act, a person (including a political committee) that makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election, must file a report describing the expenditures within 24 hours. 52 U.S.C. § 30104(g)(1). A person (including a political committee) that makes independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election must file a report describing the expenditures within 48 hours. *Id.* § 30104(g)(2).

⁴⁶ Additionally, under the Act, a person (including a political committee) 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 electioneering communications to the Commission. *Id.* § 30104(f)(1); 11 C.F.R. § 104.20.

1 § 30104 by failing to report the advertisements at issue in this matter. The investigation
2 demonstrated that CHGO spent a total of \$4.59 million for independent expenditures and
3 electioneering communications. CHGO spent at least \$793,150 to disseminate four versions of
4 "Song and Dance," \$561,790 to disseminate six versions of "Collectible Coin," and \$362,810 to
5 disseminate two versions of "Make America Work," all of which contain express advocacy and
6 are thus independent expenditures.⁴⁷ CHGO also spent at least \$415,270 to disseminate "What
7 She Believes," \$41,100 to disseminate "Queen Nancy," and \$74,120 to disseminate the Minnick
8 version of "Collectible Coin," all of which constitute electioneering communications.⁴⁸ The
9 exact amount spent on the advertisements is undoubtedly higher, given CHGO's total media
10 spending, but all of the amounts are above the thresholds for required 24- or 48-hour notices.⁴⁹
11 Accordingly, it appears that CHGO violated 52 U.S.C. § 30104(g) and (f) by failing to file
12 required independent expenditure and electioneering communications reports.

13 C. Disclaimer Violations

14 Finally, CHGO failed to include complete disclaimers on its advertisements. Whenever a
15 political committee makes a disbursement for the purpose of financing any communication
16 through any broadcasting station, newspaper, magazine, mailing or other type of general public
17 political advertising, the communication must clearly state that it has been paid for by the
18 political committee.⁵⁰ Communications not authorized by a candidate, authorized committee of a

⁴⁷ First Gen. Counsel's Rpt. at 8-13.

⁴⁸ *Id.* at 14-20. As CHGO and its representatives did not have records related to advertising placement, the investigation did not produce any additional information regarding the "targeting" of CHGO's electioneering communications under 11 C.F.R. § 100.29(b)(5)(i).

⁴⁹ We are also unable to determine the timing of the communications and required reports due to the lack of available records.

⁵⁰ 52 U.S.C. § 30120(a).

1 candidate, or an agent of either, must clearly state the full name and permanent street address,
2 telephone number, or World Wide Web address of the person who paid for the communication,
3 and that the communication is not authorized by any candidate or candidate's committee.⁵¹
4 Television communications paid for by persons other than candidates and not authorized by a
5 candidate must include an audio statement by a representative of such person indicating the name
6 of the person responsible for the content of the advertising, the so-called "stand by your ad"
7 requirement.⁵²

8 The advertisements at issue were television broadcast communications funded by a
9 political committee and thus were required to include a complete disclaimer. The written
10 disclaimer on each CHGO advertisement reads:

11 Paid for by the Commission on Hope, Growth and Opportunity, a tax-
12 exempt 501c(4) [*sic*] organization and not a federal political committee.
13 This message is not coordinated with any candidate or committee.
14 www.hopecrowthopportunity.org.⁵³

15 As explained in further detail in the First General Counsel's Report, CHGO failed to include
16 proper disclaimers stating that its communications were not authorized by any candidate or
17 candidate's committee.⁵⁴ CHGO also failed to include proper audio disclaimers on each of its
18 advertisements.⁵⁵ Accordingly, we recommend that the Commission find reason to believe that
19 the Commission on Hope, Growth and Opportunity violated 52 U.S.C. §§ 30120(a)(3) and
20 30120(d)(2).

⁵¹ *Id.* § 30120(a)(3); 11 C.F.R. § 110.11(b)(3).

⁵² 52 U.S.C. § 30120(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii).

⁵³ Resp. at 4; Compl., MUR 6471, Attach.

⁵⁴ First Gen. Counsel's Rpt. at 21-22.

⁵⁵ *Id.* at 22-23.

UNIVERSITY OF CALIFORNIA

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

1800420001-176

1 VI. RECOMMENDATIONS

- 2 1. Find reason to believe that the Commission on Hope, Growth and Opportunity
3 violated 52 U.S.C. §§ 30102, 30103, 30104, 30120(a)(3), and 30120(d)(2);
- 4 2. Enter into pre-probable cause conciliation with the Commission on Hope, Growth and
5 Opportunity;
- 6 3. Approve the attached Factual and Legal Analysis;
- 7 4.
- 8 5. Approve the appropriate letter.

9
10
11
12 7/28/15
13 Date

Daniel A. Petalas by WCP
Daniel A. Petalas
Associate General Counsel
for Enforcement

William A. Powers
William A. Powers
Assistant General Counsel

Kasey S. Morgenheim
Kasey S. Morgenheim
Attorney

Tanya D. Senanayake
Tanya D. Senanayake
Attorney

31
32
33