FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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700 Thirteenth Street, N.W.
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DEC 17 2015

RE: MUR 6796
House Majority PAC and Shannon Roche in her official capacity as treasurer

Dear Messrs. Elias, Reese and Nudelman:

On March 20, 2014, the Federal Election Commission notified your clients, House Majority PAC and Shannon Roche in her official capacity as treasurer ("HMP"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On December 10, 2015, on the basis of the information in the complaint and information provided by you, the Commission dismissed the allegation that HMP violated 52 U.S.C. § 30116(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's decision, is enclosed for your information.

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

Sincerely,

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 FEDERAL ELECTION COMMISSION

2 FACTUAL AND LEGAL ANALYSIS

3

4 RESPONDENTS: House Majority PAC and Shannon Roche
5 in her official capacity as treasurer
6 Alex Sink for Congress and Jennifer May MUR: 6796
7 in her official capacity as treasurer
8 Largo/Mid-Pinellas Democratic Club
9 Elizabeth Snedeker
10 Rich Piper
11

12 I. INTRODUCTION

13 This matter was generated by a complaint, alleging that House Majority PAC ("HMP"),
14 an independent-expenditure-only political committee,[1] violated the Act by "illegally"
15 coordinating a television advertisement with Alex Sink for Congress ("Sink Committee") and the
16 Largo/Mid-Pinellas Democratic Club ("Democratic Club"), a local party organization. The ad
17 opposed David Jolly, Sink's opponent in the March 11, 2014 special election in Florida's 13th
18 congressional district.

19 The alleged coordination at issue in the Complaint arises out of a presentation that four
20 Sink campaign field organizers provided the Democratic Club concerning Sink's campaign goals
21 during a January 2014 Democratic Club meeting and HMP's request that the Democratic Club
22 suggest individuals to cast in the pro-Sink television advertisement. The Complaint alleges that
23 the Democratic Club served as a conduit between the Sink Committee and HMP, and that the
24 Democratic Club — a component of the Democratic Party (the "Party") — was therefore
25 materially involved in crafting the content of the communication or its production. As discussed
26 below, the Commission exercises its prosecutorial discretion to dismiss the allegation that HMP

[1] House Majority PAC registered as an independent-expenditure-only political committee with the Commission on April 8, 2011, indicating that it "intends to raise funds in unlimited amounts," but that it "will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees." *See* http://docquery.fec.gov/pdf/035/11030591035/11030591035.pdf.

made an excessive contribution in the form of a coordinated communication or that the Sink Committee or the Democratic Party received or accepted such a contribution either directly or acting through the Democratic Club, Rich Piper, or Elizabeth Snedeker.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

At its monthly meeting held on January 20, 2014, the Democratic Club hosted four field organizers from the Sink campaign, among several other visitors.[2] In summarizing the meeting for the Democratic Club's website, its President Rich Piper wrote that each organizer "spoke briefly about her territory and the goals and needs of the Sink campaign for Congress in District 13."[3]

Sometime before February 11, 2014, HMP or its media production agent contacted the Democratic Club seeking recommendations for an "older," "articulate" couple who were district residents and Social Security recipients to appear in an advertisement.[4] HMP apparently spoke to Piper.[5] Piper suggested Elizabeth Snedeker and her husband, Rod Snedeker, and gave the caller their contact information.[6] The Snedekers agreed to be interviewed by HMP, and the producers decided to cast them.[7] On February 11, 2014, the Snedekers were interviewed on

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2 *See* Compl., Ex. C (Mar. 13, 2014).

3 *Id.*

4 Snedeker Resp. at 1 (May 12, 2014); HMP Resp. at 2 (May 9, 2014).

5 Snedeker Resp. at 1.

6 *Id.* at 1, HMP Resp. at 2.

7 Snedeker Resp. at 1.

1. camera to discuss Social Security and its potential privatization.[8] Material from that interview
2 was used in HMP's ad, which began airing on February 14, 2014.[9]

3 The Complaint alleges that the Sink Committee's communication of its "goals and needs"
4 to the Democratic Club during the January 2014 meeting made its way from the Democratic
5 Club to HMP in connection with the advertisement and that HMP therefore coordinated with the
6 Sink Committee.[10] The Complaint also alleges that the Democratic Club, as an official, local
7 component of the Democratic Party structure, made a "suggestion" regarding the content of the
8 ad, amounting to the material involvement of a political party with a third-party payor under the
9 Commission's regulations.[11] Moreover, the Complaint alleges that because Elizabeth Snedeker
10 served as the Democratic Club's treasurer, her appearance in the ad constitutes additional
11 "material involvement" of the Democratic Party in the creation of the ad's content.[12]

12 In its Response, HMP asserts that the Complaint fails to allege facts suggesting that the
13 Democratic Club gave HMP information from the Sink Committee that was material to any
14 aspect of the ad or that Elizabeth Snedeker was an agent of the Sink Committee or the
15 Democratic Club.[13] HMP also states that Elizabeth Snedeker is no longer the Democratic Club's

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8 *Id.*; *see* https://www.youtube.com/watch?v=-ih3JWDF5gc (last visited Sept. 4, 2014).

9 HMP disclosed with the Commission that it spent $98,709.09 and $317,181.69 on television advertising opposing Jolly disseminated on February 14 and 18, 2014, respectively. *See* HMP 24/48 Hour Report of Independent Expenditures at 3 (Feb. 14, 2014); HMP 24/48 Hour Report of Independent Expenditures at 5 (Feb. 20, 2014).

10 Compl. at 1.

11 *Id.* at 2-3.

12 *Id.* at 1, 3.

13 HMP Resp. at 5.

treasurer and that she and her husband appeared in the ad as private citizens and local residents.[14] HMP further contends that, in any event, the Democratic Club is not a "political party committee" subject to the Commission's coordination regulations.[15]

The Sink Committee asserts that it had no interaction with the Snedekers and that it was not aware of their association with the Democratic Club or of HMP's independent expenditure until after the ad had aired.[16] The Sink Committee also argues that the Complaint fails to allege facts showing that: (1) the Snedekers or anyone else from the Democratic Club had authority under the Commission's regulations to act as the Sink Committee's agent; (2) the Snedekers were at the January meeting at which the Sink Committee representatives spoke; or (3) the Snedekers had any other contact with the Sink Committee.[17]

In Piper's Response, the Democratic Club explains that the Sink Committee's "goals and needs" discussed at the January 2014 meeting related to requests for volunteers to canvass voters and staff telephones in advance of the upcoming special election.[18] Finally, Elizabeth Snedeker asserts that neither she nor her husband engaged in any strategy discussions with the Sink campaign or the Democratic Club "regarding the purpose, content, and use of the ad."[19]

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[14] *Id.* at 5-6. Elizabeth Snedeker and Piper both assert that Snedeker had not been the Democratic Club's treasurer since February 2013. *See* Snedeker Resp. at 1; Piper Resp. at 1 (June 13, 2014).

[15] HMP Resp. at 2-4.

[16] Committee Resp. at 3 (May 20, 2014).

[17] *Id.* at 2-3.

[18] Piper Resp. at 1.

[19] Snedeker Resp. at 1-2.

1 **B. Legal Analysis**

2 The Act defines "contribution" to include anything of value made by any person for the
3 purpose of influencing any election for federal office.[20] Under § 30116 of the Act, during the
4 2014 election cycle, it was unlawful to make a contribution to a candidate and the candidate's
5 authorized political committee with respect to any election for federal office that in the aggregate
6 exceeded $2,600.[21] The Act also provides that no candidate or political committee may
7 knowingly accept a contribution in violation of § 30116.[22]

8 A coordinated communication is considered an in-kind contribution from the person to
9 that candidate and is subject to the limits, prohibitions, and reporting requirements of the Act.[23]
10 Under Commission regulations, a communication is coordinated with a candidate, a candidate's
11 authorized committee, a political party committee, or their agent if the communication: (1) is
12 paid for by a person other than that candidate, authorized committee, or political party committee
13 (the "payment prong"); (2) satisfies at least one of the content standards set forth in 11 C.F.R.
14 § 109.21(c) (the "content prong"); and (3) satisfies at least one of the conduct standards set forth
15 in 11 C.F.R. § 109.21(d) (the "conduct prong").

16 Here, the payment prong of the coordinated communication test is satisfied because
17 HMP, a third party, paid for the ad at issue.[24] The content prong is also satisfied because the ad

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[20] 52 U.S.C. § 30101(8)(A)(i). On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

[21] *Id.* § 30116(a)(1)(A).

[22] *Id.* § 30116(f).

[23] 11 C.F.R. § 109.21(b).

[24] *See id.* § 109.21(a)(1).

is a "public communication" that clearly refers to Sink's opponent less than 90 days before the March 11, 2014 special election.[25]

In relevant part, the conduct prong is satisfied if: (1) the communication was created, produced, or distributed at the request or suggestion of a candidate, campaign, or political party committee, or the payor suggests the communication and the candidate, campaign or political party committee assents to the suggestion (the "request or suggestion" standard); (2) the candidate, campaign, or political party committee was materially involved in decisions regarding the communication (the "material involvement" standard); or (3) the communication was created, produced, or distributed after one or more substantial discussions between the payor and the candidate, campaign, or a political party committee involving information that is material to the communication (the "substantial discussion" standard).[26]

The Complaint alleges that the activities of the Democratic Club in connection with both HMP and the Sink Committee reflect that HMP satisfied these conduct standards as to both the Sink Committee and the Democratic Party. As described below, the Commission concludes that pursuing this matter further would not be an efficient use of the Commission's resources and exercises its prosecutorial discretion to dismiss the allegations that HMP coordinated its advertisement with either entity.

1. Allegation that HMP Engaged in Coordinated Conduct with the Sink Committee

The Complaint alleges that the Democratic Club, through either Piper or Elizabeth Snedeker, provided information to HMP concerning the Sink Committee's "goals and needs"

[25] *See id.* § 109.21(c)(4)(i).

[26] See *id.* § 109.21(d)(1)-(3).

that Sink Committee field organizers had conveyed to the Democratic Club at its January 2014 meeting. The Complaint alleges that this "prohibited coordinating information" from the Sink Committee to HMP was material to HMP's creation and distribution of its ad.

Near the time of the events, Piper publicly characterized the information that the Sink Committee representatives presented during the January 2014 meeting as related to the "goals and needs" of the Sink Committee. However, in a statement Piper submitted in response to the Complaint, Piper asserted that information that the Committee field organizers in fact provided during the meeting was simply to request volunteers to make telephone calls and canvass voters, and that the discussion had no connection to the creation, production, or distribution of the advertisement.[27] Even assuming the Complaint should be read to include Elizabeth Snedeker as a possible conduit for the information,[28] in a letter submitted in response to the Complaint, Elizabeth Snedeker asserts that she is not a Democratic Club officer[29] and that she and her husband were not part of any strategy meetings with the Sink Committee regarding the purpose, content, or use of the advertisement.[30] Furthermore, it does not appear that Piper's recommendation of a couple suited to HMP's casting needs as HMP described them, standing alone, suggests coordination.

Under the circumstances, the Commission concludes that pursuing this matter further would not be an efficient use of the Commission's resources. Accordingly, the Commission

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[27] Piper Resp. at 1.

[28] The Complaint does not allege, but appears to assume, that Snedeker attended the Club meeting at issue. The available information, including the Responses, does not indicate whether she did.

[29] Piper Resp. at 1; Snedeker Resp. at 1.

[30] Snedeker Resp. at 1-2.

exercised its prosecutorial discretion and dismissed the allegation that HMP engaged in coordinated conduct with the Sink Committee.

2. Allegation that HMP Engaged in Coordinated Conduct with the Democratic Party

The Complaint further alleges that the Democratic Club, "as part of the official Democratic Party structure," was materially involved in the creation of the communication as a result of Piper's suggestion that HMP feature the Snedekers as spokespersons. The Complaint also contends that Elizabeth Snedeker's appearance alone constitutes the material involvement of the Democratic Party," and thus satisfies the conduct prong of the coordination regulation.[31] According to the Complaint, for both of these reasons the Democratic Party received a contribution from HMP in support of its preferred candidate as a result of HMP's allegedly coordinated expenditure on the communication.

In a letter from counsel, HMP asserts that the Club's only involvement in the communication was to respond to HMP's unsolicited request for a casting suggestion.[32]

Under the facts presented here, it does not appear that the Snedekers' appearance in the advertisement alone suggests the material involvement of the Democratic Club. It does not appear that she was a Democratic Club officer at the time, and there is no information in the record indicating that she or her husband appeared in the advertisement in their capacity as Democratic Club members.

Furthermore, Piper's involvement in the creation and production of the communication, then, appears to have been *de minimis* and thus readily distinguishable from the conduct at issue

[31] *See* 11 C.F.R. § 109.21(d)(2)(i).

[32] *See* HMP Resp. at 2.

in prior matters in which the Commission concluded that the material involvement standard was satisfied.[33]

Given these circumstances, the Commission concludes that pursuing this matter further would not be an efficient use of the Commission's resources. Accordingly, the Commission exercised its prosecutorial discretion and dismissed the allegation that HMP made an excessive contribution in the form of a coordinated communication or that the Sink Committee or the Democratic Party received or accepted such a contribution either directly or acting through the Democratic Club, Rich Piper, or Elizabeth Snedeker.

[33] *See, e.g.*, MUR 5924 (Tan Nguyen) (material involvement included approving the content and disseminating the communication).