



FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Maryland USA and Joel Ritter in his official)
capacity as treasurer) MUR 7139
Mark Epstein)
Amie Hoeber)
Amie Hoeber for Congress and Chris Marston in his)
official capacity as treasurer)

**STATEMENT OF REASONS OF
COMMISSIONERS SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB**

This matter concerns allegations that Maryland USA, an independent-expenditure-only committee (“IEOPC”), republished campaign materials from, and coordinated with, Amie Hoeber for Congress (the “Hoeber Committee”), the principal campaign committee for Amie Hoeber’s 2016 congressional campaign, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). We voted to approve the Office of General Counsel’s recommendations to find reason to believe that the Respondents violated the Act and Commission regulations in connection with the republication of campaign materials and the making of coordinated communications.¹ We generally agree with the analysis set out in the First General Counsel’s Report.² However, we write separately to make clear that Maryland USA’s republication of the Hoeber Committee’s campaign materials constitutes republication, and, thus, an impermissible contribution from Maryland USA, even in the absence of coordination with the Hoeber Committee.

¹ Certification, MUR 7139 (Maryland USA, *et al.*) (Jan. 28, 2021).

² First Gen. Counsel’s Rep., MUR 7139.

I. Factual Background³

Maryland USA registered with the Commission on July 22, 2015, one week before the Hoeber Committee.⁴ Amie Hoeber (“Hoeber”) was the only candidate that Maryland USA supported during the 2016 election cycle.⁵ Mark Epstein, Amie Hoeber’s husband, was the Hoeber Committee’s Assistant Treasurer and Custodian of Records until October 26, 2015;⁶ subsequently he was Maryland USA’s primary source of funds.⁷

On October 15, 2015, the Hoeber Committee released an online video announcing Hoeber’s candidacy (the “Announcement Video”).⁸ The three-minute-and-nine-second Announcement Video features Hoeber speaking into the camera while standing in front of a building.⁹ Subsequently, Maryland USA created three videos using footage from the Announcement Video:¹⁰

³ For a complete recitation of the facts, *see* First Gen. Counsel’s Rep., MUR 7139.

⁴ FEC Form 1, Statement of Organization, Maryland USA (July 22, 2015); *see* FEC Form 1, Statement of Organization, Amie Hoeber for Congress (July 29, 2015).

⁵ *See* 2015 Year-End Report, Maryland USA (Jan. 28, 2016); Amended Pre-Primary Report, Maryland USA (Aug. 22, 2016); July Quarterly Report, Maryland USA (July 14, 2016); October Quarterly Report, Maryland USA (Oct. 13, 2016); Pre-General Report, Maryland USA (Oct. 27, 2016); Post-General Report, Maryland USA (Dec. 6, 2016); 2016 Year-End Report, Maryland USA (Jan. 26, 2017).

⁶ FEC Form 1, Statement of Organization, Amie Hoeber for Congress (July 29, 2015); FEC Form 1, Amended Statement of Organization, Amie Hoeber for Congress (Oct. 19, 2015); Compl. at 3.

⁷ *See supra* note 5.

⁸ Compl. at 4.

⁹ *Id.*

¹⁰ *Id.* at 4-5.

- Declaration 30 HD 2 is a 30-second video, 18 seconds (60 percent) of which is video and audio content from the Announcement Video¹¹

“Declaration” – 30 seconds		
Audio	On-Screen Text	Visual
[Male voiceover]: Our founding fathers knew the proper role for government.		Image of the Declaration of Independence
[Male voiceover]: Amie Hoeber shares that view.		Still photo of Amie Hoeber
[Amie Hoeber]: Too many in Congress today are perennial politicians and they’re ducking their responsibilities. They simply don’t do their job.	“Amie Hoeber”	Video of Amie Hoeber speaking to the camera
[Amie Hoeber]: Their solution to every problem is a bigger and more intrusive government.		Image of the U.S. Capitol, Barack Obama, Nancy Pelosi, and John Delaney
[Amie Hoeber]: Send me to Congress and I will listen to you and act on your behalf.		Video of Amie Hoeber speaking to the camera
[Male voiceover]: Amie Hoeber. Republican for Congress.	“Amie Hoeber”	Still photo of Amie Hoeber
[Male voiceover]: Maryland USA is responsible for the content of this advertising.	“Amie Hoeber Republican for Congress” and disclaimer tag	Still photo of Amie Hoeber superimposed on the Declaration of Independence

¹¹ <https://www.youtube.com/watch?v=UrO1OeCjPFU> (last viewed on Feb. 4, 2022).

- Declaration 15 HD is a 15-second video, 9 seconds (60 percent) of which is video and audio content from the Announcement Video¹²

“Declaration” – 15 seconds		
Audio	On-Screen Text	Visual
[Male voiceover]: Our founding fathers knew the proper role for government.		Image of the Declaration of Independence
[Male voiceover]: Amie Hoeber shares that view.		Still photo of Amie Hoeber
[Amie Hoeber]: Too many in Congress today are perennial politicians.	“Amie Hoeber”	Footage of Amie Hoeber speaking to the camera
[Amie Hoeber]: Their solution to every problem is a more intrusive government.		Image of the U.S. Capitol, Barack Obama, Nancy Pelosi, and John Delaney
[Amie Hoeber]: It’s time elected officials listen to you.	“Amie Hoeber” and disclaimer tag	Still photo of Amie Hoeber

¹²

<https://www.youtube.com/watch?v=huaVuhg91FA> (last viewed on Feb. 4, 2022).

- Stronger Together HD 30 1119 is a 30-second video, 9 seconds (30 percent) of which content from the Announcement Video.¹³

“Stronger America” – 30 seconds		
Audio	On-Screen Text	Visual
[Male voiceover]: The Islamic State on a rampage.	“ISIS on Rampage”	Still images of men with guns and apparent ISIS flag
[Male voiceover]: Iran still funding terrorism.	“Iran Funding Terrorism”	Still photo of Ali Khamenei and war images
[Male voiceover]: Putin more emboldened by the day.	“Putin Emboldened”	Still photo of Vladimir Putin, men in military fatigues, and military aircraft
[Male voiceover]: Republican Amie Hoeber knows what it takes to keep us safe.	“Amie Hoeber”	Still photo of Amie Hoeber with two women
[Amie Hoeber]: I was President Reagan’s Deputy Undersecretary of the U.S. Army during both his terms and he is my role model for public service.	“Deputy Under Secretary United States Army”	Split screen: Video of Amie Hoeber speaking to the camera next to still image of President Ronald Reagan in the Oval Office
[Male voiceover]: To help make America Stronger		Still images of Amie Hoeber in a uniform, men in military fatigues with American flag, helicopter, and naval ship
[Male voiceover]: Amie Hoeber – Republican for Congress	“Amie Hoeber Republican for Congress”	Still headshot of Amie Hoeber
[Male voiceover]: Maryland USA is responsible for the content of this advertising.	Disclaimer tag	Still photo of Amie Hoeber speaking with other individuals

For each of these three videos, all of the audio and video footage of Hoeber came from the Announcement Video.

II. Legal Analysis

The Act defines “expenditure” as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹⁴ A “contribution,” as defined in the Act, is “any gift, subscription, loan, advance, or deposit of money or anything of value, made by any person for

¹³ <https://www.youtube.com/watch?v=ISXv8NNICII> (last viewed on Feb. 4, 2022).

¹⁴ 52 U.S.C. § 30101(9)(A)(i); *see also* 11 C.F.R. § 100.111(a).

the purpose of influencing any election for Federal office.”¹⁵ A subset of contributions are expenditures that are coordinated with a candidate or candidate’s authorized committee.¹⁶ Consistent with the definitions of both contribution and expenditure, the Act further provides that the “financing by any person of the dissemination, distribution, or republication, in whole or *in part*, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committee, or their authorized agents shall be considered to be an expenditure” for the purposes of the coordinated expenditure provisions.¹⁷

In general, the republication of campaign materials prepared by a candidate’s authorized committee is thing of value done for the purpose of influencing a federal election and is therefore a contribution.¹⁸ IEOPCs are prohibited from making contributions to federal candidates,¹⁹ and candidates and their authorized committees are prohibited from accepting contributions not subject to the limits and prohibitions of the Act.²⁰ Thus, an IEOPC’s republication of a Committee’s campaign materials is prohibited.²¹ Acknowledging that “such expenditures could be made without the knowledge or control of the candidate,” the Commission crafted its regulations implementing the Act so that a contribution only would be deemed to be received by a candidate committee when the republication occurred with the cooperation or consent of the committee.²² Accordingly, the candidate who prepared the campaign material does not receive

¹⁵ 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

¹⁶ 52 U.S.C. § 30116(a)(7).

¹⁷ *Id.* § 30116(a)(7)(B)(iii) (emphasis added); *see also* 11 C.F.R. § 109.23(a). For republication, the Commission has concluded that “campaign materials” include any material belonging to or emanating from a campaign. *See, e.g.*, MUR 5743 (Betty Sutton) (candidate photo obtained from campaign website); MUR 5672 (Save American Jobs) (video produced and used by candidate’s campaign subsequently hosted on association’s website).

¹⁸ In rejecting an exception for “fair use” of campaign materials, the Commission distinguished republication in the context of intellectual property law, where republication of another person’s work is generally viewed as undesirable by the original author, from the context of campaign finance law, “where the candidate/author generally views republication of his or her campaign material, *even in part*, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 443 (Jan. 3, 2003) (emphasis added).

¹⁹ *See* 52 U.S.C. § 30116(a) (prohibition on excessive contributions); *id.* § 30118(a) (prohibition on corporate contributions); Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 (quoting Advisory Op. 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011)); *see also* Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

²⁰ *See* 52 U.S.C. § 30125(e)(1).

²¹ *See* F&LA at 4-7, MUR 6535 (Restore Our Future) (finding reason to believe that an IEOPC violated the Act by republishing campaign materials to support Mitt Romney’s 2012 presidential campaign that were originally published by Romney’s 2008 campaign).

²² H.R. Doc. No. 95-1-A, at 33 (1977). Similarly, Commission regulations provide that all contributions that are earmarked for expenditures on behalf of a clearly identified federal candidate are contributions to the candidate

or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication.²³

Although the Act and Commission regulations describe republication to include republication of campaign materials in part,²⁴ the Commission has disagreed in specific instances about whether a given use of still images or video footage without sound constituted republication of campaign materials, with some Commissioners characterizing certain uses of such campaign materials as merely “fleeting” or incidental.²⁵ However, the Commission need not engage in such exercises here. The ads in question specifically contained audio and video of the candidate communicating her own campaign message²⁶ and thus clearly fit “within the traditional view of republication as ‘the reprinting and dissemination of a candidate’s mailers, brochures, yard signs, billboards, or posters – in other words, materials that copy and convey a campaign’s message.’”²⁷ Moreover, campaign footage that constitutes 60 percent, or even 30 percent, of a 30 second ad is hardly incidental or fleeting.

Maryland USA’s assertion that the republished footage was of the candidate “discussing her positions, incorporated into Maryland USA’s larger expression of its own views about her candidacy,” is false on the face of the ads. These ads largely consist of the Hoerber Committee’s expression of *Hoerber’s* own views with snippets of generic messaging and images added on by

for the purposes of the person making the contribution. However, the candidate or candidate’s committee for whom the contribution is earmarked does not receive a contribution and is not required to report such a contribution unless the contribution is forwarded to the candidate committee through a conduit or intermediary. 11 C.F.R. § 110.6.

²³ 11 C.F.R. § 109.23(a).

²⁴ 52 U.S.C. § 30116(a)(7)(B)(iii); 11 C.F.R. § 109.23(a).

²⁵ *See, e.g.*, Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Peterson (Feb. 22, 2012), MUR 6357 (*American Crossroads, et al.*); Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Peterson (Feb. 28, 2012), MUR 5879 (*Harry Mitchell for Congress, et al.*). In both matters, the Commission’s attorneys recommended finding reason to believe Respondents impermissibly republished campaign materials. We agree with our attorneys’ assessment.

²⁶ Although our colleagues assert that the expenditures in this matter are “indistinguishable” from prior matters involving “clips of candidate B-roll footage,” their Statement of Reasons does not define “B-roll.” Primary footage of a candidate delivering a campaign message directly to the camera is not B-roll footage. *See, e.g.*, “B-roll” *Merriam-Webster’s Collegiate Dictionary*, Merriam-Webster, <https://unabridged.merriam-webster.com/collegiate/B-roll> (last visited Feb. 15, 2022) (defined as “recorded video subjects or locations used to provide supplementary material for a film or television show”); SC Lannom, *What is B-Roll: The Difference Between A-Roll vs B-Roll Footage*, StudioBinder, (Oct. 28, 2019), <https://www.studiobinder.com/blog/what-is-b-roll/> (“B-roll footage...is any supplemental video that is considered to be secondary to your primary footage”); *B Roll – Everything You Need to Know*, Nashville Film Institute, <https://www.nfi.edu/b-roll/> (last visited Feb. 15, 2022) (“B roll...refers to secondary footage that visually supports the primary footage in a film or video project”).

²⁷ *Cf.* Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Peterson at 5-6, MUR 5879 (*Harry Mitchell for Congress, et al.*) (citing Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, MUR 5996 (*Education Finance Reform Group, et al.*)).

Maryland USA – “in other words, materials that copy and convey [the Hoerber Committee’s] message.” Indeed, absent the disclaimer at the end of the ad, a viewer could reasonably assume that the ad was created by the Hoerber Committee itself. This use of campaign materials – in which a significant portion of the ad is the candidate herself sharing her campaign message in her own words – is squarely in the scope of “ republication ” as that term is used in the Act and Commission regulations.²⁸

We voted to find reason to believe that Maryland USA coordinated with the Hoerber Committee in making communications for the reasons set out in the FGCR. However, for the foregoing reasons, we also voted to find reason to believe that Maryland USA made excessive and prohibited contributions by republishing the Hoerber Committee’s campaign materials, regardless of whether the ads were coordinated.

2/16/22
Date


Shana M. Broussard
Commissioner

2/16/22
Date


Ellen L. Weintraub
Commissioner

²⁸ In their Joint Response, the Hoerber Committee, Hoerber, and Epstein argue that these ads are not subject to regulation because they were distributed on the internet for free. Resp. of Amie Hoerber for Congress, Amie Hoerber, and Mark Epstein at 3 (Nov. 15, 2016). However, the available information suggests that Maryland USA in fact paid to distribute the ads on the YouTube website, *see* First Gen. Counsel’s Rep. at 8-9 (and, notably, Maryland USA does not raise this argument in its Response).