FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MURs: 7169, 7170, 7171, 7172, 7173, 7174, 7175, 7176, 7177, 7178, 7179, 7182, 7187, 7188
DATE COMPLAINTS FILED: 10/31/2016
DATE OF NOTIFICATION: 11/2/2016
LAST RESPONSE RECEIVED: 12/22/2016
DATE ACTIVATED: 02/16/2017

ELECTION CYCLE: 2016
EXPIRATION OF SOL: 09/20/2021 – 11/08/2021

COMPLAINANT (ALL MATTERS): Foundation for Accountability and Civic Trust Matthew G. Whitaker

RESPONDENT (ALL MATTERS): Hillary for America and Jose Villarreal in his official capacity as treasurer

MUR 7169 RESPONDENTS: Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer
Santarsiero for Congress and Lora Haggard in her official capacity as treasurer

MUR 7170 RESPONDENTS: Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer
Ruben Kihuen for Congress and Jay Petterson in his official capacity as treasurer

MUR 7171 RESPONDENTS: Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer
Nelson for Wisconsin and Dr. Beth Gillis in her official capacity as treasurer

MUR 7172 RESPONDENTS: Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer
Colleen Deacon for Congress and Jennifer May in her official capacity as treasurer

MUR 7173 RESPONDENTS: Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer
Applegate for Congress and Douglas Applegate in his official capacity as treasurer

MUR 7174 RESPONDENTS: Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer
Mowrer for Iowa and Dennis Skinner is his official capacity as treasurer

MUR 7175 RESPONDENTS: Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer

	Texans for Pete and Wayne Alexander in his official capacity as treasurer
MUR 7176 RESPONDENTS:	Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer Suzanna Shkreli for Congress and Jennifer May in her official capacity as treasurer
MUR 7177 RESPONDENTS:	Colorado Democratic Party and Judith Steinberg in her official capacity as treasurer Carroll for Colorado and Mitchell S. Wright in his official capacity as treasurer
MUR 7178 RESPONDENTS:	Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer Eggman for Congress and Jay Peterson in his official capacity as treasurer
MUR 7179 RESPONDENTS:	Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer Stephanie Murray for Congress and Jennifer May in her official capacity as treasurer
MUR 7182 RESPONDENTS:	Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer Bryan Caforio for Congress and Gonzalo Freixes in his official capacity as treasurer
MUR 7187 RESPONDENTS:	Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer Friends of Christina M. Hartman and Diane Toapkian in her official capacity as treasurer
MUR 7188 RESPONDENTS:	Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer LuAnn Bennett for Congress and Jennifer May in her official capacity as treasurer
RELEVANT STATUTES AND REGULATIONS:	52 U.S.C. § 30116(a)(2)(A) 52 U.S.C. § 30116(a)(7)(B) 52 U.S.C. § 30116(d) 52 U.S.C. § 30116(f) 11 C.F.R. § 106.1(a) 11 C.F.R. § 106.8 11 C.F.R. § 109.37
INTERNAL REPORTS CHECKED:	Disclosure Reports
AGENCIES CHECKED:	None

I. INTRODUCTION

These matters involve 15 television advertisements aired during the 2016 election that opposed then-presidential candidate Donald Trump and one of fourteen Republican congressional candidates. Each advertisement was paid for partially by the Democratic Congressional Campaign Committee ("DCCC") (and in one matter, the Colorado Democratic Party ("CDP")) and partially by the campaign committee of the respective Democratic congressional candidate that the advertisement supported. Each advertisement also featured that Democratic congressional candidate. The Complaints allege that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by allocating the cost of the advertisements, resulting in excessive contributions from the DCCC/CDP to the candidate committees. The Respondents assert in response that the costs for these advertisements were properly allocated.

The Complaints further allege that the advertisements were coordinated between the DCCC/CDP and Hillary for America ("HFA"), the principal campaign committee for Hillary Clinton in the 2016 presidential election, resulting in excessive in-kind contributions from DCCC and CDP to HFA. Respondents deny coordinating as alleged.

The information in the record does not support the allegations that the costs for these advertisements were incorrectly allocated or that DCCC/CDP coordinated with HFA. We therefore recommend that the Commission find no reason to believe that the DCCC or the CDP made excessive in-kind contributions to the candidate committees, and close the files.

II. FACTUAL AND LEGAL ANALYSIS

A. Allocation of the Costs of the Advertisements

The Act defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal

office."[1] The term "anything of value" includes all in-kind contributions.[2] Contributions from a national or state committee to a candidate committee are limited to a total of $5,000 per election, and candidates and political committees are prohibited from knowingly accepting contributions in excess of the Act's limits.[3] The Act grants the national and state committees of a political party authority to also support their general election candidates with coordinated expenditures subject to certain limits.[4] Political party committees may support their candidates with independent expenditures, defined as expenditures that expressly advocate the election or defeat of a clearly identified federal candidate and are not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents.[5]

Commission regulations provide that expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified Federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived.[6] If either side pays for amounts that exceed their allocated share of the total costs, then those excessive amounts are in-kind contributions to the other candidate(s)

[1] 52 U.S.C. § 30101(8)(A).

[2] 11 C.F.R. § 100.52(d)(1).

[3] 52 U.S.C. § 30116(a)(2)(A), (f).

[4] 52 U.S.C. § 30116(d).

[5] 52 U.S.C. § 30101(17); 11 C.F.R. § 109.30. *See Colorado Rep. Fed. Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604 (1996). A communication "expressly advocates" the election or defeat of a clearly identified candidate when, among other things, it contains campaign slogans or individual words that "in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates." *See* 11 C.F.R. § 100.22(a); *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976); *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 249 (1986). In addition, a communication contains express advocacy if, when taken as a whole and with limited reference to external events, it "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates," because it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates or encourages some other kind of action." *See* 11 C.F.R. § 100.22(b).

[6] 11 C.F.R. § 106.1(a).

involved. For broadcast communications, the attribution is determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates.[7]

The Respondents assert that each of the fifteen advertisements in these matters clearly identifies a Democratic candidate for Congress, and either expressly advocates against the candidate's Republican opponent and Trump,[8] or addresses the Republican opponent's support of Trump.[9] Complainant alleges that the DCCC and CDP made, and the Respondent Democratic congressional candidate committees accepted, excessive contributions in connection with the advertisements. Complainant argues that it was improper for the Respondents to allocate the costs of the advertisements and, therefore, the amounts the DCCC paid in connection with each advertisement were excessive, in-kind contributions to the respective individual candidate committee.[10]

Respondents assert in response to the Complaints that the methods used to allocate the costs from the ads were appropriate and that the resulting expenditures were reported correctly. Specifically, Respondents assert that they applied the allocation method for broadcast communications set forth in Section 106.1(a) of the Commission's regulations and allocated the costs according to the space and time devoted to each entity as compared to the total space or time

7 *Id.*

8 *See, e.g.*, Attach. 1 at 8-9 (transcribing the advertisement at issue in MUR 7176 (Shkreli)).

9 *See, e.g.*, Attach. 1 at 10-11 (transcribing the advertisement at issue in MUR 7178 (Eggman)).

10 *See, e.g.*, MUR 7169 (Santarsiero), Compl. at 9. The Complaints discuss at length the Commission's treatment of hybrid ads. *See, e.g.*, MUR 7169, Compl. at 4-9. The Complaints note that the advertisements at issue here are not "hybrid communications" and that Respondents are improperly substituting the standard "generic party reference" with material attacking Donald Trump, while still attributing a portion of the cost of the advertisements to the DCCC/CDP. *See id.* at 2-4. Hybrid ads are defined as "'communications that refer both to one or more clearly identified Federal candidates and generically to candidates of a political party." *See id.* at 3 quoting Notice of Proposed Rulemaking on Hybrid Communications, 72 Fed. Reg. 26,569, 26,770 (May 10, 2007). There are no generic references, such as "Democrats" or "Republicans," in any of the 15 ads at issue here.

devoted to all candidates.[11] According to Respondents, the costs of the advertisements identified in the Complaints were allocated between the DCCC or CDP and the Democratic candidate whose opponent was featured in the ad along with Donald Trump, pursuant to a time/space basis according to the portion of the ad that concerned each candidate.[12] The portion of each ad that addressed Trump was paid for by the DCCC.[13] The portion of each ad that addressed the Republican congressional candidate was either paid for in full by the corresponding Democratic congressional candidate or split between that Democratic candidate and the DCCC spending under its coordinated party expenditure limit.[14]

For example, Respondents assert that they paid for the advertisement at issue in MUR 7170 (Kihuen) as an independent expenditure by the DCCC for the portion of the ad expressly advocating against Trump and as an expenditure by Ruben Kihuen for Congress, the principal campaign committee for Kihuen's campaign for Nevada's 4th Congressional District, because a portion of the ad advocated against the election of Kihuen's opponent.[15] This advertisement, "Our Values" (0:30), contained the following audio:

> *Voiceover*: Donald Trump has made a lot of insulting statements.
> [Footage of Trump].

[11] Resp. of DCCC, Santarsiero for Congress, Ruben Kihuen for Congress, Nelson for Wisconsin, Colleen Deacon for Congress, Applegate for Congress, Mowrer for Iowa, Texans for Pete, Suzanna Shkreli for Congress, Eggman for Congress, Stephanie Murray for Congress, Bryan Caforio for Congress, Friends of Christina M. Hartman, and LuAnn Bennett for Congress ("Joint Resp.") at 5-13 (Dec. 22, 2016). This Joint Response applied to all fourteen Complaints at issue in this report. *See id.*

[12] Joint Resp. at 4-5. The available record indicates that the subject advertisements aired during September and October 2016. The Joint Response indicates that the cost for the portion of each broadcast that was dedicated to the required disclaimer was split between the candidate and DCCC using the same ratio applied to the rest of the advertisement. *Id.* at 5-6.

[13] Joint Resp. at 4-5. The Respondents assert that this portion was reported by the DCCC as either an independent expenditure if it expressly advocated against Trump or an operating expenditure if it did not. *See id. See generally* 11 C.F.R. § 100.22.

[14] Joint Resp. at 4-5.

[15] *See id.* Respondents allocated the payments in this manner for the advertisements at issue in MURs 7169 (Santarsiero), 7170 (Kihuen), 7171 (Nelson), 7174 (Mowrer), 7176 (Shkreli), and 7182 (Caforio).

> *Trump*: "Ah. I don't know what I said. Ah." [Footage of Trump].
>
> *Trump*: "He's a Mexican." [Footage of Trump].
>
> *Voiceover*: Trump insulted immigrants, women, a military family and veterans with PTSD. [Footage of Trump beside "examples," such as Khizr Khan].
>
> *Kihuen*: "My opponent Crescent Hardy says he'll do anything to help Donald Trump, and Hardy also stands with Cliven Bundy." [Footage of Kihuen, Trump, and Hardy].
>
> *Bundy*: "And I've often wondered . . . are they better off as slaves, picking cotton? [Footage of Kihuen and Bundy].
>
> *Kihuen*: "Yeah, that guy." [Footage of Kihuen and Bundy].
>
> *Kihuen*: "I'm Ruben Kihuen and I approve this message, because these are not our values, and we're better off without Crescent Hardy and Donald Trump." [Footage of Kihuen].[16]

In other instances, according to Respondents, the portion of an advertisement paid for by the DCCC (under the allocation principles discussed above, because it addressed Trump) was reported as an operating expenditure by the DCCC because that portion of the ad did not expressly advocate Trump's defeat, but instead focused on policy issues.[17] For example, the Respondents assert that the ad in MUR 7172 (Deacon) was paid for by the DCCC in that manner in part and in part as an expenditure by Colleen Deacon for Congress, the principal campaign committee for Colleen Deacon's campaign for New York's 24th Congressional District because a portion of the ad addressed Deacon's opponent's support for Trump. This advertisement, "Unsettled" (0:30), contained the following audio:

---

[16] *See* "Our Values," available at https://www.youtube.com/watch?v=ulkmwN7ivMU (Oct. 17, 2016). OGC has transcribed the language from each advertisement at issue, along with some descriptive information that relates to each ad. *See* Attachment 1 to this report.

[17] Joint Resp. at 4-5. Respondents allocated the payments in this manner for the advertisements at issue in MURs 7172 (Deacon), 7175 (Gallego), 7178 (Eggman), 7179 (Murphy), and 7188 (Bennett).

> *Voiceover*: In an unsettled world, John Katko and Donald Trump's approach takes us down a dangerous path. [Footage of current events].
>
> *Trump*: "I love war in a certain way." [Footage of Trump].
>
> *Voiceover*: But when asked about supporting Trump, Katko said "I absolutely will support." [Footage of Katko].
>
> *Trump*: "Tell them to go [bleep] themselves." [Footage of Trump].
>
> *Voiceover*: When national security leaders condemn Trump's reckless statements on foreign policy. [Footage of Trump].
>
> *Reporter*: "People are wondering how those things can happen and you not flat out denounce it." [Footage of Katko and reporter].
>
> *Katko*: "I'm more concerned about my race." [Footage of Katko].
>
> *Voiceover*: Not about the safety of our families. [Footage of Katko].
>
> *Voiceover*: Trump and Katko put our National Security at risk. [Footage of Trump and Katko].
>
> *Deacon*: "I'm Collen Deacon and I approve this message." [Footage of Deacon].[18]

The one matter involving the CDP, MUR 7177 (Carroll), involves an advertisement paid for by the CDP and Carroll for Colorado, the principal campaign committee for Morgan Carroll's congressional campaign for Colorado's 6th Congressional District.[19] The CDP paid for the portion of the advertisement that criticizes Trump's policy positions as an operating expense, while Carroll for Colorado paid for the portion opposing Rep. Mike Coffman, Carroll's opponent.[20]

Finally, in two matters, MURs 7173 (Applegate) and 7187 (Hartman), all of the costs of the advertisements were split between the Democratic candidate and the DCCC spending under its coordinated party expenditure limit.[21]

---

[18] *See* "Unsettled," available at https://www.youtube.com/watch?v=Ch4ToJp3Br0 (Oct. 8, 2016); Attach. 1.

[19] MUR 7177 (Carroll), Compl. at 1 (Oct. 31, 2016).

[20] CDP Resp. at 2-3 (Dec. 22, 2016); Joint Resp. at 4.

[21] Joint Resp. at 4-5, 9.

In the circumstances presented in these MURs, we believe it was reasonable for Respondents to allocate the costs of the advertisements on a time and space basis pursuant to Section 106.1(a). The Commission has previously approved the allocation of the costs of communications that relate to more than one Federal candidate in Advisory Opinion 2010-10 (NRTL). There, the Commission addressed the appropriate allocation method for independent expenditures in several Federal elections under Section 106.1(a).[22] The Commission opined, *inter alia*, that independent expenditures that expressly advocate the election of several Federal candidates in different races and identify, and compare the positions of, those candidates' respective opponents, should be allocated among the different races, based on a time or space analysis.[23] The allocation is determined by comparing the proportion of the space or time devoted to each race in the communication, with the total space or time devoted to all races in the communication.[24] The corresponding portion of the independent expenditure should be reported as having been made in support of the candidates whose elections were expressly advocated.[25] Here, Respondents assert that certain portions of the advertisements relating to Trump do not contain express advocacy,[26] and the Commission has not expressly addressed allocation of costs for communications that address multiple candidates but may not expressly advocate for each candidate.[27] The Commission has also approved of these Section

[22] *See* Adv. Op. 2010-10 (National Right to Life PAC) at 5.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] We do not analyze in this report whether Respondents have properly characterized the content of each advertisement.

[27] Adv. Op. 2010-10 at n. 5.

106.1 allocation principles when an advertisement not only addresses two candidates, but is also paid for by two separate parties.[28]

The Commission has not explicitly addressed the allocation of costs of communications that address multiple candidates but do not expressly advocate the election or defeat of those candidates. However, Section 106.1(a) applies to "expenditures" – covering the DCCC and candidate committee payments for any non-express advocacy ads – as well as to independent expenditures, and the allocation method used by Respondents appears to satisfy the time and space basis set forth in the regulation.[29]

Based on the available record, it appears that the Respondents' allocation of the costs of the ads between the Democratic House campaign committees and either DCCC or CDP is consistent with Section 106.1(a) and Commission precedent. The Complaints do not provide information suggesting otherwise. Accordingly, we recommend that the Commission find no reason to believe that the DCCC and CDP violated 52 U.S.C. § 30116(a) by making, or that the Democratic House campaign committees violated 52 U.S.C. § 30116(f) by receiving, excessive contributions as a result of improperly allocating the costs of the ads.

B. Coordination

The Complaints also allege that the DCCC and CDP coordinated their advertisements with HFA. Respondents deny these allegations.

[28] *See* Adv. Op. 2007-24 (Burkee/Walz) at 5 (requiring the costs of joint ad devoting equal time and space between two candidates to be split equally between those two candidates' committees). *See also* Adv. Op. 2004-37 (Waters) (describing payments by multiple candidates for brochure, under 106.1 allocation principles).

[29] Respondents assert that in attributing the cost of a communication among multiple candidates, the Commission does not look to whether or not the segment associated with a particular candidate contains express advocacy. *See* Joint Resp. at 6.

Under the Act, expenditures that are coordinated with a candidate are treated as contributions to the candidate.[30] The Commission regulations further provide that a payment for a communication "coordinated with a candidate, a candidate's authorized committee, or an agent of either of the foregoing" must be treated as either an in-kind contribution to, or coordinated party expenditure with, the candidate.[31] To determine whether a communication constitutes a "party coordinated communication," Commission regulations apply a three-prong test.[32] First, the communication must be paid for by a political party committee or its agent.[33] Second, the communication must satisfy one of three content standards.[34] Finally, the communication must satisfy one of six conduct standards.[35]

In these matters, the payment prong of the coordinated communication test is satisfied because the DCCC and CDP paid for, in part, the ads at issue. The content prong also appears to be satisfied because the ads are either public communications containing express advocacy, or public

---

30 52 U.S.C. § 30116(a)(7)(B).

31 11 C.F.R. § 109.37(a), (b).

32 11 C.F.R. § 109.37(a)(1),(2),(3).

33 11 C.F.R. § 109.37(a)(1).

34 The content standards are: (1) a public communication that disseminates, distributes, or republishes, in whole or in part, a candidate's campaign materials; (2) a public communication containing express advocacy; and (3) a public communication that refers to a clearly identified Federal candidate that is publicly distributed or disseminated 90 days or fewer before a primary or general election, and was directed to voters in the jurisdiction of the clearly identified candidate. 11 C.F.R. § 109.37(a)(2)(i),(ii),(iii).

35 The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced, or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material under circumstances that satisfy one of the first five criteria identified here. 11 C.F.R. § 109.37(a)(3); *see also* 109.21(d)(1)-(6).

communications that clearly refer to a federal candidate and were publicly distributed or disseminated in that candidate's jurisdiction within 90 days of a general election.[36]

However, the Complaints do not allege specific facts that are sufficient to provide reason to believe that the conduct prong is has been satisfied. In fact, the Complaints offer only that there is "close and ongoing coordination between the DCCC and HFA," and we see no basis on the current record to conclude or reasonably infer that any of the types of conduct described in the conduct prong have been satisfied.

Moreover, the Complaints' broad allegations of coordination between the DCCC and HFA or the CDP and HFA are sufficiently rebutted by the specific sworn responses denying the alleged coordination. The DCCC's Response provides a declaration from its Deputy Executive Director, Michael Ian Russell, who worked on and supervised DCCC employees working on the advertisements mentioning Trump.[37] According to Russell, during 2016 he did not work for HFA in any capacity, and that no DCCC employee or House campaign staff working on these advertisements was employed by HFA at any time during the 120 day period prior to the date each ad was created.[38] Russell avers that the program of advertisements was conceived by DCCC without the request, suggestion, or assent of HFA or its agents, that staff were instructed not to discuss any aspect of the advertisements with HFA, and that he is not aware of any breach of protocol.[39] He further avers that none of the advertisements were created, produced, or distributed at the request or suggestion of HFA nor did they assent to the creation, production, or distribution of the advertisements, and that HFA had no involvement with the DCCC or any of the House campaign

---

36 *See* 11 C.F.R. § 109.37(a)(2)(ii), (iii).

37 Joint Resp., Ex. A.

38 Russell Decl. ¶¶ 1, 9.

39 *Id.* ¶¶ 3 - 6.

staff regarding the content, production, or distribution of the advertisements.[40] Last, he avers that HFA did not convey any relevant information about its plans, projects, activities, or needs concerning any advertisement.[41]

Similarly, the CDP Response denies coordination and supplies a declaration from its Chairman, Rick Palacio, averring that the advertisement in MUR 7177 was not created, produced, or distributed at the request, suggestion, or assent of HFA, and that HFA was not materially involved in – nor were there substantial discussions between HFA and CDP – regarding the creation, production, or distribution of the advertisement.[42]

HFA, for its part, denies that it or any of its agents coordinated any of the advertisements with either the DCCC or the CDP, or their agents.[43]

In sum, the lack of available information indicating the sharing of campaign information, the lack of specific facts in the Complaint, combined with the denials of any coordinating activity, do not provide a sufficient predicate to investigate whether any conduct standard is satisfied. Therefore, we recommend that the Commission find no reason to believe that the DCCC and CDP made excessive in-kind contributions to HFA in violation of 52 U.S.C. § 30116(a), or that HFA received excessive in-kind contributions in violation of 52 U.S.C. § 30116(f) in connection with the coordinated communication allegation. Finally, we recommend that the Commission close the files.

40 *Id.* ¶ 7.

41 *Id.* ¶ 8. In addition, the DCCC Responses provide declarations from media consultants working on the advertisements in MURs 7179 and 7188, which aver that during 2016 these companies also performed work for HFA, but that the advertisements were not created, produced, or distributed at the suggest or request of HFA, that HFA had no involvement in the advertisements, and that that the media consultants did not use or convey any information about HFA campaign plans, projects, activities, or needs to create, produce, or distribute the advertisements in question. Joint Resp., Ex. C.

42 CDP Resp., Palacio Decl.

43 HFA Resp. at 1-2.

III. RECOMMENDATIONS

1. Find no reason to believe that Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions as a result of improperly allocating the costs of the advertisements.

2. Find no reason to believe that Colorado Democratic Party and Judith Steinberg in her official capacity as treasurer violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions as a result of improperly allocating the costs of the advertisements.

3. Find no reason to believe that Santarsiero for Congress and Lora Haggard in her official capacity as treasurer; Ruben Kihuen for Congress and Jay Petterson in his official capacity as treasurer; Nelson for Wisconsin and Dr. Beth Gillis in her official capacity as treasurer; Colleen Deacon for Congress and Jennifer May in her official capacity as treasurer; Applegate for Congress and Douglas Applegate in his official capacity as treasurer; Mowrer for Iowa and Dennis Skinner is his official capacity as treasurer; Texans for Pete and Wayne Alexander in his official capacity as treasurer; Suzanna Shkreli for Congress and Jennifer May in her official capacity as treasurer; Carroll for Colorado and Mitchell S. Wright in his official capacity as treasurer; Eggman for Congress and Jay Peterson in his official capacity as treasurer; Stephanie Murray for Congress and Jennifer May in her official capacity as treasurer; Bryan Caforio for Congress and Gonzalo Freixes in his official capacity as treasurer; Friends of Christina M. Hartman and Diane Toapkian in her official capacity as treasurer; or LuAnn Bennett for Congress and Jennifer May in her official capacity as treasurer violated 52 U.S.C. § 30116(f) by accepting excessive in-kind contributions as a result of improperly allocating the costs of the advertisements.

4. Find no reason to believe the Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer violated 52 U.S.C. § 30116(a) in connection with the coordinated communication allegation.

5. Find no reason to believe the Colorado Democratic Party and Judith Steinberg in her official capacity as treasurer violated 52 U.S.C. § 30116(a) in connection with the coordinated communication allegation.

6. Find no reason to believe that Hillary for America and Jose Villarreal in his official capacity as treasurer violated 52 U.S.C. § 30116(f) in connection with the coordinated communication allegation.

7. Approve the attached Factual and Legal Analysis.

8. Approve the appropriate letters.

9. Close the files.

Lisa J. Stevenson
Acting General Counsel

6/16/17
Date

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Christine Gallagher
Christine C. Gallagher
Attorney

Christopher L. Edwards
Christopher L. Edwards
Attorney

Attachments:
1. OGC Chart Detailing Subject Advertisements

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7169 (Santarsiero for Congress)	"Dangerous for PA Women" Oct. 17, 2016 https://www.youtube.com/watch?v=7mb2DsowG00 *Voiceover*: Brian Fitzpatrick supports Donald Trump's dangerous agenda. [Footage of Trump and Fitzpatrick]. *Trump*: "Well I'm pro-life. I am totally for defunding. We shouldn't be giving to Planned Parenthood." [Footage of Trump]. *Fitzpatrick*: "We'll vote and we'll vote to defund Planned Parenthood." [Footage of Fitzpatrick]. *Voiceover*: At a time when eleven women a day die of cervical cancer. Trump's plan would eliminate cancer screenings and pre-natal care for thousands of Pennsylvania women. [Footage of Trump]. *Santarsiero*: "Donald Trump and Brian Fitzpatrick are dangerous for women. I'll protect a woman's right to choose and I'll fight for equal pay for equal work. I'm Steve Santarsiero and I approve this message." [Footage of Santarsiero].	$602,660	Portion of ad devoted to Express Advocacy ("EA") paid for by DCCC and reported as an Independent Expenditure. Remainder either paid for by campaign or split between campaign and DCCC.	EA in opposition to Trump and Republican House candidate.

[1] As alleged in the Complaints, this figure was obtained from broadcast and cable stations, and includes the total tv advertising paid for jointly by the candidate and the DCCC from Sept. 1, 2016, through the date the complaint was filed (Oct. 24, 2016).

[2] As asserted in Joint Response of DCCC, *et al.*, at 4-5.

[3] As asserted in Joint Response of DCCC, *et al.*, at 4-5

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7170 (Ruben Kihuen for Congress)	"Our Values" Oct. 17, 2016 https://www.youtube.com/watch?v=ulkmwN7ivMU *Voiceover*: Donald Trump has made a lot of insulting statements. [Footage of Trump]. *Trump*: "Ah. I don't know what I said. Ah." [Footage of Trump]. *Trump*: "He's a Mexican." [Footage of Trump]. *Voiceover*: Trump insulted immigrants, women, a military family, and veterans with PTSD. [Footage of Trump beside "examples," such as Khizr Khan]. *Kihuen*: "My opponent Crescent Hardy says he'll do anything to help Donald Trump, and Hardy also stands with Cliven Bundy." [Footage of Kihuen, Trump, and Hardy]. *Bundy*: "And I've often wondered . . . are they better off as slaves, picking cotton?" [Footage of Kihuen and Bundy]. *Kihuen*: "Yeah, that guy." [Footage of Kihuen and Bundy]. *Kihuen*: "I'm Ruben Kihuen and I approve this message, because these are not our values, and we're better off without Crescent Hardy and Donald Trump." [Footage of Kihuen].	$943,366	Portion of ad devoted to EA paid for by DCCC and reported as an Independent Expenditure. Remainder either paid for by campaign or split between campaign and DCCC.	EA in opposition to Trump and Republican House candidate.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7171 (Nelson for Wisconsin)	"No" Oct. 10, 2016 https://www.youtube.com/watch?v=LS-gU95vm9U *Nelson*: "I'm Tom Nelson and I approve this message." [Footage of Nelson]. *Voiceover*: Mike Gallagher says we have to support Donald Trump. [Footage of Gallagher]. *Trump*: "I moved on her like a [bleep], but I couldn't get there and she was married. When you're a star, you can do anything. Grab them by the [bleep]." [Footage of bus containing Trump]. *Voiceover*: He didn't pay income taxes for 18 years. [Footage of Trump]. *Trump*: "That makes me smarter." [Footage of Trump]. *Voiceover*: And mocked a disabled reporter. [Footage of Trump]. *Trump*: "Ah. I don't know what I said. Ah. I don't remember." [Footage of Trump]. *Voiceover*: Mike Gallagher still says we have to support Donald Trump. No, we don't. We don't have to support Mike Gallagher either. [Footage of Gallagher].	$109,978	Portion of ad devoted to EA paid for by DCCC and reported as an Independent Expenditure. Remainder either paid for by campaign or split between campaign and DCCC.	EA in opposition to Trump and Republican House candidate.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7172 (Colleen Deacon for Congress)	"Unsettled" Oct. 8, 2016 https://www.youtube.com/watch?v=Ch4ToJp3Br0 *Voiceover*: In an unsettled world, John Katko and Donald Trump's approach takes us down a dangerous path. [Footage of current events]. *Trump*: "I love war in a certain way." [Footage of Trump]. *Voiceover*: But when asked about supporting Trump, Katko said "I absolutely will support." [Footage of Katko]. *Trump*: "Tell them to go [bleep] themselves." [Footage of Trump]. *Voiceover*: When national security leaders condemn Trump's reckless statements on foreign policy. [Footage of Trump]. *Reporter*: "People are wondering how those things can happen and you not flat out denounce it." [Footage of Katko and reporter]. *Katko*: "I'm more concerned about my race." [Footage of Katko]. *Voiceover*: Not about the safety of our families. [Footage of Katko].	$425,362	Portion concerning candidate was either paid for in full by campaign, or split between campaign and DCCC. Remainder paid for by DCCC and reported as an operating expenditure.	Ties Republican House candidate to Trump's policy positions.

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
	Voiceover: Trump and Katko put our National Security at risk. [Footage of Trump and Katko]. *Deacon*: "I'm Collen Deacon and I approve this message." [Footage of Deacon].			
MUR 7173 (Applegate for Congress)	Two advertisements are at issue in this matter: 1) "Darrell Issa's Lined Pockets" Sept. 20, 2016 https://www.youtube.com/watch?v=Rrii1jNAe-I *Voiceover*: Darrell Issa says Donald Trump is the obvious choice for president. And it's no wonder. [Footage of Trump and Issa]. *Trump*: "I'm really rich. Nobody knows the system better than me." [Footage of Trump]. *Voiceover*: Just like Trump, Issa gamed the system to line his own pockets. Stealing millions in taxpayer money to help properties he owned. Issa's wealth increased to over $250 million dollars during his time in Congress. [Footage of Trump and Issa]. *Applegate*: "It's time we had a congressman that looks out for you, not himself. I'm Colonel Doug Applegate and I approve this message because I'll always fight for you." [Footage of Applegate]. 2) "Access" Oct. 11, 2016 https://www.youtube.com/watch?v=BO8sRQcNU_4	$802,641	Paid for with Applegate's campaign funds and DCCC funds under the coordinated party expenditure limits.	1) Ties Republican House candidate to Trump's policy positions. 2) EA in opposition to Trump and Republican House candidate.

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
	Applegate: "I'm Colonel Doug Applegate. I approve this message." [Footage of Applegate]. *Trump*: "I did try and [bleep] her. She was married. I moved on her like a [beep], and when you're a star . . . they let you do it. You can do anything." [Footage of Trump and Issa]. *Voiceover*: Darrell Issa says Donald Trump is the obvious choice for president. [Footage of Trump and Issa]. *Trump*: "You can do anything. Grab them by the [bleep]." [Footage of Trump]. *Voiceover*: On the day we saw the real Donald Trump, Darrell Issa decided to join Trump's campaign. [Footage of Trump and Issa]. *Trump*: "You can do anything. Grab them by the [bleep]." [Footage of Trump]. *Voiceover*: It's time to put country first. Say no to Donald Trump and Darrell Issa. [Footage of Trump and Issa]. *Trump*: "You can do anything. Grab them by the. . . ." [Footage of Trump and Issa].			

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7174 (Mowrer for Iowa)	"Now We Understand" Oct. 20, 2016 https://www.youtube.com/watch?v=g_4kBjw8r-U *Voiceover*: Donald Trump says he'll defund Planned Parenthood. [Footage of Trump]. *Trump*: "I would defund Planned Parenthood." [Footage of Trump]. *Voiceover*: David Young voted to do it already . . . 5 times. [Footage of Young]. *Voiceover*: And Donald Trump says about women who have abortions: [Footage of Trump]. *Trump*: "There has to be some form of punishment." [Footage of Trump]. *Voiceover*: David Young has already voted to make abortion a crime. And even though Donald Trump brags about sexually assaulting women, David Young continues to support him for president and now we understand why. [Footage of Trump and Young]. *Mowrer*: "I'm Jim Mowrer and I approve this message." [Footage of Mowrer].	$689,120	Paid for with Mowrer's campaign funds and DCCC funds under the coordinated party expenditure limits.	EA in opposition to Trump and Republican House candidate.
MUR 7175 (Texans for Pete)	"Wrong Choice for Texans" Oct. 4, 2016 https://www.youtube.com/watch?v=GJCZwJ3tYXw *Trump*: "We're going to build a wall." [Footage of Trump].	$292,644	Portion concerning candidate was either paid for in full by campaign, or split between campaign and	Ties Republican House candidate to Trump's policy positions.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
	Voiceover: Donald Trump is tearing us apart. [Footage of rally]. *Voiceover*: Trump called a judge unqualified because of his Mexican heritage. [Footage of Trump]. *Trump*: "He's a Mexican. We're building a wall between here and Mexico." [Footage of Trump]. *Voiceover*: And called Mexicans racist and murderers. [Footage of Trump]. *Voiceover*: Donald Trump, too dangerous for us. [Footage of Trump]. *Voiceover*: But Will Hurd said he could still support Donald Trump. And Will Hurd shares the same bad ideas. [Footage of Hurd]. *Hurd*: "A wall absolutely makes sense." [Footage of Hurd]. *Voiceover*: Will Hurd, he's the wrong choice for Texas families. [Footage of Hurd]. *Gallego*: "I'm Pete Gallego and I approve this message." [Footage of Gallego].		DCCC. Remainder paid for by DCCC and reported as an operating expenditure.	

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7176 (Suzanna Shkreli for Congress)	"Brags" Oct. 14, 2016 https://www.youtube.com/watch?v=WCx3ObETyrE *Voiceover*: Donald Trump brags about sexually assaulting women. [Footage of Trump]. *Trump*: "When you're a star you can do anything. Grab them by the [bleep]." [Footage of bus containing Trump]. *Voiceover*: Still Congressman Mike Bishop supports Donald Trump. [Footage of Bishop]. *Bishop*: "I think he's just a raw candidate. He's just very raw right now, and to a lot of people that's refreshing." [Footage of Bishop]. *Voiceover*: Mike Bishop thinks Donald Trump's behavior is refreshing. [Footage of Bishop]. *Voiceover*: Donald Trump and Mike Bishop. Their values are not our values. [Footage of Trump and Bishop]. *Voiceover*: Suzanna Shkreli for Congress. As a prosecutor she protects our families. [Footage of Shkreli]. *Shkreli*: "I'm Suzanna Shkreli, and I approve this message." [Footage of Shkreli].	$221,865	Portion of ad devoted to EA paid for by DCCC and reported as an Independent Expenditure. Remainder either paid for by campaign or split between campaign and DCCC.	EA in opposition to Trump and Republican House candidate.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7177 (Carroll for Colorado)	"Won't Stand Up for You" Sept. 27, 2016 https://www.youtube.com/watch?v=7KxcnuejChU *Carroll*: "I'm Morgan Carroll and I approve this message." [Footage of Carroll]. *Voiceover*: Donald Trump and Mike Coffman more similar than you think. [Footage of Trump and Coffman]. *Voiceover*: Donald Trump would defund Planned Parenthood. [Footage of Trump]. *Voiceover*: And Mike Coffman voted to defund it 6 times. [Footage of Coffman]. *Voiceover*: What does Trump say about immigrants? [Footage of Trump]. *Trump*: "They're bringing drugs. They're rapists." [Footage of Trump]. *Voiceover*: And Kaufman says immigrants should quote "pull out a dictionary." [Footage of Coffman]. *Voiceover*: Trump mocks those with disabilities. [Footage of Trump]. *Voiceover*: Coffman says nothing. [Footage of Coffman].	$722,131	CDP and Carroll for Colorado split costs on a time/space basis.	Ties Republican House candidate to Trump's policy positions.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
	Voiceover: Trump questioned President Obama's birth certificate. [Footage of Trump]. *Voiceover*: And Mike Coffman . . . [Footage of Coffman]. *Coffman*: "He's just not an American." [Footage of Coffman]. *Voiceover*: Not an American? [Footage of Coffman]. *Voiceover*: Mike Coffman won't stand up to Donald Trump because he stands with him. [Footage of Trump and Coffman].			
MUR 7178 (Eggman for Congress)	"Bragged" Oct. 4, 2016 https://www.youtube.com/watch?v=HIxNUxf-t80 *Voiceover*: To build his new luxury hotel Donald Trump got millions of your tax dollars, and Congressman Jeff Denham helped him do it. [Footage of Trump Hotel, Trump, and Denham]. *Voiceover*: Denham even bragged about all he did for Trump. [Footage of Trump and Denham]. *Voiceover*: Now Trump attacks women and immigrants and tries to claim: [Footage of individual people]. *Trump*: "There is no drought. Believe me." [Footage of Trump].	$589,087	Portion concerning candidate was either paid for in full by campaign, or split between campaign and DCCC. Remainder paid for by DCCC and reported as an operating expenditure.	Ties Republican House candidate to Trump's policy positions.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
	Voiceover: And Denham still stands with him, not us. [Footage of Trump and Denham]. *Eggman*: "I'm Michael Eggman and I approve this message because I'll always stand with the valley." [Footage of Eggman].			
MUR 7179 (Stephanie Murphy for Congress)	"It's Time to Change Washington" Oct. 11, 2016 https://www.youtube.com/watch?v=OpdIlznhrF4 *Voiceover*: Congressman Mica and Donald Trump share the same harmful policies. [Footage of Mica and Trump]. *Voiceover*: Trump wants to restrict access to women's health care, and opposes common sense efforts to reduce gun violence. [Footage of Trump]. *Trump*: "Get them out of here." [Footage of Trump]. *Murphy*: "It's time for a new approach. Stop the attacks on women's health, and start protecting our families. I'm Stephanie Murphy, and I approve this message. Because to change Washington, we need to change the people we send there." [Footage of Murphy].	$426,835	Portion concerning candidate was either paid for in full by campaign, or split between campaign and DCCC. Remainder paid for by DCCC and reported as an operating expenditure.	Ties Republican House candidate to Trump's policy positions.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7182 (Bryan Caforio for Congress)	"Stand Up" Oct. 12, 2016 https://www.youtube.com/watch?v=il8196BhvWg *Trump*: "Ah. I don't know what I said. Ah." [Footage of Trump]. *Trump*: "Grab them by the [bleep]." [Footage of bus containing Trump]. *Caforio*: "I'm Bryan Caforio. As the son of school teachers, I know these aren't our values." [Footage of Caforio]. *Trump*: "Putting a wife to work is a very dangerous thing." [Footage of Trump]. *Trump*: "There has to be some form of punishment." [Footage of Trump]. *Reporter*: "For the woman?" [Footage of Trump]. *Trump*: "Yeah." [Footage of Trump]. *Caforio*: "Unlike extremist Congressman Steve Knight, I'll stand up to bullies like Donald Trump. In Congress, I'll fight for equal pay, and to protect planned parenthood, and get real immigration reform. I'm Bryan Caforio and I approve this message." [Footage of Caforio].	$751,469	Portion of ad devoted to EA paid for by DCCC and reported as an Independent Expenditure. Remainder either paid for by campaign or split between campaign and DCCC.	EA in opposition to Trump and Republican House candidate.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
MUR 7187 (Friends of Christina M. Hartman)	"Army General" Oct. 25, 2016 https://www.youtube.com/watch?v=8DNQEgLEECA *Voiceover*: Donald Trump says he knows better than our Army generals, insults our veterans, and admires dictators like Putin. [Footage of Trump]. *Voiceover*: Lloyd Smucker stands with Trump – worse – takes money from a company accused of funding terrorism. Hides behind lies about Christina Hartman's record on security. [Footage of Smucker]. *Voiceover*: The truth, Christina Hartman has fought for democracy in over 20 countries. Standing up for freedom against repressive regimes. Christina Hartman will fight extremism. Keep America Safe. [Footage of Hartman]. *Hartman*: "I'm Christina Hartman and I approve this message." [Footage of Hartman].	$94,175	Paid for with Hartman's campaign funds and DCCC funds under the coordinated party expenditure limits.	Ties Republican House candidate to Trump's policy positions.
MUR 7188 (LuAnn Bennett for Congress)"	"Stand Up" Sept. 30, 2016 https://www.youtube.com/watch?v=xpHOFCWY30s *Voiceover*: On issues that matter to Northern Virginia, Barbara Comstock and Donald Trump have a lot in common. [Footage of Trump and Comstock]. *O'Reilly*: "Overturn Roe v. Wade." [Footage of Trump and Bill O'Reilly]. *Trump*: "Well overturn or overturn." [Footage of	$470,000	Portion concerning candidate was either paid for in full by campaign, or split between campaign and DCCC. Remainder paid for by DCCC and reported as an operating expenditure.	Ties Republican House candidate to Trump's policy positions.

MURs 7169, *et al.* (DCCC, *et al.*) – Summary of Each Advertisement at Issue

MUR	TV Advertisement Transcript	Costs[1]	Allocation Method[2]	Type of Advocacy[3]
	Trump and O'Reilly]. *Comstock*: "I think Roe v. Wade should be overturned." [Footage of Comstock]. *Voiceover*: Trump and Comstock. [Footage of Trump and Comstock]. *Trump*: "I am totally for defunding. We shouldn't be giving to Planned Parenthood." [Footage of Trump]. *Voiceover*: While Comstock voted five times to defund Planned Parenthood. [Footage of Trump and Comstock]. *Voiceover*: Northern Virginia we need LuAnn Bennett. Standing up to Trump and Comstock. Standing up for us. [Footage of Bennett]. *Bennett*: "I'm LuAnn Bennett and I approve this message." [Footage of Bennett].			