

RECEIVED
FEDERAL ELECTION
COMMISSION



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

OFFICE OF GENERAL
COUNSEL

October 24, 2016

Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR # 7176

**Re: Complaint against Suzanna Shkreli for Congress, the Democratic
Congressional Campaign Committee (DCCC), and Hillary For America**

Dear Ms. Stevenson,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interests over the interests of the public good. This complaint is filed by FACT, pursuant to 52 U.S.C. § 30109(a)(1), against Suzanna Shkreli for Congress, the Democratic Congressional Campaign Committee (DCCC), and Hillary For America, for violations of the Federal Election Campaign Act, as amended.

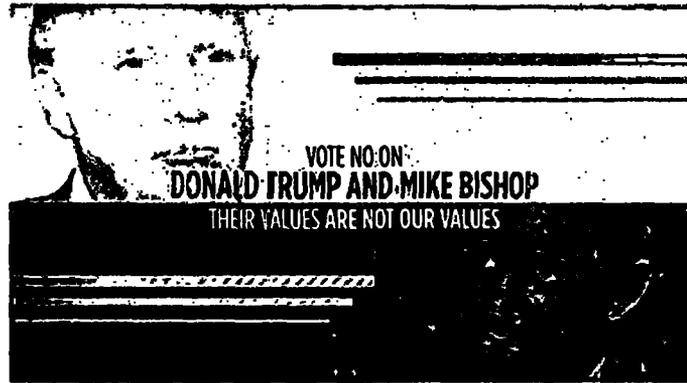
On or about October 14, 2016, Suzanna Shkreli for Congress and the DCCC began airing an advertisement titled "Braggs," which can be viewed on YouTube at <https://www.youtube.com/watch?v=WCx3ObETyrE>.

The first 7 seconds of the Shkreli/DCCC advertisement are devoted exclusively to attacking Donald Trump. The next 17 seconds are devoted to Shkreli's opponent, Mike Bishop's, statements regarding Trump. From the 20 second mark through the 24 second mark, the advertisement contains the on-screen message "Vote no on Donald Trump and Mike Bishop." (See below). The final 6 seconds of the advertisement are devoted to a brief statement regarding Shkreli along with the "stand-by-your-ad" ("SBYA") statement and a disclaimer that reads: Paid for by DCCC and Suzanna Shkreli for Congress. Approved by Suzanna Shkreli."

www.factdc.org

1717 K Street NW, Suite 900, Washington, D.C., 20006

17024474-100



This advertisement includes a disclaimer that is appropriate for a hybrid ad benefiting Shkreli and the DCCC, and media reports indicate that the DCCC and its candidates are characterizing ads such as the Shkreli/DCCC ad as a hybrid ad. According to a recent *Politico* report, see Attachment A, this ad is just one of a series of similar ads:

The Democratic Party is directing millions of extra dollars to its House candidates this fall by way of a legal loophole that has helped them bypass the typical limits on coordinated spending between parties and candidates – all while linking some vulnerable Republicans to Donald Trump.

Typically, Federal Election Commission regulations limit parties to just \$48,100 of spending in direct coordination with most House candidates. But under a decade-old FEC precedent, candidates who word their TV ads a certain way — including references to generic “Democrats” and “Republicans” as well as specific candidates — can split the cost of those ads with their party, even if that means blowing past the normal coordinated spending caps.

To date, more than a dozen Democratic challengers are benefiting from such “hybrid” advertising, getting extra hundreds of thousands of dollars apiece from the Democratic Congressional Campaign Committee. The technique has been a small but consistent part of Democratic strategy in recent years, but new legal guidance has also allowed Democrats to share costs on ads linking their opponents to Trump on policy.

[***]

Increasingly, some of the ads are naming Trump directly instead of linking GOP incumbents to generic “Washington Republicans.” [***]

“The legal logic is that it’s half an issue ad paid for by the DCCC and half a candidate ad paid for by the candidate,” said a second Democratic consultant, who has been involved in the production of hybrid ads in 2016. “The language has to be very specifically about Trump policy,” the consultant continued, to avoid falling afoul of rules governing in-kind contributions, since Trump is a candidate on the ballot this year.

1702441410

Hybrid ads do come with complications. The phrasing needs to be just right, focusing equally on local candidates and broader references, to qualify as hybrids. Sources described an intensive vetting process for the ads, which includes the DCCC's research and legal departments.

[****]

The DCCC declined to comment on its strategy.

This advertisement includes a disclaimer that is appropriate for a hybrid advertisement benefiting Shkreli and the DCCC, and media reports indicate that the DCCC and its candidates are characterizing advertisements such as the Shkreli/DCCC advertisement as hybrid advertisements. According to a recent *POLITICO* report, which is included as Attachment A, this advertisement is just one of a series of similar advertisements:

The Democratic Party is directing millions of extra dollars to its House candidates this fall by way of a legal loophole that has helped them bypass the typical limits on coordinated spending between parties and candidates – all while linking some vulnerable Republicans to Donald Trump.

Typically, Federal Election Commission regulations limit parties to just \$48,100 of spending in direct coordination with most House candidates. But under a decade-old FEC precedent, candidates who word their TV ads a certain way - including references to generic "Democrats" and "Republicans" as well as specific candidates - can split the cost of those ads with their party, even if that means blowing past the normal coordinated spending caps.

To date, more than a dozen Democratic challengers are benefiting from such "hybrid" advertising, getting extra hundreds of thousands of dollars apiece from the Democratic Congressional Campaign Committee. The technique has been a small but consistent part of Democratic strategy in recent years, but new legal guidance has also allowed Democrats to share costs on ads linking their opponents to Trump on policy.

[***]

Increasingly, some of the ads are naming Trump directly instead of linking GOP incumbents to generic "Washington Republicans."

[***]

"The legal logic is that it's half an issue ad paid for by the DCCC and half a candidate ad paid for by the candidate," said a second Democratic consultant, who has been involved in the production of hybrid ads in 2016. "The language has to be very specifically about Trump policy," the consultant continued, to avoid

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

candidates *and* (2) that also *generically* refer to other candidates of a political party without clearly identifying them.”) (emphases added); Audit Report, Bush-Cheney '04, Inc., Statement of Vice Chairman David M. Mason and Commissioner Hans A. von Spakovsky at 6 (March 22, 2007) (noting the “‘generic reference’ *requirement*, which *requires* that the communication ‘generically refer[] to other candidates of the Federal candidate’s party.’”) (emphases added). The generic reference to candidates of a political party committee is crucial to the concept of hybrid advertisements: that portion of the advertisement is attributable to the party committee *solely* because the political party derives proportional benefit from the advertisement’s generic party references. Without generic party references, the political party committee derives no benefit from its portion of the advertisement, and the costs of the political party’s portion must be paid for as a coordinated party expenditure or classified as an in-kind contribution to the clearly identified candidate.

The Shkreli/DCCC advertisement contains no discernible portion that can be reasonably characterized as benefiting the Democratic Party’s congressional candidates as a whole. There is no message in support of the Democratic Party’s congressional candidates, and no message in opposition to the Republican Party’s congressional candidates. **Never before has a party committee substituted the accepted “generic party reference” in its portion of a hybrid advertisement with material that does nothing more than reference and attack a single candidate, who, in this case, is presidential candidate Donald Trump.** As a result, the costs of these advertisements are not properly attributed between the clearly identified congressional candidate and the DCCC, because the only persons who may reasonably expect to derive any benefit from this advertisement are Suzanna Shkreli and Hillary Clinton.

Legal Background

While the concept of multi-purpose communications with allocated costs have existed for decades, the more modern practice of dividing the costs of hybrid broadcast advertisements between candidates and party committees first developed in the 2004 presidential campaign, and the legalities of that practice were addressed by the Commission in a series of decisions made in 2006-2007. The basic legal question that arises in the context of hybrid advertisements is whether one entity is paying for a benefit derived by another regulated entity while failing to treat that benefit as a contribution or coordinated expense. The law of hybrid broadcast advertisements is the product of two regulatory provisions, a 2006 advisory opinion, two audits, and subsequent practice conforming to the Commission’s precedents.

Commission Regulations

Commission regulations provide that “[e]xpenditures, 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.” 11 C.F.R. § 106.1(a)(1). “For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates.” *Id.*

A separate regulation addresses political party committee phone bank communications that refer to a clearly identified Federal candidate and "another reference that generically refers to other candidates of the Federal candidate's party without clearly identifying them." 11 C.F.R. § 106.8(a). Under this regulation, 50% of the cost of the phone bank is attributable to the clearly identified candidate, while the remaining 50% is not attributable to the candidate and may be paid by the party committee without reimbursement. The party committee's payment for the candidate-attributable portion may be reimbursed by the clearly identified Federal candidate (essentially creating a hybrid advertisement), treated as an in-kind contribution from the party committee to the clearly identified Federal candidate (subject to the relevant contribution limits), or classified as a party coordinated expenditure (subject to the relevant party coordinated expenditure limits). 11 C.F.R. § 106.8(b).

2004 Presidential Campaign

In 2004, Bush-Cheney '04 Inc. and the Republican National Committee, and Kerry-Edwards 2004 Inc. and the Democratic National Committee, produced and aired what came to be known as "hybrid advertisements." The costs of these hybrid advertisements were divided between the presidential campaign and the national party committee using a time-space allocation that attributed the presidential campaign portion of the advertisement to the presidential campaign, and the generic party portion to the national party committee. Both 2004 presidential campaigns received public funding.

2006 Advisory Opinion

In 2006, the Commission approved Advisory Opinion 2006-11 (Washington Democratic State Central Committee) and permitted a state party and federal candidate to evenly divide the costs of a mass mailing that "expressly advocate[d] the election of one clearly identified Federal candidate, as well as the elections of other candidates of the Democratic party who are referred to only generically." Advisory Opinion 2006-11 at 1 (emphasis added). The Commission noted that "[o]ne example of such a message would be: 'Vote for John Doe and our great Democratic team.'" *Id.* at 1 fn. 1. The Commission acknowledged that 11 C.F.R. § 106.1 and 11 C.F.R. § 106.8 were not "directly applicable" and that "[n]either the Act nor Commission regulations definitely address the appropriate allocation of payments for the type of mass mailings described in [the] request." *Id.* at 3. However, the Commission approved the request and provided what is currently the Commission's clearest statement on hybrid advertising:

Although neither 11 CFR 106.1 nor 106.8 is directly applicable for reasons discussed above, the Commission concludes that there is nonetheless an appropriate method for allocating the costs of the mailings described in your request. A mass mailing that expressly advocates the election of only one clearly identified Federal candidate, as well as the election of generically referenced, but not clearly identified, candidates, serves in large measure the purpose of influencing the election of the clearly identified Federal candidate, no matter how much of the space in the mailing is devoted to that candidate. See 2 U.S.C. 431(8)(A)(i) and (9)(A)(i); 11 CFR 100.52(a) and 100.111(a). Advocacy related to the election of the clearly identified candidate is the most salient feature of such

110004110004

a communication, as compared to the generic reference to the party's candidates, which does not single out any particular candidate to the reader. *Cf.* 11 CFR 106.6(f). Although the Commission recognizes that such a communication also encourages support for all of the party's other candidates, and hence the State Party Committee itself derives some benefit from the mailing, "the benefit reasonably expected to be derived" by the clearly identified candidate from the mass mailing is sufficient to require no less than a 50 percent attribution of costs to him, even if the space attributable to him is less than that attributable to the generically referenced candidates. *See* 11 CFR 106.1(a).

Where the space in the mailing devoted to the clearly identified Federal candidate exceeds the space devoted to the generically referenced party candidates, the Commission concludes that it is appropriate to apply analogous "space or time" principles set out in 11 CFR 106.1(a). In this situation, "the benefit reasonably expected to be derived" by the clearly identified candidate should be measured by determining the amount of space devoted to the clearly identified candidate as compared to the amount of space devoted to the generically referenced party candidates. Because no part of the cost of the mass mailing may be left unattributed to either the clearly identified Federal candidate or the State Party Committee, the percentage of the cost of the mailing to be attributed to the clearly identified candidate is equal to the amount of space devoted to the candidate as compared to the total space devoted to both that candidate and the generically referenced party candidates. No contribution or coordinated expenditure would be made by the State Party Committee so long as the [requestor] pays at least its proportionate share of the cost of the mass mailing. The portion of a mass mailing that is attributable to the clearly identified Federal candidate can be: (1) an in-kind contribution, subject to the limitations set forth in 11 CFR 110.2; (2) a coordinated expenditure, subject to the limitations, restrictions, and requirements of 11 CFR 109.32 and 109.33; or (3) reimbursed by the clearly identified Federal candidate or his authorized committee. *See* 11 CFR 106.8(b)(2).

Advisory Opinion 2006-11 (Washington Democratic State Central Committee) at 3-4 (footnotes omitted).

2007 Consideration of 2004 Audit Reports

The following year, in 2007, the Commission finalized audits of both 2004 presidential campaign committees.

The Commission considered the Bush-Cheney '04 Audit Report in open session first, on March 22, 2007. With respect to hybrid advertisements run by Bush-Cheney '04 and the Republican National Committee, Commissioners Mason, Toner, and von Spakovsky applied the logic of 11 C.F.R. § 106.1 and 11 C.F.R. § 106.8 in the same manner seen in Advisory Opinion 2006-11, and concluded the committees' treatment of its hybrid advertisements was permissible under the Act and Commission regulations and that no violation of the party coordinated expenditure limits or public funding spending limits occurred. *See* Audit Report, Bush-Cheney

'04, Inc., Statement of Vice Chairman David M. Mason and Commissioner Hans A. von Spakovsky (March 22, 2007). Two of the three Republican Commissioners wrote: "The permissibility of such cost-sharing is well-established by agency precedent, and the parties acted entirely reasonably and in reliance on prior decisions by the Federal Election Commission." *Id.* at 1-2. In addition, these Commissioners noted that the mass mailing approved in Advisory Opinion 2006-11 was "legally indistinguishable from the hybrid advertisements at issue here." *Id.* at 7.

Commissioners Lenhard, Walther, and Weintraub disagreed and voted to find that Bush-Cheney '04 had accepted approximately \$40,000,000 in impermissible in-kind contributions in the form of the Republican National Committee's share of hybrid advertisement costs. *See* Audit Report, Bush-Cheney '04, Inc., Statement of Chairman Robert D. Lenhard and Commissioners Steven T. Walther and Ellen L. Weintraub at 3 (March 22, 2007). Commissioners Lenhard, Walther, and Weintraub rejected the campaign's reliance on the phone bank regulation (11 C.F.R. § 106.8) and Advisory Opinion 2006-11 on the grounds that those rules apply only to phone banks and mass mailings, respectively. *Id.* at 2-3. But even if Section 106.8 and Advisory Opinion 2006-11 were applicable, the Democratic Commissioners contended that the advertisements' references to "our leaders in Congress," "liberals in Congress," and "liberal allies" did not satisfy the "generic party reference" requirement, which, they explained, requires actual references to "Democrats" or "Republicans." *Id.* at 3.

The Final Audit Report for Bush-Cheney '04, Inc., included a description of the issues raised by the campaign's hybrid advertisements and a brief explanation of how those issues were analyzed, along with an explanation that the Commissioners were divided 3-3 on the subject. The Final Audit Report was approved by a 5-1 vote, with Commissioner Weintraub dissenting. In a separate statement, Commissioner Weintraub wrote:

I cannot vote to approve this audit report because I disagree with its most important finding, that Bush-Cheney '04 complied with the expenditure limit for publicly funded presidential campaigns. To the contrary, I believe that Bush-Cheney '04 exceeded the expenditure limit by over \$42 million, and that the Commission should order the General Committee to repay that amount to the U.S. Treasury.

[***]

Along with two of my colleagues, I voted that the 50-50 split between Bush-Cheney '04 and the RNC for the cost of these "hybrid advertisements" was impermissible. As a result, I believe Bush-Cheney '04 failed to honor its commitment to abide by the expenditure limit. Moreover, both Bush-Cheney '04 and the RNC violated the coordinated contributions [sic] limits. Thus, I dissented from an earlier Commission vote approving the finding that the General Committee complied with the expenditure limit. And I will not approve a Final Audit Report that contains that finding.

Audit Report, Bush-Cheney '04, Inc., Statement of Commissioner Ellen L. Weintraub at 1 (March 22, 2007).

The Kerry-Edwards 2004 Audit Report was considered at a later open session, roughly two months later. The final report contained the exact same language regarding the Commissioners' 3-3 division on the issue of hybrid advertisements that appeared in the Bush-Cheney '04, Inc. Audit Report, and was approved by the Commission by a 5-0 vote. With respect to the hybrid advertisement issue, the Kerry-Edwards 2004 Audit Report, like the Bush-Cheney '04 Audit Report, included the finding that the presidential campaign complied with the expenditure limit. Commissioner Weintraub voted to approve the Kerry-Edwards 2004 Audit Report, despite her earlier insistence that she could "not approve a Final Audit Report that contains that finding."

2007 Notice of Proposed Rulemaking

Subsequently, the Commission issued a Notice of Proposed Rulemaking regarding the proper attribution of hybrid communications. *See* Notice of Proposed Rulemaking on Hybrid Communications, 72 Fed. Reg. 26,569 (May 10, 2007) ("2007 NPRM"). The 2007 NPRM defines hybrid communications as "communications that refer both to one or more clearly identified Federal candidates and generically to candidates of a political party." *Id.* at 26,570. The 2007 NPRM also indicates that the political party portion of a hybrid advertisement "generically refers to other candidates of a political party without clearly identifying them." *Id.* at 26,569.

The Commission's proposed rule "would address the attribution of disbursements for a public communication made by any national, State, district, or local party committee, including national congressional campaign committees and convention committees, that contains a generic party reference and also refers to only one clearly identified Federal candidate, such as 'Show your support for Senator X and our other great Democratic candidates.'" *Id.* at 26,571 (internal citations omitted). The focus of the 2007 NPRM was not whether hybrid advertisements should be permitted, but rather, how disbursements for hybrid advertisements should be attributed. As noted in the 2007 NPRM, "[t]he proposed rule discussed below presents alternative methods for attributing the disbursements for various forms of hybrid communications made by political party committees, and would supersede and replace current 11 CFR 106.8." *Id.* at 26,570.

The Commission received comments and held a public hearing on July 11, 2007, but no final rule was ever issued.

2013 Consideration of McCain-Palin 2008, Inc., Audit Report

The Audit Report for McCain-Palin 2008, Inc., did not contain findings pertaining to the hybrid advertisements paid for by McCain-Palin 2008 and the Republican National Committee. The three Democratic Commissioners objected to this "omission" and noted that "the issue of how political party committees attribute disbursements for Hybrid Communications remains of paramount concern." Audit Report, McCain-Palin 2008, Inc., and McCain-Palin Compliance Fund, Inc., Statement of Reasons of Chair Ellen L. Weintraub and Commissioners Cynthia L. Bauerly and Steven T. Walther at 2 (Feb. 1, 2013).

Conclusion

Since 2004, both parties have continued to distribute hybrid broadcast advertisements. Drawing on the 2004 audits, hybrid advertisements have generally reflected the generic party reference standard emphasized by the three Democratic Commissioners—that is, generic party references that explicitly call out “Democrats” and “Republicans” have been the norm.

The Shkreli/DCCC advertisement at issue is *not* a hybrid advertisement. While it is paid for by a candidate and a party committee, it contains absolutely no generic party reference that is fairly or reasonably attributable to the DCCC. In place of a generic party reference, the DCCC’s portion of the advertisement consists *solely* of material attacking Donald Trump. Accordingly, the DCCC’s costs in connection with this advertisement are not properly attributed to the DCCC.

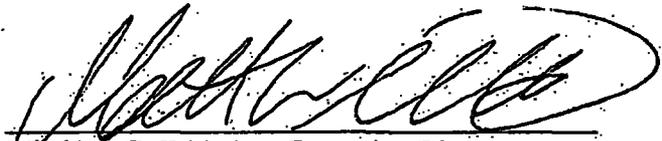
If the advertisement at issue does not qualify as a hybrid advertisement, it is simply a coordinated communication. The portion of this advertisement that was paid for by the DCCC *could* be paid for by the DCCC as a party coordinated expenditure pursuant to 11 C.F.R. §§ 109.32 – 109.37. However, as indicated by the disclaimer on the Shkreli/DCCC advertisement and as confirmed by media reports, this advertisement is not a party coordinated expenditure. To the extent that the DCCC has exceeded its assigned party coordinated expenditure limit with respect to Suzanna Shkreli, the DCCC’s payment for this advertising is an in-kind contribution to Suzanna Shkreli for Congress and is subject to the national party committee’s contribution limit of \$5,000 per election.

In addition, and in light of the close and ongoing coordination occurring between the DCCC and Hillary for America, Suzanna Shkreli for Congress and the DCCC have also paid for a public communication that is coordinated with Hillary for America.² Unless the Democratic National Committee assigned some or all of its coordinated expenditure limit to the DCCC, the full amount of the cost of the Trump portion of this advertisement is properly classified an in-kind contribution to Hillary for America.

For the reasons set forth above, we urge the Commission to find reason to believe violations of the law occurred, investigate the charges raised, and impose all appropriate penalties.

² The advertisement was paid for by a political party committee or its agent, satisfies one or more content standards (the communication expressly advocates the defeat of Donald Trump, and/or references a Presidential candidate during the relevant covered period), and satisfies one or more conduct standards (material involvement and substantial discussion). See 11 C.F.R. § 109.37; see also 11 C.F.R. § 109.21.

Sincerely,

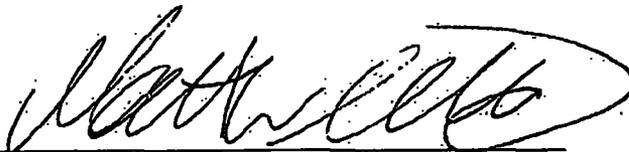


Matthew G. Whitaker, Executive Director
Foundation for Accountability & Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

VERIFICATION

The Complainant listed below hereby verifies that the statements made in the attached complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

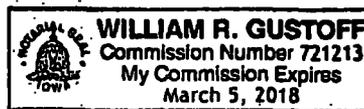


Matthew G. Whitaker, Executive Director
Foundation for Accountability & Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

Sworn to and subscribed before me on this 24th day of October 2016.



Notary Public



Attachment A

Democrats use loophole to pump millions into fight for the House - POLITICO

10/21/16, 11:36 AM

POLITICO

2016

Dems use loophole to pump millions into fight for the House

By invoking Donald Trump and Republicans, the party is stretching its cash to compete in a slew of unexpectedly competitive races.

By SCOTT BLAND | 10/18/16 05:23 PM EDT



The DCCC appears set to spend over 30 times the FEC limit on normal coordinated expenditures to help former Democratic Rep. Brad Schneider run TV ads against his better-funded opponent in Illinois. | AP Photo

The Democratic Party is directing millions of extra dollars to its House candidates this fall by way of a legal loophole that has helped them bypass the typical limits on coordinated spending between parties and candidates — all while linking some vulnerable Republicans to Donald Trump.

Typically, Federal Election Commission regulations limit parties to just \$48,100 of spending in

1704444407

direct coordination with most House candidates. But under a decade-old FEC precedent, candidates who word their TV ads a certain way — including references to generic “Democrats” and “Republicans” as well as specific candidates — can split the cost of those ads with their party, even if that means blowing past the normal coordinated spending caps.

To date, more than a dozen Democratic challengers are benefiting from such “hybrid” advertising, getting extra hundreds of thousands of dollars apiece from the Democratic Congressional Campaign Committee. The technique has been a small but consistent part of Democratic strategy in recent years, but new legal guidance has also allowed Democrats to share costs on ads linking their opponents to Trump on policy.

“You have a historically unpopular Republican presidential nominee, which increases the appeal of doing this sort of thing,” said a Democratic operative. “If you can find a way now that you only have to pay 50 percent of an ad, and link your opponent to Trump, and that makes strategic sense in the district, that’s a no-brainer.”

The cost-sharing has turned into a critical tool for the DCCC, as it suddenly tries to compete in more districts and support little-known challengers made unexpectedly viable by Trump’s late slide.

The ads that qualify for cost-splitting do exactly what Democrats already want to: nationalize House races and try to saddle local candidates — from Iowa to Nevada — with the Republican Party’s general unpopularity. And the influx of funds from the DCCC directly into candidate advertising has helped the party grow the battleground map, even including districts where the candidates themselves are perilously low on cash.

In one dramatic case, the DCCC appears set to spend over 30 times the FEC limit on normal coordinated expenditures to help former Democratic Rep. Brad Schneider of Illinois run TV ads against his better-funded opponent. The key is in the wording of the ads, which lump together GOP Rep. Bob “Dold and the Republicans.”

The DCCC and candidates around the country have split over \$5.4 million on ad costs so far, according to a source tracking House ad spending, with millions more to come. The DCCC and Schneider have together booked more than \$3.2 million of advertising together through Election Day. Other candidates continue to book hundreds of new hybrid ad reservations every week.

WHITE HOUSE

Obama, Holder to lead post-Trump redistricting campaign

By EDWARD-ISAAC DOVERE

Increasingly, some of the ads are naming Trump directly instead of linking GOP incumbents to generic "Washington Republicans." One in Northern Virginia charges GOP Rep. Barbara Comstock with having the same agenda as Trump on abortion and Planned Parenthood.

"The legal logic is that it's half an issue ad paid for by the DCCC and half a candidate ad paid for by the candidate," said a second Democratic consultant, who has been involved in the production of hybrid ads in 2016. "The language has to be very specifically about Trump policy," the consultant continued, to avoid falling afoul of rules governing in-kind contributions, since Trump is a candidate on the ballot this year.

Hybrid ads do come with complications. The phrasing needs to be just right, focusing equally on local candidates and broader references, to qualify as hybrids. Sources described an intensive vetting process for the ads, which includes the DCCC's research and legal departments.

And the wording can get clunky. Meeting the hybrid requirements is why, when President Barack Obama appeared in a Schneider TV ad this week, he awkwardly shoehorned Schneider's party into his endorsement. "Vote for Brad Schneider and the Democrats," Obama says in the ad.

Hybrid ads have typically been deployed only in districts that lean strongly toward one party, making links to "Democrats" or "Republicans" damaging to local candidates. But Trump's massive unpopularity has made more districts fruitful ground for the advertising technique.

"We can only do it in certain districts," said a third Democratic operative. "But it's increasing numbers of districts as Trump's numbers fall."

2016

How low can Trump go in the polls?

By STEVEN SHEPARD

The DCCC declined to comment on its strategy.

This type of ads has been a boon to some of Democrats' latest-breaking House campaigns, many of which are low on cash. Democrat LuAnn Bennett, the beneficiary of the anti-Comstock ad in Virginia, had just \$90,000 in her campaign account at the end of September, while Comstock had \$1.9 million, according to campaign finance reports filed last weekend. But since that last week of September, Bennett and the DCCC have aired over \$470,000 worth of TV ads together, with more likely coming.

Bennett is one of more than a half-dozen top Democratic House candidates who started the final six weeks of the campaign with less than \$150,000 in their accounts, which wouldn't cover even a week of heavy TV advertising in some places. Many of them started their campaigns late or weren't initially considered marquee recruits, leaving them short on funds when the national political environment started to turn in Democrats' direction.

The DCCC, however, just announced a record \$21 million raised in September, with a hefty \$45.5 million on hand at the end of that month. Democrats have long noted that money would be a limiting factor on just how far the party could stretch its House hopes this year. But the hybrid ads are helping the committee save some money while contesting an increasing number of House districts, many of which are in some of the country's most expensive media markets.

Since the hybrid ads are coordinated directly with candidates, who are guaranteed the "lowest unit rate" on ads from TV stations, the DCCC isn't paying premium outside-group rates to spend that money on TV. When the DCCC airs independent expenditure ads separately from the candidates in these districts, it will usually pay a higher rate than a candidate even to run an ad on the exact same program.

"It is one of our shields against the insane amounts of outside money coming into these districts," said a fourth Democratic strategist.

Florida Democrat Stephanie Murphy started her House campaign only in June but has since benefited from over \$270,000 in ads partially funded by the DCCC in Orlando, some of which say that veteran GOP Rep. John Mica "and Donald Trump share the same harmful policies."

RNC members agree with Trump: It's rigged

By KYLE CHENEY

Michigan's Suzanna Shkreli, whose campaign kicked off in July and has recently generated enthusiasm among Democrats watching the House landscape for late opportunities, is another who appears to be leaning on the technique. In upstate New York, Democrat Colleen Deacon has tried to jolt her underdog campaign by linking GOP Rep. John Katko to Trump's foreign policy views.

And Doug Applegate, a Southern California Democrat and first-time candidate making a surprisingly strong run against GOP Rep. Darrell Issa, has been one of the biggest beneficiaries of the DCCC's emphasis on hybrids. An ad-buyer estimated Applegate and the DCCC have together

aired over \$960,000 of TV ads in the past month — during which time Applegate filed an FEC report showing him with just \$167,000 in his campaign account, compared with Issa's \$3 million-plus.

"Darrell Issa and the tea party Republicans tried to play politics with our lives," a 9/11 first responder says in one of Applegate's ads. Other spots paid for by Applegate and the DCCC reference Trump, including one charging that both Trump and Issa "gamed the system" to direct taxpayer money to themselves.

Democrats are making heavy use of hybrid ads now, but they have a bipartisan tradition. President George W. Bush's 2004 campaign used them heavily in conjunction with the Republican National Committee, and the FEC deadlocked on whether to continue allowing the practice.

"The reason this happens is that the coordinated limits are now increasingly irrelevant in campaigns, because the campaigns are so expensive," said a Republican legal expert. "There is so much money spent now that the parties want to stretch the coordinated limits so that they're somewhat relevant."