

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5
6 MUR: 7185
7 DATE COMPLAINT FILED: November 3, 2016
8 DATE OF NOTIFICATION: November 7, 2016
9 LAST RESPONSE RECEIVED: December 30,
10 2016
11 DATE ACTIVATED: May 9, 2017

12
13 ELECTION CYCLE: 2016
14 EXPIRATION OF SOL:
15 October 4, 2021 (earliest)
16 October 20, 2021 (latest)
17

18 **COMPLAINANT:** Steve A. Caruso
19
20 **RESPONDENTS:** Sheriff Scott Jones for Congress and David Bauer in
21 his official capacity as treasurer
22 Scott Jones
23 NRCC and Keith A. Davis in his official capacity
24 as treasurer
25
26 **RELEVANT STATUTES AND** 52 U.S.C. § 30104(b)
27 **REGULATIONS:** 52 U.S.C. § 30116(a), (d), (f)
28 11 C.F.R. § 109.37
29
30 **INTERNAL REPORTS CHECKED:** FEC Disclosure Reports
31
32 **FEDERAL AGENCIES CHECKED:** None

33 **I. INTRODUCTION**

34 This matter involves an allegation that NRCC violated the Federal Election Campaign
35 Act of 1971, as amended (the "Act"), by making an excessive in-kind contribution to Sheriff
36 Scott Jones for Congress ("Committee") in 2016 by republishing Committee campaign materials.
37 Specifically, the Complaint alleges that NRCC used "B-roll" video, made publicly available by
38 the Committee, in a television ad supporting candidate Scott Jones. Alternatively, the Complaint

1 suggests that the Committee received a contribution from NRCC via coordination because it may
2 have given footage to NRCC directly to make the ad.

3 The NRCC contends that the Commission has failed to find reason to believe on several
4 matters involving similar "B-roll" video use and that it should dismiss this matter. The NRCC
5 states it took the footage from Jones's YouTube channel, thus implicitly rebutting the suggestion
6 that the Committee gave it any footage directly. Neither the Committee nor Jones responded to
7 the Complaint.¹

8 The available information demonstrates that NRCC aired an advertisement that used
9 campaign materials created by the Committee, and that its use of those materials constitutes an
10 in-kind contribution to the Committee. Accordingly, we recommend that the Commission find
11 reason to believe that NRCC made an excessive in-kind contribution to the Committee via
12 republication of the Committee's campaign materials and failed to report it, and enter into pre-
13 probable cause conciliation. There is, however, no information supporting the suggestion that
14 the Committee gave the footage to the NRCC directly or otherwise coordinated the
15 advertisement; thus, we recommend that the Commission find no reason to believe that NRCC
16 made, or that the Committee or Jones accepted, an excessive contribution in the form of a
17 coordinated communication and close the file as to the Committee and Jones.

¹ On May 4, 2017, the Office of General Counsel confirmed with the Committee's treasurer that neither the Committee nor the candidate would be filing a response to the Complaint.

1 **II. FACTS**

2 Scott Jones was a candidate in the 2016 general election seeking California's 7th District
3 congressional seat.² Sheriff Scott Jones for Congress is Jones's principal campaign committee.³
4 Jones and the Committee maintained a YouTube channel, Scott Jones for Congress, and on
5 September 2, 2016, they uploaded a silent video called "Scott Jones B Roll," showing Jones in a
6 variety of ordinary settings.⁴ The video contains no on-screen text.

7 NRCC is a national committee of the Republican Party.⁵ Around October 4, 2016, it
8 began airing "Dirty Money," a 30-second television ad.⁶ The first 13-14 seconds discusses
9 Jones's opponent, Ami Bera, and Bera's father's guilty plea and imprisonment for reimbursing
10 contributions to Bera's 2010 and 2012 campaigns, with video portraying Bera and the U.S.
11 Capitol and a shadowed person behind prison bars.⁷ The ad then follows with 16 or 17 seconds
12 of the Committee's B-roll video of Jones in uniform talking to police officers and dressed
13 casually walking and talking with his family, with a voiceover describing Jones as a strong and
14 effective leader. At times, the on-screen text states Jones "Put Criminals Behind Bars" and

² See <http://docquery.fec.gov/pdf/663/201511250300033663/201511250300033663.pdf> (Statement of Candidacy). Jones lost the election.

³ See <http://docquery.fec.gov/pdf/035/201609299032147035/201609299032147035.pdf> (Amended Statement of Organization).

⁴ See <https://www.youtube.com/watch?v=ASB6ym0xd2U> (last visited Aug. 7, 2017). The video shows Jones talking with workers in a factory and in a truck parking lot, talking with groups of senior citizens and young parents, wearing his sheriff uniform while speaking into a police car radio, speaking with other officers, reading with children, and walking and laughing with his family.

⁵ See NRCC Amended Statement of Organization (Mar. 28, 2017). NRCC used to be known as the National Republican Congressional Committee. See NRCC Amended Statement of Organization (Dec. 12, 2014).

⁶ See "Dirty Money" at <https://www.nrcc.org/2016/10/04/new-nrcc-tv-ad-contrasts-dc-politician-ami-beras-dirty-money-sheriff-scott-jones-leadership/> (last visited Aug. 7, 2017) ("Dirty Money").

⁷ See MUR 7072 (Ami Bera for Congress) (Commission admonished Bera's father, Babulal Bera, for reimbursing campaign contributions).

1 concludes with "Strong. Effective. Leadership." During the final five seconds, the advertisement
2 contains a spoken and written disclaimer stating that NRCC paid for the ad and that it was not
3 authorized by any candidate. NRCC disclosed the costs of the ad (\$465,161)⁸ as independent
4 expenditures in a 24/48 Hour Report filed on October 6, 2016.⁹

5 The NRCC also disclosed two \$5,000 contributions to the Committee, one for the 2016
6 primary and one for the 2016 general elections.¹⁰ In addition, the NRCC disclosed making
7 \$95,638 in coordinated party expenditures in support of the Committee during 2016.¹¹

8 III. ANALYSIS

9 A. There is Reason to Believe that NRCC Republished Candidate Campaign 10 Materials

11 The Act defines a contribution as "any gift, subscription, loan, advance, or deposit of
12 money or anything of value made by any person for the purpose of influencing any election for
13 Federal office."¹² The term "anything of value" includes all in-kind contributions.¹³ The
14 Commission has considered video footage a thing of value for purposes of the Act.¹⁴
15 Contributions from a national or state party committee to a candidate committee are limited to a
16

⁸ The Complaint — without citing support — alleges that the costs of the ad could be "as much as \$1,170,814.84." *See Compl.* at 2.

⁹ *See* NRCC 24/48 Hour Report of Independent Expenditures at 1-4 (Oct. 6, 2016).

¹⁰ *See* NRCC Amended July 2016 Monthly Report at 1,763 (Aug. 2, 2016) (\$5,000 primary election contribution), August 2016 Monthly Report at 1,652 (Aug. 20, 2016) (\$5,000 general election contribution).

¹¹ *See* NRCC Amended October 2016 Monthly Report at 2,969, Schedule F (Mar. 2, 2017).

¹² 52 U.S.C. § 30101(8)(A).

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ *See, e.g.*, First Gen. Counsel's Rpt. at 7-8 and Statement of Reasons, Comm'rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2, MUR 5964 (Schock for Congress) (analyzing video footage as a campaign asset and thing of value requiring payment at the usual and normal charge); F&LA at 10-11, MUR 6218 (Ball4NY) (analyzing video footage as a campaign asset that would have value).

1 total of \$5,000 per election, and candidates and political committees are prohibited from
2 knowingly accepting contributions in excess of the Act's limits.¹⁵ The NRCC made direct
3 contributions to the Committee in the maximum amount for the 2016 primary and general
4 elections.

5 Political party committees may further support their candidates with independent
6 expenditures, defined as expenditures that expressly advocate the election or defeat of a clearly
7 identified federal candidate and are not made in concert or cooperation with or at the request or
8 suggestion of such candidate, the candidate's authorized political committee, or their agents.¹⁶

9 Included in the definition of expenditure is "the financing by any person of the
10 dissemination, distribution, or republication, *in whole or in part*, of any broadcast or any written,
11 graphic, or other form of campaign materials prepared by the candidate, his campaign
12 committees, or their authorized agents."¹⁷ The republication of campaign materials prepared by
13 a candidate's authorized committee is also "considered a[n in-kind] contribution for the purposes
14 of contribution limitations and reporting responsibilities of the person making the expenditure,"¹⁸
15 because the person financing the communication "has provided something of value to the

¹⁵ 52 U.S.C. § 30116(a)(2)(A), (f). 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. See 52 U.S.C. § 30116(d). In 2016, the NRCC's limit to support House candidates in states with more than one congressional district was \$48,100. See https://transition.fec.gov/info/charts_cpe_2016.shtml. The NRCC spent its shared coordinated party expenditure limit for Jones by September 23, 2016. See NRCC Amended October 2016 Monthly Report at 2969, Schedule F (Mar. 2, 2017). Apparently, the State Party Committee assigned its coordinated party expenditure limit to the NRCC. See 11 C.F.R. § 109.33.

¹⁶ 52 U.S.C. § 30101(17); 11 C.F.R. § 109.30. See also 11 C.F.R. § 100.22(a), (b).

¹⁷ 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added). For republication, the Commission has concluded that "campaign materials" include any material belonging to or emanating from a campaign. See, e.g., MUR 6783 (Indian Americans for Freedom) (text from candidate's mailer reproduced in nonprofit's mailer); 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 11 C.F.R. § 109.23(a).

1 candidate [or] authorized committee.”¹⁹ The candidate who prepared the campaign materials is
2 deemed to have received a contribution only if the republication is a coordinated communication
3 or a party coordinated communication.²⁰

4 The NRCC acknowledges that the Committee’s B-roll footage constitutes “between 16
5 and 17 seconds” of “Dirty Money.”²¹ The NRCC asserts, however, that it created the Bera
6 footage used in the first half of the ad and all of the ad’s audio and on-screen messaging.²²
7 NRCC argues that the B-roll footage had “no discernible message” and only served as
8 background imagery and that NRCC conveyed its own message in the advertisement and did not
9 redistribute Jones’s message.²³ NRCC also argues that the fact that more than half of the video
10 in “Dirty Money” came from the Committee’s B-roll does not warrant a different result than
11 prior cases dismissing republication allegations, and that such a delineation would be “arbitrary
12 and capricious.”²⁴

13 Here, NRCC republished campaign materials produced by the Committee when it aired
14 the “Dirty Money” advertisement. NRCC’s 30-second ad contains between 16 and 17 seconds

¹⁹ See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (explanation and justification) (“Coordinated and Independent Expenditures E&J”). As the Commission there explained, “Congress has addressed republication of campaign material through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443 (emphasis added); see also Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (June 8, 2006) (explanation and justification), (communications “that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.”).

²⁰ 11 C.F.R. § 109.23(a).

²¹ See Resp. at 2.

²² See *id.*

²³ See *id.* at 2, 5-6.

²⁴ See *id.*, citing, *e.g.*, Statements of Reasons, Comm’rs. Hunter, McGahn & Petersen, MURs 5879 (DCCC) and 6357 (American Crossroads); Statement of Reasons, Comm’rs Goodman, Hunter & Petersen, MUR 6902 (Franken).

1 of video images obtained from campaign material the Committee published on its YouTube
2 channel. By republishing this footage, NRCC made an excessive in-kind contribution to the
3 Committee.²⁵

4 That the B-roll video was publicly available does not relieve Respondents of liability; the
5 republication regulation focuses on the further dissemination of campaign materials, wherever
6 obtained.²⁶ Moreover, in its 2003 rulemaking, the Commission specifically rejected a request to
7 adopt a "public domain" exception to republication, explaining that "virtually all campaign
8 material that could be republished" may be considered in the public domain, and therefore such
9 an exception could "swallow the rule."²⁷

10 Nor do the facts presented here satisfy the regulatory exception for briefly quoted
11 materials.²⁸ NRCC used 16 to 17 seconds of the Committee's campaign footage in an
12 advertisement that was 30 seconds long, slightly more than half the length of the ad, and the
13 video footage of Jones, a core component of the presentation, came entirely from the
14 Committee's previously existing campaign materials.²⁹ And because the NRCC had already

²⁵ See 11 C.F.R. § 109.23(a).

²⁶ See, e.g., MUR 5743 (Betty Sutton) (candidate photo obtained from publicly available campaign website); MUR 5672 (Save American Jobs) (video produced and used by candidate's campaign subsequently hosted on association's website); MUR 5996 (Tim Bee) (candidate photo obtained from candidate's publicly available website). Further, the "publicly available source" safe harbor applies to some standards used in determining whether republished campaign materials satisfy the conduct prong of the coordinated communication test, see 11 C.F.R. § 109.21(d)(2), (d)(3), not whether campaign material was republished under 11 C.F.R. § 109.23 or § 109.30.

²⁷ Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 442-43.

²⁸ See 11 C.F.R. § 109.23(b)(4).

²⁹ See Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 442-43 (acknowledging that Congress concluded that republication even in part provides a benefit to the candidate).

1 contributed \$10,000 to Jones's campaign and had reached its shared coordinated party
2 expenditure limit, any contribution it made was excessive.³⁰

3 For these reasons, we recommend that the Commission find reason to believe that NRCC
4 violated 52 U.S.C. §§ 30116(a) and 30104(b) by making an excessive in-kind contribution as a
5 result of republishing campaign materials and by failing to properly disclose the expenditure as a
6 contribution to the Committee.

7 **B. The Coordination Allegation is Factually Unsupported**

8 The Complaint alternatively alleges that the Commission should investigate whether the
9 Committee received an illegal contribution by providing the video footage to NRCC directly,
10 "[g]iven the quality and format of the video posted."³¹ The Complaint suggests that NRCC and
11 the Committee may have coordinated on the ad because NRCC could not have created "Dirty
12 Money" by using the B-roll video directly from the Committee's YouTube site.³² As mentioned
13 above, if the ad is considered coordinated, the Committee would have received an excessive in-
14 kind contribution from NRCC.³³ The available information, however, does not support the
15 Complaint's allegation, as NRCC states that it took the footage from the Committee's YouTube
16 channel, and we have no information to the contrary. Thus, we recommend that the Commission

³⁰ See *supra* p. 4.

³¹ Compl. at 2.

³² Expenditures that are coordinated with a candidate are treated as contributions to the candidate. 52 U.S.C. § 30116(a)(7)(B). The Commission's 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. See 11 C.F.R. § 109.37(a), (b). To determine whether a communication constitutes a "party coordinated communication," Commission regulations apply a three-prong test. See 11 C.F.R. § 109.37(a)(1), (2), (3). First, the communication must be paid for by a political party committee or its agent. 11 C.F.R. § 109.37(a)(1). Second, the communication must satisfy one of three content standards. See 11 C.F.R. § 109.37(a)(2)(i), (ii), (iii). Finally, the communication must satisfy one of six conduct standards. See 11 C.F.R. § 109.37(a)(3); see also 109.21(d)(1)-(6).

³³ See 11 C.F.R. § 109.37; 52 U.S.C. § 30116(f).

1 find no reason to believe that NRCC made, or that Scott Jones and Sheriff Scott Jones for
2 Congress accepted, an excessive in-kind contribution in the form of a coordinated
3 communication.

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13 **V. RECOMMENDATIONS**

- 14 1. Find reason to believe that NRCC and Keith A. Davis in his official capacity as
15 treasurer violated 52 U.S.C. §§ 30104(b) and 30116(a) in connection with
16 republishing campaign material;
17
- 18 2. Find no reason to believe that Scott Jones or Sheriff Scott Jones for Congress and
19 David Bauer in his official capacity as treasurer violated 52 U.S.C. § 30116(f);
20
- 21 3. Find no reason to believe that NRCC and Keith A. Davis in his official capacity
22 as treasurer violated 52 U.S.C. § 30116(a) in connection with a coordinated
23 communication;
24
- 25 4. Approve the attached Factual and Legal Analyses;
26
- 27 5. Enter into conciliation with NRCC and Keith A. Davis in his official capacity as
28 treasurer prior to a finding of probable cause to believe;
29
-

CONFIDENTIAL

- 1 6. Approve the proposed attached Conciliation Agreement;
- 2
- 3 7. Approve the appropriate letters; and
- 4 8. Close the file as to Scott Jones and Sheriff Scott Jones for Congress and David
- 5 Bauer in his official capacity as treasurer.
- 6

7 Lisa J. Stevenson
8 Acting General Counsel
9

10
11
12 Date: 8/7/17

13 *Kathleen M. Guith*
14 _____
15 Kathleen M. Guith
16 Associate General Counsel for
17 Enforcement

18
19 *Mark Allen*
20 _____
21 Mark Allen
22 Assistant General Counsel

23
24 *Elena Paoli*
25 _____
26 Elena Paoli
27 Attorney
28

29
30 Attachments:

- 31 1. Factual and Legal Analysis for NRCC
- 32 2. Factual and Legal Analysis for Scott Jones and Sheriff Scott Jones for Congress
- 33

2008-11-14 14:45:09

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** NRCC and Keith A. Davis
6 in his official capacity as treasurer **MUR 7185**

7
8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission
10 alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), by
11 NRCC and Keith A. Davis in his official capacity as treasurer. The Complaint alleges that
12 NRCC violated the Act by making an excessive in-kind contribution to Sheriff Scott Jones for
13 Congress (“Committee”) in 2016 by republishing Committee campaign materials. Specifically,
14 the Complaint alleges that NRCC used “B-roll” video, made publicly available by the
15 Committee, in a television ad supporting candidate Scott Jones. The Complaint also suggests
16 that NRCC and the Committee may have coordinated on the ad because NRCC could not have
17 created “Dirty Money” by using the B-roll video directly from the Committee’s YouTube site.

18 **II. FACTS**

19 NRCC is a national committee of the Republican Party.¹ Scott Jones was a candidate in
20 the 2016 general election seeking California’s 7th District congressional seat.² Sheriff Scott
21 Jones for Congress is Jones’s principal campaign committee (“Committee”).³ Jones and the
22 Committee maintained a YouTube channel, Scott Jones for Congress, and on September 2, 2016,

¹ See NRCC Amended Statement of Organization (Mar. 28, 2017). NRCC used to be known as the National Republican Congressional Committee. See NRCC Amended Statement of Organization (Dec. 12, 2014).

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1 they uploaded a silent video called “Scott Jones B Roll,” showing Jones in a variety of ordinary
2 settings.⁴ The video contains no on-screen text.

3 Around October 4, 2016, NRCC began airing “Dirty Money,” a 30-second television ad.⁵
4 The first 13-14 seconds discusses Jones’s opponent, Ami Bera, and Bera’s father’s guilty plea
5 and imprisonment for reimbursing contributions to Bera’s 2010 and 2012 campaigns, with video
6 portraying Bera and the U.S. Capitol and a shadowed person behind prison bars.⁶ The ad then
7 follows with 16 or 17 seconds of the Committee’s B-roll video of Jones in uniform talking to
8 police officers and dressed casually walking and talking with his family, with a voiceover
9 describing Jones as a strong and effective leader. At times, the on-screen text states Jones “Put
10 Criminals Behind Bars” and concludes with “Strong. Effective. Leadership.” During the final
11 five seconds, the advertisement contains a spoken and written disclaimer stating that NRCC paid
12 for the ad and that it was not authorized by any candidate. NRCC disclosed the costs of the ad
13 (\$465,161)⁷ as independent expenditures in a 24/48 Hour Report filed on October 6, 2016.⁸

⁴ See <https://www.youtube.com/watch?v=ASB6ym0xd2U> (last visited Aug. 7, 2017). The video shows Jones talking with workers in a factory and in a truck parking lot, talking with groups of senior citizens and young parents, wearing his sheriff uniform while speaking into a police car radio, speaking with other officers, reading with children, and walking and laughing with his family.

⁵ See “Dirty Money” at <https://www.nrcc.org/2016/10/04/new-nrcc-tv-ad-contrasts-dc-politician-ami-beras-dirty-money-sheriff-scott-jones-leadership/> (last visited Aug. 7, 2017) (“Dirty Money”).

⁶ See MUR 7072 (Ami Bera for Congress) (Commission admonished Bera’s father, Babulal Bera, for reimbursing campaign contributions).

⁷ The Complaint — without citing support — alleges that the costs of the ad could be “as much as \$1,170,814.84.” See Compl. at 2.

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1 The NRCC also disclosed two \$5,000 contributions to the Committee, one for the 2016
2 primary and one for the 2016 general elections.⁹ In addition, the NRCC disclosed making
3 \$95,638 in coordinated party expenditures in support of the Committee during 2016.¹⁰

4 **III. ANALYSIS**

5 The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of
6 money or anything of value made by any person for the purpose of influencing any election for
7 Federal office.”¹¹ The term “anything of value” includes all in-kind contributions.¹² The
8 Commission has considered video footage a thing of value for purposes of the Act.¹³
9 Contributions from a national or state party committee to a candidate committee are limited to a
10 total of \$5,000 per election, and candidates and political committees are prohibited from
11 knowingly accepting contributions in excess of the Act’s limits.¹⁴ The NRCC made direct

⁹ See NRCC Amended July 2016 Monthly Report at 1,763 (Aug. 2, 2016) (\$5,000 primary election contribution), August 2016 Monthly Report at 1,652 (Aug. 20, 2016) (\$5,000 general election contribution).

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¹¹ 52 U.S.C. § 30101(8)(A).

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5 identified federal candidate and are not made in concert or cooperation with or at the request or
6 suggestion of such candidate, the candidate's authorized political committee, or their agents.¹⁵

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8 dissemination, distribution, or republication, *in whole or in part*, of any broadcast or any written,
9 graphic, or other form of campaign materials prepared by the candidate, his campaign
10 committees, or their authorized agents."¹⁶ The republication of campaign materials prepared by
11 a candidate's authorized committee is also "considered a[n in-kind] contribution for the purposes
12 of contribution limitations and reporting responsibilities of the person making the expenditure,"¹⁷
13 because the person financing the communication "has provided something of value to the
14 candidate [or] authorized committee."¹⁸ The candidate who prepared the campaign materials is

¹⁵ 52 U.S.C. § 30101(17); 11 C.F.R. § 109.30. *See also* 11 C.F.R. § 100.22(a), (b).

¹⁶ 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added). For republication, the Commission has concluded that "campaign materials" include any material belonging to or emanating from a campaign. *See, e.g.*, MUR 6783 (Indian Americans for Freedom) (text from candidate's mailer reproduced in nonprofit's mailer); 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).

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1 deemed to have received a contribution only if the republication is a coordinated communication
2 or a party coordinated communication.¹⁹

3 The NRCC acknowledges that the Committee's B-roll footage constitutes "between 16
4 and 17 seconds" of "Dirty Money."²⁰ The NRCC asserts, however, that it created the Bera
5 footage used in the first half of the ad and all of the ad's audio and on-screen messaging.²¹
6 NRCC argues that the B-roll footage had "no discernible message" and only served as
7 background imagery and that NRCC conveyed its own message in the advertisement and did not
8 redistribute Jones's message.²² NRCC also argues that the fact that more than half of the video
9 in "Dirty Money" came from the Committee's B-roll does not warrant a different result than
10 prior cases dismissing republication allegations, and that such a delineation would be "arbitrary
11 and capricious."²³

12 Here, NRCC republished campaign materials produced by the Committee when it aired
13 the "Dirty Money" advertisement. NRCC's 30-second ad contains between 16 and 17 seconds
14 of video images obtained from campaign material the Committee published on its YouTube
15 channel. By republishing this footage, NRCC made an excessive in-kind contribution to the
16 Committee.²⁴

¹⁹ 11 C.F.R. § 109.23(a).

²⁰ See Resp. at 2.

²¹ See *id.*

²² See *id.* at 2, 5-6.

²³ See *id.*, citing, *e.g.*, Statements of Reasons, Comm'rs. Hunter, McGahn & Petersen, MURs 5879 (DCCC) and 6357 (American Crossroads); Statement of Reasons, Comm'rs Goodman, Hunter & Petersen, MUR 6902 (Franken).

²⁴ See 11 C.F.R. § 109.23(a).

1 That the B-roll video was publicly available does not relieve Respondents of liability; the
2 republication regulation focuses on the further dissemination of campaign materials, wherever
3 obtained.²⁵ Moreover, in its 2003 rulemaking, the Commission specifically rejected a request to
4 adopt a “public domain” exception to republication, explaining that “virtually all campaign
5 material that could be republished” may be considered in the public domain, and therefore such
6 an exception could “swallow the rule.”²⁶

7 Nor do the facts presented here satisfy the regulatory exception for briefly quoted
8 materials.²⁷ NRCC used 16 to 17 seconds of the Committee’s campaign footage in an
9 advertisement that was 30 seconds long, slightly more than half the length of the ad, and the
10 video footage of Jones, a core component of the presentation, came entirely from the
11 Committee’s previously existing campaign materials.²⁸ And because the NRCC had already
12 contributed \$10,000 to Jones’s campaign and had reached its shared coordinated party
13 expenditure limit, any contribution it made was excessive.²⁹

14 Therefore, the Commission finds reason to believe that NRCC violated 52 U.S.C.
15 §§ 30116(a) and 30104(b) by making an excessive in-kind contribution as a result of

²⁵ See, e.g., MUR 5743 (Betty Sutton) (candidate photo obtained from publicly available campaign website); MUR 5672 (Save American Jobs) (video produced and used by candidate’s campaign subsequently hosted on association’s website); MUR 5996 (Tim Bee) (candidate photo obtained from candidate’s publicly available website). Further, the “publicly available source” safe harbor applies to some standards used in determining whether republished campaign materials satisfy the conduct prong of the coordinated communication test, see 11 C.F.R. § 109.21(d)(2), (d)(3), not whether campaign material was republished under 11 C.F.R. § 109.23 or § 109.30.

²⁶ Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 442-43.

²⁷ See 11 C.F.R. § 109.23(b)(4).

²⁸ See Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 442-43 (acknowledging that Congress concluded that republication even in part provides a benefit to the candidate).

²⁹ See *supra* p. 3.

1 republishing campaign materials and by failing to properly disclose the expenditure as a
2 contribution to the Committee.

3 The Complaint suggests that NRCC and the Committee may have coordinated on the ad
4 because NRCC could not have created “Dirty Money” by using the B-roll video directly from the
5 Committee’s YouTube site.³⁰ If the ad is considered coordinated, the Committee would have
6 received an excessive in-kind contribution from NRCC.³¹ The available information, however,
7 does not support the Complaint’s allegation, as NRCC states that it took the footage from the
8 Committee’s YouTube channel, and we have no information to the contrary. Therefore, the
9 Commission finds no reason to believe that NRCC violated 52 U.S.C. § 30116(a) in connection
10 with a coordinated communication.

³⁰ Expenditures that are coordinated with a candidate are treated as contributions to the candidate. 52 U.S.C. § 30116(a)(7)(B). The Commission’s 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. *See* 11 C.F.R. § 109.37(a), (b). To determine whether a communication constitutes a “party coordinated communication,” Commission regulations apply a three-prong test. *See* 11 C.F.R. § 109.37(a)(1), (2), (3). First, the communication must be paid for by a political party committee or its agent. 11 C.F.R. § 109.37(a)(1). Second, the communication must satisfy one of three content standards. *See* 11 C.F.R. § 109.37(a)(2)(i), (ii), (iii). Finally, the communication must satisfy one of six conduct standards. *See* 11 C.F.R. § 109.37(a)(3); *see also* 109.21(d)(1)-(6).

³¹ *See* 11 C.F.R. § 109.37; 52 U.S.C. § 30116(f).

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Sheriff Scott Jones for Congress and **MUR 7185**
6 David Bauer in his official capacity
7 as treasurer
8 Scott Jones
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by
13 Sheriff Scott Jones for Congress and David Bauer in his official capacity as treasurer
14 ("Committee") and Scott Jones (collectively "Respondents"). The Complaint alleges that the
15 Committee violated the Act by accepting an excessive in-kind contribution when the NRCC
16 republished Committee campaign materials.¹ The Complaint alleges that NRCC used "B-roll"
17 video in a television ad supporting Scott Jones where the Committee directly provided the video
18 footage to NRCC.

19 **II. FACTS**

20 Scott Jones was a candidate in the 2016 general election seeking California's 7th District
21 congressional seat.² Sheriff Scott Jones for Congress is Jones's principal campaign committee.³
22 Jones and the Committee maintained a YouTube channel, Scott Jones for Congress, and on

¹ Neither the Committee nor Jones responded to the Complaint. On May 4, 2017, the Commission's Office of General Counsel confirmed with the Committee's treasurer that neither the Committee nor the candidate would be filing a response to the Complaint.

² See <http://docquery.fec.gov/pdf/663/201511250300033663/201511250300033663.pdf> (Statement of Candidacy). Jones lost the election.

³ See <http://docquery.fec.gov/pdf/035/201609299032147035/201609299032147035.pdf> (Amended Statement of Organization).

1 September 2, 2016, they uploaded a silent video called “Scott Jones B Roll,” showing Jones in a
2 variety of ordinary settings.⁴ The video contains no on-screen text.

3 NRCC is a national committee of the Republican Party.⁵ Around October 4, 2016,
4 NRCC began airing “Dirty Money,” a 30-second television ad.⁶ The first 13-14 seconds
5 discusses Jones’s opponent, Ami Bera, and Bera’s father’s guilty plea and imprisonment for
6 reimbursing contributions to Bera’s 2010 and 2012 campaigns, with video portraying Bera and
7 the U.S. Capitol and a shadowed person behind prison bars.⁷ The ad then follows with 16 or 17
8 seconds of the Committee’s B-roll video of Jones in uniform talking to police officers and
9 dressed casually walking and talking with his family, with a voiceover describing Jones as a
10 strong and effective leader. At times, the on-screen text states Jones “Put Criminals Behind
11 Bars” and concludes with “Strong. Effective. Leadership.” During the final five seconds, the
12 advertisement contains a spoken and written disclaimer stating that NRCC paid for the ad and
13 that it was not authorized by any candidate. NRCC disclosed the costs of the ad (\$465,161)⁸ as
14 independent expenditures in a 24/48 Hour Report filed on October 6, 2016.⁹

⁴ See <https://www.youtube.com/watch?v=ASB6ym0xd2U> (last visited Aug. 7, 2017). The video shows Jones talking with workers in a factory and in a truck parking lot, talking with groups of senior citizens and young parents, wearing his sheriff uniform while speaking into a police car radio, speaking with other officers, reading with children, and walking and laughing with his family.

⁵ See NRCC Amended Statement of Organization (Mar. 28, 2017). NRCC used to be known as the National Republican Congressional Committee. See NRCC Amended Statement of Organization (Dec. 12, 2014).

⁶ See “Dirty Money” at <https://www.nrcc.org/2016/10/04/new-nrcc-tv-ad-contrasts-dc-politician-ami-beras-dirty-money-sheriff-scott-jones-leadership/> (last visited Aug. 7, 2017) (“Dirty Money”).

⁷ See MUR 7072 (Ami Bera for Congress) (Commission admonished Bera’s father, Babulal Bera, for reimbursing campaign contributions).

⁸ The Complaint — without citing support — alleges that the costs of the ad could be “as much as \$1,170,814.84.” See Compl. at 2.

⁹ See NRCC 24/48 Hour Report of Independent Expenditures at 1-4 (Oct. 6, 2016).

1 The NRCC also disclosed two \$5,000 contributions to the Committee, one for the 2016
2 primary and one for the 2016 general elections.¹⁰ In addition, the NRCC disclosed making
3 \$95,638 in coordinated party expenditures in support of the Committee during 2016.¹¹

4 **III. ANALYSIS**

5 The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of
6 money or anything of value made by any person for the purpose of influencing any election for
7 Federal office.”¹² The term “anything of value” includes all in-kind contributions.¹³ The
8 Commission has considered video footage a thing of value for purposes of the Act.¹⁴
9 Contributions from a national or state party committee to a candidate committee are limited to a
10 total of \$5,000 per election, and candidates and political committees are prohibited from

¹⁰ See NRCC Amended July 2016 Monthly Report at 1,763 (Aug. 2, 2016) (\$5,000 primary election contribution), August 2016 Monthly Report at 1,652 (Aug. 20, 2016) (\$5,000 general election contribution).

¹¹ See NRCC Amended October 2016 Monthly Report at 2,969, Schedule F (Mar. 2, 2017).

¹² 52 U.S.C. § 30101(8)(A).

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ See, e.g., First Gen. Counsel’s Rpt. at 7-8 and Statement of Reasons, Comm’rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2, MUR 5964 (Schock for Congress) (analyzing video footage as a campaign asset and thing of value requiring payment at the usual and normal charge); Factual & Legal Analysis at 10-11, MUR 6218 (Ball4NY) (analyzing video footage as a campaign asset that would have value).

1 knowingly accepting contributions in excess of the Act's limits.¹⁵ The NRCC made direct
2 contributions to the Committee in the maximum amount for the 2016 primary and general
3 elections.

4 Political party committees may further support their candidates with independent
5 expenditures, defined as expenditures that expressly advocate the election or defeat of a clearly
6 identified federal candidate and are not made in concert or cooperation with or at the request or
7 suggestion of such candidate, the candidate's authorized political committee, or their agents.¹⁶

8 Included in the definition of expenditure is "the financing by any person of the
9 dissemination, distribution, or republication, *in whole or in part*, of any broadcast or any written,
10 graphic, or other form of campaign materials prepared by the candidate, his campaign
11 committees, or their authorized agents."¹⁷ The republication of campaign materials prepared by
12 a candidate's authorized committee is also "considered a[n in-kind] contribution for the purposes
13 of contribution limitations and reporting responsibilities of the person making the expenditure,"¹⁸
14 because the person financing the communication "has provided something of value to the

¹⁵ 52 U.S.C. § 30116(a)(2)(A), (f). 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. *See* 52 U.S.C. § 30116(d). In 2016, the NRCC's limit to support House candidates in states with more than one congressional district was \$48,100. *See* https://transition.fec.gov/info/charts_cpe_2016.shtml. The NRCC spent its shared coordinated party expenditure limit for Jones by September 23, 2016. *See* NRCC Amended October 2016 Monthly Report at 2969, Schedule F (Mar. 2, 2017). Apparently, the State Party Committee assigned its coordinated party expenditure limit to the NRCC. *See* 11 C.F.R. § 109.33.

¹⁶ 52 U.S.C. § 30101(17); 11 C.F.R. § 109.30. *See also* 11 C.F.R. § 100.22(a), (b).

¹⁷ 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added). For republication, the Commission has concluded that "campaign materials" include any material belonging to or emanating from a campaign. *See, e.g.*, MUR 6783 (Indian Americans for Freedom) (text from candidate's mailer reproduced in nonprofit's mailer); 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 11 C.F.R. § 109.23(a).

1 candidate [or] authorized committee.”¹⁹ The candidate who prepared the campaign materials is
2 deemed to have received a contribution only if the republication is a coordinated communication
3 or a party coordinated communication.²⁰

4 The available information does not support the Complaint’s allegation that the
5 Committee coordinated the ad with NRCC; rather it indicates that NRCC took the footage from
6 the Committee’s YouTube channel.²¹

7 Therefore, the Commission finds no reason to believe that Sheriff Scott Jones for
8 Congress and David Bauer in his official capacity as treasurer or Scott Jones violated 52 U.S.C.
9 § 30116(f) by accepting an excessive in-kind contribution in the form of a coordinated
10 communication.

¹⁹ See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (explanation and justification) (“Coordinated and Independent Expenditures E&J”). As the Commission there explained, “Congress has addressed republication of campaign material through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443 (emphasis added); *see also* Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (June 8, 2006) (explanation and justification), (communications “that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.”).

²⁰ 11 C.F.R. § 109.23(a).

²¹ Expenditures that are coordinated with a candidate are treated as contributions to the candidate. 52 U.S.C. § 30116(a)(7)(B). The Commission’s 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. *See* 11 C.F.R. § 109.37(a), (b). To determine whether a communication constitutes a “party coordinated communication,” Commission regulations apply a three-prong test. *See* 11 C.F.R. § 109.37(a)(1), (2), (3). First, the communication must be paid for by a political party committee or its agent. 11 C.F.R. § 109.37(a)(1). Second, the communication must satisfy one of three content standards. *See* 11 C.F.R. § 109.37(a)(2)(i), (ii), (iii). Finally, the communication must satisfy one of six conduct standards. *See* 11 C.F.R. § 109.37(a)(3); *see also* 109.21(d)(1)-(6).