

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7190**

4 DATE COMPLAINT FILED: 11/07/2016

5 DATE OF NOTIFICATION: 11/10/2016

6 DATE OF LAST RESPONSE: 12/16/2016

7 DATE ACTIVATED: 5/16/2017

8 ELECTION CYCLE: 2016

9 EXPIRATION OF STATUTE OF LIMITATIONS:

10 Earliest: 8/12/2021 Latest: 12/8/2021

11 COMPLAINANT:

12 Steve Harrison, Chair of Alaska Veterans Party
13 Citizens for Joe Miller, Inc.

14 RESPONDENTS:

15 Alaska Republican Party and Donald Handeland
16 in his official capacity as treasurer¹
17 Lisa Murkowski for U.S. Senate and Catherine Straub
18 in her official capacity as treasurer

19 **MUR: 7208**

20 DATE COMPLAINT FILED: 1/5/2017

21 DATE OF NOTIFICATION: 1/10/2017

22 DATE OF LAST RESPONSE: 2/8/2017

23 DATE ACTIVATED: 5/16/2017

24 ELECTION CYCLE: 2016

25 EXPIRATION OF STATUTE OF LIMITATIONS

26 Earliest: 9/17/2021 Latest: 12/8/2021

27 COMPLAINANT:

28 Julie Hamm

29 RESPONDENTS:

30 Alaska Republican Party and Donald Handeland
31 in his official capacity as treasurer
32 Chairman Tuckerman Babcock
33 Vice Chairman Rick Whitbeck
34 Senator Lisa Murkowski
35 Lisa Murkowski for U.S. Senate and Catherine Straub in

36 ¹ Julie Tisdale was treasurer of Alaska Republican Party when the complaints were filed. See ARP Amended
37 Statement of Organization (Oct. 26, 2016), available at
38 <http://docquery.fec.gov/pdf/202/201610269034581202/201610269034581202.pdf>. On February 5, 2019, the
39 committee filed an amended Statement of Organization designating Donald Handeland as its treasurer. See ARP
40 Amended Statement of Organization (Feb.5, 2019), available at
<http://docquery.fec.gov/pdf/502/201902059145463502/201902059145463502.pdf>.

1		her official capacity as treasurer
2		
3	RELEVANT STATUTES	52 U.S.C. § 30101(8)(B)(v)
4	AND REGULATIONS:	52 U.S.C. § 30101(9)(B)(iv)
5		52 U.S.C. § 30104(b)
6		52 U.S.C. § 30116(a)(2)(A), (d)(3)(A), (f)
7		52 U.S.C. § 30120
8		11 C.F.R. § 100.26
9		11 C.F.R. § 100.80
10		11 C.F.R. § 100.89
11		11 C.F.R. § 100.149
12		11 C.F.R. § 104.4(a)
13		11 C.F.R. § 109.21(c), (d)
14		11 C.F.R. § 109.32(b)(2)(i)
15		11 C.F.R. § 109.37(a)
16		11 C.F.R. § 110.11(d)(2)
17		
18	INTERNAL REPORTS CHECKED:	Disclosure Reports
19		
20	FEDERAL AGENCIES CHECKED:	None
21		

22 I. INTRODUCTION

23 In the months leading up to the 2016 general election, Lisa Murkowski for U.S. Senate
 24 and Catherine Straub in her official capacity as treasurer (the “Murkowski Committee”), the
 25 principal campaign committee of Senator Lisa Murkowski, made a series of transfers totaling
 26 \$354,007 to the Alaska Republican Party and Donald Handeland in his official capacity as
 27 treasurer (“ARP”). The Complaints in MURs 7190 and 7208 allege that ARP used those funds
 28 to make coordinated party expenditures resulting in excessive in-kind contributions to
 29 Murkowski and the Murkowski Committee in violation of the Federal Election Campaign Act of
 30 1971, as amended (“Act”). The Complaints also allege that neither of the respondent committees
 31 properly disclosed the transactions in question; the Complaint in MUR 7208 additionally alleges
 32 that ARP failed to include disclaimers in its communications indicating that Murkowski or the
 33 Murkowski Committee had authorized them.

1 Respondents deny that they violated the Act, asserting that the Act allows a candidate to
2 make unlimited transfers to a state political party and that the transfers were properly disclosed
3 in reports filed with the Commission. In addition, while ARP acknowledges that some of its
4 communications were coordinated with the Murkowski Committee, ARP contends that costs for
5 those communications were properly disclosed as coordinated party expenditures, were within
6 the allowable limit, and contained adequate disclaimers.

7 Based upon the available information, we conclude that the Murkowski Committee and
8 ARP properly reported the transfers. We also conclude that ARP properly reported its
9 coordinated party expenditures but failed to state in disclaimers on its communications that the
10 candidate, Lisa Murkowski, or her committee authorized the communications.

11 Accordingly, we recommend that the Commission: (1) find no reason to believe that the
12 Murkowski Committee or ARP violated 52 U.S.C. § 30104(b) by failing to properly report the
13 making and acceptance of transfers to ARP and payments for coordinated party expenditures; (2)
14 find no reason to believe that ARP, its Chairman Tuckerman Babcock, or its Vice Chairman
15 Rick Whitbeck violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions; (3)
16 find no reason to believe that Lisa Murkowski or the Murkowski Committee violated 52 U.S.C.
17 § 30116(f) by accepting excessive in-kind contributions; and (4) find reason to believe that ARP
18 violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(d)(2) by failing to include an adequate
19 disclaimer in its communications.

20 **II. FACTUAL & LEGAL ANALYSIS**

21
22 The Alaska Republican Party is a state party committee that is registered and files reports
23 with the Commission. Lisa Murkowski is the current U.S. Senator from Alaska and was the

1 Republican candidate in the general election for U.S. Senate in Alaska on November 8, 2016.

2 The Murkowski Committee is Senator Murkowski's principal campaign committee.²

3 The Murkowski Committee made eight transfers totaling \$354,007 to the ARP between
4 September 20, 2016, and October 26, 2016.³ In its disclosure reports, the Murkowski Committee
5 did not specify a purpose for the transfers. ARP, in its own disclosure reports, described the
6 receipts as "surplus campaign funds" in memo entries.⁴

7 ARP made disbursements totaling \$352,218.31 between September 17, 2016, and
8 November 14, 2016. These disbursements included \$56,111.60 in coordinated party
9 expenditures for four mailers attacking Murkowski's opponent, Joe Miller ("Miller Mailers");⁵
10 \$39,606.71 for an absentee ballot mailer;⁶ and \$256,500.00 for "voter contact for turnout."⁷

² Murkowski Committee Amended Statement of Organization (May 8, 2017); *available at* <http://docquery.fec.gov/pdf/672/201705080200147672/201705080200147672.pdf>.

³ *See* Murkowski Committee disclosure reports: 2016 October Quarterly Report at 253, 254; 2016 12-Day Pre-General Report at 91; 2016 30-Day Post-General Report at 149.

⁴ MUR 7190 Compl. at 1-2 (citing Murkowski Committee 2016 October Quarterly Report); *see also*, ARP disclosure reports: 2016 October Monthly Report at 54; 2016 12-Day Pre-General Report at 27, 28; and 2016 30-Day Post-General Report at 38, 39.

⁵ *See* ARP 2016 Post-General Report at 42-43. Copies of the Miller Mailers are attached to the complaints in MUR 7190 and MUR 7208. *See* MUR 7190 Complaint, Exs. B-E; MUR 7208 Compl. ARP's former treasurer submitted an affidavit and documents pertaining to the cost of production and postage for the Miller Mailers, which indicate that each of the four mailers was sent to over 33,000 persons via bulk mail and that they were mailed on October 21, 24, 26 and 31. *See* Tisdale Aff., Exs. 1-8, ARP MUR 7190 Resp. (Dec. 6, 2016) ("ARP 7190 Resp.") (explaining that ARP made coordinated party expenditures on behalf of Murkowski on or after October 20).

⁶ *See* ARP 2016 12-Day Pre-General Report at 25. A copy of the absentee ballot mailer is attached to the complaint in MUR 7190. *See* Compl. MUR 7190, Ex. A.

⁷ *See* ARP 2016 October Monthly Report at 54; ARP 2016 12-Day Pre-General Election Report at 27, 28; ARP 2016 30-Day Post-General Report at 38, 39, 41.

1 **A. There is No Reason to Believe that the Murkowski Committee or the ARP**
2 **Misreported the Transfers**

3
4 The Complaint in MUR 7190 alleges that the Murkowski Committee and the ARP each
5 misreported the transfers by mischaracterizing the purpose of the transfers in their respective
6 disclosure reports — the Murkowski Committee failed to specify any purpose whatsoever, and
7 ARP described them as “surplus campaign funds.”⁸ The Complainant, citing to his own
8 experience, states that surplus funds are not transferred to a state party until the campaign is over,
9 especially in a competitive race.⁹

10 The Act and Commission regulations enumerate a number of permissible non-campaign
11 uses of funds in a campaign account.¹⁰ For example, a candidate’s principal campaign
12 committee may transfer any contributions received “without limitation, to a national, State, or
13 local committee of a political party.”¹¹ So long as the transfer is made for a lawful purpose and
14 not converted to personal use,¹² the Commission has determined that “[t]hese provisions do not
15 limit the purposes that any transferred funds may be put to, nor do they restrict the amount that
16 may be transferred in any specific period of time.”¹³ Although both authorized and state party

⁸ MUR 7190 Compl. at 1-2.

⁹ See MUR 7190 Compl. at 2.

¹⁰ See 52 U.S.C. § 30114(a); 11 C.F.R. § 113.2 (identifying “Permissible non-campaign use of funds”); see also Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds, 67 Fed. Reg. 76962, 76964 (Dec. 13, 2002) (explaining that section 113.2 “sets forth the permissible non-campaign uses of funds in a campaign account”).

¹¹ 52 U.S.C. § 30114(a)(4); see also 11 C.F.R. § 113.2(c).

¹² See 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e).

¹³ Advisory Op. 2004-22 (Bereuter) at 1-2.

1 committees must report the making and acceptance of such a transfer,¹⁴ neither the Act nor
2 Commission regulations require an authorized committee to identify the purpose of a transfer to
3 a party committee.

4 Consequently, the Murkowski Committee was free to transfer the campaign funds in
5 question for any lawful purpose, other than personal use, and was not required to disclose the
6 purpose of the transfers. Nor does the manner in which ARP described the transfers in its
7 disclosure reports appear misleading or result in any misreporting — neither the Act nor
8 Commission regulations define the meaning of “surplus campaign funds,” or specifies that any
9 such funds can only exist after the conclusion of the election. Accordingly, we recommend that
10 the Commission find no reason to believe that the Murkowski Committee or the ARP violated
11 52 U.S.C. § 30104(b) by failing to properly report the making and acceptance of the transfers of
12 funds.

13 **B. There is No Reason to Believe that ARP Made, and the Murkowski**
14 **Committee Received, Excessive and Unreported In-Kind Contributions For**
15 **Mailings and Voter Contact in Support of Murkowski**
16

17 The MUR 7190 Complaint alleges that ARP coordinated with the Murkowski Committee
18 on the Miller Mailers, the absentee ballot mailer, and the voter contact activities, resulting in
19 unreported and excessive contributions to the Murkowski Committee. A candidate and her
20 authorized committee are prohibited from accepting contributions exceeding \$5,000 per election
21 from other committees, including political party committees.¹⁵ In addition to this limit, however,
22 the Act gives the national and state committees of a political party authority to support their

¹⁴ See 52 U.S.C. § 30104(b)(2)(F), (4); 11 C.F.R. § 104.3(a)(4)(iii), (b)(2).

¹⁵ 52 U.S.C. § 30116(a)(2)(A), (f).

1 general election candidates with coordinated expenditures subject to certain limits. In 2016, the
2 coordinated party expenditure limit applicable to a U.S. Senate candidate was \$96,100.¹⁶ When
3 a party committee makes an expenditure for a communication that is coordinated with a
4 candidate (and that is not otherwise exempt party activity) the party committee must report the
5 expenditure as either an in-kind contribution (subject to the \$5,000 limit) or a coordinated party
6 expenditure (subject to the \$96,100 limit).¹⁷ The authorized committee of the candidate on
7 whose behalf the coordinated party expenditures are made does not report the expenditures as
8 contributions.¹⁸

9 Based on the discussion below, we recommend that the Commission find no reason to
10 believe that ARP made, and Murkowski and the Murkowski Committee accepted, excessive in-
11 kind contributions in connection with the Miller Mailers, the absentee ballot mailer, and the voter
12 contact activities, and no reason to believe that ARP failed to properly report its disbursements
13 for these activities.

14 1. Miller Mailers

15 In response to the allegation in MUR 7190 that ARP failed to report the Miller Mailers as
16 coordinated party expenditures and exceeded its coordinated party expenditure limit when it paid

¹⁶ See 52 U.S.C. § 30116(d); 11 C.F.R. § 109.32(b)(2)(i); Coordinated Party Expenditure Limits for 2016 General Election Senate Nominees, at http://classic.fec.gov/info/charts_cpe_2016.shtml#Senate.

¹⁷ See 11 C.F.R. § 109.37(b); *see also* 52 U.S.C. § 30104(b).

¹⁸ 11 C.F.R. § 104.3(a)(3)(iii).

1 for the mailers,¹⁹ ARP does not dispute that the Miller Mailers were coordinated but contends
2 that they were permissible under the coordinated party expenditure rules described above.²⁰

3 The Miller mailers are critical of U.S. Senate candidate Joe Miller and include statements
4 advocating the defeat of Miller, such as “Vote Against Joe Miller for U.S. Senate”²¹, “Joe Miller
5 for Senate? Delete Hilary Clinton for President?”²² and “On November 8th, Delete Joe Miller for
6 U.S. Senate.”²³ According to ARP’s disclosure reports, it made \$56,111.60 in coordinated party
7 expenditures on behalf of Murkowski, its general election nominee for U.S. Senate, between
8 October 20 and October 25, 2016.²⁴ In its response to MUR 7190, ARP asserts that all of this
9 expense was for the Miller Mailers.²⁵ To support its assertion, the ARP provided an affidavit
10 from its treasurer at that time, Julie Tisdale, and supporting correspondence, invoices, and checks
11 relating to the production cost and postage for the Miller Mailers.²⁶

12 The coordinated party expenditures for the Miller Mailers were reported on ARP’s 30-
13 Day Post-General Election Report, which is the correct report on which to report expenditures

¹⁹ MUR 7190 Compl. Exs. B-E. The Complaint in MUR 7190 also alleges that ARP failed to report a fifth mailer (the absentee ballot mailer) as a coordinated expenditure. The absentee ballot mailer is addressed below.

²⁰ ARP 7190 Resp. at 2-3.

²¹ MUR 7190 Compl. Exs. B, C

²² *Id.* at Ex. D.

²³ *Id.* at Ex. E.

²⁴ See ARP 2016 Post-General Report at 42-43 (itemizing four coordinated expenditures on Schedule F: \$11,407.80 on October 20 for postage; \$16,648 on October 24 for printing; \$11,407.80 on October 25 for printing; and \$16,648 on October 25 for postage).

²⁵ See ARP 7190 Resp. at 2-3.

²⁶ Tisdale Aff. ¶¶ 7-11, ARP 7190 Resp.

1 incurred from October 20 through November 28, 2016.²⁷ Moreover, the total cost for the Miller
2 Mailers, \$56,111.60, was within ARP's \$96,100 limit for coordinated party expenditures. Based
3 on this information, it appears that ARP properly and timely reported coordinated party
4 expenditures in support of the Murkowski Committee on its regularly scheduled reports.

5 2. Absentee Ballot Mailer

6 The Complaint's only apparent basis for the allegation in MUR 7190 that ARP's absentee
7 ballot mailer was coordinated with the Murkowski Committee and resulted in unreported and
8 excessive contributions to the committee is the fact of the Murkowski Committee's transfers to
9 ARP. Respondents argue that the mailer is not a contribution to any candidate or expenditure
10 (coordinated party expenditure or otherwise) because it qualifies for the Act's slate card and
11 sample ballot exemption.²⁸

12 The four-page absentee ballot mailer includes a listing of Republican candidates running
13 in the 2016 general election in Alaska (Donald Trump for President, Mike Pence for Vice
14 President, Lisa Murkowski for United States Senate, Don Young for United States Congress, and
15 George Rauscher for Alaska House) and urges the reader to request a General Election absentee
16 ballot using an enclosed absentee ballot application. The absentee ballot mailer also urges
17 recipients to "Elect Republicans candidates to unlock our energy resources, unburden small
18 businesses to create jobs, strengthen our military, and defend Alaskans' constitutional rights."²⁹
19 The mailer also includes a letter from Tuckerman Babcock, Chairman of the ARP, which

²⁷ See 2016 Reporting Dates, available at https://transition.fec.gov/info/report_dates_2016.shtml#general.

²⁸ See ARP 7190 Resp. at 1-2 (citing 52 U.S.C. §§ 30101(8)(B)(v), 30101(9)(B)(iv)); Resp. of Murkowski at 2, MUR 7190 (Dec. 16, 2016) (citing same).

²⁹ MUR 7190 Compl. at Ex. A.

1 features the names and photographs of Trump, Murkowski, and Young, and urges the reader to
2 vote to avoid “los[ing] our Supreme Court, our once proud military, our free economy, our
3 individual rights to free speech, religion and the individual right to keep and bear arms.” Finally,
4 the mailer calls on voters to vote against Hillary Clinton, the Democratic candidate for President
5 in 2016, stating “Your vote is your only opportunity to say, once and for all: NeverHillary!”³⁰

6 ARP reported \$39,606 in disbursements on October 18, 2016, to Advanced Design for a
7 “2016 Absentee Ballot Mailer design/printing/postage for full slate.”³¹

8 The Act exempts from the definitions of “contribution” and “expenditure” payments by a
9 state or local political party committee of the costs incurred to prepare, display, mail, or
10 otherwise distribute a printed slate card, sample ballot, or other printed listing of three or more
11 candidates for public office for which an election is held in the state in which the party
12 committee is organized.³² In interpreting the scope of the exemptions, the Commission has
13 advised that materials may include the following information: (1) information identifying
14 candidates by name or picture; (2) the office or position currently held by the candidates; (3) the
15 elective office sought by the candidates; (4) party affiliation; and (5) voting information, such as
16 election time and place.³³ Other information providing “additional biographical information,

³⁰ *Id.*

³¹ ARP 2016 Pre-General Report at 25 (Oct. 28, 2016).

³² 52 U.S.C. §§ 30101(8)(B)(v), (9)(B)(iv).

³³ *See* AO 2008-06 (Democratic Party of Virginia, A) at 2; 1978-09 (Republican State Central Committee of Iowa).

1 descriptions of candidates' positions on the issues, or statements of party philosophy, do not
2 qualify under the slate card exemption."³⁴

3 ARP's absentee ballot mailer has some of the characteristics of a slate card – *e.g.*, it is
4 direct mail which references five Republican Party candidates running in the 2016 General
5 Election in Alaska, including four clearly identified federal candidates, and was paid for with
6 federally permissible funds – but also includes statements of party philosophy when it makes
7 statements such as “Elect Republicans candidates to unlock our energy resources, unburden
8 small businesses to create jobs, strengthen our military, and defend Alaskans' constitutional
9 rights.”³⁵ As a result, the mailer does not qualify for the slate card exemption. Thus, the costs of
10 the mailer could be an in-kind contribution to Murkowski or a coordinated party expenditure to
11 Murkowski if it was coordinated with the Murkowski Committee. Under Commission
12 regulations, a political party communication is coordinated with a candidate or that candidate's
13 authorized committee if it satisfies each of the following three requirements: (1) it is paid for by
14 a political party committee; (2) it satisfies at least one of the “content” standards described in 11
15 C.F.R. § 109.37(a)(2)(i) through (iii); and (3) it satisfies at least one of the “conduct” standards
16 described in 11 C.F.R. § 109.21(d).³⁶

17 It does not appear that the conduct prong of the coordination test is satisfied with respect
18 to the absentee ballot mailer.³⁷ The conduct prong of the party coordinated communication test

³⁴ See AO 2008-06 at 3.

³⁵ MUR 7190 Compl., Ex. A.

³⁶ 11 C.F.R. § 109.37(a).

³⁷ Because a communication must meet all three prongs of the coordination test (*i.e.*, payment, content, and conduct) in section 109.37 to be deemed a party coordinated communication, it is unnecessary to consider whether ARP's absentee ballot mailer meets the content prong of the test.

1 is satisfied when (1) a communication is created, produced, or distributed at the request or
2 suggestion of a candidate; (2) a candidate is materially involved in decisions regarding, among
3 other things, the content, audience, means, mode, timing, frequency, size, or prominence of the
4 communication; (3) the communication is created, produced, or distributed after one or more
5 substantial discussions about the communication between the payor and the candidate; (4) the
6 communication is created, produced, or disseminated through the use of a common vendor; or
7 (5) the communication is paid for by a former employee or independent contractor or the
8 employer of such a person.³⁸

9 The MUR 7190 Complaint makes no specific allegation relating to any of the conduct
10 standards. The only information noted in the MUR 7190 Complaint in support of coordination is
11 an assertion that ARP would not have had sufficient funds to pay for the mailings without the
12 transfers from the Murkowski Committee.³⁹ The available information, including the Complaint
13 fails to show how the mere fact of the transfers, without more, satisfy any of the elements of the
14 conduct prong. Absent other information suggesting coordination, the fact of the Murkowski
15 Committee's transfers is insufficient to conclude that the absentee ballot mailer was a
16 coordinated party communication by ARP on behalf of the Murkowski Committee.⁴⁰

³⁸ 11 C.F.R. § 109.21(d)(1)-(5). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See* 11 C.F.R. § 109.21(d)(6).

³⁹ *See* MUR 7190 Compl. at 2 (claiming that "multiple Alaska Republican Party State Central Committee members have told the Miller campaign that the party simply didn't have the funds for federal election activity in the US Senate race without Murkowski transfers."). ARP had about \$50,576 at the beginning of the reporting period in which it reported the \$39,606 disbursement for the absentee ballot mailing; almost all of ARP's receipts during that period came from the Murkowski Committee. *See* ARP 2016 12-Day Pre-General Report (Summary Page of Receipts and Disbursements).

⁴⁰ This matter is distinguishable from the facts in MUR 6691 (Lampson for Congress & Texas Democratic Party), where a candidate committee transferred campaign funds to a state party contemporaneously with the state party's expenditures for mailers in support of the candidate. In that matter, we concluded there was a reasonable inference of coordination in part because the mailers contained some of the same substance as the candidate committee's press release, which was issued contemporaneously with the mailers. First Gen. Counsel's Rpt. at 9,

1 Accordingly, there is no basis to conclude that ARP made, and Murkowski and the Murkowski
2 Committee accepted, an excessive in-kind contribution in connection with the absentee ballot
3 mailer or that ARP should have reported the absentee ballot mailer as a coordinated party
4 expenditure.

5 3. Voter Targeting

6 The MUR 7208 Complaint alleges that ARP and the Murkowski Committee used
7 transferred funds to pay for coordinated “voter targeting” activities to benefit Murkowski,
8 resulting in additional unreported and excessive coordinated party expenditures.⁴¹ Respondents
9 contend that ARP used the funds to conduct get-out-the-vote activities (“GOTV”) on behalf of
10 four Republican candidates in Alaska. ARP argues that such activities did not constitute
11 contributions to Murkowski, because they fall under the slate card exemptions at 52 U.S.C.
12 § 30101(8)(B)(v) and (9)(B)(iv).⁴²

13 According to ARP’s disclosure reports, it spent over \$256,500.00 for “voter contact for
14 turnout,” from September 17, 2016 through November 14, 2016.⁴³ While Respondents assert
15 that those disbursements are exempt as contributions, they do not provide specific information
16 regarding the nature of its activities to support their claim. Nevertheless, the Complaint provides
17 little support for the allegation that ARP’s voter targeting efforts constituted coordinated party

MUR 6691; *but see* Certification, MUR 6691 (Jan. 13, 2015) (showing insufficient votes to approve OGC’s reason to believe recommendations pertaining to the coordinated mailings). Here, we have no such similar evidence, aside from the fact of the transfers.

⁴¹ MUR 7208 Compl. at 1-2 (alleging that Murkowski and ARP “colluded on the purchasing of voter targeting”).

⁴² *See* Resp. of Lisa Murkowski at 2, MUR 7208 (Feb. 8, 2017); ARP 7208 Resp. at 2.

⁴³ *See* ARP’s 2016 October Monthly Report (Oct. 20, 2016) at 54 (\$50,000, \$32,000); 2016 12-Day Pre-General Report (Oct. 28; 2016) at 27(\$32,000, \$32,000); 2016 Amended 30-Day Post-General Report (Feb. 20, 2017) at 38 (\$32,000), at 39 (\$32,000, \$32,000), at 41 (\$14,500).

1 expenditures under Commission regulations, other than the timing of the transfers in September
2 and October 2016. The Complaint identifies no communications or other specific activities that
3 show how ARP and the Murkowski committee worked in concert. Absent more specific
4 information, there are insufficient facts to support a conclusion that ARP may have made and
5 failed to report, and the Murkowski Committee may have accepted, excessive coordinated party
6 expenditures in connection with the activities described as “voter contact for turnout.”

7 **C. ARP’s Disclaimer Notices on the Miller Mailings Were Incomplete**
8

9 The MUR 7208 Complaint alleges that the disclaimers on the Miller Mailers failed to
10 state that the mailings were paid for or authorized by Murkowski.⁴⁴ In response, ARP notes that
11 the disclaimers clearly identified ARP as the entity who paid for the mailings, but appears to
12 concede that its disclaimers failed to include authorization statements from Murkowski⁴⁵ by
13 stating that it “will make further efforts to fully comply with [the] disclaimer requirements.”⁴⁶

14 All public communications by a political committee require a disclaimer.⁴⁷ A
15 “disclaimer” is a statement that must identify who paid for the communication; if the
16 communication is authorized by a candidate, an authorized committee of a candidate, or an agent
17 of the candidate or committee, but is paid for by any other person, the disclaimer must clearly
18 state that the communication is paid for by such other person and authorized by such candidate,

⁴⁴ MUR 7208 Compl. at 2. The Complaint in MUR 7208 speculates that Murkowski “paid for” the Miller Mailers by virtue of her relatively concurrent “donations” to ARP. But, as discussed above, Murkowski transferred, not donated, funds to ARP pursuant to provisions of the Act and Commission regulations allowing a candidate to transfer funds to a state party committee without limitation for any lawful purpose that is not for the candidate’s personal use.

⁴⁵ Resp. of ARP at 3, MUR 7208 (Feb. 8, 2017) (“ARP 7208 Resp.”).

⁴⁶ *Id.*

⁴⁷ See 11 C.F.R. § 110.11(a)(1) (scope of disclaimer provision); see also 11 C.F.R. § 100.26 (defining “public communication”).

1 authorized committee or agent.⁴⁸ In addition to this general disclaimer rule, Commission
2 regulations explicitly specify that communications treated as coordinated party expenditures and
3 made with the approval of the party's general election candidate, that candidate's committee, or
4 agent of either, must both identify the party committee that paid for the communication and state
5 that the candidate authorized the communication.⁴⁹

6 Here, the Miller Mailers appear to be mass mailings and, thus, "public communications"
7 within the scope of the disclaimer rule.⁵⁰ ARP admitted, in both its reporting to the Commission
8 and in its response to the Complaint in MUR 7208 that it coordinated the Miller Mailers with
9 Murkowski and disseminated them after Murkowski became the general election nominee; the
10 mailers therefore appear to be within the requirements of 11 C.F.R. § 110.11(d)(2).⁵¹ The
11 disclaimer on the Miller Mailers identified ARP as the payor for the communications, stating
12 "Paid for by the Alaska Republican Party," but failed to state that Murkowski or the Murkowski
13 Committee authorized the communications. Accordingly, the disclaimers did not fully comply
14 with the requirements set forth in section 110.11(d)(2) of Commission regulations.

15 In a similar matter, MUR 5833, the Commission found reason to believe that a state party
16 committee violated the disclaimer requirements on a communication on which the disclaimer
17 stated that it was paid for the party committee but failed to include any candidate authorization

⁴⁸ See 52 U.S.C. § 30120(a)(2); 11 CFR § 110.11(b)(2).

⁴⁹ 11 C.F.R. § 110.11(d)(2).

⁵⁰ See 11 C.F.R. § 100.26 (including "mass mailing" in definition of "public communication"); 11 C.F.R. § 100.27 (defining "mass mailing" as a mailing by U.S. mail of more than 500 identical or substantially similar pieces within a 30-day period); *see also* n. 5, *supra* (noting mailing dates, within one week, of 33,000+ batches for the Miller Mailers).

⁵¹ Murkowski won the 2016 Alaska Republican primary race for U.S. Senate on August 16, 2016. Becky Bohrer, *Murkowski Easily Defeats challengers in Alaska GOP Primary*, AP (Aug. 17, 2016), <https://apnews.com/30d3a0ae931149218839f2a2304f2ec2>.

1 statement.⁵² The fact that the ARP admittedly coordinated its communication but still failed to
2 include any candidate authorization in its disclaimer counsels here in favor of finding reason to
3 believe a disclaimer violation occurred.⁵³ Because the ARP disclaimer failed to indicate that
4 Murkowski had authorized the coordinated Miller Mailers, we recommend that the Commission
5 find reason to believe that ARP violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(d)(2).

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⁵² See Factual & Legal Analysis at 6, MUR 5833 (Ohio Democratic Party) (noting that disclaimer stated only “Paid for by the Ohio Democratic Party” and finding RTB on alternative violation theories in the case the communication was or was not authorized by the candidate mentioned therein); *see also* Conciliation Agreement at 5-6, MUR 5833 (Ohio Democratic Party) (noting that the communication was independent and not coordinated and conciliating the disclaimer violation for the omission of the “not authorized” statement).

⁵³ The facts of this matter – in which a state party committee made a party coordinated communication without a full disclaimer indicating that the communication was authorized by the general election candidate with whom it was coordinated – are distinguishable from several previous matters in which the Commission did not pursue partial disclaimer violations where there was a failure to include some aspects of a required disclaimer. *See, e.g.*, MUR 6683 (Fort Bend County Democratic Party) (dismissing allegation that local party organization violated disclaimer requirements by including only partial disclaimer on voter guide (which itself included advertisements from state and federal candidates) that omitted payor address, printed box, and candidate authorization statement; the Commission did not analyze whether any candidate may have authorized the communication); MUR 6633 (Republican Majority Campaign PAC) (dismissal with caution where, *inter alia*, website failed to state communication was not authorized by a candidate but elsewhere stated that it was “not affiliated with” any candidate); MUR 6044 (Musgrove) (dismissing disclaimer violation where disclaimer stated communication was not authorized and there was insufficient information to conclude that it *was* authorized by the candidate included therein); MUR 6037 (Merkley for Oregon) (Commission closed file after it agreed with OGC’s recommendation to find no RTB on coordination allegation but split on OGC’s recommendation to find RTB on disclaimer violation (for failure to include authorization statement)); *see also* Advisory Opinion 2004-01 (Bush/Kerr) (explaining, by analogy to the party coordinated communication disclaimer requirements, the type of candidate involvement in other ads that would constitute “authorization”); Advisory Opinion 2003-23 (WE LEAD) at 5 (concluding that a solicitation coordinated with a candidate must include in the disclaimer that the candidate authorized the communication); *cf.* Statement of Reasons, Comm’rs Hunter, Petersen, and McGahn at 4, 5, MUR 6037 (explaining three Commissioners’ position that no candidate authorization was required if the advertisement was not a “coordinated communication,” which the Merkley advertisement was not).

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V. RECOMMENDATIONS

1. Find no reason to believe that Alaska Republican Party and Donald Handeland in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
2. Find no reason to believe that Lisa Murkowski for U.S. Senate and Catherine Straub in her official capacity as treasurer violated 52 U.S.C. § 30104(b);
3. Find no reason to believe that Alaska Republican Party and Donald Handeland in his official capacity as treasurer, Tuckerman Babcock, or Rick Whitbeck violated 52 U.S.C. § 30116(a);
4. Find no reason to believe that Lisa Murkowski or Lisa Murkowski for U.S. Senate and Catherine Straub in her official capacity as treasurer violated 52 U.S.C. § 30116(f);
5. Find reason to believe that Alaska Republican Party and Donald Handeland in his official capacity as treasurer violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(d)(2);
6. Approve the Factual and Legal Analyses;
7. Enter into conciliation with Alaska Republican Party and Donald Handeland in his official capacity as treasurer prior to a finding of probable cause to believe;

1 8. Approve the attached conciliation agreement with Alaska Republican Party and
2 Donald Handeland in his official capacity as treasurer; and

3 9. Approve the appropriate letters.
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5 Lisa J. Stevenson
6 Acting General Counsel

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10 DATE: 2/15/19

11 BY: Kathleen M. Guith
12 Kathleen M. Guith
13 Associate General Counsel
14 for Enforcement

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16 Jin Lee
17 Jin Lee
18 Acting Assistant General Counsel

19
20
21 Dominique Dillenseger
22 Dominique Dillenseger
23 Attorney

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25 Attachments:

- 26 (1) Factual and Legal Analysis for ARP, Tuckerman Babcock and Rick Whitbeck
27 (2) Factual and Legal Analysis for Senator Murkowski and Murkowski Committee
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