

1 political mailings on behalf of the Committee during the 2016 election cycle, which
2 resulted in the Committee accepting excessive contributions from URP. The Complaint
3 also alleges that neither URP nor the Committee properly reported the excessive
4 contributions, and URP did not report debt to a vendor. Respondents assert that the
5 volunteer materials exemption applies to the mailings, and thus no excessive contribution
6 occurred, and the mailings contained the appropriate disclaimer.² As discussed below, we
7 recommend that the Commission find reason to believe that URP made, and the
8 Committee accepted, excessive contributions. Further, we recommend that the
9 Commission take no action at this time as to Mia Love. We also recommend that the
10 Commission find reason to believe that URP failed to report the excessive contributions to
11 the Committee and debt to a vendor, the Committee failed to report the excessive
12 contribution, and URP did not include the appropriate disclaimer on the mailings.

13 **II. FACTUAL BACKGROUND**

14 URP is a state party committee that is registered and files disclosure reports with
15 the Commission. Mia Love was re-elected in 2016 to represent the Fourth Congressional
16 District of Utah, and she is a candidate for re-election in 2018. The Committee is the
17 authorized committee for Love's campaign.

18 The Complaint alleges that in January 2018, sources within URP publicly revealed
19 that URP sent political mail valued at approximately \$120,000 on behalf of Love's 2016

² The Complaint does not explicitly allege a disclaimer violation, but it refers to a news article in which URP's Chair stated that the mailings contained URP's disclaimer, not the Committee's. Compl. at 3, n.7.

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1 campaign, and URP continues to owe the vendor, Arena Communications (“Arena”), for
 2 services related to the mailing.³

3 A news article cited in the Complaint quotes Love’s campaign manager, David
 4 Hansen, as stating “[t]echnically, the money is owed by the Party . . . , [but] it’s the
 5 responsibility of the campaign to pay it off.”⁴ Hansen reportedly added that the
 6 committee routed the mail through URP because URP pays a lower bulk mail rate.⁵
 7 Hansen is quoted in another article as saying that “[i]t’s the Utah Republican Party
 8 Victory Fund that basically funded” the mailings, adding that “[t]here was a debt left over
 9 from [the mailings]” and the Love campaign “tried to raise money to help the party in lots
 10 of areas, and if they use it to pay off the debt, that’s their decision.”⁶

11 The Complaint further alleges that URP Chair Rob Anderson reportedly described
 12 the mailings as being sent out by Love’s campaign, but with URP’s disclaimer because the
 13 Love Committee agreed to pay “pass-through money” for the mailings.⁷ The

³ Compl. at 2.

⁴ *Id.*, citing Brian Mullahy, *Utah GOP Has Campaign Debt from Mia Love and Tanner Ainge*, KUTV (Jan. 19, 2018) (“Mullahy, *Utah GOP*”), <https://kutv.com/news/local/utah-gop-has-campaign-debt-from-mia-love-ad-tanner-ainge>.

⁵ *Id.*

⁶ Lee Davidson, *Federal Complaints Accuse Mia Love and Ben McAdams of Taking Illegal Donations, Marking the Latest Fight in this Contentious Campaign*, SALT LAKE TRIBUNE (Aug. 17, 2018) (“Davidson, *Federal Complaints*”), <https://www.sltrib.com/news/politics/2018/08/17/federal-complaints-accuse/>.

⁷ Compl. at 2-3, citing Ed Wallace, *Report: AingeGate: Is the UTGOP Laundering Money for Tanner Ainge?* Utah Standard News (Jan. 24, 2018) (“Wallace, *Report*”), <https://www.utahstandardnews.com/aingegate-utgop-laundering-money-tanner-ainge>.

1 disclaimer on the mailings states “[p]aid for by the Utah Republican Party.”⁸ Anderson is
 2 further quoted as saying that “Dave Hansen’s agreed to pay that off. That’s Mia’s
 3 responsibility. And I’ll tell you, Arena has called and said ‘Your name is on there. You’re
 4 liable to it.’ So, that’s the only reason we carry it on the books is we have to report that to
 5 the FEC.”⁹ Finally, the article states that URP’s accounts payable include \$122,134.40
 6 owed to Arena Communications for the Mia Love campaign.¹⁰ URP, however, did not
 7 disclose any debt during the 2016 cycle or during 2017.¹¹

8 The Complaint alleges that the information from Anderson suggests that the Mia
 9 Love mailing was a coordinated communication, and it should be treated as an in-kind
 10 contribution to the Committee or as a coordinated party expenditure.¹² It further alleges
 11 that since the value of URP’s mailing for Love’s campaign was over \$120,000, it
 12 exceeded the \$5,000 limit that the state party committee may contribute to a candidate as
 13 well as the coordinated party expenditure limit, which, combining the state and national
 14 party’s limits for 2016, was \$96,200.¹³ Accordingly, the Complaint alleges URP made an
 15 excessive contribution to the Committee, which neither URP nor the Committee
 16 reported.¹⁴

⁸ Committee Resp. at 1; URP Resp. at 1.

⁹ Wallace, *Report* at 2.

¹⁰ *Id.* at 5.

¹¹ See URP 2015-2016 Financial Summary, <https://fec.gov/data/committee/C00089482/?cycle=2016>; URP 2017-2018 Financial Summary, <https://www.fec.gov/data/committee/C00089482/?cycle=2018>.

¹² Compl. at 4.

¹³ Compl. at 4, 5.

¹⁴ *Id.*

1 In separate responses, the Committee and URP assert that the mailings distributed
2 were volunteer mail within the meaning of 11 C.F.R. §§ 100.87 and 100.147, which
3 exempt from the definitions of “contribution” and “expenditure” amounts paid by state or
4 local party committees for campaign materials to be distributed by volunteers on behalf of
5 any nominee of such party.¹⁵ Accordingly, the Committee asserts that the payments are
6 not expenditures or contributions as defined in the Federal Election Campaign Act (the
7 “Act”), the coordination rules do not apply, and the payments are not coordinated party
8 expenditures.¹⁶ URP asserts that volunteers were involved in the mailings’ distribution,
9 and the mailings contained the appropriate disclaimer.¹⁷ In support, URP provides emails
10 from September 2016 between URP and Arena about having volunteers meet an Arena
11 representative at a post office to accept the mailings.¹⁸

12 URP asserts that the comments by Hansen, the Committee’s campaign manager,
13 that it had a responsibility to pay URP does not “refer to a legal responsibility, but to the
14 common and legitimate task of transferring funds from a candidate committee to the state
15 party,” which may be used to pay expenses.¹⁹ Similarly, the Committee asserts that
16 Hansen’s reference to the Committee’s “responsibility” actually referred to URP “because
17 [t]echnically the money is owed by the party.”²⁰ The Committee asserts that even if the

¹⁵ Committee Resp. at 1; URP Resp. at 1.

¹⁶ Committee Resp. at 1.

¹⁷ URP Resp. at 2.

¹⁸ URP Resp., Ex. A.

¹⁹ URP Resp. at 2.

²⁰ Committee Resp. at 2.

1 mailings originated with the Committee, it does not affect the mailings' eligibility for the
 2 volunteer materials exemptions.²¹ Respondents assert that the disclaimer, “[p]aid for by
 3 the Utah Republican Party,” is the appropriate disclaimer for volunteer mail that is
 4 authorized by a candidate.²² Respondents also assert that a candidate committee may
 5 transfer an unlimited amount of funds to a state party committee.²³ Neither response
 6 disputes the reported \$120,000 figure.

7 According to the Commission's records, during the 2016 election cycle, URP
 8 made payments totaling \$54,000 to Arena Communications for “Direct mail-Mia Love,”²⁴
 9 As mentioned earlier, the disclaimer on the mailings read “Paid for by the Utah
 10 Republican Party.”²⁵ URP did not disclose any contributions to the Committee or
 11 coordinated party expenditures on behalf of Love during the 2016 cycle, nor any debt to
 12 Arena Communications. Nor has URP disclosed any debt to Arena Communications
 13 during the 2018 cycle.

²¹ *Id.* The Committee also stated that it was following previous Commission enforcement matters concerning when the volunteer materials exemption applies, and noted that in 2010, the Commission attempted to clarify when the exemption applies, but failed to approve a policy statement on this issue. *Id.* at 2, 3.

²² URP Resp. at 2; Committee Resp. at 1.

²³ URP Resp. at 2, n.9; Committee Resp. at 2.

²⁴ See URP 2016 Post-General Report at 11 (Dec. 7, 2016) (\$15,000 on Oct. 20, 2016, \$10,000 on Oct. 21, 2016 and \$20,000 on Nov. 14, 2016); URP 2016 Year-End Report at 8 (Jan. 30, 2017) (\$9,000 on Dec. 1, 2016).

²⁵ Committee Resp. at 1; Utah Resp. at 1.

1 During the 2016 cycle, the Committee made contributions to URP totaling
 2 \$19,000.²⁶ The Committee did not report paying for the mailings, but it did make
 3 payments totaling \$14,434 to Arena Communications during the 2016 cycle for printing or
 4 software, and it reported no debt to Arena Communications.²⁷

5 **III. LEGAL ANALYSIS**

6

7 **A. The Available Information Indicates that the Volunteer Materials**
 8 **Exemption Does not Apply to the Mailings**

9

10 The Act provides that the cost of certain campaign materials paid for by a state or
 11 local party committee and used in connection with volunteer activities on behalf of the
 12 party's nominee are neither contributions nor expenditures.²⁸ This is known as the
 13 "volunteer materials" exemption, and payments qualifying for this exemption are not
 14 subject to the Act's limits on a state party committee's contributions or expenditures.²⁹
 15 This exemption applies to state party committee payments for campaign materials such as
 16 pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters and yard
 17 signs.³⁰

²⁶ See Committee 2015 October Quarterly Report at 335 (Oct. 15, 2015) (\$9,500 on July 23, 2015); Committee 2016 July Quarterly Report at 1062 (July 15, 2016) (\$3,000 on Apr. 5, 2016); Committee 2016 October Quarterly Report at 1842 (Oct. 13, 2016) (\$1,500 on Sept. 14, 2016); and Committee 2016 Pre-General Report at 402 (Oct. 27, 2016) (\$5,000 on Oct. 18, 2016).

²⁷ See Committee 2015 October Quarterly Report at 306 (Oct. 15, 2015) (\$724.44 for printing on Sept. 3, 2015; 2016 Pre-General Report at 381 (Oct. 27, 2016) (\$8,684.77 for printing on Oct. 7, 2016); Committee 2016 Post-General Report at 598-599 (Dec. 8, 2016) (\$4,276.14 for printing and \$450.00 for software on Oct. 31, 2016 and \$299.18 for printing on Nov. 14, 2016). See also <https://www.fec.gov/data/committee/C00505776/?cycle=2016>.

²⁸ 52 U.S.C. §§ 30101(8)(B)(ix) and (9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147.

²⁹ *Id.*

³⁰ 11 C.F.R. § 100.87.

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1 To qualify for the volunteer materials exemption, mailers must be “used … in
 2 connection with volunteer activities,” “distributed by volunteers and not by commercial
 3 or for-profit operations,” and cannot “be used in connection with . . . direct mail,” which
 4 means “any mailing(s) by a commercial vendor or any mailing(s) made from commercial
 5 lists.”³¹ The Commission “has considered the totality of volunteer involvement in
 6 evaluating whether a mailer was ‘distributed’ by volunteers or was commercial ‘direct
 7 mail,’” but emphasized that “substantial volunteer involvement” is required for the
 8 volunteer materials exemption to apply.³²

9 According to URP’s disclosure reports, it paid a total of \$54,000 for mailings it
 10 described as “*Direct mail-Mia Love.*”³³ In addition, the information respondents provided
 11 regarding the volunteers’ involvement concerning the mailings is unpersuasive. The
 12 emails between URP and Arena seem to be arranging for URP volunteers to meet an
 13 Arena representative at a post office to accept the mailings, but URP provided no
 14 information describing the work the volunteers were to perform, or whether the volunteers
 15 actually did that work.³⁴ URP should be aware that the Commission considers such

³¹ See Factual and Legal Analysis at 3, MUR 6899 (Pat Meehan for Congress); See also 11 C.F.R. § 100.87(a), 100.147(a); Factual and Legal Analysis at 7, MUR 5598 (Utah Republican Party).

³² Statement of Reasons of Chair Robert D. Lenhard and Comm’rs. Mason, von Spakovsky, and Weintraub at 4, n.3, MUR 5837 (Missouri Democratic Committee).

³³ URP 2016 Post-General Report at 11; URP 2016 Year-End Report at 8 (emphasis added). In contrast to the description reported on its 2016 disclosure reports, URP described its payments to Arena Communications for mailings on its behalf during the 2018 cycle as “Exempt mail-Mia Love” on the relevant disclosure reports. See, e.g., 2017 November Monthly Report at 8; 2018 July Monthly Report at 9.

³⁴ In MUR 6899 (Pat Meehan), the Commission found that the volunteer materials exemption applied based on information respondents provided, including a sworn statement and pictures of the volunteers unpacking, addressing, and delivering mailings to the post office. In MUR 5598 (Utah Republican Party), the Commission found reason to believe that URP made an excessive contribution to a House candidate’s committee regarding mailings on behalf of the committee. An investigation showed that volunteers stamped

1 information material because in MUR 5598, the Commission investigated the applicability
 2 of the volunteer materials exemption regarding mailers URP had Arena prepare regarding
 3 a different federal candidate. Accordingly, the available information does not show that
 4 the volunteer materials exemption applies, and URP's spending on the Mia Love mailings
 5 is either a contribution to the Committee or a coordinated party expenditure on behalf of
 6 Love.

7 **B. There is Reason to Believe URP Made, and the Committee Accepted,
 8 Excessive Contributions, and did not Report Them**

9
 10 The term "coordinated" means made in cooperation, consultation, or concert with or
 11 at the request of or suggestion of, a candidate, a candidate's authorized committee, or a
 12 political party committee.³⁵ A party communication is coordinated with a candidate or its
 13 authorized committee if: (1) it is paid for by a political party committee or its agent; (2) it
 14 satisfies at least one of the "content" standards described in 11 C.F.R. § 109.37(a)(2);
 15 and (3) satisfies at least one of the "conduct" standards described in 11 C.F.R.
 16 § 109.21(d), subject to certain provisions that are not material here.³⁶ A communication
 17 that is coordinated with a candidate or his or her authorized committee is considered an in-
 18 kind contribution and is subject to the limitations, prohibitions, and reporting requirements

mailers and loaded them onto a truck, but Arena printed addresses on mailers, sorted them by postal carrier route and delivered mailers to post office. The Commission dismissed the matter under *Heckler* based on "the complicated history of the application of the...exemption" and forthcoming guidance regarding the exemption. *See Statement of Reasons, Comm'r's Petersen, Bauerly, Hunter & Weintraub, MUR 5598 (Utah Republican Party).* Although the Commission has yet to issue such guidance, in this case, URP has presented no information about the work the volunteers were supposed to perform, or whether volunteers actually did any work, only that volunteers were supposed to meet an Arena representative.

³⁵ 11 C.F.R. § 109.20.

³⁶ 11 C.F.R. § 109.37(a). The other provisions are 11 C.F.R. § 109.21(e), (g), and (h).

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1 of the Act.³⁷ In 2016, the Act limited contributions from a political party committee to
 2 one of its candidates to \$5,000 per election.³⁸ In addition, the Act limited the amount of
 3 expenditures that a political party committee could make in coordination with its House
 4 candidates to \$48,100.³⁹

5 The payment prong is satisfied. URP reported paying \$54,000 for mailings
 6 regarding Mia Love, and the Committee did not report paying for any of the mailings.⁴⁰
 7 One news article said that Anderson described the mailings as being sent out by Love's
 8 campaign, and that the mailings contained URP's disclaimer language because the Love
 9 Committee agreed to pay "pass-through money" for the mailings. Still, the relevant
 10 disclosure reports indicate that URP paid for the mailing, not the Committee.

11 As for Hansen's statement that the "Utah Republican Party Victory Fund basically
 12 funded" the mailings,⁴¹ no committee with this name, or any name containing the words
 13 "Victory" and "Utah" that supported Republican candidates, was registered with the
 14 Commission or the State of Utah during the 2016 election cycle.⁴² Nor were the funds to

³⁷ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.21(b). *See also* 11 C.F.R. § 109.37(b)(1).

³⁸ 52 U.S.C. § 30116(a)(2)(A).

³⁹ *See* <https://www.fec.gov/updates/coordinated-party-expenditure-limits-adjusted-3/>. This limit was applicable to House candidates, such as Love, who ran in states that have more than one Representative in the U.S. House. The national party also had a \$48,100 coordinated party expenditure limit on behalf of Love.

⁴⁰ This also does not appear to be a situation in which the Committee donated funds to URP that URP then spent on communications on behalf the Committee. *See* MUR 6691 (Lampson for Congress). The Committee only contributed \$19,000 to URP, most of which was in 2015 and early 2016, and only a small amount in October 2016. URP reported payments of \$54,000 to Arena Communications on behalf of the Committee beginning in October 2016. *See supra* nn.24, 26.

⁴¹ Davidson, *Federal Complaints*.

⁴² *See* <https://elections.utah.gov/campaign-finance>. The Utah Victory Fund was a joint fundraising committee registered with the Commission during the 2015-2016 cycle, and it raised funds for the Utah

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1 pay Arena Communications from any disclosed joint fundraising by URP, as it did not
2 participate in any joint fundraising committees during the 2016 election cycle. While the
3 Love Committee did participate in joint fundraising committees during the 2016 election
4 cycle and received transfers of joint fundraising receipts totaling \$115,000,⁴³ none of the
5 joint fundraising committees disclosed any payments to, or debts owed to, Arena
6 Communications during the 2016 election cycle.⁴⁴

7 The content prong is also satisfied, as the mailing appears to be a public
8 communication that refers to a clearly identified House candidate that was publicly
9 distributed in the candidate's jurisdiction within 90 days of the election.⁴⁵ Although the
10 Complaint did not provide copies of the mailings, URP reported paying Arena
11 Communications for "direct mail-Mia Love," so it is reasonable to infer that it was a
12 "mass mailing," a form of public communication,⁴⁶ and referred to Love.⁴⁷ URP relies on
13 emails from September 2016 in support of its assertion that volunteers were to handle the
14 mailings, and its disclosure reports reflect that it paid for the mailings in October 2016 and
15 thereafter, so it is also reasonable to infer that they were mailed within 90 days of the

Democratic Party and Owen for Congress. This joint fundraising committee filed a termination report with the Commission on December 7, 2016.

⁴³ See Committee to Protect Prosperity and Free Enterprise, Friends of Winning Women 2016, Zeldin-Love Victory Fund, and Republicans Inspiring Success & Empowerment Project (RISE PROJECT).

⁴⁴ Love Victory Committee, a joint fundraising committee, made a payment to Arena Communications on May 11, 2017 for \$895.

⁴⁵ See 11 C.F.R. § 109.37(a)(2)(iii)(A).

⁴⁶ See 11 C.F.R. § 100.26.

⁴⁷ See 11 C.F.R. § 109.37(a)(2)(iii)(A).

1 November 8, 2016, general election, and that they were disseminated in Love's
 2 congressional district.⁴⁸

3 As to the conduct prong, the available information indicates that URP and the
 4 Committee cooperated on the mailings, thereby satisfying one or more of these standards:
 5 (1) the mailings were created, produced or distributed at the request or suggestion of Love
 6 or the Committee, or Love or the Committee assented to them;⁴⁹ (2) Love or her
 7 Committee was materially involved in decisions regarding, among other things, the
 8 content, audience, means, mode, timing, frequency, size or prominence of the mailings;⁵⁰
 9 or (3) the mailings were created, produced, or distributed after one or more substantial
 10 discussions about the mailings between URP and Love or the Committee.⁵¹ URP Chair
 11 Anderson reportedly described the mailings as being created by Love's campaign, but
 12 distributed by the URP to take advantage of URP's lower bulk mailing rate: "Mia sent out
 13 fliers. They put the mailings through the Utah GOP and put paid for by the Utah GOP."⁵²
 14 Respondents do not dispute that Anderson made this statement, which appears to satisfy
 15 the "request or suggestion," "material involvement," or "substantial discussion" conduct
 16 standard.⁵³

⁴⁸ See *id.*

⁴⁹ See 11 C.F.R. §§ 109.21(d)(1), 109.37(a)(3).

⁵⁰ See 11 C.F.R. §§ 109.21(d)(2), 109.37(a)(3).

⁵¹ See 11 C.F.R. §§ 109.21(d)(3), 109.37(a)(3).

⁵² Compl. at 2-4, citing Wallace, *Report* and Mullahy, *Utah GOP*.

⁵³ See 11 C.F.R. § 109.21(d)(1)-(3). Respondents deny that the mailings constituted coordinated communications as a matter of law – because the volunteer materials exemption applies – but do not deny conduct that would satisfy the conduct standard.

1 Thus, because all three prongs of the party coordinated communication test appear
 2 to be satisfied, the costs for the mailers are subject to the expenditure and contribution
 3 limits for such communications.⁵⁴

4 URP did not disclose any coordinated party expenditures in 2016 nor any debt owed
 5 by or to the Committee during the 2016 election cycle.⁵⁵ The Committee reported no debt
 6 during the 2016 election cycle.⁵⁶ NRCC reported no coordinated party expenditures on
 7 behalf of Mia Love during the 2016 election cycle.⁵⁷

8 The Respondents do not deny the news report that the mailings cost at least
 9 \$120,000. Instead, they argue that the amounts they spent were exempt under the
 10 volunteer materials exemption, an argument that is not persuasive, as explained in the
 11 previous section. URP's 2016 disclosure reports reveal that it made expenditures of
 12 \$54,000 on the Committee's behalf, which is \$900 more than the sum of its contribution
 13 limit for the general election (\$5,000) plus its coordinated expenditure limit (\$48,100).
 14 Since the uncontested reports indicate that URP spent \$120,000 or more on mailings on
 15 behalf of Love, its excessive contribution regarding the mailers would be at least
 16 \$66,900.⁵⁸ In addition, URP did not report this contribution, and did not rebut the

⁵⁴ 11 C.F.R. § 109.37(b).

⁵⁵ See URP 2015-2016 Financial Summary found at <https://www.fec.gov/data/committee/C00089482/?cycle=2016>.

⁵⁶ See Committee's 2015-2016 Financial Summary found at <https://www.fec.gov/data/committee/C00505776/?cycle=2016>.

⁵⁷ The NRCC used to be known as the National Republican Congressional Committee, but changed its name to NRCC in an amended Statement of Organization in 2014.

⁵⁸ The Complaint alleges that the national party also had a coordinated party expenditure limit of \$48,100 to spend on the Love campaign. Compl. at 4. According to the Commission's records, the NRCC

1 allegation that it failed to disclose its debt to Arena Communications. Similarly, the
 2 Committee did not report the contribution it received from URP regarding the mailers.

3 Accordingly, we recommend that the Commission find reason to believe that URP
 4 made, and the Committee accepted, excessive contributions in violation of 52 U.S.C.
 5 §§ 30116(a)(2)(A) and 30116(f), respectively. We recommend that the Commission take
 6 no action at this time as to Mia Love regarding accepting excessive contributions.

7 Further, we recommend that the Commission find reason to believe that URP violated
 8 52 U.S.C. § 30104(b)(4) and (8) by failing to report the excessive contributions to the
 9 Committee and debt to Arena Communications.⁵⁹ Finally, we recommend the
 10 Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b) by
 11 not reporting URP's contribution.

12 **C. Disclaimer**

13 A public communication that is authorized by a candidate, authorized committee,
 14 or political party committee that qualifies as an exempt activity, such as volunteer activity
 15 for party committees under 11 C.F.R. § 100.147, must comply with certain disclaimer
 16 requirements, but the disclaimer does not need to state whether the communication is
 17 authorized by a candidate, or any authorized committee or agent of any candidate.⁶⁰

did not use any of that coordinated party expenditure limit, and the available information does not indicate whether the national party assigned its coordinated party expenditure limit to URP. *See* 11 C.F.R. § 109.33.

⁵⁹ URP has experienced various reporting problems in recent election cycles. The Audit Division audited URP during the 2012 election cycle. Additionally, the Reports Analysis Division ("RAD") referred URP to the Alternative Dispute Resolution Office ("ADRO") for the 2014 election cycle, which was subsequently referred to OGC. *See* MUR 7235 (Utah Republican Party). For the 2016 election cycle, RAD referred URP to the Audit Division for an audit, but the Commission transferred the referral to ADRO. The Commission approved a negotiated settlement with URP in May 2018. *See* ADR 855 (Utah Republican Party).

⁶⁰ *See* 11 C.F.R. § 110.11(e). *See also* SOR at 6, MUR 5837.

1 However, if the volunteer materials exemption does not apply, the communication needs
2 to state whether the communication is authorized by a candidate or any authorized
3 committee.⁶¹ Since the volunteer materials exemption does not apply to the mailings, the
4 disclaimer should have stated that it was authorized by Love or her committee and paid for
5 by URP.⁶² Therefore, we recommend that URP violated 52 U.S.C. § 30120(a)(2) because
6 the mailings failed to include the appropriate disclaimer.

7 **IV. INVESTIGATION**

8 The proposed investigation would seek to resolve the disparity between the alleged
9 \$120,000 that URP spent for the mailings and the \$54,000 that URP reported on its
10 disclosure reports, as well as the size of any unreported debt to Arena Communications.
11 We will determine the actual amount of URP's expenditures on behalf of the Committee,
12 and whether any other entity paid additional amounts. Finally, we will seek further
13 information regarding Respondents' arguments that the volunteer materials exemption
14 applies.

15 **V. RECOMMENDATIONS**

16

17 1. Find reason to believe that Friends of Mia Love and Robert Carlin in his
18 official capacity as treasurer violated 52 U.S.C. § 30116(f);

19

20 2. Find reason to believe that Friends of Mia Love and Robert Carlin in his
21 official capacity as treasurer violated 52 U.S.C. § 30104(b);

22

23 3. Find reason to believe that Utah Republican Party and Abram Young in his
24 official capacity as treasurer violated 52 U.S.C. § 30116(a)(2)(A);

25

26 4. Find reason to believe that Utah Republican Party and Abram Young in his
27 official capacity as treasurer violated 52 U.S.C. § 30104(b)(4) and (8);

61 *Id.*

62 *Id.* See also 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(b)(2).

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1
2 5. Find reason to believe that Utah Republican Party and Abram Young in his
3 official capacity as treasurer violated 52 U.S.C. § 30120(a)(2);
4
5 6. Take no action at this time as to Mia Love;
6
7 7. Approve the Factual and Legal Analyses;
8
9 8. Approve the use of compulsory process; and
10
11 9. Approve the appropriate letters.

12
13
14 Lisa J. Stevenson
15 Acting General Counsel
16

17 Kathleen M. Guith
18 Associate General Counsel for Enforcement
19

20
21 10.25.18
22 Date

23 Stephen Gura
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ELW edits 2/22/21

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Mia Love and Robert Carlin in his official capacity as treasurer

MUR 7330

I. INTRODUCTION

10 The Complaint alleges that Representative Mia Love and Friends of Mia Love
11 (“Committee”) coordinated with the Utah Republican Party (“URP”) when URP paid for
12 political mailings on behalf of the Committee during the 2016 election cycle, which
13 resulted in the Committee accepting excessive contributions from URP. The Complaint
14 also alleges that neither the Committee nor URP properly reported the excessive
15 contributions, and URP did not report debt to a vendor. The Committee asserts that the
16 volunteer materials exemption applies to the mailings, and thus no excessive contribution
17 occurred. As discussed below, the Commission finds that there is reason to believe that
18 the Committee accepted excessive contributions from URP, and failed to report them.

19 II. FACTUAL BACKGROUND

20 URP is a state party committee that is registered and files disclosure reports with
21 the Commission. Mia Love was re-elected in 2016 to represent the Fourth Congressional
22 District of Utah, and she is a candidate for re-election in 2018. The Committee is the
23 authorized committee for Love's campaign.

24 The Complaint alleges that in January 2018, sources within URP publicly revealed
25 that URP sent political mail valued at approximately \$120,000 on behalf of Love's 2016

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Factual and Legal Analysis

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1 campaign, and URP continues to owe the vendor, Arena Communications (“Arena”), for
2 services related to the mailing.¹

3 A news article cited in the Complaint quotes Love’s campaign manager, David
4 Hansen, as stating “[t]echnically, the money is owed by the Party . . . , [but] it’s the
5 responsibility of the campaign to pay it off.”² Hansen reportedly added that the
6 committee routed the mail through URP because URP pays a lower bulk mail rate.³
7 Hansen is quoted in another article as saying that “[i]t’s the Utah Republican Party
8 Victory Fund that basically funded” the mailings, adding that “[t]here was a debt left over
9 from [the mailings]” and the Love campaign “tried to raise money to help the party in lots
10 of areas, and if they use it to pay off the debt, that’s their decision.”⁴

11 The Complaint further alleges that URP Chair Rob Anderson reportedly described
12 the mailings as being sent out by Love’s campaign, but with URP’s disclaimer because the
13 Love Committee agreed to pay “pass-through money” for the mailings.⁵ The

¹ Compl. at 2.

² *Id.*, citing Brian Mullahy, *Utah GOP Has Campaign Debt from Mia Love and Tanner Ainge*, KUTV (Jan. 19, 2018) (“Mullahy, Utah GOP”), <https://kutv.com/news/local/utah-gop-has-campaign-debt-from-mia-love-ad-tanner-ainge>.

³ *Id.*

⁴ Lee Davidson, *Federal Complaints Accuse Mia Love and Ben McAdams of Taking Illegal Donations, Marking the Latest Fight in this Contentious Campaign*, SALT LAKE TRIBUNE (Aug. 17, 2018) (“Davidson, Federal Complaints”), <https://www.sltrib.com/news/politics/2018/08/17/federal-complaints-accuse/>.

⁵ Compl. at 2-3, citing Ed Wallace, *Report: AingeGate: Is the UTGOP Laundering Money for Tanner Ainge?* Utah Standard News (Jan. 24, 2018) (“Wallace, Report”), <https://www.utahstandardnews.com/ainlegate-utgop-laundering-money-tanner-ainge>.

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1 disclaimer on the mailings states “[p]aid for by the Utah Republican Party.”⁶ Anderson is
 2 further quoted as saying that “Dave Hansen’s agreed to pay that off. That’s Mia’s
 3 responsibility. And I’ll tell you, Arena has called and said ‘Your name is on there. You’re
 4 liable to it.’ So, that’s the only reason we carry it on the books is we have to report that to
 5 the FEC.”⁷ Finally, the article states that URP’s accounts payable include \$122,134.40
 6 owed to Arena Communications for the Mia Love campaign.⁸ URP, however, did not
 7 disclose any debt during the 2016 cycle or during 2017.⁹

8 The Complaint alleges that the information from Anderson suggests that the Mia
 9 Love mailing was a coordinated communication, and it should be treated as an in-kind
 10 contribution to the Committee or as a coordinated party expenditure.¹⁰ It further alleges
 11 that since the value of URP’s mailing for Love’s campaign was over \$120,000, it
 12 exceeded the \$5,000 limit that the state party committee may contribute to a candidate as
 13 well as the coordinated party expenditure limit, which, combining the state and national
 14 party’s limits for 2016, was \$96,200.¹¹ Accordingly, the Complaint alleges URP made an

⁶ Committee Resp. at 1.

⁷ Wallace, *Report* at 2.

⁸ *Id.* at 5.

⁹ See URP 2015-2016 Financial Summary, <https://fec.gov/data/committee/C00089482/?cycle=2016>; URP 2017-2018 Financial Summary, <https://www.fec.gov/data/committee/C00089482/?cycle=2018>.

¹⁰ Compl. at 4.

¹¹ Compl. at 4, 5.

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1 excessive contribution to the Committee, which neither the Committee nor URP
2 reported.¹²

3 In its response, the Committee asserts that the mailings distributed were volunteer
4 mail within the meaning of 11 C.F.R. §§ 100.87 and 100.147, which exempt from the
5 definitions of “contribution” and “expenditure” amounts paid by state or local party
6 committees for campaign materials to be distributed by volunteers on behalf of any
7 nominee of such party.¹³ Accordingly, the Committee asserts that the payments are not
8 expenditures or contributions as defined in the Federal Election Campaign Act (the
9 “Act”), the coordination rules do not apply, and the payments are not coordinated party
10 expenditures.¹⁴ There is information available concerning emails from September 2016
11 between URP and Arena about having volunteers meet an Arena representative at a post
12 office to accept the mailings.

13 The Committee asserts that Hansen’s reference to the Committee’s
14 “responsibility” actually referred to URP “because [t]echnically the money is owed by the
15 party.”¹⁵ The Committee claims that even if the mailings originated with the Committee,
16 it does not affect the mailings’ eligibility for the volunteer materials exemptions.¹⁶ The

¹² *Id.*

¹³ Committee Resp. at 1.

¹⁴ *Id.*

¹⁵ Committee Resp. at 2.

¹⁶ *Id.* The Committee also stated that it was following previous Commission enforcement matters concerning when the volunteer materials exemption applies, and noted that in 2010, the Commission attempted to clarify when the exemption applies, but failed to approve a policy statement on this issue. *Id.* at 2, 3.

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1 Committee asserts that the disclaimer, “[p]aid for by the Utah Republican Party,” is the
 2 appropriate disclaimer for volunteer mail that is authorized by a candidate.¹⁷ The
 3 Committee also states that a candidate committee may transfer an unlimited amount of
 4 funds to a state party committee.¹⁸ Neither response disputes the reported \$120,000
 5 figure.

6 According to the Commission’s records, during the 2016 election cycle, URP
 7 made payments totaling \$54,000 to Arena Communications for “Direct mail-Mia Love,”¹⁹
 8 As mentioned earlier, the disclaimer on the mailings read “Paid for by the Utah
 9 Republican Party.”²⁰ URP did not disclose any contributions to the Committee or
 10 coordinated party expenditures on behalf of Love during the 2016 cycle, nor any debt to
 11 Arena Communications. Nor has URP disclosed any debt to Arena Communications
 12 during the 2018 cycle.

13 During the 2016 cycle, the Committee made contributions to URP totaling
 14 \$19,000.²¹ The Committee did not report paying for the mailings, but it did make

¹⁷ Committee Resp. at 1.

¹⁸ *Id.* at 2.

¹⁹ See URP 2016 Post-General Report at 11 (Dec. 7, 2016) (\$15,000 on Oct. 20, 2016, \$10,000 on Oct. 21, 2016 and \$20,000 on Nov. 14, 2016); URP 2016 Year-End Report at 8 (Jan. 30, 2017) (\$9,000 on Dec. 1, 2016).

²⁰ Committee Resp. at 1.

²¹ See Committee 2015 October Quarterly Report at 335 (Oct. 15, 2015) (\$9,500 on July 23, 2015); Committee 2016 July Quarterly Report at 1062 (July 15, 2016) (\$3,000 on Apr. 5, 2016); Committee 2016 October Quarterly Report at 1842 (Oct. 13, 2016) (\$1,500 on Sept. 14, 2016); and Committee 2016 Pre-General Report at 402 (Oct. 27, 2016) (\$5,000 on Oct. 18, 2016).

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1 payments totaling \$14,434 to Arena Communications during the 2016 cycle for printing or
 2 software, and it reported no debt to Arena Communications.²²

3 **III. LEGAL ANALYSIS**

4

5 **A. The Available Information Indicates that the Volunteer Materials**
 6 **Exemption Does not Apply to the Mailings**

7

8 The Act provides that the cost of certain campaign materials paid for by a state or
 9 local party committee and used in connection with volunteer activities on behalf of the
 10 party's nominee are neither contributions nor expenditures.²³ This is known as the
 11 "volunteer materials" exemption, and payments qualifying for this exemption are not
 12 subject to the Act's limits on a state party committee's contributions or expenditures.²⁴

13 This exemption applies to state party committee payments for campaign materials such as
 14 pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters and yard
 15 signs.²⁵

16 To qualify for the volunteer materials exemption, mailers must be "used ... in
 17 connection with volunteer activities," "distributed by volunteers and not by commercial
 18 or for-profit operations," and cannot "be used in connection with ... direct mail," which
 19 means "any mailing(s) by a commercial vendor or any mailing(s) made from commercial

²² See Committee 2015 October Quarterly Report at 306 (Oct. 15, 2015) (\$724.44 for printing on Sept. 3, 2015; 2016 Pre-General Report at 381 (Oct. 27, 2016) (\$8,684.77 for printing on Oct. 7, 2016); Committee 2016 Post-General Report at 598-599 (Dec. 8, 2016) (\$4,276.14 for printing and \$450.00 for software on Oct. 31, 2016 and \$299.18 for printing on Nov. 14, 2016). See also <https://www.fec.gov/data/committee/C00505776/?cycle=2016>.

²³ 52 U.S.C. §§ 30101(8)(B)(ix) and (9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147.

²⁴ *Id.*

²⁵ 11 C.F.R. § 100.87.

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1 lists.”²⁶ The Commission “has considered the totality of volunteer involvement in
 2 evaluating whether a mailer was ‘distributed’ by volunteers or was commercial ‘direct
 3 mail,’” but emphasized that “substantial volunteer involvement” is required for the
 4 volunteer materials exemption to apply.²⁷

5 According to URP’s disclosure reports, it paid a total of \$54,000 for mailings it
 6 described as “*Direct mail-Mia Love.*”²⁸ In addition, the available information regarding
 7 the volunteers’ involvement concerning the mailings is unpersuasive. The emails between
 8 URP and Arena seem to be arranging for URP volunteers to meet an Arena representative
 9 at a post office to accept the mailings.²⁹ Accordingly, the available information does not
 10 show that the volunteer materials exemption applies, and URP’s spending on the Mia
 11 Love mailings is either a contribution to the Committee or a coordinated party expenditure
 12 on behalf of Love.

²⁶ See Factual and Legal Analysis at 3, MUR 6899 (Pat Meehan for Congress); See also 11 C.F.R. § 100.87(a), 100.147(a); Factual and Legal Analysis at 7, MUR 5598 (Utah Republican Party).

²⁷ Statement of Reasons of Chair Robert D. Lenhard and Comm’rs. Mason, von Spakovsky, and Weintraub at 4, n.3, MUR 5837 (Missouri Democratic Committee).

²⁸ URP 2016 Post-General Report at 11; URP 2016 Year-End Report at 8 (emphasis added). In contrast to the description reported on its 2016 disclosure reports, URP described its payments to Arena Communications for mailings on its behalf during the 2018 cycle as “Exempt mail-Mia Love” on the relevant disclosure reports. See, e.g., 2017 November Monthly Report at 8; 2018 July Monthly Report at 9.

²⁹ In MUR 6899 (Pat Meehan), the Commission found that the volunteer materials exemption applied based on information respondents provided, including a sworn statement and pictures of the volunteers unpacking, addressing, and delivering mailings to the post office. In MUR 5598 (Utah Republican Party), the Commission found reason to believe that URP made an excessive contribution to a House candidate’s committee regarding mailings on behalf of the committee. An investigation showed that volunteers stamped mailers and loaded them onto a truck, but Arena printed addresses on mailers, sorted them by postal carrier route and delivered mailers to post office. The Commission dismissed the matter under *Heckler* based on “the complicated history of the application of the...exemption” and forthcoming guidance regarding the exemption. See Statement of Reasons, Comm’rs Petersen, Bauerly, Hunter & Weintraub, MUR 5598 (Utah Republican Party). Although the Commission has yet to issue such guidance.

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B. There is Reason to Believe the Committee Accepted Excessive Contributions, and did not Report Them

The term "coordinated" means made in cooperation, consultation, or concert with or

at the request of or suggestion of, a candidate, a candidate's authorized committee, or a

⁶ political party committee.³⁰ Under Commission regulations, a party communication is

⁷ coordinated with a candidate or its authorized committee if: (1) it is paid for by a political

⁸ party committee or its agent; (2) it satisfies at least one of the “content” standards

9 described in 11 C.F.R. § 109.37(a)(2); and (3) satisfies at least one of the

10 "conduct" standards described in 11 C.F.R. § 109.21(d), subject to

¹¹ certain provisions that are not material here.³¹ A communication that is coordinated with

12 a candidate or his or her authorized committee is considered an in-kind contribution and is

¹³ subject to the limitations, prohibitions, and reporting requirements of the Act.³² In 2016,

¹⁴ the Act limited contributions from a political party committee to one of its candidates to

¹⁵ \$5,000 per election.³³ In addition, the Act limited the amount of expenditures that

16 political party committee could make in coordination with its House candidates to

17 \$48,100.³⁴

30 11 C.F.R. § 109.20.

³¹ 11 C.F.R. § 109.37(a). The other provisions are 11 C.F.R. § 109.21(e), (g), and (h).

³² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.21(b). *See also* 11 C.F.R. § 109.37(b)(1).

³³ 52 U.S.C. § 30116(a)(2)(A).

³⁴ See <https://www.fec.gov/updates/coordinated-party-expenditure-limits-adjusted-3/>. This limit was applicable to House candidates, such as Love, who ran in states that have more than one Representative in the U.S. House. The national party also had a \$48,100 coordinated party expenditure limit on behalf of Love.

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1 The payment prong is satisfied. URP reported paying \$54,000 for mailings
 2 regarding Mia Love, and the Committee did not report paying for any of the mailings.³⁵
 3 One news article said that Anderson described the mailings as being sent out by Love's
 4 campaign, and that the mailings contained URP's disclaimer language because the Love
 5 Committee agreed to pay "pass-through money" for the mailings. Still, the relevant
 6 disclosure reports indicate that URP paid for the mailing, not the Committee.

7 As for Hansen's statement that the "Utah Republican Party Victory Fund basically
 8 funded" the mailings,³⁶ no committee with this name, or any name containing the words
 9 "Victory" and "Utah" that supported Republican candidates, was registered with the
 10 Commission or the State of Utah during the 2016 election cycle.³⁷ Nor were the funds to
 11 pay Arena Communications from any disclosed joint fundraising by URP, as it did not
 12 participate in any joint fundraising committees during the 2016 election cycle. While the
 13 Love Committee did participate in joint fundraising committees during the 2016 election
 14 cycle and received transfers of joint fundraising receipts totaling \$115,000,³⁸ none of the

³⁵ This also does not appear to be a situation in which the Committee donated funds to URP that URP then spent on communications on behalf of the Committee. *See* MUR 6691 (Lampson for Congress). The Committee only contributed \$19,000 to URP, most of which was in 2015 and early 2016, and only a small amount in October 2016. URP reported payments of \$54,000 to Arena Communications on behalf of the Committee beginning in October 2016. *See supra* nn.20, 22.

³⁶ Davidson, *Federal Complaints*.

³⁷ *See* <https://elections.utah.gov/campaign-finance>. The Utah Victory Fund was a joint fundraising committee registered with the Commission during the 2015-2016 cycle, and it raised funds for the Utah Democratic Party and Owen for Congress. This joint fundraising committee filed a termination report with the Commission on December 7, 2016.

³⁸ *See* Committee to Protect Prosperity and Free Enterprise, Friends of Winning Women 2016, Zeldin-Love Victory Fund, and Republicans Inspiring Success & Empowerment Project (RISE PROJECT).

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1 joint fundraising committees disclosed any payments to, or debts owed to, Arena

2 Communications during the 2016 election cycle.³⁹

3 The content prong is also satisfied, as the mailing appears to be a public
 4 communication that refers to a clearly identified House candidate that was publicly
 5 distributed in the candidate's jurisdiction within 90 days of the election.⁴⁰ Although the

6 Complaint did not provide copies of the mailings, URP reported paying Arena
 7 Communications for "direct mail-Mia Love," so it is reasonable to infer that it was a
 8 "mass mailing," a form of public communication,⁴¹ and referred to Love.⁴² There are
 9 emails from September 2016 that reference volunteers meeting an Arena representative at
 10 a post office to accept the mailings, and URP's disclosure reports reflect that it paid for the
 11 mailings in October 2016 and thereafter, so it is also reasonable to infer that they were
 12 mailed within 90 days of the November 8, 2016, general election, and that they were
 13 disseminated in Love's congressional district.⁴³

14 As to the conduct prong, the available information indicates that URP and the
 15 Committee cooperated on the mailings, thereby satisfying one or more of these standards:
 16 (1) the mailings were created, produced or distributed at the request or suggestion of Love

³⁹ Love Victory Committee, a joint fundraising committee, made a payment to Arena Communications on May 11, 2017 for \$895.

⁴⁰ See 11 C.F.R. § 109.37(a)(2)(iii)(A).

⁴¹ See 11 C.F.R. § 100.26.

⁴² See 11 C.F.R. § 109.37(a)(2)(iii)(A).

⁴³ See *id.*

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1 or the Committee, or Love or the Committee assented to them;⁴⁴ (2) Love or her
 2 Committee was materially involved in decisions regarding, among other things, the
 3 content, audience, means, mode, timing, frequency, size or prominence of the mailings;⁴⁵
 4 or (3) the mailings were created, produced, or distributed after one or more substantial
 5 discussions about the mailings between URP and Love or the Committee.⁴⁶ URP Chair
 6 Anderson reportedly described the mailings as being created by Love's campaign, but
 7 distributed by the URP to take advantage of URP's lower bulk mailing rate: "Mia sent out
 8 fliers. They put the mailings through the Utah GOP and put paid for by the Utah GOP."⁴⁷
 9 The Committee does not dispute that Anderson made this statement, which appears to
 10 satisfy the "request or suggestion," "material involvement," or "substantial discussion"
 11 conduct standard.⁴⁸

12 Thus, because all three prongs of the party coordinated communication test under
 13 Commission regulations appear to be satisfied, the costs for the mailers are subject to the
 14 expenditure and contribution limits for such communications.⁴⁹

⁴⁴ See 11 C.F.R. §§ 109.21(d)(1), 109.37(a)(3).

⁴⁵ See 11 C.F.R. §§ 109.21(d)(2), 109.37(a)(3).

⁴⁶ See 11 C.F.R. §§ 109.21(d)(3), 109.37(a)(3).

⁴⁷ Compl. at 2-4, citing Wallace, *Report and Mullahy, Utah GOP*.

⁴⁸ See 11 C.F.R. § 109.21(d)(1)-(3). The Committee denies that the mailings constituted coordinated communications as a matter of law – because the volunteer materials exemption applies – but does not deny conduct that would satisfy the conduct standard.

⁴⁹ 11 C.F.R. § 109.37(b).

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1 URP did not disclose any coordinated party expenditures in 2016 nor any debt owed
2 by or to the Committee during the 2016 election cycle.⁵⁰ The Committee reported no debt
3 during the 2016 election cycle.⁵¹ NRCC reported no coordinated party expenditures on
4 behalf of Mia Love during the 2016 election cycle.⁵²

5 The Committee does not deny the news report that the mailings cost at least
6 \$120,000. Instead, the Committee argues that the mailings were exempt under the
7 volunteer materials exemption, an argument that is not persuasive, as explained in the
8 previous section. URP's 2016 disclosure reports reveal that it made expenditures of
9 \$54,000 on the Committee's behalf, which is \$900 more than the sum of its contribution
10 limit for the general election (\$5,000) plus its coordinated expenditure limit (\$48,100).

11 Since the uncontested reports indicate that URP spent \$120,000 or more on mailings on
12 behalf of Love, its excessive contribution regarding the mailers would be at least
13 \$66,900.⁵³ The Committee did not report the contribution it received from URP regarding
14 the mailers.

⁵⁰ See URP 2015-2016 Financial Summary found at <https://www.fec.gov/data/committee/C00089482/?cycle=2016>.

⁵¹ See Committee's 2015-2016 Financial Summary found at <https://www.fec.gov/data/committee/C00505776/?cycle=2016>.

⁵² The NRCC used to be known as the National Republican Congressional Committee, but changed its name to NRCC in an amended Statement of Organization in 2014.

⁵³ The Complaint alleges that the national party also had a coordinated party expenditure limit of \$48,100 to spend on the Love campaign. Compl. at 4. According to the Commission's records, the NRCC did not use any of that coordinated party expenditure limit, and the available information does not indicate whether the national party assigned its coordinated party expenditure limit to URP. See 11 C.F.R. § 109.33.

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1 Accordingly, the Commission finds that there reason to believe that the Committee
2 accepted excessive contributions from URP in violation of 52 U.S.C. § 30116(f), and
3 failed to report them in violation of 52 U.S.C. § 30104(b).

ELW edits 2/22/21

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Utah Republican Party and Abram Young
in his official capacity as treasurer MUR 7330

I. INTRODUCTION

10 The Complaint alleges that Representative Mia Love and Friends of Mia Love
11 (“Committee”) coordinated with the Utah Republican Party (“URP”) when URP paid for
12 political mailings on behalf of the Committee during the 2016 election cycle, which
13 resulted in URP making excessive contributions to the Committee. The Complaint also
14 alleges that neither URP nor the Committee properly reported the excessive contributions,
15 and URP did not report debt to a vendor. URP asserts that the volunteer materials
16 exemption applies to the mailings, and thus no excessive contribution occurred, and the
17 mailings contained the appropriate disclaimer.¹ As discussed below, the Commission
18 finds that there is reason to believe that URP made excessive contributions to the
19 Committee. The Commission also finds that there is reason to believe that URP failed to
20 report the excessive contributions to the Committee and debt to a vendor. Further, the
21 Commission finds that there is reason to believe that URP did not include the appropriate
22 disclaimer on the mailings.

23 II. FACTUAL BACKGROUND

24 URP is a state party committee that is registered and files disclosure reports with
25 the Commission. Mia Love was re-elected in 2016 to represent the Fourth Congressional

¹ The Complaint does not explicitly allege a disclaimer violation, but it refers to a news article in which URP's Chair stated that the mailings contained URP's disclaimer, not the Committee's. Compl. at 3, n.7.

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1 District of Utah, and she is a candidate for re-election in 2018. The Committee is the
2 authorized committee for Love's campaign.

3 The Complaint alleges that in January 2018, sources within URP publicly revealed
4 that URP sent political mail valued at approximately \$120,000 on behalf of Love's 2016
5 campaign, and URP continues to owe the vendor, Arena Communications ("Arena"), for
6 services related to the mailing.²

7 A news article cited in the Complaint quotes Love's campaign manager, David
8 Hansen, as stating "[t]echnically, the money is owed by the Party . . . , [but] it's the
9 responsibility of the campaign to pay it off."³ Hansen reportedly added that the
10 committee routed the mail through URP because URP pays a lower bulk mail rate.⁴
11 Hansen is quoted in another article as saying that "[i]t's the Utah Republican Party
12 Victory Fund that basically funded" the mailings, adding that "[t]here was a debt left over
13 from [the mailings]" and the Love campaign "tried to raise money to help the party in lots
14 of areas, and if they use it to pay off the debt, that's their decision."⁵

² Compl. at 2.

³ *Id.*, citing Brian Mullahy, *Utah GOP Has Campaign Debt from Mia Love and Tanner Ainge*, KUTV (Jan. 19, 2018) ("Mullahy, *Utah GOP*"), <https://kutv.com/news/local/utah-gop-has-campaign-debt-from-mia-love-ad-tanner-ainge>.

⁴ *Id.*

⁵ Lee Davidson, *Federal Complaints Accuse Mia Love and Ben McAdams of Taking Illegal Donations, Marking the Latest Fight in this Contentious Campaign*, SALT LAKE TRIBUNE (Aug. 17, 2018) ("Davidson, *Federal Complaints*"), <https://www.sltrib.com/news/politics/2018/08/17/federal-complaints-accuse/>.

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1 The Complaint further alleges that URP Chair Rob Anderson reportedly described
 2 the mailings as being sent out by Love's campaign, but with URP's disclaimer because the
 3 Love Committee agreed to pay "pass-through money" for the mailings.⁶ The
 4 disclaimer on the mailings states "[p]aid for by the Utah Republican Party."⁷ Anderson is
 5 further quoted as saying that "Dave Hansen's agreed to pay that off. That's Mia's
 6 responsibility. And I'll tell you, Arena has called and said 'Your name is on there. You're
 7 liable to it.' So, that's the only reason we carry it on the books is we have to report that to
 8 the FEC."⁸ Finally, the article states that URP's accounts payable include \$122,134.40
 9 owed to Arena Communications for the Mia Love campaign.⁹ URP, however, did not
 10 disclose any debt during the 2016 cycle or during 2017.¹⁰

11 The Complaint alleges that the information from Anderson suggests that the Mia
 12 Love mailing was a coordinated communication, and it should be treated as an in-kind
 13 contribution to the Committee or as a coordinated party expenditure.¹¹ It further alleges
 14 that since the value of URP's mailing for Love's campaign was over \$120,000, it
 15 exceeded the \$5,000 limit that the state party committee may contribute to a candidate as
 16 well as the coordinated party expenditure limit, which, combining the state and national

⁶ Complaint at 2-3, citing Ed Wallace, *Report: AingeGate: Is the UTGOP Laundering Money for Tanner Ainge?* Utah Standard News (Jan. 24, 2018) ("Wallace, *Report*"), <https://www.utahstandardnews.com/aingegate-utgop-laundering-money-tanner-ainge>.

⁷ URP Resp.at 1.

⁸ Wallace, *Report* at 2.

⁹ *Id.* at 5.

¹⁰ See URP 2015-2016 Financial Summary, <https://fec.gov/data/committee/C00089482/?cycle=2016>; URP 2017-2018 Financial Summary, <https://www.fec.gov/data/committee/C00089482/?cycle=2018>.

¹¹ Compl. at 4.

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1 party's limits for 2016, was \$96,200.¹² Accordingly, the Complaint alleges URP made an
2 excessive contribution to the Committee, which neither URP nor the Committee
3 reported.¹³

4 In its response, URP asserts that the mailings distributed were volunteer mail
5 within the meaning of 11 C.F.R. §§ 100.87 and 100.147, which exempt from the
6 definitions of "contribution" and "expenditure" amounts paid by state or local party
7 committees for campaign materials to be distributed by volunteers on behalf of any
8 nominee of such party.¹⁴ URP claims that volunteers were involved in the mailings'
9 distribution, and the mailings contained the appropriate disclaimer.¹⁵ In support, URP
10 provides emails from September 2016 between URP and Arena about having volunteers
11 meet an Arena representative at a post office to accept the mailings.¹⁶

12 URP asserts that the comments by Hansen, the Committee's campaign manager,
13 that it had a responsibility to pay URP does not "refer to a legal responsibility, but to the
14 common and legitimate task of transferring funds from a candidate committee to the state
15 party," which may be used to pay expenses.¹⁷ URP claims that the disclaimer, "[p]aid for
16 by the Utah Republican Party," is the appropriate disclaimer for volunteer mail that is

¹² Compl. at 4, 5.

¹³ *Id.*

¹⁴ URP Resp. at 1.

¹⁵ URP Resp. at 2.

¹⁶ URP Resp., Ex. A.

¹⁷ URP Resp. at 2.

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1 authorized by a candidate.¹⁸ URP also states that a candidate committee may transfer an
 2 unlimited amount of funds to a state party committee.¹⁹ URP's response does not dispute
 3 the reported \$120,000 figure.

4 According to the Commission's records, during the 2016 election cycle, URP
 5 made payments totaling \$54,000 to Arena Communications for "Direct mail-Mia Love,"²⁰
 6 As mentioned earlier, the disclaimer on the mailings read "Paid for by the Utah
 7 Republican Party."²¹ URP did not disclose any contributions to the Committee or
 8 coordinated party expenditures on behalf of Love during the 2016 cycle, nor any debt to
 9 Arena Communications. Nor has URP disclosed any debt to Arena Communications
 10 during the 2018 cycle.

11 During the 2016 cycle, the Committee made contributions to URP totaling
 12 \$19,000.²² The Committee did not report paying for the mailings, but it did make
 13 payments totaling \$14,434 to Arena Communications during the 2016 cycle for printing or
 14 software, and it reported no debt to Arena Communications.²³

¹⁸ *Id.*

¹⁹ *Id.*, n.9.

²⁰ See URP 2016 Post-General Report at 11 (Dec. 7, 2016) (\$15,000 on Oct. 20, 2016, \$10,000 on Oct. 21, 2016 and \$20,000 on Nov. 14, 2016); URP 2016 Year-End Report at 8 (Jan. 30, 2017) (\$9,000 on Dec. 1, 2016).

²¹ URP Resp. at 1.

²² See Committee 2015 October Quarterly Report at 335 (Oct. 15, 2015) (\$9,500 on July 23, 2015); Committee 2016 July Quarterly Report at 1062 (July 15, 2016) (\$3,000 on Apr. 5, 2016); Committee 2016 October Quarterly Report at 1842 (Oct. 13, 2016) (\$1,500 on Sept. 14, 2016); and Committee 2016 Pre-General Report at 402 (Oct. 27, 2016) (\$5,000 on Oct. 18, 2016).

²³ See Committee 2015 October Quarterly Report at 306 (Oct. 15, 2015) (\$724.44 for printing on Sept. 3, 2015; 2016 Pre-General Report at 381 (Oct. 27, 2016) (\$8,684.77 for printing on Oct. 7, 2016); Committee 2016 Post-General Report at 598-599 (Dec. 8, 2016) (\$4,276.14 for printing and \$450.00 for (footnote continued on next page)

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1 **III. LEGAL ANALYSIS**

2

3 **A. The Available Information Indicates that the Volunteer Materials**

4 **Exemption Does not Apply to the Mailings**

5

6 The Federal Election Campaign Act of 1971, as amended (the “Act”) provides that

7 the cost of certain campaign materials paid for by a state or local party committee and

8 used in connection with volunteer activities on behalf of the party’s nominee are neither

9 contributions nor expenditures.²⁴ This is known as the “volunteer materials” exemption,

10 and payments qualifying for this exemption are not subject to the Act’s limits on a state

11 party committee’s contributions or expenditures.²⁵ This exemption applies to state party

12 committee payments for campaign materials such as pins, bumper stickers, handbills,

13 brochures, posters, party tabloids or newsletters and yard signs.²⁶

14 To qualify for the volunteer materials exemption, mailers must be “used … in

15 connection with volunteer activities,” “distributed by volunteers and not by commercial

16 or for-profit operations,” and cannot “be used in connection with … direct mail,” which

17 means “any mailing(s) by a commercial vendor or any mailing(s) made from commercial

18 lists.”²⁷ The Commission “has considered the totality of volunteer involvement in

19 evaluating whether a mailer was ‘distributed’ by volunteers or was commercial ‘direct

software on Oct. 31, 2016 and \$299.18 for printing on Nov. 14, 2016). *See also* <https://www.fec.gov/data/committee/C00505776/?cycle=2016>.

²⁴ 52 U.S.C. §§ 30101(8)(B)(ix) and (9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147.

²⁵ *Id.*

²⁶ 11 C.F.R. § 100.87.

²⁷ *See* Factual and Legal Analysis at 3, MUR 6899 (Pat Meehan for Congress); *See also* 11 C.F.R. § 100.87(a), 100.147(a); Factual and Legal Analysis at 7, MUR 5598 (Utah Republican Party).

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1 mail,” but emphasized that “substantial volunteer involvement” is required for the
 2 volunteer materials exemption to apply.²⁸

3 According to URP’s disclosure reports, it paid a total of \$54,000 for mailings it
 4 described as “*Direct mail-Mia Love.*”²⁹ In addition, the information URP provided
 5 regarding the volunteers’ involvement concerning the mailings is unconvincing. The
 6 emails between URP and Arena seem to be arranging for URP volunteers to meet an
 7 Arena representative at a post office to accept the mailings, but URP provided no
 8 information describing the work the volunteers were to perform, or whether the volunteers
 9 actually did that work.³⁰ Accordingly, the available information does not show that the
 10 volunteer materials exemption applies, and URP’s spending on the Mia Love mailings is
 11 either a contribution to the Committee or a coordinated party expenditure on behalf of
 12 Love.

²⁸ Statement of Reasons of Chair Robert D. Lenhard and Comm’rs. Mason, von Spakovsky, and Weintraub at 4, n.3, MUR 5837 (Missouri Democratic Committee).

²⁹ URP 2016 Post-General Report at 11; URP 2016 Year-End Report at 8 (emphasis added). In contrast to the description reported on its 2016 disclosure reports, URP described its payments to Arena Communications for mailings on its behalf during the 2018 cycle as “Exempt mail-Mia Love” on the relevant disclosure reports. *See, e.g.*, 2017 November Monthly Report at 8; 2018 July Monthly Report at 9.

³⁰ In MUR 6899 (Pat Meehan), the Commission found that the volunteer materials exemption applied based on information respondents provided, including a sworn statement and pictures of the volunteers unpacking, addressing, and delivering mailings to the post office. In MUR 5598 (Utah Republican Party), the Commission found reason to believe that URP made an excessive contribution to a House candidate’s committee regarding mailings on behalf of the committee. An investigation showed that volunteers stamped mailers and loaded them onto a truck, but Arena printed addresses on mailers, sorted them by postal carrier route and delivered mailers to post office. The Commission dismissed the matter under *Heckler* based on “the complicated history of the application of the...exemption” and forthcoming guidance regarding the exemption. *See Statement of Reasons, Comm’rs Petersen, Bauerly, Hunter & Weintraub, MUR 5598 (Utah Republican Party).* Although the Commission has yet to issue such guidance, in this case, URP has presented no information about the work the volunteers were supposed to perform, or whether volunteers actually did any work, only that volunteers were supposed to meet an Arena representative.

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B. There is Reason to Believe URP Made Excessive Contributions to the Committee and did not Report Them

The term “coordinated” means made in cooperation, consultation, or concert with or at the request of or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.³¹ Under Commission regulations, a party communication is coordinated with a candidate or its authorized committee if: (1) it is paid for by a political party committee or its agent; (2) it satisfies at least one of the “content” standards described in 11 C.F.R. § 109.37(a)(2); and (3) satisfies at least one of the “conduct” standards described in 11 C.F.R. § 109.21(d), subject to certain provisions that are not material here.³² A communication that is coordinated with a candidate or his or her authorized committee is considered an in-kind contribution and is subject to the limitations, prohibitions, and reporting requirements of the Act.³³ In 2016, the Act limited contributions from a political party committee to one of its candidates to \$5,000 per election.³⁴ In addition, the Act limited the amount of expenditures that a political party committee could make in coordination with its House candidates to \$48,100.³⁵

31 11 C.F.R. § 109.20.

³² 11 C.F.R. § 109.37(a). The other provisions are 11 C.F.R. § 109.21(e), (g), and (h).

³³ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.21(b). *See also* 11 C.F.R. § 109.37(b)(1).

³⁴ 52 U.S.C. § 30116(a)(2)(A).

³⁵ See <https://www.fec.gov/updates/coordinated-party-expenditure-limits-adjusted-3/>. This limit was applicable to House candidates, such as Love, who ran in states that have more than one Representative in the U.S. House. The national party also had a \$48,100 coordinated party expenditure limit on behalf of Love.

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1 The payment prong is satisfied. URP reported paying \$54,000 for mailings
 2 regarding Mia Love, and the Committee did not report paying for any of the mailings.³⁶
 3 One news article said that Anderson described the mailings as being sent out by Love's
 4 campaign, and that the mailings contained URP's disclaimer language because the Love
 5 Committee agreed to pay "pass-through money" for the mailings. Still, the relevant
 6 disclosure reports indicate that URP paid for the mailing, not the Committee.

7 As for Hansen's statement that the "Utah Republican Party Victory Fund basically
 8 funded" the mailings,³⁷ no committee with this name, or any name containing the words
 9 "Victory" and "Utah" that supported Republican candidates, was registered with the
 10 Commission or the State of Utah during the 2016 election cycle.³⁸ Nor were the funds to
 11 pay Arena Communications from any disclosed joint fundraising by URP, as it did not
 12 participate in any joint fundraising committees during the 2016 election cycle. While the
 13 Love Committee did participate in joint fundraising committees during the 2016 election
 14 cycle and received transfers of joint fundraising receipts totaling \$115,000,³⁹ none of the

³⁶ This also does not appear to be a situation in which the Committee donated funds to URP that URP then spent on communications on behalf the Committee. *See* MUR 6691 (Lampson for Congress). The Committee only contributed \$19,000 to URP, most of which was in 2015 and early 2016, and only a small amount in October 2016. URP reported payments of \$54,000 to Arena Communications on behalf of the Committee beginning in October 2016. *See supra* nn.20, 22.

³⁷ Davidson, *Federal Complaints*.

³⁸ *See* <https://elections.utah.gov/campaign-finance>. The Utah Victory Fund was a joint fundraising committee registered with the Commission during the 2015-2016 cycle, and it raised funds for the Utah Democratic Party and Owen for Congress. This joint fundraising committee filed a termination report with the Commission on December 7, 2016.

³⁹ *See* Committee to Protect Prosperity and Free Enterprise, Friends of Winning Women 2016, Zeldin-Love Victory Fund, and Republicans Inspiring Success & Empowerment Project (RISE PROJECT).

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1 joint fundraising committees disclosed any payments to, or debts owed to, Arena

2 Communications during the 2016 election cycle.⁴⁰

3 The content prong is also satisfied, as the mailing appears to be a public
 4 communication that refers to a clearly identified House candidate that was publicly
 5 distributed in the candidate's jurisdiction within 90 days of the election.⁴¹ Although the
 6 Complaint did not provide copies of the mailings, URP reported paying Arena
 7 Communications for "direct mail-Mia Love," so it is reasonable to infer that it was a
 8 "mass mailing," a form of public communication,⁴² and referred to Love.⁴³ URP relies on
 9 emails from September 2016 in support of its assertion that volunteers were to handle the
 10 mailings, and its disclosure reports reflect that it paid for the mailings in October 2016 and
 11 thereafter, so it is also reasonable to infer that they were mailed within 90 days of the
 12 November 8, 2016, general election, and that they were disseminated in Love's
 13 congressional district.⁴⁴

14 As to the conduct prong, the available information indicates that URP and the
 15 Committee cooperated on the mailings, thereby satisfying one or more of these standards:
 16 (1) the mailings were created, produced or distributed at the request or suggestion of Love
 17 or the Committee, or Love or the Committee assented to them;⁴⁵ (2) Love or her

⁴⁰ Love Victory Committee, a joint fundraising committee, made a payment to Arena Communications on May 11, 2017 for \$895.

⁴¹ See 11 C.F.R. § 109.37(a)(2)(iii)(A).

⁴² See 11 C.F.R. § 100.26.

⁴³ See 11 C.F.R. § 109.37(a)(2)(iii)(A).

⁴⁴ See *id.*

⁴⁵ See 11 C.F.R. §§ 109.21(d)(1), 109.37(a)(3).

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1 Committee was materially involved in decisions regarding, among other things, the
 2 content, audience, means, mode, timing, frequency, size or prominence of the mailings;⁴⁶
 3 or (3) the mailings were created, produced, or distributed after one or more substantial
 4 discussions about the mailings between URP and Love or the Committee.⁴⁷ URP Chair
 5 Anderson reportedly described the mailings as being created by Love's campaign, but
 6 distributed by the URP to take advantage of URP's lower bulk mailing rate: "Mia sent out
 7 fliers. They put the mailings through the Utah GOP and put paid for by the Utah GOP."⁴⁸
 8 URP does not dispute that Anderson made this statement, which appears to satisfy the
 9 "request or suggestion," "material involvement," or "substantial discussion" conduct
 10 standard.⁴⁹

11 Thus, because all three prongs of the party coordinated communication test under
 12 Commission regulations appear to be satisfied, the costs for the mailers are subject to the
 13 expenditure and contribution limits for such communications.⁵⁰

14 URP did not disclose any coordinated party expenditures in 2016 nor any debt owed
 15 by or to the Committee during the 2016 election cycle.⁵¹ The Committee reported no debt

⁴⁶ See 11 C.F.R. §§ 109.21(d)(2), 109.37(a)(3).

⁴⁷ See 11 C.F.R. §§ 109.21(d)(3), 109.37(a)(3).

⁴⁸ Compl. at 2-4, citing Wallace, *Report and Mullahy, Utah GOP*.

⁴⁹ See 11 C.F.R. § 109.21(d)(1)-(3). URP denies that the mailings constituted coordinated communications as a matter of law – because the volunteer materials exemption applies – but does not deny conduct that would satisfy the conduct standard.

⁵⁰ 11 C.F.R. § 109.37(b).

⁵¹ See URP 2015-2016 Financial Summary found at <https://www.fec.gov/data/committee/C00089482/?cycle=2016>.

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1 during the 2016 election cycle.⁵² NRCC reported no coordinated party expenditures on
2 behalf of Mia Love during the 2016 election cycle.⁵³

3 URP does not deny the news report that the mailings cost at least \$120,000.
4 Instead, URP argues that the amounts it spent were exempt under the volunteer materials
5 exemption, an argument that is not persuasive, as explained in the previous section.
6 URP's 2016 disclosure reports reveal that it made expenditures of \$54,000 on the
7 Committee's behalf, which is \$900 more than the sum of its contribution limit for the
8 general election (\$5,000) plus its coordinated expenditure limit (\$48,100). Since the
9 uncontested reports indicate that URP spent \$120,000 or more on mailings on behalf of
10 Love, its excessive contribution regarding the mailers would be at least \$66,900.⁵⁴ In
11 addition, URP did not report this contribution, and did not rebut the allegation that it failed
12 to disclose its debt to Arena Communications.

13 Accordingly, the Commission finds that there is reason to believe that URP made
14 excessive contributions to the Committee in violation of 52 U.S.C. § 30116(a)(2)(A).

15 Further, the Commission finds that there is reason to believe that URP violated 52 U.S.C.
16 § 30104(b)(4) and (8) by failing to report the excessive contributions to the Committee
17 and debt to Arena Communications.

⁵² See Committee's 2015-2016 Financial Summary found at <https://www.fec.gov/data/committee/C00505776/?cycle=2016>.

⁵³ The NRCC used to be known as the National Republican Congressional Committee, but changed its name to NRCC in an amended Statement of Organization in 2014.

⁵⁴ The Complaint alleges that the national party also had a coordinated party expenditure limit of \$48,100 to spend on the Love campaign. Compl. at 4. According to the Commission's records, the NRCC did not use any of that coordinated party expenditure limit, and the available information does not indicate whether the national party assigned its coordinated party expenditure limit to URP. See 11 C.F.R. § 109.33.

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1 **C. Disclaimer**

2 A public communication that is authorized by a candidate, authorized committee,

3 or political party committee that qualifies as an exempt activity, such as volunteer activity

4 for party committees under 11 C.F.R. § 100.147, must comply with certain disclaimer

5 requirements, but the disclaimer does not need to state whether the communication is

6 authorized by a candidate, or any authorized committee or agent of any candidate.⁵⁵

7 However, if the volunteer materials exemption does not apply, the communication needs

8 to state whether the communication is authorized by a candidate or any authorized

9 committee.⁵⁶ Since the volunteer materials exemption does not apply to the mailings, the

10 disclaimer should have stated that it was authorized by Love or her committee and paid for

11 by URP.⁵⁷ Therefore, the Commission finds that there is reason to believe that URP

12 violated 52 U.S.C. § 30120(a)(2) because the mailings failed to include the appropriate

13 disclaimer.

⁵⁵ See 11 C.F.R. § 110.11(e). See also SOR at 6, MUR 5837.

⁵⁶ *Id.*

⁵⁷ *Id.* See also 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(b)(2).