

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR 7378**

DATE COMPLAINT FILED: May 7, 2018

DATE OF NOTIFICATIONS: May 14, 2018

DATE OF LAST RESPONSE: July 11, 2018

DATE ACTIVATED: September 14, 2018

EXPIRATION OF SOL: May 7, 2023

ELECTION CYCLE: 2018

**COMPLAINANT:**

Hagan for Congress

**RESPONDENTS:**

Anthony Gonzalez for Congress and Natalie K.

Baur in her official capacity as treasurer

Conservative Leadership Now PAC and Paul

Kilgore in his official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

11 C.F.R. § 109.20

11 C.F.R. § 109.21

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that Anthony Gonzalez for Congress and Natalie K. Baur in her official capacity as treasurer (the "Committee"), the principal campaign committee for Anthony Gonzalez, a candidate for the House of Representatives in Ohio's 16th Congressional District, and Conservative Leadership Now PAC ("CLN") and Paul Kilgore in his official capacity as treasurer, an independent-expenditure-only political committee ("IEOPC") (collectively, the "Respondents"), violated the Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission regulations by making and accepting in-kind contributions in the form of coordinated communications and not reporting them. For the

reasons discussed below, we recommend that the Commission find no reason to believe that the Respondents violated 52 U.S.C. §§ 30104, 30116(f), and 30118(a) and close the file.

## II. FACTS

Christina Hagan and Anthony Gonzalez were Republican primary candidates in Ohio's 16th Congressional District during the 2018 election cycle. The Complaint alleges that CLN made a prohibited in-kind contribution to Gonzalez's campaign by distributing a mailer with similar language, content, and source citations as a mailer the Committee distributed two days later.<sup>1</sup> The Complaint alleges that the Committee and CLN coordinated the communications within the meaning of 11 C.F.R. § 109.21, which resulted in an illegal contribution from an IEOPC to a candidate's committee that was not reported.

CLN's mailer, which is reproduced in the Complaint, attacks Hagan's experience as a "career politician," labeling her a "swamp creature" and making other references to "swamps."<sup>2</sup> The mailer makes three main statements about Hagan: (1) she voted to raise her own salary; (2) her father sought to appoint her to his old Ohio House seat; and (3) she did not move into the congressional district until after she announced her candidacy.<sup>3</sup> CLN reported disseminating mailers opposing Hagan on April 23, 26, and 30, 2018.<sup>4</sup> Press reports indicate that the mailers were sent to voters in Ohio's 16th Congressional District.<sup>5</sup>

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<sup>1</sup> Compl. at 2-3 (May 7, 2018).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *See id.*

<sup>4</sup> *See* Conservative Leadership Now PAC, July 2018 Quarterly Report at 7-8 (July 3, 2018). The record does not indicate exactly when the mailer in question was disseminated.

<sup>5</sup> *See* Compl. at 2; Siraj Hashmi, *Christina Hagan accuses Anthony Gonzalez of colluding with his Super PAC on nearly identical ad campaign*, WASHINGTON EXAMINER, Apr. 30, 2018, <https://www.washingtonexaminer.com/opinion/christina-hagan-accuses-anthony-gonzalez-of-colluding-with-his-super-pac-on-nearly-identical-ad-campaign>.

1           The Committee's mailer, also reproduced in the Complaint, attacks Hagan's experience  
2 as a "professional politician" and also makes "swamp" references. It states that Hagan voted  
3 to raise her own pay and that she was appointed to her father's old Ohio House seat. The  
4 Committee's mailer also notes that Hagan voted to raise taxes on Ohioans.<sup>6</sup> The Committee  
5 cites to Ohio legislative sources and the same CantonRep.com article referenced in CLN's  
6 mailer.<sup>7</sup> Although both mailers rely on the same "swamp" theme, they are not identical; they  
7 use different language, different images of swamps as backgrounds, different pictures of  
8 Hagan, and different layouts and fonts.<sup>8</sup>

9           Respondents deny the coordination allegation. The Committee states that CLN's  
10 mailer "was created without any communication with the [c]ampaign" and attributes  
11 similarities between the mailers to a "consistent narrative" that developed from Hagan's  
12 political record.<sup>9</sup> Similarly, CLN argues that the Complaint fails to establish that it engaged in  
13 any behavior that would satisfy the conduct prong of the coordinated communications test.<sup>10</sup>  
14 CLN states that there is nothing to indicate that it "used anything of the campaign's that was  
15 not public."<sup>11</sup> CLN also notes that it could not have republished the Committee's materials  
16 because CLN issued its mailer first.<sup>12</sup>

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<sup>6</sup>       *See* Compl. at 3.

<sup>7</sup>       *See id.* at 2-3. The source citations in the Campaign's mailer reproduced in the Complaint are illegible, but the citation text is reproduced in the body of the Complaint.

<sup>8</sup>       *See id.*

<sup>9</sup>       *See* Anthony Gonzalez for Congress, Resp. at 2 (July 3, 2018).

<sup>10</sup>      *See* Conservative Leadership Now PAC, Resp. at 3 (July 11, 2018).

<sup>11</sup>      *See id.*

<sup>12</sup>      *See id.*

### III. LEGAL ANALYSIS

The Act provides that an expenditure made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents” constitutes an in-kind contribution.<sup>13</sup> IEOPCs are prohibited from making contributions to candidates and their authorized committees.<sup>14</sup> It is unlawful for candidates and political committees to knowingly accept a prohibited or excessive contribution.<sup>15</sup> Political committees are required to report all contributions made and received.<sup>16</sup>

The Commission's regulations provide a three-part test for determining when a communication is considered coordinated, which is treated as an in-kind contribution.<sup>17</sup> The communication must: (1) be paid for by a third party; (2) satisfy one of five “content” standards listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of six “conduct” standards listed in 11 C.F.R. § 109.21(d).<sup>18</sup> All three prongs must be satisfied for a communication to be considered coordinated.<sup>19</sup>

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<sup>13</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20; *see also* 52 U.S.C. § 30104(b) (requiring political committees to disclose to the Commission contributions received from other political committees and persons).

<sup>14</sup> *See* 52 U.S.C. §§ 30116(a), 30118(a); Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

<sup>15</sup> *See* 52 U.S.C. §§ 30116(f), 30118(a).

<sup>16</sup> 52 U.S.C. § 30104(a), (b).

<sup>17</sup> 11 C.F.R. §§ 109.21(a), (b). *Cf.* 11 C.F.R. §§ 109.37(a), (b) (treatment of party coordinated communication as either contribution or coordinated party expenditure).

<sup>18</sup> 11 C.F.R. § 109.21(a). The six types of conduct that satisfy the conduct prong are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. *See* 11 C.F.R. § 109.21(d).

<sup>19</sup> 11 C.F.R. §§ 109.21(a), (b); *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (explanation and justification).

1 The “payment” prong is satisfied because the mailer was paid for by CLN, a third  
 2 party.<sup>20</sup> The “content” prong is satisfied because the mailer is a public communication that  
 3 clearly identifies Hagan, was disseminated within 90 days of the May 8, 2018, primary, and  
 4 was targeted to voters in Ohio’s 16th Congressional District.<sup>21</sup> CLN does not dispute that the  
 5 “payment” and “content” prongs are satisfied.<sup>22</sup>

6 Although the Complaint suggests that the similarity of the mailers shows that the  
 7 Committee and CLN coordinated their messaging, the Complaint does not allege any  
 8 information that would satisfy the “conduct” prong of the coordinated communication test, the  
 9 Respondents specifically deny any coordination occurred, and we are not aware of any  
 10 information to the contrary.<sup>23</sup> There is no information to indicate any contact between the  
 11 Committee and CLN that would qualify as a “request or suggestion,” “material involvement,”  
 12 or “substantial discussion;” and no allegation that there was a common vendor, former  
 13 employee, or independent contractor involved. Moreover, the facts do not support the  
 14 republication allegation because the Committee’s mailer was sent two days after CLN’s  
 15 mailer, and CLN denies using anything of the campaign’s that was not public.<sup>24</sup>

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<sup>20</sup> See Compl. at 1 (showing CLN’s disclaimer on the mailer); Conservative Leadership Now PAC, Resp. at 2. The Committee’s argument that the payment prong is not satisfied because CLN did not pay for the Committee’s mailer appears to misunderstand the Complaint. The allegation is not that CLN paid for the Committee’s communications, but that it made an in-kind contribution by coordinating its own communications with Gonzalez’s campaign.

<sup>21</sup> See 11 C.F.R. § 109.21(c)(4)(i); Conservative Leadership Now PAC, July 2018 Quarterly Report at 7-8 (showing that mailers were disseminated in April); Compl. at 2; Hashmi, *supra* note 5.

<sup>22</sup> See Conservative Leadership Now PAC, Resp. at 1-4.

<sup>23</sup> Compl. at 1-3.

<sup>24</sup> See *id.* at 1 (stating that CLN issued the mailer before Gonzalez’s campaign issued its mailer); CLN Resp. at 3. In addition, the Commission has decided in past matters that the timing of and mere thematic similarities between a candidate’s campaign materials and a third-party communication are insufficient to establish coordination. See Factual & Legal Analysis at 11, MUR 7124 (Katie McGinty for Senate, *et al.*) (“F&LA”); F&LA at 8, MUR 6821 (Shaheen for Senate, *et al.*).

Because the conduct prong of the coordinated communications test was not satisfied here, we recommend that the Commission find no reason to believe that the Respondents violated 52 U.S.C. §§ 30104, 30116(f), and 30118(a).

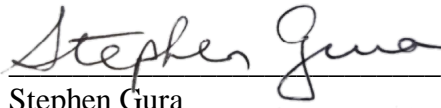
### III. RECOMMENDATIONS

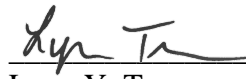
1. Find no reason to believe that Anthony Gonzalez for Congress and Natalie K. Baur in her official capacity as treasurer and Conservative Leadership Now PAC and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. §§ 30104, 30116(f), and 30118(a);
2. Approve the attached Factual and Legal Analysis;
3. Approve the appropriate letters; and
4. Close the file as to all Respondents.

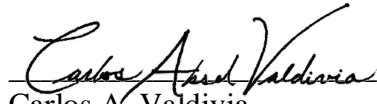
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