



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 5, 2021

VIA EMAIL

James E. Tyrrell, III
Venable LLP
600 Massachusetts Ave., NW
Washington, DC 20001
jetyrrell@Venable.com

RE: MUR 7378
Conservative Leadership Now PAC and
Paul Kilgore in his official capacity
as treasurer

Dear Mr. Tyrrell:

On May 14, 2018, the Federal Election Commission notified your client, Conservative Leadership Now PAC and Paul Kilgore in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 20, 2021, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Conservative Leadership Now PAC and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. §§ 30104, 30116(f), and 30118(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact me, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran".

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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

MUR 7378

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, the Commission finds no reason to believe that the Respondents violated 52 U.S.C. §§ 30104, 30116(f), and 30118(a).

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.¹ The Complaint alleges that the Committee and CLN coordinated the communications

¹ Compl. at 2-3 (May 7, 2018).

1 within the meaning of 11 C.F.R § 109.21, which resulted in an illegal contribution from an
2 IEOPC to a candidate's committee that was not reported.

3 CLN's mailer, which is reproduced in the Complaint, attacks Hagan's experience as a
4 "career politician," labeling her a "swamp creature" and making other references to "swamps."²
5 The mailer makes three main statements about Hagan: (1) she voted to raise her own salary;
6 (2) her father sought to appoint her to his old Ohio House seat; and (3) she did not move into the
7 congressional district until after she announced her candidacy.³ CLN reported disseminating
8 mailers opposing Hagan on April 23, 26, and 30, 2018.⁴

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

² Compl. at 2.

³ *See id.*

⁴ *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.

⁵ *See* Compl. at 3.

⁶ *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.

⁷ *See* Compl. at 2-3.

Respondents deny the coordination allegation. The Committee states that CLN’s mailer “was created without any communication with the [c]ampaign” and attributes similarities between the mailers to a “consistent narrative” that developed from Hagan’s political record.⁸ Similarly, CLN argues that the Complaint fails to establish that it engaged in any behavior that would satisfy the conduct prong of the coordinated communications test.⁹ CLN states that there is nothing to indicate that it “used anything of the campaign’s that was not public.”¹⁰ CLN also notes that it could not have republished the Committee’s materials because CLN issued its mailer first.¹¹

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.¹² IEOPCs are prohibited from making contributions to candidates and their authorized committees.¹³ It is unlawful for candidates and political committees to knowingly accept a prohibited or excessive contribution.¹⁴ Political committees are required to report all contributions made and received.¹⁵

⁸ See Anthony Gonzalez for Congress, Resp. at 2 (July 3, 2018).

⁹ See Conservative Leadership Now PAC, Resp. at 3 (July 11, 2018).

¹⁰ See *id.*

¹¹ See *id.*

¹² 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).

¹³ See 52 U.S.C. §§ 30116(a), 30118(a); Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

¹⁴ See 52 U.S.C. §§ 30116(f), 30118(a).

¹⁵ 52 U.S.C. § 30104(a), (b).

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.¹⁶ 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).¹⁷ All three prongs must be satisfied for a communication to be considered coordinated under Commission regulations.¹⁸

The “payment” prong is satisfied because the mailer was paid for by CLN, a third party.¹⁹ The “content” prong is satisfied because the mailer is a public communication that clearly identifies Hagan, was disseminated within 90 days of the May 8, 2018, primary, and was targeted to voters in Ohio’s 16th Congressional District.²⁰ CLN does not dispute that the “payment” and “content” prongs are satisfied.²¹

Although the Complaint suggests that the similarity of the mailers shows that the Committee and CLN coordinated their messaging, the Complaint does not allege any information that would satisfy the “conduct” prong of the coordinated communication test, the

¹⁶ 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).

¹⁷ 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).

¹⁸ 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).

¹⁹ *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.

²⁰ *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.

²¹ *See* Conservative Leadership Now PAC, Resp. at 1-4.

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Factual and Legal Analysis

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1 Respondents specifically deny any coordination occurred, and the Commission is not aware of
2 any information to the contrary.²² There is no information to indicate any contact between the
3 Committee and CLN that would qualify as a “request or suggestion,” “material involvement,” or
4 “substantial discussion;” and no allegation that there was a common vendor, former employee, or
5 independent contractor involved.

6 The conduct prong of the coordinated communications test was not satisfied here. The
7 Commission finds no reason to believe that the Respondents violated 52 U.S.C. §§ 30104,
8 30116(f), and 30118(a).

²²

Compl. at 1-3.