

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****Pre-MUR 613**

DATE FILED: July 2, 2018

DATE OF LAST RESPONSE: Nov. 16, 2018

DATE ACTIVATED: Mar. 1, 2019

EXPIRATION OF SOL: Apr. 3, 2023 (earliest)/

May 2, 2023 (latest)

ELECTION CYCLE: 2018

COMPLAINANT:*Sua Sponte***RESPONDENT:**Ohio First PAC and Julie Dozier in her official
capacity as treasurer**MUR 7438**

DATE COMPLAINT FILED: July 23, 2018

DATE OF NOTIFICATION: July 30, 2018

DATE OF LAST RESPONSE: Aug. 15, 2018

DATE ACTIVATED: Mar. 1, 2019

EXPIRATION OF SOL: Apr. 3, 2023 (earliest)/

May 2, 2023 (latest)

ELECTION CYCLE: 2018

COMPLAINANT:American Democracy Legal Fund
Brad Woodhouse**RESPONDENT:**Ohio First PAC and Julie Dozier in her official
capacity as treasurer**MUR 7476**

DATE COMPLAINT FILED: Aug. 9, 2018

DATE OF NOTIFICATION: Aug. 15, 2018

DATE OF LAST RESPONSE: Oct. 4, 2018

DATE ACTIVATED: Mar. 1, 2019

EXPIRATION OF SOL: Apr. 3, 2023 (earliest)/

Jul. 15, 2023 (latest)

ELECTION CYCLE: 2018

COMPLAINANT:Campaign Legal Center
Margaret Christ

1
 2 **RESPONDENTS:** Ohio First PAC and Julie Dozier in her official
 3 capacity as treasurer
 4 Majority Strategies, LLC¹
 5 Grassroots Targeting LLC
 6 Renacci for US Senate and Russell Corwin in his
 7 official capacity as treasurer
 8
 9 **MUR 7542**
 10 DATE COMPLAINT FILED: Nov. 14, 2018
 11 DATE OF NOTIFICATION: Nov. 21, 2018
 12 DATE OF LAST RESPONSE: Feb. 21, 2019
 13 DATE ACTIVATED: Mar. 1, 2019
 14
 15 EXPIRATION OF SOL: Sept. 8, 2023 (earliest)/
 16 Dec. 6, 2023 (latest)
 17 ELECTION CYCLE: 2018
 18
 19 **COMPLAINANT:** Campaign Legal Center
 20 Margaret Christ
 21
 22 **RESPONDENTS:** MeToo Ohio and Lisa Lisker in her official
 23 capacity as treasurer
 24 Majority Strategies, LLC
 25 Renacci for US Senate and Russell Corwin in his
 26 official capacity as treasurer
 27
 28 **RELEVANT STATUTES**
 29 **AND REGULATIONS:** 52 U.S.C. § 30101(8)(A)(i)
 30 52 U.S.C. §§ 30104(a)(4)(A)(ii), (b), (g)
 31 52 U.S.C. §§ 30116(a)(7), (f)
 32 52 U.S.C. § 30118(a)
 33 11 C.F.R. § 100.55
 34 11 C.F.R. § 104.3(b)
 35 11 C.F.R. § 104.4
 36 11 C.F.R. § 109.20
 37 11 C.F.R. § 109.21
 38 11 C.F.R. § 116.3
 39 **INTERNAL REPORTS CHECKED:** Disclosure Reports
 40

¹ Majority Strategies refers to itself as both Majority Strategies, LLC and Majority Strategies, Inc. in its responses. *Compare* Ohio First, Majority Strategies, Inc., & Grassroots Targeting LLC, Resp. at 1, MUR 7476 (Aug. 9, 2018) (“Joint Response”), *with* Majority Strategies Resp. at 1, MUR 7542 (Jan. 29, 2019) (“Majority Strategies Resp.”). Information available from the Florida Secretary of State indicates that the entity is currently registered as Majority Strategies, LLC and it is referred to as such in this report.

1 **FEDERAL AGENCIES CHECKED:** None

2 **I. INTRODUCTION**

3 These four matters each involve allegations relating to independent expenditures
4 made in support of Jim Renacci or in opposition to Renacci's opponent Sherrod Brown in the
5 2018 Senate election in Ohio. Ohio First PAC and Julie Dozier in her official capacity as
6 treasurer ("Ohio First") made such independent expenditures before the Ohio Republican
7 Primary,² and MeToo Ohio and Lisa Lisker in her official capacity as treasurer ("MeToo
8 Ohio") made such independent expenditures before the Ohio General Election.³

9 Pre-MUR 613 is a *sua sponte* submission filed by Ohio First, disclosing its failure to
10 report independent expenditures in support of Jim Renacci on 24- and 48-hour reports and on
11 its Pre-Primary Report. The Complaint in MUR 7438 raises the same reporting violations at
12 issue in the Pre-MUR,⁴ while the Complaint in MUR 7476 includes additional allegations
13 that Ohio First failed to report in-kind contributions from its vendors Majority Strategies,
14 LLC ("Majority Strategies") and Grassroots Targeting LLC ("Grassroots Targeting"), failed
15 to report debts and obligations, and made prohibited contributions to Renacci for US Senate
16 and Russell Corwin in his official capacity as treasurer ("Renacci Committee") in the form of

² Ohio First, *Sua Sponte* Submission at 1 (June 29, 2018), Pre-MUR 613 (Ohio First PAC) ("First Submission"); Ohio First PAC, *Sua Sponte* Supp. Submission at 1 (Sept. 28, 2018), Pre-MUR 613 (Ohio First PAC) ("Second Submission"); Ohio First, *Sua Sponte* Second Supp. Submission (Nov. 16, 2018), Pre-MUR 613 (Ohio First PAC) ("Third Submission"); Joint Response at 1-2.

³ MUR 7542 Compl. at 2 (Nov. 14, 2018).

⁴ MUR 7438 Compl. at 5-6 (July 23, 2018).

1 coordinated communications that the Renacci Committee allegedly accepted.⁵ Lastly, the
2 Complaint in MUR 7542 raises similar allegations that MeToo Ohio failed to report in-kind
3 contributions from its vendor Majority Strategies and made prohibited contributions to the
4 Renacci Committee in the form of coordinated communications.⁶

5 As discussed below, we recommend that the Commission: (1) find reason to believe
6 that Ohio First violated 52 U.S.C. § 30104(a)(4)(A)(ii) by failing to timely file a pre-primary
7 report and violated 52 U.S.C. § 30104(g) by failing to report its independent expenditures;
8 (2) find reason to believe that Ohio First and MeToo Ohio violated 52 U.S.C. § 30104(b)(3)
9 by failing to report contributions received from their vendors in the form of extensions of
10 credit; (3) dismiss the allegations that Ohio First and MeToo Ohio made and the Renacci
11 Committee accepted a contribution in the form of coordinated communications in violation
12 of 52 U.S.C. §§ 30116(a) or (f), respectively, 30118(a), and 11 C.F.R. § 109.21; (4) find no
13 reason to believe that Majority Strategies and Grassroots Targeting violated the Federal
14 Election Campaign Act of 1971, as amended (the “Act”); and (5) close the file as to the
15 Renacci Committee, Majority Strategies, and Grassroots Targeting.

⁵ MUR 7476 Compl. at 10-12 (Aug. 9, 2018). We received a joint response to the MUR 7476 Complaint from Ohio First, Majority Strategies, and Grassroots Targeting, but did not receive a response from the Renacci Committee.

⁶ MUR 7542 Compl. at 2.

1 **II. FACTS**

2 **A. Ohio First PAC**

3 Ohio First is an independent expenditure-only political committee (“IEOPC”) that
4 registered with the Commission on January 21, 2018.⁷ In the weeks leading up to the May 8,
5 2018, Ohio primary election, Ohio First supported the candidacy of Jim Renacci for the
6 Republican nomination for U.S. Senate from Ohio by making nearly half a million dollars in
7 independent expenditures, but it did not file reports with the Commission disclosing these
8 independent expenditures until after the primary election.⁸

9 Under the Commission’s reporting schedules for the Ohio primary election, Ohio
10 First was required to file 48-hour independent expenditure reports through April 18, 2018,
11 and 24-hour independent expenditure reports from April 19 to May 6, 2018, as well as a Pre-
12 Primary Report by April 26, 2018 (covering the period through April 18, 2018). Ohio first
13 did not report any cash on hand, receipts, disbursements, or debts, and reported no
14 independent expenditures, until June 29, 2018, more than six weeks after the primary
15 election.

⁷ Ohio First, Statement of Organization (Jan. 21, 2018).

⁸ See First Submission at 1 (stating that Ohio First filed its independent expenditure reports after the primary election); Ohio First, 2018 Pre-Primary Report at 10-13 (June 29, 2018); Ohio First, 2018 July Quarterly Report at 15-17 (July 15, 2018). The Reports Analysis Division (“RAD”) issued Requests for Additional Information (“RFAIs”) to Ohio First in connection with these independent expenditures. RFAI: Pre-Primary 2018 (Aug. 15, 2018); RFAI: July Quarterly 2018 (Aug. 15, 2018). RAD issued the RFAIs after Ohio First filed the *sua sponte* submission.

1 Most of Ohio First's activity occurred during April and May 2018.⁹ During that
 2 period, Ohio First made the following independent expenditures, totaling \$472,129.66:¹⁰

Distribution or Dissemination	Vendor	Amount
Apr. 1, 2018	Majority Strategies	\$ 25,000.00
Apr. 1, 2018	Majority Strategies	\$ 93,270.00
Apr. 1, 2018	Majority Strategies	\$ 2,500.00
Apr. 2, 2018	Majority Strategies	\$ 52,307.33
Apr. 9, 2018	Majority Strategies	\$ 52,307.33
Apr. 16, 2018	Majority Strategies	\$ 52,307.33
Apr. 16, 2018	Majority Strategies	\$ 25,000.00
Apr. 23, 2018	Majority Strategies	\$ 50,314.67
Apr. 30, 2018	Majority Strategies	\$ 51,311.00
May 1, 2018	Ascent Media LLC	\$ 7,700.00
May 1, 2018	Majority Strategies	\$ 58,362.00
May 1, 2018	Majority Strategies	\$ 1,750.00
	Total:	\$ 472,129.66

3 In a supplemental submission, Ohio First represents that it failed to timely report its
 4 independent expenditures because Ohio First's treasurer was unaware of the expenditures.¹¹
 5 Ohio First stated that, although it had received invoices from its vendors, it did not pay the

⁹ First Submission at 1; Ohio First, 2018 Pre-Primary Report at 10-13; Ohio First, 2018 July Quarterly Report at 15-17.

¹⁰ Ohio First, 2018 Pre-Primary Report at 2, 6-9; Ohio First, 2018 July Quarterly Report at 9-14. The first contribution to Ohio First was made on May 10, 2018, two days after the primary election. Ohio First Receipts, https://www.fec.gov/data/receipts/?two_year_transaction_period=2018&committee_id=C00666750&data_type=processed (last visited Apr. 18, 2020).

¹¹ See Second Submission at 1.

1 invoices because it lacked funds and did not forward the unpaid invoices to Ohio First's
2 treasurer.¹² Ohio First states that it discovered that it did not file the required reports on or
3 around June 20, 2018, and then conducted an "audit" to review its activity and implemented
4 a new process to route independent expenditure invoices directly to the treasurer upon
5 receipt.¹³

6 After conducting its internal review, Ohio First filed its *sua sponte* submission with
7 the Commission by letter dated June 29, 2018.¹⁴ At the same time, Ohio First filed
8 independent expenditure reports for the 12 expenditures it made from April 1 through
9 May 1, 2018, and filed its Pre-Primary Report covering the period from April 1 through
10 April 18, 2018. The Pre-Primary Report disclosed no receipts, no disbursements, no cash on
11 hand, and \$367,667.99 in debts and obligations along with \$302,691.99 in independent
12 expenditures in support of Renacci.¹⁵

13 Ohio First timely filed its next report, the July Quarterly Report covering the period
14 from April 19 to June 30, 2018, in which it disclosed receiving its first contributions
15 (\$79,200 in receipts from five contributors), five additional independent expenditures totaling

¹² *Id.* (explaining, also, that Ohio First's treasurer is a "professional at a compliance firm").

¹³ *Id.* at 2. Ohio First stated that the revised compliance process was not memorialized in any formal written policy because of the "expectation of a limited time duration for Ohio First PAC's activities." Third Submission at 3.

¹⁴ First Submission at 1. The letter was received July 2, 2018. *Id.*

¹⁵ Ohio First, 2018 Pre-Primary Report at 2. In addition to debt to Majority Strategies for the \$302,691.99 in independent expenditures disseminated during the Pre-Primary period, the report also disclosed additional debts to Majority Strategies in the amounts of \$30,000 for "survey research" and \$4,975 for "web service." Ohio First, 2018 Pre-Primary Report at 2, 6-9.

1 \$169,437.67, and debts and obligations in the amount of \$597,104.66.¹⁶ Ohio First's July
2 Quarterly Report disclosed, in addition to all of the previously reported debt that remained
3 due in full, new debts to Majority Strategies for independent expenditures worth \$161,737.67
4 and \$60,000 owed to Grassroots Targeting — a political research firm headed by Blaise
5 Hazelwood, who was also Executive Director of Ohio First — for “political strategy
6 consulting.”¹⁷ According to the Complaint in MUR 7476, Grassroots Targeting had
7 conducted survey research for Ohio First sometime on or before April 9, 2018;¹⁸
8 Respondents assert “Grassroots Targeting invoiced Ohio First for services rendered on June
9 22, 2018.”¹⁹ Ohio First did not report any April disbursements to Grassroots Targeting and
10 first reported its \$60,000 debt to Grassroots Targeting in the 2018 July Quarterly Report,
11 which covered activity from April 19 to June 30, 2018.²⁰

12 Ohio First's 2018 October Quarterly, Pre-General, Post-General, and 2018 Year-End
13 reports show total receipts of \$925,500 from July 1 through November 26, 2018, and the

¹⁶ Ohio First, 2018 July Quarterly Report at 2, 6-7, 15-17. The five additional independent expenditures were included in Ohio First's July 2, 2018 *sua sponte* submission.

¹⁷ Ohio First, 2018 July Quarterly Report at 2, 9-14; Grassroots Targeting, <https://www.grassrootstargeting.com/> (last visited Apr. 22, 2020); *see also* Third Submission at.1 (referring to emails between Ohio First's treasurer and Executive Director and attaching emails between Hazelwood, using a grassrootstargeting.com email address, and the treasurer).

¹⁸ *See* MUR 7476 Compl. at 3 (citing *Morning Score*, POLITICO, Apr. 9, 2018, <https://www.politico.com/newsletters/morning-score/2018/04/09/countdown-to-scott-campaign-launch-162837> (“*Morning Score*”) (“Grassroots Targeting conducted the survey for Ohio First PAC, a pro-Renacci group.”)).

¹⁹ *See* Joint Response at 4. The Joint Response is ambiguous as to whether the \$60,000 in services (reported in Ohio First's July Quarterly 2018 Report as debt owed to Grassroots Targeting) were rendered in June 2018, invoiced in June 2018, or both.

²⁰ *See id.*

1 repayment of nearly all its debt.²¹ Ohio First reported, on its Post-General Report, that it had
2 repaid all its debts to Majority Strategies, which totaled \$537,104.66, and repaid \$30,000 of
3 its \$60,000 debt to Grassroots Targeting.²² In its 2020 April Quarterly Report, Ohio First
4 continued to report a \$30,000 debt to Grassroots Targeting.²³

5 In addition to the independent expenditure reporting violations raised in the *sua*
6 *sponte* submission and the Complaint in MUR 7438, the MUR 7476 Complaint also alleges
7 that Ohio First failed to properly report the extensions of credit by Majority Strategies as in-
8 kind contributions (with corresponding reporting of disbursements) and failed to properly
9 report in-kind contributions from (or debts owed to) Grassroots Targeting.²⁴ The MUR 7476
10 Complaint asserts that Majority Strategies does not ordinarily extend credit to newly formed
11 committees with no cash on hand and that the extensions of credit therefore constitute in-kind
12 contributions to Ohio First that were not reported.²⁵ Similarly, the MUR 7476 Complaint
13 asserts that the survey conducted by Grassroots Targeting was either a contribution or a
14 reportable debt if Grassroots Targeting extended credit to Ohio First.²⁶

15 In response, Ohio First, Majority Strategies, and Grassroots Targeting contend that
16 the credit extended by Majority Strategies does not qualify as a contribution because

²¹ Ohio First, 2018 October Quarterly Report at 2 (Oct. 15, 2018); Ohio First, 2018 Pre-General Report at 2 (Oct. 25, 2018); Ohio First, 2018 Post-General Report at 2 (Dec. 6, 2018); Ohio First, 2018 Year-End Report at 2 (Jan. 31, 2019).

²² Ohio First, 2018 October Quarterly Report at 12-17; Ohio First, 2018 Post-General Report at 7-9, 11.

²³ Ohio First, 2020 April Quarterly Report at 7.

²⁴ MUR 7476 Compl. at 10-12. The Complaint in MUR 7476 alleges, in the alternative, that Majority Strategies made, but did not report, the independent expenditures reported by Ohio First. *See id.* at 14-15.

²⁵ *Id.* at 10-11.

²⁶ *Id.* at 12.

1 Majority Strategies “has routinely granted credit to hundreds of similarly situated clients”
2 and “typically uses extended repayment terms,” which it asserts is a practice common
3 throughout the political consulting industry.²⁷ The Chief Executive Officer of Majority
4 Strategies submitted a declaration supporting this position, though the Joint Response
5 includes no specific terms and no documents, such as contracts, corroborating the
6 representations made in the declaration.²⁸ The Joint Response does not explain Grassroots
7 Targeting’s business practices with regard to extensions of credit or the repayment terms of
8 such credit, but states that Ohio First accurately reported the services provided by Grassroots
9 Targeting, contending that the description of the services rendered was “adequate.”²⁹
10 Further, Respondents assert that Grassroots Targeting invoiced Ohio First for services
11 rendered on June 22, 2018, that this was the first date on which Ohio First’s Treasurer
12 became aware of the debt, and that Ohio First subsequently reported the debt on its 2018 July
13 Quarterly Report.³⁰

14 In addition to the alleged reporting violations, the MUR 7476 Complaint also alleges
15 that Ohio First made excessive and prohibited in-kind contributions to the Renacci
16 Committee by coordinating communications through Majority Strategies as a common
17 vendor.³¹ In response to the coordination allegations, Majority Strategies and Ohio First
18 state that there is no information indicating that the Renacci Committee and Ohio First shared

²⁷ Joint Response at 2.

²⁸ *Id.* at Ex. B.

²⁹ *Id.* at 1, 4-5.

³⁰ *Id.*

³¹ MUR 7476 Compl. at 13-14.

1 information.³² They further explain that Majority Strategies employs a firewall to prevent
2 employees working with IEOPCs from working with candidates' authorized committees, and
3 vice-versa.³³

4 **B. MeToo Ohio**

5 MeToo Ohio is an IEOPC that registered with the Commission on September 5,
6 2018.³⁴ In the weeks leading up to the November 6, 2018, Ohio general election, MeToo
7 Ohio spent over half a million dollars in independent expenditures opposing Sherrod Brown,
8 Renacci's opponent in the general election.³⁵ Most of those independent expenditures were
9 funded by credit extended by Majority Strategies.

10 MeToo Ohio's first report, the 2018 October Quarterly Report, discloses no receipts,
11 no disbursements, no cash on hand, and \$27,004 in debts and obligations to Majority
12 Strategies for independent expenditures opposing Brown.³⁶ In MeToo Ohio's next report,
13 the Pre-General Report covering the period from October 1 to October 17, 2018, MeToo
14 Ohio disclosed receiving \$220,000 from one contributor, disbursements of \$176,000 to a
15 different vendor (for an independent expenditure, as reported on Schedule E), and debts and
16 obligations of \$156,004 to Majority Strategies.³⁷

³² Joint Response at 3.

³³ *Id.*

³⁴ MeToo Ohio, Statement of Organization (Sept. 5, 2018).

³⁵ MeToo Ohio, 2018 October Quarterly Report at 8 (Oct. 14, 2018).

³⁶ MeToo Ohio, 2018 October Quarterly Report.

³⁷ MeToo Ohio, 2018 Pre-General Report (Oct. 24, 2018).

1 MeToo Ohio disclosed its first payments to Majority Strategies on its Post-General
2 Report. In its Post-General Report, covering the period from October 18 to November 26,
3 2018, MeToo Ohio disclosed receiving \$425,000 from three contributors and disbursements
4 of \$442,206, including over \$231,004 to Majority Strategies.³⁸

5 The Complaint in MUR 7542 alleges that MeToo Ohio failed to properly report the
6 extensions of credit by Majority Strategies as an in-kind contribution.³⁹ The Complaint
7 asserts that Majority Strategies does not ordinarily extend credit to a newly formed
8 committee that has no cash on hand and no record of fundraising.⁴⁰ The Complaint also
9 alleges that, with the limited exception of Ohio First (which was funding MeToo Ohio), there
10 is no record of Majority Strategies extending six figures of credit to a newly formed
11 committee with no cash on hand.⁴¹

12 Respondents assert that Majority Strategies's extension of credit to MeToo Ohio was
13 consistent with Majority Strategies's ordinary business practices.⁴² In particular, Majority
14 Strategies asserts that it "does ads for clients on a post-paid basis in the ordinary course of
15 business" and that "it is not outside normal business practices for production companies to do

³⁸ MeToo Ohio, 2018 Post-General Report (Dec. 6, 2018). The vast majority of MeToo Ohio's \$645,000 in contributions were received from Ohio First (\$305,000) and from A Public Voice, Inc. (\$315,000). *See* MeToo Ohio, 2018 Pre-General Report (Oct. 24, 2018); MeToo Ohio, 2018 Post-General Report (Dec. 6, 2018).

³⁹ MUR 7542 Compl. at 17-18. In the alternative, the MUR 7542 Complaint asserts that Majority Strategies failed to report independent expenditures because it was not paid by MeToo Ohio for the independent expenditures. *Id.* at 19.

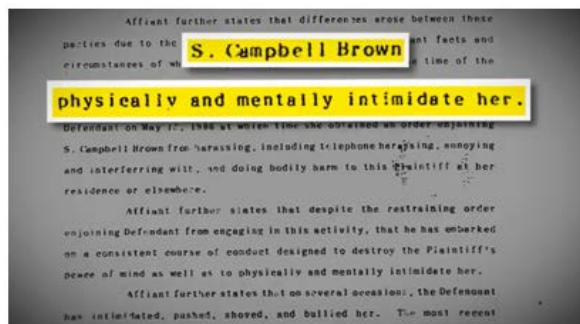
⁴⁰ *Id.* at 17-18.

⁴¹ *Id.* at 18.

⁴² Majority Strategies Resp. at 4, MUR 7542 (Jan. 29, 2019) ("Majority Strategies Resp."); MeToo Ohio, Resp. at 3, MUR 7542 (Jan. 29, 2019) ("MeToo Ohio Resp.").

1 ads on a post-paid basis.”⁴³ Neither Majority Strategies’s nor MeToo Ohio’s response
 2 includes specific terms or documents, such as contracts, supporting these assertions regarding
 3 the vendor’s ordinary business practices.

4 The Complaint in MUR 7542 also alleges that MeToo Ohio made prohibited and
 5 excessive in-kind contributions to the Renacci Committee by coordinating communications
 6 through Majority Strategies, a common vendor.⁴⁴ In support of this allegation, the Complaint
 7 states that the Renacci Committee’s second television ad was launched on the same day as a
 8 MeToo Ohio ad and that the two ads were “strikingly consistent in theme, tone, and style,
 9 including references to the same excerpted court documents and similar visuals.”⁴⁵ The
 10 MUR 7542 Complaint notes, for example, that each ad included highlighted text of court
 11 documents, as in these screen shots of the ads from the Renacci Committee at left and
 12 MeToo at right:⁴⁶



13
 14

⁴³ Majority Strategies Resp. at 3.

⁴⁴ MUR 7542 Compl. at 1-2

⁴⁵ *Id.* at 2; compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE (Oct. 10, 2018), available at https://www.youtube.com/watch?v=2yxypM_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE (Oct. 11, 2018), available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

⁴⁶ See MUR 7542 Compl. at 6; MeToo Ohio, *Turning a Blind Eye*, YOUTUBE at 0:21 (Oct. 10, 2018), available at https://www.youtube.com/watch?v=2yxypM_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE at 0:18 (Oct. 11, 2018), available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

1 Both Majority Strategies and the Renacci Committee state that Majority Strategies
 2 did not create, produce, or place any television advertisements for the Renacci Committee.⁴⁷
 3 Majority Strategies further denies that it provided any campaign information from the
 4 Renacci Committee to MeToo Ohio, and asserts that it had implemented a firewall that
 5 prevented any information that may have been obtained from its work for the Renacci
 6 Committee from being used in MeToo Ohio's projects and vice versa.⁴⁸ Respondents also
 7 assert that the 11 C.F.R. § 109.21(d)(3) safe harbor was satisfied because the information
 8 utilized to create the ads was a matter of public knowledge.⁴⁹

9 **III. LEGAL ANALYSIS**

10 **A. There is Reason to Believe that Ohio First Failed to Timely File Its** 11 **Independent Expenditure Reports and Pre-Primary Report**

12 Under the Act and Commission regulations, political committees other than
 13 authorized committees must report their independent expenditures.⁵⁰ Every political
 14 committee that makes independent expenditures must report them in its regularly scheduled
 15 disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).⁵¹ Depending on the

⁴⁷ Majority Strategies Resp. at 2 (“Majority Strategies did not produce or place any media ads for the Renacci campaign”); Renacci for US Senate, Resp. at 2, MUR 7542 (Feb. 21, 2019) (“Renacci Resp.”) (stating that “Majority Strategies, LLC did not create, produce, or distribute the referenced Renacci for U.S. Senate advertisement” and asserting that the complained-of advertisement “was produced by OnMessage, Inc.”). The Renacci Committee acknowledges contracting with Majority Strategies for website design/maintenance and for the production of campaign materials, including palm cards, literature, bumper stickers, and yard signs. Renacci Resp. at 2. The Renacci Committee denies that Majority Strategies was involved in its television or digital advertising. *Id.*

⁴⁸ Majority Strategies Resp. at 2.

⁴⁹ MeToo Ohio Resp. at 2; Majority Strategies Resp. at 2; Renacci Resp. at 2-4.

⁵⁰ 52 U.S.C. § 30104(b)(4)(H)(iii); *see also* 11 C.F.R. § 104.3(b)(1)(vii).

⁵¹ 11 C.F.R. § 104.4(a).

1 aggregate dollar amounts and timing of the independent expenditures, a political committee
2 that makes or contracts to make independent expenditures must also report the independent
3 expenditures within 24 or 48 hours.⁵² In addition, political committees including IEOPCs
4 that make expenditures in connection with a primary election must file a pre-primary report
5 no later than 12 days before that primary, disclosing all receipts and disbursements as of the
6 20th day before the primary election.⁵³

7 Ohio First was under an obligation to disclose the independent expenditures made on
8 or before April 18, 2018, within 48 hours of the communications' public distribution or
9 dissemination.⁵⁴ Similarly, Ohio First was required to disclose the independent expenditures
10 made between April 19 and May 6, 2018, within 24 hours of the communications' public
11 distribution or dissemination.⁵⁵

12 Ohio First voluntarily self-disclosed reporting violations related to over \$470,000 in
13 independent expenditures and does not deny that it failed to timely file the associated 24-
14 hour, 48-hour, and Pre-Primary Reports.⁵⁶ Specifically, Ohio First failed to timely file 24-

⁵² A political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must report these expenditures within 48 hours (in "48-hour reports"). 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). These 48-hour reports must be filed by the end of the second day "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(b)(2). A political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election must report the expenditures within 24 hours (in "24-hour reports"). 52 U.S.C. § 30104(g)(1); 11 C.F.R. §§ 104.4(c), 109.10(d). These 24-hour reports must be filed before midnight on the day following the date on which the communication is publicly disseminated. 11 C.F.R. § 104.4(c).

⁵³ 52 U.S.C. § 30104(a)(4)(A); 11 C.F.R. § 104.5(c)(1).

⁵⁴ 11 C.F.R. § 104.4(b).

⁵⁵ 11 C.F.R. § 104.4(c).

⁵⁶ First Submission at 1; Second Submission at 1-2; Third Submission at 1.

1 Hour Reports disclosing \$169,437.67 in independent expenditures and 48-Hour Reports
 2 disclosing \$302,691.99 in independent expenditures.⁵⁷ Ohio First also acknowledged that it
 3 did not file its Pre-Primary Report, an election-sensitive report, until more than six weeks
 4 after it was due.⁵⁸ Accordingly, we recommend that the Commission find reason to believe
 5 that Ohio First violated 52 U.S.C. § 30104(a)(4)(A)(ii) by failing to timely file a pre-primary
 6 report and 52 U.S.C. § 30104(g) by failing to report its independent expenditures.⁵⁹

7 **B. There is Reason to Believe Ohio First and MeToo Ohio Failed to Report**
 8 **In-Kind Contributions in the form of Extensions of Credit From their**
 9 **Vendors**

10 The Act requires each treasurer of a political committee to file reports of receipts and
 11 disbursements with the Commission.⁶⁰ Such reports must include the total amount of
 12 contributions received, as well as the identification of each person who made a contribution
 13 in excess of \$200 during the reporting period, together with the date and amount of such
 14 contribution.⁶¹

⁵⁷ First Submission at 1.

⁵⁸ *Id.* Because Ohio First filed the election sensitive 24- hour, 48-hour, and Pre-Primary Reports after the date of the primary election, they are deemed “not filed” rather than filed late. *See* 11 C.F.R. § 111.43(d)(1), (e) (defining “election sensitive reports” and explaining their treatment as late or not filed).

⁵⁹ The Commission may offer self-reporting respondents more favorable terms in an eventual conciliation agreement, after considering the nature of the violation, the extent of corrective actions undertaken by respondents, whether the respondents fully disclosed the violation, and whether respondents fully cooperated with the Commission. *See* Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16695, 16697 (Apr. 5, 2007) (listing the factors that the Commission may take into account to determine what incentives or penalties to apply). Because we are also recommending that the Commission investigate Ohio First’s actions with respect to other allegations, we are not making any recommendations at this time regarding the level of credit Ohio First should receive for self-reporting. An investigation into the extension of credit by Ohio First’s vendors, including Majority Strategies, may yield additional information that will impact our assessment of Ohio First’s reporting violations.

⁶⁰ 52 U.S.C. § 30104(a)(1).

⁶¹ 52 U.S.C. §§ 30104(b)(2)(A), (b)(3)(A)-(B).

1 A “contribution” includes “any gift [or] advance . . . of money or anything of value
2 made by any person for the purpose of influencing any election for Federal office.”⁶² The
3 extension of credit to a political committee by a commercial vendor is a contribution, “unless
4 the credit is extended in the ordinary course of the person’s business and the terms are
5 substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and
6 size of obligation.”⁶³ A “commercial vendor” is any person who provides goods or services
7 to a candidate or political committee, and whose usual and normal business involves the sale,
8 rental, lease, or provision of those goods and services.⁶⁴

9 Commission regulations state that, in determining whether credit was extended in a
10 commercial vendor’s ordinary course of business, the Commission will consider whether:
11 (1) the commercial vendor followed its established procedures and its past practice in
12 approving the extension of credit; (2) the commercial vendor received prompt payment in
13 full for prior extensions of credit to the same committee; and (3) the extension of credit
14 conformed to the usual and normal practice in the vendor’s trade or industry.⁶⁵ The
15 Commission has explained that “[t]hese factors are intended to provide guidance The
16 factors need not be accorded equal weight and in some cases a single factor may not be
17 dispositive.”⁶⁶

⁶² 52 U.S.C. § 30101(8)(A)(i).

⁶³ 11 C.F.R. § 100.55 (explaining that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3(b).

⁶⁴ 11 C.F.R. § 116.1(c).

⁶⁵ 11 C.F.R. § 116.3(c).

⁶⁶ Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26378, 26281 (June 27, 1990); *see* Advisory Op. 1991-20 (Call Interactive) at 4.

1 **1. Ohio First Did Not Report Contributions From Majority**
2 **Strategies and Grassroots Targeting in the form of Extensions of**
3 **Credit**

4 As an initial matter, both Majority Strategies and Grassroots Targeting appear to be in
5 the business of providing the services they provided to Ohio First, and, therefore, appear to
6 be “commercial vendors.”⁶⁷ From Ohio First’s reporting of debts, it appears that both of
7 these vendors extended credit to Ohio First by providing services in advance of payment.

8 Ohio First made almost half a million dollars in independent expenditures before the
9 Ohio primary election, without having reported raising any contributions at all.⁶⁸ Ohio First
10 reported that it did not receive any contributions before the primary and that it was operating
11 through debt.⁶⁹ The available information supports a conclusion that Majority Strategies’s
12 and Grassroots Targeting’s extensions of credit to Ohio First were contributions because they
13 were not made in the ordinary course of the vendors’ business and on terms similar to those
14 the vendors would make available to non-political customers of similar risk and size of
15 obligation.

16 At the time the vendors extended credit, Ohio First was a brand-new committee with
17 no apparent money or assets. It had no payment history with Majority Strategies, Grassroots
18 Targeting, or any other vendor. Majority Strategies nevertheless provided Ohio First services
19 worth over \$400,000 before Ohio First had received any contributions.⁷⁰ Similarly,

⁶⁷ See 11 C.F.R. § 116.1(c).

⁶⁸ Ohio First, 2018 Pre-Primary Report at 2, 10-13; Ohio First, 2018 July Quarterly Report at 6-7, 15-17.

⁶⁹ Ohio First, 2018 Pre-Primary Report at 2 (summarizing Ohio First’s debts and obligations); Ohio First, 2018 July Quarterly Report at 2, 6-7 (showing that Ohio First began receiving money on May 10, 2018).

⁷⁰ See Ohio First, 2018 Pre-Primary Report at 2, 6-13; Ohio First, 2018 July Quarterly Report at 6-7, 9-17.

1 Grassroots Targeting provided services to Ohio First worth \$60,000 despite Ohio First's lack
2 of funds and credit history; this included survey research reportedly conducted on or before
3 April 9, 2018, that Ohio First did not report as debt in its Pre-Primary Report.⁷¹

4 Respondents assert that Majority Strategies's extension of credit was not an in-kind
5 contribution because the credit was extended in the ordinary course of Majority Strategies's
6 business.⁷² In his declaration, the Chief Executive Officer of Majority Strategies avers that
7 Majority Strategies "has routinely extended credit to its clients as an ordinary part of its
8 business" and that its "clients . . . are expected to repay their extensions of credit in full."⁷³

9 Notwithstanding this representation regarding extensions of credit to clients of
10 Majority Strategies, the submitted declaration does not explain the circumstances under
11 which Majority Strategies will extend credit, including whether it extends credit as a matter
12 of course to all clients, whether it routinely extends credit to a committee with no pre-
13 existing history and no evidence that it had or could obtain funds to repay the extensions of
14 credit, and whether it routinely extends credit in amounts over \$400,000 to all or some
15 clients.⁷⁴ Respondents did not provide copies of agreements or any other supporting
16 documentation explaining the terms and conditions for the extensions of credit to Ohio First.
17 The response, including the declaration, also does not provide specific examples of credit
18 that has been extended to other similarly situated clients. Finally, the Respondents rely on

⁷¹ Ohio First, 2018 July Quarterly Report at 6-9; MUR 7476 Compl. at 3 (citing *Morning Score*, which reported that "Grassroots Targeting conducted the survey for Ohio First PAC, a pro-Renacci group.").

⁷² Joint Resp. at 2.

⁷³ *Id.* at Ex. B ¶¶ 4-5.

⁷⁴ *See id.* at 2.

1 assertions from Majority Strategies's CEO to indicate that the vendor followed a "common"
2 practice "throughout the political consulting industry" of "extending credit for various terms
3 of payment," but provides no evidence as to industry practice of extending credit to newly
4 established nonconnected political committees with no assets.⁷⁵ Moreover, an examination
5 of all reports filed with the Commission found no instances, besides those involving Ohio
6 First and MeToo Ohio, in which Majority Strategies extended credit to a committee that did
7 not report receipts prior to or at the same time that it reported the debt.⁷⁶

8 Respondents provide even less information to explain the extension of credit between
9 Ohio First and Grassroots Targeting.⁷⁷ Hazelwood headed both Ohio First and Grassroots
10 Targeting, but Respondents do not provide any documentation or specific examples to
11 support their statement that Grassroots Targeting invoiced Ohio First "according to its
12 regular business practices."⁷⁸ Respondents provided no information, for example, indicating

⁷⁵ *Id.* at 2, Ex. B ¶ 6.

⁷⁶ Although our review located 65 committees (other than Ohio First and MeToo Ohio) that reported debts to Majority Strategies, we located no other similarly situated committees, *i.e.*, newly formed committees with no reported receipts, to which Majority Strategies extended credit of similar size of obligation. Fifty-eight of the 65 committees to which Majority Strategies extended credit — 20 party committees (or reporting components of party committees), 34 candidate committees, and four IEOPCs — had an established history of reported receipts and payments to vendors. The remaining seven committees that reported debt to Majority Strategies — four candidate committees, and three IEOPCs — had modest assets and reported debts to Majority Strategies in amounts between \$250 and \$5,000, amounts which are of significantly smaller size of obligation than those apparently extended to Ohio First and MeToo Ohio. *See* Fedra for Congress, 2009 Year-End Report (Jan. 26, 2010) (reporting \$1,920 debt); Shawn Nelson for Congress, 2018 April Quarterly Report (Apr. 15, 2018) (reporting \$2,115 debt); John Ward for Congress, Inc., 2017 Year-End Report (Jan. 31, 2018) (reporting \$5,000 debt alongside payments to Majority Strategies of \$17,006, although subsequently amended to remove the entry indicating debt owed to Majority Strategies); Adrian Smith for Congress, 2005 October Quarterly Report (Oct. 15, 2005) (reporting \$3,250 debt, later amended to reflect debt of \$3,340); Freedom Path Action Network, 2012 July Quarterly Report (July 13, 2012) (reporting \$250 debt); Freedom Country Fund, 2012 July Quarterly Report (July 13, 2012) (reporting \$250 debt); Freedom Pioneers Action Network, July Quarterly Report (July 13, 2012) (reporting \$250 debt).

⁷⁷ *See* Joint Response at 4.

⁷⁸ *Id.*

1 that Grassroots Targeting entered into any written agreements with Ohio First, reflecting
2 Grassroots Targeting's normal business practices in extending credit, or substantiating that
3 the credit extended by Grassroots Targeting was done in the ordinary course of business.⁷⁹
4 Moreover, an examination of all reports filed with the Commission found no other instances
5 in which Grassroots Targeting extended credit to a similarly situated nonconnected
6 committee.⁸⁰ The Joint Response defends only the adequacy of the "Political Strategy
7 Consulting" description that Ohio First provided when it reported the debt incurred for the
8 survey, which it reported based on the date Ohio First was invoiced instead of the date when
9 the debt was reportedly incurred.⁸¹

10 Thus, despite the assertions of Majority Strategies and Grassroots Targeting that they
11 engaged in ordinary business practices consistent with prior practices, the available
12 information does not support the contention that the vendors' extension of credit to Ohio
13 First was ordinary. This conclusion is consistent with several matters in which the
14 Commission found reason to believe that a vendor's extension of credit to a committee was
15 not made in the vendor's ordinary course of business and was, therefore, a contribution.

16

17

⁷⁹ Cf. Factual & Legal Analysis at 13-14, MUR 6141 (Friends of Dave Reichert) ("F&LA").

⁸⁰ There are five other committees that have reported debt to Grassroots Targeting: a national party committee, a state party committee, and three principal campaign committees of candidates who had run for election in at least one prior election cycle. Each of the committees thus had a substantial history of reported receipts and payments to vendors prior to the extension of credit by Grassroots Targeting.

⁸¹ Joint Response at 4. Commission regulations require a political committee to report debts in excess of \$500 as of the date on which the debt is incurred. 11 C.F.R. § 104.11(b). If the exact amount of the debt is unknown, the political committee should report an estimate and state that the amount reported is an estimate. *Id.*

1
2
3
4 in MUR 5635, the Commission found reason
5 to believe a vendor extended credit outside its ordinary course of business and industry
6 practice on a record that included facts, as ascertained in a Commission audit, similar to the
7 ones in this matter: a vendor extended over \$1 million credit on a short term contract to a
8 committee with which it had no prior business relationship.⁸³ In another matter, the
9 Commission found reason to believe on a record, like the one here, with little or no
10 information demonstrating or substantiating that the vendors' extensions of credit had been
11 made in the ordinary course of business.⁸⁴ Conversely, the Commission has found no reason
12 to believe a vendor's extension of credit constituted a contribution where the record included
13 documents, sworn affidavits, or other evidence demonstrating that the extensions of credit
14 had been made in the vendor's ordinary course of business or on terms substantially similar
15 to extensions of credit to other clients of similar risk and size of obligation.⁸⁵

8

⁸³ Gen. Counsel's Brief at 8-9, MUR 5635 (Conservative Leadership PAC, *et al.*). The Commission conciliated with the committee and vendor on the extension of credit violation.

⁸⁴ See Factual & Legal Analysis at 6, 8-10, MUR 6101 (Heller *et al.*) (also noting the lack of information about the vendor's advance payment policies, billing cycles, and details about the terms of the transactions with the committee). The Commission took no further action after the initial reason to believe finding, once the investigation established that the vendor *had* extended credit in the ordinary course of business and on similar terms to other clients. See Second Gen. Counsel's Rpt. at 5, MUR 6101 (Heller *et al.*) (discussing prior matters in which the Commission took no further action after a reason to believe finding on an extension of credit outside ordinary business practices).

⁸⁵ See, e.g., F&LA at 8-14, MUR 6141 (Friends of Dave Reichert) (finding no reason to believe that the credit extension was outside the vendor's ordinary course of business on a record including vendor's sworn declaration providing a detailed explanation of its business practices, publicly available information (including a Federal Communication Commission opinion letter) about industry standards, and the respondent committee's

1 Here, Respondents did not submit written agreements or other documents to support
2 their contentions that the vendors acted in their ordinary course of business and, in the case
3 of Grassroots Targeting, they did not provide any sworn statement for the record. The
4 available record does not include information to support the notion that Ohio First's vendors
5 extended credit in the ordinary course of their business and on terms substantially similar to
6 extensions of credit to any other debtor of similar risk and size of obligation. Given Ohio
7 First's status as a newly formed committee that had no assets and, in the case of Majority
8 Strategies, no apparent relationship with the vendor, and given the size of Ohio First's
9 obligations, the available information indicates that the vendors' extensions of credit were
10 not made in the ordinary course of business and therefore should have been reported as
11 contributions by Ohio First.

12 Although Ohio First has repaid all its debt to Majority Strategies and half of its debt
13 to Grassroots Targeting, Ohio First's failure to report these extensions of credit as in-kind
14 contributions deprived Ohio voters of information they were entitled to know, namely who
15 was funding Ohio First's pro-Renacci independent expenditures.⁸⁶ As a result of Ohio First's
16 failure to file timely 24- and 48-hour reports and a timely Pre-Primary Report, voters were
17 deprived of information reflecting that the organization's independent expenditures were
18 funded via vendors' extensions of credit with lengthy terms of repayment — roughly six

history of prompt payments to the vendor in earlier election cycles); MUR 5939 (Moveon.org *et al.*) (finding no reason to believe that *New York Times* extended credit outside of ordinary business practices on record that included the terms of the transaction in question as well as the paper's usual terms and practices).

⁸⁶ See *Citizens United v. FEC*, 558 U.S. 310, 367 (2010) (explaining that the Supreme Court has consistently upheld the Act's disclosure provisions, which provide the electorate with "information about the sources of election-related spending" to "help citizens make informed choices in the political marketplace") (internal quotation marks and citations omitted).

1 months after Ohio First made the independent expenditures. That credit repayment period
2 undermines the contention that such payment terms were commercially reasonable,
3 especially considering Majority Strategies's expectation that its clients "promptly [repay]"
4 extensions of credit."⁸⁷

5 Because there is not sufficient information to support Respondents' contention that
6 the extensions of credit from Majority Strategies and Grassroots Targeting were provided in
7 the ordinary course of business, and the available information indicates that they may not
8 have been provided in the ordinary course of business, we recommend that the Commission
9 find reason to believe that Ohio First failed to report contributions received from its vendors
10 in violation of 52 U.S.C. § 30104(b)(3)(A).⁸⁸

11 As to the vendors, Ohio First as an IEOPC was permitted to accept funds outside the
12 Act's otherwise applicable contribution limits and source prohibitions, including corporate
13 contributions.⁸⁹ Because the vendors appear to have been permitted to make contributions to
14 an IEOPC⁹⁰ and have no independent reporting obligation for making the contributions under
15 the Act, we recommend that that Commission find no reason to believe that Majority

⁸⁷ See 11 C.F.R. § 100.55 (stating that a failure "to make a reasonable attempt to collect [a] debt[will result in a contribution]"); Joint Response, Ex. B ("Clients of Majority Strategies are expected to repay their extensions of credit in full, and in nearly all cases have promptly repaid those extensions of credit."); Ohio First, 2018 Post-General Report at 11-13 (showing that Ohio First did not completely repay Majority Strategies for April and May expenditures until the period from October 18 to November 26, 2018).

⁸⁸ If the extensions of credit were in-kind contributions, then Ohio First failed to report these as both contributions and corresponding disbursements.

⁸⁹ See 52 U.S.C. §§ 30116(a)(1), 30118(a); 11 C.F.R. § 114.2, note to paragraph (b) (clarifying that corporations can make contributions to nonconnected political committees); *see generally SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc); Advisory Op. 2010-11 (Commonsense Ten).

⁹⁰ See, e.g., 11 C.F.R. § 114.2, note to paragraph (b). Although IEOPCs may not accept contributions from certain sources, such as foreign nationals, the record includes no indication that Majority Strategies or Grassroots Targeting is prohibited from contributing to an IEOPC.

1 Strategies and Grassroots Targeting violated the Act in connection with the extension of
2 credit to Ohio First.⁹¹

3 **2. MeToo Ohio Did Not Report Contributions From Majority**
4 **Strategies in the Form of Extensions of Credit**

5 MeToo Ohio similarly contracted with Majority Strategies to make independent
6 expenditures worth \$231,004, but did not make a single payment until 50 days after the first
7 service was rendered and did not report any disbursements to Majority Strategies until after
8 the election. Although MeToo Ohio reported contributions from one donor prior to the
9 election, those receipts post-dated over \$27,000 in debt to Majority Strategies and the cash on
10 hand (\$44,000) reported in its Pre-General Report was not nearly enough to pay its additional
11 outstanding debts to Majority Strategies (totalling \$156,004).⁹²

12 The available information supports a conclusion that Majority Strategies's extensions
13 of credit to MeToo Ohio were contributions because they were not made in the ordinary
14 course of business and on terms similar to those the vendors would make available to non-
15 political customers of similar risk and size of obligation. At the time that Majority Strategies
16 first extended credit, MeToo Ohio was a brand-new committee with no apparent money or
17 assets. MeToo Ohio had no payment history with Majority Strategies or any other vendor.
18 Majority Strategies nevertheless provided MeToo Ohio with services worth over \$230,000
19 before it received any payment from MeToo Ohio.

⁹¹ The MUR 7476 Complaint poses an alternative theory alleging that Majority Strategies was responsible for unreported independent expenditures. *See* MUR 7476 Compl. at 14-15. However, the available information shows that Majority Strategies was ultimately paid for the cost of its services and there is no information to suggest that the Majority Strategies made the independent expenditures itself.

⁹² MeToo Ohio, 2018 Pre-General Report at 2, 7.

1 Respondents assert that Majority Strategies's extension of credit to MeToo Ohio was
2 not an in-kind contribution because it was consistent with Majority Strategies's ordinary
3 business practices. In support of this assertion, MeToo Ohio and Majority Strategies point to
4 Ohio Conservatives for a Change, another IEOPC that was active during the time period at
5 issue, as an example of another group to which Majority Strategies has regularly extended
6 credit.⁹³ However, Ohio Conservatives for a Change was not similarly situated to MeToo
7 Ohio. Prior to the time that Majority Strategies extended credit to Ohio Conservatives for a
8 Change, that committee had reported receipts totaling over \$1.3 million and cash on hand,
9 after a payment to a different vendor, of almost \$1.3 million; in other words, it already had a
10 track record of raising funds and paying vendors.⁹⁴ Further, as mentioned above, an
11 examination of all reports filed with the Commission found no instances, besides those
12 involving Ohio First and MeToo Ohio, in which Majority Strategies extended credit to a
13 nonconnected committee that did not report assets prior to or at the same time that it reported
14 the debt.⁹⁵

15 Moreover, Respondents do not explain why Majority Strategies extended credit to a
16 cashless new committee or why it continued to extend credit when it had not received a
17 payment in any amount. Nor do Respondents explain what, if any, process or analysis
18 Majority Strategies undertook when deciding to extend credit to MeToo Ohio. And

⁹³ Majority Strategies Resp. at 3; MeToo Ohio, Resp. at 3.

⁹⁴ Ohio Conservatives for a Change, 2017 Mid-Year Report (July 28, 2017).

⁹⁵ *See supra*, n. 76 (including Ohio Conservatives for a Change among the four IEOPCs with established history of reported receipts and payments to vendors to which Majority Strategies had extended credit).

1 Respondents provided no copies of agreements or any other supporting documentation
2 explaining the terms and conditions for the extensions of credit to the Committee.
3 Because the available information is not sufficient to support Respondents' assertion
4 that the extension of credit from Majority Strategies was offered in the ordinary course of
5 business, and the available information indicates that it may not have been provided in the
6 ordinary course of business, we recommend that the Commission find reason to believe that
7 MeToo Ohio failed to report contributions received from its vendor in violation of 52 U.S.C.
8 § 30104(b)(3)(A).

9 As discussed above, because the vendor appears to have been permitted to make
10 contributions to an IEOPC and have no independent reporting obligation for making the
11 contributions under the Act, we recommend that that Commission find no reason to believe
12 that Majority Strategies violated the Act in connection with its extension of credit to Me Too
13 Ohio.⁹⁶

14 **C. Coordinated Communications**

15 Under the Act and Commission regulations, a "contribution" includes an in-kind
16 contribution.⁹⁷ When a person makes an expenditure in cooperation, consultation or in
17 concert with, or at the request or suggestion of, a candidate or the candidate's authorized
18 committee or their agents, it is treated as in in-kind contribution.⁹⁸ A "coordinated

⁹⁶ The MUR 7542 Complaint poses an alternative theory alleging that Majority Strategies was responsible for unreported independent expenditures. *See* MUR 7542 Compl. at 19. However, the available information shows that Majority Strategies was ultimately paid for the cost of its services and there is no information to suggest that the Majority Strategies itself made the independent expenditures.

⁹⁷ 52 U.S.C §§ 30101(8)(A)(i); 11 C.F.R. § 100.52(d).

⁹⁸ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

1 communication” constitutes an in-kind contribution from the person paying for the
 2 communication to the candidate or political committee with whom, or with which, it is
 3 coordinated.⁹⁹ Any person who is otherwise prohibited from making contributions to
 4 candidates under the Act or Commission regulations is prohibited from making an in-kind
 5 contribution in the form of paying for a coordinated communication.¹⁰⁰ “An independent
 6 expenditure-only political committee ‘may not make contributions to candidates or political
 7 party committees, including in-kind contributions such as coordinated communications.’”¹⁰¹

8 A communication is “coordinated” with a candidate, an authorized committee, a
 9 political party committee, or agent thereof, if the communication: (1) is paid for, partly or
 10 entirely, by a person other than the candidate, authorized committee, political party
 11 committee, or agent thereof; (2) satisfies at least one of the “content standards” at 11 C.F.R.
 12 § 109.21(c); and (3) satisfies at least one of the “conduct standards” at 11 C.F.R.
 13 § 109.21(d).¹⁰²

14 One of the standards by which the conduct prong may be met is the “common

⁹⁹ 11 C.F.R. § 109.21(b)(1).

¹⁰⁰ *See* 52 U.S.C. §§ 30116(f), 30118(a).

¹⁰¹ Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 (quoting Advisory Op. 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011))); *see also* Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

¹⁰² 11 C.F.R. § 109.21(a). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a public communication that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

1 vendor” standard.¹⁰³ The “common vendor” standard has three elements: (1) the person
2 paying for the communication uses a “commercial vendor” to create, produce, or distribute
3 the communication; (2) the vendor, including any owner, officer, or employee, previously
4 provided certain enumerated services — including, *inter alia*, “development of media
5 strategy,” polling, fundraising, “developing the content of a public communication,”
6 “Producing a public communication,” “identifying voters,” or “consulting or otherwise
7 providing political or media advice”¹⁰⁴ — to the candidate identified in the communication
8 (or that candidate’s opponent) during the previous 120 days; and (3) the commercial vendor
9 uses or conveys to the person paying for the communication:

10 (A) Information about the campaign plans, projects, activities, or needs of the
11 clearly identified candidate, the candidate’s opponent, or a political party
12 committee, and that information is material to the creation, production, or
13 distribution of the communication; or

14
15 (B) Information used previously by the commercial vendor in providing
16 services to the candidate who is clearly identified in the communication, or
17 the candidate’s authorized committee, the candidate’s opponent, the
18 opponent’s authorized committee, or a political party committee, and that
19 information is material to the creation, production, or distribution of the
20 communication.¹⁰⁵

¹⁰³ 11 C.F.R. § 109.21(d)(4).

¹⁰⁴ 11 C.F.R. § 109.21(d)(4)(ii).

¹⁰⁵ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

1 The common vendor conduct standard is not satisfied if a commercial vendor has established
 2 and implemented a written firewall policy that meets certain requirements, so long as
 3 material information is not shared.¹⁰⁶

4 The payor of a communication that is coordinated through use of a common vendor
 5 makes a contribution to the candidate, but the candidate or authorized committee “does not
 6 receive or accept an in-kind contribution” resulting from coordination through a common
 7 vendor unless the communication was made at the request or suggestion of, with the material
 8 involvement of, or after substantial discussions with, the candidate or authorized
 9 committee.¹⁰⁷

10 **1. The Commission Should Dismiss the Allegation that Ohio First**
 11 **Made Coordinated Communications**

12 The MUR 7476 Complaint alleges that Ohio First made prohibited in-kind
 13 contributions to the Renacci Committee by coordinating communications through Majority
 14 Strategies as the common vendor.¹⁰⁸ This allegation is based solely on the fact that Majority
 15 Strategies provided services to both Ohio First and the Renacci Committee.

¹⁰⁶ 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants, and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

¹⁰⁷ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

¹⁰⁸ MUR 7476 Compl. at 13-14. The Complaint does not identify the particular advertisements that were allegedly coordinated.

1 Respondents do not dispute that Ohio First's communications satisfy the "payment"
2 and "content" prongs of the coordinated communication provision.¹⁰⁹ With respect to the
3 conduct prong of the coordinated communications test, the first element of the common
4 vendor standard is satisfied here because Majority Strategies appears to be a "commercial
5 vendor" in that its usual and normal business entails providing communications consulting
6 services to committees, and Ohio First hired Majority Strategies to create, produce, or
7 distribute communications.¹¹⁰ The second "common vendor" element is also satisfied here,
8 since the available information indicates that Majority Strategies provided several of the
9 enumerated services to the Renacci Committee within 120 days prior to providing
10 communications services to Ohio First.¹¹¹

11 With respect to the third element of the common vendor standard, however, there is
12 no information that Majority Strategies used or conveyed information to Ohio First about the
13 Renacci Committee's "plans, projects, activities, or needs."¹¹² The MUR 7476 Complaint
14 merely asserts that Majority Strategies conveyed this information to Ohio First because the
15 two committees employed a common vendor, which is not a sufficient basis to find
16 coordination.¹¹³ In crafting the common vendor rules, the Commission specifically rejected

¹⁰⁹ *See* Joint Response at 2-3.

¹¹⁰ *See* 11 C.F.R. § 109.21(d)(4)(i).

¹¹¹ 11 C.F.R. § 109.21(d)(4)(ii); *see also* Renacci for US Senate, 2018 April Quarterly Report at 101 (Apr. 12, 2018) (showing a February 22, 2018, disbursement to Majority Strategies for "printing"); Ohio First, 2018 Pre-Primary Report at 10 (showing an April 1, 2018, disbursement to Majority Strategies for "Media Placement/Media Production").

¹¹² *See* 11 C.F.R. § 109.21(d)(4)(ii).

¹¹³ *See* MUR 7476 Compl. at 13-14; Second Gen. Counsel's Rpt. at 7, 10, MUR 5502 (Martinez for Senate, *et al.*) (finding no evidence of coordination from the mere presence of a common vendor).

1 the notion that use of a common vendor is impermissible or that it established a presumption
2 of coordination.¹¹⁴

3 Moreover, Respondents provided a written firewall policy that is dated March 2018,
4 which prohibits employees working on opposite sides of the firewall from communicating
5 information about their separate clients; Respondents assert that this policy was signed by
6 each Majority Strategies employee.¹¹⁵ Although Majority Strategies has not identified which
7 employees worked for Ohio First and which worked for the Renacci Committee, or provided
8 specific information as to the operation of the firewall, we also do not have any information
9 to indicate that the firewall was not operative as Respondents assert.

10 Given the conclusory nature of the allegations, and in light of the Respondents'
11 denials, the sworn declaration and firewall policy provided by Majority Strategies, and the
12 absence of information sufficient to support the third element of the common vendor test, the
13 available information does not reasonably support a finding that the conduct prong of the
14 coordinated communications test has been satisfied. Accordingly, we recommend that the
15 Commission dismiss the allegation that Ohio First made or the Renacci Committee accepted
16 a contribution in the form of coordinated communications in violation of 52 U.S.C.
17 §§ 30116(a) or (f), respectively, 30118(a), and 11 C.F.R. § 109.21.

18 **2. The Commission Should Dismiss the Allegation that MeToo Ohio**
19 **Made a Coordinated Communication**

20 The MUR 7542 Complaint alleges that MeToo Ohio made illegal in-kind
21 contributions to the Renacci Committee by coordinating communications through Majority

¹¹⁴ See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003).

¹¹⁵ See Joint Response, Exs. B-C.

1 Strategies, a common vendor. Unlike the coordinated communications allegations against
2 Ohio First, the Complaint in MUR 7542 identifies specific communications that were
3 allegedly coordinated between MeToo Ohio and the Renacci Committee, noting that the two
4 committees launched similar ads on the same day.¹¹⁶

5 A review of the advertisements reveals significant similarities between those
6 distributed by MeToo Ohio and by the Renacci Committee.¹¹⁷ In particular, both ads
7 contrast allegations that Renacci's opponent Brown physically abused his then-wife in the
8 1980s with the Senate Democrats' treatment of Brett Kavanaugh during his Supreme Court
9 confirmation process.¹¹⁸ Moreover, both ads feature excerpts from the same restraining order
10 that Brown's ex-wife sought in the 1980s and use similar visuals, such as highlighted text
11 from the court documents.¹¹⁹

12 Respondents do not dispute that MeToo Ohio's communications satisfy the
13 "payment" and "content" prongs of the coordinated communication test. With respect to the
14 conduct prong of the coordinated communications test, the first element of the common
15 vendor standard is satisfied here because Majority Strategies appears to be a "commercial
16 vendor" in that its usual and normal business entails providing communications consulting

¹¹⁶ MUR 7542 Compl. at 14-17.

¹¹⁷ Compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2xyppoM_MM with Renacci for US Senate, *Washington's Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

¹¹⁸ Compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2xyppoM_MM with Renacci for US Senate, *Washington's Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

¹¹⁹ Compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2xyppoM_MM with Renacci for US Senate, *Washington's Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

1 services to committees, and MeToo Ohio hired Majorities Strategies to create, produce, or
2 distribute communications.

3 It also appears that the second “common vendor” element may be satisfied here. The
4 Renacci Committee paid Majority Strategies for “production and delivery” six times between
5 August and November 2018.¹²⁰ Although Respondents deny that the Renacci Committee ad
6 at issue was created by Majority Strategies,¹²¹ the Renacci Committee acknowledges
7 contracting with Majority Strategies “for website design/maintenance and for the production
8 of campaign materials, including palm cards, literature, bumper stickers, and yard signs.”¹²²
9 The nature of the “campaign materials” and “literature” produced by Majority Strategies for
10 the Renacci Committee are not described, but it appears from the available information that it
11 is possible that Majority Strategies produced a public communication within 120 days prior
12 to developing the ad for MeToo Ohio.¹²³ Because the second element of the common vendor
13 standard does not require that the commercial vendor worked on communications for the
14 candidate committee, but requires only that the vendor provided the candidate or authorized
15 committee one of the enumerated services within 120 days of the vendor working on
16 communications for the third party, and because Majority Strategies’s production of public
17 communications for the Renacci Committee during the relevant time period appears to

¹²⁰ Renacci for US Senate, Amend. 2018 October Quarterly Report at 937, 941, 965, and 1007 (Mar. 25, 2019); Renacci for US Senate, Amend. 2018 Pre-General Report at 1209, (Mar. 25, 2019); Renacci for US Senate, Amend. 2018 Post-General Report at 824 (Mar. 25, 2019).

¹²¹ See Majority Strategies Resp. at 2 (asserting that Majority Strategies “did not produce or place any media ads for the Renacci campaign”); Renacci Resp. at 2.

¹²² Renacci Resp. at 2. The Renacci Committee denies that Majority Strategies was involved in its television or digital advertising. *Id.*

¹²³ See 11 C.F.R. § 100.26; 11 C.F.R. §109.21(d)(4)(ii).

1 indicate provision of at least one of the enumerated services, the second element of the
2 common vendor standard appears to be satisfied.

3 With respect to the third element of the common vendor standard, Majority Strategies
4 denies that it provided any campaign information from the Renacci Committee to MeToo
5 Ohio and asserts that it had a firewall in place that prevented any information that may have
6 been obtained from the Renacci Committee from being used in projects for MeToo Ohio.¹²⁴
7 The Renacci Committee similarly denies that its vendor OnMessage, Inc., which produced
8 the ad at issue, had any discussions about the Renacci campaign with MeToo Ohio or
9 Majority Strategies.¹²⁵

10 However, Majority Strategies did not provide a copy of the firewall that governed its
11 engagement by the Renacci Committee.¹²⁶ Nor does Majority Strategies identify which
12 employees worked for MeToo Ohio or the Renacci Committee, or assert that these
13 employees agreed to comply with the firewall implemented by Majority Strategies. Further,
14 MeToo Ohio does not deny obtaining information regarding the Renacci Committee's "plans,
15 projects, activities, or needs" and the Renacci Committee does not deny obtaining
16 information regarding MeToo Ohio's "plans, projects, activities, or needs."

17 Instead, Respondents assert that the similarities between the two ads was coincidental
18 because the information utilized to create the ads was a matter of public knowledge.¹²⁷ In

¹²⁴ Majority Strategies Resp. at 2.

¹²⁵ Renacci Resp. at 2, Anderson Affidavit.

¹²⁶ Although it is possible that the firewall that governed Majority Strategies's relationships with Renacci for US Sentate and MeToo Ohio is the firewall it provided in response to MUR 7476, Majority Strategies does not make such an assertion.

¹²⁷ MeToo Ohio Resp. at 2; Majority Strategies Resp. at 2; Renacci Resp. at 2-4.

1 particular, Respondents assert that Kavanaugh's confirmation, and Brown's opposition to it,
2 was covered by the media in September and October 2018, and it is therefore unsurprising
3 that an IEOPC and campaign opposing Brown would make it an issue in the election.¹²⁸ The
4 Renacci Committee asserts that the issue of the restraining order that Brown's ex-wife sought
5 in the 1980s has been raised in nearly all of Brown's election campaigns. The Renacci
6 Committee also asserts that MeToo Ohio had released a similar one-minute video almost a
7 month earlier, on or about September 13, 2018,¹²⁹ and that Renacci had publicly made the
8 connection between Senate Democrats' treatment of Kavanaugh and the allegations against
9 Brown at least as early as September 19, 2018.¹³⁰

10 Viewed in total, the available information is insufficient to give rise to a reasonable
11 inference that MeToo Ohio made or the Renacci Committee accepted a contribution in the
12 form of a coordinated communication. The two ads are very similar, Majority Strategies
13 failed to provide a copy of the firewall it alleges existed or confirm that its employees
14 complied by the firewall, and neither MeToo Ohio nor the Renacci Committee denies
15 receiving information about the other's plans. However, the allegation is somewhat
16 speculative, the issue of the restraining order that Brown's ex-wife sought in the 1980s was a
17 matter of discussion by the media during the relevant time period, the issue had also been
18 raised in Brown's prior campaigns, and the Renacci Committee's vendor denies discussing
19 the ad with MeToo Ohio and Majority Strategies. Accordingly, we recommend that the

¹²⁸ MeToo Ohio Resp. at 2; Majority Strategies Resp. at 2.

¹²⁹ MeToo Ohio, *Me Too Ohio*, YOUTUBE, available at <https://www.youtube.com/watch?v=U5ACBK4hzO4>. We note, however, that this video does not contain a comparison to the allegations against Brett Kavanaugh.

¹³⁰ Renacci Resp. at 2-3; *id.* at n.9 (citing *Renacci hits 'hypocrisy' of response to Kavanaugh allegation*, FOX NEWS (Sept. 19, 2018), available at <https://video.foxnews.com/v/5837147158001/#sp=show-clips>).

1 Commission dismiss the allegation that MeToo Ohio made and the Renacci Committee
2 accepted a contribution in the form of coordinated communications in violation of 52 U.S.C.
3 §§ 30116(a) or (f), respectively, 30118(a), and 11 C.F.R. § 109.21.

4 **III. INVESTIGATION**

5 The proposed investigation would seek to determine whether the credit extended to
6 Ohio First by its vendors Majority Strategies and Grassroots Targeting and the credit
7 extended to MeToo Ohio by its vendor Majority Strategies were made in the ordinary course
8 of business. We would attempt to conduct the investigation by voluntary means, but we
9 recommend that the Commission authorize compulsory process, as necessary.

10 **IV. RECOMMENDATIONS**

- 11 1. Open a MUR for Pre-MUR 613 and merge that matter into MUR 7348;
- 12 2. Find reason to believe that Ohio First PAC and Julie Dozier in her official
13 capacity as treasurer failed to file a pre-primary report in violation of 52 U.S.C.
14 § 30104(a)(4)(A)(ii) and independent expenditure reports in violation of 52
15 U.S.C. § 30104(g);
- 16 3. Find reason to believe that Ohio First PAC and Julie Dozier in her official capacity
17 as treasurer and MeToo Ohio and Lisa Lisker in her official capacity as treasurer
18 failed to report contributions in the form of extensions of credit in violation of 52
19 U.S.C. § 30104(b)(3)(A);
- 20 4. Find no reason to believe that Majority Strategies, LLC, and Grassroots Targeting
21 LLC violated the Act;
- 22 5. Dismiss the allegation that Ohio First PAC and Julie Dozier in her official capacity
23 as treasurer made and Renacci for US Senate and Russell Corwin in his official
24 capacity as treasurer accepted a contribution in the form of coordinated
25 communications in violation of 52 U.S.C. §§ 30116(a) or (f), 30118(a), and 11
26 C.F.R. § 109.21;
- 27 6. Dismiss the allegation that MeToo Ohio and Lisa Lisker in her official capacity as
28 treasurer made and Renacci for US Senate and Russell Corwin in his official
29 capacity as treasurer accepted a contribution in the form of coordinated
30 communications in violation of 52 U.S.C. §§ 30116(a) or (f), 30118(a), and 11
31 C.F.R. § 109.21;

- 1 7. Approve the attached Factual and Legal Analyses;
- 2 8. Authorize the use of compulsory process, including the issuance of appropriate
- 3 interrogatories, document subpoenas, and deposition subpoenas, as necessary;
- 4 9. Close the file as to Renacci for US Senate and Russell Corwin in his official
- 5 capacity as treasurer, Majority Strategies, LLC, and Grassroots Targeting LLC;
- 6 and
- 7 10. Approve the appropriate letters.

8

9

Lisa J. Stevenson
Acting General Counsel

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11

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13 May 11, 2020

Charles Kitcher

14 Date

Charles Kitcher
Acting Associate General Counsel for Enforcement

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Lynn Y. Tran
Assistant General Counsel

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Kristina Portner

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Kristina M. Portner
Attorney

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Attachments:

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3. Factual and Legal Analysis for Majority Strategies LLC

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4. Factual and Legal Analysis for Grassroots Targeting LLC

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treasurer

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

1
2
3 RESPONDENT: Majority Strategies, LLC MURs 7476 and 7542
4

I. INTRODUCTION

6 These matters each involve allegations relating to independent expenditures made in
7 support of Jim Renacci or in opposition to Renacci's opponent Sherrod Brown in the 2018
8 Senate election in Ohio. Ohio First made such independent expenditures before the Ohio
9 Republican Primary,¹ and MeToo Ohio made such independent expenditures before the Ohio
10 General Election.²

11 The Complaint in MUR 7476 alleges that Ohio First failed to report in-kind
12 contributions from its vendor Majority Strategies, LLC ("Majority Strategies").³ The
13 Complaint in MUR 7542 raises similar allegations that MeToo Ohio failed to report in-kind
14 contributions from its vendor Majority Strategies.⁴ Based on the available information, the
15 Commission finds no reason to believe that Majority Strategies violated the Federal Election
16 Campaign Act of 1971, as amended (the "Act"), in this matter and closes the file as to
17 Majority Strategies.

¹ Ohio First, Majority Strategies, Inc., & Grassroots Targeting LLC, Resp. at 1-2, MUR 7476 (Aug. 9, 2018) ("Joint Response").

² MUR 7542 Compl. at 2 (Nov. 14, 2018).

³ MUR 7476 Compl. at 10-12 (Aug. 9, 2018).

⁴ MUR 7542 Compl. at 2.

1 **II. FACTS**

2 **A. Ohio First PAC**

3 Ohio First is an independent expenditure-only political committee (“IEOPC”) that
4 registered with the Commission on January 21, 2018.⁵ In the weeks leading up to the May 8,
5 2018, Ohio primary election, Ohio First supported the candidacy of Jim Renacci for the
6 Republican nomination for U.S. Senate from Ohio by making nearly half a million dollars in
7 independent expenditures.

8 Ohio First’s Pre-Primary Report covering the period from April 1 through
9 April 18, 2018 disclosed no receipts, no disbursements, no cash on hand, and \$367,667.99 in
10 debts and obligations along with \$302,691.99 in independent expenditures in support of
11 Renacci.⁶ Ohio First timely filed its next report, the July Quarterly Report covering the
12 period from April 19 to June 30, 2018, in which it disclosed receiving its first contributions
13 (\$79,200 in receipts from five contributors), five additional independent expenditures totaling
14 \$169,437.67, and debts and obligations in the amount of \$597,104.66.⁷ Ohio First’s July
15 Quarterly Report disclosed, in addition to all of the previously reported debt that remained
16 due in full, new debts to Majority Strategies for independent expenditures worth
17 \$161,737.67.⁸

⁵ Ohio First, Statement of Organization (Jan. 21, 2018).

⁶ Ohio First, 2018 Pre-Primary Report at 2. In addition to debt to Majority Strategies for the \$302,691.99 in independent expenditures disseminated during the Pre-Primary period, the report also disclosed additional debts to Majority Strategies in the amounts of \$30,000 for “survey research” and \$4,975 for “web service.” Ohio First, 2018 Pre-Primary Report at 2, 6-9.

⁷ Ohio First, 2018 July Quarterly Report at 2, 6-7, 15-17.

⁸ Ohio First, 2018 July Quarterly Report at 2, 9-14.

1 Ohio First's 2018 October Quarterly, Pre-General, Post-General, and 2018 Year-End
2 reports show total receipts of \$925,500 from July 1 through November 26, 2018, and the
3 repayment of nearly all its debt.⁹ Ohio First reported, on its Post-General Report, that it had
4 repaid all its debts to Majority Strategies, which totaled \$537,104.66.¹⁰

5 The MUR 7476 Complaint alleges that Majority Strategies made an in-kind
6 contribution to Ohio First in the form of an extension of credit.¹¹ The MUR 7476 Complaint
7 asserts that Majority Strategies does not ordinarily extend credit to newly formed committees
8 with no cash on hand and that the extensions of credit therefore constitute in-kind
9 contributions to Ohio First that were not reported.¹²

10 In response, Majority Strategies contends that the credit extended by Majority
11 Strategies does not qualify as a contribution because Majority Strategies "has routinely
12 granted credit to hundreds of similarly situated clients" and "typically uses extended
13 repayment terms," which it asserts is a practice common throughout the political consulting
14 industry.¹³ The Chief Executive Officer of Majority Strategies submitted a declaration
15 supporting this position, though the Response includes no specific terms and no documents,
16 such as contracts, corroborating the representations made in the declaration.¹⁴

⁹ Ohio First, 2018 October Quarterly Report at 2 (Oct. 15, 2018); Ohio First, 2018 Pre-General Report at 2 (Oct. 25, 2018); Ohio First, 2018 Post-General Report at 2 (Dec. 6, 2018); Ohio First, 2018 Year-End Report at 2 (Jan. 31, 2019).

¹⁰ Ohio First, 2018 October Quarterly Report at 12-17; Ohio First, 2018 Post-General Report at 7-9, 11.

¹¹ MUR 7476 Compl. at 10-12. The Complaint in MUR 7476 alleges, in the alternative, that Majority Strategies made, but did not report, the independent expenditures reported by Ohio First. *See id.* at 14-15.

¹² *Id.* at 10-11.

¹³ Joint Response at 2.

¹⁴ *Id.* at Ex. B.

1 **B. MeToo Ohio**

2 MeToo Ohio is an IEOPC that registered with the Commission on September 5,
3 2018.¹⁵ In the weeks leading up to the November 6, 2018, Ohio general election, MeToo
4 Ohio spent over half a million dollars in independent expenditures opposing Sherrod Brown,
5 Renacci's opponent in the general election.¹⁶ Most of those independent expenditures were
6 funded by credit extended by Majority Strategies.

7 MeToo Ohio's first report, the 2018 October Quarterly Report, discloses no receipts,
8 no disbursements, no cash on hand, and \$27,004 in debts and obligations to Majority
9 Strategies for independent expenditures opposing Brown.¹⁷ In MeToo Ohio's next report,
10 the Pre-General Report covering the period from October 1 to October 17, 2018, MeToo
11 Ohio disclosed receiving \$220,000 from one contributor, disbursements of \$176,000 to a
12 different vendor (for an independent expenditure, as reported on Schedule E), and debts and
13 obligations of \$156,004 to Majority Strategies.¹⁸

14 MeToo Ohio disclosed its first payments to Majority Strategies on its Post-General
15 Report. In its Post-General Report, covering the period from October 18 to November 26,
16 2018, MeToo Ohio disclosed receiving \$425,000 from three contributors and disbursements
17 of \$442,206, including over \$231,004 to Majority Strategies.¹⁹

¹⁵ MeToo Ohio, Statement of Organization (Sept. 5, 2018).

¹⁶ MeToo Ohio, 2018 October Quarterly Report at 8 (Oct. 14, 2018).

¹⁷ MeToo Ohio, 2018 October Quarterly Report.

¹⁸ MeToo Ohio, 2018 Pre-General Report (Oct. 24, 2018).

¹⁹ MeToo Ohio, 2018 Post-General Report (Dec. 6, 2018). The vast majority of MeToo Ohio's \$645,000 in contributions were received from Ohio First (\$305,000) and from A Public Voice, Inc. (\$315,000). *See*

1 The Complaint in MUR 7542 alleges Majority Strategies made an in-kind
2 contribution to MeToo Ohio in the form of an extension of credit.²⁰ The Complaint asserts
3 that Majority Strategies does not ordinarily extend credit to a newly formed committee that
4 has no cash on hand and no record of fundraising.²¹ The Complaint also alleges that, with
5 the limited exception of Ohio First (which was funding MeToo Ohio), there is no record of
6 Majority Strategies extending six figures of credit to a newly formed committee with no cash
7 on hand.²²

8 Majority Strategies asserts that its extension of credit to MeToo Ohio was consistent
9 with Majority Strategies's ordinary business practices.²³ In particular, Majority Strategies
10 asserts that it "does ads for clients on a post-paid basis in the ordinary course of business"
11 and that "it is not outside normal business practices for production companies to do ads on a
12 post-paid basis."²⁴ Majority Strategies's response does not include specific terms or
13 documents, such as contracts, supporting these assertions regarding the vendor's ordinary
14 business practices.

MeToo Ohio, 2018 Pre-General Report (Oct. 24, 2018); MeToo Ohio, 2018 Post-General Report (Dec. 6, 2018).

²⁰ MUR 7542 Compl. at 17-18. In the alternative, the MUR 7542 Complaint asserts that Majority Strategies failed to report independent expenditures because it was not paid by MeToo Ohio for the independent expenditures. *Id.* at 19.

²¹ *Id.* at 17-18.

²² *Id.* at 18.

²³ Majority Strategies Resp. at 4, MUR 7542 (Jan. 29, 2019) ("Majority Strategies Resp.").

²⁴ Majority Strategies Resp. at 3.

1 **III. LEGAL ANALYSIS**

2 The Act requires each treasurer of a political committee to file reports of receipts and
3 disbursements with the Commission.²⁵ Such reports must include the total amount of
4 contributions received, as well as the identification of each person who made a contribution
5 in excess of \$200 during the reporting period, together with the date and amount of such
6 contribution.²⁶

7 A “contribution” includes “any gift [or] advance . . . of money or anything of value
8 made by any person for the purpose of influencing any election for Federal office.”²⁷ The
9 extension of credit to a political committee by a commercial vendor is a contribution, “unless
10 the credit is extended in the ordinary course of the person’s business and the terms are
11 substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and
12 size of obligation.”²⁸ A “commercial vendor” is any person who provides goods or services
13 to a candidate or political committee, and whose usual and normal business involves the sale,
14 rental, lease, or provision of those goods and services.²⁹

15 Commission regulations state that, in determining whether credit was extended in a
16 commercial vendor’s ordinary course of business, the Commission will consider whether:
17 (1) the commercial vendor followed its established procedures and its past practice in

²⁵ 52 U.S.C. § 30104(a)(1).

²⁶ 52 U.S.C. §§ 30104(b)(2)(A), (b)(3)(A)-(B).

²⁷ 52 U.S.C. § 30101(8)(A)(i).

²⁸ 11 C.F.R. § 100.55 (explaining that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3(b).

²⁹ 11 C.F.R. § 116.1(c).

1 approving the extension of credit; (2) the commercial vendor received prompt payment in
2 full for prior extensions of credit to the same committee; and (3) the extension of credit
3 conformed to the usual and normal practice in the vendor’s trade or industry.³⁰ The
4 Commission has explained that “[t]hese factors are intended to provide guidance The
5 factors need not be accorded equal weight and in some cases a single factor may not be
6 dispositive.”³¹

7 **A. Majority Strategies Made a Contribution to Ohio First in the form of an**
8 **Extension of Credit**

9 As an initial matter, Majority Strategies appears to be in the business of providing the
10 services it provided to Ohio First, and, therefore, appears to be a “commercial vendor.”³²
11 From Ohio First’s reporting of debts, it appears that Majority Strategies extended credit to
12 Ohio First by providing services in advance of payment.

13 Ohio First made almost half a million dollars in independent expenditures before the
14 Ohio primary election, without having reported raising any contributions at all.³³ Ohio First
15 reported that it did not receive any contributions before the primary and that it was operating
16 through debt.³⁴ The available information supports a conclusion that Majority Strategies’s
17 extension of credit to Ohio First was a contributions because it was not made in the ordinary

³⁰ 11 C.F.R. § 116.3(c).

³¹ Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26378, 26281 (June 27, 1990); *see* Advisory Op. 1991-20 (Call Interactive) at 4.

³² *See* 11 C.F.R. § 116.1(c).

³³ Ohio First, 2018 Pre-Primary Report at 2, 10-13; Ohio First, 2018 July Quarterly Report at 6-7, 15-17.

³⁴ Ohio First, 2018 Pre-Primary Report at 2 (summarizing Ohio First’s debts and obligations); Ohio First, 2018 July Quarterly Report at 2, 6-7 (showing that Ohio First began receiving money on May 10, 2018).

1 course of the vendor’s business and on terms similar to those the vendor would make
2 available to non-political customers of similar risk and size of obligation.

3 At the time Majority Strategies extended credit, Ohio First was a brand-new
4 committee with no apparent money or assets. It had no payment history with Majority
5 Strategies or any other vendor. Majority Strategies nevertheless provided Ohio First services
6 worth over \$400,000 before Ohio First had received any contributions.³⁵

7 Respondent asserts that Majority Strategies’s extension of credit was not an in-kind
8 contribution because the credit was extended in the ordinary course of Majority Strategies’s
9 business.³⁶ In his declaration, the Chief Executive Officer of Majority Strategies avers that
10 Majority Strategies “has routinely extended credit to its clients as an ordinary part of its
11 business” and that its “clients . . . are expected to repay their extensions of credit in full.”³⁷

12 Notwithstanding this representation regarding extensions of credit to clients of
13 Majority Strategies, the submitted declaration does not explain the circumstances under
14 which Majority Strategies will extend credit, including whether it extends credit as a matter
15 of course to all clients, whether it routinely extends credit to a committee with no pre-
16 existing history and no evidence that it had or could obtain funds to repay the extensions of
17 credit, and whether it routinely extends credit in amounts over \$400,000 to all or some
18 clients.³⁸ Respondent did not provide copies of agreements or any other supporting
19 documentation explaining the terms and conditions for the extensions of credit to Ohio First.

³⁵ See Ohio First, 2018 Pre-Primary Report at 2, 6-13; Ohio First, 2018 July Quarterly Report at 6-7, 9-17.

³⁶ Joint Resp. at 2.

³⁷ *Id.* at Ex. B ¶¶ 4-5.

³⁸ See *id.* at 2.

1 The response, including the declaration, also does not provide specific examples of credit
2 that has been extended to other similarly situated clients. Finally, the Respondent relies on
3 assertions from Majority Strategies’s CEO to indicate that the vendor followed a “common”
4 practice “throughout the political consulting industry” of “extending credit for various terms
5 of payment,” but provides no evidence as to industry practice of extending credit to newly
6 established nonconnected political committees with no assets.³⁹ Moreover, an examination
7 of all reports filed with the Commission found no instances, besides those involving Ohio
8 First and MeToo Ohio, in which Majority Strategies extended credit to a committee that did
9 not report receipts prior to or at the same time that it reported the debt.⁴⁰

10 Thus, despite the assertions of Majority Strategies that it engaged in ordinary business
11 practices consistent with prior practices, the available information does not support the
12 contention that the extension of credit to Ohio First was ordinary. This conclusion is
13 consistent with several matters in which the Commission found reason to believe that a
14 vendor’s extension of credit to a committee was not made in the vendor’s ordinary course of

³⁹ *Id.* at 2, Ex. B ¶ 6.

⁴⁰ A review located 65 committees (other than Ohio First and MeToo Ohio) that reported debts to Majority Strategies, but did not identify other similarly situated committees, *i.e.*, newly formed committees with no reported receipts, to which Majority Strategies extended credit of similar size of obligation. Fifty-eight of the 65 committees to which Majority Strategies extended credit — 20 party committees (or reporting components of party committees), 34 candidate committees, and four IEOPCs — had an established history of reported receipts and payments to vendors. The remaining seven committees that reported debt to Majority Strategies — four candidate committees, and three IEOPCs — had modest assets and reported debts to Majority Strategies in amounts between \$250 and \$5,000, amounts which are of significantly smaller size of obligation than those apparently extended to Ohio First and MeToo Ohio. *See* Fedra for Congress, 2009 Year-End Report (Jan. 26, 2010) (reporting \$1,920 debt); Shawn Nelson for Congress, 2018 April Quarterly Report (Apr. 15, 2018) (reporting \$2,115 debt); John Ward for Congress, Inc., 2017 Year-End Report (Jan. 31, 2018) (reporting \$5,000 debt alongside payments to Majority Strategies of \$17,006, although subsequently amended to remove the entry indicating debt owed to Majority Strategies); Adrian Smith for Congress, 2005 October Quarterly Report (Oct. 15, 2005) (reporting \$3,250 debt, later amended to reflect debt of \$3,340); Freedom Path Action Network, 2012 July Quarterly Report (July 13, 2012) (reporting \$250 debt); Freedom Country Fund, 2012 July Quarterly Report (July 13, 2012) (reporting \$250 debt); Freedom Pioneers Action Network, July Quarterly Report (July 13, 2012) (reporting \$250 debt).

1 business and was, therefore, a contribution. The Commission has found reason to believe
2 vendors extended credit to an IEOPC outside its ordinary course of business and industry
3 practice when the IEOPC lacked a prior business relationship with its vendors or a well-
4 established track record for payment and when the extension was out of line with the
5 vendors' prior extensions of credit (as reported to the Commission by other committees). In
6 MUR 5635, the Commission found reason to believe a vendor extended credit outside its
7 ordinary course of business and industry practice on a record that included facts, as
8 ascertained in a Commission audit, similar to the ones in this matter: a vendor extended over
9 \$1 million credit on a short term contract to a committee with which it had no prior business
10 relationship.⁴¹ In another matter, the Commission found reason to believe on a record, like
11 the one here, with little or no information demonstrating or substantiating that the vendors'
12 extensions of credit had been made in the ordinary course of business.⁴² Conversely, the
13 Commission has found no reason to believe a vendor's extension of credit constituted a
14 contribution where the record included documents, sworn affidavits, or other evidence
15 demonstrating that the extensions of credit had been made in the vendor's ordinary course of

⁴¹ Gen. Counsel's Brief at 8-9, MUR 5635 (Conservative Leadership PAC, *et al.*). The Commission conciliated with the committee and vendor on the extension of credit violation.

⁴² See Factual & Legal Analysis at 6, 8-10, MUR 6101 (Heller *et al.*) (also noting the lack of information about the vendor's advance payment policies, billing cycles, and details about the terms of the transactions with the committee). The Commission took no further action after the initial reason to believe finding, once the investigation established that the vendor *had* extended credit in the ordinary course of business and on similar terms to other clients. See Second Gen. Counsel's Rpt. at 5, MUR 6101 (Heller *et al.*) (discussing prior matters in which the Commission took no further action after an RTB finding on an extension of credit outside ordinary business practices).

1 business or on terms substantially similar to extensions of credit to other clients of similar
2 risk and size of obligation.⁴³

3 Here, Respondent did not submit written agreements or other documents to support
4 their contentions that it acted in its ordinary course of business. The available record does
5 not include information to support the notion that Ohio First's vendor extended credit in the
6 ordinary course of its business and on terms substantially similar to extensions of credit to
7 any other debtor of similar risk and size of obligation. Given Ohio First's apparently high
8 risk, as a newly formed committee that had no assets, no apparent relationship with the
9 vendor, and given the size of Ohio First's obligations, the available information indicates that
10 Majority Strategies's extension of credit was not made in the ordinary course of business and
11 therefore should have been reported as contributions by Ohio First.

12 However, Ohio First as an IEOPC was permitted to accept funds outside the Act's
13 otherwise applicable contribution limits and source prohibitions, including corporate
14 contributions.⁴⁴ Because Majority Strategies appears to have been permitted to make
15 contributions to an IEOPC⁴⁵ and has no independent reporting obligation for making the

⁴³ See, e.g., F&LA at 8-14, MUR 6141 (Friends of Dave Reichert) (finding no reason to believe that the credit extension was outside the vendor's ordinary course of business on a record including vendor's sworn declaration providing a detailed explanation of its business practices, publicly available information (including a Federal Communication Commission opinion letter) about industry standards, and the respondent committee's history of prompt payments to the vendor in earlier election cycles); MUR 5939 (Moveon.org *et al.*) (finding no reason to believe that *New York Times* extended credit outside of ordinary business practices on record that included the terms of the transaction in question as well as the paper's usual terms and practices).

⁴⁴ See 52 U.S.C. §§ 30116(a)(1), 30118(a); 11 C.F.R. § 114.2, note to paragraph (b) (clarifying that corporations can make contributions to nonconnected political committees); see generally *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc); Advisory Op. 2010-11 (Commonsense Ten).

⁴⁵ See, e.g., 11 C.F.R. § 114.2, note to paragraph (b). Although IEOPCs may not accept contributions from certain sources, such as foreign nationals, the record includes no indication that Majority Strategies is prohibited from contributing to an IEOPC.

1 contributions under the Act, the Commission finds no reason to believe that Majority
2 Strategies violated the Act in connection with the extension of credit to Ohio First.

3 **B. Majority Strategies Made a Contribution to MeToo Ohio in the form of**
4 **an Extension of Credit**

5 MeToo Ohio similarly contracted with Majority Strategies to make independent
6 expenditures worth \$231,004, but did not make a single payment until 50 days after the first
7 service was rendered and did not report any disbursements to Majority Strategies until after
8 the election. Although MeToo Ohio reported contributions from one donor prior to the
9 election, those receipts post-dated over \$27,000 in debt to Majority Strategies and the cash on
10 hand (\$44,000) reported in its Pre-General Report was not nearly enough to pay its additional
11 outstanding debts to Majority Strategies (totalling \$156,004).⁴⁶

12 The available information supports a conclusion that Majority Strategies's extension
13 of credit to MeToo Ohio was a contribution because it was not made in the ordinary course
14 of business and on terms similar to those the vendor would make available to non-political
15 customers of similar risk and size of obligation. At the time that Majority Strategies first
16 extended credit, MeToo Ohio was a brand-new committee with no apparent money or assets.
17 MeToo Ohio had no payment history with Majority Strategies or any other vendor. Majority
18 Strategies nevertheless provided MeToo Ohio with services worth over \$230,000 before it
19 received any payment from MeToo Ohio.

20 Respondent asserts that Majority Strategies's extension of credit to MeToo Ohio was
21 not an in-kind contribution because it was consistent with Majority Strategies's ordinary

⁴⁶ MeToo Ohio, 2018 Pre-General Report at 2, 7.

1 business practices. In support of this assertion, Majority Strategies points to Ohio
2 Conservatives for a Change, another IEOPC that was active during the time period at issue,
3 as an example of another group to which Majority Strategies has regularly extended credit.⁴⁷
4 However, Ohio Conservatives for a Change was not similarly situated to MeToo Ohio. Prior
5 to the time that Majority Strategies extended credit to Ohio Conservatives for a Change, that
6 committee had reported receipts totaling over \$1.3 million and cash on hand, after a payment
7 to a different vendor, of almost \$1.3 million; in other words, it already had a track record of
8 both raising funds and paying vendors.⁴⁸ Further, as mentioned above, an examination of all
9 reports filed with the Commission found no instances, besides those involving Ohio First and
10 MeToo Ohio, in which Majority Strategies extended credit to a nonconnected committee that
11 did not report assets prior to or at the same time that it reported the debt.⁴⁹

12 Moreover, Respondent does not explain why Majority Strategies extended credit to a
13 cashless new committee or why it continued to extend credit when it had not received a
14 payment in any amount. Nor does Respondent explain what, if any, process or analysis
15 Majority Strategies undertook when deciding to extend credit to MeToo Ohio. And
16 Respondent provided no copies of agreements or any other supporting documentation
17 explaining the terms and conditions for the extensions of credit to the Committee.

18 However, MeToo Ohio as an IEOPC was permitted to accept funds outside the Act's
19 otherwise applicable contribution limits and source prohibitions, including corporate

⁴⁷ Majority Strategies Resp. at 3.

⁴⁸ Ohio Conservatives for a Change, 2017 Mid-Year Report (July 28, 2017).

⁴⁹ *See supra*, n. 40 (including Ohio Conservatives for a Change among the four IEOPCs with established history of reported receipts and payments to vendors to which Majority Strategies had extended credit).

1 contributions.⁵⁰ Because Majority Strategies appears to have been permitted to make
2 contributions to an IEOPC and has no independent reporting obligation for making the
3 contributions under the Act, the Commission finds no reason to believe that Majority
4 Strategies violated the Act in connection with its extension of credit to Me Too Ohio.⁵¹

⁵⁰ See generally, *SpeechNow.org*, 599 F.3d 686; Advisory Op. 2010-11 (Commonsense Ten); see also 52 U.S.C. §§ 30116(a)(1), 30118(a).

⁵¹ The MUR 7542 Complaint poses an alternative theory alleging that Majority Strategies was responsible for unreported independent expenditures. See MUR 7542 Compl. at 19. However, the available information shows that Majority Strategies was ultimately paid for the cost of its services and there is no information to suggest that the Majority Strategies made the independent expenditures itself.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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3 RESPONDENT: Grassroots Targeting LLC MUR 7476
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I. INTRODUCTION

6 This matter involves allegations that Ohio First failed to report contributions from its
7 vendor Grassroots Targeting LLC (“Grassroots Targeting”).¹ Based on the available
8 information, the Commission finds no reason to believe that Grassroots Targeting violated
9 the Federal Election Campaign Act of 1971, as amended (the “Act”), in this matter and
10 closes the file as to Grassroots Targeting.

II. FACTS

12 Ohio First is an independent expenditure-only political committee (“IEOPC”) that
13 registered with the Commission on January 21, 2018.² In the weeks leading up to the May 8,
14 2018, Ohio primary election, Ohio First supported the candidacy of Jim Renacci for the
15 Republican nomination for U.S. Senate from Ohio by making nearly half a million dollars in
16 independent expenditures.

17 Most of Ohio First’s activity occurred during April and May 2018.³ Ohio First’s Pre-
18 Primary Report disclosed no receipts, no disbursements, no cash on hand, and \$367,667.99 in
19 debts and obligations along with \$302,691.99 in independent expenditures in support of
20 Renacci.⁴ Ohio First timely filed its next report, the July Quarterly Report covering the

¹ MUR 7476 Compl. at 10-12 (Aug. 9, 2018).

² Ohio First, Statement of Organization (Jan. 21, 2018).

³ Ohio First, 2018 Pre-Primary Report at 10-13; Ohio First, 2018 July Quarterly Report at 15-17.

⁴ Ohio First, 2018 Pre-Primary Report at 2.

1 period from April 19 to June 30, 2018, in which it disclosed receiving its first contributions
2 (\$79,200 in receipts from five contributors), five additional independent expenditures totaling
3 \$169,437.67, and debts and obligations in the amount of \$597,104.66.⁵ Ohio First’s July
4 Quarterly Report disclosed, in addition to all of the previously reported debt that remained
5 due in full, new debts to Majority Strategies for independent expenditures worth \$161,737.67
6 and \$60,000 owed to Grassroots Targeting — a political research firm headed by Blaise
7 Hazelwood, who was also Executive Director of Ohio First — for “political strategy
8 consulting.”⁶

9 According to the Complaint, Grassroots Targeting had conducted survey research for
10 Ohio First sometime on or before April 9, 2018.⁷ Respondent asserts “Grassroots Targeting
11 invoiced Ohio First for services rendered on June 22, 2018.”⁸ Ohio First did not report any
12 April disbursements to Grassroots Targeting and first reported its \$60,000 debt to Grassroots
13 Targeting in the 2018 July Quarterly Report, which covered activity from April 19 to June
14 30, 2018.⁹

⁵ Ohio First, 2018 July Quarterly Report at 2, 6-7, 15-17.

⁶ Ohio First, 2018 July Quarterly Report at 2, 9-14; Grassroots Targeting, <https://www.grassrootstargeting.com/> (last visited Apr. 22, 2020).

⁷ See MUR 7476 Compl. at 3 (citing *Morning Score*, POLITICO, Apr. 9, 2018, <https://www.politico.com/newsletters/morning-score/2018/04/09/countdown-to-scott-campaign-launch-162837> (“*Morning Score*”) (“Grassroots Targeting conducted the survey for Ohio First PAC, a pro-Renacci group.”)).

⁸ See Ohio First, Majority Strategies, Inc., & Grassroots Targeting LLC, Resp. at 4, MUR 7476 (Aug. 9, 2018) (“Joint Response”). The Joint Response is ambiguous as to whether the \$60,000 in services (reported in Ohio First’s July Quarterly 2018 Report as debt owed to Grassroots Targeting) were rendered in June 2018, invoiced in June 2018, or both.

⁹ See *id.*

1 Ohio First's 2018 October Quarterly, Pre-General, Post-General, and 2018 Year-End
2 reports show total receipts of \$925,500 from July 1 through November 26, 2018, and the
3 repayment of nearly all its debt.¹⁰ Ohio First reported, on its Post-General Report, that it had
4 repaid \$30,000 of its \$60,000 debt to Grassroots Targeting.¹¹ In its 2020 April Quarterly
5 Report, Ohio First continued to report a \$30,000 debt to Grassroots Targeting.¹²

6 The Complaint alleges that Grassroots Targeting made an in-kind contribution to
7 Ohio First in the form of an extension of credit.¹³ Grassroots Targeting's Response does not
8 explain its business practices with regard to extensions of credit or the repayment terms of
9 such credit, but states that Ohio First accurately reported the services provided by Grassroots
10 Targeting, noting that the description of the services rendered was "adequate."¹⁴ Further,
11 Respondent asserts that Grassroots Targeting invoiced Ohio First for services rendered on
12 June 22, 2018 and that Ohio First subsequently reported the debt on its 2018 July Quarterly
13 Report.¹⁵

¹⁰ Ohio First, 2018 October Quarterly Report at 2 (Oct. 15, 2018); Ohio First, 2018 Pre-General Report at 2 (Oct. 25, 2018); Ohio First, 2018 Post-General Report at 2 (Dec. 6, 2018); Ohio First, 2018 Year-End Report at 2 (Jan. 31, 2019).

¹¹ Ohio First, 2018 October Quarterly Report at 12-17; Ohio First, 2018 Post-General Report at 7-9, 11.

¹² Ohio First, 2020 April Quarterly Report at 7.

¹³ MUR 7476 Compl. at 10-12.

¹⁴ Joint Response at 1, 4-5.

¹⁵ *Id.*

1 **III. LEGAL ANALYSIS**

2 The Act requires each treasurer of a political committee to file reports of receipts and
3 disbursements with the Commission.¹⁶ Such reports must include the total amount of
4 contributions received, as well as the identification of each person who made a contribution
5 in excess of \$200 during the reporting period, together with the date and amount of such
6 contribution.¹⁷

7 A “contribution” includes “any gift [or] advance . . . of money or anything of value
8 made by any person for the purpose of influencing any election for Federal office.”¹⁸ The
9 extension of credit to a political committee by a commercial vendor is a contribution, “unless
10 the credit is extended in the ordinary course of the person’s business and the terms are
11 substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and
12 size of obligation.”¹⁹ A “commercial vendor” is any person who provides goods or services
13 to a candidate or political committee, and whose usual and normal business involves the sale,
14 rental, lease, or provision of those goods and services.²⁰

15 Commission regulations state that, in determining whether credit was extended in a
16 commercial vendor’s ordinary course of business, the Commission will consider whether:
17 (1) the commercial vendor followed its established procedures and its past practice in

¹⁶ 52 U.S.C. § 30104(a)(1).

¹⁷ 52 U.S.C. §§ 30104(b)(2)(A), (b)(3)(A)-(B).

¹⁸ 52 U.S.C. § 30101(8)(A)(i).

¹⁹ 11 C.F.R. § 100.55 (explaining that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3(b).

²⁰ 11 C.F.R. § 116.1(c).

1 approving the extension of credit; (2) the commercial vendor received prompt payment in
2 full for prior extensions of credit to the same committee; and (3) the extension of credit
3 conformed to the usual and normal practice in the vendor’s trade or industry.²¹ The
4 Commission has explained that “[t]hese factors are intended to provide guidance The
5 factors need not be accorded equal weight and in some cases a single factor may not be
6 dispositive.”²²

7 As an initial matter, Grassroots Targeting appears to be in the business of providing
8 the services they provided to Ohio First, and, therefore, appears to be a “commercial
9 vendor.”²³ From Ohio First’s reporting of debts, it appears that Grassroots Targeting
10 extended credit to Ohio First by providing services in advance of payment.

11 Ohio First made almost half a million dollars in independent expenditures before the
12 Ohio primary election, without having reported raising any contributions at all.²⁴ Ohio First
13 reported that it did not receive any contributions before the primary and that it was operating
14 through debt.²⁵ The available information supports a conclusion that Grassroots Targeting’s
15 extension of credit to Ohio First was a contribution because it was not made in the ordinary
16 course of the vendor’s business and on terms similar to those the vendor would make
17 available to non-political customers of similar risk and size of obligation.

²¹ 11 C.F.R. § 116.3(c).

²² Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26378, 26281 (June 27, 1990); *see* Advisory Op. 1991-20 (Call Interactive) at 4.

²³ *See* 11 C.F.R. § 116.1(c).

²⁴ Ohio First, 2018 Pre-Primary Report at 2, 10-13; Ohio First, 2018 July Quarterly Report at 6-7, 15-17.

²⁵ Ohio First, 2018 Pre-Primary Report at 2 (summarizing Ohio First’s debts and obligations); Ohio First, 2018 July Quarterly Report at 2, 6-7 (showing that Ohio First began receiving money on May 10, 2018).

1 At the time that Grassroots Targeting extended credit, Ohio First was a brand-new
2 committee with no apparent money or assets. It had no payment history with Grassroots
3 Targeting or any other vendor. Grassroots Targeting nevertheless provided services to Ohio
4 First worth \$60,000 despite Ohio First's lack of funds and credit history.²⁶

5 Grassroots Targeting provides little information to explain the extension of credit
6 between Ohio First and Grassroots Targeting.²⁷ Hazelwood headed both Ohio First and
7 Grassroots Targeting, but Respondent does not provide any documentation or specific
8 examples to support its statement that Grassroots Targeting invoiced Ohio First "according to
9 its regular business practices."²⁸ Respondent provided no information, for example,
10 indicating that Grassroots Targeting entered into any written agreements with Ohio First,
11 reflecting Grassroots Targeting's normal business practices in extending credit, or
12 substantiating that the credit extended by Grassroots Targeting was done in the ordinary
13 course of business.²⁹ Moreover, an examination of all reports filed with the Commission
14 found no other instances in which Grassroots Targeting extended credit to a similarly situated
15 nonconnected committee.³⁰ The Response defends only the adequacy of the "Political

²⁶ Ohio First, 2018 July Quarterly Report at 6-9; MUR 7476 Compl. at 3 (citing *Morning Score*, which reported that "Grassroots Targeting conducted the survey for Ohio First PAC, a pro-Renacci group.").

²⁷ See Joint Response at 4.

²⁸ *Id.*

²⁹ Cf. Factual & Legal Analysis at 13-14, MUR 6141 (Friends of Dave Reichert) ("F&LA").

³⁰ There are five other committees that have reported debt to Grassroots Targeting: a national party committee, a state party committee, and three principal campaign committees of candidates who had run for election in at least one prior election cycle. Each of the committees thus had a substantial history of reported receipts and payments to vendors prior to the extension of credit by Grassroots Targeting.

1 Strategy Consulting” description that Ohio First provided when it reported the debt incurred
2 for the survey.³¹

3 Thus, despite the assertions of Grassroots Targeting that it engaged in ordinary
4 business practices consistent with prior practices, the available information does not support
5 the contention that the vendor’s extension of credit to Ohio First was ordinary. This
6 conclusion is consistent with several matters in which the Commission found reason to
7 believe that a vendor’s extension of credit to a committee was not made in the vendor’s
8 ordinary course of business and was, therefore, a contribution. The Commission has found
9 reason to believe vendors extended credit to an IEOPC outside their ordinary course of
10 business and industry practice when the IEOPC lacked a prior business relationship with its
11 vendors or a well-established track record for payment and when the extension was out of
12 line with the vendors’ prior extensions of credit (as reported to the Commission by other
13 committees). In MUR 5635, the Commission found reason to believe a vendor extended
14 credit outside its ordinary course of business and industry practice on a record that included
15 facts, as ascertained in a Commission audit, similar to the ones in this matter: a vendor
16 extended over \$1 million credit on a short term contract to a committee with which it had no
17 prior business relationship.³² In another matter, the Commission found reason to believe on a
18 record, like the one here, with little or no information demonstrating or substantiating that the

³¹ Joint Response at 4. Commission regulations require a political committee to report debts in excess of \$500 as of the date on which the debt is incurred. 11 C.F.R. § 104.11(b). If the exact amount of the debt is unknown, the political committee should report an estimate and state that the amount reported is an estimate. *Id.*

³² Gen. Counsel’s Brief at 8-9, MUR 5635 (Conservative Leadership PAC, *et al.*). The Commission conciliated with the committee and vendor on the extension of credit violation.

1 vendors' extensions of credit had been made in the ordinary course of business.³³
2 Conversely, the Commission has found no reason to believe a vendor's extension of credit
3 constituted a contribution where the record included documents, sworn affidavits, or other
4 evidence demonstrating that the extensions of credit had been made in the vendor's ordinary
5 course of business or on terms substantially similar to extensions of credit to other clients of
6 similar risk and size of obligation.³⁴

7 Here, Respondent did not submit written agreements or other documents to support
8 its contentions that it acted in its ordinary course of business and did not provide any sworn
9 statement for the record. The available record does not include information to support the
10 notion that Grassroots Targeting extended credit to Ohio First in the ordinary course of its
11 business and on terms substantially similar to extensions of credit to any other debtor of
12 similar risk and size of obligation. Given Ohio First's status as a newly formed committee
13 that had no assets and given the size of Ohio First's obligations, the available information
14 indicates that Grassroots Targeting's extension of credit was not made in the ordinary course

³³ See Factual & Legal Analysis at 6, 8-10, MUR 6101(Heller *et al.*) (also noting the lack of information about the vendor's advance payment policies, billing cycles, and details about the terms of the transactions with the committee). The Commission took no further action after the initial reason to believe finding, once the investigation established that the vendor *had* extended credit in the ordinary course of business and on similar terms to other clients. See Second Gen. Counsel's Rpt. at 5, MUR 6101 (Heller *et al.*) (discussing prior matters in which the Commission took no further action after an reason to believe finding on an extension of credit outside ordinary business practices).

³⁴ See, e.g., F&LA at 8-14, MUR 6141 (Friends of Dave Reichert) (finding no reason to believe that the credit extension was outside the vendor's ordinary course of business on a record including vendor's sworn declaration providing a detailed explanation of its business practices, publicly available information (including a Federal Communication Commission opinion letter) about industry standards, and the respondent committee's history of prompt payments to the vendor in earlier election cycles); MUR 5939 (Moveon.org *et al.*) (finding no reason to believe that *New York Times* extended credit outside of ordinary business practices on record that included the terms of the transaction in question as well as the paper's usual terms and practices).

1 of business and therefore was a contribution to Ohio First.

2 However, Ohio First as an IEOPC was permitted to accept funds outside the Act's
3 otherwise applicable contribution limits and source prohibitions, including corporate
4 contributions.³⁵ Because Grassroots Targeting appears to have been permitted to make a
5 contribution to an IEOPC³⁶ and had no independent reporting obligation for making the
6 contributions under the Act, the Commission finds no reason to believe that Grassroots
7 Targeting violated the Act in connection with the extension of credit to Ohio First.

³⁵ See 52 U.S.C. §§ 30116(a)(1), 30118(a); 11 C.F.R. § 114.2, note to paragraph (b) (clarifying that corporations can make contributions to nonconnected political committees); *see generally*, *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc); Advisory Op. 2010-11 (Commonsense Ten).

³⁶ *See, e.g.*, 11 C.F.R. § 114.2, note to paragraph (b). Although IEOPCs may not accept contributions from certain sources, such as foreign nationals, the record includes no indication that Grassroots Targeting is prohibited from contributing to an IEOPC.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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RESPONDENTS: Ohio First PAC and MURs 7438 and 7476
Julie Dozier in her official capacity as treasurer

I. INTRODUCTION

These matters were generated by Complaints filed with the Federal Election Commission (the “Commission”) and information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities.¹ The matters each involve allegations relating to reporting of independent expenditures made in support of Jim Renacci in the 2018 Senate election in Ohio. Ohio First PAC and Julie Dozier in her official capacity as treasurer (collectively, “Ohio First” or “Respondents”) made such independent expenditures in support of Jim Renacci before the Ohio Republican Primary and failed to report these independent expenditures on 24- and 48-hour reports and on its Pre-Primary Report.² The Complaint in MUR 7438 raises the same reporting violations by Ohio First,³ while the Complaint in MUR 7476 includes additional allegations that Ohio First failed to report in-kind contributions from its vendors Majority Strategies, LLC (“Majority Strategies”) and Grassroots Targeting LLC (“Grassroots Targeting”), failed to report debts and obligations, and made prohibited contributions to Renacci for US Senate and Russell

¹ See 52 U.S.C. § 30109(a)(1)-(2).

² Ohio First, *Sua Sponte* Submission at 1 (June 29, 2018), Pre-MUR 613 (Ohio First PAC) (“First Submission”); Ohio First PAC, *Sua Sponte* Supp. Submission at 1 (Sept. 28, 2018), Pre-MUR 613 (Ohio First PAC) (“Second Submission”); Ohio First, *Sua Sponte* Second Supp. Submission (Nov. 16, 2018), Pre-MUR 613 (Ohio First PAC) (“Third Submission”); Ohio First, Majority Strategies, Inc., & Grassroots Targeting LLC, Resp. at 1-2, MUR 7476 (Aug. 9, 2018) (“Joint Response”).

³ MUR 7438 Compl. at 5-6 (July 23, 2018).

1 Corwin in his official capacity as treasurer (“Renacci Committee”) in the form of coordinated
2 communications that the Renacci Committee allegedly accepted.⁴

3 Based on the available information, the Commission: (1) finds reason to believe that
4 Ohio First violated 52 U.S.C. § 30104(a)(4)(A)(ii) by failing to timely file a pre-primary
5 report and violated 52 U.S.C. § 30104(g) by failing to report its independent expenditures;
6 (2) finds reason to believe that Ohio First violated 52 U.S.C. § 30104(b)(3) by failing to
7 report contributions received from its vendors in the form of extensions of credit; and (3)
8 dismisses the allegation that Ohio First made a contribution in the form of coordinated
9 communications in violation of 52 U.S.C. §§ 30116(a), 30118(a), and 11 C.F.R. § 109.21.

10 **II. FACTS**

11 Ohio First is an independent expenditure-only political committee (“IEOPC”) that
12 registered with the Commission on January 21, 2018.⁵ In the weeks leading up to the May 8,
13 2018, Ohio primary election, Ohio First supported the candidacy of Jim Renacci for the
14 Republican nomination for U.S. Senate from Ohio by making nearly half a million dollars in
15 independent expenditures, but it did not file reports with the Commission disclosing these
16 independent expenditures until after the primary election.⁶

17 Under the Commission’s reporting schedules for the Ohio primary election, Ohio
18 First was required to file 48-hour independent expenditure reports through April 18, 2018,
19 and 24-hour independent expenditure reports from April 19 to May 6, 2018, as well as a Pre-

⁴ MUR 7476 Compl. at 10-12 (Aug. 9, 2018).

⁵ Ohio First, Statement of Organization (Jan. 21, 2018).

⁶ See First Submission at 1 (stating that Ohio First filed its independent expenditure reports after the primary election); Ohio First, 2018 Pre-Primary Report at 10-13 (June 29, 2018); Ohio First, 2018 July Quarterly Report at 15-17 (July 15, 2018).

Pre-MUR 613 and MURs 7438 and 7476 (Ohio First PAC)

Factual and Legal Analysis

Page 3 of 22

1 Primary Report by April 26, 2018 (covering the period through April 18, 2018). Ohio first
 2 did not report any cash on hand, receipts, disbursements, or debts, and reported no
 3 independent expenditures, until June 29, 2018, more than six weeks after the primary
 4 election.

5 Most of Ohio First's activity occurred during April and May 2018.⁷ During that
 6 period, Ohio First made the following independent expenditures, totaling \$472,129.66:⁸

Distribution or Dissemination	Vendor	Amount
Apr. 1, 2018	Majority Strategies	\$ 25,000.00
Apr. 1, 2018	Majority Strategies	\$ 93,270.00
Apr. 1, 2018	Majority Strategies	\$ 2,500.00
Apr. 2, 2018	Majority Strategies	\$ 52,307.33
Apr. 9, 2018	Majority Strategies	\$ 52,307.33
Apr.16, 2018	Majority Strategies	\$ 52,307.33
Apr. 16, 2018	Majority Strategies	\$ 25,000.00
Apr. 23, 2018	Majority Strategies	\$ 50,314.67
Apr. 30, 2018	Majority Strategies	\$ 51,311.00
May 1, 2018	Ascent Media LLC	\$ 7,700.00
May 1, 2018	Majority Strategies	\$ 58,362.00
May 1, 2018	Majority Strategies	\$ 1,750.00
	Total:	\$ 472,129.66

⁷ First Submission at 1; Ohio First, 2018 Pre-Primary Report at 10-13; Ohio First, 2018 July Quarterly Report at 15-17.

⁸ Ohio First, 2018 Pre-Primary Report at 2, 6-9; Ohio First, 2018 July Quarterly Report at 9-14. The first contribution to Ohio First was made on May 10, 2018, two days after the primary election. Ohio First Receipts, https://www.fec.gov/data/receipts/?two_year_transaction_period=2018&committee_id=C00666750&data_type=processed (last visited Apr. 18, 2020).

1 In a supplemental submission, Ohio First represents that it failed to timely report its
2 independent expenditures because Ohio First’s treasurer was unaware of the expenditures.⁹
3 Ohio First stated that, although it had received invoices from its vendors, it did not pay the
4 invoices because it lacked funds and did not forward the unpaid invoices to Ohio First’s
5 treasurer.¹⁰ Ohio First states that it discovered that it did not file the required reports on or
6 around June 20, 2018, and then conducted an “audit” to review its activity and implemented
7 a new process to route independent expenditure invoices directly to the treasurer upon
8 receipt.¹¹

9 After conducting its internal review, Ohio First filed its *sua sponte* submission with
10 the Commission by letter dated June 29, 2018.¹² At the same time, Ohio First filed
11 independent expenditure reports for the 12 expenditures it made from April 1 through
12 May 1, 2018, and filed its Pre-Primary Report covering the period from April 1 through
13 April 18, 2018. The Pre-Primary Report disclosed no receipts, no disbursements, no cash on
14 hand, and \$367,667.99 in debts and obligations along with \$302,691.99 in independent
15 expenditures in support of Renacci.¹³

⁹ See Second Submission at 1.

¹⁰ *Id.* (explaining, also, that Ohio First’s treasurer is a “professional at a compliance firm”).

¹¹ *Id.* at 2. Ohio First stated that the revised compliance process was not memorialized in any formal written policy because of the “expectation of a limited time duration for Ohio First PAC’s activities.” Third Submission at 3.

¹² First Submission at 1. The letter was received July 2, 2018. *Id.*

¹³ Ohio First, 2018 Pre-Primary Report at 2. In addition to debt to Majority Strategies for the \$302,691.99 in independent expenditures disseminated during the Pre-Primary period, the report also disclosed additional debts to Majority Strategies in the amounts of \$30,000 for “survey research” and \$4,975 for “web service.” Ohio First, 2018 Pre-Primary Report at 2, 6-9.

1 Ohio First timely filed its next report, the July Quarterly Report covering the period
2 from April 19 to June 30, 2018, in which it disclosed receiving its first contributions
3 (\$79,200 in receipts from five contributors), five additional independent expenditures totaling
4 \$169,437.67, and debts and obligations in the amount of \$597,104.66.¹⁴ Ohio First's July
5 Quarterly Report disclosed, in addition to all of the previously reported debt that remained
6 due in full, new debts to Majority Strategies for independent expenditures worth \$161,737.67
7 and \$60,000 owed to Grassroots Targeting — a political research firm headed by Blaise
8 Hazelwood, who was also Executive Director of Ohio First — for “political strategy
9 consulting.”¹⁵ According to the Complaint in MUR 7476, Grassroots Targeting had
10 conducted survey research for Ohio First sometime on or before April 9, 2018;¹⁶
11 Respondents assert “Grassroots Targeting invoiced Ohio First for services rendered on June
12 22, 2018.”¹⁷ Ohio First did not report any April disbursements to Grassroots Targeting and
13 first reported its \$60,000 debt to Grassroots Targeting in the 2018 July Quarterly Report,
14 which covered activity from April 19 to June 30, 2018.¹⁸

¹⁴ Ohio First, 2018 July Quarterly Report at 2, 6-7, 15-17. The five additional independent expenditures were included in Ohio First's July 2, 2018 *sua sponte* submission.

¹⁵ Ohio First, 2018 July Quarterly Report at 2, 9-14; Grassroots Targeting, <https://www.grassrootstargeting.com/> (last visited Apr. 22, 2020); *see also* Third Submission at.1 (referring to emails between Ohio First's treasurer and Executive Director and attaching emails between Hazelwood, using a grassrootstargeting.com email address, and the treasurer).

¹⁶ *See* MUR 7476 Compl. at 3 (citing *Morning Score*, POLITICO, Apr. 9, 2018, <https://www.politico.com/newsletters/morning-score/2018/04/09/countdown-to-scott-campaign-launch-162837> (“*Morning Score*”) (“Grassroots Targeting conducted the survey for Ohio First PAC, a pro-Renacci group.”)).

¹⁷ *See* Joint Response at 4. The Joint Response is ambiguous as to whether the \$60,000 in services (reported in Ohio First's July Quarterly 2018 Report as debt owed to Grassroots Targeting) were rendered in June 2018, invoiced in June 2018, or both.

¹⁸ *See id.*

1 Ohio First's 2018 October Quarterly, Pre-General, Post-General, and 2018 Year-End
2 reports show total receipts of \$925,500 from July 1 through November 26, 2018, and the
3 repayment of nearly all its debt.¹⁹ Ohio First reported, on its Post-General Report, that it had
4 repaid all its debts to Majority Strategies, which totaled \$537,104.66, and repaid \$30,000 of
5 its \$60,000 debt to Grassroots Targeting.²⁰ In its 2020 April Quarterly Report, Ohio First
6 continued to report a \$30,000 debt to Grassroots Targeting.²¹

7 In addition to the independent expenditure reporting violations raised in the *sua*
8 *sponte* submission and the Complaint in MUR 7438, the MUR 7476 Complaint also alleges
9 that Ohio First failed to properly report the extensions of credit by Majority Strategies as in-
10 kind contributions (with corresponding reporting of disbursements) and failed to properly
11 report in-kind contributions from (or debts owed to) Grassroots Targeting.²² The MUR 7476
12 Complaint asserts that Majority Strategies does not ordinarily extend credit to newly formed
13 committees with no cash on hand and that the extensions of credit therefore constitute in-kind
14 contributions to Ohio First that were not reported.²³ Similarly, the MUR 7476 Complaint
15 asserts that the survey conducted by Grassroots Targeting was either a contribution or a
16 reportable debt if Grassroots Targeting extended credit to Ohio First.²⁴

¹⁹ Ohio First, 2018 October Quarterly Report at 2 (Oct. 15, 2018); Ohio First, 2018 Pre-General Report at 2 (Oct. 25, 2018); Ohio First, 2018 Post-General Report at 2 (Dec. 6, 2018); Ohio First, 2018 Year-End Report at 2 (Jan. 31, 2019).

²⁰ Ohio First, 2018 October Quarterly Report at 12-17; Ohio First, 2018 Post-General Report at 7-9, 11.

²¹ Ohio First, 2020 April Quarterly Report at 7.

²² MUR 7476 Compl. at 10-12. The Complaint in MUR 7476 alleges, in the alternative, that Majority Strategies made, but did not report, the independent expenditures reported by Ohio First. *See id.* at 14-15.

²³ *Id.* at 10-11.

²⁴ *Id.* at 12.

1 In response, Ohio First, Majority Strategies, and Grassroots Targeting contend that
2 the credit extended by Majority Strategies does not qualify as a contribution because
3 Majority Strategies “has routinely granted credit to hundreds of similarly situated clients”
4 and “typically uses extended repayment terms,” which it asserts is a practice common
5 throughout the political consulting industry.²⁵ The Chief Executive Officer of Majority
6 Strategies submitted a declaration supporting this position, though the Joint Response
7 includes no specific terms and no documents, such as contracts, corroborating the
8 representations made in the declaration.²⁶ The Joint Response does not explain Grassroots
9 Targeting’s business practices with regard to extensions of credit or the repayment terms of
10 such credit, but states that Ohio First accurately reported the services provided by Grassroots
11 Targeting, contending that the description of the services rendered was “adequate.”²⁷
12 Further, Respondents assert that Grassroots Targeting invoiced Ohio First for services
13 rendered on June 22, 2018, that this was the first date on which Ohio First’s Treasurer
14 became aware of the debt, and that Ohio First subsequently reported the debt on its 2018 July
15 Quarterly Report.²⁸

16 In addition to the alleged reporting violations, the MUR 7476 Complaint also alleges
17 that Ohio First made excessive and prohibited in-kind contributions to the Renacci
18 Committee by coordinating communications through Majority Strategies as a common

²⁵ Joint Response at 2.

²⁶ *Id.* at Ex. B.

²⁷ *Id.* at 1, 4-5.

²⁸ *Id.*

1 vendor.²⁹ In response to the coordination allegations, Majority Strategies and Ohio First
2 state that there is no information indicating that the Renacci Committee and Ohio First shared
3 information.³⁰ They further explain that Majority Strategies employs a firewall to prevent
4 employees working with IEOPCs from working with candidates' authorized committees, and
5 vice-versa.³¹

6 **III. LEGAL ANALYSIS**

7 **A. There is Reason to Believe that Ohio First Failed to Timely File Its** 8 **Independent Expenditure Reports and Pre-Primary Report**

9 Under the Act and Commission regulations, political committees other than
10 authorized committees must report their independent expenditures.³² Every political
11 committee that makes independent expenditures must report them in its regularly scheduled
12 disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).³³ Depending on the
13 aggregate dollar amounts and timing of the independent expenditures, a political committee
14 that makes or contracts to make independent expenditures must also report the independent
15 expenditures within 24 or 48 hours.³⁴ In addition, political committees including IEOPCs

²⁹ MUR 7476 Compl. at 13-14.

³⁰ Joint Response at 3.

³¹ *Id.*

³² 52 U.S.C. § 30104(b)(4)(H)(iii); *see also* 11 C.F.R. § 104.3(b)(1)(vii).

³³ 11 C.F.R. § 104.4(a).

³⁴ A political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must report these expenditures within 48 hours (in "48-hour reports"). 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). These 48-hour reports must be filed by the end of the second day "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(b)(2). A political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election must report the expenditures within 24 hours (in "24-hour reports"). 52 U.S.C. § 30104(g)(1); 11

1 that make expenditures in connection with a primary election must file a pre-primary report
 2 no later than 12 days before that primary, disclosing all receipts and disbursements as of the
 3 20th day before the primary election.³⁵

4 Ohio First was under an obligation to disclose the independent expenditures made on
 5 or before April 18, 2018, within 48 hours of the communications' public distribution or
 6 dissemination.³⁶ Similarly, Ohio First was required to disclose the independent expenditures
 7 made between April 19 and May 6, 2018, within 24 hours of the communications' public
 8 distribution or dissemination.³⁷

9 Ohio First voluntarily self-disclosed reporting violations related to over \$470,000 in
 10 independent expenditures and does not deny that it failed to timely file the associated 24-
 11 hour, 48-hour, and Pre-Primary Reports.³⁸ Specifically, Ohio First failed to timely file 24-
 12 Hour Reports disclosing \$169,437.67 in independent expenditures and 48-Hour Reports
 13 disclosing \$302,691.99 in independent expenditures.³⁹ Ohio First also acknowledged that it
 14 did not file its Pre-Primary Report, an election-sensitive report, until more than six weeks
 15 after it was due.⁴⁰ Accordingly, the Commission finds reason to believe that Ohio First

C.F.R. §§ 104.4(c), 109.10(d). These 24-hour reports must be filed before midnight on the day following the date on which the communication is publicly disseminated. 11 C.F.R. § 104.4(c).

³⁵ 52 U.S.C. § 30104(a)(4)(A); 11 C.F.R. § 104.5(c)(1).

³⁶ 11 C.F.R. § 104.4(b).

³⁷ 11 C.F.R. § 104.4(c).

³⁸ First Submission at 1; Second Submission at 1-2; Third Submission at 1.

³⁹ First Submission at 1.

⁴⁰ *Id.* Because Ohio First filed the election sensitive 24- hour, 48-hour, and Pre-Primary Reports after the date of the primary election, they are deemed “not filed” rather than filed late. *See* 11 C.F.R. § 111.43(d)(1), (e) (defining “election sensitive reports” and explaining their treatment as late or not filed).

1 violated 52 U.S.C. § 30104(a)(4)(A)(ii) by failing to timely file a pre-primary report and 52
2 U.S.C. § 30104(g) by failing to report its independent expenditures.

3 **B. There is Reason to Believe Ohio First Failed to Report In-Kind**
4 **Contributions in the form of Extensions of Credit From its Vendors**

5 The Act requires each treasurer of a political committee to file reports of receipts and
6 disbursements with the Commission.⁴¹ Such reports must include the total amount of
7 contributions received, as well as the identification of each person who made a contribution
8 in excess of \$200 during the reporting period, together with the date and amount of such
9 contribution.⁴²

10 A “contribution” includes “any gift [or] advance . . . of money or anything of value
11 made by any person for the purpose of influencing any election for Federal office.”⁴³ The
12 extension of credit to a political committee by a commercial vendor is a contribution, “unless
13 the credit is extended in the ordinary course of the person’s business and the terms are
14 substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and
15 size of obligation.”⁴⁴ A “commercial vendor” is any person who provides goods or services
16 to a candidate or political committee, and whose usual and normal business involves the sale,
17 rental, lease, or provision of those goods and services.⁴⁵

⁴¹ 52 U.S.C. § 30104(a)(1).

⁴² 52 U.S.C. §§ 30104(b)(2)(A), (b)(3)(A)-(B).

⁴³ 52 U.S.C. § 30101(8)(A)(i).

⁴⁴ 11 C.F.R. § 100.55 (explaining that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3(b).

⁴⁵ 11 C.F.R. § 116.1(c).

1 Commission regulations state that, in determining whether credit was extended in a
2 commercial vendor's ordinary course of business, the Commission will consider whether:
3 (1) the commercial vendor followed its established procedures and its past practice in
4 approving the extension of credit; (2) the commercial vendor received prompt payment in
5 full for prior extensions of credit to the same committee; and (3) the extension of credit
6 conformed to the usual and normal practice in the vendor's trade or industry.⁴⁶ The
7 Commission has explained that "[t]hese factors are intended to provide guidance The
8 factors need not be accorded equal weight and in some cases a single factor may not be
9 dispositive."⁴⁷

10 As an initial matter, both Majority Strategies and Grassroots Targeting appear to be in
11 the business of providing the services they provided to Ohio First, and, therefore, appear to be
12 "commercial vendors."⁴⁸ From Ohio First's reporting of debts, it appears that both of these
13 vendors extended credit to Ohio First by providing services in advance of payment.

14 Ohio First made almost half a million dollars in independent expenditures before the
15 Ohio primary election, without having reported raising any contributions at all.⁴⁹ Ohio First
16 reported that it did not receive any contributions before the primary and that it was operating
17 through debt.⁵⁰ The available information supports a conclusion that Majority Strategies's

⁴⁶ 11 C.F.R. § 116.3(c).

⁴⁷ Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26378, 26281 (June 27, 1990); *see* Advisory Op. 1991-20 (Call Interactive) at 4.

⁴⁸ *See* 11 C.F.R. § 116.1(c).

⁴⁹ Ohio First, 2018 Pre-Primary Report at 2, 10-13; Ohio First, 2018 July Quarterly Report at 6-7, 15-17.

⁵⁰ Ohio First, 2018 Pre-Primary Report at 2 (summarizing Ohio First's debts and obligations); Ohio First, 2018 July Quarterly Report at 2, 6-7 (showing that Ohio First began receiving money on May 10, 2018).

1 and Grassroots Targeting’s extensions of credit to Ohio First were contributions because they
2 were not made in the ordinary course of the vendors’ business and on terms similar to those
3 the vendors would make available to non-political customers of similar risk and size of
4 obligation.

5 At the time the vendors extended credit, Ohio First was a brand-new committee with
6 no apparent money or assets. It had no payment history with Majority Strategies, Grassroots
7 Targeting, or any other vendor. Majority Strategies nevertheless provided Ohio First services
8 worth over \$400,000 before Ohio First had received any contributions.⁵¹ Similarly,
9 Grassroots Targeting provided services to Ohio First worth \$60,000 despite Ohio First’s lack
10 of funds and credit history; this included survey research reportedly conducted on or before
11 April 9, 2018, that Ohio First did not report as debt in its Pre-Primary Report.⁵²

12 Respondents assert that Majority Strategies’s extension of credit was not an in-kind
13 contribution because the credit was extended in the ordinary course of Majority Strategies’s
14 business.⁵³ In his declaration, the Chief Executive Officer of Majority Strategies avers that
15 Majority Strategies “has routinely extended credit to its clients as an ordinary part of its
16 business” and that its “clients . . . are expected to repay their extensions of credit in full.”⁵⁴

17 Notwithstanding this representation regarding extensions of credit to clients of
18 Majority Strategies, the submitted declaration does not explain the circumstances under

⁵¹ See Ohio First, 2018 Pre-Primary Report at 2, 6-13; Ohio First, 2018 July Quarterly Report at 6-7, 9-17.

⁵² Ohio First, 2018 July Quarterly Report at 6-9; MUR 7476 Compl. at 3 (citing *Morning Score*, which reported that “Grassroots Targeting conducted the survey for Ohio First PAC, a pro-Renacci group.”).

⁵³ Joint Resp. at 2.

⁵⁴ *Id.* at Ex. B ¶¶ 4-5.

1 which Majority Strategies will extend credit, including whether it extends credit as a matter
2 of course to all clients, whether it routinely extends credit to a committee with no pre-
3 existing history and no evidence that it had or could obtain funds to repay the extensions of
4 credit, and whether it routinely extends credit in amounts over \$400,000 to all or some
5 clients.⁵⁵ Respondents did not provide copies of agreements or any other supporting
6 documentation explaining the terms and conditions for the extensions of credit to Ohio First.
7 The response, including the declaration, also does not provide specific examples of credit
8 that has been extended to other similarly situated clients. Finally, the Respondents rely on
9 assertions from Majority Strategies’s CEO to indicate that the vendor followed a “common”
10 practice “throughout the political consulting industry” of “extending credit for various terms
11 of payment,” but provides no evidence as to industry practice of extending credit to newly
12 established nonconnected political committees with no assets.⁵⁶ Moreover, an examination
13 of all reports filed with the Commission found no instances, besides those involving Ohio
14 First and MeToo Ohio, in which Majority Strategies extended credit to a committee that did
15 not report receipts prior to or at the same time that it reported the debt.⁵⁷

⁵⁵ *See id.* at 2.

⁵⁶ *Id.* at 2, Ex. B ¶ 6.

⁵⁷ A review located 65 committees (other than Ohio First and MeToo Ohio) that reported debts to Majority Strategies, but did not identify other similarly situated committees, *i.e.*, newly formed committees with no reported receipts, to which Majority Strategies extended credit of similar size of obligation. Fifty-eight of the 65 committees to which Majority Strategies extended credit — 20 party committees (or reporting components of party committees), 34 candidate committees, and four IEOPCs — had an established history of reported receipts and payments to vendors. The remaining seven committees that reported debt to Majority Strategies — four candidate committees, and three IEOPCs — had modest assets and reported debts to Majority Strategies in amounts between \$250 and \$5,000, amounts which are of significantly smaller size of obligation than those apparently extended to Ohio First and MeToo Ohio. *See* Fedra for Congress, 2009 Year-End Report (Jan. 26, 2010) (reporting \$1,920 debt); Shawn Nelson for Congress, 2018 April Quarterly Report (Apr. 15, 2018) (reporting \$2,115 debt); John Ward for Congress, Inc., 2017 Year-End Report (Jan. 31, 2018) (reporting \$5,000 debt alongside payments to Majority Strategies of \$17,006, although subsequently amended to remove the entry indicating debt owed to Majority Strategies); Adrian Smith for Congress, 2005 October Quarterly

1 Respondents provide even less information to explain the extension of credit between
2 Ohio First and Grassroots Targeting.⁵⁸ Hazelwood headed both Ohio First and Grassroots
3 Targeting, but Respondents do not provide any documentation or specific examples to
4 support their statement that Grassroots Targeting invoiced Ohio First “according to its
5 regular business practices.”⁵⁹ Respondents provided no information, for example, indicating
6 that Grassroots Targeting entered into any written agreements with Ohio First, reflecting
7 Grassroots Targeting’s normal business practices in extending credit, or substantiating that
8 the credit extended by Grassroots Targeting was done in the ordinary course of business.⁶⁰
9 Moreover, an examination of all reports filed with the Commission found no other instances
10 in which Grassroots Targeting extended credit to a similarly situated nonconnected
11 committee.⁶¹ The Joint Response defends only the adequacy of the “Political Strategy
12 Consulting” description that Ohio First provided when it reported the debt incurred for the
13 survey, which it reported based on the date Ohio First was invoiced instead of the date when
14 the debt was reportedly incurred.⁶²

Report (Oct. 15, 2005) (reporting \$3,250 debt, later amended to reflect debt of \$3,340); Freedom Path Action Network, 2012 July Quarterly Report (July 13, 2012) (reporting \$250 debt); Freedom Country Fund, 2012 July Quarterly Report (July 13, 2012) (reporting \$250 debt); Freedom Pioneers Action Network, July Quarterly Report (July 13, 2012) (reporting \$250 debt).

⁵⁸ See Joint Response at 4.

⁵⁹ *Id.*

⁶⁰ *Cf.* Factual & Legal Analysis at 13-14, MUR 6141 (Friends of Dave Reichert) (“F&LA”).

⁶¹ There are five other committees that have reported debt to Grassroots Targeting: a national party committee, a state party committee, and three principal campaign committees of candidates who had run for election in at least one prior election cycle. Each of the committees thus had a substantial history of reported receipts and payments to vendors prior to the extension of credit by Grassroots Targeting.

⁶² Joint Response at 4. Commission regulations require a political committee to report debts in excess of \$500 as of the date on which the debt is incurred. 11 C.F.R. § 104.11(b). If the exact amount of the debt is unknown, the political committee should report an estimate and state that the amount reported is an estimate. *Id.*

1 Thus, despite the assertions of Majority Strategies and Grassroots Targeting that they
2 engaged in ordinary business practices consistent with prior practices, the available
3 information does not support the contention that the vendors' extension of credit to Ohio
4 First was ordinary. This conclusion is consistent with several matters in which the
5 Commission found reason to believe that a vendor's extension of credit to a committee was
6 not made in the vendor's ordinary course of business and was, therefore, a contribution. The
7 Commission has found reason to believe vendors extended credit to an IEOPC outside its
8 ordinary course of business and industry practice when the IEOPC lacked a prior business
9 relationship with its vendors or a well-established track record for payment and when the
10 extension was out of line with the vendors' prior extensions of credit (as reported to the
11 Commission by other committees). In MUR 5635, the Commission found reason to believe a
12 vendor extended credit outside its ordinary course of business and industry practice on a
13 record that included facts, as ascertained in a Commission audit, similar to the ones in this
14 matter: a vendor extended over \$1 million credit on a short term contract to a committee
15 with which it had no prior business relationship.⁶³ In another matter, the Commission found
16 reason to believe on a record, like the one here, with little or no information demonstrating or
17 substantiating that the vendors' extensions of credit had been made in the ordinary course of
18 business.⁶⁴ Conversely, the Commission has found no reason to believe a vendor's extension

⁶³ Gen. Counsel's Brief at 8-9, MUR 5635 (Conservative Leadership PAC, *et al.*). The Commission conciliated with the committee and vendor on the extension of credit violation.

⁶⁴ See Factual & Legal Analysis at 6, 8-10, MUR 6101(Heller *et al.*) (also noting the lack of information about the vendor's advance payment policies, billing cycles, and details about the terms of the transactions with the committee). The Commission took no further action after the initial reason to believe finding, once the investigation established that the vendor *had* extended credit in the ordinary course of business and on similar terms to other clients. See Second Gen. Counsel's Rpt. at 5, MUR 6101 (Heller *et al.*) (discussing prior matters in which the Commission took no further action after a reason to believe finding on an extension of credit outside ordinary business practices).

1 of credit constituted a contribution where the record included documents, sworn affidavits, or
2 other evidence demonstrating that the extensions of credit had been made in the vendor's
3 ordinary course of business or on terms substantially similar to extensions of credit to other
4 clients of similar risk and size of obligation.⁶⁵

5 Here, Respondents did not submit written agreements or other documents to support
6 their contentions that the vendors acted in their ordinary course of business and, in the case
7 of Grassroots Targeting, they did not provide any sworn statement for the record. The
8 available record does not include information to support the notion that Ohio First's vendors
9 extended credit in the ordinary course of their business and on terms substantially similar to
10 extensions of credit to any other debtor of similar risk and size of obligation. Given Ohio
11 First's status as a newly formed committee that had no assets and, in the case of Majority
12 Strategies, no apparent relationship with the vendor, and given the size of Ohio First's
13 obligations, the available information indicates that the vendors' extensions of credit were
14 not made in the ordinary course of business and therefore should have been reported as
15 contributions by Ohio First.

16 Although Ohio First has repaid all its debt to Majority Strategies and half of its debt
17 to Grassroots Targeting, Ohio First's failure to report these extensions of credit as in-kind
18 contributions deprived Ohio voters of information they were entitled to know, namely who

⁶⁵ See, e.g., F&LA at 8-14, MUR 6141 (Friends of Dave Reichert) (finding no reason to believe that the credit extension was outside the vendor's ordinary course of business on a record including vendor's sworn declaration providing a detailed explanation of its business practices, publicly available information (including a Federal Communication Commission opinion letter) about industry standards, and the respondent committee's history of prompt payments to the vendor in earlier election cycles); MUR 5939 (Moveon.org *et al.*) (finding no reason to believe that *New York Times* extended credit outside of ordinary business practices on record that included the terms of the transaction in question as well as the paper's usual terms and practices).

1 was funding Ohio First’s pro-Renacci independent expenditures.⁶⁶ As a result of Ohio First’s
2 failure to file timely 24- and 48-hour reports and a timely Pre-Primary Report, voters were
3 deprived of information reflecting that the organization’s independent expenditures were
4 funded via vendors’ extensions of credit with lengthy terms of repayment — roughly six
5 months after Ohio First made the independent expenditures. That credit repayment period
6 undermines the contention that such payment terms were commercially reasonable,
7 especially considering Majority Strategies’s expectation that its clients “promptly [repay]”
8 extensions of credit.”⁶⁷

9 Because there is not sufficient information to support Respondents’ contention that
10 the extensions of credit from Majority Strategies and Grassroots Targeting were provided in
11 the ordinary course of business, and the available information indicates that they may not
12 have been provided in the ordinary course of business, the Commission finds reason to
13 believe that Ohio First failed to report contributions received from its vendors in violation of
14 52 U.S.C. § 30104(b)(3)(A).

⁶⁶ See *Citizens United v. FEC*, 558 U.S. 310, 367 (2010) (explaining that the Supreme Court has consistently upheld the Act’s disclosure provisions, which provide the electorate with “information about the sources of election-related spending” to “help citizens make informed choices in the political marketplace.”) (internal quotation marks and citations omitted).

⁶⁷ See 11 C.F.R. § 100.55 (stating that a failure “to make a reasonable attempt to collect [a] debt[will result in a contribution]”); Joint Response, Ex. B (“Clients of Majority Strategies are expected to repay their extensions of credit in full, and in nearly all cases have promptly repaid those extensions of credit.”); Ohio First, 2018 Post-General Report at 11-13 (showing that Ohio First did not completely repay Majority Strategies for April and May expenditures until the period from October 18 to November 26, 2018).

1 **C. The Commission Dismisses the Allegation that Ohio First Made**
 2 **Coordinated Communications**

3 Under the Act and Commission regulations, a “contribution” includes an in-kind
 4 contribution.⁶⁸ When a person makes an expenditure in cooperation, consultation or in
 5 concert with, or at the request or suggestion of, a candidate or the candidate’s authorized
 6 committee or their agents, it is treated as in in-kind contribution.⁶⁹ A “coordinated
 7 communication” constitutes an in-kind contribution from the person paying for the
 8 communication to the candidate or political committee with whom, or with which, it is
 9 coordinated.⁷⁰ Any person who is otherwise prohibited from making contributions to
 10 candidates under the Act or Commission regulations is prohibited from making an in-kind
 11 contribution in the form of paying for a coordinated communication.⁷¹ “An independent
 12 expenditure-only political committee ‘may not make contributions to candidates or political
 13 party committees, including in-kind contributions such as coordinated communications.’”⁷²

14 Under Commission regulations, a communication is “coordinated” with a candidate,
 15 an authorized committee, a political party committee, or agent thereof, if the communication:
 16 (1) is paid for, partly or entirely, by a person other than the candidate, authorized committee,
 17 political party committee, or agent thereof; (2) satisfies at least one of the “content standards”
 18 at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the “conduct standards” at 11 C.F.R.

⁶⁸ 52 U.S.C §§ 30101(8)(A)(i); 11 C.F.R. § 100.52(d).

⁶⁹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

⁷⁰ 11 C.F.R. § 109.21(b)(1).

⁷¹ *See* 52 U.S.C. §§ 30116(f), 30118(a).

⁷² Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 (quoting Advisory Op. 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011))); *see also* Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

1 § 109.21(d).⁷³

2 One of the standards by which the conduct prong may be met is the “common
 3 vendor” standard.⁷⁴ The “common vendor” standard has three elements: (1) the person
 4 paying for the communication uses a “commercial vendor” to create, produce, or distribute
 5 the communication; (2) the vendor, including any owner, officer, or employee, previously
 6 provided certain enumerated services — including, *inter alia*, “development of media
 7 strategy,” polling, fundraising, “developing the content of a public communication,”
 8 “Producing a public communication,” “identifying voters,” or “consulting or otherwise
 9 providing political or media advice”⁷⁵ — to the candidate identified in the communication
 10 (or that candidate’s opponent) during the previous 120 days; and (3) the commercial vendor
 11 uses or conveys to the person paying for the communication:

12 (A) Information about the campaign plans, projects, activities, or needs of the
 13 clearly identified candidate, the candidate’s opponent, or a political party
 14 committee, and that information is material to the creation, production, or
 15 distribution of the communication; or

16
 17 (B) Information used previously by the commercial vendor in providing
 18 services to the candidate who is clearly identified in the communication, or
 19 the candidate’s authorized committee, the candidate’s opponent, the
 20 opponent’s authorized committee, or a political party committee, and that
 21 information is material to the creation, production, or distribution of the

⁷³ 11 C.F.R. § 109.21(a). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a public communication that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

⁷⁴ 11 C.F.R. § 109.21(d)(4).

⁷⁵ 11 C.F.R. § 109.21(d)(4)(ii).

1 communication.⁷⁶

2 The common vendor conduct standard is not satisfied if a commercial vendor has established
3 and implemented a written firewall policy that meets certain requirements, so long as
4 material information is not shared.⁷⁷

5 The payor of a communication that is coordinated through use of a common vendor
6 makes a contribution to the candidate, but the candidate or authorized committee “does not
7 receive or accept an in-kind contribution” resulting from coordination through a common
8 vendor unless the communication was made at the request or suggestion of, with the material
9 involvement of, or after substantial discussions with, the candidate or authorized
10 committee.⁷⁸

11 The MUR 7476 Complaint alleges that Ohio First made prohibited in-kind
12 contributions to the Renacci Committee by coordinating communications through Majority
13 Strategies as the common vendor.⁷⁹ This allegation is based solely on the fact that Majority
14 Strategies provided services to both Ohio First and the Renacci Committee.

⁷⁶ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

⁷⁷ 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants, and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

⁷⁸ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

⁷⁹ MUR 7476 Compl. at 13-14. The Complaint does not identify the particular advertisements that were allegedly coordinated.

1 Respondents do not dispute that Ohio First’s communications satisfy the “payment”
2 and “content” prongs of the coordinated communication provision.⁸⁰ With respect to the
3 conduct prong of the coordinated communications test, the first element of the common
4 vendor standard is satisfied here because Majority Strategies is a “commercial vendor” in
5 that its usual and normal business entails providing communications consulting services to
6 committees, and Ohio First hired Majority Strategies to create, produce, or distribute
7 communications.⁸¹ The second “common vendor” element is also satisfied here, since the
8 available information indicates that Majority Strategies provided several of the enumerated
9 services to the Renacci Committee within 120 days prior to providing communications
10 services to Ohio First.⁸²

11 With respect to the third element of the common vendor standard, however, there is
12 no information that Majority Strategies used or conveyed information to Ohio First about the
13 Renacci Committee’s “plans, projects, activities, or needs.”⁸³ The MUR 7476 Complaint
14 merely asserts that Majority Strategies conveyed this information to Ohio First because the
15 two committees employed a common vendor, which is not alone a sufficient basis to find
16 coordination.⁸⁴

⁸⁰ See Joint Response at 2-3.

⁸¹ See 11 C.F.R. § 109.21(d)(4)(i).

⁸² 11 C.F.R. § 109.21(d)(4)(ii); see also Renacci for US Senate, 2018 April Quarterly Report at 101 (Apr. 12, 2018) (showing a February 22, 2018, disbursement to Majority Strategies for “printing”); Ohio First, 2018 Pre-Primary Report at 10 (showing an April 1, 2018, disbursement to Majority Strategies for “Media Placement/Media Production”).

⁸³ See 11 C.F.R. § 109.21(d)(4)(ii).

⁸⁴ See MUR 7476 Compl. at 13-14; Second Gen. Counsel’s Rpt. at 7, 10, MUR 5502 (Martinez for Senate, *et al.*) (finding no evidence of coordination from the mere presence of a common vendor).

1 Moreover, Respondents provided a written firewall policy that is dated March 2018,
2 which prohibits employees working on opposite sides of the firewall from communicating
3 information about their separate clients; Respondents assert that this policy was signed by
4 each Majority Strategies employee.⁸⁵ Although Majority Strategies has not identified which
5 employees worked for Ohio First and which worked for the Renacci Committee or provided
6 specific information as to the operation of the firewall, we also do not have any information
7 to indicate that the firewall was not operative as Respondents assert.

8 Given the conclusory nature of the allegations, and in light of the Respondents'
9 denials, the sworn declaration and firewall policy provided by Majority Strategies, and the
10 absence of information sufficient to support the third element of the common vendor test, the
11 available information does not reasonably support a finding that the conduct prong of the
12 coordinated communications test has been satisfied. Accordingly, the Commission dismisses
13 the allegation that Ohio First made a contribution in the form of coordinated communications
14 in violation of 52 U.S.C. §§ 30116(a), 30118(a), and 11 C.F.R. § 109.21.

⁸⁵ *See* Joint Response, Exs. B-C.

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FACTUAL AND LEGAL ANALYSIS

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RESPONDENTS: Renacci for US Senate and MURs 7476 and 7542
Russell Corwin in his official capacity as treasurer

I. INTRODUCTION

These matters involve allegations relating to independent expenditures made in support of Jim Renacci or in opposition to Renacci’s opponent Sherrod Brown in the 2018 Senate election in Ohio. The Complaint in MUR 7476 alleges that Renacci for US Senate and Russell Corwin in his official capacity as treasurer (collectively, “Renacci Committee” or “Respondents”) accepted a prohibited contributions from Ohio First in the form of coordinated communications.¹ The Complaint in MUR 7542 raises similar allegations that the Renacci Committee accepted a prohibited contributions from MeToo Ohio in the form of coordinated communications.²

Based on the available information, the Commission dismisses the allegations that the Renacci Committee accepted a contribution from Ohio First or MeToo Ohio in the form of coordinated communications in violation of 52 U.S.C. §§ 30116(f), 30118(a), and 11 C.F.R. § 109.21; (2) dismisses the allegation that the Renacci Committee accepted a contribution from MeToo Ohio in the form of coordinated communications in violation of 52 U.S.C. §§ 30116(f), 30118(a), and 11 C.F.R. § 109.21; and (3) closes the file as to the Renacci Committee.

¹ MUR 7476 Compl. at 10-12 (Aug. 9, 2018).

² MUR 7542 Compl. at 2 (Nov. 14, 2018).

1 **II. FACTS**

2 **A. Ohio First PAC**

3 Ohio First is an independent expenditure-only political committee (“IEOPC”) that
4 registered with the Commission on January 21, 2018.³ In the weeks leading up to the May 8,
5 2018, Ohio primary election, Ohio First supported the candidacy of Jim Renacci for the
6 Republican nomination for U.S. Senate from Ohio by making nearly half a million dollars in
7 independent expenditures. The MUR 7476 Complaint alleges that the Renacci Committee
8 accepted excessive and prohibited in-kind contributions from Ohio First in the form of
9 coordinating communications through Majority Strategies as a common vendor.⁴

10 Information available to the Commission suggests that Majority Strategies employs a
11 firewall to prevent employees working with IEOPCs from working with candidates’
12 authorized committees, and vice-versa.

13 **B. MeToo Ohio**

14 MeToo Ohio is an IEOPC that registered with the Commission on September 5,
15 2018.⁵ In the weeks leading up to the November 6, 2018, Ohio general election, MeToo
16 Ohio spent over half a million dollars in independent expenditures opposing Sherrod Brown,
17 Renacci’s opponent in the general election.⁶ The Complaint in MUR 7542 alleges that the
18 Renacci Committee accepted prohibited and excessive in-kind contributions from MeToo
19 Ohio in the form of coordinating communications through Majority Strategies, a common

³ Ohio First, Statement of Organization (Jan. 21, 2018).

⁴ MUR 7476 Compl. at 13-14.

⁵ MeToo Ohio, Statement of Organization (Sept. 5, 2018).

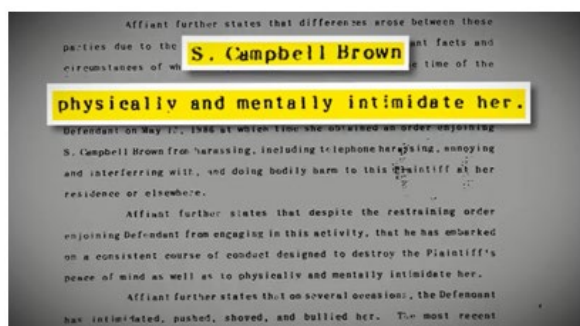
⁶ MeToo Ohio, 2018 October Quarterly Report at 8 (Oct. 14, 2018).

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1 vendor.⁷ In support of this allegation, the Complaint states that the Renacci Committee’s
 2 second television ad was launched on the same day as a MeToo Ohio ad and that the two ads
 3 were “strikingly consistent in theme, tone, and style, including references to the same
 4 excerpted court documents and similar visuals.”⁸ The MUR 7542 Complaint notes, for
 5 example, that each ad included highlighted text of court documents, as in these screen shots
 6 of the ads from the Renacci Committee at left and MeToo at right:⁹



7
 8 The Renacci Committee state that Majority Strategies did not create, produce, or
 9 place any television advertisements for the Renacci Committee.¹⁰ Respondents also assert
 10 that the 11 C.F.R. § 109.21(d)(3) safe harbor was satisfied because the information utilized to
 11 create the ads was a matter of public knowledge.¹¹

⁷ MUR 7542 Compl. at 1-2

⁸ *Id.* at 2; compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE (Oct. 10, 2018), available at https://www.youtube.com/watch?v=2yxypm_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE (Oct. 11, 2018), available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

⁹ See MUR 7542 Compl. at 6; MeToo Ohio, *Turning a Blind Eye*, YOUTUBE at 0:21 (Oct. 10, 2018), available at https://www.youtube.com/watch?v=2yxypm_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE at 0:18 (Oct. 11, 2018), available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

¹⁰ Renacci for US Senate, Resp. at 2, MUR 7542 (Feb. 21, 2019) (“Renacci Resp.”) (stating that “Majority Strategies, LLC did not create, produce, or distribute the referenced Renacci for U.S. Senate advertisement” and asserting that the complained-of advertisement “was produced by OnMessage, Inc.”). The Renacci Committee acknowledges contracting with Majority Strategies for website design/maintenance and for the production of campaign materials, including palm cards, literature, bumper stickers, and yard signs. Renacci Resp. at 2. The Renacci Committee denies that Majority Strategies was involved in its television or digital advertising. *Id.*

¹¹ Renacci Resp. at 2-4.

1 **III. LEGAL ANALYSIS**

2 Under the Act and Commission regulations, a “contribution” includes an in-kind
 3 contribution.¹² When a person makes an expenditure in cooperation, consultation or in
 4 concert with, or at the request or suggestion of, a candidate or the candidate’s authorized
 5 committee or their agents, it is treated as in-kind contribution.¹³ A “coordinated
 6 communication” constitutes an in-kind contribution from the person paying for the
 7 communication to the candidate or political committee with whom, or with which, it is
 8 coordinated.¹⁴ Any person who is otherwise prohibited from making contributions to
 9 candidates under the Act or Commission regulations is prohibited from making an in-kind
 10 contribution in the form of paying for a coordinated communication.¹⁵ “An independent
 11 expenditure-only political committee ‘may not make contributions to candidates or political
 12 party committees, including in-kind contributions such as coordinated communications.’”¹⁶

13 Under Commission regulations, a communication is “coordinated” with a candidate,
 14 an authorized committee, a political party committee, or agent thereof, if the communication:
 15 (1) is paid for, partly or entirely, by a person other than the candidate, authorized committee,
 16 political party committee, or agent thereof; (2) satisfies at least one of the “content standards”
 17 at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the “conduct standards” at 11 C.F.R.

¹² 52 U.S.C §§ 30101(8)(A)(i); 11 C.F.R. § 100.52(d).

¹³ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

¹⁴ 11 C.F.R. § 109.21(b)(1).

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

¹⁶ Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 (quoting Advisory Op. 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011))); *see also* Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

1 § 109.21(d).¹⁷

2 One of the standards by which the conduct prong may be met is the “common
3 vendor” standard.¹⁸ The “common vendor” standard has three elements: (1) the person
4 paying for the communication uses a “commercial vendor” to create, produce, or distribute
5 the communication; (2) the vendor, including any owner, officer, or employee, previously
6 provided certain enumerated services — including, *inter alia*, “development of media
7 strategy,” polling, fundraising, “developing the content of a public communication,”
8 “Producing a public communication,” “identifying voters,” or “consulting or otherwise
9 providing political or media advice”¹⁹ — to the candidate identified in the communication
10 (or that candidate’s opponent) during the previous 120 days; and (3) the commercial vendor
11 uses or conveys to the person paying for the communication:

12 (A) Information about the campaign plans, projects, activities, or needs of the
13 clearly identified candidate, the candidate’s opponent, or a political party
14 committee, and that information is material to the creation, production, or
15 distribution of the communication; or

16
17 (B) Information used previously by the commercial vendor in providing
18 services to the candidate who is clearly identified in the communication, or
19 the candidate’s authorized committee, the candidate’s opponent, the
20 opponent’s authorized committee, or a political party committee, and that
21 information is material to the creation, production, or distribution of the

¹⁷ 11 C.F.R. § 109.21(a). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a public communication that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

¹⁸ 11 C.F.R. § 109.21(d)(4).

¹⁹ 11 C.F.R. § 109.21(d)(4)(ii).

1 communication.²⁰

2 The common vendor conduct standard is not satisfied if a commercial vendor has established
3 and implemented a written firewall policy that meets certain requirements, so long as
4 material information is not shared.²¹

5 The payor of a communication that is coordinated through use of a common vendor
6 makes a contribution to the candidate, but the candidate or authorized committee “does not
7 receive or accept an in-kind contribution” resulting from coordination through a common
8 vendor unless the communication was made at the request or suggestion of, with the material
9 involvement of, or after substantial discussions with, the candidate or authorized
10 committee.²²

11 **A. The Commission Dismisses the Allegation that Renacci Committee**
12 **Accepted Prohibited In-Kind Contributions from Ohio First**

13 The MUR 7476 Complaint alleges that the Renacci Committee accepted prohibited
14 in-kind contributions from OhioFirst by coordinating communications through Majority

²⁰ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

²¹ 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants, and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

²² 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

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1 Strategies as the common vendor.²³ This allegation is based solely on the fact that Majority
2 Strategies provided services to both Ohio First and the Renacci Committee.

3 With respect to the conduct prong of the coordinated communications test, the first
4 element of the common vendor standard is satisfied here because Majority Strategies appears
5 to be a “commercial vendor” in that its usual and normal business entails providing
6 communications consulting services to committees, and Ohio First hired Majority Strategies
7 to create, produce, or distribute communications.²⁴ The second “common vendor” element is
8 also satisfied here, since the available information indicates that Majority Strategies provided
9 several of the enumerated services to the Renacci Committee within 120 days prior to
10 providing communications services to Ohio First.²⁵

11 With respect to the third element of the common vendor standard, however, there is
12 no information that Majority Strategies used or conveyed information to Ohio First about the
13 Renacci Committee’s “plans, projects, activities, or needs.”²⁶ The MUR 7476 Complaint
14 merely asserts that Majority Strategies conveyed this information to Ohio First because the
15 two committees employed a common vendor, which is not alone a sufficient basis to find
16 coordination.²⁷ Moreover, information available to the Commission suggests that Majority

²³ MUR 7476 Compl. at 13-14. The Complaint does not identify the particular advertisements that were allegedly coordinated.

²⁴ See 11 C.F.R. § 109.21(d)(4)(i).

²⁵ 11 C.F.R. § 109.21(d)(4)(ii); see also Renacci for US Senate, 2018 April Quarterly Report at 101 (Apr. 12, 2018) (showing a February 22, 2018, disbursement to Majority Strategies for “printing”); Ohio First, 2018 Pre-Primary Report at 10 (showing an April 1, 2018, disbursement to Majority Strategies for “Media Placement/Media Production”).

²⁶ See 11 C.F.R. § 109.21(d)(4)(ii).

²⁷ See MUR 7476 Compl. at 13-14; Second Gen. Counsel’s Rpt. at 7, 10, MUR 5502 (Martinez for Senate, *et al.*) (finding no evidence of coordination from the mere presence of a common vendor).

1 Strategies implemented a written firewall policy, which prohibits employees working on
2 opposite sides of the firewall from communicating information about their separate clients.

3 Given the conclusory nature of the allegations and the information available to the
4 Commission regarding Majority Strategies firewall policy, and the absence of information
5 sufficient to support the third element of the common vendor test, the available information
6 does not reasonably support a finding that the conduct prong of the coordinated
7 communications test has been satisfied. Accordingly, the Commission dismisses the
8 allegation that the Renacci Committee accepted a contribution in the form of coordinated
9 communications in violation of 52 U.S.C. §§ 30116(f), 30118(a), and 11 C.F.R. § 109.21.

10 **B. The Commission Dismisses the Allegation that the Renacci Committee**
11 **Accepted Prohibited In-Kind Contributions from MeToo Ohio**

12 The MUR 7542 Complaint alleges that the Renacci Committee accepted illegal in-
13 kind contributions from MeToo Ohio by coordinating communications through Majority
14 Strategies, a common vendor. Unlike the coordinated communications allegations against
15 Ohio First, the Complaint in MUR 7542 identifies specific communications that were
16 allegedly coordinated between MeToo Ohio and the Renacci Committee, noting that the two
17 committees launched similar ads on the same day.²⁸

18 A review of the advertisements reveals significant similarities between those
19 distributed by MeToo Ohio and by the Renacci Committee.²⁹ In particular, both ads contrast
20 allegations that Renacci's opponent Brown physically abused his then-wife in the 1980s with

²⁸ MUR 7542 Compl. at 14-17.

²⁹ *Compare* MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2xyppoM_MM with Renacci for US Senate, *Washington's Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

1 the Senate Democrats’ treatment of Brett Kavanaugh during his Supreme Court confirmation
2 process.³⁰ Moreover, both ads feature excerpts from the same restraining order that Brown’s
3 ex-wife sought in the 1980s and use similar visuals, such as highlighted text from the court
4 documents.³¹

5 With respect to the conduct prong of the coordinated communications test, the first
6 element of the common vendor standard is satisfied here because Majority Strategies appears
7 to be a “commercial vendor” in that its usual and normal business entails providing
8 communications consulting services to committees, and MeToo Ohio hired Majorities
9 Strategies to create, produce, or distribute communications.

10 It also appears that the second “common vendor” element may be satisfied here. The
11 Renacci Committee paid Majority Strategies for “production and delivery” six times between
12 August and November 2018.³² Although Respondent denies that the Renacci Committee ad
13 at issue was created by Majority Strategies,³³ the Renacci Committee acknowledges
14 contracting with Majority Strategies “for website design/maintenance and for the production
15 of campaign materials, including palm cards, literature, bumper stickers, and yard signs.”³⁴

³⁰ Compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2xyppoM_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

³¹ Compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2xyppoM_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

³² Renacci for US Senate, Amend. 2018 October Quarterly Report at 937, 941, 965, and 1007 (Mar. 25, 2019); Renacci for US Senate, Amend. 2018 Pre-General Report at 1209, (Mar. 25, 2019); Renacci for US Senate, Amend. 2018 Post-General Report at 824 (Mar. 25, 2019).

³³ See Renacci Resp. at 2.

³⁴ Renacci Resp. at 2. The Renacci Committee denies that Majority Strategies was involved in its television or digital advertising. *Id.*

1 The nature of the “campaign materials” and “literature” produced by Majority Strategies for
2 the Renacci Committee are not described, but it appears from the available information that it
3 is possible that Majority Strategies produced a public communication within 120 days prior
4 to developing the ad for MeToo Ohio.³⁵ Because the second element of the common vendor
5 standard does not require that the commercial vendor worked on communications for the
6 candidate committee, but requires only that the vendor provided the candidate or authorized
7 committee one of the enumerated services within 120 days of the vendor working on
8 communications for the third party, and because Majority Strategies’s production of public
9 communications for the Renacci Committee during the relevant time period appears to
10 indicate provision of at least one of the enumerated services, the second element of the
11 common vendor standard appears to be satisfied.

12 With respect to the third element of the common vendor standard, information
13 available to the Commission suggests that Majority Strategies appears to have had a firewall
14 in place that prevented any information that may have been obtained from the Renacci
15 Committee from being used in projects for MeToo Ohio. Further, the Renacci Committee
16 denies that its vendor OnMessage, Inc., which produced the ad at issue, had any discussions
17 about the Renacci campaign with MeToo Ohio or Majority Strategies.³⁶

18 Respondents assert that the similarities between the two ads was coincidental because
19 the information utilized to create the ads was a matter of public knowledge.³⁷ The Renacci
20 Committee asserts that the issue of the restraining order that Brown’s ex-wife sought in the

³⁵ See 11 C.F.R. § 100.26; 11 C.F.R. §109.21(d)(4)(ii).

³⁶ Renacci Resp. at 2, Anderson Affidavit.

³⁷ Renacci Resp. at 2-4.

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1 1980s has been raised in nearly all of Brown's election campaigns. The Renacci Committee
2 also asserts that MeToo Ohio had released a similar one-minute video almost a month earlier,
3 on or about September 13, 2018,³⁸ and that Renacci had publicly made the connection
4 between Senate Democrats' treatment of Kavanaugh and the allegations against Brown at
5 least as early as September 19, 2018.³⁹

6 Viewed in total, the available information is insufficient to give rise to a reasonable
7 inference that the Renacci Committee accepted a contribution in the form of a coordinated
8 communication. The allegation is somewhat speculative, the issue of the restraining order
9 that Brown's ex-wife sought in the 1980s was a matter of discussion by the media during the
10 relevant time period, the issue had also been raised in Brown's prior campaigns, and the
11 Renacci Committee's vendor denies discussing the ad with MeToo Ohio and Majority
12 Strategies. Accordingly, the Commission dismisses the allegation that the Renacci
13 Committee accepted a contribution in the form of coordinated communications in violation
14 of 52 U.S.C. §§ 30116(f), 30118(a), and 11 C.F.R. § 109.21.

³⁸ MeToo Ohio, *Me Too Ohio*, YOUTUBE, available at <https://www.youtube.com/watch?v=U5ACBK4hzO4>. We note, however, that this video does not contain a comparison to the allegations against Brett Kavanaugh.

³⁹ Renacci Resp. at 2-3; *id.* n.9 (citing Renacci hits 'hypocrisy' of response to Kavanaugh allegation, FOX NEWS (Sept. 19, 2018), available at <https://video.foxnews.com/v/5837147158001/#sp=show-clips>).

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FACTUAL AND LEGAL ANALYSIS

1
2
3 RESPONDENTS: MeToo Ohio and MUR 7542
4 Lisa Lisker in her official capacity as treasurer
5

6 **I. INTRODUCTION**

7 This matter involves allegations relating to independent expenditures made by MeToo
8 Ohio and Lisa Lisker in her official capacity as treasurer (collectively, “MeToo Ohio” or
9 “Respondents”) in support of Jim Renacci or in opposition to Renacci’s opponent Sherrod
10 Brown in the 2018 Senate election in Ohio.¹ The Complaint alleges that MeToo Ohio failed
11 to report in-kind contributions from its vendor Majority Strategies and made prohibited
12 contributions to Renacci for US Senate (“Renacci Committee”) in the form of coordinated
13 communications.²

14 Based on the available information, the Commission: (1) finds reason to believe that
15 MeToo Ohio violated 52 U.S.C. § 30104(b)(3) by failing to report contributions received
16 from its vendors in the form of extensions of credit; and (2) dismisses the allegation that
17 MeToo Ohio made a contribution to the Renacci Committee in the form of coordinated
18 communications in violation of 52 U.S.C. §§ 30116(a), 30118(a), and 11 C.F.R. § 109.21.

19 **II. FACTS**

20 MeToo Ohio is an independent expenditure-only political committee (“IEOPC”) that
21 registered with the Commission on September 5, 2018.³ In the weeks leading up to the
22 November 6, 2018, Ohio general election, MeToo Ohio spent over half a million dollars in

¹ MUR 7542 Compl. at 2 (Nov. 14, 2018).

² *Id.*

³ MeToo Ohio, Statement of Organization (Sept. 5, 2018).

1 independent expenditures opposing Sherrod Brown, Renacci's opponent in the general
2 election.⁴ Most of those independent expenditures were funded by credit extended by
3 Majority Strategies.

4 MeToo Ohio's first report, the 2018 October Quarterly Report, discloses no receipts,
5 no disbursements, no cash on hand, and \$27,004 in debts and obligations to Majority
6 Strategies for independent expenditures opposing Brown.⁵ In MeToo Ohio's next report, the
7 Pre-General Report covering the period from October 1 to October 17, 2018, MeToo Ohio
8 disclosed receiving \$220,000 from one contributor, disbursements of \$176,000 to a different
9 vendor (for an independent expenditure, as reported on Schedule E), and debts and
10 obligations of \$156,004 to Majority Strategies.⁶

11 MeToo Ohio disclosed its first payments to Majority Strategies on its Post-General
12 Report. In its Post-General Report, covering the period from October 18 to November 26,
13 2018, MeToo Ohio disclosed receiving \$425,000 from three contributors and disbursements
14 of \$442,206, including over \$231,004 to Majority Strategies.⁷

15 The Complaint alleges that MeToo Ohio failed to properly report the extensions of
16 credit by Majority Strategies as an in-kind contribution.⁸ The Complaint asserts that

⁴ MeToo Ohio, 2018 October Quarterly Report at 8 (Oct. 14, 2018).

⁵ MeToo Ohio, 2018 October Quarterly Report)

⁶ MeToo Ohio, 2018 Pre-General Report (Oct. 24, 2018).

⁷ MeToo Ohio, 2018 Post-General Report (Dec. 6, 2018). The vast majority of MeToo Ohio's \$645,000 in contributions were received from Ohio First (\$305,000) and from A Public Voice, Inc. (\$315,000). *See* MeToo Ohio, 2018 Pre-General Report (Oct. 24, 2018); MeToo Ohio, 2018 Post-General Report (Dec. 6, 2018).

⁸ MUR 7542 Compl. at 17-18. In the alternative, the Complaint asserts that Majority Strategies failed to report independent expenditures because it was not paid by MeToo Ohio for the independent expenditures. *Id.* at 19.

1 Majority Strategies does not ordinarily extend credit to a newly formed committee that has
2 no cash on hand and no record of fundraising.⁹ The Complaint also alleges that, with the
3 limited exception of Ohio First (an IEOPC which was funding MeToo Ohio), there is no
4 record of Majority Strategies extending six figures of credit to a newly formed committee
5 with no cash on hand.¹⁰

6 Respondents assert that Majority Strategies's extension of credit to MeToo Ohio was
7 consistent with Majority Strategies's ordinary business practices.¹¹ However, MeToo Ohio's
8 response does not include specific terms or documents, such as contracts, supporting these
9 assertions regarding the vendor's ordinary business practices.

10 The Complaint also alleges that MeToo Ohio made prohibited and excessive in-kind
11 contributions to the Renacci Committee by coordinating communications through Majority
12 Strategies, a common vendor.¹² In support of this allegation, the Complaint states that the
13 Renacci Committee's second television ad was launched on the same day as a MeToo Ohio
14 ad and that the two ads were "strikingly consistent in theme, tone, and style, including
15 references to the same excerpted court documents and similar visuals."¹³ The Complaint

⁹ *Id.* at 17-18.

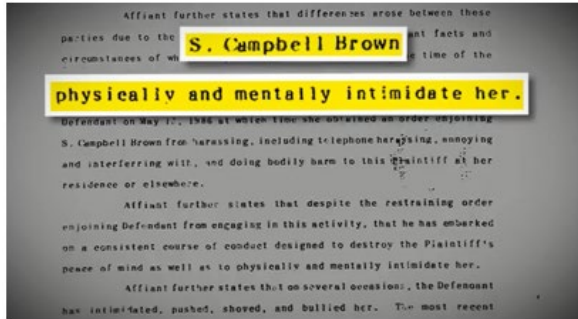
¹⁰ *Id.* at 18.

¹¹ MeToo Ohio, Resp. at 3, MUR 7542 (Jan. 29, 2019) ("MeToo Ohio Resp.").

¹² MUR 7542 Compl. at 1-2

¹³ *Id.* at 2; compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE (Oct. 10, 2018), available at https://www.youtube.com/watch?v=2yxypM_MM with Renacci for US Senate, *Washington's Worst*, YOUTUBE (Oct. 11, 2018), available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

1 notes, for example, that each ad included highlighted text of court documents, as in these
 2 screen shots of the ads from the Renacci Committee at left and MeToo at right.¹⁴



3
 4 Information available to the Commission suggests that Majority Strategies did not
 5 create, produce, or place any television advertisements for the Renacci Committee and that
 6 Majority Strategies may have implemented a firewall that prevented any information that
 7 may have been obtained from its work for the Renacci Committee from being used in MeToo
 8 Ohio's projects and vice versa. Respondents asserts that the 11 C.F.R. § 109.21(d)(3) safe
 9 harbor was satisfied because the information utilized to create the ads was a matter of public
 10 knowledge.¹⁵

11 III. LEGAL ANALYSIS

12 A. There is Reason to Believe MeToo Ohio Failed to Report In-Kind 13 Contributions in the form of Extensions of Credit From Its Vendor

14 The Act requires each treasurer of a political committee to file reports of receipts and
 15 disbursements with the Commission.¹⁶ Such reports must include the total amount of
 16 contributions received, as well as the identification of each person who made a contribution

¹⁴ See MUR 7542 Compl. at 6; MeToo Ohio, *Turning a Blind Eye*, YOUTUBE at 0:21 (Oct. 10, 2018), available at https://www.youtube.com/watch?v=2yxypM_MM with Renacci for US Senate, *Washington's Worst*, YOUTUBE at 0:18 (Oct. 11, 2018), available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

¹⁵ MeToo Ohio Resp. at 2.

¹⁶ 52 U.S.C. § 30104(a)(1).

1 in excess of \$200 during the reporting period, together with the date and amount of such
2 contribution.¹⁷

3 A “contribution” includes “any gift [or] advance . . . of money or anything of value
4 made by any person for the purpose of influencing any election for Federal office.”¹⁸ The
5 extension of credit to a political committee by a commercial vendor is a contribution, “unless
6 the credit is extended in the ordinary course of the person’s business and the terms are
7 substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and
8 size of obligation.”¹⁹ A “commercial vendor” is any person who provides goods or services
9 to a candidate or political committee, and whose usual and normal business involves the sale,
10 rental, lease, or provision of those goods and services.²⁰

11 Commission regulations state that, in determining whether credit was extended in a
12 commercial vendor’s ordinary course of business, the Commission will consider whether:
13 (1) the commercial vendor followed its established procedures and its past practice in
14 approving the extension of credit; (2) the commercial vendor received prompt payment in
15 full for prior extensions of credit to the same committee; and (3) the extension of credit
16 conformed to the usual and normal practice in the vendor’s trade or industry.²¹ The
17 Commission has explained that “[t]hese factors are intended to provide guidance The

¹⁷ 52 U.S.C. §§ 30104(b)(2)(A), (b)(3)(A)-(B).

¹⁸ 52 U.S.C. § 30101(8)(A)(i).

¹⁹ 11 C.F.R. § 100.55 (explaining that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3(b).

²⁰ 11 C.F.R. § 116.1(c).

²¹ 11 C.F.R. § 116.3(c).

1 factors need not be accorded equal weight and in some cases a single factor may not be
2 dispositive.”²²

3 As an initial matter, Majority Strategies appears to be in the business of providing the
4 services they provided to MeToo Ohio, and, therefore, appears to be a “commercial
5 vendor.”²³ From MeToo Ohio’s reporting of debts, it appears that this vendor extended
6 credit to MeToo Ohio by providing services in advance of payment.

7 MeToo Ohio contracted with Majority Strategies to make independent expenditures
8 worth \$231,004, but did not make a single payment until 50 days after the first service was
9 rendered and did not report any disbursements to Majority Strategies until after the election.
10 Although MeToo Ohio reported contributions from one donor prior to the election, those
11 receipts post-dated over \$27,000 in debt to Majority Strategies and the cash on hand
12 (\$44,000) reported in its Pre-General Report was not nearly enough to pay its additional
13 outstanding debts to Majority Strategies (totalling \$156,004).²⁴

14 The available information supports a conclusion that Majority Strategies’s extensions
15 of credit to MeToo Ohio were contributions because they were not made in the ordinary
16 course of business and on terms similar to those the vendors would make available to non-
17 political customers of similar risk and size of obligation. At the time that Majority Strategies
18 first extended credit, MeToo Ohio was a brand-new committee with no apparent money or
19 assets. MeToo Ohio had no payment history with Majority Strategies or any other vendor.

²² Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26378, 26281 (June 27, 1990); *see* Advisory Op. 1991-20 (Call Interactive) at 4.

²³ *See* 11 C.F.R. § 116.1(c).

²⁴ MeToo Ohio, 2018 Pre-General Report at 2, 7.

1 Majority Strategies nevertheless provided MeToo Ohio with services worth over \$230,000
2 before it received any payment from MeToo Ohio.

3 Respondents assert that Majority Strategies's extension of credit to MeToo Ohio was
4 not an in-kind contribution because it was consistent with Majority Strategies's ordinary
5 business practices. In support of this assertion, MeToo Ohio points to Ohio Conservatives
6 for a Change, another IEOPC that was active during the time period at issue, as an example
7 of another group to which Majority Strategies has regularly extended credit.²⁵ However,
8 Ohio Conservatives for a Change was not similarly situated to MeToo Ohio. Prior to the
9 time that Majority Strategies extended credit to Ohio Conservatives for a Change, that
10 committee had reported receipts totaling over \$1.3 million and cash on hand, after a payment
11 to a different vendor, of almost \$1.3 million; in other words, it already had a track record of
12 both raising funds and paying vendors.²⁶ Moreover, an examination of all reports filed with
13 the Commission found no instances, besides those involving MeToo Ohio and Ohio First
14 (which was funding MeToo Ohio), in which Majority Strategies extended credit to a
15 committee that did not report receipts prior to or at the same time that it reported the debt.²⁷

²⁵ MeToo Ohio, Resp. at 3.

²⁶ Ohio Conservatives for a Change, 2017 Mid-Year Report (July 28, 2017).

²⁷ A review located 65 committees (other than MeToo Ohio and Ohio First) that reported debts to Majority Strategies, but did not identify other similarly situated committees, *i.e.*, newly formed committees with no reported receipts, to which Majority Strategies extended credit of similar size of obligation. Fifty-eight of the 65 committees to which Majority Strategies extended credit — 20 party committees (or reporting components of party committees), 34 candidate committees, and four IEOPCs — had an established history of reported receipts and payments to vendors (Ohio Conservatives for a Change is among the four IEOPCs with established history of reported receipts and payments to vendors to which Majority Strategies had extended credit). The remaining seven committees that reported debt to Majority Strategies — four candidate committees, and three IEOPCs — had modest assets and reported debts to Majority Strategies in amounts between \$250 and \$5,000, amounts which are of significantly smaller size of obligation than those apparently extended to Ohio First and MeToo Ohio. *See* Feda for Congress, 2009 Year-End Report (Jan. 26, 2010) (reporting \$1,920 debt); Shawn Nelson for Congress, 2018 April Quarterly Report (Apr. 15, 2018) (reporting \$2,115 debt); John Ward for Congress, Inc., 2017 Year-End Report (Jan. 31, 2018) (reporting \$5,000 debt

1 Further, Respondents do not explain why Majority Strategies extended credit to a new
2 committee or why Majority Strategies continued to extend credit when it had not received a
3 payment in any amount. Nor do Respondents explain what, if any, process or analysis
4 Majority Strategies undertook when deciding to extend credit to MeToo Ohio. And
5 Respondents provided no copies of agreements or any other supporting documentation
6 explaining the terms and conditions for the extensions of credit to the Committee.

7 Thus, despite the assertions of Respondents that Majority Strategies engaged in its
8 ordinary business practices consistent with prior practices, the available information does not
9 support the contention that the vendor's extension of credit to MeToo Ohio was ordinary.
10 This conclusion is consistent with several matters in which the Commission found reason to
11 believe that a vendor's extension of credit to a committee was not made in the vendor's
12 ordinary course of business and was, therefore, a contribution. The Commission has found
13 reason to believe vendors extended credit to an IEOPC outside its ordinary course of business
14 and industry practice when the IEOPC lacked a prior business relationship with its vendors or
15 a well-established track record for payment and when the extension was out of line with the
16 vendors' prior extensions of credit (as reported to the Commission by other committees). In
17 MUR 5635, the Commission found reason to believe a vendor extended credit outside its
18 ordinary course of business and industry practice on a record that included facts, as
19 ascertained in a Commission audit, similar to the ones in this matter: a vendor extended over

alongside payments to Majority Strategies of \$17,006, although subsequently amended to remove the entry indicating debt owed to Majority Strategies); Adrian Smith for Congress, 2005 October Quarterly Report (Oct. 15, 2005) (reporting \$3,250 debt, later amended to reflect debt of \$3,340); Freedom Path Action Network, 2012 July Quarterly Report (July 13, 2012) (reporting \$250 debt); Freedom Country Fund, 2012 July Quarterly Report (July 13, 2012) (reporting \$250 debt); Freedom Pioneers Action Network, July Quarterly Report (July 13, 2012) (reporting \$250 debt).

1 \$1 million credit on a short term contract to a committee with which it had no prior business
2 relationship.²⁸ In another matter, the Commission found reason to believe on a record, like
3 the one here, with little or no information demonstrating or substantiating that the vendors'
4 extensions of credit had been made in the ordinary course of business.²⁹ Conversely, the
5 Commission has found no reason to believe a vendor's extension of credit constituted a
6 contribution where the record included documents, sworn affidavits, or other evidence
7 demonstrating that the extensions of credit had been made in the vendor's ordinary course of
8 business or on terms substantially similar to extensions of credit to other clients of similar
9 risk and size of obligation.³⁰

10 Here, Respondents did not submit written agreements or other documents to support
11 their contentions that the vendors acted in their ordinary course of business. The available
12 record does not include information to support the notion that Me Ohio's vendor extended
13 credit in the ordinary course of their business and on terms substantially similar to extensions
14 of credit to any other debtor of similar risk and size of obligation. Because the available

²⁸ Gen. Counsel's Brief at 8-9, MUR 5635 (Conservative Leadership PAC, *et al.*). The Commission conciliated with the committee and vendor on the extension of credit violation.

²⁹ See Factual & Legal Analysis at 6, 8-10, MUR 6101(Heller *et al.*) (also noting the lack of information about the vendor's advance payment policies, billing cycles, and details about the terms of the transactions with the committee). The Commission took no further action after the initial reason to believe finding, once the investigation established that the vendor *had* extended credit in the ordinary course of business and on similar terms to other clients. See Second Gen. Counsel's Rpt. at 5, MUR 6101 (Heller *et al.*) (discussing prior matters in which the Commission took no further action after a reason to believe finding on an extension of credit outside ordinary business practices).

³⁰ See, e.g., F&LA at 8-14, MUR 6141 (Friends of Dave Reichert) (finding no reason to believe that the credit extension was outside the vendor's ordinary course of business on a record including vendor's sworn declaration providing a detailed explanation of its business practices, publicly available information (including a Federal Communication Commission opinion letter) about industry standards, and the respondent committee's history of prompt payments to the vendor in earlier election cycles); MUR 5939 (Moveon.org *et al.*) (finding no reason to believe that *New York Times* extended credit outside of ordinary business practices on record that included the terms of the transaction in question as well as the paper's usual terms and practices).

1 information is not sufficient to support Respondents’ assertion that the extension of credit
2 from Majority Strategies was offered in the ordinary course of business, and the available
3 information indicates that it may not have been provided in the ordinary course of business,
4 the Commission finds reason to believe that MeToo Ohio failed to report contributions
5 received from its vendor in violation of 52 U.S.C. § 30104(b)(3)(A).

6 **B. The Commission Dismisses the Allegation that MeToo Ohio Made**
7 **Coordinated Communications**

8 Under the Act and Commission regulations, a “contribution” includes an in-kind
9 contribution.³¹ When a person makes an expenditure in cooperation, consultation or in
10 concert with, or at the request or suggestion of, a candidate or the candidate’s authorized
11 committee or their agents, it is treated as in-kind contribution.³² A “coordinated
12 communication” constitutes an in-kind contribution from the person paying for the
13 communication to the candidate or political committee with whom, or with which, it is
14 coordinated.³³ Any person who is otherwise prohibited from making contributions to
15 candidates under the Act or Commission regulations is prohibited from making an in-kind
16 contribution in the form of paying for a coordinated communication.³⁴ “An independent
17 expenditure-only political committee ‘may not make contributions to candidates or political
18 party committees, including in-kind contributions such as coordinated communications.’”³⁵

³¹ 52 U.S.C §§ 30101(8)(A)(i); 11 C.F.R. § 100.52(d).

³² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

³³ 11 C.F.R. § 109.21(b)(1).

³⁴ *See* 52 U.S.C. §§ 30116(f), 30118(a).

³⁵ Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 (quoting Advisory Op. 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011)); *see also* Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

1 Under Commission regulations, a communication is “coordinated” with a candidate,
 2 an authorized committee, a political party committee, or agent thereof, if the communication:
 3 (1) is paid for, partly or entirely, by a person other than the candidate, authorized committee,
 4 political party committee, or agent thereof; (2) satisfies at least one of the “content standards”
 5 at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the “conduct standards” at 11 C.F.R.
 6 § 109.21(d).³⁶

7 One of the standards by which the conduct prong may be met is the “common
 8 vendor” standard.³⁷ The “common vendor” standard has three elements: (1) the person
 9 paying for the communication uses a “commercial vendor” to create, produce, or distribute
 10 the communication; (2) the vendor, including any owner, officer, or employee, previously
 11 provided certain enumerated services — including, *inter alia*, “development of media
 12 strategy,” polling, fundraising, “developing the content of a public communication,”
 13 “Producing a public communication,” “identifying voters,” or “consulting or otherwise
 14 providing political or media advice”³⁸ — to the candidate identified in the communication
 15 (or that candidate’s opponent) during the previous 120 days; and (3) the commercial vendor
 16 uses or conveys to the person paying for the communication:

17 (A) Information about the campaign plans, projects, activities, or needs of the
 18 clearly identified candidate, the candidate’s opponent, or a political party

³⁶ 11 C.F.R. § 109.21(a). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a “public communication” that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

³⁷ 11 C.F.R. § 109.21(d)(4).

³⁸ 11 C.F.R. § 109.21(d)(4)(ii).

1 committee, and that information is material to the creation, production, or
2 distribution of the communication; or

3
4 (B) Information used previously by the commercial vendor in providing
5 services to the candidate who is clearly identified in the communication, or
6 the candidate's authorized committee, the candidate's opponent, the
7 opponent's authorized committee, or a political party committee, and that
8 information is material to the creation, production, or distribution of the
9 communication.³⁹

10 The common vendor conduct standard is not satisfied if a commercial vendor has established
11 and implemented a written firewall policy that meets certain requirements, so long as
12 material information is not shared.⁴⁰

13 The payor of a communication that is coordinated through use of a common vendor
14 makes a contribution to the candidate, but the candidate or authorized committee “does not
15 receive or accept an in-kind contribution” resulting from coordination through a common
16 vendor unless the communication was made at the request or suggestion of, with the material
17 involvement of, or after substantial discussions with, the candidate or authorized
18 committee.⁴¹

³⁹ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

⁴⁰ 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate's authorized committee, the candidate's opponent, the opponent's authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants, and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate's campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

⁴¹ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

1 The Complaint alleges that MeToo Ohio made illegal in-kind contributions to the
2 Renacci Committee by coordinating communications through Majority Strategies, a common
3 vendor. The Complaint identifies specific communications that were allegedly coordinated
4 between MeToo Ohio and the Renacci Committee, noting that the two committees launched
5 similar ads on the same day.⁴²

6 A review of the advertisements reveals significant similarities between those
7 distributed by MeToo Ohio and by the Renacci Committee.⁴³ In particular, both ads contrast
8 allegations that Renacci’s opponent Brown physically abused his then-wife in the 1980s with
9 the Senate Democrats’ treatment of Brett Kavanaugh during his Supreme Court confirmation
10 process.⁴⁴ Moreover, both ads feature excerpts from the same restraining order that Brown’s
11 ex-wife sought in the 1980s and use similar visuals, such as highlighted text from the court
12 documents.⁴⁵

13 Respondents do not dispute that MeToo Ohio’s communications satisfy the
14 “payment” and “content” prongs of the coordinated communication test. With respect to the
15 conduct prong of the coordinated communications test, the first element of the common
16 vendor standard is satisfied here because Majority Strategies appears to be a “commercial

⁴² MUR 7542 Compl. at 14-17.

⁴³ Compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2yxyppoM_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

⁴⁴ Compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2yxyppoM_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

⁴⁵ Compare MeToo Ohio, *Turning a Blind Eye*, YOUTUBE, available at https://www.youtube.com/watch?v=2yxyppoM_MM with Renacci for US Senate, *Washington’s Worst*, YOUTUBE, available at <https://www.youtube.com/watch?v=4uQcexM2Ib4>.

1 vendor” in that its usual and normal business entails providing communications consulting
2 services to committees, and MeToo Ohio hired Majorities Strategies to create, produce, or
3 distribute communications.

4 It also appears that the second “common vendor” element may be satisfied here. The
5 Renacci Committee paid Majority Strategies for “production and delivery” six times between
6 August and November 2018.⁴⁶ Although information available to the Commission suggests
7 that the Renacci Committee ad at issue was not created by Majority Strategies, it also
8 established that the Renacci Committee contracted with Majority Strategies for website
9 design/maintenance and for the production of campaign materials, including palm cards,
10 literature, bumper stickers, and yard signs. The nature of the campaign materials and
11 literature produced by Majority Strategies for the Renacci Committee is not known, but it
12 appears from the available information that it is possible that Majority Strategies produced a
13 public communication for the Renacci Committee within 120 days prior to developing the ad
14 for MeToo Ohio.⁴⁷ Because the second element of the common vendor standard does not
15 require that the commercial vendor worked on communications for the candidate committee,
16 but requires only that the vendor provided the candidate or authorized committee one of the
17 enumerated services within 120 days of the vendor working on communications for the third
18 party, and because Majority Strategies’s production of public communications for the
19 Renacci Committee during the relevant time period appears to indicate provision of at least

⁴⁶ Renacci for US Senate, Amend. 2018 October Quarterly Report at 937, 941, 965, and 1007 (Mar. 25, 2019); Renacci for US Senate, Amend. 2018 Pre-General Report at 1209, (Mar. 25, 2019); Renacci for US Senate, Amend. 2018 Post-General Report at 824 (Mar. 25, 2019).

⁴⁷ See 11 C.F.R. § 100.26; 11 C.F.R. §109.21(d)(4)(ii).

1 one of the enumerated services, the second element of the common vendor standard appears
2 to be satisfied.

3 With respect to the third element of the common vendor standard, information
4 available to the Commission suggests that Majority Strategies had a firewall in place that
5 prevented any information that may have been obtained from the Renacci Committee from
6 being used in projects for MeToo Ohio. Respondents assert that the similarities between the
7 two ads was coincidental because the information utilized to create the ads was a matter of
8 public knowledge.⁴⁸ In particular, Respondents assert that Kavanagh's confirmation, and
9 Brown's opposition to it, was covered by the media in September and October 2018, and it is
10 therefore unsurprising that an IEOPC and campaign opposing Brown would make it an issue
11 in the election.⁴⁹ Additionally, the Commission is in receipt of information indicating that
12 MeToo posted a video roughly one month earlier that featured images of the same court
13 documents the Complainant suggests link the two October ads.

14 Viewed in total, the available information is insufficient to give rise to a reasonable
15 inference that MeToo Ohio made a contribution in the form of a coordinated communication.
16 The allegation is somewhat speculative, the issue of the restraining order that Brown's ex-
17 wife sought in the 1980s was a matter of discussion by the media during the relevant time
18 period, and the issue had also been raised in Brown's prior campaigns. Accordingly, the
19 Commission dismisses the allegation that MeToo Ohio made a contribution in the form of
20 coordinated communications in violation of 52 U.S.C.
21 §§ 30116(a), 30118(a), and 11 C.F.R. § 109.21.

⁴⁸ MeToo Ohio Resp. at 2.

⁴⁹ MeToo Ohio Resp. at 2.