

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR 7521**

DATE FILED: October 22, 2018

DATE OF NOTIFICATION: October 24, 2018

LAST RESPONSE RECEIVED: Dec. 18, 2018

DATE ACTIVATED: July 2, 2019

EXPIRATION OF SOL: May 8, 2023

ELECTION CYCLE: 2018

**COMPLAINANT:**

Dallas Woodhouse

**RESPONDENTS:**

Swing Left and Ethan Todras-Whitehill in his  
official capacity as treasurer  
Kathy Manning for Congress and  
Megan Brengarth in her official capacity as  
treasurer  
Abby Karp

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)(2)(A)

52 U.S.C. § 30116(a)(7)(B)(i)

52 U.S.C. § 30116(f)

11 C.F.R. § 100.74

11 C.F.R. § 109.20

11 C.F.R. § 109.21

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that multicandidate political committee Swing Left and its  
employee Abby Karp coordinated a “door-to-door” canvassing effort with the congressional  
campaign of Kathy Manning and her authorized committee Kathy Manning for Congress and  
Megan Brengarth in her official capacity as treasurer (“Manning Committee”) resulting in  
unreported and prohibited coordinated expenditures by Swing Left. All of the respondents filed

1 responses to the complaint and deny that they violated the Federal Election Campaign Act of  
2 1971, as amended (the “Act”).

3 For the reasons set forth below, we recommend that the Commission dismiss the  
4 allegations that Swing Left violated 52 U.S.C. §§ 30116(a)(2)(A) and 30104(b) and that the  
5 Manning Committee violated 52 U.S.C. §§ 30116(f) and 30104(b), and dismiss the allegation  
6 that Abby Karp violated the Act. These recommendations are consistent with the Commission’s  
7 prosecutorial discretion to determine the proper ordering of its priorities and use of agency  
8 resources.<sup>1</sup>

## 9 **II. FACTUAL BACKGROUND**

10 Swing Left is registered with the Commission as a “hybrid” political committee with a  
11 “Carey” non-contribution account.<sup>2</sup> Abby Karp is a Swing Left volunteer who led its canvassing  
12 efforts in Greensboro, North Carolina in 2018.<sup>3</sup> Kathy Manning for Congress is the principal  
13 campaign committee of U.S. Representative Kathy Manning, who was the Democratic candidate  
14 for Congress from the 13th Congressional District in North Carolina in 2018.

15 The Complaint alleges that Swing Left made unreported impermissible coordinated  
16 expenditures on behalf of the Manning Committee when it conducted a door-to-door canvassing

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<sup>1</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>2</sup> Swing Left Amended Statement of Organization (Aug. 20, 2018). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. See Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), available at <http://www.fec.gov/press/press2011/20111006postcarey.shtml>.

<sup>3</sup> Swing Left and Abby Karp Resp. at 2 (Dec. 18, 2018) (“Swing Left Resp.”).

1 effort.<sup>4</sup> To demonstrate that the two committees were in communication, the Complaint points  
2 to an interview given by Karp, “the leader of Swing Left’s Gilford County contingent,” to the  
3 podcast *The Voter Project*.<sup>5</sup> In the interview, Karp described communications she had with the  
4 Manning Committee. She acknowledged asking a staff member of the Committee, “how do you  
5 want to work together,” and the Committee staffer responded, according to Karp, “why don’t  
6 you keep doing what you’re doing, but can you take some guidance from us as far as where to go  
7 and do more targeted work?”<sup>6</sup> To further support the coordination allegation, the Complaint  
8 cites to a general statement made by Swing Left’s founder, Ethan Todras-Whitehill, in a  
9 January 2017 magazine article, where he said that “we do want to support Democrats. We plan  
10 on being in touch with them, coordinating.”<sup>7</sup> Finally, the Complaint points out that Swing Left  
11 has been collecting, and reporting, conduit contributions on behalf of Manning. While  
12 acknowledging that these activities may be permissible, the Complaint says it points to “an even  
13 closer relationship.”<sup>8</sup>

14 Swing Left responds that the Complaint’s allegations are erroneous and that as a  
15 multicandidate Carey PAC, Swing Left is allowed to engage in both coordinated and  
16 independent activity as long as a firewall exists to prevent the flow of information between staff

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<sup>4</sup> Compl. at 1-2. The Complaint alternatively describes the activity as “door-to-door voter advocacy” and “canvassing.” *See id.* at 1, 2.

<sup>5</sup> *Id.* at 1, citing Shirna Honig, *The Voter Project Episode #20* (Aug. 2, 2018); *see* <https://www.stitcher.com/podcast/the-voter-project> at 7:08.

<sup>6</sup> Comp. at 1.

<sup>7</sup> *Id.*, citing Jia Tolenti, *Swing Left and the Post-Election Surge of Progressive Activism*, *THE NEW YORKER* (Jan. 26, 2017).

<sup>8</sup> Compl. at 2.

1 coordinating with candidates and those involved in independent activities.<sup>9</sup> In this regard, Swing  
2 Left claims to have spent only \$205 for printing and get-out-the-vote activities on behalf of the  
3 Manning Committee, well below the applicable \$5,000 contribution limit, and that the  
4 canvassers were volunteers eligible for the volunteer exemption.<sup>10</sup> In addition, Swing Left  
5 maintains that the Complaint fails to identify any other activity that could have qualified as  
6 expenses attributable to the \$5,000 limit.<sup>11</sup> With respect to the Complaint's claim that Swing  
7 Left's role as a conduit for contributions to the Manning Committee evidences a close  
8 relationship between the two committees, Swing Left responds that serving as a conduit is  
9 permitted.<sup>12</sup>

10 The Manning Committee acknowledges that during the 2018 general election, Ashlei  
11 Blue, its Field and Political Director, and Abby Karp, a Swing Left volunteer in Greensboro,  
12 North Carolina, were in regular contact.<sup>13</sup> The Manning Committee asserts that Swing Left's  
13 volunteers made phone calls, knocked on doors, and recruited and organized other volunteers to  
14 support the Committee, and Swing Left's recruitment of volunteers and advertising of events was  
15 done through email or on free social media sites such as Facebook.<sup>14</sup> The Manning Committee

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<sup>9</sup> Swing Left Resp. at 1. According to its disclosure reports, Swing Left did not make any independent expenditures during the 2018 election cycle.

<sup>10</sup> Swing Left disclosed \$205 in in-kind contributions to the Manning Committee. *See* Swing Left Amended 2018 Post-General Report (Dec. 17, 2018) at 9,970, 11,422 and 13,741 (disbursements of \$55 and \$75 to Shopify for printing on October 19 and November 1, 2018, respectively, and disbursements of \$75 to Staples for GOTV supplies on November 1, 2018).

<sup>11</sup> Swing Left Resp. at 3.

<sup>12</sup> Swing Left states that it is permissible for it to accept contributions that persons have earmarked for candidates and to forward those contributions to the candidates. Swing Left Resp. at 3. *See* 11 C.F.R. § 110.6.

<sup>13</sup> Manning Committee Resp. at 2 (Dec. 17, 2018).

<sup>14</sup> *Id.*

1 claims that the majority of Swing Left's activities did not constitute expenditures that would be  
2 subject to the reporting requirements or contribution limits of the Act.<sup>15</sup> Referring to its  
3 disclosure reports, the Manning Committee claims that it properly reported in-kind contributions  
4 from Swing Left of \$205 for printing and get-out-the-vote activities.<sup>16</sup> In her sworn declaration,  
5 Ashlei Blue averred that the Manning Committee used its own voter contact lists and materials  
6 for the canvasses, and paid for all data and targeting and staff salaries for persons who  
7 coordinated the canvassing activities.<sup>17</sup>

### 8 **III. LEGAL ANALYSIS**

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10 The Act defines the terms "contribution" and "expenditure" to include "anything of  
11 value" made by any person for the purpose of influencing any election for federal office.<sup>18</sup> The  
12 term "anything of value" includes in-kind contributions.<sup>19</sup> In-kind contributions result when  
13 goods or services are provided without charge or at less than the usual and normal charge,<sup>20</sup> and  
14 when a person makes an expenditure in cooperation, consultation or in concert with, or at the  
15 request or suggestion of a candidate or the candidate's authorized committee or their agents.<sup>21</sup>

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<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* The Manning Committee disclosed \$205 in in-kind contributions from Swing Left. *See* Manning Committee 2018 Post-General Report (Dec. 6, 2018) at 212, 215 (\$55 for printing on October 19, 2018 and \$150 for "GOTV Consulting and Travel" on November 1, 2018).

<sup>17</sup> *Id.* at 2, Declaration of Ashlie Blue ("Blue Decl.") ¶ 7.

<sup>18</sup> 52 U.S.C. §§ 30101(8)(A)(i), 30101(9)(A)(i).

<sup>19</sup> *See* 11 C.F.R. § 100.52(d).

<sup>20</sup> *Id.*

<sup>21</sup> *See* 52 U.S.C. § 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20(a) (defining "coordinated" as made in cooperation, consultation or concert with or at the request or suggestion of a candidate, a candidate's authorized committee or a political party committee).

1 Under Commission regulations, expenditures for “coordinated communications” are  
2 addressed under a three-prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are  
3 addressed under 11 C.F.R. § 109.20(b).<sup>22</sup> The Commission has explained that section 109.20(b)  
4 applies to “expenditures that are not made for communications but that are coordinated with a  
5 candidate, authorized committee, or political party committee.”<sup>23</sup>

6 No multicandidate committee shall make contributions to any candidate or his or her  
7 authorized committee with respect to any election for Federal office which in the aggregate  
8 exceed \$5,000.<sup>24</sup> No candidate or political committee shall knowingly accept any contribution  
9 or make any expenditure in violation of the provisions of 52 U.S.C. § 30116.<sup>25</sup> The value of  
10 services provided without compensation by any individual who volunteers on behalf of a  
11 candidate or political committee is not a contribution.<sup>26</sup> The Act requires committee treasurers to  
12 file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C.  
13 § 30104, and the reports must include, *inter alia*, the total amount of receipts and disbursements,  
14 including the appropriate itemizations, where required.<sup>27</sup>

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<sup>22</sup> A communication is coordinated with a candidate, authorized committee, a political party committee or an agent of the candidate and the committees when: (1) the communication is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee; (2) satisfies at least one of the content standards of 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the conduct standards of 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21.

<sup>23</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003); *see also* Advisory Opinion 2011-14 (Utah Bankers Association).

<sup>24</sup> *See* 52 U.S.C. § 30116(a)(2)(A).

<sup>25</sup> *See* 52 U.S.C. § 30116(f).

<sup>26</sup> *See* 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74.

<sup>27</sup> 52 U.S.C. § 30104(a)(1), 30104(b); 11 C.F.R. § 104.3.

1           The Complaint alleges that Swing Left's funding of its "door-to-door voter advocacy  
2 program" amounted to unreported and impermissible coordinated expenditures.<sup>28</sup> As a  
3 multicandidate committee, however, Swing Left is permitted to make contributions to candidate  
4 committees subject to the Act's limitations.<sup>29</sup> While the Manning Committee and Swing Left  
5 acknowledge coordinating the door-to-door canvassing, they maintain that the costs incurred by  
6 Swing Left were minimal (\$205) and well below the applicable contribution limits. Further,  
7 Swing Left claims to have minimized its canvas expenses through the use of volunteers,  
8 including volunteer Abby Karp, the operative identified in the Complaint.<sup>30</sup> The claim of  
9 volunteer activity is further supported in a statement by the Manning Committee's Field and  
10 Political Director who described the details of how volunteers were located and managed.<sup>31</sup> The  
11 available information does not reflect anything to the contrary regarding Karp and other Swing  
12 Left associates who worked on behalf of the Manning Committee apparently as volunteers.<sup>32</sup>  
13 Other than the canvassing activity, the Complaint did not identify any other expenditures for  
14 goods or services that could be attributable to Swing Left's contribution limit. Moreover, the  
15 Manning Committee appears to have incurred, and reported, its own costs related to the

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<sup>28</sup> Compl. at 2.

<sup>29</sup> See 52 U.S.C. § 30116(a)(2)(A).

<sup>30</sup> Swing Left Resp. at 3.

<sup>31</sup> Blue Decl. ¶¶ 2, 5-8. See 52 U.S.C. § 30101(8)(B)(i) (the term "contribution" does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee); 11 C.F.R. § 100.74 (same).

<sup>32</sup> Swing Left's 2018 Pre-General and Post-General Reports do not reveal any payments to persons in North Carolina in October or November 2018. See MUR 6834 (Lynn Jenkins) (Commission determined that because there was no information indicating that William Roe received payment for the volunteer services he provided to the Committee, it appeared that the services at issue did not constitute a contribution).

1 canvassing effort.<sup>33</sup> Finally, the committees disclosed Swing Left's \$205 in expenditures as  
2 contributions to the Manning Committee and thus appear to have complied with applicable  
3 reporting obligations for these expenditures.<sup>34</sup>

4 Based on the foregoing, further use of the Commission's limited resources does not  
5 appear warranted. Accordingly, we recommend that the Commission exercise its prosecutorial  
6 discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismiss the allegations that Swing  
7 Left made, and the Manning Committee accepted, unreported excessive contributions and that  
8 Abby Karp, Swing Left's volunteer, violated the Act.<sup>35</sup> We further recommend that the  
9 Commission close the file.

#### 10 **IV. RECOMMENDATIONS**

11 1. Dismiss the allegation that Swing Left and Ethan Todras-Whitehill in his official  
12 capacity as treasurer violated 52 U.S.C. §§ 30116(a)(2)(A) and 30104(b) by making  
13 unreported excessive contributions to Kathy Manning for Congress pursuant to the  
14 Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821  
15 (1985);  
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<sup>33</sup> For example, the Manning Committee paid a salary of \$1,679.98 every two weeks to Ashlei Blue, who coordinated all volunteers in connection with her responsibility as the Field and Political Director. *See* Manning Committee Resp. at 2 and Blue Decl. ¶ 2; Manning Committee 2018 Post-General Report at 256 and 273.

<sup>34</sup> Swing Left also maintains that canvassing is not a "public communication" and that it could therefore be coordinated with candidates without triggering an in-kind contribution. *See* Swing Left Resp. at 4; 11 C.F.R. § 109.21(c)(2)-(5) (coordinated communications content standards requiring public communications). Swing Left cites MUR 5564 (Alaska Democratic Party) to support its view, although the identified Factual and Legal Analyses do not explicitly express this proposition and the referenced Statements of Reasons were authored by fewer than four Commissioners. Swing Left also cites a three-Commissioner concurring statement in connection with Advisory Opinion 2016-21 (Great America PAC). In its advisory opinion request, Great America PAC represented that among its outreach efforts would be door-to-door canvassing, which it asserted would constitute "public communications." *Id.* at 4, n.3. The Commission could not agree on this issue. *See* AO 2016-21, Concurring Statement of Commissioners Goodman, Hunter and Petersen (Jan. 12, 2017). In any event, the available information is that Swing Left's canvassing costs were \$205, and thus it is unnecessary for the Commission to determine whether canvassing is a public communication in this matter.

<sup>35</sup> The Complaint also notes that Swing Left may accept conduit contributions that are earmarked for the Committee, but it is evident of a close relationship. *See* 11 C.F.R. § 110.6; 52 U.S.C. § 30116(a)(8). The Complaint has not made any specific allegations that Swing Left did anything impermissible while serving as a conduit for contributions earmarked for the Committee. The available information does not indicate any impermissible activity by Swing Left as a conduit for contributions to the Manning Committee.



