

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

**MUR: 7527**

DATE COMPLAINT FILED: Oct. 25, 2018

DATE OF NOTIFICATION: Oct. 31, 2018

LAST RESPONSE RECEIVED: Dec. 20, 2018

DATE ACTIVATED: March 15, 2019

EXPIRATION OF SOL: Sept. 1, 2023 – Oct. 22, 2023

ELECTION CYCLE: 2018

**COMPLAINANT:** Foundation for Accountability and Civic Trust**RESPONDENTS:** News for Democracy  
News for Democracy LLC

**RELEVANT STATUTES AND REGULATIONS:** 52 U.S.C. § 30101(4), (17)  
52 U.S.C. § 30102  
52 U.S.C. § 30103  
52 U.S.C. § 30104  
52 U.S.C. § 30120  
11 C.F.R. § 100.5  
11 C.F.R. § 100.22  
11 C.F.R. § 100.26  
11 C.F.R. § 102.1  
11 C.F.R. § 104.1

**INTERNAL REPORTS CHECKED:** Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

The Complaint in this matter alleges that News for Democracy violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to organize, register, and report as a political committee in connection with its 2018 election activity.<sup>1</sup> The Complaint

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<sup>1</sup> Compl. at 1 (Oct. 25, 2018).

1 argues that because News for Democracy spent between \$1.2 and \$4.6 million on political  
2 advertising and only started operating a few months before the 2018 general election, it should  
3 have registered and filed reports as a political committee under the Act.<sup>2</sup>

4 This office identified and notified two entities — News for Democracy, a nonprofit  
5 organized under section 501(c)(4) of the Internal Revenue Code, and News for Democracy LLC,  
6 a New York corporation — as respondents. The exact relationship between the two entities is  
7 unclear, although there is some indication that they effectively function as related entities.<sup>3</sup>  
8 Nonprofit News for Democracy acknowledges that it paid for the advertisements cited in the  
9 Complaint but argues that the Complaint has failed to identify any independent expenditures it  
10 made in the 2018 election cycle and that its spending was “not made for the purpose of  
11 influencing federal elections.”<sup>4</sup> News for Democracy LLC responds that it did not fund any of  
12 the specific advertisements found in the Complaint despite publicly available information in  
13 Facebook’s Ad Library indicating that News for Democracy LLC paid for advertisements  
14 referenced in the Complaint.<sup>5</sup>

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<sup>2</sup> *Id.* at 1-3.

<sup>3</sup> Publicly available information in Facebook’s Ad Library indicates that News for Democracy LLC has purchased advertisements generally referred to in the Complaint and relevant to this matter. Moreover, the Complaint appears to refer to both entities, and press reports suggest they are related. *See, e.g.,* Compl., Ex. C, Lachlan Markay, *The Mystery Firms Behind the Liberal Facebook Dubbing a Hawaii Rep. a CWILF*, THE DAILY BEAST, Sept. 20, 2018 (updated online Nov. 20, 2018) (“Sept. Markay article”). Given News for Democracy LLC’s denial of funding the specific five ads attached to the Complaint but not denying funding other advertisements, this Report will refer to them collectively as News for Democracy when appropriate.

<sup>4</sup> *See* News for Democracy Resp. at 2-4 (Dec. 20, 2018) (“NFD Resp.”).

<sup>5</sup> *See* News for Democracy LLC Resp. at 1 (Dec. 19, 2018) (“NFD LLC Resp.”).

1 As discussed below, in 2018, News for Democracy and News for Democracy LLC  
2 satisfied the statutory threshold for political committee status, and the available information  
3 regarding their overall conduct, including statements by their principals, supports a reasonable  
4 inference that they each had the requisite major purpose of nominating or electing federal  
5 candidates. Accordingly, we recommend that the Commission find reason to believe that News  
6 for Democracy and News for Democracy LLC violated 52 U.S.C. §§ 30102, 30103, and 30104  
7 by failing to organize, register, and report with the Commission as a political committee. We  
8 further recommend that the Commission find reason to believe that they violated 52 U.S.C.  
9 § 30104(c)(1) by failing to file reports disclosing independent expenditures and 52 U.S.C.  
10 § 30120(a) for failing to include disclaimers on ads containing express advocacy.

## 11 **II. FACTUAL BACKGROUND**

12 The Complaint alleges that “News for Democracy is a secretive organization that has  
13 spent millions of dollars on political advertising.”<sup>6</sup> The Complaint states that “despite becoming  
14 one of the most influential organizations in political advertising, the organization has no website,  
15 contact page, or email address.”<sup>7</sup> Citing various press reports and the Facebook Ad Library,<sup>8</sup> the

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<sup>6</sup> Compl. at 2.

<sup>7</sup> *Id.* In addition, the Complaint alleges that given the secrecy of News for Democracy’s funding, “it is essential that the Commission ensure that foreign nationals have not been influencing” our elections through the organization, and thus the Commission should “investigate how much of the millions of dollars raised and spent by News for Democracy came from foreign nationals.” *Id.* at 3. The Complaint offers no information to support the allegation that News for Democracy raised and spent funds from foreign nationals. Because the foreign national allegation is, at this time, too vague and speculative to support a reason to believe finding, but because News for Democracy’s funding and spending would be examined in a political committee status investigation that may reveal receipts from foreign nationals, we recommend that the Commission take no action at this time as to the allegation that News for Democracy violated 52 U.S.C. § 30121 by accepting foreign national contributions.

<sup>8</sup> *Id.* at note 5 (citing “Facebook Ad Archive” of ads from News for Democracy (now labeled by Facebook as “Ad Library”) at [https://www.facebook.com/ads/archive/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&q=news%20for%20democracy](https://www.facebook.com/ads/archive/?active_status=all&ad_type=political_and_issue_ads&country=US&q=news%20for%20democracy)) (as of October 15, 2021, sort by “high to low” impressions to see a sampling of News for Democracy ads).

1 Complaint alleges that News for Democracy's "Facebook ad buys have created, 'at a minimum,  
2 45 million impressions through more than 2,600 ads'" from its August 27, 2018 inception to  
3 October 16, 2018.<sup>9</sup> News for Democracy was reportedly the "second-largest political ad buy[er]  
4 on Facebook" during a two-week period in September 2018, "trailing only Beto O'Rourke's  
5 Texas Senate campaign."<sup>10</sup> Based on this activity, the Complaint alleges that News for  
6 Democracy violated the Act and Commission regulations by failing to register and report as a  
7 political committee.

8 News for Democracy, according to its Response, is organized under Section 501(c)(4) of  
9 the Internal Revenue Code, and registered with the District of Columbia as a non-profit  
10 organization on August 27, 2018.<sup>11</sup> The Response describes the organization's primary purpose  
11 as the "promotion of social welfare" and its mission as "educat[ing] the public through  
12 identifying inaccurate news or commentary and promoting digital news that is factual in nature  
13 to counteract the harmful effects of news or commentary that is not accurate, reliable, or

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<sup>9</sup> Compl., Ex. B, Alexis C. Madrigal, *The Secret Organization Quietly Spending Millions on Facebook Political Ads*, THE ATLANTIC, Oct. 17, 2018 ("Madrigal article"). Facebook defines "impressions" as the "number of times your ads were on screen for your target audience."  
<https://www.facebook.com/business/help/675615482516035>.

<sup>10</sup> Madrigal article. According to a *New York Magazine* article, many of News for Democracy's Facebook pages "had accumulated anywhere from 5,000 to 12,000 subscribers sharing memes or news articles relevant to their subject matter a couple of times a day." Simon van Zuylen-Wood, *How Low Will Democrats Go? Probably Not Low Enough*, NEW YORK MAGAZINE at 6 (Dec. 20, 2019) ("NYMAG article"),  
<https://nymag.com/intelligencer/2019/12/democrats-digital-strategy-2020-election.html>.

<sup>11</sup> NFD Resp. at 1. News for Democracy's corporate status is listed as "revoked." See News for Democracy – Initial File Number: N00006064145 DC Corp. Notice, The reason for the revocation is unknown to this office at this time, as is whether News for Democracy has registered in another jurisdiction since DC's revocation. As of October 14, 2021, the IRS has no filings by News for Democracy in its public "Tax Exempt Organization Search" databases.

News for Democracy LLC formed on August 28, 2018 in Colorado, just a day after the formation of News for Democracy 501(c)(4) in the District of Columbia, and voluntarily dissolved July 30, 2019. See Colorado Business Information, <https://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do> (search for "News for Democracy") (last visited Oct. 19, 2021).

1 credible, or is generated by ‘bots.’”<sup>12</sup> Shortly after forming, News for Democracy “began to  
2 create, produce, and disseminate digital advertising content to advance its mission. The content  
3 is disseminated in the form of paid digital advertisements on social media platforms such as  
4 Facebook, as well as content that is shared organically.”<sup>13</sup> News for Democracy LLC denies  
5 funding the specific advertisements referenced in the Complaint but does not explain its  
6 relationship to News for Democracy or why it is listed as the payor for similar advertisements in  
7 Facebook’s Ad Library.<sup>14</sup>

8 A review of publicly available information about the two separate News for Democracy  
9 entities reveals that the groups appear to be referenced interchangeably and that they are both  
10 part of a group of entities associated with MotiveAI, a Denver corporation.<sup>15</sup> According to a  
11 New York University research report on social media political advertising in 2018, News for  
12 Democracy and another MotiveAI-connected entity, New American Media Group LLC, were  
13 examples of a “new type of political advertiser,” specifically, “unknown for-profit media  
14 companies that appear to be creating disingenuous communities that appear to be ‘grassroots  
15 movements’ to target different demographics and interests.”<sup>16</sup> The NYU Report found that these  
16 groups appeared to exist for no other purpose than to spread a particular political message by

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<sup>12</sup> NFD Resp. at 1.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *See* NFD LLC Resp. at 1.

<sup>15</sup> *See* Madrigal article, (“Fletcher [MotiveAI’s CEO] acknowledged . . . that MotiveAI, working with outside groups, is behind News for Democracy”); *see also* Tony Romm, Elizabeth Dwoskin, and Craig Timberg, *Internet Billionaire Reid Hoffman Apologizes for Funding a Group Tied to Disinformation in Alabama Race*, THE WASHINGTON POST, (Dec. 26, 2018), [https://www.washingtonpost.com/technology/2018/12/26/internet-billionaire-reid-hoffman-apologizes-funding-group-behind-disinformation-alabama-race/?utm\\_term=.781cf4a97098](https://www.washingtonpost.com/technology/2018/12/26/internet-billionaire-reid-hoffman-apologizes-funding-group-behind-disinformation-alabama-race/?utm_term=.781cf4a97098) (“Dec. Romm article”).

<sup>16</sup> Laura Edelson, *et al.*, *An Analysis of United States Online Political Advertising Transparency*, New York University, Feb. 12, 2019, at 9 (“NYU Report”), <https://arxiv.org/pdf/1902.04385.pdf>

1 running ads on Facebook pages, “most of which were designed to be appealing to groups with  
2 traditionally conservative view points.”<sup>17</sup>

3 News for Democracy and MotiveAI were both reportedly funded by Investing in US, an  
4 investment fund co-founded by Reid Hoffman and Dmitri Mehlhorn.<sup>18</sup> Mehlhorn, who also  
5 served as a board member of News for Democracy,<sup>19</sup> described the goal of Investing in US as  
6 bringing entrepreneurs and investors to “join the resistance” to then-President Trump.<sup>20</sup>  
7 Hoffman, a co-founder of LinkedIn and its former chairman, describes himself as politically  
8 active through his investments “in the sphere of civic engagement and politics over the past two  
9 years.”<sup>21</sup> In furtherance of its goal, Investing in US reportedly supported Democratic candidates  
10 and groups starting with the 2017 elections in Virginia, where the investments were made with  
11 the stated goal of flipping the then-Republican state legislature, and the 2017 special Senate  
12 election in Alabama.<sup>22</sup> Investing in US reportedly spent hundreds of millions of dollars to  
13 support Democratic-leaning groups during the 2018 midterm elections.<sup>23</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> Madrigal article; NY Mag. article.

<sup>19</sup> Tony Romm, Elizabeth Dvoskin, and Craig Timberg, *Facebook is Investigating the Political Pages and Ads of Another Group Backed by Reid Hoffman*, THE WASHINGTON POST (Jan. 7, 2019), [https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/?noredirect=on&utm\\_term=.fc1b24f6c1c1](https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/?noredirect=on&utm_term=.fc1b24f6c1c1) (“Jan. Romm article”).

<sup>20</sup> Dmitri Mehlhorn, *Investing in US – 2017-2018 in Review*, MEDIUM.COM (Dec. 21, 2018) (“Mehlhorn Medium Post”), <https://medium.com/@DmitriMehlhorn/investing-in-us-64afe222face>.

<sup>21</sup> Reid Hoffman, *Truth and Politics*, MEDIUM (Dec. 26, 2018) (“Hoffman Medium Post”), <https://medium.com/@reidhoffman/truth-and-politics-1a532bc6c2b1>.

<sup>22</sup> Dec. and Jan. Romm articles. The circumstances surrounding Investing in US’s participation in the 2017 special election in Alabama are involved in the allegations in P-MUR 621/MUR 7562 (New Knowledge)

<sup>23</sup> *See* Mehlhorn Medium Post.

1           One of the groups supported by Investing in US was American Engagement  
2 Technologies, a digital advertising firm that received \$750,000 in funding, some of which was  
3 used to “experiment with many of the tactics now understood to have influenced the 2016  
4 elections.”<sup>24</sup> These tactics, dubbed Project Birmingham, included funding fake Facebook pages  
5 where the group posed as conservative Republicans in an effort to draw support away from the  
6 Republican Senate candidate Roy Moore and a scheme to link Moore to thousands of Russian  
7 Twitter accounts that suddenly began to follow Moore.<sup>25</sup>

8           Similarly, News for Democracy was part of an effort to target conservatives on Facebook  
9 using the same microtargeting tactics used by the Internet Research Agency during the 2016  
10 election and by Project Birmingham in 2017.<sup>26</sup> Mehlhorn reportedly pitched the group to  
11 Democratic donors looking for organizations to support and stated that News for Democracy’s  
12 goal was “outreach to groups that were center [and] center-right, and trying to reach out to them  
13 with messages.”<sup>27</sup>

14           During the 2018 election, News for Democracy created at least 14 Facebook pages and  
15 paid MotiveAI to create thousands of ads for those pages.<sup>28</sup> Facebook’s Ad Library reveals

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<sup>24</sup> Scott Shane and Alan Blinder, *Secret Experiment in Alabama Senate Race Imitated Russian Tactics*, NEW YORK TIMES (Dec. 19, 2018), <https://www.nytimes.com/2018/12/19/us/alabama-senate-roy-jones-russia.html> (“Shane/Blinder article”); see also Dec. Romm article (stating that Hoffman invested \$750,000 in American Engagement Technologies).

<sup>25</sup> Shane/Blinder article.

<sup>26</sup> In an interview, Mehlhorn said he disavowed disinformation as a tool for mobilizing American voters but also said that U.S. political groups could learn from the “troll army” reportedly used by the Internet Research Agency and its use of microtargeting voters. Jan. Romm article; see also Hannah Kuchler, *Facebook and the midterms: who’s trying to influence your vote?*, FINANCIAL TIMES (Oct. 31, 2018) [www.ft.com](http://www.ft.com), (quoting NYU Report co-author Damon McCoy, “It had exactly the same earmarks, exactly what the Russians were doing, setting up these fake communities.”) (subscription required, available in ).

<sup>27</sup> Jan. Romm article.

<sup>28</sup> *Id.*

1 that News for Democracy spent \$5,619,202 on ads that ran from August 2018 to November 6,  
 2 2018 as follows:<sup>29</sup>

3

| Page Name                | Source <sup>30</sup>   | Amount Spent | Number of Ads in Library |
|--------------------------|------------------------|--------------|--------------------------|
| Our Flag Our Country     | News For Democracy     | \$1,209,154  | 1,281                    |
| Living Free              | News For Democracy     | \$974,845    | 749                      |
| Better With Age          | News For Democracy     | \$768,039    | 888                      |
| The Holy Tribune         | News For Democracy     | \$551,000    | 512                      |
| Women For Civility       | News For Democracy     | \$531,850    | 594                      |
| Corazon Coqui            | News For Democracy     | \$359,332    | 83                       |
| Self-Reliant Republic    | News For Democracy     | \$297,895    | 256                      |
| Military Network         | News For Democracy     | \$277,943    | 576                      |
| Sounds Like Tennessee    | News For Democracy     | \$246,713    | 37                       |
| Voz Boricua              | News For Democracy     | \$165,236    | 42                       |
| Rugged Roots             | News For Democracy     | \$116,916    | 87                       |
| That's Just North Dakota | News For Democracy     | \$78,693     | 38                       |
| Left AF                  | News For Democracy     | \$19,763     | 62                       |
| Military Network         | News For Democracy LLC | \$15,487     | 4                        |
| The Black Pages          | News For Democracy LLC | \$5,732      | 4                        |
| Left AF                  | News For Democracy LLC | \$604        | 4                        |
|                          |                        | \$5,619,202  | 5,217                    |

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<sup>29</sup> The same publicly available Facebook Library data shows that besides News for Democracy and News for Democracy LLC, two other related entities bought ads on a few of these Facebook pages: New American Media LLC paid \$3,000 on a Corazon Coqui page, and News for America paid \$32,883 on the That's Just North Dakota page. In addition, Fight for America's Future PAC, an independent expenditure-only political committee, spent \$35,000 on the Our Flag page, but the available information is not clear on what relationship Fight for America's Future PAC had to the News for Democracy entities.

<sup>30</sup> In the Facebook Ad Library, this column is entitled "Disclaimer." The Facebook platform appended information to the paid advertisements in this matter stating that the communications were "paid for by" a Facebook page named "News for Democracy." *See, e.g.*, Compl., Ex. A. Such a platform-appended "disclaimer," which is created by the platform and operates independently of the communication, does not identify the payor name, as evidenced by the ambiguity in the payors of Facebook ads placed by both News for Democracy LLC and News for Democracy 501(c)(4). Moreover, the platform-appended label does not provide a payor's address, phone, or website, as required under the Act and Commission regulations for disclaimers. The platform-appended label also does not include an authorization statement. As such, the platform-appended label does not satisfy the disclaimer requirement. *See infra* at Section III.C.



1 News for Democracy's network of Facebook pages was part of a program to grow  
2 audiences around non-partisan topics before running ads designed to undercut support for  
3 conservative candidates and promote Democratic positions and candidates.<sup>31</sup> Publicly available  
4 information about News for Democracy indicates that the pages were made to sound like news  
5 organizations,<sup>32</sup> or targeted to appeal to specific demographics, including "'bros,' Spanish-  
6 language speakers, women, Tennessee and North Dakota residents, seniors, military veterans,  
7 Christians, and even, in underhanded fashion, Trump supporters."<sup>33</sup> Names of some of these  
8 Facebook pages included "The Keg Bros," "World News Reporter," "Corazon Coqui,"  
9 "Heartland Gazette," "Women for Civility," "Better with Age," "The Holy Tribune," and "Our  
10 Flag Our Country."<sup>34</sup> Eventually, followers of these pages would be targeted with so-called  
11 payload content in the form of ads and videos "to boost Democratic policies, candidates, or  
12 ideas, or knock down the opposition."<sup>35</sup> MotiveAI's chief executive Dan Fletcher explained in a  
13 2019 interview that MotiveAI acted as a vendor for the Facebook pages, but that MotiveAI's  
14 "partners," such as News for Democracy, were responsible for the ad campaigns.<sup>36</sup>

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<sup>31</sup> See, e.g., Madrigal article, Sept. Markay article; Lachlan Markay, *MotiveAI, a Democratic Ad Firm Accused of Fake News, Retools for 2020*, THE DAILY BEAST, April 23, 2019, <https://www.thedailybeast.com/motiveai-a-democratic-ad-firm-accused-of-fake-news-retools-for-2020> ("April Markay article"); Jan. Romm article; Dec. Romm article.

<sup>32</sup> Despite calling itself "News" for Democracy and labeling some of its Facebook pages "media/news company," News for Democracy does not contend that it is a "media entity" entitled to the "media exemption." Similarly, related entities appear to be called "New American Media LLC" and "News for America." The "media exemption" or "press exemption," when applied, exempts from the definition of "contribution" and "expenditure," the costs associated with covering news stories, commentary, or editorials. See 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; Internet Communications, 71 Fed. Reg. 18,589, 18,608 (Apr. 12, 2006) (explaining application of media exemption to press entity acting in its "legitimate press function").

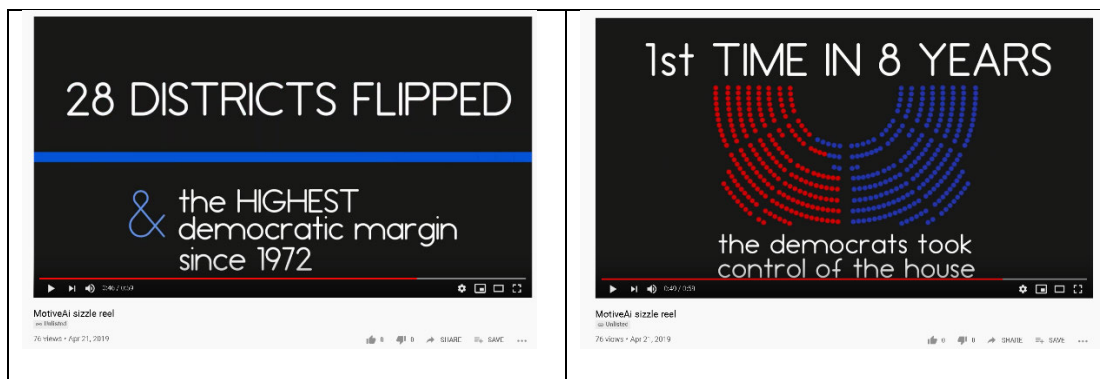
<sup>33</sup> Sept. Markay article; see also April Markay article.

<sup>34</sup> See Madrigal article; Sept. Markay article.

<sup>35</sup> See Sept. Markay article; April Markay article; see also Jan. Romm article.

<sup>36</sup> April Markay article.

1           Although it is not clear whether MotiveAI was merely a vendor to News for Democracy  
 2 or directed the activities of News for Democracy,<sup>37</sup> MotiveAI appears to have used its 2018  
 3 activity, including its work for News for Democracy, to market itself for the 2020 elections as an  
 4 organization focused on electing democratic candidates<sup>38</sup> by posting a 60-second promotional  
 5 “sizzle reel” on Vimeo that claimed that it “had the largest digital program of the 2018 midterm  
 6 elections,” producing “over 260 videos and over 5000 individual ads which led to:”<sup>39</sup>



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 8           News for Democracy's Response does not explain its relationship to MotiveAI or provide  
 9 any information about the extent of its activity disseminating advertisements in the 2018 election  
 10 cycle. News for Democracy also did not provide any information about any other activity it

<sup>37</sup> In an online job posting at Colorado College, MotiveAI described itself as a “startup that builds and manages online political communities, using storytelling and facts to help encourage a more informed, thoughtful, empathetic and motivated electorate.” See <https://sites.coloradocollege.edu/careercenter/entry-level-assistant-video-editor-for-motiveai/> (last visited Oct. 20, 2021).

<sup>38</sup> Daily Beast reporter Lachlan Markay said that after he asked MotiveAI's cofounder, Dan Fletcher, about this video, the video was removed from MotiveAI's website. April Markay article at 6. The Daily Beast downloaded a copy of the video, uploaded it onto YouTube and also embedded the video in its article. *Id.* See Lachlan Markay, *MotiveAi Sizzle Reel*, YOUTUBE (Apr. 21, 2019) (“MotiveAI Video”)

<sup>39</sup> MotiveAI Video.

1 conducted during its existence in pursuit of its stated social welfare mission, and, as of the date  
2 of this Report, it has not filed any public disclosure documents with the IRS.<sup>40</sup>

3 The Complaint does not examine News for Democracy's entire ad program and instead  
4 identifies five ads to support its allegation that News for Democracy failed to register and report  
5 as a political committee. The Complaint cited to ads on the Sounds Like Tennessee,<sup>41</sup> That's  
6 Just North Dakota,<sup>42</sup> Corazon Coqui,<sup>43</sup> and Women for Civility<sup>44</sup> pages. Three of the ads  
7 mentioned and used images of Senate candidates Kevin Cramer and Rick Scott, while two of the  
8 ads referenced President Trump and the mid-term elections, with one narrator stating, "I'll be  
9 voting Democratic in the mid-term elections on November 6" and another narrator saying, "it  
10 would be nice to have a Congress" working for "us" and stating that she "would be voting for the  
11 Democrats this election."<sup>45</sup>

### 12 III. LEGAL ANALYSIS

13 News for Democracy's 2018 ad campaign was widespread, and it altered its ads multiple  
14 times to better target the recipients, thus creating a body of material too large and difficult to  
15 review or catalogue in its entirety. In prior matters in which the Commission considered whether

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<sup>40</sup> FEC disclosure reports reveal that a "News for Democracy" with a Washington, D.C., address, made a \$125,000 contribution on October 5, 2018, to For Our Future, a pro-Democratic independent expenditure-only political committee. See <https://docquery.fec.gov/cgi-bin/fecimg/?201911219166074361>. The Washington address appears to be a co-working site. See <https://makeoffices.com/locations/washington-dc/k-street/>. We have no information whether this News for Democracy is the same entity as the respondent.

<sup>41</sup> Compl. Ex. A; Advertisement 6. Links and transcripts for this ad and all others cited in this Report are available in [redacted] in a document titled "MUR 7527 (News for Democracy) Representative FB ads."

<sup>42</sup> Compl. Ex. A; Advertisement 13.

<sup>43</sup> Compl. Ex. A; Advertisement 14 (only one of two Corazon Coqui ads cited in the Complaint is included in the representative ad summary document in [redacted]).

<sup>44</sup> Compl. Ex. A; Advertisement 7.

<sup>45</sup> Compl. Ex. A. These ads are discussed in more detail below.

1 an entity's ads factored into an analysis of political committee status, the number of ads  
2 disseminated has typically been much smaller.<sup>46</sup> Here, there are over 5,000 ads, many with  
3 multiple versions. It is evident, nevertheless, that some News for Democracy ads contain  
4 express advocacy and virtually all were disseminated in connection with federal elections.  
5 Because News for Democracy spent more than \$1,000 on these activities and its major purpose  
6 was the nomination or election of federal candidates, News for Democracy was required to  
7 register and report to the Commission as a political committee.

#### 8 **A. Political Committee Status Allegation**

##### 9 1. The Test for Political Committee Status

10 The Act and Commission regulations define a "political committee" as "any committee,  
11 club, association, or other group of persons which receives contributions aggregating in excess of  
12 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
13 during a calendar year."<sup>47</sup> In *Buckley v. Valeo*, the Supreme Court held that defining political  
14 committee status "only in terms of [the] amount of annual 'contributions' and 'expenditures'"  
15 might be overbroad, reaching "groups engaged purely in issue discussion."<sup>48</sup> To cure that  
16 infirmity, the Court concluded that the term "political committee" "need only encompass  
17 organizations that are under the control of a candidate or the *major purpose of which is the*  
18 *nomination or election of a candidate.*"<sup>49</sup> Accordingly, under the statute as thus construed, an

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<sup>46</sup> See First Gen. Counsel's Rpt. at 6, MUR 7418 (Fuse Washington) (case involved \$2,616.62 in spending on electioneering communications for 12 candidates); First Gen. Counsel's Rpt. at 6, MUR 6974 (Foundation for a Secure and Prosperous America (\$1 million, two ads); Conciliation Agreement, Part IV ¶ 15, MURs 5511/5525 (Swiftboat Veterans (12 television ads).

<sup>47</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>48</sup> 424 U.S. 1 at 79 (1976) (*per curiam*).

<sup>49</sup> *Id.* (emphasis added).

1 organization that is not controlled by a candidate must register as a political committee only if  
2 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election  
3 of federal candidates.

4 Although *Buckley* established the major purpose test, it provided no guidance as to the  
5 proper approach to determine an organization’s major purpose.<sup>50</sup> After *Buckley*, the Commission  
6 adopted a policy of determining on a case-by-case basis whether an organization is a political  
7 committee, including whether its major purpose is the nomination or election of federal  
8 candidates. Though it has periodically considered crafting a bright-line rule through rulemaking,  
9 the Commission consistently has declined to do so.<sup>51</sup> Instead, the Commission said that  
10 determining an organization’s major purpose “requires the flexibility of a case-by-case analysis  
11 of an organization’s conduct that is incompatible with a one-size-fits-all rule,” and that “any list  
12 of factors developed by the Commission would not likely be exhaustive in any event, as  
13 evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions  
14 considering the political committee status of various entities.”<sup>52</sup>

15 In 2016, the United States District Court for the District of Columbia in *Citizens for*  
16 *Responsibility and Ethics in Washington v. FEC* instructed the Commission, when examining an  
17 organization’s major purpose, to look beyond express advocacy and consider whether other

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<sup>50</sup> See, e.g., *Real Truth About Abortion, Inc. f/k/a Real Truth About Obama, Inc. v. FEC*, 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 568 U.S. 1114 (Jan. 7, 2013) (“*RTAA*”) (“Although *Buckley* did create the major purpose test, it did not mandate a particular methodology for determining an organization’s major purpose.”).

<sup>51</sup> See, e.g., Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

<sup>52</sup> Political Committee Status, 72 Fed. Reg. 5595, 5601-02 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”); see e.g., Factual & Legal Analysis (“F&LA”) at 13-14, MUR 6538R (Americans for Job Security).

1 communications at issue indicate a “campaign-related purpose.”<sup>53</sup> The Court also held that the  
2 Commission’s analysis of the relevant time period for evaluating a group’s spending must retain  
3 the flexibility to account for changes in an organization’s major purpose over time.<sup>54</sup>

4 Thus, to determine an entity’s “major purpose,” the Commission considers a group’s  
5 “overall conduct,” including, among other factors, public statements about its mission,  
6 organizational documents, government filings (*e.g.*, IRS notices), and the proportion of spending  
7 related to “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”<sup>55</sup>  
8 The Commission has stated that it compares how much of an organization’s spending is for  
9 federal campaign activity relative to activities that [a]re not campaign related.<sup>56</sup>

10 Political committees must comply with certain organizational and reporting requirements  
11 set forth in the Act. They must register with the Commission, file periodic reports for disclosure

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<sup>53</sup> 209 F. Supp. 3d 77, 92-93 (D.D.C. 2016) (“*CREW I*”). The same District Court later held that electioneering communications “*presumptively* have an election-related purpose,” but the analysis by that Court in *CREW I* and its subsequent decision refers generally to all speech that is campaign-related but does not contain express advocacy. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (“*CREW II*”) (*italics in original*). The Court refrained from establishing its own bright-line rule regarding which communications inherently have a campaign-related purpose but stated that the First Amendment does not require “the agency to exclude from its consideration all non-express advocacy in the context of disclosure.” *CREW I*, 209 F. Supp. 3d at 93.

<sup>54</sup> *CREW I*, 209 F. Supp. 3d at 94. In its subsequent F&LA, the Commission accepted the Court’s remand of the enforcement matter, found that the organization’s campaign-related spending exceeded 50% of its overall spending approximately one year before the 2010 election, and found reason to believe that the organization violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee. F&LA at 14-15, MUR 6538R (Americans for Job Security); *see also* Conciliation Agreement, MUR 6538R (Sept. 9, 2019).

<sup>55</sup> Supplemental E&J at 5597, 5605.

<sup>56</sup> *Id.* at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. *See Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, in *RTAA*, the Fourth Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. *See* 681 F.3d 544; *see also Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission’s case-by-case method of determining political committee status), *cert. denied*, 572 U.S. 1114 (2014).

1 to the public, appoint a treasurer who maintains its records, and identify themselves through  
 2 “disclaimers” on all of their political advertising, on their websites, and in mass emails.<sup>57</sup>

3 2. Application of the Test for Political Committee Status to News for  
 4 Democracy

5 a. Statutory Threshold

6  
 7 To assess whether an organization has made an “expenditure,” the Commission analyzes  
 8 whether spending on any of an organization’s communications made independently of a  
 9 candidate constitute express advocacy.<sup>58</sup>

10 Under the Commission’s regulations, a communication contains express advocacy when  
 11 it uses phrases such as

12 “vote for the President,” “re-elect your Congressman,” “support  
 13 the Democratic nominee,” “cast your ballot for the Republican  
 14 challenger for U.S. Senate in Georgia,” “Smith for Congress,”  
 15 “Bill McKay in ’94,” “vote Pro-Life” or “vote Pro-Choice”  
 16 accompanied by a listing of clearly identified candidates described  
 17 as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat”  
 18 accompanied by a picture of one or more candidate(s), “reject the  
 19 incumbent,” or communications of campaign slogan(s), or  
 20 individual word(s), which in context can have no other reasonable  
 21 meaning than to urge the election or defeat of one or more clearly  
 22 identified candidate(s), such as posters, bumper stickers,  
 23 advertisements, etc. which say “Nixon’s the One,” “Carter ’76,”  
 24 “Regan/Bush,” or “Mondale!”<sup>59</sup>

25  
 26 In addition, a communication contains express advocacy if, “[w]hen taken as a whole and  
 27 with limited reference to external events, such as the proximity to the election,” it “could only be  
 28 interpreted by a reasonable person as containing advocacy of the election or defeat of one or

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<sup>57</sup> See 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

<sup>58</sup> See Supplemental E&J, 72 Fed. Reg. at 5606.

<sup>59</sup> 11 C.F.R. § 100.22(a); see also *Buckley v. Valeo*, 424 U.S. at 44.

1 more clearly identified candidate(s),” because it contains an “electoral portion” that is  
2 “unmistakable, unambiguous, and suggestive of only one meaning” and “[r]easonable minds  
3 could not differ as to whether it encourages actions to elect or defeat one or more clearly  
4 identified candidate(s) or encourages some other kind of action.”<sup>60</sup> In its explanation and  
5 justification for 11 C.F.R. § 100.22(b), the Commission stated that “[c]ommunications discussing  
6 or commenting on a candidate’s character, qualifications, or accomplishments are considered  
7 express advocacy under new section 100.22(b) if, in context, they can have no other reasonable  
8 meaning than to encourage actions to elect or defeat the candidate in question.”<sup>61</sup>

9       Among News for Democracy’s thousands of Facebook ads, all disseminated in the two  
10 months prior to the 2018 general election, News for Democracy spent at least \$21,000 and up to  
11 \$105,000 on ads expressly advocating the defeat of clearly identified candidates Rick Scott,  
12 Marsha Blackburn, Kevin Cramer, and Devin Nunes. This spending satisfies the statutory  
13 threshold for political committee status.

14       News for Democracy disseminated the following ad expressly advocating the defeat of  
15 U.S. Senate candidate Marsha Blackburn on the “Sounds Like Tennessee” Facebook page,  
16 targeted at voters in Tennessee where Blackburn was running for Senate. The ad, which was not  
17 referenced in the Complaint, begins with “the biggest, richest most powerful private corrections  
18 company in the United States: Corrections Corporation of America, headquartered right here in  
19 Nashville, Tennessee.” The voiceover continues:

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<sup>60</sup> *Id.* § 100.22(b). The term “clearly identified” means “the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ‘the President,’ ‘your Congressman,’ or the ‘the incumbent,’ or through an unambiguous reference to his or her status as a candidate such as ‘the Democratic presidential nominee’ or ‘the Republican candidate for Senate in the State of Georgia.’” 11 C.F.R. § 100.17.

<sup>61</sup> Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294-35,295 (July 6, 1995).



1           Blackburn has taken over \$24,000 from the for-profit prison  
2           industry this year alone. Making her one of Washington's biggest  
3           recipients of private prison cash. These facilities  
4           disproportionately incarcerate African Americans on non-violent  
5           charges. Turning jailing people into a lucrative multibillion dollar  
6           industry. We need leaders who fight for us. Not private prisons'  
7           bottom line. Say No to Marsha Blackburn.<sup>62</sup>

8  
9           The ad ends with the following image:  
10



12           News for Democracy spent between \$10,000 and \$50,000 on this ad that clearly  
13           identifies Blackburn by her name and image.<sup>63</sup> This ad expressly advocates against the election  
14           of Blackburn by making the statement that “we need leaders who fight for us” and directing  
15           viewers to “say no to Marsha Blackburn.”<sup>64</sup> By connecting campaign contributions she  
16           purportedly received to needing political leaders “who fight for us” and saying “no” to  
17           Blackburn, this ad, disseminated just before the general election to people interested in

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<sup>62</sup>           Sounds Like Tennessee, Advertisement 2.

<sup>63</sup>           *Id.*; see also Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 5, 2018 to November 6, 2018 and, by clicking “ad details,” showing 92% of the ad’s viewers were in Tennessee), <https://www.facebook.com/ads/library/?id=304123667035215>. Overall, News for Democracy spent \$246,713 on the Sounds Like Tennessee page.

<sup>64</sup>           Sounds Like Tennessee, Advertisement 2.

1 Tennessee,<sup>65</sup> has no other reasonable meaning than to urge Blackburn's defeat in the upcoming  
2 election.<sup>66</sup>

3 On the "Corazon Coqui" page, News for Democracy spent between \$10,000 and \$50,000  
4 on a single placement of an ad that clearly identifies, by name and image, a candidate for federal  
5 office: U.S. Senate candidate Rick Scott of Florida.<sup>67</sup> The voiceover at the end of the ad asks,  
6 "Will you vote for him for Senate?" followed by the answer, "No. Absolutely not." The text  
7 then concludes, "Rick Scott is not our friend. He does not deserve our votes."<sup>68</sup> The question  
8 "will you vote for him for Senate" and response of "no" together with the phrases, "Scott is not  
9 our friend" and "he does not deserve our votes" provide a clear directive to vote against Scott.<sup>69</sup>  
10 Even though the words used in the ad may be "marginally less direct than 'Vote for Smith,'" that  
11 margin does not change the directive to not vote for Scott.<sup>70</sup>

12 News for Democracy also paid between \$1,000 and \$5,000 to place an ad on the page  
13 "That's Just North Dakota" that clearly identified, by name and image, U.S. Senate Candidate

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<sup>65</sup> According to Facebook, this ad and others on the "Sounds Like Tennessee" Facebook page were almost all seen by viewers in Tennessee, at rates ranging from 90-92%. *See supra* note 63.

<sup>66</sup> *See* Second Gen. Counsel's Rpt. at 6-7 and Cert., July 20, 2005, MUR 5365 (Club for Growth) (finding probable cause on political committee status based in part on express advocacy advertisement that stated, among other things, "'NO' to Daschle Democrats.").

<sup>67</sup> Corazon Coqui, Advertisement 1; *see* Facebook Ad Library, News for Democracy, Corazon Coqui, (showing ad placement from October 24, 2018 to October 27, 2018 and showing 92% of the ad's viewers were in Florida), <https://www.facebook.com/ads/library/?id=42642335455745>. Overall, News for Democracy spent at least \$359,332 on the Corazon Coqui page, with New American Media LLC spending \$3,000 on the page, and an additional \$21,733 in ads were not identified by the Facebook ad archive. *Id.*

<sup>68</sup> Corazon Coqui, Advertisement 1 (translated from the Spanish text using Google Translate, with the accuracy of the translation confirmed by a native Spanish speaker).

<sup>69</sup> *Id.*

<sup>70</sup> *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) ("MCFL") (urging voters to vote for pro-life candidates and identifying pro-life candidates in a list constituted express advocacy).

1 Kevin Cramer.<sup>71</sup> The ad starts with Cramer's voice stating that "it's hard for me to not be  
2 suspicious" about allegations against Supreme Court nominee Brett Kavanaugh.<sup>72</sup> It ends with  
3 the voiceover telling listeners that "North Dakotans deserve a leader who takes sexual assault  
4 seriously. Not someone who dismisses women as 'suspicious.'" <sup>73</sup> In this context, the phrase  
5 "North Dakotans deserve a leader who takes sexual assault seriously" when contrasted with  
6 Cramer's statement that the sexual assault allegations against Kavanaugh were "suspicious" is  
7 used to question Cramer's character and fitness for office by suggesting that Cramer does not  
8 take sexual assault seriously. By saying that "North Dakotans deserve" a certain type of leader  
9 and suggesting that Cramer does not meet those requirements, the ad has no other meaning than  
10 to encourage the defeat of Cramer in his Senate race.<sup>74</sup>

11 Similarly, an ad that ran on "The Holy Tribune" and "Military Network" pages included  
12 statements from constituents in Representative Devin Nunes's district, stating that he "hides  
13 from us," that they were "concerned [he] is simply not paying attention," and expressing  
14 "frustration because of Devin Nunes's unwillingness to meet with" constituents. The ad requests  
15 that listeners "[s]hare if [they] think District 22 needs a Representative they can count on. Not

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<sup>71</sup> That's Just North Dakota, Advertisement 3; *see* Facebook Ad Library, News for Democracy, That's Just North Dakota (showing ad placement from October 4, 2018 to October 8, 2018 and showing 93% of the ad's viewers were in North Dakota), <https://www.facebook.com/ads/library/?id=239548520244222>. Overall, News for Democracy and News for America overall spent \$111,576 on the That's Just North Dakota page. *See id.*

<sup>72</sup> That's Just North Dakota, Advertisement 3.

<sup>73</sup> *Id.*

<sup>74</sup> *See* F&LA at 14-15, MUR 5024R (Council for Responsible Government) (concluding that "Tell Tom Kean Jr. . . . New Jersey Needs New Jersey Leaders" was suggestive of only one meaning—to "vote against Tom Kean").

1 Devin Nunes.”<sup>75</sup> Taken together, these statements can only be viewed as urging viewers to vote  
2 against Nunes because they are similar in content to the phrase “reject the incumbent.”<sup>76</sup>

3 As the foregoing discussion demonstrates, News for Democracy spent more than \$1,000  
4 on express advocacy communications, thus meeting the statutory threshold for political  
5 committee status.<sup>77</sup>

6 b. Major Purpose

7 Despite News for Democracy's Response stating that it was formed for social welfare  
8 purposes, the available information indicates that News for Democracy's sole purpose was the  
9 nomination or election of federal candidates.<sup>78</sup> News for Democracy was reportedly created to  
10 conduct social-media operations primarily targeted at conservative audiences with the goal of  
11 influencing the outcome of the 2018 Congressional midterm election similar to the targeting  
12 operations of the Internet Research Agency during the 2016 elections.<sup>79</sup> To carry out its goal,

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<sup>75</sup> The Holy Tribune, Advertisement 4; see Facebook's Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 25, 2018 to October 25, 2018) <https://www.facebook.com/ads/library/?id=329004324542883>. News for Democracy reportedly spent less than \$100 for this placement, though it is not clear whether the ad ran multiple times. This ad appears to have also been placed on the “Military Network” Facebook page. See <https://www.facebook.com/ads/library/?id=2420686094638638>. The Nunes ad was viewed only in California. News for Democracy spent over \$500,000 on The Holy Tribune page and News for Democracy and News for Democracy LLC spent almost \$300,000 combined on the Military Network page.

<sup>76</sup> 11 C.F.R. § 100.22(a).

<sup>77</sup> See 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>78</sup> See *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at \*14 (E.D. Va. Sept. 24, 2008) (“A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive.”) (emphasis in original), *aff'd*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion*, 681 F.3d 544 (4th Cir. 2012); see also Supp. E&J at 5597 (“Therefore, determining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization's specific conduct — whether it received \$1,000 in contributions or made \$1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate). Neither FECA, its subsequent amendments, nor any judicial decision interpreting either, has substituted tax status as an acceptable proxy for this conduct-based determination.”).

<sup>79</sup> See Madrigal article, Sept. Markay article; Jan. Romm article.

1 News for Democracy disseminated ads that covered a range of political and social issues and  
2 distributed them on purported conservative Facebook pages with names such as “Our Flag Our  
3 Country,” “Self-Reliant Republic,” and “Rugged Roots,” or on pages described as “media/news  
4 company” like “The Holy Tribune” and “Military Network.”<sup>80</sup> These pages and several ads on  
5 them were reportedly designed to attract conservative audiences through the use of targeted  
6 content before inserting ads in their news feeds that opposed Republicans and supported  
7 Democrats running for Congress.<sup>81</sup> Backed by audience engagement and polling data, the  
8 conservative-sounding Facebook pages created by News for Democracy sought to find people  
9 who could be open to its payload content in the form of electoral messages, *e.g.*, the hypothetical  
10 40-something, white male in the “Sounds Like Tennessee” Facebook ad who, like President  
11 Trump, disagreed with Colin Kaepernick’s actions but could nevertheless see the value of free  
12 expression.<sup>82</sup>

13 Although News for Democracy’s activities appear to have been designed to camouflage  
14 its major purpose and the group did not have a website or make public statements about its  
15 activities,<sup>83</sup> statements from individuals and organizations associated with News for Democracy,  
16 as well as its conduct in mimicking election-influencing tactics reportedly used by the Internet

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<sup>80</sup> See *supra* note 29 and accompanying text; see also Sept. Markay article; April Markay article; Jan. Romm article.

<sup>81</sup> See *supra* notes 31-36. Following the 2018 mid-term election, Facebook opened an investigation into whether News for Democracy’s Facebook ads and pages violated its “community standards and advertising policies,” which emphasize authenticity and ban efforts to mislead people about the origin of content. Jan. Romm article.

<sup>82</sup> Madrigal article; Compl. Ex. A; Sounds Like Tennessee ad, Advertisement 6.

<sup>83</sup> The Commission has noted that in its consideration of an organization’s “overall conduct,” it will look at that organization’s public statements, including its own materials, statements to donors, or statements made on its website, “giving due weight to the form and nature of the statement, as well as the speaker’s position within the organization.” Supplemental E&J, 72 Fed. Reg. at 5601.

1 Research Agency in the 2016 elections,<sup>84</sup> establish that the group's goal was achieving particular  
2 outcomes in federal elections. After the election, MotiveAI, the creator of the ads disseminated  
3 by News for Democracy, boasted that its advertising campaign had achieved its goals,  
4 specifically with respect to the number of "districts flipped" from Republican to Democratic and  
5 with Democrats taking "control of the House."<sup>85</sup> Similarly, Dmitri Mehlhorn, a News for  
6 Democracy board member, reportedly pitched the group to Democratic donors looking for  
7 organizations to support.<sup>86</sup> In response to reporting about groups that Investing in US funded,  
8 including News for Democracy, Mehlhorn has also acknowledged that Investing in US funded  
9 organizations that were focused on "raising and deploying resources" to "influence the political  
10 direction of our country" and that he sought "to bring together investors and entrepreneurs to join  
11 the resistance" to then-President Trump.<sup>87</sup>

12 There is no other available information, including from Respondents, that News for  
13 Democracy conducted *any activity* other than advertising in connection with the 2018 federal  
14 elections.<sup>88</sup> Its entire purpose, supported by its dissemination of ads just before the 2018 general  
15 election, was, according to the aforementioned sizzle reel, to "flip districts."<sup>89</sup> News for  
16 Democracy accomplished its objectives by saturating more than a dozen Facebook pages with  
17 hundreds of ads promoting its support of Democratic candidates and progressive policies.

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<sup>84</sup> See *supra* notes 18-27.

<sup>85</sup> MotiveAI Video.

<sup>86</sup> Jan. Romm article.

<sup>87</sup> Mehlhorn Medium Post.

<sup>88</sup> *But see* note 41 (possible \$125,000 political contribution).

<sup>89</sup> MotiveAI Video.

1           In addition, for purposes of this kind of political committee status analysis, even the ads  
2 that did not mention candidates or policies appear to have been created to support News for  
3 Democracy's campaign-related purpose. The available information indicates that News for  
4 Democracy used paid, non-election related ads to attract more followers to its social media  
5 accounts so that they would be subsequently exposed to so-called payload content. As the  
6 Senate Intelligence Committee found, the Internet Research Agency's disinformation campaign  
7 employed this tactic to influence the 2016 election.<sup>90</sup> In mimicking this way of gaining trust and  
8 concealing its true motives, News for Democracy's almost identical tactics — marked by the  
9 creation of disingenuous communities and engagement through social media as part of a payload  
10 communication strategy — can be understood by the Commission as campaign activities  
11 indicative of its major purpose of influencing the 2018 election by electing federal candidates.<sup>91</sup>

12           In past enforcement actions, the Commission has determined that funds spent on  
13 communications that support or oppose a clearly identified federal candidate, but do not contain  
14 express advocacy, may appropriately be considered in determining whether that group has

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<sup>90</sup> U.S. SENATE SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION, VOLUME 2: RUSSIA'S USE OF SOCIAL MEDIA (Oct. 8, 2019) at 32-33, 51, 61 (explaining the role of "'payload content' designed to influence the targeted user").

<sup>91</sup> Compare Supplemental E&J at 5601 (observing that "*Buckley* and *MCFL* make clear that the major purpose doctrine requires a fact-intensive analysis of a group's campaign activities compared to its activities unrelated to campaigns").

1 federal campaign activity as its major purpose.<sup>92</sup> This approach is consistent with the court's  
2 reasoning in *CREW I*, namely that, when examining an organization's major purpose,  
3 "excluding *all* non-express advocacy speech from consideration [is] contrary to law."<sup>93</sup>

4 Besides the statements about the purpose of News for Democracy's ads by Fletcher, a  
5 review of Facebook's Ad Library confirms that in addition to ads containing express advocacy,  
6 several of the ads disseminated by News for Democracy opposed or criticized clearly identified  
7 federal candidates. For example, News for Democracy purchased an ad on the "Sounds Like  
8 Tennessee" page telling viewers that "[o]n Tuesday, November 6th, we take back Tennessee,"  
9 that "we elect leaders who will fight for us" (accompanied by the image of Democratic Senate  
10 candidate Phil Bredesen), and "not politicians who promote bigotry" (alongside the image of  
11 Marsha Blackburn, his Republican opponent).<sup>94</sup>

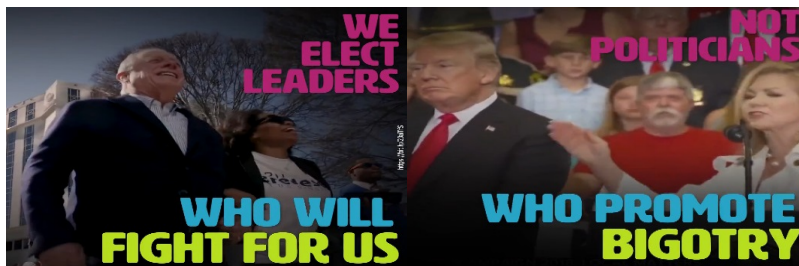
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<sup>92</sup> See F&LA at 11-14, MUR 6538R (Americans for Job Security) (finding that non-express advocacy electioneering communications that criticize or support federal candidates satisfy major purpose); Conciliation Agreement ¶ IV.11, MUR 5754 (MoveOn.org Voter Fund) (relying on funds used for advertisements that "opposed" or "criticized" George W. Bush to establish political committee status); F&LA at 2, MUR 5753 (League of Conservation Voters 527) (finding major purpose satisfied where funds spent on door-to-door and phone bank express advocacy campaign, and also on advertisements "supporting or opposing clearly identified federal candidates, some of which contained express advocacy"); Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund) (concluding that PFA VF had met the major purpose test after spending 60% of its funds on communications that "praised George W. Bush's leadership as President and/or criticized Senator Kerry's ability to provide similar leadership"); see also Stipulation for Entry of Consent Judgment ¶ 22, *FEC v. Citizens Club for Growth, Inc.*, Civ. No. 1:05-01851 (Sept. 6, 2007) (entering stipulation of Commission and respondent, approved as part of a consent judgment, where organization was treated as a political committee because "the vast majority of [the group's disbursements] were made in connection with federal elections, including, but not limited to, funding for candidate research, polling, and advertisements and other public communications referencing a clearly identified federal candidate").

<sup>93</sup> *CREW I*, 209 F. Supp. 3d at 92 (emphasis in original) (internal quotation omitted). Although this case involved electioneering communications and not ads on the internet, the court's reasoning is still applicable to determining any putative political committee's major purpose.

<sup>94</sup> Sounds Like Tennessee, Advertisement 12; see Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 23, 2018 to November 2, 2018), <https://www.facebook.com/ads/library/?id=1743746029062760>. News for Democracy spent between \$10,000 and \$15,000, where 91% of the views were in Tennessee. See *id.*





2  
 3 News for Democracy purchased another ad on the “That’s Just North Dakota” page that  
 4 opposed Republican Senate candidate Kevin Cramer, describing him as having “the wrong  
 5 priorities” and telling viewers that he “can’t be trusted to look out for families.”<sup>95</sup>



7 On the “Corazon Coqui” page, News for Democracy purchased an ad calling Rick Scott,  
 8 Republican candidate for U.S. Senate in Florida, a “thief and a liar” for alleged “Medicare fraud”  
 9 based on events that occurred while he was in the private sector.<sup>96</sup> News for Democracy-  
 10 purchased ads featuring Republican U.S. House candidates Jim Jordan and Rod Blum were

<sup>95</sup> That’s Just North Dakota, Compl. Ex. A; Advertisement 13; *see* Facebook Ad Library, News for Democracy, That’s Just North Dakota (showing ad placement from October 22, 2018 to October 23, 2018), <https://www.facebook.com/ads/library/?id=1956720011294738>. News for Democracy spent between \$1,500 and \$2,000 on this ad, where 93% of the views were in North Dakota. *See id.*

<sup>96</sup> Corazon Coqui, Compl. Ex. A; Advertisement 14; *see* Facebook Ad Library, News for Democracy, Corazon Coqui (showing ad placement from October 22, 2018 to October 24, 2018), <https://www.facebook.com/ads/library/?id=1404408626359020>. News for Democracy spent between \$4,000 and \$4,500 on this ad, where 93% of the views were in Florida. *See id.*

1 similarly critical. For instance, an ad on the “The Holy Tribune” describes Jordan as someone  
2 who “wants to be the next Speaker of the House,” and asks “can we trust he’ll stand up for  
3 what’s right when it really counts,” telling listeners that “[w]e need leaders with strong values  
4 not selfish ambition and flexible morals.”<sup>97</sup> Rod Blum, in an ad on the “Our Flag Our Country”  
5 is targeted for “hid[ing] his connections to unethical corporations” because of an ethics inquiry  
6 that he “knew . . . wouldn’t end well,” and concludes by telling listeners that “Iowans deserve  
7 Better” and asks them to “[s]hare if [they] agree.”<sup>98</sup>

8         Although these ads do not include an explicit electoral call to action, each ad references a  
9 clearly identified federal candidate, opposes that candidate, and ran shortly before the 2018  
10 midterm election, most likely in that candidate’s state or district, given the state-specific names  
11 of some of its Facebook pages and location of viewers — establishing the requisite electoral  
12 nexus.<sup>99</sup> The content of the advertisements is similar to other communications that the  
13 Commission has previously found were indicative of federal campaign activity.<sup>100</sup> By  
14 suggesting that Blackburn supports bigotry, Cramer has the “wrong priorities,” Scott is a “thief  
15 and a liar,” Jordan is someone with “selfish ambition and flexible morals,” and Blum is hiding

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<sup>97</sup>         The Holy Tribune, Advertisement 15; *see* Facebook Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 12, 2018 to October 20, 2018), <https://www.facebook.com/ads/library/?id=477923282694505>. News for Democracy spent between \$1,000 and \$1,500 for the Jordan ad. *See id.*

<sup>98</sup>         Our Flag Our Country, Advertisement 16; *see* Facebook Ad Library, News for Democracy, Our Flag Our Country (showing ad placement from October 13, 2018 to October 15, 2018), <https://www.facebook.com/ads/library/?id=564300743999316>. Although News for Democracy spent less than \$100 on the Blum ad, the group spent over \$1.2 million on the Our Flag Our Country page and Fight for America’s Future PAC spent an additional \$35,000 on the page.

<sup>99</sup>         *See supra* at notes 67 and 75 (viewership of the “Sounds Like Tennessee” and “That’s Just North Dakota” ads were upwards of 90% in the respective state compared to all of the ads’ viewers).

<sup>100</sup>         *See* F&LA at 12-13, MUR 6538R (Americans for Job Security); F&LA at 5, 18, MUR 5753 (League of Conservation Voters 527); F&LA at 3-4, 12-13, MUR 5754 (MoveOn.org. Voter Fund); Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund).

1 “connections to unethical corporations,” the ads question the candidates’ character and fitness for  
2 office. In addition to running right before the election, the Blackburn ad has an explicit electoral  
3 nexus with the statement that “[o]n Tuesday, November 6th, we take back Tennessee,” and uses  
4 the phrase “elect leaders who fight for us,” while showing an image of Blackburn’s opponent,  
5 Phil Bredesen. The only way for Bredesen to fight for voters in Tennessee is if he is elected to  
6 the Senate. Saying that Cramer “can’t be trusted to look out for families” and that “Iowans  
7 deserve better” than Blum in the context of ads that ran only in the timeframe before the election  
8 reasonably appears to encourage voters in North Dakota and Iowa to vote against those  
9 candidates. As for the Jordan ad, it references a position, Speaker of the House, that Jordan can  
10 likely only hold if re-elected to federal office. Accordingly, each of these ads supports a  
11 determination that News for Democracy had as its purpose the nomination or election of federal  
12 candidates.

13 In addition to ads that referenced a clearly identified federal candidate, News for  
14 Democracy also sought to further influence the 2018 midterm election by purchasing numerous  
15 ads containing explicit references to Congressional elections along with an exhortation to vote  
16 for “Democrats” or to vote against the “GOP,” “GOP Congress,” or “Congressional  
17 Republicans,” consistent with an organization that had a major purpose of federal election  
18 activity. These “party” ads, with first-person accounts of people deciding to vote “Democrat”  
19 and at times, exhorting the viewer to share the video, are the digital equivalent of a bumper  
20 sticker stating, “Democrats!”<sup>1</sup> The only reasonable interpretation for these ads is to convince the  
21 viewer to vote for Democratic candidates even if they have previously voted only for  
22 Republicans. By citing reasons for their change of opinion, such as Republicans dismantling

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<sup>1</sup> 11 C.F.R. § 100.22(a).

1 healthcare and perceived changes in values held by Republicans, the speakers in the videos are  
2 likewise exhorting viewers to make the same change.

3 For example, the “Sounds Like Tennessee” ad cited in the Complaint accuses Donald  
4 Trump of “ma[king] our health care system worse and more expensive and start[ing] a reckless  
5 trade war that’s . . . blowing back negatively on our economy.”<sup>102</sup> The ad concludes with a  
6 declaration that the speaker is “voting Democrat in the mid-term elections on November 6.”<sup>103</sup>



7 Relatedly, a “Women for Civility” ad speaker states, “You know the GOP strangled the  
8 ACA so much the past two years that my costs went up and my coverage got worse. Thanks a  
9 lot. Great leadership, guys! And meanwhile what do we get from the Republican Congress?  
10 Endless culture wars, and trillion-dollar tax breaks to corporations and to the ultra-wealthy.”<sup>104</sup>  
11 The ad ends with the speaker linking her vote for Democrats to actions of the Republican  
12 Congress, stating, “Wouldn’t it be nice if we had a Congress that worked hard for us instead of

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<sup>102</sup> Sounds Like Tennessee, Compl. Ex. A; Advertisement 6; *see* Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 23, 2018, to October 25, 2018), <https://www.facebook.com/ads/library/?id=287306971879845>.

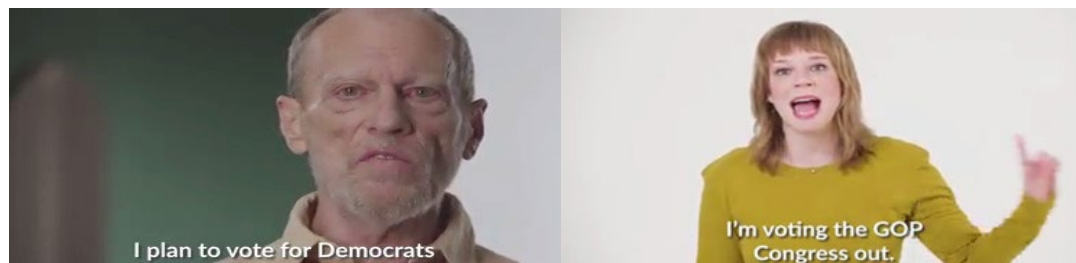
<sup>103</sup> Sounds Like Tennessee, Compl. Ex. A; Advertisement 6.

<sup>104</sup> Women for Civility, Compl. Ex. A; Advertisement 7; *see* Facebook Ad Library, News for Democracy, Women for Civility (showing ad placement from October 22, 2018, to October 24, 2018), <https://www.facebook.com/ads/library/?id=480760542428590>.

1 working so hard against us? That's why I am voting for the Democrats this year,"<sup>105</sup> suggesting  
 2 that the "Republican Congress" was not working for voters.



4 At least two ads on the "Better with Age" page link the speaker's decision to "vote for  
 5 Democrats" or "voting Democrat" to a desire to "get closer to a Congress who will represent me  
 6 and not the one percent"<sup>106</sup> or to a statement that the speaker was "voting the GOP Congress  
 7 out."<sup>107</sup> The electoral nexus to federal elections in these ads is clear with the reference to voting  
 8 against the GOP Congress.



9 In other ads, News for Democracy emphasized accountability in urging the replacement  
 10 of Republicans in Congress and portrayed the Republican Party as being responsible for  
 11 corruption and incivility. For instance, an "Our Flag Our Country" ad expresses discontent with

<sup>105</sup> Women for Civility, Compl. Ex. A; Advertisement 7.

<sup>106</sup> Better with Age, Advertisement 9; see Facebook Ad Library, News for Democracy, Better with Age (showing ad placement from October 24, 2018, to October 26, 2018), <https://www.facebook.com/ads/library/?id=299080014025480>.

<sup>107</sup> Better with Age, Advertisement 8; see Facebook Ad Library, News for Democracy, Better with Age (showing ad placement from October 24, 2018, to November 1, 2018), <https://www.facebook.com/ads/library/?id=313637485924620>.

1 “a one party system,” stating that “with Republicans controlling the White House, the House,  
2 and the Senate[,]” “[i]t’s no wonder why we see so much rampant corruption.”<sup>108</sup> The individual  
3 in the ad states, “I may not agree with Democrats on everything. But I am voting for them this  
4 time, because if there’s one thing our country needs right now, it’s balance and  
5 accountability.”<sup>109</sup> Disseminated just before the 2018 election, the Our Flag Our Country ad  
6 speaker naming the White House, Senate, and House as Republican-controlled, and then stating  
7 he’s voting Democratic for “balance” is equivalent to a voter guide showing the Obama logo and  
8 stating, “How do I vote a straight Democratic Ticket,” which the Commission found to be  
9 express advocacy.<sup>110</sup>

10 “The Holy Tribune” page, which reportedly targeted evangelicals,<sup>111</sup> includes an ad with  
11 a speaker who describes himself as a retired healthcare executive in Texas who has voted  
12 Republican since the age of 18.<sup>112</sup> After explaining that the current Republican Party is not the  
13 party he “grew up knowing about,” and that Republicans are not “doing their job,” the speaker  
14 then states “in these midterms I will vote — and I hope others will vote — to hold Republicans  
15 accountable for not doing their job.”<sup>113</sup> The ad ends with the following text: “Share this video if

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<sup>108</sup> Our Flag Our Country, Advertisement 5, *see* Facebook Ad Library, News for Democracy, Our Flag Our Country (showing ad placement from November 4, 2018, to November 4, 2018), <https://www.facebook.com/ads/library/?id=304166843520784>.

<sup>109</sup> *Id.*

<sup>110</sup> *See* F&LA at 7, MUR 6683 (Fort Bend County Democratic Party).

<sup>111</sup> Jan. Romm article.

<sup>112</sup> The Holy Tribune, Advertisement 10; *see* Facebook Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 24, 2018 to November 6, 2018), <https://www.facebook.com/ads/library/?id=187412635474539>.

<sup>113</sup> *Id.*

1 you agree that we should hold Congressional Republicans accountable,”<sup>114</sup> suggesting that  
 2 voting in the midterms against “Congressional Republicans” is a way to hold them  
 3 “accountable.”

4 And on the “Military Network” page, after discussing his father’s service in World War  
 5 II, the speaker states, “My father was a Republican. I was a Republican.”<sup>115</sup> He then explains,  
 6 “[b]ut as long as this Republican Party continues to side with hate, I can’t side with them. I am  
 7 voting for a new Congress. I am voting Democrat for the first time in my life. Share.”<sup>116</sup>  
 8



9 As with other ads, News for Democracy uses the “Military Network” ad to use a  
 10 particular electoral outcome, “voting Democrat” and “for a new Congress,” explicitly linking the  
 11 vote for Democratic candidates to federal elections. All of News for Democracy’s “party” ads  
 12 that try to convince voters to vote Democratic are expressly advocating Democratic candidates  
 13 because there is no other way to vote Democratic other than to vote for Democratic candidates in  
 14 the 2018 election.<sup>117</sup> The link to federal elections is clear with the repeated references to the  
 15 midterms and GOP Congress and Congressional Republicans and consistent with News for

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<sup>114</sup> *Id.*

<sup>115</sup> Military Network, Advertisement 11; *see* Facebook Ad Library, News for Democracy, Military Network (showing ad placement from October 18, 2018 to October 19, 2018), <https://www.facebook.com/ads/library/?id=174367523494041>.

<sup>116</sup> *Id.*

<sup>117</sup> *See, e.g.*, F&LA at 13, MUR 6538R (AJS) (ads supporting three candidates make no sense unless message was to elect them to federal office).

1 Democracy's sole purpose, advocating for Democratic candidates in the midterm elections. This  
2 exhibited primary purpose belies News for Democracy's stated social welfare purpose or status.

3 Collectively, News for Democracy spent more than \$5.5 million on Facebook ads that  
4 were viewed millions of times before the 2018 midterm election.<sup>118</sup> News reporting,  
5 corroborated by information from Facebook's Ad Library, indicates that each ad was part of an  
6 overall campaign designed to influence the outcome of the 2018 midterm election by  
7 encouraging viewers to support Democratic candidates. Indeed, in its promotional video  
8 following the election,<sup>119</sup> MotiveAI, the creator of the Facebook advertisements, revealed the  
9 singular nature of that campaign: to use online advertising to elect candidates from the  
10 Democratic Party — both specifically named candidates and unnamed federal candidates — to  
11 the U.S. Congress.<sup>120</sup> In effect, News for Democracy's specific ads and their "party" ads taken  
12 as a whole are similar to the "Special Edition" flyer in *MCFL*, where the Supreme Court found  
13 that the exhortation to vote "pro-life" accompanied by photographs designating supportive and  
14 non-supportive candidates constituted express advocacy.<sup>121</sup>

15 The Edition cannot be regarded as a mere discussion of public  
16 issues that by their nature raise the names of certain politicians.  
17 Rather, it provides in effect an explicit directive: vote for these  
18 (named) candidates. The fact that this message is marginally less  
19 direct than 'Vote for Smith' does not change its essential nature.  
20 The Edition goes beyond issue discussion to express electoral  
21 advocacy."<sup>122</sup>  
22

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<sup>118</sup> See *supra* note.29; Madrigal article.

<sup>119</sup> See April Markay article.

<sup>120</sup> See MotiveAI Video.

<sup>121</sup> *MCFL*, 479 U.S. at 250.

<sup>122</sup> *Id.*



1 News for Democracy's party ads similarly exhort viewers to vote for Democratic  
2 candidates and cannot be interpreted to be issue ads as their message is to vote for a change in  
3 the party controlling all three branches of government by voting against Republican candidates  
4 and officeholders.<sup>123</sup>

5 News for Democracy, nevertheless, argues that it accomplishes its mission to "promot[e]  
6 social welfare" and to "educate the public through identifying inaccurate news or commentary"  
7 by disseminating "genuine issue advertisements" in the form of digital ads about state and  
8 federal policies and public officials.<sup>124</sup> However, as discussed above, News for Democracy  
9 explicitly linked discussion of issues in several of the ads to voting in congressional elections,  
10 with statements about "voting the GOP Congress out," "voting for a new Congress," and the  
11 need to vote and "hold Congressional Republicans accountable." While a small number of News  
12 for Democracy's advertisements included in the Facebook Ad Library appear to be exclusively  
13 issue oriented, that is, without any reference to a candidate or election, as discussed above, these  
14 are "issue ads" apparently made for the purpose of attracting certain audiences to further its  
15 federal campaign objective, not to advance the particular issue.<sup>125</sup> The online tactics News for  
16 Democracy appeared to employ to influence the 2018 midterm election are not new; rather, they  
17 are a continuation of similar social media strategies used by the Internet Research Agency in  
18 2016. Specifically, the Internet Research Agency purchased political ads on social media in the

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<sup>123</sup> See also Advisory Op. 2006-20 (Unity 08) (putative party's name is "placeholder" for candidates' names on petition drive materials).

<sup>124</sup> NFD Resp. at 1-2.

<sup>125</sup> Madrigal article, Sept. Romm article, Nov. Romm article, Sept. Markay article; NYU Report at 8-9. Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* at 4, 14 (March 2019).

1 names of U.S. persons and entities that were designed to attract U.S. audiences with the goal of  
2 “sowing discord in the U.S. political system.”<sup>126</sup>

3         Although the extent to which News for Democracy spent money on express advocacy  
4 communications or communications with an explicit electoral nexus during its existence is not  
5 clear, the overall record indicates that the reason for this uncertainty is that News for Democracy  
6 purposefully sought to obscure its spending.<sup>127</sup> News for Democracy has provided no  
7 information to substantiate its stated mission or to rebut sufficiently the information in the  
8 Complaint and attached articles that its purpose was federal campaign activity. It has not  
9 submitted information regarding any other activity besides the relatively little information about  
10 its digital advertisements. It has likewise provided no information regarding its revenue and  
11 expenses from the 2018 fiscal year, which is the only tax year for which it would have filed a tax  
12 return. Nor is this information publicly available. News for Democracy’s Facebook ad  
13 purchases in 2018 and the possible \$125,000 contribution to an independent expenditure-only  
14 political committee constitute the only publicly available information on its spending.<sup>128</sup> That  
15 News for Democracy seemingly became inactive after the 2018 midterm election and within  
16 three months of having formed provides support, in addition to the Facebook ads and statements  
17 from individuals associated with the group, that it had the major purpose of nominating or

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<sup>126</sup> Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* at 4, 14 (March 2019).

<sup>127</sup> The Commission has declined to “set a threshold on the proportion of spending on major purpose activities required for political committee status,” and it also stated that “the determination of an organization’s major purpose requires the flexibility of a case-by-case analysis of an organization’s conduct that is incompatible with a one-size fits-all rule,” noting the “multitude of fact patterns at issue in the Commission’s enforcement actions considering the political committee status of various entities.” F&LA at 7, 15, MUR 6538R (Americans for Job Security).

<sup>128</sup> The Google Transparency Report appears to show that News for Democracy disseminated a few ads in 2019, but it is not clear that they are the Respondents’ ads. See <https://transparencyreport.google.com/political-ads/advertiser/AR156845883458060288>.

1 electing federal candidates in 2018.<sup>129</sup> Accordingly, because both the statutory and major  
2 purpose requirements appear to have been satisfied, we recommend that the Commission find  
3 reason to believe that News for Democracy violated 52 U.S.C. §§ 30102, 30103, and 30104 by  
4 failing to organize, register, and report with the Commission as a political committee.

5 **B. News for Democracy Apparently Failed To Report Independent**  
6 **Expenditures**

7 An independent expenditure is an expenditure that (1) expressly advocates the election or  
8 defeat of a clearly identified federal candidate, and (2) is not made in concert or cooperation  
9 with, or at the request or suggestion of, the candidate or his or her committee or agent, or a  
10 political party committee or its agent.<sup>130</sup> The Act requires political committees and persons other  
11 than political committees to report their independent expenditures.<sup>131</sup> Political committees other  
12 than authorized committees must disclose their independent expenditures and itemize such  
13 expenditures with information including the name and address of each person who receives  
14 disbursements in connection with an independent expenditure, as well as the date, amount,  
15 purpose, and identity of the candidate the independent expenditure is supporting or opposing.<sup>132</sup>  
16 Similar reporting requirements apply to non-political committee persons making independent

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<sup>129</sup> See F&LA at 13, MUR 5754 (MoveOn.Org Voter Fund) (noting that the respondent's major purpose was to defeat a federal candidate because its activities, including the fact it had been virtually inactive since the 2004 general election, showed that its sole objective was to defeat a federal candidate).

<sup>130</sup> 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

<sup>131</sup> See generally 52 U.S.C. § 30104.

<sup>132</sup> 52 U.S.C. § 30104(b)(3)(B)(iii), (g); 11 C.F.R. § 109.10.

1 expenditures aggregating greater than \$250 in a calendar year.<sup>133</sup> A person, including a political  
2 committee, also may have to file additional disclosure reports depending on the amount and  
3 timing of an independent expenditure.<sup>134</sup>

4 As discussed above in Part III.A.2.a., News for Democracy purchased four ads of more  
5 than \$250 in the aggregate that expressly advocated the election or defeat of clearly identified  
6 federal candidates and thus should have been reported on reports to the Commission.<sup>135</sup> Because  
7 News for Democracy failed to report these independent expenditures, we recommend that the  
8 Commission find reason to believe that News for Democracy violated 52 U.S.C. § 30104(c)(1).

### 9 **C. News for Democracy Apparently Failed to Include Required Disclaimers**

10 The Act requires that all “public communications” of political committees and any  
11 “public communication” by any person that expressly advocates the election or defeat of a  
12 clearly identified candidate must include a disclaimer in the communication identifying who paid  
13 for the communication and, where applicable, whether the communication was authorized by a

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<sup>133</sup> 52 U.S.C. § 30104(c), (g); 11 C.F.R. § 109.10. These persons must also identify individuals who made contributions over \$200. 52 U.S.C. § 30104(c)(1), (2)(C); *Citizens for Responsibility & Ethics in Wash. v. FEC*, 316 F. Supp. 3d 349, 410 (D.D.C. 2018) (holding sections 30104(c)(1) and (c)(2)(C) “unambiguously require separate and complementary requirements to identify donors of over \$200 to reporting non-political committees and mandate significantly more disclosure than that required by the challenged regulation, 11 C.F.R. § 109.10(e)(1)(vi).”).

<sup>134</sup> Section 30104(g) requires reports from persons making independent expenditures over certain aggregate amounts and within certain prescribed timeframes: for expenditures aggregating greater than \$10,000 made at any time up to the 20th day before an election, persons must file a report describing those expenditures with the Commission within 48 hours of making or contracting to make the expenditure. 52 U.S.C. § 30104(g)(2).

<sup>135</sup> See Corazon Coqui, Advertisement 1; Sounds Like Tennessee, Advertisement 2; That’s Just North Dakota, Advertisement 3; The Holy Tribune, Advertisement 4.

1 candidate.<sup>136</sup> Under Commission regulations, a “public communication” includes  
2 communications placed for a fee on another person’s website.<sup>137</sup> The Commission has  
3 previously determined that a disclaimer is required on the type of paid Facebook advertising  
4 placed by News for Democracy.<sup>138</sup>

5         The type of information required in a disclaimer varies depending on whether the  
6 communication is paid for or authorized by a candidate. If the communication is not paid for or  
7 authorized by a candidate, then the disclaimer must “clearly state the full name and permanent  
8 street address, telephone number, or World Wide Web address of the person who paid for the  
9 communication, and that the communication is not authorized by any candidate or candidate’s  
10 committee.”<sup>139</sup> This information “must be presented in a clear and conspicuous manner, to give  
11 the reader, observer, or listener adequate notice of the identity” of the ad’s sponsor.<sup>140</sup>

12         News for Democracy paid for the placement of thousands of ads on Facebook including  
13 the four examples discussed above that expressly advocated the election or defeat of clearly  
14 identified federal candidates. Even assuming News for Democracy is not a political committee,  
15 its express advocacy communications placed on Facebook for a fee required disclaimers

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<sup>136</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2)-(3), (b), (c). A candidate is “clearly identified” when the communication includes the name or a photograph or drawing of the candidate or “the identity of the candidate is apparent by unambiguous reference.” 52 U.S.C. § 30101(18).

<sup>137</sup> 11 C.F.R. § 100.26.

<sup>138</sup> See Advisory Opinion 2017-12 (Take Back Action Fund) (concluding that requestor was required to include all of the disclaimer information required by 52 U.S.C. § 30120(a) on its paid Facebook Image and Video advertising); see also Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006) (noting disclaimer requirements apply to “all potential forms of advertising” placed for a fee online, including “banner advertisements, streaming video, pop-up advertisements, and directed search results”).

<sup>139</sup> 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3). A communication that is authorized by a candidate, the candidate’s authorized committee, or an agent, but is paid for by any other person, must state that the communication is paid for by another person and is authorized by such candidate, committee, or agent. *Id.* § 110.11(b)(2).

<sup>140</sup> 11 C.F.R. § 110.11(c)(1).

1 identifying the payor by name, providing the payor's address, phone, or website, and including  
2 the appropriate authorization language.<sup>141</sup> None of the four express advocacy ads included such  
3 disclaimers. Accordingly, we recommend that the Commission find reason to believe that News  
4 for Democracy violated 52 U.S.C. § 30120(a).<sup>142</sup>

#### 5 **IV. PROPOSED INVESTIGATION**

6 We lack a complete factual record on News for Democracy's operation and its  
7 relationship with MotiveAI and other entities. We will therefore gather facts regarding its  
8 formation, funding, and spending in connection with federal elections. We will also seek  
9 information from Facebook and News for Democracy to establish a complete list of ads that  
10 News for Democracy and News for Democracy LLC purchased on Facebook and elsewhere,  
11 including contact information at News for Democracy, News for Democracy LLC, and any other  
12 entity that purchased ads on the News for Democracy pages as well as the source of the payment  
13 for the News for Democracy sponsored ads and Facebook pages and the names and contact  
14 information for any individuals involved in the News for Democracy ads. This information is  
15 necessary to enable the Commission to determine News for Democracy's reporting obligations.

#### 16 **V. RECOMMENDATIONS**

- 17 1. Find reason to believe that News for Democracy and News for Democracy LLC  
18 violated 52 U.S.C. §§ 30102, 30103, and 30104(a) by failing to register and report  
19 as political committees;  
20
- 21 2. Find reason to believe that News for Democracy and News for Democracy LLC  
22 violated 52 U.S.C. § 30104(c)(1) by failing to report independent expenditures;  
23
- 24 3. Find reason to believe that News for Democracy and News for Democracy LLC

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<sup>141</sup> See, e.g., Corazon Coqui, Advertisement 1; Sounds Like Tennessee, Advertisement 2; That's Just North Dakota, Advertisement 3; The Holy Tribune, Advertisement 4.

<sup>142</sup> See F&LA at 6-8 (MUR 7280) (Unknown Owner of "Trump 2020" Facebook Page) (finding reason-to-believe respondent failed to include required disclaimers on Facebook advertisements).

1 violated 52 U.S.C. § 30120(a) by failing to include required disclaimers on ads  
2 containing express advocacy;

3  
4 4. Take no action at this time as to the allegation that News for Democracy and  
5 News for Democracy LLC violated 52 U.S.C. § 30121 by accepting foreign  
6 national contributions;

7  
8 5. Approve the attached Factual and Legal Analyses;

9  
10 6. Authorize the use of compulsory process; and

11  
12 7. Approve the appropriate letter.

13  
14 Lisa J. Stevenson  
15 Acting General Counsel  
16

17  
18  
19 November 3, 2021

20 Date

21 Charles Kitcher  
22 Charles Kitcher  
23 Associate General Counsel for Enforcement  
24

25 Elena Paoli  
26 Elena Paoli  
27 Attorney  
28

29 Previously Assigned: Jonathan A. Peterson  
30

31  
32 Attachment:

- 33  
34 1. News for Democracy Factual and Legal Analysis  
35 2. News for Democracy LLC Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** News for Democracy                      **MUR:** 7527

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”) by the Foundation for Accountability and Civic Trust. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that News for Democracy violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to organize, register, and report as a political committee in connection with its 2018 election activity.<sup>1</sup> The Complaint argues that because News for Democracy spent between \$1.2 and \$4.6 million on political advertising and only started operating a few months before the 2018 general election, it should have registered and filed reports as a political committee under the Act.<sup>2</sup>

The Commission identified and notified two entities — News for Democracy, a nonprofit organized under section 501(c)(4) of the Internal Revenue Code, and News for Democracy LLC, a New York corporation — as respondents. The exact relationship between the two entities is unclear, although there is some indication that they effectively function as related entities.<sup>3</sup> Nonprofit News for Democracy acknowledges that it paid for the advertisements cited in the Complaint but argues that the Complaint has failed to identify any independent expenditures it

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<sup>1</sup> Compl. at 1 (Oct. 25, 2018).

<sup>2</sup> *Id.* at 1-3.

<sup>3</sup> Publicly available information in Facebook’s Ad Library indicates that News for Democracy LLC has purchased advertisements generally referred to in the Complaint and relevant to this matter. Moreover, the Complaint appears to refer to both entities, and press reports suggest they are related. *See, e.g.,* Compl., Ex. C, Lachlan Markay, *The Mystery Firms Behind the Liberal Facebook Dubbing a Hawaii Rep. a CWILF*, THE DAILY BEAST, Sept. 20, 2018 (updated online Nov. 20, 2018) (“Sept. Markay article”). Given News for Democracy LLC’s denial of funding the specific five ads attached to the Complaint but not denying funding other advertisements, the Factual & Legal Analysis refers to them collectively as News for Democracy when appropriate.



1 made in the 2018 election cycle and that its spending was “not made for the purpose of  
2 influencing federal elections.”<sup>4</sup>

3 As discussed below, in 2018, News for Democracy and News for Democracy LLC  
4 satisfied the statutory threshold for political committee status, and the available information  
5 regarding their overall conduct, including statements by their principals, supports a reasonable  
6 inference that they each had the requisite major purpose of nominating or electing federal  
7 candidates. In addition, News for Democracy and News for Democracy LLC failed to file  
8 reports disclosing independent expenditures and failed to include disclaimers on ads containing  
9 express advocacy.

## 10 **II. FACTUAL BACKGROUND**

11 The Complaint alleges that “News for Democracy is a secretive organization that has  
12 spent millions of dollars on political advertising.”<sup>5</sup> The Complaint states that “despite becoming  
13 one of the most influential organizations in political advertising, the organization has no website,  
14 contact page, or email address.”<sup>6</sup> Citing various press reports and the Facebook Ad Library,<sup>7</sup> the  
15 Complaint alleges that News for Democracy’s “Facebook ad buys have created, ‘at a minimum,  
16 45 million impressions through more than 2,600 ads’” from its August 27, 2018 inception to

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<sup>4</sup> See News for Democracy Resp. at 2-4 (Dec. 20, 2018) (“NFD Resp.”).

<sup>5</sup> Compl. at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at note 5 (citing “Facebook Ad Archive” of ads from News for Democracy (now labeled by Facebook as “Ad Library”) at [https://www.facebook.com/ads/archive/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&q=news%20for%20democracy](https://www.facebook.com/ads/archive/?active_status=all&ad_type=political_and_issue_ads&country=US&q=news%20for%20democracy)) (as of October 15, 2021, sort by “high to low” impressions to see a sampling of News for Democracy ads).

1 October 16, 2018.<sup>8</sup> News for Democracy was reportedly the “second-largest political ad buy[er]  
 2 on Facebook” during a two-week period in September 2018, “trailing only Beto O’Rourke’s  
 3 Texas Senate campaign.”<sup>9</sup> Based on this activity, the Complaint alleges that News for  
 4 Democracy violated the Act and Commission regulations by failing to register and report as a  
 5 political committee.

6 News for Democracy, according to its Response, is organized under Section 501(c)(4) of  
 7 the Internal Revenue Code, and registered with the District of Columbia as a non-profit  
 8 organization on August 27, 2018.<sup>10</sup> The Response describes the organization’s primary purpose  
 9 as the “promotion of social welfare” and its mission as “educat[ing] the public through  
 10 identifying inaccurate news or commentary and promoting digital news that is factual in nature  
 11 to counteract the harmful effects of news or commentary that is not accurate, reliable, or  
 12 credible, or is generated by ‘bots.’”<sup>11</sup> Shortly after forming, News for Democracy “began to  
 13 create, produce, and disseminate digital advertising content to advance its mission. The content

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<sup>8</sup> Compl., Ex. B, Alexis C. Madrigal, *The Secret Organization Quietly Spending Millions on Facebook Political Ads*, THE ATLANTIC, Oct. 17, 2018 (“Madrigal article”). Facebook defines “impressions” as the “number of times your ads were on screen for your target audience.” <https://www.facebook.com/business/help/675615482516035>.

<sup>9</sup> Madrigal article. According to a *New York Magazine* article, many of News for Democracy’s Facebook pages “had accumulated anywhere from 5,000 to 12,000 subscribers sharing memes or news articles relevant to their subject matter a couple of times a day.” Simon van Zuylen-Wood, *How Low Will Democrats Go? Probably Not Low Enough*, NEW YORK MAGAZINE at 6 (Dec. 20, 2019) (“NYMAG article”), <https://nymag.com/intelligencer/2019/12/democrats-digital-strategy-2020-election.html>.

<sup>10</sup> NFD Resp. at 1. News for Democracy’s corporate status is listed as “revoked.” *See* News for Democracy – Initial File Number: N00006064145 DC Corp. Notice. The reason for the revocation is unknown, as is whether News for Democracy has registered in another jurisdiction since DC’s revocation. As of October 14, 2021, the IRS has no filings by News for Democracy in its public “Tax Exempt Organization Search” databases.

News for Democracy LLC formed on August 28, 2018 in Colorado, just a day after the formation of News for Democracy 501(c)(4) in the District of Columbia, and voluntarily dissolved July 30, 2019. *See* Colorado Business Information, <https://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do> (search for “News for Democracy”) (last visited Oct. 19, 2021).

<sup>11</sup> NFD Resp. at 1.

1 is disseminated in the form of paid digital advertisements on social media platforms such as  
2 Facebook, as well as content that is shared organically.”<sup>12</sup>

3 A review of publicly available information about the two separate News for Democracy  
4 entities reveals that the groups appear to be referenced interchangeably and that they are both  
5 part of a group of entities associated with MotiveAI, a Denver corporation.<sup>13</sup> According to a  
6 New York University research report on social media political advertising in 2018, News for  
7 Democracy and another MotiveAI-connected entity, New American Media Group LLC, were  
8 examples of a “new type of political advertiser,” specifically, “unknown for-profit media  
9 companies that appear to be creating disingenuous communities that appear to be ‘grassroots  
10 movements’ to target different demographics and interests.”<sup>14</sup> The NYU Report found that these  
11 groups appeared to exist for no other purpose than to spread a particular political message by  
12 running ads on Facebook pages, “most of which were designed to be appealing to groups with  
13 traditionally conservative view points.”<sup>15</sup>

14 News for Democracy and MotiveAI were both reportedly funded by Investing in US, an  
15 investment fund co-founded by Reid Hoffman and Dmitri Mehlhorn.<sup>16</sup> Mehlhorn, who also

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<sup>12</sup> *Id.* at 2.

<sup>13</sup> See Madrigal article, (“Fletcher [MotiveAI’s CEO] acknowledged . . . that MotiveAI, working with outside groups, is behind News for Democracy”); see also Tony Romm, Elizabeth Dwoskin, and Craig Timberg, *Internet Billionaire Reid Hoffman Apologizes for Funding a Group Tied to Disinformation in Alabama Race*, THE WASHINGTON POST, (Dec. 26, 2018), [https://www.washingtonpost.com/technology/2018/12/26/internet-billionaire-reid-hoffman-apologizes-funding-group-behind-disinformation-alabama-race/?utm\\_term=.781cf4a97098](https://www.washingtonpost.com/technology/2018/12/26/internet-billionaire-reid-hoffman-apologizes-funding-group-behind-disinformation-alabama-race/?utm_term=.781cf4a97098) (“Dec. Romm article”).

<sup>14</sup> Laura Edelson, *et al.*, *An Analysis of United States Online Political Advertising Transparency*, New York University, Feb. 12, 2019, at 9 (“NYU Report”), <https://arxiv.org/pdf/1902.04385.pdf>.

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

<sup>16</sup> Madrigal article; NY Mag. article.

1 served as a board member of News for Democracy,<sup>17</sup> described the goal of Investing in US as  
 2 bringing entrepreneurs and investors to “join the resistance” to then-President Trump.<sup>18</sup>  
 3 Hoffman, a co-founder of LinkedIn and its former chairman, describes himself as politically  
 4 active through his investments “in the sphere of civic engagement and politics over the past two  
 5 years.”<sup>19</sup> In furtherance of its goal, Investing in US reportedly supported Democratic candidates  
 6 and groups starting with the 2017 elections in Virginia, where the investments were made with  
 7 the stated goal of flipping the then-Republican state legislature, and the 2017 special Senate  
 8 election in Alabama.<sup>20</sup> Investing in US reportedly spent hundreds of millions of dollars to  
 9 support Democratic-leaning groups during the 2018 midterm elections.<sup>21</sup>

10 One of the groups supported by Investing in US was American Engagement  
 11 Technologies, a digital advertising firm that received \$750,000 in funding, some of which was  
 12 used to “experiment with many of the tactics now understood to have influenced the 2016  
 13 elections.”<sup>22</sup> These tactics, dubbed Project Birmingham, included funding fake Facebook pages  
 14 where the group posed as conservative Republicans in an effort to draw support away from the

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<sup>17</sup> Tony Romm, Elizabeth Dwoskin, and Craig Timberg, *Facebook is Investigating the Political Pages and Ads of Another Group Backed by Reid Hoffman*, THE WASHINGTON POST (Jan. 7, 2019), [https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/?noredirect=on&utm\\_term=.fc1b24f6c1c1](https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/?noredirect=on&utm_term=.fc1b24f6c1c1) (“Jan. Romm article”).

<sup>18</sup> Dmitri Mehlhorn, *Investing in US – 2017-2018 in Review*, MEDIUM.COM (Dec. 21, 2018) (“Mehlhorn Medium Post”), <https://medium.com/@DmitriMehlhorn/investing-in-us-64afe222face>.

<sup>19</sup> Reid Hoffman, *Truth and Politics*, MEDIUM (Dec. 26, 2018) (“Hoffman Medium Post”), <https://medium.com/@reidhoffman/truth-and-politics-1a532bc6c2b1>.

<sup>20</sup> Dec. and Jan. Romm articles.

<sup>21</sup> See Mehlhorn Medium Post.

<sup>22</sup> Scott Shane and Alan Blinder, *Secret Experiment in Alabama Senate Race Imitated Russian Tactics*, NEW YORK TIMES (Dec. 19, 2018), <https://www.nytimes.com/2018/12/19/us/alabama-senate-roy-jones-russia.html> (“Shane/Blinder article”); see also Dec. Romm article (stating that Hoffman invested \$750,000 in American Engagement Technologies).

1 Republican Senate candidate Roy Moore and a scheme to link Moore to thousands of Russian  
2 Twitter accounts that suddenly began to follow Moore.<sup>23</sup>

3 Similarly, News for Democracy was part of an effort to target conservatives on Facebook  
4 using the same microtargeting tactics used by the Internet Research Agency during the 2016  
5 election and by Project Birmingham in 2017.<sup>24</sup> Mehlhorn reportedly pitched the group to  
6 Democratic donors looking for organizations to support and stated that News for Democracy's  
7 goal was "outreach to groups that were center [and] center-right, and trying to reach out to them  
8 with messages."<sup>25</sup>

9 During the 2018 election, News for Democracy created at least 14 Facebook pages and  
10 paid MotiveAI to create thousands of ads for those pages.<sup>26</sup> Facebook's Ad Library reveals  
11 that News for Democracy spent \$5,619,202 on ads that ran from August 2018 to November 6,  
12 2018 as follows:<sup>27</sup>

13

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<sup>23</sup> Shane/Blinder article.

<sup>24</sup> In an interview, Mehlhorn said he disavowed disinformation as a tool for mobilizing American voters but also said that U.S. political groups could learn from the "troll army" reportedly used by the Internet Research Agency and its use of microtargeting voters. Jan. Romm article; *see also* Hannah Kuchler, *Facebook and the midterms: who's trying to influence your vote?*, FINANCIAL TIMES (Oct. 31, 2018) [www.ft.com](http://www.ft.com), (quoting NYU Report co-author Damon McCoy, "It had exactly the same earmarks, exactly what the Russians were doing, setting up these fake communities.").

<sup>25</sup> Jan. Romm article.

<sup>26</sup> *Id.*

<sup>27</sup> The same publicly available Facebook Library data shows that besides News for Democracy and News for Democracy LLC, two other related entities bought ads on a few of these Facebook pages: New American Media LLC paid \$3,000 on a Corazon Coqui page, and News for America paid \$32,883 on the That's Just North Dakota page. In addition, Fight for America's Future PAC, an independent expenditure-only political committee, spent \$35,000 on the Our Flag page, but the available information is not clear on what relationship Fight for America's Future PAC had to the News for Democracy entities.

| Page Name                | Source <sup>28</sup>   | Amount Spent | Number of Ads in Library |
|--------------------------|------------------------|--------------|--------------------------|
| Our Flag Our Country     | News For Democracy     | \$1,209,154  | 1,281                    |
| Living Free              | News For Democracy     | \$974,845    | 749                      |
| Better With Age          | News For Democracy     | \$768,039    | 888                      |
| The Holy Tribune         | News For Democracy     | \$551,000    | 512                      |
| Women For Civility       | News For Democracy     | \$531,850    | 594                      |
| Corazon Coqui            | News For Democracy     | \$359,332    | 83                       |
| Self-Reliant Republic    | News For Democracy     | \$297,895    | 256                      |
| Military Network         | News For Democracy     | \$277,943    | 576                      |
| Sounds Like Tennessee    | News For Democracy     | \$246,713    | 37                       |
| Voz Boricua              | News For Democracy     | \$165,236    | 42                       |
| Rugged Roots             | News For Democracy     | \$116,916    | 87                       |
| That's Just North Dakota | News For Democracy     | \$78,693     | 38                       |
| Left AF                  | News For Democracy     | \$19,763     | 62                       |
| Military Network         | News For Democracy LLC | \$15,487     | 4                        |
| The Black Pages          | News For Democracy LLC | \$5,732      | 4                        |
| Left AF                  | News For Democracy LLC | \$604        | 4                        |
|                          |                        | \$5,619,202  | 5,217                    |

1

<sup>28</sup> In the Facebook Ad Library, this column is entitled “Disclaimer.” The Facebook platform appended information to the paid advertisements in this matter stating that the communications were “paid for by” a Facebook page named “News for Democracy.” *See, e.g.*, Compl., Ex. A. Such a platform-appended “disclaimer,” which is created by the platform and operates independently of the communication, does not identify the payor name, as evidenced by the ambiguity in the payors of Facebook ads placed by both News for Democracy LLC and News for Democracy 501(c)(4). Moreover, the platform-appended label does not provide a payor’s address, phone, or website, as required under the Act and Commission regulations for disclaimers. The platform-appended label also does not include an authorization statement. As such, the platform-appended label does not satisfy the disclaimer requirement. *See infra* at Section III.C.

1 News for Democracy’s network of Facebook pages was part of a program to grow  
 2 audiences around non-partisan topics before running ads designed to undercut support for  
 3 conservative candidates and promote Democratic positions and candidates.<sup>29</sup> Publicly available  
 4 information about News for Democracy indicates that the pages were made to sound like news  
 5 organizations,<sup>30</sup> or targeted to appeal to specific demographics, including “‘bros,’ Spanish-  
 6 language speakers, women, Tennessee and North Dakota residents, seniors, military veterans,  
 7 Christians, and even, in underhanded fashion, Trump supporters.”<sup>31</sup> Names of some of these  
 8 Facebook pages included “The Keg Bros,” “World News Reporter,” “Corazon Coqui,”  
 9 “Heartland Gazette,” “Women for Civility,” “Better with Age,” “The Holy Tribune,” and “Our  
 10 Flag Our Country.”<sup>32</sup> Eventually, followers of these pages would be targeted with so-called  
 11 payload content in the form of ads and videos “to boost Democratic policies, candidates, or  
 12 ideas, or knock down the opposition.”<sup>33</sup> MotiveAI’s chief executive Dan Fletcher explained in a  
 13 2019 interview that MotiveAI acted as a vendor for the Facebook pages, but that MotiveAI’s  
 14 “partners,” such as News for Democracy, were responsible for the ad campaigns.<sup>34</sup>

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<sup>29</sup> See, e.g., Madrigal article, Sept. Markay article; Lachlan Markay, *MotiveAI, a Democratic Ad Firm Accused of Fake News, Retools for 2020*, THE DAILY BEAST, April 23, 2019, <https://www.thedailybeast.com/motiveai-a-democratic-ad-firm-accused-of-fake-news-retools-for-2020> (“April Markay article”); Jan. Romm article; Dec. Romm article.

<sup>30</sup> Despite calling itself “News” for Democracy and labeling some of its Facebook pages “media/news company,” News for Democracy does not contend that it is a “media entity” entitled to the “media exemption.” Similarly, related entities appear to be called “New American Media LLC” and “News for America.” The “media exemption” or “press exemption,” when applied, exempts from the definition of “contribution” and “expenditure,” the costs associated with covering news stories, commentary, or editorials. See 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; Internet Communications, 71 Fed. Reg. 18,589, 18,608 (Apr. 12, 2006) (explaining application of media exemption to press entity acting in its “legitimate press function”).

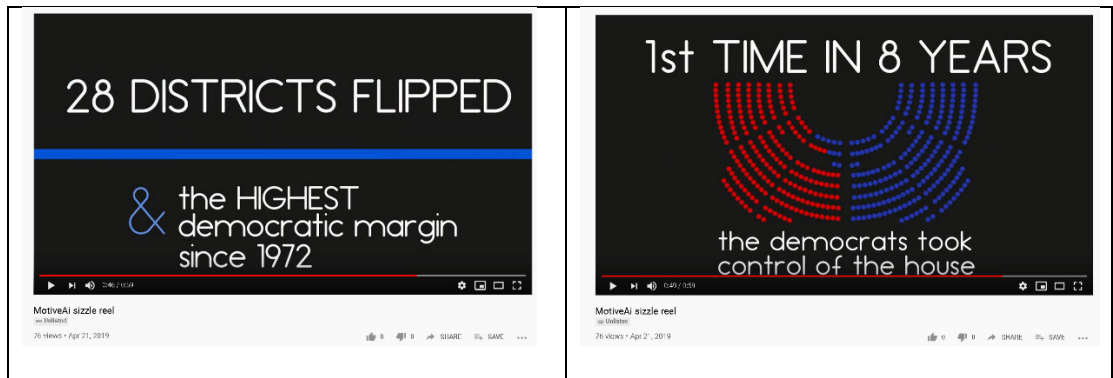
<sup>31</sup> Sept. Markay article; see also April Markay article.

<sup>32</sup> See Madrigal article; Sept. Markay article.

<sup>33</sup> See Sept. Markay article; April Markay article; see also Jan. Romm article.

<sup>34</sup> April Markay article.

1           Although it is not clear whether MotiveAI was merely a vendor to News for Democracy  
 2 or directed the activities of News for Democracy,<sup>35</sup> MotiveAI appears to have used its 2018  
 3 activity, including its work for News for Democracy, to market itself for the 2020 elections as an  
 4 organization focused on electing democratic candidates<sup>36</sup> by posting a 60-second promotional  
 5 “sizzle reel” on Vimeo that claimed that it “had the largest digital program of the 2018 midterm  
 6 elections,” producing “over 260 videos and over 5000 individual ads which led to:”<sup>37</sup>



7  
 8 News for Democracy’s Response does not explain its relationship to MotiveAI or provide any  
 9 information about the extent of its activity disseminating advertisements in the 2018 election  
 10 cycle. News for Democracy also did not provide any information about any other activity it

<sup>35</sup> In an online job posting at Colorado College, MotiveAI described itself as a “startup that builds and manages online political communities, using storytelling and facts to help encourage a more informed, thoughtful, empathetic and motivated electorate.” See <https://sites.coloradocollege.edu/careercenter/entry-level-assistant-video-editor-for-motiveai/> (last visited Oct. 20, 2021).

<sup>36</sup> Daily Beast reporter Lachlan Markay said that after he asked MotiveAI’s cofounder, Dan Fletcher, about this video, the video was removed from MotiveAI’s website. April Markay article at 6. The Daily Beast downloaded a copy of the video, uploaded it onto YouTube and also embedded the video in its article. *Id.* See Lachlan Markay, *MotiveAi Sizzle Reel*, YOUTUBE (Apr. 21, 2019) (“MotiveAI Video”).

<sup>37</sup> MotiveAI Video.



1 conducted during its existence in pursuit of its stated social welfare mission, and, as of the date  
2 of this Report, it has not filed any public disclosure documents with the IRS.<sup>38</sup>

3 The Complaint does not examine News for Democracy’s entire ad program and instead  
4 identifies five ads to support its allegation that News for Democracy failed to register and report  
5 as a political committee. The Complaint cited to ads on the Sounds Like Tennessee,<sup>39</sup> That’s  
6 Just North Dakota,<sup>40</sup> Corazon Coqui,<sup>41</sup> and Women for Civility<sup>42</sup> pages. Three of the ads  
7 mentioned and used images of Senate candidates Kevin Cramer and Rick Scott, while two of the  
8 ads referenced President Trump and the mid-term elections, with one narrator stating, “I’ll be  
9 voting Democratic in the mid-term elections on November 6” and another narrator saying, “it  
10 would be nice to have a Congress” working for “us” and stating that she “would be voting for the  
11 Democrats this election.”<sup>43</sup>

### 12 III. LEGAL ANALYSIS

13 News for Democracy’s 2018 ad campaign was widespread, and it altered its ads multiple  
14 times to better target the recipients, thus creating a body of material too large and difficult to

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<sup>38</sup> FEC disclosure reports reveal that a “News for Democracy” with a Washington, D.C., address, made a \$125,000 contribution on October 5, 2018, to For Our Future, a pro-Democratic independent expenditure-only political committee. See <https://docquery.fec.gov/cgi-bin/fecimg/?201911219166074361>. The Washington address appears to be a co-working site. See <https://makeoffices.com/locations/washington-dc/k-street/>. We have no information whether this News for Democracy is the same entity as the respondent.

<sup>39</sup> Compl. Ex. A; Advertisement 6. Links and transcripts for this ad and all others cited in this Factual and Legal Analysis are available in an enclosed document titled “MUR 7527 (News for Democracy) Representative FB ads.”

<sup>40</sup> Compl. Ex. A; Advertisement 13.

<sup>41</sup> Compl. Ex. A; Advertisement 14 (only one of two Corazon Coqui ads cited in the Complaint is included in the representative ad summary document).

<sup>42</sup> Compl. Ex. A; Advertisement 7.

<sup>43</sup> Compl. Ex. A. These ads are discussed in more detail below.

1 review or catalogue in its entirety. In prior matters in which the Commission considered whether  
2 an entity’s ads factored into an analysis of political committee status, the number of ads  
3 disseminated has typically been much smaller.<sup>44</sup> Here, there are over 5,000 ads, many with  
4 multiple versions. It is evident, nevertheless, that some News for Democracy ads contain  
5 express advocacy and virtually all were disseminated in connection with federal elections.  
6 Because News for Democracy spent more than \$1,000 on these activities and its major purpose  
7 was the nomination or election of federal candidates, News for Democracy was required to  
8 register and report to the Commission as a political committee.

9 **A. Political Committee Status Allegation**

10 1. The Test for Political Committee Status

11 The Act and Commission regulations define a “political committee” as “any committee,  
12 club, association, or other group of persons which receives contributions aggregating in excess of  
13 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
14 during a calendar year.”<sup>45</sup> In *Buckley v. Valeo*, the Supreme Court held that defining political  
15 committee status “only in terms of [the] amount of annual ‘contributions’ and ‘expenditures’”  
16 might be overbroad, reaching “groups engaged purely in issue discussion.”<sup>46</sup> To cure that  
17 infirmity, the Court concluded that the term “political committee” “need only encompass  
18 organizations that are under the control of a candidate or the *major purpose of which is the*

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<sup>44</sup> See First Gen. Counsel’s Rpt. at 6, MUR 7418 (Fuse Washington) (case involved \$2,616.62 in spending on electioneering communications for 12 candidates); First Gen. Counsel’s Rpt. at 6, MUR 6974 (Foundation for a Secure and Prosperous America (\$1 million, two ads); Conciliation Agreement, Part IV ¶ 15, MURs 5511/5525 (Swiftboat Veterans (12 television ads).

<sup>45</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>46</sup> 424 U.S. 1 at 79 (1976) (*per curiam*).

1 *nomination or election of a candidate.*<sup>47</sup> Accordingly, under the statute as thus construed, an  
2 organization that is not controlled by a candidate must register as a political committee only if  
3 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election  
4 of federal candidates.

5 Although *Buckley* established the major purpose test, it provided no guidance as to the  
6 proper approach to determine an organization’s major purpose.<sup>48</sup> After *Buckley*, the Commission  
7 adopted a policy of determining on a case-by-case basis whether an organization is a political  
8 committee, including whether its major purpose is the nomination or election of federal  
9 candidates. Though it has periodically considered crafting a bright-line rule through rulemaking,  
10 the Commission consistently has declined to do so.<sup>49</sup> Instead, the Commission said that  
11 determining an organization’s major purpose “requires the flexibility of a case-by-case analysis  
12 of an organization’s conduct that is incompatible with a one-size-fits-all rule,” and that “any list  
13 of factors developed by the Commission would not likely be exhaustive in any event, as  
14 evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions  
15 considering the political committee status of various entities.”<sup>50</sup>

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<sup>47</sup> *Id.* (emphasis added).

<sup>48</sup> See, e.g., *Real Truth About Abortion, Inc. f/k/a Real Truth About Obama, Inc. v. FEC*, 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 568 U.S. 1114 (Jan. 7, 2013) (“*RTAA*”) (“Although *Buckley* did create the major purpose test, it did not mandate a particular methodology for determining an organization’s major purpose.”).

<sup>49</sup> See, e.g., Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

<sup>50</sup> Political Committee Status, 72 Fed. Reg. 5595, 5601-02 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”); see, e.g., Factual & Legal Analysis (“F&LA”) at 13-14, MUR 6538R (Americans for Job Security).

1           In 2016, the United States District Court for the District of Columbia in *Citizens for*  
2 *Responsibility and Ethics in Washington v. FEC* instructed the Commission, when examining an  
3 organization’s major purpose, to look beyond express advocacy and consider whether other  
4 communications at issue indicate a “campaign-related purpose.”<sup>51</sup> The Court also held that the  
5 Commission’s analysis of the relevant time period for evaluating a group’s spending must retain  
6 the flexibility to account for changes in an organization’s major purpose over time.<sup>52</sup>

7           Thus, to determine an entity’s “major purpose,” the Commission considers a group’s  
8 “overall conduct,” including, among other factors, public statements about its mission,  
9 organizational documents, government filings (*e.g.*, IRS notices), and the proportion of spending  
10 related to “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”<sup>53</sup>  
11 The Commission has stated that it compares how much of an organization’s spending is for  
12 federal campaign activity relative to activities that [a]re not campaign related.<sup>54</sup>

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<sup>51</sup> 209 F. Supp. 3d 77, 92-93 (D.D.C. 2016) (“*CREW I*”). The same District Court later held that electioneering communications “*presumptively* have an election-related purpose,” but the analysis by that Court in *CREW I* and its subsequent decision refers generally to all speech that is campaign-related but does not contain express advocacy. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (“*CREW II*”) (*italics in original*). The Court refrained from establishing its own bright-line rule regarding which communications inherently have a campaign-related purpose but stated that the First Amendment does not require “the agency to exclude from its consideration all non-express advocacy in the context of disclosure.” *CREW I*, 209 F. Supp. 3d at 93.

<sup>52</sup> *CREW I*, 209 F. Supp. 3d at 94. In its subsequent F&LA, the Commission accepted the Court’s remand of the enforcement matter, found that the organization’s campaign-related spending exceeded 50% of its overall spending approximately one year before the 2010 election, and found reason to believe that the organization violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee. F&LA at 14-15, MUR 6538R (Americans for Job Security); *see also* Conciliation Agreement, MUR 6538R (Sept. 9, 2019).

<sup>53</sup> Supplemental E&J at 5597, 5605.

<sup>54</sup> *Id.* at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. *See Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, in *RTAA*, the Fourth Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. *See* 681 F.3d 544; *see also Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission’s case-by-case method of determining political committee status), *cert. denied*, 572 U.S. 1114 (2014).

1 Political committees must comply with certain organizational and reporting requirements set  
 2 forth in the Act. They must register with the Commission, file periodic reports for disclosure to  
 3 the public, appoint a treasurer who maintains its records, and identify themselves through  
 4 “disclaimers” on all of their political advertising, on their websites, and in mass emails.<sup>55</sup>

5 2. Application of the Test for Political Committee Status to News for  
 6 Democracy

7  
 8 a. Statutory Threshold

9 To assess whether an organization has made an “expenditure,” the Commission analyzes  
 10 whether spending on any of an organization’s communications made independently of a  
 11 candidate constitute express advocacy.<sup>56</sup>

12 Under the Commission’s regulations, a communication contains express advocacy when  
 13 it uses phrases such as

14 “vote for the President,” “re-elect your Congressman,” “support  
 15 the Democratic nominee,” “cast your ballot for the Republican  
 16 challenger for U.S. Senate in Georgia,” “Smith for Congress,”  
 17 “Bill McKay in ’94,” “vote Pro-Life” or “vote Pro-Choice”  
 18 accompanied by a listing of clearly identified candidates described  
 19 as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat”  
 20 accompanied by a picture of one or more candidate(s), “reject the  
 21 incumbent,” or communications of campaign slogan(s), or  
 22 individual word(s), which in context can have no other reasonable  
 23 meaning than to urge the election or defeat of one or more clearly  
 24 identified candidate(s), such as posters, bumper stickers,  
 25 advertisements, etc. which say “Nixon’s the One,” “Carter ’76,”  
 26 “Regan/Bush,” or “Mondale!”<sup>57</sup>

55 See 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

56 See Supplemental E&J, 72 Fed. Reg. at 5606.

57 11 C.F.R. § 100.22(a); see also *Buckley v. Valeo*, 424 U.S. at 44.

1           In addition, a communication contains express advocacy if, “[w]hen taken as a whole and  
2 with limited reference to external events, such as the proximity to the election,” it “could only be  
3 interpreted by a reasonable person as containing advocacy of the election or defeat of one or  
4 more clearly identified candidate(s),” because it contains an “electoral portion” that is  
5 “unmistakable, unambiguous, and suggestive of only one meaning” and “[r]easonable minds  
6 could not differ as to whether it encourages actions to elect or defeat one or more clearly  
7 identified candidate(s) or encourages some other kind of action.”<sup>58</sup> In its explanation and  
8 justification for 11 C.F.R. § 100.22(b), the Commission stated that “[c]ommunications discussing  
9 or commenting on a candidate’s character, qualifications, or accomplishments are considered  
10 express advocacy under new section 100.22(b) if, in context, they can have no other reasonable  
11 meaning than to encourage actions to elect or defeat the candidate in question.”<sup>59</sup>

12           Among News for Democracy’s thousands of Facebook ads, all disseminated in the two  
13 months prior to the 2018 general election, News for Democracy spent at least \$21,000 and up to  
14 \$105,000 on ads expressly advocating the defeat of clearly identified candidates Rick Scott,  
15 Marsha Blackburn, Kevin Cramer, and Devin Nunes. This spending satisfies the statutory  
16 threshold for political committee status.

17           News for Democracy disseminated the following ad expressly advocating the defeat of  
18 U.S. Senate candidate Marsha Blackburn on the “Sounds Like Tennessee” Facebook page,

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<sup>58</sup> *Id.* § 100.22(b). The term “clearly identified” means “the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ‘the President,’ ‘your Congressman,’ or the ‘the incumbent,’ or through an unambiguous reference to his or her status as a candidate such as ‘the Democratic presidential nominee’ or ‘the Republican candidate for Senate in the State of Georgia.’” 11 C.F.R. § 100.17.

<sup>59</sup> Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294-35,295 (July 6, 1995).

1 targeted at voters in Tennessee where Blackburn was running for Senate. The ad, which was not  
 2 referenced in the Complaint, begins with “the biggest, richest most powerful private corrections  
 3 company in the United States: Corrections Corporation of America, headquartered right here in  
 4 Nashville, Tennessee.” The voiceover continues:

5                   Blackburn has taken over \$24,000 from the for-profit  
 6                   prison industry this year alone. Making her one of Washington’s  
 7                   biggest recipients of private prison cash. These facilities  
 8                   disproportionately incarcerate African Americans on non-violent  
 9                   charges. Turning jailing people into a lucrative multibillion dollar  
 10                  industry. We need leaders who fight for us. Not private prisons’  
 11                  bottom line. Say No to Marsha Blackburn.<sup>60</sup>

12  
 13 The ad ends with the following image:



16                  News for Democracy spent between \$10,000 and \$50,000 on this ad that clearly  
 17 identifies Blackburn by her name and image.<sup>61</sup> This ad expressly advocates against the election  
 18 of Blackburn by making the statement that “we need leaders who fight for us” and directing  
 19 viewers to “say no to Marsha Blackburn.”<sup>62</sup> By connecting campaign contributions she

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<sup>60</sup>                  Sounds Like Tennessee, Advertisement 2.

<sup>61</sup>                  *Id.*; see also Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 5, 2018 to November 6, 2018 and, by clicking “ad details,” showing 92% of the ad’s viewers were in Tennessee), <https://www.facebook.com/ads/library/?id=304123667035215>. Overall, News for Democracy spent \$246,713 on the Sounds Like Tennessee page.

<sup>62</sup>                  Sounds Like Tennessee, Advertisement 2.

1 purportedly received to needing political leaders “who fight for us” and saying “no” to  
2 Blackburn, this ad, disseminated just before the general election to people interested in  
3 Tennessee,<sup>63</sup> has no other reasonable meaning than to urge Blackburn’s defeat in the upcoming  
4 election.<sup>64</sup>

5 On the “Corazon Coqui” page, News for Democracy spent between \$10,000 and \$50,000  
6 on a single placement of an ad that clearly identifies, by name and image, a candidate for federal  
7 office: U.S. Senate candidate Rick Scott of Florida.<sup>65</sup> The voiceover at the end of the ad asks,  
8 “Will you vote for him for Senate?” followed by the answer, “No. Absolutely not.” The text  
9 then concludes, “Rick Scott is not our friend. He does not deserve our votes.”<sup>66</sup> The question  
10 “will you vote for him for Senate” and response of “no” together with the phrases, “Scott is not  
11 our friend” and “he does not deserve our votes” provide a clear directive to vote against Scott.<sup>67</sup>  
12 Even though the words used in the ad may be “marginally less direct than ‘Vote for Smith,’” that  
13 margin does not change the directive to not vote for Scott.<sup>68</sup>

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<sup>63</sup> According to Facebook, this ad and others on the “Sounds Like Tennessee” Facebook page were almost all seen by viewers in Tennessee, at rates ranging from 90-92%. *See supra* note 61.

<sup>64</sup> *See* Second Gen. Counsel’s Rpt. at 6-7 and Cert., July 20, 2005, MUR 5365 (Club for Growth) (finding probable cause on political committee status based in part on express advocacy advertisement that stated, among other things, “‘NO’ to Daschle Democrats.”).

<sup>65</sup> Corazon Coqui, Advertisement 1; *see* Facebook Ad Library, News for Democracy, Corazon Coqui, (showing ad placement from October 24, 2018 to October 27, 2018 and showing 92% of the ad’s viewers were in Florida), <https://www.facebook.com/ads/library/?id=426423354555745>. Overall, News for Democracy spent at least \$359,332 on the Corazon Coqui page, with New American Media LLC spending \$3,000 on the page, and an additional \$21,733 in ads were not identified by the Facebook ad archive. *Id.*

<sup>66</sup> Corazon Coqui, Advertisement 1 (translated from the Spanish text using Google Translate, with the accuracy of the translation confirmed by a native Spanish speaker).

<sup>67</sup> *Id.*

<sup>68</sup> *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (“MCFL”) (urging voters to vote for pro-life candidates and identifying pro-life candidates in a list constituted express advocacy).



1 News for Democracy also paid between \$1,000 and \$5,000 to place an ad on the page  
2 “That’s Just North Dakota” that clearly identified, by name and image, U.S. Senate Candidate  
3 Kevin Cramer.<sup>69</sup> The ad starts with Cramer’s voice stating that “it’s hard for me to not be  
4 suspicious” about allegations against Supreme Court nominee Brett Kavanaugh.<sup>70</sup> It ends with  
5 the voiceover telling listeners that “North Dakotans deserve a leader who takes sexual assault  
6 seriously. Not someone who dismisses women as ‘suspicious.’”<sup>71</sup> In this context, the phrase  
7 “North Dakotans deserve a leader who takes sexual assault seriously” when contrasted with  
8 Cramer’s statement that the sexual assault allegations against Kavanaugh were “suspicious” is  
9 used to question Cramer’s character and fitness for office by suggesting that Cramer does not  
10 take sexual assault seriously. By saying that “North Dakotans deserve” a certain type of leader  
11 and suggesting that Cramer does not meet those requirements, the ad has no other meaning than  
12 to encourage the defeat of Cramer in his Senate race.<sup>72</sup>

13 Similarly, an ad that ran on “The Holy Tribune” and “Military Network” pages included  
14 statements from constituents in Representative Devin Nunes’s district, stating that he “hides  
15 from us,” that they were “concerned [he] is simply not paying attention,” and expressing  
16 “frustration because of Devin Nunes’s unwillingness to meet with” constituents. The ad requests  
17 that listeners “[s]hare if [they] think District 22 needs a Representative they can count on. Not

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<sup>69</sup> That’s Just North Dakota, Advertisement 3; see Facebook Ad Library, News for Democracy, That’s Just North Dakota (showing ad placement from October 4, 2018 to October 8, 2018 and showing 93% of the ad’s viewers were in North Dakota), <https://www.facebook.com/ads/library/?id=239548520244222>. Overall, News for Democracy and News for America overall spent \$111,576 on the That’s Just North Dakota page. See *id.*

<sup>70</sup> That’s Just North Dakota, Advertisement 3.

<sup>71</sup> *Id.*

<sup>72</sup> See F&LA 14-15, MUR 5024R (Council for Responsible Government) (concluding that “Tell Tom Kean Jr. . . . New Jersey Needs New Jersey Leaders” was suggestive of only one meaning—to “vote against Tom Kean”).

1 Devin Nunes.”<sup>73</sup> Taken together, these statements can only be viewed as urging viewers to vote  
 2 against Nunes because they are similar in content to the phrase “reject the incumbent.”<sup>74</sup>

3 As the foregoing discussion demonstrates, News for Democracy spent more than \$1,000  
 4 on express advocacy communications, thus meeting the statutory threshold for political  
 5 committee status.<sup>75</sup>

6 b. Major Purpose

7 Despite News for Democracy’s Response stating that it was formed for social welfare  
 8 purposes, the available information indicates that News for Democracy’s sole purpose was the  
 9 nomination or election of federal candidates.<sup>76</sup> News for Democracy was reportedly created to  
 10 conduct social-media operations primarily targeted at conservative audiences with the goal of  
 11 influencing the outcome of the 2018 Congressional midterm election similar to the targeting  
 12 operations of the Internet Research Agency during the 2016 elections.<sup>77</sup> To carry out its goal,

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<sup>73</sup> The Holy Tribune, Advertisement 4; *see* Facebook’s Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 25, 2018 to October 25, 2018) <https://www.facebook.com/ads/library/?id=329004324542883>. News for Democracy reportedly spent less than \$100 for this placement, though it is not clear whether the ad ran multiple times. This ad appears to have also been placed on the “Military Network” Facebook page. *See* <https://www.facebook.com/ads/library/?id=2420686094638638>. The Nunes ad was viewed only in California. News for Democracy spent over \$500,000 on The Holy Tribune page and News for Democracy and News for Democracy LLC spent almost \$300,000 combined on the Military Network page.

<sup>74</sup> 11 C.F.R. § 100.22(a).

<sup>75</sup> *See* 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>76</sup> *See Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at \*14 (E.D. Va. Sept. 24, 2008) (“A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive.”) (emphasis in original), *aff’d*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion*, 681 F.3d 544 (4th Cir. 2012); *see also* Supp. E&J at 5597 (“Therefore, determining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct — whether it received \$1,000 in contributions or made \$1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate). Neither FECA, its subsequent amendments, nor any judicial decision interpreting either, has substituted tax status as an acceptable proxy for this conduct-based determination.”).

<sup>77</sup> *See* Madrigal article, Sept. Markay article; Jan. Romm article.

1 News for Democracy disseminated ads that covered a range of political and social issues and  
2 distributed them on purported conservative Facebook pages with names such as “Our Flag Our  
3 Country,” “Self-Reliant Republic,” and “Rugged Roots,” or on pages described as “media/news  
4 company” like “The Holy Tribune” and “Military Network.”<sup>78</sup> These pages and several ads on  
5 them were reportedly designed to attract conservative audiences through the use of targeted  
6 content before inserting ads in their news feeds that opposed Republicans and supported  
7 Democrats running for Congress.<sup>79</sup> Backed by audience engagement and polling data, the  
8 conservative-sounding Facebook pages created by News for Democracy sought to find people  
9 who could be open to its payload content in the form of electoral messages, *e.g.*, the hypothetical  
10 40-something, white male in the “Sounds Like Tennessee” Facebook ad who, like President  
11 Trump, disagreed with Colin Kaepernick’s actions but could nevertheless see the value of free  
12 expression.<sup>80</sup>

13 Although News for Democracy’s activities appear to have been designed to camouflage  
14 its major purpose and the group did not have a website or make public statements about its  
15 activities,<sup>81</sup> statements from individuals and organizations associated with News for Democracy,  
16 as well as its conduct in mimicking election-influencing tactics reportedly used by the Internet

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<sup>78</sup> See *supra* note 27 and accompanying text; see also Sept. Markay article; April Markay article; Jan. Romm article.

<sup>79</sup> See *supra* notes 29-34. Following the 2018 mid-term election, Facebook opened an investigation into whether News for Democracy’s Facebook ads and pages violated its “community standards and advertising policies,” which emphasize authenticity and ban efforts to mislead people about the origin of content. Jan. Romm article.

<sup>80</sup> Madrigal article; Compl. Ex. A; Sounds Like Tennessee ad, Advertisement 6.

<sup>81</sup> The Commission has noted that in its consideration of an organization’s “overall conduct,” it will look at that organization’s public statements, including its own materials, statements to donors, or statements made on its website, “giving due weight to the form and nature of the statement, as well as the speaker’s position within the organization.” Supplemental E&J, 72 Fed. Reg. at 5601.

1 Research Agency in the 2016 elections,<sup>82</sup> establish that the group’s goal was achieving particular  
2 outcomes in federal elections. After the election, MotiveAI, the creator of the ads disseminated  
3 by News for Democracy, boasted that its advertising campaign had achieved its goals,  
4 specifically with respect to the number of “districts flipped” from Republican to Democratic and  
5 with Democrats taking “control of the House.”<sup>83</sup> Similarly, Dmitri Mehlhorn, a News for  
6 Democracy board member, reportedly pitched the group to Democratic donors looking for  
7 organizations to support.<sup>84</sup> In response to reporting about groups that Investing in US funded,  
8 including News for Democracy, Mehlhorn has also acknowledged that Investing in US funded  
9 organizations that were focused on “raising and deploying resources” to “influence the political  
10 direction of our country” and that he sought “to bring together investors and entrepreneurs to join  
11 the resistance” to then-President Trump.<sup>85</sup>

12 There is no other available information, including from Respondents, that News for  
13 Democracy conducted *any activity* other than advertising in connection with the 2018 federal  
14 elections.<sup>86</sup> Its entire purpose, supported by its dissemination of ads just before the 2018 general  
15 election, was, according to the aforementioned sizzle reel, to “flip districts.”<sup>87</sup> News for  
16 Democracy accomplished its objectives by saturating more than a dozen Facebook pages with  
17 hundreds of ads promoting its support of Democratic candidates and progressive policies.

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<sup>82</sup> See *supra* notes 18-25.

<sup>83</sup> MotiveAI Video.

<sup>84</sup> Jan. Romm article.

<sup>85</sup> Mehlhorn Medium Post.

<sup>86</sup> *But see* note 38 (possible \$125,000 political contribution).

<sup>87</sup> MotiveAI Video.

1           In addition, for purposes of this kind of political committee status analysis, even the ads  
2 that did not mention candidates or policies appear to have been created to support News for  
3 Democracy’s campaign-related purpose. The available information indicates that News for  
4 Democracy used paid, non-election related ads to attract more followers to its social media  
5 accounts so that they would be subsequently exposed to so-called payload content. As the  
6 Senate Intelligence Committee found, the Internet Research Agency’s disinformation campaign  
7 employed this tactic to influence the 2016 election.<sup>88</sup> In mimicking this way of gaining trust and  
8 concealing its true motives, News for Democracy’s almost identical tactics — marked by the  
9 creation of disingenuous communities and engagement through social media as part of a payload  
10 communication strategy — can be understood by the Commission as campaign activities  
11 indicative of its major purpose of influencing the 2018 election by electing federal candidates.<sup>89</sup>

12           In past enforcement actions, the Commission has determined that funds spent on  
13 communications that support or oppose a clearly identified federal candidate, but do not contain  
14 express advocacy, may appropriately be considered in determining whether that group has

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<sup>88</sup> U.S. SENATE SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION, VOLUME 2: RUSSIA’S USE OF SOCIAL MEDIA (Oct. 8, 2019) at 32-33, 51, 61 (explaining the role of “‘payload content’ designed to influence the targeted user”).

<sup>89</sup> Compare Supplemental E&J at 5601 (observing that “*Buckley* and *MCFL* make clear that the major purpose doctrine requires a fact-intensive analysis of a group’s campaign activities compared to its activities unrelated to campaigns”).

1 federal campaign activity as its major purpose.<sup>90</sup> This approach is consistent with the court’s  
 2 reasoning in *CREW I*, namely that, when examining an organization’s major purpose,  
 3 “excluding *all* non-express advocacy speech from consideration [is] contrary to law.”<sup>91</sup>  
 4 Besides the statements about the purpose of News for Democracy’s ads by Fletcher, a review of  
 5 Facebook’s Ad Library confirms that in addition to ads containing express advocacy, several of  
 6 the ads disseminated by News for Democracy opposed or criticized clearly identified federal  
 7 candidates. For example, News for Democracy purchased an ad on the “Sounds Like  
 8 Tennessee” page telling viewers that “[o]n Tuesday, November 6th, we take back Tennessee,”  
 9 that “we elect leaders who will fight for us” (accompanied by the image of Democratic Senate  
 10 candidate Phil Bredesen), and “not politicians who promote bigotry” (alongside the image of  
 11 Marsha Blackburn, his Republican opponent).<sup>92</sup>

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<sup>90</sup> See F&LA at 11-14, MUR 6538R (Americans for Job Security) (finding that non-express advocacy electioneering communications that criticize or support federal candidates satisfy major purpose); Conciliation Agreement ¶ IV.11, MUR 5754 (MoveOn.org Voter Fund) (relying on funds used for advertisements that “opposed” or “criticized” George W. Bush to establish political committee status); F&LA at 2, MUR 5753 (League of Conservation Voters 527) (finding major purpose satisfied where funds spent on door-to-door and phone bank express advocacy campaign, and also on advertisements “supporting or opposing clearly identified federal candidates, some of which contained express advocacy”); Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund) (concluding that PFA VF had met the major purpose test after spending 60% of its funds on communications that “praised George W. Bush’s leadership as President and/or criticized Senator Kerry’s ability to provide similar leadership”); see also Stipulation for Entry of Consent Judgment ¶ 22, *FEC v. Citizens Club for Growth, Inc.*, Civ. No. 1:05-01851 (Sept. 6, 2007) (entering stipulation of Commission and respondent, approved as part of a consent judgment, where organization was treated as a political committee because “the vast majority of [the group’s disbursements] were made in connection with federal elections, including, but not limited to, funding for candidate research, polling, and advertisements and other public communications referencing a clearly identified federal candidate”).

<sup>91</sup> *CREW I*, 209 F. Supp. 3d at 92 (emphasis in original) (internal quotation omitted). Although this case involved electioneering communications and not ads on the internet, the court’s reasoning is still applicable to determining any putative political committee’s major purpose.

<sup>92</sup> Sounds Like Tennessee, Advertisement 12; see Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 23, 2018 to November 2, 2018), <https://www.facebook.com/ads/library/?id=1743746029062760>. News for Democracy spent between \$10,000 and \$15,000, where 91% of the views were in Tennessee. See *id.*



2 News for Democracy purchased another ad on the “That’s Just North Dakota” page that  
 3 opposed Republican Senate candidate Kevin Cramer, describing him as having “the wrong  
 4 priorities” and telling viewers that he “can’t be trusted to look out for families.”<sup>93</sup>



6 On the “Corazon Coqui” page, News for Democracy purchased an ad calling Rick Scott,  
 7 Republican candidate for U.S. Senate in Florida, a “thief and a liar” for alleged “Medicare fraud”  
 8 based on events that occurred while he was in the private sector.<sup>94</sup> News for Democracy-  
 9 purchased ads featuring Republican U.S. House candidates Jim Jordan and Rod Blum were  
 10 similarly critical. For instance, an ad on the “The Holy Tribune” describes Jordan as someone

<sup>93</sup> That’s Just North Dakota, Compl. Ex. A; Advertisement 13; *see* Facebook Ad Library, News for Democracy, That’s Just North Dakota (showing ad placement from October 22, 2018 to October 23, 2018), <https://www.facebook.com/ads/library/?id=1956720011294738>. News for Democracy spent between \$1,500 and \$2,000 on this ad, where 93% of the views were in North Dakota. *See id.*

<sup>94</sup> Corazon Coqui, Compl. Ex. A; Advertisement 14; *see* Facebook Ad Library, News for Democracy, Corazon Coqui (showing ad placement from October 22, 2018 to October 24, 2018), <https://www.facebook.com/ads/library/?id=1404408626359020>. News for Democracy spent between \$4,000 and \$4,500 on this ad, where 93% of the views were in Florida. *See id.*

1 who “wants to be the next Speaker of the House,” and asks “can we trust he’ll stand up for  
 2 what’s right when it really counts,” telling listeners that “[w]e need leaders with strong values  
 3 not selfish ambition and flexible morals.”<sup>95</sup> Rod Blum, in an ad on the “Our Flag Our Country”  
 4 is targeted for “hid[ing] his connections to unethical corporations” because of an ethics inquiry  
 5 that he “knew . . . wouldn’t end well,” and concludes by telling listeners that “Iowans deserve  
 6 Better” and asks them to “[s]hare if [they] agree.”<sup>96</sup>

7 Although these ads do not include an explicit electoral call to action, each ad references a  
 8 clearly identified federal candidate, opposes that candidate, and ran shortly before the 2018  
 9 midterm election, most likely in that candidate’s state or district, given the state-specific names  
 10 of some of its Facebook pages and location of viewers — establishing the requisite electoral  
 11 nexus.<sup>97</sup> The content of the advertisements is similar to other communications that the  
 12 Commission has previously found were indicative of federal campaign activity.<sup>98</sup> By suggesting  
 13 that Blackburn supports bigotry, Cramer has the “wrong priorities,” Scott is a “thief and a liar,”  
 14 Jordan is someone with “selfish ambition and flexible morals,” and Blum is hiding “connections  
 15 to unethical corporations,” the ads question the candidates’ character and fitness for office. In

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<sup>95</sup> The Holy Tribune, Advertisement 15; *see* Facebook Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 12, 2018 to October 20, 2018), <https://www.facebook.com/ads/library/?id=477923282694505>. News for Democracy spent between \$1,000 and \$1,500 for the Jordan ad. *See id.*

<sup>96</sup> Our Flag Our Country, Advertisement 16; *see* Facebook Ad Library, News for Democracy, Our Flag Our Country (showing ad placement from October 13, 2018 to October 15, 2018), <https://www.facebook.com/ads/library/?id=564300743999316>. Although News for Democracy spent less than \$100 on the Blum ad, the group spent over \$1.2 million on the Our Flag Our Country page and Fight for America’s Future PAC spent an additional \$35,000 on the page.

<sup>97</sup> *See supra* at notes 61 and 69 (viewership of the “Sounds Like Tennessee” and “That’s Just North Dakota” ads were upwards of 90% in the respective state compared to all of the ads’ viewers).

<sup>98</sup> *See* F&LA at 12-13, MUR 6538R (Americans for Job Security); F&LA at 5, 18, MUR 5753 (League of Conservation Voters 527); F&LA at 3-4, 12-13, MUR 5754 (MoveOn.org. Voter Fund); Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund).



1 addition to running right before the election, the Blackburn ad has an explicit electoral nexus with the  
2 statement that “[o]n Tuesday, November 6th, we take back Tennessee,” and uses the phrase “elect  
3 leaders who fight for us,” while showing an image of Blackburn’s opponent, Phil Bredesen. The only  
4 way for Bredesen to fight for voters in Tennessee is if he is elected to the Senate. Saying that Cramer  
5 “can’t be trusted to look out for families” and that “Iowans deserve better” than Blum in the context  
6 of ads that ran only in the timeframe before the election reasonably appears to encourage voters in  
7 North Dakota and Iowa to vote against those candidates. As for the Jordan ad, it references a  
8 position, Speaker of the House, that Jordan can likely only hold if re-elected to federal office.  
9 Accordingly, each of these ads supports a determination that News for Democracy had as its purpose  
10 the nomination or election of federal candidates.

11 In addition to ads that referenced a clearly identified federal candidate, News for Democracy  
12 also sought to further influence the 2018 midterm election by purchasing numerous ads containing  
13 explicit references to Congressional elections along with an exhortation to vote for “Democrats” or to  
14 vote against the “GOP,” “GOP Congress,” or “Congressional Republicans,” consistent with an  
15 organization that had a major purpose of federal election activity. These “party” ads, with first-  
16 person accounts of people deciding to vote “Democrat” and at times, exhorting the viewer to share  
17 the video, are the digital equivalent of a bumper sticker stating, “Democrats!”<sup>1</sup> The only reasonable  
18 interpretation for these ads is to convince the viewer to vote for Democratic candidates even if they  
19 have previously voted only for Republicans. By citing reasons for their change of opinion, such as  
20 Republicans dismantling healthcare and perceived changes in values held by Republicans, the  
21 speakers in the videos are likewise exhorting viewers to make the same change.

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<sup>1</sup> 11 C.F.R. § 100.22(a).

1 healthcare and perceived changes in values held by Republicans, the speakers in the videos are  
2 likewise exhorting viewers to make the same change.

3 For example, the “Sounds Like Tennessee” ad cited in the Complaint accuses Donald  
4 Trump of “ma[king] our health care system worse and more expensive and start[ing] a reckless  
5 trade war that’s . . . blowing back negatively on our economy.”<sup>100</sup> The ad concludes with a  
6 declaration that the speaker is “voting Democrat in the mid-term elections on November 6.”<sup>101</sup>



8 Relatedly, a “Women for Civility” ad speaker states, “You know the GOP strangled the  
9 ACA so much the past two years that my costs went up and my coverage got worse. Thanks a  
10 lot. Great leadership, guys! And meanwhile what do we get from the Republican Congress?  
11 Endless culture wars, and trillion-dollar tax breaks to corporations and to the ultra-wealthy.”<sup>102</sup>  
12 The ad ends with the speaker linking her vote for Democrats to actions of the Republican  
13 Congress, stating, “Wouldn’t it be nice if we had a Congress that worked hard for us instead of

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<sup>100</sup> Sounds Like Tennessee, Compl. Ex. A; Advertisement 6; *see* Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 23, 2018, to October 25, 2018), <https://www.facebook.com/ads/library/?id=287306971879845>.

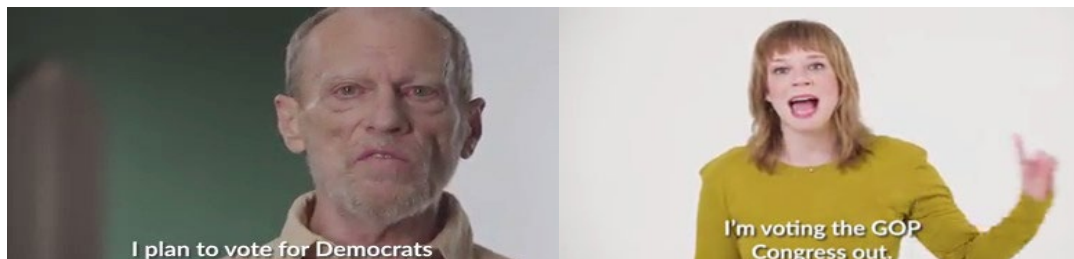
<sup>101</sup> Sounds Like Tennessee, Compl. Ex. A; Advertisement 6

<sup>102</sup> Women for Civility, Compl. Ex. A; Advertisement 7; *see* Facebook Ad Library, News for Democracy, Women for Civility (showing ad placement from October 22, 2018, to October 24, 2018), <https://www.facebook.com/ads/library/?id=480760542428590>.

1 working so hard against us? That’s why I am voting for the Democrats this year,”<sup>103</sup> suggesting  
 2 that the “Republican Congress” was not working for voters.



4 At least two ads on the “Better with Age” page link the speaker’s decision to “vote for  
 5 Democrats” or “voting Democrat” to a desire to “get closer to a Congress who will represent me  
 6 and not the one percent”<sup>104</sup> or to a statement that the speaker was “voting the GOP Congress  
 7 out.”<sup>105</sup> The electoral nexus to federal elections in these ads is clear with the reference to voting  
 8 against the GOP Congress.



10 In other ads, News for Democracy emphasized accountability in urging the replacement  
 11 of Republicans in Congress and portrayed the Republican Party as being responsible for  
 12 corruption and incivility. For instance, an “Our Flag Our Country” ad expresses discontent with  
 13 “a one party system,” stating that “with Republicans controlling the White House, the House,

<sup>103</sup> Women for Civility, Compl. Ex. A; Advertisement 7.

<sup>104</sup> Better with Age, Advertisement 9; *see* Facebook Ad Library, News for Democracy, Better with Age (showing ad placement from October 24, 2018, to October 26, 2018), <https://www.facebook.com/ads/library/?id=299080014025480>.

<sup>105</sup> Better with Age, Advertisement 8; *see* Facebook Ad Library, News for Democracy, Better with Age (showing ad placement from October 24, 2018, to November 1, 2018), <https://www.facebook.com/ads/library/?id=313637485924620>.

1 and the Senate[,]” “[i]t’s no wonder why we see so much rampant corruption.”<sup>106</sup> The individual  
2 in the ad states, “I may not agree with Democrats on everything. But I am voting for them this  
3 time, because if there’s one thing our country needs right now, it’s balance and  
4 accountability.”<sup>107</sup> Disseminated just before the 2018 election, the Our Flag Our Country ad  
5 speaker naming the White House, Senate, and House as Republican-controlled, and then stating  
6 he’s voting Democratic for “balance” is equivalent to a voter guide showing the Obama logo and  
7 stating, “How do I vote a straight Democratic Ticket,” which the Commission found to be  
8 express advocacy.<sup>108</sup>

9 “The Holy Tribune” page, which reportedly targeted evangelicals,<sup>109</sup> includes an ad with  
10 a speaker who describes himself as a retired healthcare executive in Texas who has voted  
11 Republican since the age of 18.<sup>110</sup> After explaining that the current Republican Party is not the  
12 party he “grew up knowing about,” and that Republicans are not “doing their job,” the speaker  
13 then states “in these midterms I will vote — and I hope others will vote — to hold Republicans  
14 accountable for not doing their job.”<sup>111</sup> The ad ends with the following text: “Share this video if  
15 you agree that we should hold Congressional Republicans accountable,”<sup>112</sup> suggesting that

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<sup>106</sup> Our Flag Our Country, Advertisement 5, *see* Facebook Ad Library, News for Democracy, Our Flag Our Country (showing ad placement from November 4, 2018, to November.4, 2018), <https://www.facebook.com/ads/library/?id=304166843520784>.

<sup>107</sup> *Id.*

<sup>108</sup> *See* F&LA at 7, MUR 6683 (Fort Bend County Democratic Party).

<sup>109</sup> Jan. Romm article.

<sup>110</sup> The Holy Tribune, Advertisement 10; *see* Facebook Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 24, 2018 to November 6, 2018), <https://www.facebook.com/ads/library/?id=187412635474539>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

1 voting in the midterms against “Congressional Republicans” is a way to hold them  
 2 “accountable.”

3 And on the “Military Network” page, after discussing his father’s service in World War  
 4 II, the speaker states, “My father was a Republican. I was a Republican.”<sup>113</sup> He then explains,  
 5 “[b]ut as long as this Republican Party continues to side with hate, I can’t side with them. I am  
 6 voting for a new Congress. I am voting Democrat for the first time in my life. Share.”<sup>114</sup>

7



9 As with other ads, News for Democracy uses the “Military Network” ad to use a  
 10 particular electoral outcome, “voting Democrat” and “for a new Congress,” explicitly linking the  
 11 vote for Democratic candidates to federal elections. All of News for Democracy’s “party” ads  
 12 that try to convince voters to vote Democratic are expressly advocating Democratic candidates  
 13 because there is no other way to vote Democratic other than to vote for Democratic candidates in  
 14 the 2018 election.<sup>115</sup> The link to federal elections is clear with the repeated references to the  
 15 midterms and GOP Congress and Congressional Republicans and consistent with News for

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<sup>113</sup> Military Network, Advertisement 11; *see* Facebook Ad Library, News for Democracy, Military Network (showing ad placement from October 18, 2018 to October 19, 2018), <https://www.facebook.com/ads/library/?id=174367523494041>.

<sup>114</sup> *Id.*

<sup>115</sup> *See, e.g.*, F&LA at 13, MUR 6538R (AJS) (ads supporting three candidates make no sense unless message was to elect them to federal office).

1 Democracy’s sole purpose, advocating for Democratic candidates in the midterm elections. This  
 2 exhibited primary purpose belies News for Democracy’s stated social welfare purpose or status.

3 Collectively, News for Democracy spent more than \$5.5 million on Facebook ads that  
 4 were viewed millions of times before the 2018 midterm election.<sup>116</sup> News reporting,  
 5 corroborated by information from Facebook’s Ad Library, indicates that each ad was part of an  
 6 overall campaign designed to influence the outcome of the 2018 midterm election by  
 7 encouraging viewers to support Democratic candidates. Indeed, in its promotional video  
 8 following the election,<sup>117</sup> MotiveAI, the creator of the Facebook advertisements, revealed the  
 9 singular nature of that campaign: to use online advertising to elect candidates from the  
 10 Democratic Party — both specifically named candidates and unnamed federal candidates — to  
 11 the U.S. Congress.<sup>118</sup> In effect, News for Democracy’s specific ads and their “party” ads taken  
 12 as a whole are similar to the “Special Edition” flyer in *MCFL*, where the Supreme Court found  
 13 that the exhortation to vote “pro-life” accompanied by photographs designating supportive and  
 14 non-supportive candidates constituted express advocacy.<sup>119</sup>

15 The Edition cannot be regarded as a mere discussion of public  
 16 issues that by their nature raise the names of certain politicians.  
 17 Rather, it provides in effect an explicit directive: vote for these  
 18 (named) candidates. The fact that this message is marginally less  
 19 direct than ‘Vote for Smith’ does not change its essential nature.  
 20 The Edition goes beyond issue discussion to express electoral  
 21 advocacy.”<sup>120</sup>  
 22

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<sup>116</sup> See *supra* note.27; Madrigal article.

<sup>117</sup> See April Markay article.

<sup>118</sup> See MotiveAI Video.

<sup>119</sup> *MCFL*, 479 U.S. at 250.

<sup>120</sup> *Id.*

1 News for Democracy’s party ads similarly exhort viewers to vote for Democratic  
2 candidates and cannot be interpreted to be issue ads as their message is to vote for a change in  
3 the party controlling all three branches of government by voting against Republican candidates  
4 and officeholders.<sup>121</sup>

5 News for Democracy, nevertheless, argues that it accomplishes its mission to “promot[e]  
6 social welfare” and to “educate the public through identifying inaccurate news or commentary”  
7 by disseminating “genuine issue advertisements” in the form of digital ads about state and  
8 federal policies and public officials.<sup>122</sup> However, as discussed above, News for Democracy  
9 explicitly linked discussion of issues in several of the ads to voting in congressional elections,  
10 with statements about “voting the GOP Congress out,” “voting for a new Congress,” and the  
11 need to vote and “hold Congressional Republicans accountable.” While a small number of News  
12 for Democracy’s advertisements included in the Facebook Ad Library appear to be exclusively  
13 issue oriented, that is, without any reference to a candidate or election, as discussed above, these  
14 are “issue ads” apparently made for the purpose of attracting certain audiences to further its  
15 federal campaign objective, not to advance the particular issue.<sup>123</sup> The online tactics News for  
16 Democracy appeared to employ to influence the 2018 midterm election are not new; rather, they  
17 are a continuation of similar social media strategies used by the Internet Research Agency in  
18 2016. Specifically, the Internet Research Agency purchased political ads on social media in the

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<sup>121</sup> See also Advisory Op. 2006-20 (Unity 08) (putative party’s name is “placeholder” for candidates’ names on petition drive materials).

<sup>122</sup> NFD Resp. at 1-2.

<sup>123</sup> Madrigal article, Sept. Romm article, Nov. Romm article, Sept. Markay article; NYU Report at 8-9. Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* at 4, 14 (March 2019).

1 names of U.S. persons and entities that were designed to attract U.S. audiences with the goal of  
2 “sowing discord in the U.S. political system.”<sup>124</sup>

3         Although the extent to which News for Democracy spent money on express advocacy  
4 communications or communications with an explicit electoral nexus during its existence is not  
5 clear, the overall record indicates that the reason for this uncertainty is that News for Democracy  
6 purposefully sought to obscure its spending.<sup>125</sup> News for Democracy has provided no  
7 information to substantiate its stated mission or to rebut sufficiently the information in the  
8 Complaint and attached articles that its purpose was federal campaign activity. It has not  
9 submitted information regarding any other activity besides the relatively little information about  
10 its digital advertisements. It has likewise provided no information regarding its revenue and  
11 expenses from the 2018 fiscal year, which is the only tax year for which it would have filed a tax  
12 return. Nor is this information publicly available. News for Democracy’s Facebook ad  
13 purchases in 2018 and the possible \$125,000 contribution to an independent expenditure-only  
14 political committee constitute the only publicly available information on its spending.<sup>126</sup> That  
15 News for Democracy seemingly became inactive after the 2018 midterm election and within  
16 three months of having formed provides support, in addition to the Facebook ads and statements  
17 from individuals associated with the group, that it had the major purpose of nominating or

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<sup>124</sup> Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* at 4, 14 (March 2019).

<sup>125</sup> The Commission has declined to “set a threshold on the proportion of spending on major purpose activities required for political committee status,” and it also stated that “the determination of an organization’s major purpose requires the flexibility of a case-by-case analysis of an organization’s conduct that is incompatible with a one-size fits-all rule,” noting the “multitude of fact patterns at issue in the Commission’s enforcement actions considering the political committee status of various entities.” F&LA at 7, 15, MUR 6538R (Americans for Job Security).

<sup>126</sup> The Google Transparency Report appears to show that News for Democracy disseminated a few ads in 2019, but it is not clear that they are the Respondents’ ads. See <https://transparencyreport.google.com/political-ads/advertiser/AR156845883458060288>.



1 electing federal candidates in 2018.<sup>127</sup> Accordingly, because both the statutory and major  
2 purpose requirements appear to have been satisfied, the Commission finds reason to believe that  
3 News for Democracy violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize,  
4 register, and report with the Commission as a political committee.

5 **B. News for Democracy Apparently Failed To Report Independent**  
6 **Expenditures**  
7

8 An independent expenditure is an expenditure that (1) expressly advocates the election or  
9 defeat of a clearly identified federal candidate, and (2) is not made in concert or cooperation  
10 with, or at the request or suggestion of, the candidate or his or her committee or agent, or a  
11 political party committee or its agent.<sup>128</sup> The Act requires political committees and persons other  
12 than political committees to report their independent expenditures.<sup>129</sup> Political committees other  
13 than authorized committees must disclose their independent expenditures and itemize such  
14 expenditures with information including the name and address of each person who receives  
15 disbursements in connection with an independent expenditure, as well as the date, amount,  
16 purpose, and identity of the candidate the independent expenditure is supporting or opposing.<sup>130</sup>  
17 Similar reporting requirements apply to non-political committee persons making independent

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<sup>127</sup> See F&LA at 13, MUR 5754 (MoveOn.Org Voter Fund) (noting that the respondent's major purpose was to defeat a federal candidate because its activities, including the fact it had been virtually inactive since the 2004 general election, showed that its sole objective was to defeat a federal candidate).

<sup>128</sup> 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

<sup>129</sup> See generally 52 U.S.C. § 30104.

<sup>130</sup> 52 U.S.C. § 30104(b)(3)(B)(iii), (g); 11 C.F.R. § 109.10.

1 expenditures aggregating greater than \$250 in a calendar year.<sup>131</sup> A person, including a political  
2 committee, also may have to file additional disclosure reports depending on the amount and  
3 timing of an independent expenditure.<sup>132</sup>

4 As discussed above in Part III.A.2.a., News for Democracy purchased four ads of more  
5 than \$250 in the aggregate that expressly advocated the election or defeat of clearly identified  
6 federal candidates and thus should have been reported on reports to the Commission.<sup>133</sup> Because  
7 News for Democracy failed to report these independent expenditures, the Commission finds  
8 reason to believe that News for Democracy violated 52 U.S.C. § 30104(c)(1).

9 **C. News for Democracy Apparently Failed to Include Required**  
10 **Disclaimers**

11  
12 The Act requires that all “public communications” of political committees and any  
13 “public communication” by any person that expressly advocates the election or defeat of a  
14 clearly identified candidate must include a disclaimer in the communication identifying who paid  
15 for the communication and, where applicable, whether the communication was authorized by a

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<sup>131</sup> 52 U.S.C. § 30104(c), (g); 11 C.F.R. § 109.10. These persons must also identify individuals who made contributions over \$200. 52 U.S.C. § 30104(c)(1), (2)(C); *Citizens for Responsibility & Ethics in Wash. v. FEC*, 316 F. Supp. 3d 349, 410 (D.D.C. 2018) (holding sections 30104(c)(1) and (c)(2)(C) “unambiguously require separate and complementary requirements to identify donors of over \$200 to reporting non-political committees and mandate significantly more disclosure than that required by the challenged regulation, 11 C.F.R. § 109.10(e)(1)(vi).”).

<sup>132</sup> Section 30104(g) requires reports from persons making independent expenditures over certain aggregate amounts and within certain prescribed timeframes: for expenditures aggregating greater than \$10,000 made at any time up to the 20th day before an election, persons must file a report describing those expenditures with the Commission within 48 hours of making or contracting to make the expenditure. 52 U.S.C. § 30104(g)(2).

<sup>133</sup> See Corazon Coqui, Advertisement 1; Sounds Like Tennessee, Advertisement 2; That’s Just North Dakota, Advertisement 3; The Holy Tribune, Advertisement 4.

1 candidate.<sup>134</sup> Under Commission regulations, a “public communication” includes  
2 communications placed for a fee on another person’s website.<sup>135</sup> The Commission has  
3 previously determined that a disclaimer is required on the type of paid Facebook advertising  
4 placed by News for Democracy.<sup>136</sup>

5         The type of information required in a disclaimer varies depending on whether the  
6 communication is paid for or authorized by a candidate. If the communication is not paid for or  
7 authorized by a candidate, then the disclaimer must “clearly state the full name and permanent  
8 street address, telephone number, or World Wide Web address of the person who paid for the  
9 communication, and that the communication is not authorized by any candidate or candidate’s  
10 committee.”<sup>137</sup> This information “must be presented in a clear and conspicuous manner, to give  
11 the reader, observer, or listener adequate notice of the identity” of the ad’s sponsor.<sup>138</sup>  
12 News for Democracy paid for the placement of thousands of ads on Facebook including the four  
13 examples discussed above that expressly advocated the election or defeat of clearly identified  
14 federal candidates. Even assuming News for Democracy is not a political committee, its express  
15 advocacy communications placed on Facebook for a fee required disclaimers identifying the

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<sup>134</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2)-(3), (b), (c). A candidate is “clearly identified” when the communication includes the name or a photograph or drawing of the candidate or “the identity of the candidate is apparent by unambiguous reference.” 52 U.S.C. § 30101(18).

<sup>135</sup> 11 C.F.R. § 100.26.

<sup>136</sup> See Advisory Opinion 2017-12 (Take Back Action Fund) (concluding that requestor was required to include all of the disclaimer information required by 52 U.S.C. § 30120(a) on its paid Facebook Image and Video advertising); see also Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006) (noting disclaimer requirements apply to “all potential forms of advertising” placed for a fee online, including “banner advertisements, streaming video, pop up advertisements, and directed search results”).

<sup>137</sup> 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3). A communication that is authorized by a candidate, the candidate’s authorized committee, or an agent, but is paid for by any other person, must state that the communication is paid for by another person and is authorized by such candidate, committee, or agent. *Id.* § 110.11(b)(2).

<sup>138</sup> 11 C.F.R. § 110.11(c)(1).

- 1 payor by name, providing the payor's address, phone, or website, and including the appropriate
- 2 authorization language.<sup>139</sup> None of the four express advocacy ads included such disclaimers.
- 3 Accordingly, the Commission finds reason to believe that News for Democracy violated
- 4 52 U.S.C. § 30120(a).

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<sup>139</sup> See, e.g., Corazon Coqui, Advertisement 1; Sounds Like Tennessee, Advertisement 2; That's Just North Dakota, Advertisement 3; The Holy Tribune, Advertisement 4.

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** News for Democracy LLC

**MUR:** 7527

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”) by the Foundation for Accountability and Civic Trust. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that News for Democracy violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to organize, register, and report as a political committee in connection with its 2018 election activity.<sup>1</sup> The Complaint argues that because News for Democracy spent between \$1.2 and \$4.6 million on political advertising and only started operating a few months before the 2018 general election, it should have registered and filed reports as a political committee under the Act.<sup>2</sup>

The Commission identified and notified two entities — News for Democracy, a nonprofit organized under section 501(c)(4) of the Internal Revenue Code, and News for Democracy LLC, a New York corporation — as respondents. The exact relationship between the two entities is unclear, although there is some indication that they effectively function as related entities.<sup>3</sup> News for Democracy LLC responds that it did not fund any of the specific advertisements found

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<sup>1</sup> Compl. at 1 (Oct. 25, 2018).

<sup>2</sup> *Id.* at 1-3.

<sup>3</sup> Publicly available information in Facebook’s Ad Library indicates that News for Democracy LLC has purchased advertisements generally referred to in the Complaint and relevant to this matter. Moreover, the Complaint appears to refer to both entities, and press reports suggest they are related. *See, e.g.,* Compl., Ex. C, Lachlan Markay, *The Mystery Firms Behind the Liberal Facebook Dubbing a Hawaii Rep. a CWILF*, THE DAILY BEAST, Sept. 20, 2018 (updated online Nov. 20, 2018) (“Sept. Markay article”). Given News for Democracy LLC’s denial of funding the specific five ads attached to the Complaint but not denying funding other advertisements, this Factual and Legal Analysis will refer to them collectively as News for Democracy when appropriate.

1 in the Complaint despite publicly available information in Facebook’s Ad Library indicating that  
2 News for Democracy LLC paid for advertisements referenced in the Complaint.<sup>4</sup>

3 As discussed below, in 2018, News for Democracy and News for Democracy LLC  
4 satisfied the statutory threshold for political committee status, and the available information  
5 regarding their overall conduct, including statements by their principals, supports a reasonable  
6 inference that they each had the requisite major purpose of nominating or electing federal  
7 candidates. In addition, News for Democracy and News for Democracy LLC failed to file  
8 reports disclosing independent expenditures and failed to include disclaimers on ads containing  
9 express advocacy.

## 10 **II. FACTUAL BACKGROUND**

11 The Complaint alleges that “News for Democracy is a secretive organization that has  
12 spent millions of dollars on political advertising.”<sup>5</sup> The Complaint states that “despite becoming  
13 one of the most influential organizations in political advertising, the organization has no website,  
14 contact page, or email address.”<sup>6</sup> Citing various press reports and the Facebook Ad Library,<sup>7</sup> the  
15 Complaint alleges that News for Democracy’s “Facebook ad buys have created, ‘at a minimum,  
16 45 million impressions through more than 2,600 ads’” from its August 27, 2018 inception to

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<sup>4</sup> See News for Democracy LLC Resp. at 1 (Dec. 19, 2018) (“NFD LLC Resp.”).

<sup>5</sup> Compl. at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at note 5 (citing “Facebook Ad Archive” of ads from News for Democracy (now labeled by Facebook as “Ad Library”) at [https://www.facebook.com/ads/archive/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&q=news%20for%20democracy](https://www.facebook.com/ads/archive/?active_status=all&ad_type=political_and_issue_ads&country=US&q=news%20for%20democracy)) (as of October 15, 2021, sort by “high to low” impressions to see a sampling of News for Democracy ads).

1 October 16, 2018.<sup>8</sup> News for Democracy was reportedly the “second-largest political ad buy[er]  
2 on Facebook” during a two-week period in September 2018, “trailing only Beto O’Rourke’s  
3 Texas Senate campaign.”<sup>9</sup> Based on this activity, the Complaint alleges that News for  
4 Democracy violated the Act and Commission regulations by failing to register and report as a  
5 political committee.

6 News for Democracy is organized under Section 501(c)(4) of the Internal Revenue Code  
7 and registered with the District of Columbia as a non-profit organization on August 27, 2018.  
8 News for Democracy LLC denies funding the specific advertisements referenced in the  
9 Complaint but does not explain its relationship to News for Democracy or why it is listed as the  
10 payor for similar advertisements in Facebook’s Ad Library.<sup>10</sup>

11 A review of publicly available information about the two separate News for Democracy  
12 entities reveals that the groups appear to be referenced interchangeably and that they are both  
13 part of a group of entities associated with MotiveAI, a Denver corporation.<sup>11</sup> According to a  
14 New York University research report on social media political advertising in 2018, News for

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<sup>8</sup> Compl., Ex. B, Alexis C. Madrigal, *The Secret Organization Quietly Spending Millions on Facebook Political Ads*, THE ATLANTIC, Oct. 17, 2018 (“Madrigal article”). Facebook defines “impressions” as the “number of times your ads were on screen for your target audience.”  
<https://www.facebook.com/business/help/675615482516035>.

<sup>9</sup> Madrigal article. According to a *New York Magazine* article, many of News for Democracy’s Facebook pages “had accumulated anywhere from 5,000 to 12,000 subscribers sharing memes or news articles relevant to their subject matter a couple of times a day.” Simon van Zuylen-Wood, *How Low Will Democrats Go? Probably Not Low Enough*, NEW YORK MAGAZINE at 6 (Dec. 20, 2019) (“NYMAG article”),  
<https://nymag.com/intelligencer/2019/12/democrats-digital-strategy-2020-election.html>.

<sup>10</sup> See NFD LLC Resp. at 1.

<sup>11</sup> See Madrigal article, (“Fletcher [MotiveAI’s CEO] acknowledged . . . that MotiveAI, working with outside groups, is behind News for Democracy”); see also Tony Romm, Elizabeth Dwoskin, and Craig Timberg, *Internet Billionaire Reid Hoffman Apologizes for Funding a Group Tied to Disinformation in Alabama Race*, THE WASHINGTON POST, (Dec. 26, 2018), [https://www.washingtonpost.com/technology/2018/12/26/internet-billionaire-reid-hoffman-apologizes-funding-group-behind-disinformation-alabama-race/?utm\\_term=.781cf4a97098](https://www.washingtonpost.com/technology/2018/12/26/internet-billionaire-reid-hoffman-apologizes-funding-group-behind-disinformation-alabama-race/?utm_term=.781cf4a97098) (“Dec. Romm article”).

1 Democracy and another MotiveAI-connected entity, New American Media Group LLC, were  
2 examples of a “new type of political advertiser,” specifically, “unknown for-profit media  
3 companies that appear to be creating disingenuous communities that appear to be ‘grassroots  
4 movements’ to target different demographics and interests.”<sup>12</sup> The NYU Report found that these  
5 groups appeared to exist for no other purpose than to spread a particular political message by  
6 running ads on Facebook pages, “most of which were designed to be appealing to groups with  
7 traditionally conservative view points.”<sup>13</sup>

8 News for Democracy and MotiveAI were both reportedly funded by Investing in US, an  
9 investment fund co-founded by Reid Hoffman and Dmitri Mehlhorn.<sup>14</sup> Mehlhorn, who also  
10 served as a board member of News for Democracy,<sup>15</sup> described the goal of Investing in US as  
11 bringing entrepreneurs and investors to “join the resistance” to then-President Trump.<sup>16</sup>  
12 Hoffman, a co-founder of LinkedIn and its former chairman, describes himself as politically  
13 active through his investments “in the sphere of civic engagement and politics over the past two  
14 years.”<sup>17</sup> In furtherance of its goal, Investing in US reportedly supported Democratic candidates  
15 and groups starting with the 2017 elections in Virginia, where the investments were made with

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<sup>12</sup> Laura Edelson, *et al.*, *An Analysis of United States Online Political Advertising Transparency*, New York University, Feb. 12, 2019, at 9 (“NYU Report”), <https://arxiv.org/pdf/1902.04385.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> Madrigal article; NY Mag. article.

<sup>15</sup> Tony Romm, Elizabeth Dvoskin, and Craig Timberg, *Facebook is Investigating the Political Pages and Ads of Another Group Backed by Reid Hoffman*, THE WASHINGTON POST (Jan. 7, 2019), [https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/?noredirect=on&utm\\_term=.fc1b24f6c1c1](https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/?noredirect=on&utm_term=.fc1b24f6c1c1) (“Jan. Romm article”).

<sup>16</sup> Dmitri Mehlhorn, *Investing in US – 2017-2018 in Review*, MEDIUM.COM (Dec. 21, 2018) (“Mehlhorn Medium Post”), <https://medium.com/@DmitriMehlhorn/investing-in-us-64afe222face>.

<sup>17</sup> Reid Hoffman, *Truth and Politics*, MEDIUM (Dec. 26, 2018) (“Hoffman Medium Post”), <https://medium.com/@reidhoffman/truth-and-politics-1a532bc6c2b1>.



1 the stated goal of flipping the then-Republican state legislature, and the 2017 special Senate  
2 election in Alabama.<sup>18</sup> Investing in US reportedly spent hundreds of millions of dollars to  
3 support Democratic-leaning groups during the 2018 midterm elections.<sup>19</sup>

4 One of the groups supported by Investing in US was American Engagement  
5 Technologies, a digital advertising firm that received \$750,000 in funding, some of which was  
6 used to “experiment with many of the tactics now understood to have influenced the 2016  
7 elections.”<sup>20</sup> These tactics, dubbed Project Birmingham, included funding fake Facebook pages  
8 where the group posed as conservative Republicans in an effort to draw support away from the  
9 Republican Senate candidate Roy Moore and a scheme to link Moore to thousands of Russian  
10 Twitter accounts that suddenly began to follow Moore.<sup>21</sup>

11 Similarly, News for Democracy was part of an effort to target conservatives on Facebook  
12 using the same microtargeting tactics used by the Internet Research Agency during the 2016  
13 election and by Project Birmingham in 2017.<sup>22</sup> Mehlhorn reportedly pitched the group to  
14 Democratic donors looking for organizations to support and stated that News for Democracy’s

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<sup>18</sup> Dec. and Jan. Romm articles.

<sup>19</sup> See Mehlhorn Medium Post.

<sup>20</sup> Scott Shane and Alan Blinder, *Secret Experiment in Alabama Senate Race Imitated Russian Tactics*, NEW YORK TIMES (Dec. 19, 2018), <https://www.nytimes.com/2018/12/19/us/alabama-senate-roy-jones-russia.html> (“Shane/Blinder article”); see also Dec. Romm article (stating that Hoffman invested \$750,000 in American Engagement Technologies).

<sup>21</sup> Shane/Blinder article.

<sup>22</sup> In an interview, Mehlhorn said he disavowed disinformation as a tool for mobilizing American voters but also said that U.S. political groups could learn from the “troll army” reportedly used by the Internet Research Agency and its use of microtargeting voters. Jan. Romm article; see also Hannah Kuchler, *Facebook and the midterms: who’s trying to influence your vote?*, FINANCIAL TIMES (Oct. 31, 2018) [www.ft.com](http://www.ft.com), (quoting NYU Report co-author Damon McCoy, “It had exactly the same earmarks, exactly what the Russians were doing, setting up these fake communities.”).

1 goal was “outreach to groups that were center [and] center-right, and trying to reach out to them  
 2 with messages.”<sup>23</sup>

3 During the 2018 election, News for Democracy created at least 14 Facebook pages and  
 4 paid MotiveAI to create thousands of ads for those pages.<sup>24</sup> Facebook’s Ad Library reveals  
 5 that News for Democracy spent \$5,619,202 on ads that ran from August 2018 to November 6,  
 6 2018 as follows:<sup>25</sup>

| Page Name             | Source <sup>26</sup> | Amount Spent | Number of Ads in Library |
|-----------------------|----------------------|--------------|--------------------------|
| Our Flag Our Country  | News For Democracy   | \$1,209,154  | 1,281                    |
| Living Free           | News For Democracy   | \$974,845    | 749                      |
| Better With Age       | News For Democracy   | \$768,039    | 888                      |
| The Holy Tribune      | News For Democracy   | \$551,000    | 512                      |
| Women For Civility    | News For Democracy   | \$531,850    | 594                      |
| Corazon Coqui         | News For Democracy   | \$359,332    | 83                       |
| Self-Reliant Republic | News For Democracy   | \$297,895    | 256                      |
| Military Network      | News For Democracy   | \$277,943    | 576                      |
| Sounds Like Tennessee | News For Democracy   | \$246,713    | 37                       |

<sup>23</sup> Jan. Romm article.

<sup>24</sup> *Id.*

<sup>25</sup> The same publicly available Facebook Library data shows that besides News for Democracy and News for Democracy LLC, two other related entities bought ads on a few of these Facebook pages: New American Media LLC paid \$3,000 on a Corazon Coqui page, and News for America paid \$32,883 on the That’s Just North Dakota page. In addition, Fight for America’s Future PAC, an independent expenditure-only political committee, spent \$35,000 on the Our Flag page, but the available information is not clear on what relationship Fight for America’s Future PAC had to the News for Democracy entities.

<sup>26</sup> In the Facebook Ad Library, this column is entitled “Disclaimer.” The Facebook platform appended information to the paid advertisements in this matter stating that the communications were “paid for by” a Facebook page named “News for Democracy.” *See, e.g.,* Compl., Ex. A. Such a platform-appended “disclaimer,” which is created by the platform and operates independently of the communication, does not identify the payor name, as evidenced by the ambiguity in the payors of Facebook ads placed by both News for Democracy LLC and News for Democracy 501(c)(4). Moreover, the platform-appended label does not provide a payor’s address, phone, or website, as required under the Act and Commission regulations for disclaimers. The platform-appended label also does not include an authorization statement. As such, the platform-appended label does not satisfy the disclaimer requirement. *See infra* at Section III.C.

|                          |                        |             |       |
|--------------------------|------------------------|-------------|-------|
| Voz Boricua              | News For Democracy     | \$165,236   | 42    |
| Rugged Roots             | News For Democracy     | \$116,916   | 87    |
| That's Just North Dakota | News For Democracy     | \$78,693    | 38    |
| Left AF                  | News For Democracy     | \$19,763    | 62    |
| Military Network         | News For Democracy LLC | \$15,487    | 4     |
| The Black Pages          | News For Democracy LLC | \$5,732     | 4     |
| Left AF                  | News For Democracy LLC | \$604       | 4     |
|                          |                        | \$5,619,202 | 5,217 |

1  
 2 News for Democracy’s network of Facebook pages was part of a program to grow  
 3 audiences around non-partisan topics before running ads designed to undercut support for  
 4 conservative candidates and promote Democratic positions and candidates.<sup>27</sup> Publicly available  
 5 information about News for Democracy indicates that the pages were made to sound like news  
 6 organizations,<sup>28</sup> or targeted to appeal to specific demographics, including “‘bros,’ Spanish-  
 7 language speakers, women, Tennessee and North Dakota residents, seniors, military veterans,  
 8 Christians, and even, in underhanded fashion, Trump supporters.”<sup>29</sup> Names of some of these  
 9 Facebook pages included “The Keg Bros,” “World News Reporter,” “Corazon Coqui,”  
 10 “Heartland Gazette,” “Women for Civility,” “Better with Age,” “The Holy Tribune,” and “Our

<sup>27</sup> See, e.g., Madrigal article, Sept. Markay article; Lachlan Markay, *MotiveAI, a Democratic Ad Firm Accused of Fake News, Retools for 2020*, THE DAILY BEAST, April 23, 2019, <https://www.thedailybeast.com/motiveai-a-democratic-ad-firm-accused-of-fake-news-retools-for-2020> (“April Markay article”); Jan. Romm article; Dec. Romm article.

<sup>28</sup> Despite calling itself “News” for Democracy and labeling some of its Facebook pages “media/news company,” News for Democracy does not contend that it is a “media entity” entitled to the “media exemption.” Similarly, related entities appear to be called “New American Media LLC” and “News for America.” The “media exemption” or “press exemption,” when applied, exempts from the definition of “contribution” and “expenditure,” the costs associated with covering news stories, commentary, or editorials. See 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; Internet Communications, 71 Fed. Reg. 18,589, 18,608 (Apr. 12, 2006) (explaining application of media exemption to press entity acting in its “legitimate press function”).

<sup>29</sup> Sept. Markay article; see also April Markay article.

1 Flag Our Country.”<sup>30</sup> Eventually, followers of these pages would be targeted with so-called  
2 payload content in the form of ads and videos “to boost Democratic policies, candidates, or  
3 ideas, or knock down the opposition.”<sup>31</sup> MotiveAI’s chief executive Dan Fletcher explained in a  
4 2019 interview that MotiveAI acted as a vendor for the Facebook pages, but that MotiveAI’s  
5 “partners,” such as News for Democracy, were responsible for the ad campaigns.<sup>32</sup>

6 Although it is not clear whether MotiveAI was merely a vendor to News for Democracy  
7 or directed the activities of News for Democracy,<sup>33</sup> MotiveAI appears to have used its 2018  
8 activity, including its work for News for Democracy, to market itself for the 2020 elections as an  
9 organization focused on electing democratic candidates<sup>34</sup> by posting a 60-second promotional  
10 “sizzle reel” on Vimeo that claimed that it “had the largest digital program of the 2018 midterm  
11 elections,” producing “over 260 videos and over 5000 individual ads which led to:”<sup>35</sup>

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<sup>30</sup> See Madrigal article; Sept. Markay article.

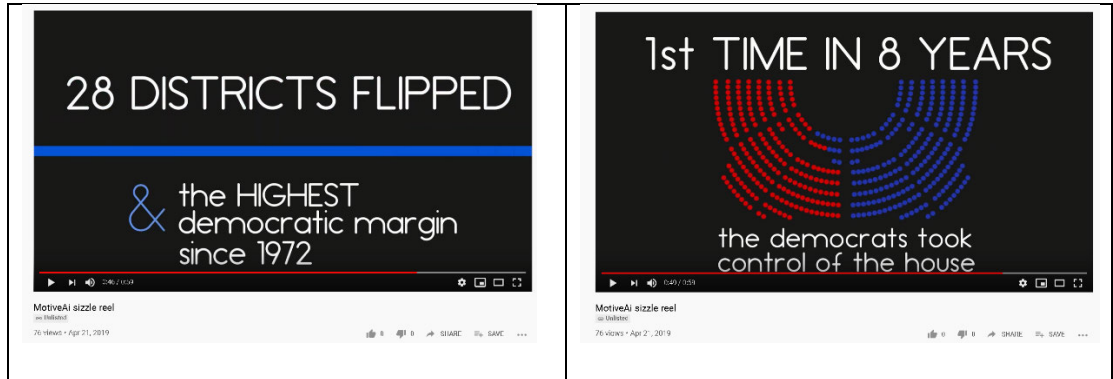
<sup>31</sup> See Sept. Markay article; April Markay article; *see also* Jan. Romm article.

<sup>32</sup> April Markay article.

<sup>33</sup> In an online job posting at Colorado College, MotiveAI described itself as a “startup that builds and manages online political communities, using storytelling and facts to help encourage a more informed, thoughtful, empathetic and motivated electorate.” See <https://sites.coloradocollege.edu/careercenter/entry-level-assistant-video-editor-for-motiveai/> (last visited Oct. 20, 2021).

<sup>34</sup> Daily Beast reporter Lachlan Markay said that after he asked MotiveAI’s cofounder, Dan Fletcher, about this video, the video was removed from MotiveAI’s website. April Markay article at 6. The Daily Beast downloaded a copy of the video, uploaded it onto YouTube and also embedded the video in its article. *Id.* See Lachlan Markay, *MotiveAi Sizzle Reel*, YOUTUBE (Apr. 21, 2019) (“MotiveAI Video”).

<sup>35</sup> MotiveAI Video.



1  
 2 News for Democracy LLC’s Response does not explain its relationship to MotiveAI or provide  
 3 any information about the extent of its activity disseminating advertisements in the 2018 election  
 4 cycle. News for Democracy LLC also did not provide any information about any other activity it  
 5 conducted during its existence.<sup>36</sup>

6 The Complaint does not examine News for Democracy’s entire ad program and instead  
 7 identifies five ads to support its allegation that News for Democracy failed to register and report  
 8 as a political committee. The Complaint cited to ads on the Sounds Like Tennessee,<sup>37</sup> That’s  
 9 Just North Dakota,<sup>38</sup> Corazon Coqui,<sup>39</sup> and Women for Civility<sup>40</sup> pages. Three of the ads  
 10 mentioned and used images of Senate candidates Kevin Cramer and Rick Scott, while two of the

<sup>36</sup> FEC disclosure reports reveal that a “News for Democracy” with a Washington, D.C., address, made a \$125,000 contribution on October 5, 2018, to For Our Future, a pro-Democratic independent expenditure-only political committee. See <https://docquery.fec.gov/cgi-bin/fecimg/?201911219166074361>. The Washington address appears to be a co-working site. See <https://makeoffices.com/locations/washington-dc/k-street/>. We have no information whether this News for Democracy is the same entity as the respondent.

<sup>37</sup> Compl. Ex. A; Advertisement 6. Links and transcripts for this ad and all others cited in this Factual and Legal Analysis are available in an enclosed document titled “MUR 7527 (News for Democracy) Representative FB ads.”

<sup>38</sup> Compl. Ex. A; Advertisement 13.

<sup>39</sup> Compl. Ex. A; Advertisement 14 (only one of two Corazon Coqui ads cited in the Complaint is included in the representative ad summary document).

<sup>40</sup> Compl. Ex. A; Advertisement 7.

1 ads referenced President Trump and the mid-term elections, with one narrator stating, “I’ll be  
2 voting Democratic in the mid-term elections on November 6” and another narrator saying, “it  
3 would be nice to have a Congress” working for “us” and stating that she “would be voting for the  
4 Democrats this election.”<sup>41</sup>

### 5 **III. LEGAL ANALYSIS**

6 News for Democracy’s 2018 ad campaign was widespread, and it altered its ads multiple  
7 times to better target the recipients, thus creating a body of material too large and difficult to  
8 review or catalogue in its entirety. In prior matters in which the Commission considered whether  
9 an entity’s ads factored into an analysis of political committee status, the number of ads  
10 disseminated has typically been much smaller.<sup>42</sup> Here, there are over 5,000 ads, many with  
11 multiple versions. It is evident, nevertheless, that some News for Democracy ads contain  
12 express advocacy and virtually all were disseminated in connection with federal elections.  
13 Because News for Democracy spent more than \$1,000 on these activities and its major purpose  
14 was the nomination or election of federal candidates, News for Democracy was required to  
15 register and report to the Commission as a political committee.

#### 16 **A. Political Committee Status Allegation**

##### 17 1. The Test for Political Committee Status

18 The Act and Commission regulations define a “political committee” as “any committee,  
19 club, association, or other group of persons which receives contributions aggregating in excess of  
20 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000

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<sup>41</sup> Compl. Ex. A. These ads are discussed in more detail below.

<sup>42</sup> See First Gen. Counsel’s Rpt. at 6, MUR 7418 (Fuse Washington) (case involved \$2,616.62 in spending on electioneering communications for 12 candidates); First Gen. Counsel’s Rpt. at 6, MUR 6974 (Foundation for a Secure and Prosperous America (\$1 million, two ads); Conciliation Agreement, Part IV ¶ 15, MURs 5511/5525 (Swiftboat Veterans (12 television ads).

1 during a calendar year.”<sup>43</sup> In *Buckley v. Valeo*, the Supreme Court held that defining political  
2 committee status “only in terms of [the] amount of annual ‘contributions’ and ‘expenditures’”  
3 might be overbroad, reaching “groups engaged purely in issue discussion.”<sup>44</sup> To cure that  
4 infirmity, the Court concluded that the term “political committee” “need only encompass  
5 organizations that are under the control of a candidate or the *major purpose of which is the*  
6 *nomination or election of a candidate.*”<sup>45</sup> Accordingly, under the statute as thus construed, an  
7 organization that is not controlled by a candidate must register as a political committee only if  
8 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election  
9 of federal candidates.

10 Although *Buckley* established the major purpose test, it provided no guidance as to the  
11 proper approach to determine an organization’s major purpose.<sup>46</sup> After *Buckley*, the Commission  
12 adopted a policy of determining on a case-by-case basis whether an organization is a political  
13 committee, including whether its major purpose is the nomination or election of federal  
14 candidates. Though it has periodically considered crafting a bright-line rule through rulemaking,  
15 the Commission consistently has declined to do so.<sup>47</sup> Instead, the Commission said that  
16 determining an organization’s major purpose “requires the flexibility of a case-by-case analysis

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<sup>43</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>44</sup> 424 U.S. 1 at 79 (1976) (*per curiam*).

<sup>45</sup> *Id.* (emphasis added).

<sup>46</sup> See, e.g., *Real Truth About Abortion, Inc. f/k/a Real Truth About Obama, Inc. v. FEC*, 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 568 U.S. 1114 (Jan. 7, 2013) (“*RTAA*”) (“Although *Buckley* did create the major purpose test, it did not mandate a particular methodology for determining an organization’s major purpose.”).

<sup>47</sup> See, e.g., Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

1 of an organization’s conduct that is incompatible with a one-size-fits-all rule,” and that “any list  
2 of factors developed by the Commission would not likely be exhaustive in any event, as  
3 evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions  
4 considering the political committee status of various entities.”<sup>48</sup>

5 In 2016, the United States District Court for the District of Columbia in *Citizens for*  
6 *Responsibility and Ethics in Washington v. FEC* instructed the Commission, when examining an  
7 organization’s major purpose, to look beyond express advocacy and consider whether other  
8 communications at issue indicate a “campaign-related purpose.”<sup>49</sup> The Court also held that the  
9 Commission’s analysis of the relevant time period for evaluating a group’s spending must retain  
10 the flexibility to account for changes in an organization’s major purpose over time.<sup>50</sup>

11 Thus, to determine an entity’s “major purpose,” the Commission considers a group’s  
12 “overall conduct,” including, among other factors, public statements about its mission,  
13 organizational documents, government filings (*e.g.*, IRS notices), and the proportion of spending

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<sup>48</sup> Political Committee Status, 72 Fed. Reg. 5595, 5601-02 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”); *see, e.g.*, Factual & Legal Analysis (“F&LA”) at 13-14, MUR 6538R (Americans for Job Security).

<sup>49</sup> 209 F. Supp. 3d 77, 92-93 (D.D.C. 2016) (“*CREW I*”). The same District Court later held that electioneering communications “*presumptively* have an election-related purpose,” but the analysis by that Court in *CREW I* and its subsequent decision refers generally to all speech that is campaign-related but does not contain express advocacy. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (“*CREW II*”) (*italics in original*). The Court refrained from establishing its own bright-line rule regarding which communications inherently have a campaign-related purpose but stated that the First Amendment does not require “the agency to exclude from its consideration all non-express advocacy in the context of disclosure.” *CREW I*, 209 F. Supp. 3d at 93.

<sup>50</sup> *CREW I*, 209 F. Supp. 3d at 94. In its subsequent Factual and Legal Analysis, the Commission accepted the Court’s remand of the enforcement matter, found that the organization’s campaign-related spending exceeded 50% of its overall spending approximately one year before the 2010 election, and found reason to believe that the organization violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee. F&LA at 14-15, MUR 6538R (Americans for Job Security); *see also* Conciliation Agreement, MUR 6538R (Sept. 9, 2019).



1 related to “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”<sup>51</sup>

2 The Commission has stated that it compares how much of an organization’s spending is for  
 3 federal campaign activity relative to activities that [a]re not campaign related.<sup>52</sup>

4 Political committees must comply with certain organizational and reporting requirements set  
 5 forth in the Act. They must register with the Commission, file periodic reports for disclosure to  
 6 the public, appoint a treasurer who maintains its records, and identify themselves through  
 7 “disclaimers” on all of their political advertising, on their websites, and in mass emails.<sup>53</sup>

8 2. Application of the Test for Political Committee Status to News for  
 9 Democracy

10 a. Statutory Threshold

11  
 12 To assess whether an organization has made an “expenditure,” the Commission analyzes  
 13 whether spending on any of an organization’s communications made independently of a  
 14 candidate constitute express advocacy.<sup>54</sup>

15 Under the Commission’s regulations, a communication contains express advocacy when  
 16 it uses phrases such as

17 “vote for the President,” “re-elect your Congressman,” “support  
 18 the Democratic nominee,” “cast your ballot for the Republican  
 19 challenger for U.S. Senate in Georgia,” “Smith for Congress,”  
 20 “Bill McKay in ’94,” “vote Pro-Life” or “vote Pro-Choice”  
 21 accompanied by a listing of clearly identified candidates described  
 22 as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat”  
 23 accompanied by a picture of one or more candidate(s), “reject the

<sup>51</sup> Supplemental E&J at 5597, 5605.

<sup>52</sup> *Id.* at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. *See Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, in *RTAA*, the Fourth Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. *See* 681 F.3d 544; *see also Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission’s case-by-case method of determining political committee status), *cert. denied*, 572 U.S. 1114 (2014).

<sup>53</sup> *See* 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

<sup>54</sup> *See* Supplemental E&J, 72 Fed. Reg. at 5606.

1 incumbent,” or communications of campaign slogan(s), or  
2 individual word(s), which in context can have no other reasonable  
3 meaning than to urge the election or defeat of one or more clearly  
4 identified candidate(s), such as posters, bumper stickers,  
5 advertisements, etc. which say “Nixon’s the One,” “Carter ’76,”  
6 “Regan/Bush,” or “Mondale!”<sup>55</sup>

7  
8 In addition, a communication contains express advocacy if, “[w]hen taken as a whole and  
9 with limited reference to external events, such as the proximity to the election,” it “could only be  
10 interpreted by a reasonable person as containing advocacy of the election or defeat of one or  
11 more clearly identified candidate(s),” because it contains an “electoral portion” that is  
12 “unmistakable, unambiguous, and suggestive of only one meaning” and “[r]easonable minds  
13 could not differ as to whether it encourages actions to elect or defeat one or more clearly  
14 identified candidate(s) or encourages some other kind of action.”<sup>56</sup> In its explanation and  
15 justification for 11 C.F.R. § 100.22(b), the Commission stated that “[c]ommunications discussing  
16 or commenting on a candidate’s character, qualifications, or accomplishments are considered  
17 express advocacy under new section 100.22(b) if, in context, they can have no other reasonable  
18 meaning than to encourage actions to elect or defeat the candidate in question.”<sup>57</sup>

19 Among News for Democracy’s thousands of Facebook ads, all disseminated in the two  
20 months prior to the 2018 general election, News for Democracy spent at least \$21,000 and up to  
21 \$105,000 on ads expressly advocating the defeat of clearly identified candidates Rick Scott,

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<sup>55</sup> 11 C.F.R. § 100.22(a); *see also Buckley v. Valeo*, 424 U.S. at 44.

<sup>56</sup> *Id.* § 100.22(b). The term “clearly identified” means “the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ‘the President,’ ‘your Congressman,’ or the ‘the incumbent,’ or through an unambiguous reference to his or her status as a candidate such as ‘the Democratic presidential nominee’ or ‘the Republican candidate for Senate in the State of Georgia.’” 11 C.F.R. § 100.17.

<sup>57</sup> Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294-35,295 (July 6, 1995).

1 Marsha Blackburn, Kevin Cramer, and Devin Nunes. This spending satisfies the statutory  
2 threshold for political committee status.

3 News for Democracy disseminated the following ad expressly advocating the defeat of  
4 U.S. Senate candidate Marsha Blackburn on the “Sounds Like Tennessee” Facebook page,  
5 targeted at voters in Tennessee where Blackburn was running for Senate. The ad, which was not  
6 referenced in the Complaint, begins with “the biggest, richest most powerful private corrections  
7 company in the United States: Corrections Corporation of America, headquartered right here in  
8 Nashville, Tennessee.” The voiceover continues:

9 Blackburn has taken over \$24,000 from the for-profit  
10 prison industry this year alone. Making her one of Washington’s  
11 biggest recipients of private prison cash. These facilities  
12 disproportionately incarcerate African Americans on non-violent  
13 charges. Turning jailing people into a lucrative multibillion dollar  
14 industry. We need leaders who fight for us. Not private prisons’  
15 bottom line. Say No to Marsha Blackburn.<sup>58</sup>

16  
17 The ad ends with the following image:

18



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<sup>58</sup> Sounds Like Tennessee, Advertisement 2.

1 News for Democracy spent between \$10,000 and \$50,000 on this ad that clearly  
2 identifies Blackburn by her name and image.<sup>59</sup> This ad expressly advocates against the election  
3 of Blackburn by making the statement that “we need leaders who fight for us” and directing  
4 viewers to “say no to Marsha Blackburn.”<sup>60</sup> By connecting campaign contributions she  
5 purportedly received to needing political leaders “who fight for us” and saying “no” to  
6 Blackburn, this ad, disseminated just before the general election to people interested in  
7 Tennessee,<sup>61</sup> has no other reasonable meaning than to urge Blackburn’s defeat in the upcoming  
8 election.<sup>62</sup>

9 On the “Corazon Coqui” page, News for Democracy spent between \$10,000 and \$50,000  
10 on a single placement of an ad that clearly identifies, by name and image, a candidate for federal  
11 office: U.S. Senate candidate Rick Scott of Florida.<sup>63</sup> The voiceover at the end of the ad asks,  
12 “Will you vote for him for Senate?” followed by the answer, “No. Absolutely not.” The text  
13 then concludes, “Rick Scott is not our friend. He does not deserve our votes.”<sup>64</sup> The question

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<sup>59</sup> *Id.*; see also Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 5, 2018 to November 6, 2018 and, by clicking “ad details,” showing 92% of the ad’s viewers were in Tennessee), <https://www.facebook.com/ads/library/?id=304123667035215>. Overall, News for Democracy spent \$246,713 on the Sounds Like Tennessee page.

<sup>60</sup> Sounds Like Tennessee, Advertisement 2.

<sup>61</sup> According to Facebook, this ad and others on the “Sounds Like Tennessee” Facebook page were almost all seen by viewers in Tennessee, at rates ranging from 90-92%. See *supra* note 59.

<sup>62</sup> See Second Gen. Counsel’s Rpt. at 6-7 and Cert., July 20, 2005, MUR 5365 (Club for Growth) (finding probable cause on political committee status based in part on express advocacy advertisement that stated, among other things, “‘NO’ to Daschle Democrats.”).

<sup>63</sup> Corazon Coqui, Advertisement 1; see Facebook Ad Library, News for Democracy, Corazon Coqui, (showing ad placement from October 24, 2018 to October 27, 2018 and showing 92% of the ad’s viewers were in Florida), <https://www.facebook.com/ads/library/?id=426423354555745>. Overall, News for Democracy spent at least \$359,332 on the Corazon Coqui page, with New American Media LLC spending \$3,000 on the page, and an additional \$21,733 in ads were not identified by the Facebook ad archive. *Id.*

<sup>64</sup> Corazon Coqui, Advertisement 1 (translated from the Spanish text using Google Translate, with the accuracy of the translation confirmed by a native Spanish speaker).

1 “will you vote for him for Senate” and response of “no” together with the phrases, “Scott is not  
2 our friend” and “he does not deserve our votes” provide a clear directive to vote against Scott.<sup>65</sup>  
3 Even though the words used in the ad may be “marginally less direct than ‘Vote for Smith,’” that  
4 margin does not change the directive to not vote for Scott.<sup>66</sup>

5 News for Democracy also paid between \$1,000 and \$5,000 to place an ad on the page  
6 “That’s Just North Dakota” that clearly identified, by name and image, U.S. Senate Candidate  
7 Kevin Cramer.<sup>67</sup> The ad starts with Cramer’s voice stating that “it’s hard for me to not be  
8 suspicious” about allegations against Supreme Court nominee Brett Kavanaugh.<sup>68</sup> It ends with  
9 the voiceover telling listeners that “North Dakotans deserve a leader who takes sexual assault  
10 seriously. Not someone who dismisses women as ‘suspicious.’”<sup>69</sup> In this context, the phrase  
11 “North Dakotans deserve a leader who takes sexual assault seriously” when contrasted with  
12 Cramer’s statement that the sexual assault allegations against Kavanaugh were “suspicious” is  
13 used to question Cramer’s character and fitness for office by suggesting that Cramer does not  
14 take sexual assault seriously. By saying that “North Dakotans deserve” a certain type of leader

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<sup>65</sup> *Id.*

<sup>66</sup> *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (“MCFL”) (urging voters to vote for pro-life candidates and identifying pro-life candidates in a list constituted express advocacy).

<sup>67</sup> That’s Just North Dakota, Advertisement 3; *see* Facebook Ad Library, News for Democracy, That’s Just North Dakota (showing ad placement from October 4, 2018 to October 8, 2018 and showing 93% of the ad’s viewers were in North Dakota), <https://www.facebook.com/ads/library/?id=239548520244222>. Overall, News for Democracy and News for America overall spent \$111,576 on the That’s Just North Dakota page. *See id.*

<sup>68</sup> That’s Just North Dakota, Advertisement 3.

<sup>69</sup> *Id.*

1 and suggesting that Cramer does not meet those requirements, the ad has no other meaning than  
 2 to encourage the defeat of Cramer in his Senate race.<sup>70</sup>

3 Similarly, an ad that ran on “The Holy Tribune” and “Military Network” pages included  
 4 statements from constituents in Representative Devin Nunes’s district, stating that he “hides  
 5 from us,” that they were “concerned [he] is simply not paying attention,” and expressing  
 6 “frustration because of Devin Nunes’s unwillingness to meet with” constituents. The ad requests  
 7 that listeners “[s]hare if [they] think District 22 needs a Representative they can count on. Not  
 8 Devin Nunes.”<sup>71</sup> Taken together, these statements can only be viewed as urging viewers to vote  
 9 against Nunes because they are similar in content to the phrase “reject the incumbent.”<sup>72</sup>

10 As the foregoing discussion demonstrates, News for Democracy spent more than \$1,000  
 11 on express advocacy communications, thus meeting the statutory threshold for political  
 12 committee status.<sup>73</sup>

#### 13 b. Major Purpose

14 The available information indicates that News for Democracy’s sole purpose was the  
 15 nomination or election of federal candidates.<sup>74</sup> News for Democracy was reportedly created to

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<sup>70</sup> See F&LA at 14-15, MUR 5024R (Council for Responsible Government) (concluding that “Tell Tom Kean Jr. . . . New Jersey Needs New Jersey Leaders” was suggestive of only one meaning—to “vote against Tom Kean”).

<sup>71</sup> The Holy Tribune, Advertisement 4; see Facebook’s Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 25, 2018 to October 25, 2018) <https://www.facebook.com/ads/library/?id=329004324542883>. News for Democracy reportedly spent less than \$100 for this placement, though it is not clear whether the ad ran multiple times. This ad appears to have also been placed on the “Military Network” Facebook page. See <https://www.facebook.com/ads/library/?id=2420686094638638>. The Nunes ad was viewed only in California. News for Democracy spent over \$500,000 on The Holy Tribune page and News for Democracy and News for Democracy LLC spent almost \$300,000 combined on the Military Network page.

<sup>72</sup> 11 C.F.R. § 100.22(a).

<sup>73</sup> See 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>74</sup> See *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at \*14 (E.D. Va. Sept. 24, 2008) (“A declaration by the organization that they are *not* incorporated for an electioneering purpose is not

1 conduct social-media operations primarily targeted at conservative audiences with the goal of  
2 influencing the outcome of the 2018 Congressional midterm election similar to the targeting  
3 operations of the Internet Research Agency during the 2016 elections.<sup>75</sup> To carry out its goal,  
4 News for Democracy disseminated ads that covered a range of political and social issues and  
5 distributed them on purported conservative Facebook pages with names such as “Our Flag Our  
6 Country,” “Self-Reliant Republic,” and “Rugged Roots,” or on pages described as “media/news  
7 company” like “The Holy Tribune” and “Military Network.”<sup>76</sup> These pages and several ads on  
8 them were reportedly designed to attract conservative audiences through the use of targeted  
9 content before inserting ads in their news feeds that opposed Republicans and supported  
10 Democrats running for Congress.<sup>77</sup> Backed by audience engagement and polling data, the  
11 conservative-sounding Facebook pages created by News for Democracy sought to find people  
12 who could be open to its payload content in the form of electoral messages, *e.g.*, the hypothetical  
13 40-something, white male in the “Sounds Like Tennessee” Facebook ad who, like President

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dispositive.”) (emphasis in original), *aff’d*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion*, 681 F.3d 544 (4th Cir. 2012); *see also* Supp. E&J at 5597 (“Therefore, determining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct — whether it received \$1,000 in contributions or made \$1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate). Neither FECA, its subsequent amendments, nor any judicial decision interpreting either, has substituted tax status as an acceptable proxy for this conduct-based determination.”).

<sup>75</sup> *See* Madrigal article, Sept. Markay article; Jan. Romm article.

<sup>76</sup> *See supra* note 25 and accompanying text; *see also* Sept. Markay article; April Markay article; Jan. Romm article.

<sup>77</sup> *See supra* notes 27-35. Following the 2018 mid-term election, Facebook opened an investigation into whether News for Democracy’s Facebook ads and pages violated its “community standards and advertising policies,” which emphasize authenticity and ban efforts to mislead people about the origin of content. Jan. Romm article.

1 Trump, disagreed with Colin Kaepernick’s actions but could nevertheless see the value of free  
2 expression.<sup>78</sup>

3 Although News for Democracy’s activities appear to have been designed to camouflage  
4 its major purpose and the group did not have a website or make public statements about its  
5 activities,<sup>79</sup> statements from individuals and organizations associated with News for Democracy,  
6 as well as its conduct in mimicking election-influencing tactics reportedly used by the Internet  
7 Research Agency in the 2016 elections,<sup>80</sup> establish that the group’s goal was achieving particular  
8 outcomes in federal elections. After the election, MotiveAI, the creator of the ads disseminated  
9 by News for Democracy, boasted that its advertising campaign had achieved its goals,  
10 specifically with respect to the number of “districts flipped” from Republican to Democratic and  
11 with Democrats taking “control of the House.”<sup>81</sup> Similarly, Dmitri Mehlhorn, a News for  
12 Democracy board member, reportedly pitched the group to Democratic donors looking for  
13 organizations to support.<sup>82</sup> In response to reporting about groups that Investing in US funded,  
14 including News for Democracy, Mehlhorn has also acknowledged that Investing in US funded  
15 organizations that were focused on “raising and deploying resources” to “influence the political

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<sup>78</sup> Madrigal article; Compl. Ex. A; Sounds Like Tennessee ad, Advertisement 6.

<sup>79</sup> The Commission has noted that in its consideration of an organization’s “overall conduct,” it will look at that organization’s public statements, including its own materials, statements to donors, or statements made on its website, “giving due weight to the form and nature of the statement, as well as the speaker’s position within the organization.” Supplemental E&J, 72 Fed. Reg. at 5601.

<sup>80</sup> *See supra* notes 14-23.

<sup>81</sup> MotiveAI Video.

<sup>82</sup> Jan. Romm article.



1 direction of our country” and that he sought “to bring together investors and entrepreneurs to join  
2 the resistance” to then-President Trump.<sup>83</sup>

3           There is no other available information, including from Respondent, that News for  
4 Democracy conducted *any activity* other than advertising in connection with the 2018 federal  
5 elections.<sup>84</sup> Its entire purpose, supported by its dissemination of ads just before the 2018 general  
6 election, was, according to the aforementioned sizzle reel, to “flip districts.”<sup>85</sup> News for  
7 Democracy accomplished its objectives by saturating more than a dozen Facebook pages with  
8 hundreds of ads promoting its support of Democratic candidates and progressive policies.

9           In addition, for purposes of this kind of political committee status analysis, even the ads  
10 that did not mention candidates or policies appear to have been created to support News for  
11 Democracy’s campaign-related purpose. The available information indicates that News for  
12 Democracy used paid, non-election related ads to attract more followers to its social media  
13 accounts so that they would be subsequently exposed to so-called payload content. As the  
14 Senate Intelligence Committee found, the Internet Research Agency’s disinformation campaign  
15 employed this tactic to influence the 2016 election.<sup>86</sup> In mimicking this way of gaining trust and  
16 concealing its true motives, News for Democracy’s almost identical tactics — marked by the  
17 creation of disingenuous communities and engagement through social media as part of a payload

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<sup>83</sup> Mehlhorn Medium Post.

<sup>84</sup> *But see* note 36 (possible \$125,000 political contribution).

<sup>85</sup> MotiveAI Video.

<sup>86</sup> U.S. SENATE SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION, VOLUME 2: RUSSIA’S USE OF SOCIAL MEDIA (Oct. 8, 2019) at 32-33, 51, 61 (explaining the role of “‘payload content’ designed to influence the targeted user”).

1 communication strategy — can be understood by the Commission as campaign activities  
2 indicative of its major purpose of influencing the 2018 election by electing federal candidates.<sup>87</sup>

3 In past enforcement actions, the Commission has determined that funds spent on  
4 communications that support or oppose a clearly identified federal candidate, but do not contain  
5 express advocacy, may appropriately be considered in determining whether that group has  
6 federal campaign activity as its major purpose.<sup>88</sup> This approach is consistent with the court’s  
7 reasoning in *CREW I*, namely that, when examining an organization’s major purpose,  
8 “excluding *all* non-express advocacy speech from consideration [is] contrary to law.”<sup>89</sup>  
9 Besides the statements about the purpose of News for Democracy’s ads by Fletcher, a review of  
10 Facebook’s Ad Library confirms that in addition to ads containing express advocacy, several of  
11 the ads disseminated by News for Democracy opposed or criticized clearly identified federal  
12 candidates. For example, News for Democracy purchased an ad on the “Sounds Like

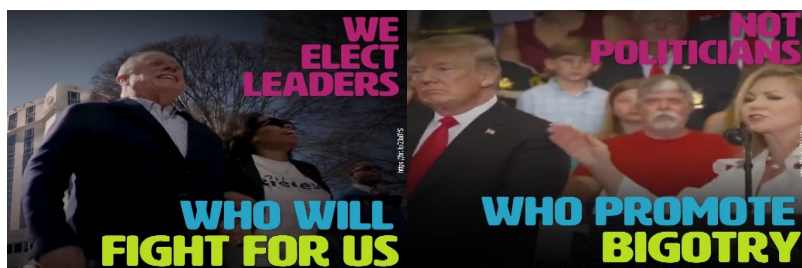
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<sup>87</sup> Compare Supplemental E&J at 5601 (observing that “*Buckley* and *MCFL* make clear that the major purpose doctrine requires a fact-intensive analysis of a group’s campaign activities compared to its activities unrelated to campaigns”).

<sup>88</sup> See F&LA at 11-14, MUR 6538R (Americans for Job Security) (finding that non-express advocacy electioneering communications that criticize or support federal candidates satisfy major purpose); Conciliation Agreement ¶ IV.11, MUR 5754 (MoveOn.org Voter Fund) (relying on funds used for advertisements that “opposed” or “criticized” George W. Bush to establish political committee status); F&LA at 2, MUR 5753 (League of Conservation Voters 527) (finding major purpose satisfied where funds spent on door-to-door and phone bank express advocacy campaign, and also on advertisements “supporting or opposing clearly identified federal candidates, some of which contained express advocacy”); Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund) (concluding that PFA VF had met the major purpose test after spending 60% of its funds on communications that “praised George W. Bush’s leadership as President and/or criticized Senator Kerry’s ability to provide similar leadership”); see also Stipulation for Entry of Consent Judgment ¶ 22, *FEC v. Citizens Club for Growth, Inc.*, Civ. No. 1:05-01851 (Sept. 6, 2007) (entering stipulation of Commission and respondent, approved as part of a consent judgment, where organization was treated as a political committee because “the vast majority of [the group’s disbursements] were made in connection with federal elections, including, but not limited to, funding for candidate research, polling, and advertisements and other public communications referencing a clearly identified federal candidate”).

<sup>89</sup> *CREW I*, 209 F. Supp. 3d at 92 (emphasis in original) (internal quotation omitted). Although this case involved electioneering communications and not ads on the internet, the court’s reasoning is still applicable to determining any putative political committee’s major purpose.

1 Tennessee” page telling viewers that “[o]n Tuesday, November 6th, we take back Tennessee,”  
 2 that “we elect leaders who will fight for us” (accompanied by the image of Democratic Senate  
 3 candidate Phil Bredesen), and “not politicians who promote bigotry” (alongside the image of  
 4 Marsha Blackburn, his Republican opponent).<sup>90</sup>



6 News for Democracy purchased another ad on the “That’s Just North Dakota” page that  
 7 opposed Republican Senate candidate Kevin Cramer, describing him as having “the wrong  
 8 priorities” and telling viewers that he “can’t be trusted to look out for families.”<sup>91</sup>



10 On the “Corazon Coqui” page, News for Democracy purchased an ad calling Rick Scott,  
 11 Republican candidate for U.S. Senate in Florida, a “thief and a liar” for alleged “Medicare fraud”

<sup>90</sup> Sounds Like Tennessee, Advertisement 12; *see* Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 23, 2018 to November 2, 2018), <https://www.facebook.com/ads/library/?id=1743746029062760>. News for Democracy spent between \$10,000 and \$15,000, where 91% of the views were in Tennessee. *See id.*

<sup>91</sup> That’s Just North Dakota, Compl. Ex. A; Advertisement 13; *see* Facebook Ad Library, News for Democracy, That’s Just North Dakota (showing ad placement from October 22, 2018 to October 23, 2018), <https://www.facebook.com/ads/library/?id=1956720011294738>. News for Democracy spent between \$1,500 and \$2,000 on this ad, where 93% of the views were in North Dakota. *See id.*

1 based on events that occurred while he was in the private sector.<sup>92</sup> News for Democracy-  
 2 purchased ads featuring Republican U.S. House candidates Jim Jordan and Rod Blum were  
 3 similarly critical. For instance, an ad on the “The Holy Tribune” describes Jordan as someone  
 4 who “wants to be the next Speaker of the House,” and asks “can we trust he’ll stand up for  
 5 what’s right when it really counts,” telling listeners that “[w]e need leaders with strong values  
 6 not selfish ambition and flexible morals.”<sup>93</sup> Rod Blum, in an ad on the “Our Flag Our Country”  
 7 is targeted for “hid[ing] his connections to unethical corporations” because of an ethics inquiry  
 8 that he “knew . . . wouldn’t end well,” and concludes by telling listeners that “Iowans deserve  
 9 Better” and asks them to “[s]hare if [they] agree.”<sup>94</sup>

10 Although these ads do not include an explicit electoral call to action, each ad references a  
 11 clearly identified federal candidate, opposes that candidate, and ran shortly before the 2018  
 12 midterm election, most likely in that candidate’s state or district, given the state-specific names  
 13 of some of its Facebook pages and location of viewers — establishing the requisite electoral  
 14 nexus.<sup>95</sup> The content of the advertisements is similar to other communications that the

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<sup>92</sup> Corazon Coqui, Compl. Ex. A; Advertisement 14; *see* Facebook Ad Library, News for Democracy, Corazon Coqui (showing ad placement from October 22, 2018 to October 24, 2018), <https://www.facebook.com/ads/library/?id=1404408626359020>. News for Democracy spent between \$4,000 and \$4,500 on this ad, where 93% of the views were in Florida. *See id.*

<sup>93</sup> The Holy Tribune, Advertisement 15; *see* Facebook Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 12, 2018 to October 20, 2018), <https://www.facebook.com/ads/library/?id=477923282694505>. News for Democracy spent between \$1,000 and \$1,500 for the Jordan ad. *See id.*

<sup>94</sup> Our Flag Our Country, Advertisement 16; *see* Facebook Ad Library, News for Democracy, Our Flag Our Country (showing ad placement from October 13, 2018 to October 15, 2018), <https://www.facebook.com/ads/library/?id=564300743999316>. Although News for Democracy spent less than \$100 on the Blum ad, the group spent over \$1.2 million on the Our Flag Our Country page and Fight for America’s Future PAC spent an additional \$35,000 on the page.

<sup>95</sup> *See supra* at notes 59 and 67 (viewership of the “Sounds Like Tennessee” and “That’s Just North Dakota” ads were upwards of 90% in the respective state compared to all of the ads’ viewers).

1 Commission has previously found were indicative of federal campaign activity.<sup>96</sup> By suggesting that  
2 Blackburn supports bigotry, Cramer has the “wrong priorities,” Scott is a “thief and a liar,” Jordan is  
3 someone with “selfish ambition and flexible morals,” and Blum is hiding “connections to unethical  
4 corporations,” the ads question the candidates’ character and fitness for office. In addition to running  
5 right before the election, the Blackburn ad has an explicit electoral nexus with the statement that  
6 “[o]n Tuesday, November 6th, we take back Tennessee,” and uses the phrase “elect leaders who fight  
7 for us,” while showing an image of Blackburn’s opponent, Phil Bredesen. The only way for  
8 Bredesen to fight for voters in Tennessee is if he is elected to the Senate. Saying that Cramer “can’t  
9 be trusted to look out for families” and that “Iowans deserve better” than Blum in the context of ads  
10 that ran only in the timeframe before the election reasonably appears to encourage voters in North  
11 Dakota and Iowa to vote against those candidates. As for the Jordan ad, it references a position,  
12 Speaker of the House, that Jordan can likely only hold if re-elected to federal office. Accordingly,  
13 each of these ads supports a determination that News for Democracy had as its purpose the  
14 nomination or election of federal candidates.

15 In addition to ads that referenced a clearly identified federal candidate, News for Democracy  
16 also sought to further influence the 2018 midterm election by purchasing numerous ads containing  
17 explicit references to Congressional elections along with an exhortation to vote for “Democrats” or to  
18 vote against the “GOP,” “GOP Congress,” or “Congressional Republicans,” consistent with an  
19 organization that had a major purpose of federal election activity. These “party” ads, with first-  
20 person accounts of people deciding to vote “Democrat” and at times, exhorting the viewer to share  
21 the video, are the digital equivalent of a bumper

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<sup>96</sup> See F&LA at 12-13, MUR 6538R (Americans for Job Security); F&LA at 5, 18, MUR 5753 (League of Conservation Voters 527); F&LA at 3-4, 12-13, MUR 5754 (MoveOn.org. Voter Fund); Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund).

1 sticker stating, “Democrats!”<sup>97</sup> The only reasonable interpretation for these ads is to convince  
 2 the viewer to vote for Democratic candidates even if they have previously voted only for  
 3 Republicans. By citing reasons for their change of opinion, such as Republicans dismantling  
 4 healthcare and perceived changes in values held by Republicans, the speakers in the videos are  
 5 likewise exhorting viewers to make the same change.

6 For example, the “Sounds Like Tennessee” ad cited in the Complaint accuses Donald  
 7 Trump of “ma[king] our health care system worse and more expensive and start[ing] a reckless  
 8 trade war that’s . . . blowing back negatively on our economy.”<sup>98</sup> The ad concludes with a  
 9 declaration that the speaker is “voting Democrat in the mid-term elections on November 6.”<sup>99</sup>



11 Relatedly, a “Women for Civility” ad speaker states, “You know the GOP strangled the  
 12 ACA so much the past two years that my costs went up and my coverage got worse. Thanks a  
 13 lot. Great leadership, guys! And meanwhile what do we get from the Republican Congress?  
 14 Endless culture wars, and trillion-dollar tax breaks to corporations and to the ultra-wealthy.”<sup>100</sup>

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<sup>97</sup> 11 C.F.R. § 100.22(a).

<sup>98</sup> Sounds Like Tennessee, Compl. Ex. A; Advertisement 6; *see* Facebook Ad Library, News for Democracy, Sounds Like Tennessee (showing ad placement from October 23, 2018, to October 25, 2018), <https://www.facebook.com/ads/library/?id=287306971879845>.

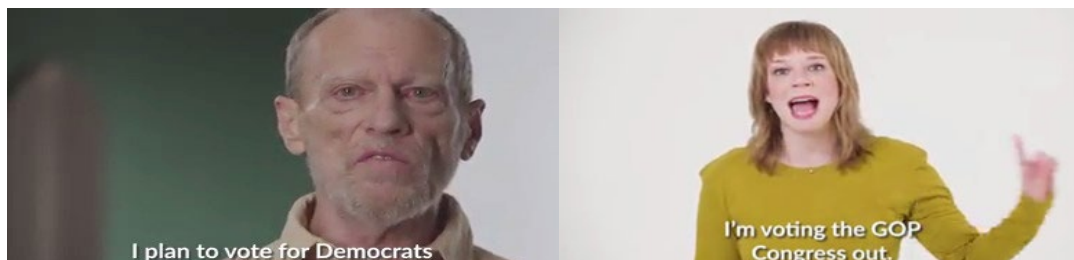
<sup>99</sup> Sounds Like Tennessee, Compl. Ex. A; Advertisement 6

<sup>100</sup> Women for Civility, Compl. Ex. A; Advertisement 7; *see* Facebook Ad Library, News for Democracy, Women for Civility (showing ad placement from October 22, 2018, to October 24, 2018), <https://www.facebook.com/ads/library/?id=480760542428590>.

1 The ad ends with the speaker linking her vote for Democrats to actions of the Republican  
 2 Congress, stating, “Wouldn’t it be nice if we had a Congress that worked hard for us instead of  
 3 working so hard against us? That’s why I am voting for the Democrats this year,”<sup>101</sup> suggesting  
 4 that the “Republican Congress” was not working for voters.



6 At least two ads on the “Better with Age” page link the speaker’s decision to “vote for  
 7 Democrats” or “voting Democrat” to a desire to “get closer to a Congress who will represent me  
 8 and not the one percent”<sup>102</sup> or to a statement that the speaker was “voting the GOP Congress  
 9 out.”<sup>103</sup> The electoral nexus to federal elections in these ads is clear with the reference to voting  
 10 against the GOP Congress.



12 In other ads, News for Democracy emphasized accountability in urging the replacement  
 13 of Republicans in Congress and portrayed the Republican Party as being responsible for

<sup>101</sup> Women for Civility, Compl. Ex. A; Advertisement 7.

<sup>102</sup> Better with Age, Advertisement 9; *see* Facebook Ad Library, News for Democracy, Better with Age (showing ad placement from October 24, 2018, to October 26, 2018), <https://www.facebook.com/ads/library/?id=299080014025480>.

<sup>103</sup> Better with Age, Advertisement 8; *see* Facebook Ad Library, News for Democracy, Better with Age (showing ad placement from October 24, 2018, to November 1, 2018), <https://www.facebook.com/ads/library/?id=313637485924620>.

1 corruption and incivility. For instance, an “Our Flag Our Country” ad expresses discontent with  
2 “a one party system,” stating that “with Republicans controlling the White House, the House,  
3 and the Senate[,]” “[i]t’s no wonder why we see so much rampant corruption.”<sup>104</sup> The individual  
4 in the ad states, “I may not agree with Democrats on everything. But I am voting for them this  
5 time, because if there’s one thing our country needs right now, it’s balance and  
6 accountability.”<sup>105</sup> Disseminated just before the 2018 election, the Our Flag Our Country ad  
7 speaker naming the White House, Senate, and House as Republican-controlled, and then stating  
8 he’s voting Democratic for “balance” is equivalent to a voter guide showing the Obama logo and  
9 stating, “How do I vote a straight Democratic Ticket,” which the Commission found to be  
10 express advocacy.<sup>106</sup>

11 “The Holy Tribune” page, which reportedly targeted evangelicals,<sup>107</sup> includes an ad with  
12 a speaker who describes himself as a retired healthcare executive in Texas who has voted  
13 Republican since the age of 18.<sup>108</sup> After explaining that the current Republican Party is not the  
14 party he “grew up knowing about,” and that Republicans are not “doing their job,” the speaker  
15 then states “in these midterms I will vote — and I hope others will vote — to hold Republicans  
16 accountable for not doing their job.”<sup>109</sup> The ad ends with the following text: “Share this video if

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<sup>104</sup> Our Flag Our Country, Advertisement 5, *see* Facebook Ad Library, News for Democracy, Our Flag Our Country (showing ad placement from November 4, 2018, to November.4, 2018), <https://www.facebook.com/ads/library/?id=304166843520784>.

<sup>105</sup> *Id.*

<sup>106</sup> *See* F&LA at 7, MUR 6683 (Fort Bend County Democratic Party).

<sup>107</sup> Jan. Romm article.

<sup>108</sup> The Holy Tribune, Advertisement 10; *see* Facebook Ad Library, News for Democracy, The Holy Tribune (showing ad placement from October 24, 2018 to November 6, 2018), <https://www.facebook.com/ads/library/?id=187412635474539>.

<sup>109</sup> *Id.*



1 you agree that we should hold Congressional Republicans accountable,”<sup>110</sup> suggesting that  
 2 voting in the midterms against “Congressional Republicans” is a way to hold them  
 3 “accountable.”

4 And on the “Military Network” page, after discussing his father’s service in World War  
 5 II, the speaker states, “My father was a Republican. I was a Republican.”<sup>111</sup> He then explains,  
 6 “[b]ut as long as this Republican Party continues to side with hate, I can’t side with them. I am  
 7 voting for a new Congress. I am voting Democrat for the first time in my life. Share.”<sup>112</sup>  
 8



10 As with other ads, News for Democracy uses the “Military Network” ad to use a  
 11 particular electoral outcome, “voting Democrat” and “for a new Congress,” explicitly linking the  
 12 vote for Democratic candidates to federal elections. All of News for Democracy’s “party” ads  
 13 that try to convince voters to vote Democratic are expressly advocating Democratic candidates  
 14 because there is no other way to vote Democratic other than to vote for Democratic candidates in  
 15 the 2018 election.<sup>113</sup> The link to federal elections is clear with the repeated references to the  
 16 midterms and GOP Congress and Congressional Republicans and consistent with News for

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<sup>110</sup> *Id.*

<sup>111</sup> Military Network, Advertisement 11; *see* Facebook Ad Library, News for Democracy, Military Network (showing ad placement from October 18, 2018 to October 19, 2018), <https://www.facebook.com/ads/library/?id=174367523494041>.

<sup>112</sup> *Id.*

<sup>113</sup> *See, e.g.*, F&LA at 13, MUR 6538R (AJS) (ads supporting three candidates make no sense unless message was to elect them to federal office).

1 Democracy’s sole purpose, advocating for Democratic candidates in the midterm elections. This  
2 exhibited primary purpose belies News for Democracy’s stated social welfare purpose or status.

3 Collectively, News for Democracy spent more than \$5.5 million on Facebook ads that  
4 were viewed millions of times before the 2018 midterm election.<sup>114</sup> News reporting,  
5 corroborated by information from Facebook’s Ad Library, indicates that each ad was part of an  
6 overall campaign designed to influence the outcome of the 2018 midterm election by  
7 encouraging viewers to support Democratic candidates. Indeed, in its promotional video  
8 following the election,<sup>115</sup> MotiveAI, the creator of the Facebook advertisements, revealed the  
9 singular nature of that campaign: to use online advertising to elect candidates from the  
10 Democratic Party — both specifically named candidates and unnamed federal candidates — to  
11 the U.S. Congress.<sup>116</sup> In effect, News for Democracy’s specific ads and their “party” ads taken  
12 as a whole are similar to the “Special Edition” flyer in *MCFL*, where the Supreme Court found  
13 that the exhortation to vote “pro-life” accompanied by photographs designating supportive and  
14 non-supportive candidates constituted express advocacy.<sup>117</sup>

15 The Edition cannot be regarded as a mere discussion of public  
16 issues that by their nature raise the names of certain politicians.  
17 Rather, it provides in effect an explicit directive: vote for these  
18 (named) candidates. The fact that this message is marginally less  
19 direct than ‘Vote for Smith’ does not change its essential nature.  
20 The Edition goes beyond issue discussion to express electoral  
21 advocacy.”<sup>118</sup>  
22

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<sup>114</sup> See *supra* note.25; Madrigal article.

<sup>115</sup> See April Markay article.

<sup>116</sup> See MotiveAI Video.

<sup>117</sup> *MCFL*, 479 U.S. at 250.

<sup>118</sup> *Id.*

1 News for Democracy’s party ads similarly exhort viewers to vote for Democratic  
2 candidates and cannot be interpreted to be issue ads as their message is to vote for a change in  
3 the party controlling all three branches of government by voting against Republican candidates  
4 and officeholders.<sup>119</sup>

5 As discussed above, News for Democracy explicitly linked discussion of issues in several  
6 of the ads to voting in congressional elections, with statements about “voting the GOP Congress  
7 out,” “voting for a new Congress,” and the need to vote and “hold Congressional Republicans  
8 accountable.” While a small number of News for Democracy’s advertisements included in the  
9 Facebook Ad Library appear to be exclusively issue oriented, that is, without any reference to a  
10 candidate or election, as discussed above, these are “issue ads” apparently made for the purpose  
11 of attracting certain audiences to further its federal campaign objective, not to advance the  
12 particular issue.<sup>120</sup> The online tactics News for Democracy appeared to employ to influence the  
13 2018 midterm election are not new; rather, they are a continuation of similar social media  
14 strategies used by the Internet Research Agency in 2016. Specifically, the Internet Research  
15 Agency purchased political ads on social media in the names of U.S. persons and entities that  
16 were designed to attract U.S. audiences with the goal of “sowing discord in the U.S. political  
17 system.”<sup>121</sup>

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<sup>119</sup> See also Advisory Op. 2006-20 (Unity 08) (putative party’s name is “placeholder” for candidates’ names on petition drive materials).

<sup>120</sup> Madrigal article, Sept. Romm article, Nov. Romm article, Sept. Markay article; NYU Report at 8-9. Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* at 4, 14 (March 2019).

<sup>121</sup> Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* at 4, 14 (March 2019).

1           Although the extent to which News for Democracy spent money on express advocacy  
2 communications or communications with an explicit electoral nexus during its existence is not  
3 clear, the overall record indicates that the reason for this uncertainty is that News for Democracy  
4 purposefully sought to obscure its spending.<sup>122</sup> News for Democracy has provided no  
5 information to substantiate its stated mission or to rebut sufficiently the information in the  
6 Complaint and attached articles that its purpose was federal campaign activity. It has not  
7 submitted information regarding any other activity besides the relatively little information about  
8 its digital advertisements. Nor is this information publicly available. News for Democracy’s  
9 Facebook ad purchases in 2018 and the possible \$125,000 contribution to an independent  
10 expenditure-only political committee constitute the only publicly available information on its  
11 spending.<sup>123</sup> That News for Democracy seemingly became inactive after the 2018 midterm  
12 election and within three months of having formed provides support, in addition to the Facebook  
13 ads and statements from individuals associated with the group, that it had the major purpose of  
14 nominating or electing federal candidates in 2018.<sup>124</sup> Accordingly, because both the statutory  
15 and major purpose requirements appear to have been satisfied, the Commission finds reason to

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<sup>122</sup> The Commission has declined to “set a threshold on the proportion of spending on major purpose activities required for political committee status,” and it also stated that “the determination of an organization’s major purpose requires the flexibility of a case-by-case analysis of an organization’s conduct that is incompatible with a one-size fits-all rule,” noting the “multitude of fact patterns at issue in the Commission’s enforcement actions considering the political committee status of various entities.” F&LA at 7, 15, MUR 6538R (Americans for Job Security).

<sup>123</sup> The Google Transparency Report appears to show that News for Democracy disseminated a few ads in 2019, but it is not clear that they are the Respondents’ ads. See <https://transparencyreport.google.com/political-ads/advertiser/AR156845883458060288>.

<sup>124</sup> See F&LA at 13, MUR 5754 (MoveOn.Org Voter Fund) (noting that the respondent’s major purpose was to defeat a federal candidate because its activities, including the fact it had been virtually inactive since the 2004 general election, showed that its sole objective was to defeat a federal candidate).

1 believe that News for Democracy LLC violated 52 U.S.C. §§ 30102, 30103, and 30104 by  
2 failing to organize, register, and report with the Commission as a political committee.

3 **B. News for Democracy Apparently Failed To Report Independent**  
4 **Expenditures**

5  
6 An independent expenditure is an expenditure that (1) expressly advocates the election or  
7 defeat of a clearly identified federal candidate, and (2) is not made in concert or cooperation  
8 with, or at the request or suggestion of, the candidate or his or her committee or agent, or a  
9 political party committee or its agent.<sup>125</sup> The Act requires political committees and persons other  
10 than political committees to report their independent expenditures.<sup>126</sup> Political committees other  
11 than authorized committees must disclose their independent expenditures and itemize such  
12 expenditures with information including the name and address of each person who receives  
13 disbursements in connection with an independent expenditure, as well as the date, amount,  
14 purpose, and identity of the candidate the independent expenditure is supporting or opposing.<sup>127</sup>  
15 Similar reporting requirements apply to non-political committee persons making independent

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<sup>125</sup> 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

<sup>126</sup> *See generally* 52 U.S.C. § 30104.

<sup>127</sup> 52 U.S.C. § 30104(b)(3)(B)(iii), (g); 11 C.F.R. § 109.10.

1 expenditures aggregating greater than \$250 in a calendar year.<sup>128</sup> A person, including a political  
2 committee, also may have to file additional disclosure reports depending on the amount and  
3 timing of an independent expenditure.<sup>129</sup>

4 As discussed above in Part III.A.2.a., News for Democracy purchased four ads of more  
5 than \$250 in the aggregate that expressly advocated the election or defeat of clearly identified  
6 federal candidates and thus should have been reported on reports to the Commission.<sup>130</sup> Because  
7 News for Democracy failed to report these independent expenditures, the Commission finds  
8 reason to believe that News for Democracy LLC violated 52 U.S.C. § 30104(c)(1).

9 **C. News for Democracy Apparently Failed to Include Required**  
10 **Disclaimers**

11  
12 The Act requires that all “public communications” of political committees and any  
13 “public communication” by any person that expressly advocates the election or defeat of a  
14 clearly identified candidate must include a disclaimer in the communication identifying who paid  
15 for the communication and, where applicable, whether the communication was authorized by a

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<sup>128</sup> 52 U.S.C. § 30104(c), (g); 11 C.F.R. § 109.10. These persons must also identify individuals who made contributions over \$200. 52 U.S.C. § 30104(c)(1), (2)(C); *Citizens for Responsibility & Ethics in Wash. v. FEC*, 316 F. Supp. 3d 349, 410 (D.D.C. 2018) (holding sections 30104(c)(1) and (c)(2)(C) “unambiguously require separate and complementary requirements to identify donors of over \$200 to reporting non-political committees and mandate significantly more disclosure than that required by the challenged regulation, 11 C.F.R. § 109.10(e)(1)(vi).”).

<sup>129</sup> Section 30104(g) requires reports from persons making independent expenditures over certain aggregate amounts and within certain prescribed timeframes: for expenditures aggregating greater than \$10,000 made at any time up to the 20th day before an election, persons must file a report describing those expenditures with the Commission within 48 hours of making or contracting to make the expenditure. 52 U.S.C. § 30104(g)(2).

<sup>130</sup> See Corazon Coqui, Advertisement 1; Sounds Like Tennessee, Advertisement 2; That’s Just North Dakota, Advertisement 3; The Holy Tribune, Advertisement 4.

1 candidate.<sup>131</sup> Under Commission regulations, a “public communication” includes  
2 communications placed for a fee on another person’s website.<sup>132</sup> The Commission has  
3 previously determined that a disclaimer is required on the type of paid Facebook advertising  
4 placed by News for Democracy.<sup>133</sup>

5         The type of information required in a disclaimer varies depending on whether the  
6 communication is paid for or authorized by a candidate. If the communication is not paid for or  
7 authorized by a candidate, then the disclaimer must “clearly state the full name and permanent  
8 street address, telephone number, or World Wide Web address of the person who paid for the  
9 communication, and that the communication is not authorized by any candidate or candidate’s  
10 committee.”<sup>134</sup> This information “must be presented in a clear and conspicuous manner, to give  
11 the reader, observer, or listener adequate notice of the identity” of the ad’s sponsor.<sup>135</sup>  
12 News for Democracy paid for the placement of thousands of ads on Facebook including the four  
13 examples discussed above that expressly advocated the election or defeat of clearly identified  
14 federal candidates. Even assuming News for Democracy is not a political committee, its express  
15 advocacy communications placed on Facebook for a fee required disclaimers identifying the

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<sup>131</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2)-(3), (b), (c). A candidate is “clearly identified” when the communication includes the name or a photograph or drawing of the candidate or “the identity of the candidate is apparent by unambiguous reference.” 52 U.S.C. § 30101(18).

<sup>132</sup> 11 C.F.R. § 100.26.

<sup>133</sup> See Advisory Opinion 2017-12 (Take Back Action Fund) (concluding that requestor was required to include all of the disclaimer information required by 52 U.S.C. § 30120(a) on its paid Facebook Image and Video advertising); see also Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006) (noting disclaimer requirements apply to “all potential forms of advertising” placed for a fee online, including “banner advertisements, streaming video, pop up advertisements, and directed search results”).

<sup>134</sup> 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3). A communication that is authorized by a candidate, the candidate’s authorized committee, or an agent, but is paid for by any other person, must state that the communication is paid for by another person and is authorized by such candidate, committee, or agent. *Id.* § 110.11(b)(2).

<sup>135</sup> 11 C.F.R. § 110.11(c)(1).

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1 payor by name, providing the payor's address, phone, or website, and including the appropriate  
2 authorization language.<sup>136</sup> None of the four express advocacy ads included such disclaimers.  
3 Accordingly, the Commission finds reason to believe that News for Democracy LLC violated  
4 52 U.S.C. § 30120(a).

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<sup>136</sup> See, e.g., Corazon Coqui, Advertisement 1; Sounds Like Tennessee, Advertisement 2; That's Just North Dakota, Advertisement 3; The Holy Tribune, Advertisement 4.