



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

November 15, 2022

**VIA ELECTRONIC MAIL**

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RE: MUR 7527  
News for Democracy

Dear Mr. Reese and Ms. LaBeau:

On October 31, 2018, the Federal Election Commission (the “Commission”) notified your client, News for Democracy, of a complaint alleging that News for Democracy violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and provided your client with a copy of the complaint.

After reviewing the allegations contained in the complaint, your client’s response, and publicly available information, the Commission on October 18, 2022, found reason to believe that News for Democracy violated 52 U.S.C. §§ 30104(c)(1) and 30120(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission’s findings, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that News for Democracy violated the law. Enclosed is a conciliation agreement for your consideration

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your client is interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or [epaoli@fec.gov](mailto:epaoli@fec.gov) within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a); 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [https://www.fec.gov/resources/cms-content/documents/respondent\\_guide.pdf](https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf).

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen Dickerson", written over a horizontal line.

Allen Dickerson  
Chairman

Enclosures  
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”). *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. 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 made in the 2018 election cycle and that its spending was “not made for the purpose of influencing federal elections.”<sup>3</sup>

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

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

<sup>3</sup> *See* News for Democracy Resp. at 2-4 (Dec. 20, 2018) (“NFD Resp.”).

1 As discussed below, in 2018, News for Democracy failed to file reports disclosing  
2 independent expenditures and failed to include disclaimers on ads containing express advocacy.

## 3 **II. FACTUAL BACKGROUND**

4 The Complaint alleges that News for Democracy “spent millions of dollars on political  
5 advertising.”<sup>4</sup> The Complaint states that “despite becoming one of the most influential  
6 organizations in political advertising, the organization has no website, contact page, or email  
7 address.”<sup>5</sup> Citing various press reports and the Facebook Ad Library,<sup>6</sup> the Complaint alleges that  
8 News for Democracy’s “Facebook ad buys have created, ‘at a minimum, 45 million impressions  
9 through more than 2,600 ads’” from its August 27, 2018 inception to October 16, 2018.<sup>7</sup> News  
10 for Democracy was reportedly the “second-largest political ad buy[er] on Facebook” during a  
11 two-week period in September 2018, “trailing only Beto O’Rourke’s Texas Senate campaign.”<sup>8</sup>  
12 Based on this activity, the Complaint alleges that News for Democracy violated the Act and  
13 Commission regulations by failing to register and report as a political committee.

14 News for Democracy, according to its Response, is organized under Section 501(c)(4) of  
15 the Internal Revenue Code, and registered with the District of Columbia as a non-profit

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4 Compl. at 2.

5 *Id.*

6 *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).

7 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>.

8 Madrigal article.

1 organization on August 27, 2018.<sup>9</sup> The Response describes the organization’s primary purpose  
2 as the “promotion of social welfare” and its mission as “educat[ing] the public through  
3 identifying inaccurate news or commentary and promoting digital news that is factual in nature  
4 to counteract the harmful effects of news or commentary that is not accurate, reliable, or  
5 credible, or is generated by ‘bots.’”<sup>10</sup> Shortly after forming, News for Democracy “began to  
6 create, produce, and disseminate digital advertising content to advance its mission. The content  
7 is disseminated in the form of paid digital advertisements on social media platforms such as  
8 Facebook, as well as content that is shared organically.”<sup>11</sup>

9           The Complaint does not examine News for Democracy’s entire ad program and instead  
10 identifies five ads to support its allegation that News for Democracy failed to register and report  
11 as a political committee. The Complaint cited to ads on the Sounds Like Tennessee,<sup>12</sup> That’s  
12 Just North Dakota,<sup>13</sup> Corazon Coqui,<sup>14</sup> and Women for Civility<sup>15</sup> pages. Three of the ads  
13 mentioned and used images of Senate candidates Kevin Cramer and Rick Scott, while two of the  
14 ads referenced President Trump and the mid-term elections, with one narrator stating, “I’ll be  
15 voting Democratic in the mid-term elections on November 6” and another narrator saying, “it

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<sup>9</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.

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

<sup>11</sup> *Id.* at 2.

<sup>12</sup> Compl. Ex. A.

<sup>13</sup> Compl. Ex. A.

<sup>14</sup> Compl. Ex. A.

<sup>15</sup> Compl. Ex. A.

1 would be nice to have a Congress” working for “us” and stating that she “would be voting for the  
2 Democrats this election.”<sup>16</sup>

### 3 **III. LEGAL ANALYSIS**

#### 4 **A. News for Democracy Apparently Failed To Report Independent** 5 **Expenditures**

6  
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>17</sup> The Act requires political committees and persons other  
11 than political committees to report their independent expenditures.<sup>18</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>19</sup>  
16 Similar reporting requirements apply to non-political committee persons making independent

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<sup>16</sup> Compl. Ex. A.

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

<sup>18</sup> *See generally* 52 U.S.C. § 30104.

<sup>19</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>20</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>21</sup>

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

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

19  
 20 In addition, a communication contains express advocacy if, “[w]hen taken as a whole and  
 21 with limited reference to external events, such as the proximity to the election,” it “could only be  
 22 interpreted by a reasonable person as containing advocacy of the election or defeat of one or  
 23 more clearly identified candidate(s),” because it contains an “electoral portion” that is  
 24 “unmistakable, unambiguous, and suggestive of only one meaning” and “[r]easonable minds

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<sup>20</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>21</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>22</sup> 11 C.F.R. § 100.22(a); *see also Buckley v. Valeo*, 424 U.S. at 44.



1 could not differ as to whether it encourages actions to elect or defeat one or more clearly  
2 identified candidate(s) or encourages some other kind of action.”<sup>23</sup> In its explanation and  
3 justification for 11 C.F.R. § 100.22(b), the Commission stated that “[c]ommunications discussing  
4 or commenting on a candidate’s character, qualifications, or accomplishments are considered  
5 express advocacy under new section 100.22(b) if, in context, they can have no other reasonable  
6 meaning than to encourage actions to elect or defeat the candidate in question.”<sup>24</sup>

7 Among News for Democracy’s thousands of Facebook ads, all disseminated in the two  
8 months prior to the 2018 general election, News for Democracy spent at least \$20,000 and up to  
9 \$100,000 on ads expressly advocating the defeat of clearly identified candidates Marsha  
10 Blackburn and Rick Scott

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

17 Blackburn has taken over \$24,000 from the for-profit prison  
18 industry this year alone. Making her one of Washington’s biggest  
19 recipients of private prison cash. These facilities  
20 disproportionately incarcerate African Americans on non-violent  
21 charges. Turning jailing people into a lucrative multibillion dollar

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<sup>23</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>24</sup> Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294-35,295 (July 6, 1995).

1 industry. We need leaders who fight for us. Not private prisons'  
2 bottom line. Say No to Marsha Blackburn.<sup>25</sup>

3  
4 The ad ends with the following image:



6  
7 News for Democracy spent between \$10,000 and \$50,000 on this ad that clearly  
8 identifies Blackburn by her name and image.<sup>26</sup> This ad expressly advocates against the election  
9 of Blackburn by directing viewers to “say no to Marsha Blackburn.”<sup>27</sup> By connecting campaign  
10 contributions she purportedly received to needing political leaders “who fight for us” and saying  
11 “no” to Blackburn, this ad, disseminated just before the general election to people interested in  
12 Tennessee,<sup>28</sup> has no other reasonable meaning than to urge Blackburn’s defeat in the upcoming  
13 election.<sup>29</sup>

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<sup>25</sup> Sounds Like Tennessee; Attachment,,Advertisement 2.

<sup>26</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>27</sup> Sounds Like Tennessee, Advertisement 2.

<sup>28</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>29</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.”).

1           On the “Corazon Coqui” page, News for Democracy spent between \$10,000 and \$50,000  
 2 on a single placement of an ad that clearly identifies, by name and image, a candidate for federal  
 3 office: U.S. Senate candidate Rick Scott of Florida.<sup>30</sup> The voiceover at the end of the ad asks,  
 4 “Will you vote for him for Senate?” followed by the answer, “No. Absolutely not.” The text  
 5 then concludes, “Rick Scott is not our friend. He does not deserve our votes.”<sup>31</sup> The question  
 6 “will you vote for him for Senate” and response of “no” together with the phrases, “Scott is not  
 7 our friend” and “he does not deserve our votes” provide a clear directive to vote against Scott.<sup>32</sup>  
 8 Even though the words used in the ad may be “marginally less direct than ‘Vote for Smith,’” that  
 9 margin does not change the directive to not vote for Scott.<sup>33</sup>



10  
 11           Because News for Democracy failed to report these independent expenditures, the  
 12 Commission finds reason to believe that News for Democracy violated 52 U.S.C. § 30104(c)(1).

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<sup>30</sup> Corazon Coqui, Attachment, 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>31</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>32</sup> *Id.*

<sup>33</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           **B.       News for Democracy Apparently Failed to Include Required Disclaimers**

2           The Act requires that all “public communications” of political committees and any  
3 “public communication” by any person that expressly advocates the election or defeat of a  
4 clearly identified candidate must include a disclaimer in the communication identifying who paid  
5 for the communication and, where applicable, whether the communication was authorized by a  
6 candidate.<sup>34</sup> Under Commission regulations, a “public communication” includes  
7 communications placed for a fee on another person’s website.<sup>35</sup> The Commission has  
8 previously determined that a disclaimer is required on the type of paid Facebook advertising  
9 placed by News for Democracy.<sup>36</sup>

10           The type of information required in a disclaimer varies depending on whether the  
11 communication is paid for or authorized by a candidate. If the communication is not paid for or  
12 authorized by a candidate, then the disclaimer must “clearly state the full name and permanent  
13 street address, telephone number, or World Wide Web address of the person who paid for the  
14 communication, and that the communication is not authorized by any candidate or candidate’s

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<sup>34</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>35</sup> 11 C.F.R. § 100.26.

<sup>36</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, popup advertisements, and directed search results”).



1 committee.”<sup>37</sup> This information “must be presented in a clear and conspicuous manner, to give  
2 the reader, observer, or listener adequate notice of the identity” of the ad’s sponsor.<sup>38</sup>  
3 News for Democracy paid for the placement of thousands of ads on Facebook including the two  
4 ads discussed above that expressly advocated the election or defeat of clearly identified federal  
5 candidates. These express advocacy communications placed on Facebook for a fee required  
6 disclaimers identifying the payor by name, providing the payor’s address, phone, or website, and  
7 including the appropriate authorization language. Neither ad included such disclaimers.  
8 Accordingly, the Commission finds reason to believe that News for Democracy violated  
9 52 U.S.C. § 30120(a).

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<sup>37</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>38</sup> 11 C.F.R. § 110.11(c)(1).

**ATTACHMENT**  
News for Democracy Representative Facebook Ads

Advertisement #	Facebook Page	Ad	Content of Ad
1.	Corazon Coqui	 <p>Rick Scott: Ustedes lo pueden ganar, este grupo puede ganar las elecciones.</p>	<p>Translated: Rick Scott: You can win it, this group can win the elections. [Voice: If we see your record year after year after year after year, you have not been a friend of the Latino community, nor of the Puerto Rican community, or any person who lives in Florida.] [Rick Scott voice: You can win it, this group can win the elections.] [Voice: I would like to tell the Puerto Ricans that Rick Scott had a hand in purging Puerto Ricans votes in one of his last elections.] Rick Scott's voter purge was illegal: Court. [Article from MSNBC April 02, 2014.] Voter purging in Florida targets Latinos and new citizens. [Article from HuffPost July 24, 2012.] In his years as governor, Scott rejected resources and strategies to protect Florida from the effects of climate change. [Voice: Tell that to the people of Puerto Rico. Every hurricane season we have to cross our fingers and pray that a hurricane does not pass] [Voice: Will you vote for him for Senate?] [Answer: No. Absolutely not.] Text: Rick Scott is not our friend. He does not deserve our votes.</p>
2.	Sounds Like Tennessee		<p>[Voice: the biggest, richest most powerful private corrections company in the United States: Corrections Corporation of America, headquartered right here in Nashville, Tennessee.] Text: And it has a friend in Republican Marsha Blackburn. Blackburn has taken over \$24,000 from the for-profit prison industry this year alone. Making her one of Washington's biggest recipients of private prison cash. These facilities disproportionately incarcerate African Americans on non-violent charges. Turning jailing people into a lucrative multibillion dollar industry. We need leaders who fight for us. Not private prisons' bottom line. Say No to Marsha Blackburn.</p>