



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 4, 2023

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kendra Arnold
Executive Director
Foundation for Accountability and Trust
1717 K Street, NW, Suite 900
Washington, DC 20006

RE: MUR 7527
(News for Democracy, *et al.*)

Dear Ms. Arnold:

This is in reference to the complaint you filed with the Federal Election Commission on October 25, 2018, concerning News for Democracy and News for Democracy LLC. On October 18, 2022, the Commission found reason to believe that News for Democracy violated 52 U.S.C. §§ 30104(c)(1) and 30120(a), provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”). On February 22, 2023, a conciliation agreement signed by the respondent was accepted by the Commission.

In addition, on October 18, 2022, there were an insufficient number of votes to find reason to believe that News for Democracy and News for Democracy LLC violated 52 U.S.C. §§ 30102, 30103, and 30104(a) by failing to register and report to the Commission as political committees. On February 22, 2023, the Commission closed the file, which included closing the file as to the allegation that News for Democracy and News for Democracy LLC accepted foreign national contributions.

One or more Statements of Reason explaining the Commission’s vote will follow. The Act allows a complainant to seek judicial review of the Commission’s dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the conciliation agreement with News for Democracy and the Commission’s Factual and Legal Analysis are enclosed for your information. If you have any questions, please contact me at (202) 694-1548.

Sincerely,

Elena Paoli

Elena Paoli
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7527
News for Democracy)	
)	

CONCILIATION AGREEMENT

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”). The Commission found reason to believe that News for Democracy (“Respondent”) violated 52 U.S.C. §§ 30104(c)(1) and 30120(a).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. News for Democracy, according to its Response, is organized under Section 501(c)(4) of the Internal Revenue Code and registered with the District of Columbia as a non-profit organization on August 27, 2018. Respondent describes itself as promoting social welfare by educating the public through identifying inaccurate news or commentary and promoting digital news that is factual in nature to counteract the harmful effects of news or commentary that is not accurate, reliable, or credible or is generated by bots. From September

2018 through early November 2018, Respondent disseminated thousands of paid digital advertisements, primarily on Facebook, to support its mission.

2. In October and November 2018, News for Democracy disseminated a video ad expressly advocating the defeat of U.S. Senate candidate Marsha Blackburn on the “Sounds Like Tennessee” Facebook page, targeted at voters in Tennessee where Blackburn was running. News for Democracy paid Facebook between \$10,000 and \$50,000 to run the ad. The voiceover in the ad states:

The biggest, richest most powerful private corrections company in the United States: Corrections Corporation of America, headquartered right here in Nashville, Tennessee. 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.

The ad ends with the following image:



3. In October 2018, News for Democracy disseminated a video ad expressly advocating the defeat of U.S. Senate candidate Rick Scott on the Spanish-language “Corazon Coqui” Facebook page. The ad targeted voters in Florida where Scott was running. News for Democracy paid between \$10,000 and \$50,000 to Facebook to run the ad. The ad asks, “Will

you vote for him for Senate? followed by the answer, “No. Absolutely Not.” The text concludes, “Rick Scott is not our friend. He does not deserve our votes.”



4 An independent expenditure is an expenditure that (1) expressly advocates the election or defeat of a clearly identified federal candidate, and (2) is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent. The Federal Election Campaign Act of 1971 as amended, (the “Act”), requires political committees and persons other than political committees to report their independent expenditures. Non-political committees making independent expenditures aggregating greater than \$250 in a calendar year must disclose their independent expenditures and itemize such expenditures with information including the name and address of each person who receives disbursements in connection with an independent expenditure, as well as the date, amount, purpose, and identity of the candidate the independent expenditure is supporting or opposing. A person, including a political committee, also may have to file additional disclosure reports depending on the amount and timing of an independent expenditure.

5. Under the Commission’s regulation at 11 C.F.R. § 100.22(a), a communication contains express advocacy when it uses phrases such as

“vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in ’94,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described

as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent,” or communications of campaign slogan(s), or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Nixon’s the One,” “Carter ’76,” “Regan/Bush,” or “Mondale!”

6. In addition, under 11 C.F.R. § 100.22(b), a communication contains express advocacy if, “[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election,” it “could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s),” because it contains an “electoral portion” that is “unmistakable, unambiguous, and suggestive of only one meaning” and “[r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.”

7. The Act requires that any “public communication” by any person that expressly advocates the election or defeat of a clearly identified candidate must include a disclaimer in the communication identifying who paid for the communication and, where applicable, whether the communication was authorized by a candidate. Under Commission regulations, a “public communication” includes communications placed for a fee on another person’s website. The Commission has previously determined that a disclaimer is required on the type of paid Facebook advertising involving public communications.

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

for the communication, and that the communication is not authorized by any candidate or candidate's committee." This information "must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity" of the ad's sponsor.

9. The Commission determined the Blackburn ad expressly advocates against her election by directing viewers to "say no to Marsha Blackburn." By connecting campaign contributions she purportedly received to needing political leaders "who fight for us" and saying "no" to Blackburn, this ad, disseminated just before the general election to people interested in Tennessee, has no other reasonable meaning than to urge Blackburn's defeat in the upcoming election.

10. In the Scott ad, the voiceover at the end of the ad asks, "Will you vote for him for Senate?" followed by the answer, "No. Absolutely not." The text then concludes, "Rick Scott is not our friend. He does not deserve our votes." The Commission determined that the question "will you vote for him for Senate" and response of "no" together with the phrases, "Scott is not our friend" and "he does not deserve our votes" expressly advocates against the election of Scott in the upcoming election.

11. The Commission found reason to believe the Blackburn and Scott ads are express advocacy communications placed on Facebook for a fee and required disclaimers identifying the payor by name, providing the payor's address, phone, or website, and including the appropriate authorization language.

V. 1. Respondent failed to report independent expenditures, in violation of 52 U.S.C. § 30104(c)(1).

2. Respondent failed to include appropriate disclaimers on its advertising, in violation of 52 U.S.C. § 30120(a).

VI. Solely for the purposes of settling this matter, Respondent agrees not to contest the Commission's findings.

VII. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Twenty-Five Thousand dollars (\$25,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

VIII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.


XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

MUR 7527 (News for Democracy)
Conciliation Agreement
Page 7 of 7

oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: **Charles Kitcher**  Digitally signed by Charles Kitcher
Date: 2023.02.23 13:45:18 -05'00'

Charles Kitcher
Associate General Counsel
for Enforcement

2/23/23
Date

FOR THE RESPONDENT:



Adam Clark
Counsel for Respondent

1/24/2023
Date

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.¹ 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.²

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.”³

¹ Compl. at 1 (Oct. 25, 2018).

² *Id.* at 1-3.

³ *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.”⁴ 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.”⁵ Citing various press reports and the Facebook Ad Library,⁶ 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, 2018.⁷ 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.”⁸
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

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) (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, 2018.⁹ 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.’”¹⁰ 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.”¹¹

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,¹² That’s
12 Just North Dakota,¹³ Corazon Coqui,¹⁴ and Women for Civility¹⁵ 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

⁹ 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.

¹⁰ NFD Resp. at 1.

¹¹ *Id.* at 2.

¹² Compl. Ex. A.

¹³ Compl. Ex. A.

¹⁴ Compl. Ex. A.

¹⁵ 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.”¹⁶

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

¹⁶ Compl. Ex. A.

¹⁷ 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

¹⁸ *See generally* 52 U.S.C. § 30104.

¹⁹ 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.²⁰ 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.²¹

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!”²²

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

²⁰ 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).”).

²¹ 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).

²² 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.”²³ 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.”²⁴

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

²³ *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.

²⁴ 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.²⁵

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.²⁶ This ad expressly advocates against the election
9 of Blackburn by directing viewers to “say no to Marsha Blackburn.”²⁷ 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,²⁸ has no other reasonable meaning than to urge Blackburn’s defeat in the upcoming
13 election.²⁹

²⁵ Sounds Like Tennessee; Attachment,,Advertisement 2.

²⁶ *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.

²⁷ Sounds Like Tennessee, Advertisement 2.

²⁸ 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.

²⁹ 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.³⁰ 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.”³¹ 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.³²
 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.³³



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).

³⁰ 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.*

³¹ Corazon Coqui, Advertisement 1 (translated from the Spanish text using Google Translate, with the accuracy of the translation confirmed by a native Spanish speaker).

³² *Id.*

³³ *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.³⁴ Under Commission regulations, a “public communication” includes
7 communications placed for a fee on another person’s website.³⁵ The Commission has
8 previously determined that a disclaimer is required on the type of paid Facebook advertising
9 placed by News for Democracy.³⁶

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

³⁴ 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).

³⁵ 11 C.F.R. § 100.26.



³⁶ 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.”³⁷ 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.³⁸
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).

³⁷ 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).

³⁸ 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>