

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FIRST GENERAL COUNSEL'S REPORT**

4  
5 **MUR 7427**

6 DATE COMPLAINT FILED:<sup>1</sup> July 16, 2018

7 DATE OF NOTIFICATIONS: Aug. 23, 2018

8 DATE RESPONSE RECEIVED: Sept. 8, 2018

9 DATE ACTIVATED: Jan. 24, 2019

10 EARLIEST SOL: Sept. 17, 2019

11 LATEST SOL: Oct. 19, 2021

12 ELECTION CYCLES: 2014 and 2016

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14  
15 **COMPLAINANTS:**

Campaign Legal Center

16 Giffords

17  
18 **RESPONDENTS:**

National Rifle Association of America Political  
Victory Fund and Robert G. Owens,<sup>2</sup> in his  
official capacity as treasurer

National Rifle Association of America Institute for  
Legislative Action and Robert G. Owens, in his  
official capacity as treasurer

24 OnMessage, Inc.

25 Starboard Strategic, Inc.

26 Thom Tillis Committee and Collin McMichael in  
his official capacity as treasurer

28 Cotton for Senate and Theodore V. Koch in his  
official capacity as treasurer

30 Cory Gardner for Senate and Lisa Lisker in her  
official capacity as treasurer

32 Ron Johnson for Senate, Inc. and James J.

33 Malczewski in his official capacity as treasurer

34  
35 **MUR 7497**

36 DATE COMPLAINT FILED: Sept. 17, 2018

37 DATE OF NOTIFICATIONS: Sept. 21, 2018

38 DATE RESPONSE RECEIVED: Nov. 15, 2018

39 DATE ACTIVATED: Jan. 24, 2019

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<sup>1</sup> On August 16, 2018, an Amended Complaint was filed adding Giffords as a new complainant. All references to "Complaint" refer to the Amended Complaint.

<sup>2</sup> After the Complaint was filed, the National Rifle Association of America Political Victory Fund and the National Rifle Association of America Institute for Legislative Action changed their treasurer from Mary R. Adkins to Roger G. Owens.

1 EARLIEST SOL: Sept. 6, 2023  
 2 LATEST SOL: Oct. 17, 2023  
 3 ELECTION CYCLES: 2018  
 4  
 5 **COMPLAINANTS:** Campaign Legal Center  
 6 Giffords  
 7  
 8 **RESPONDENTS:** National Rifle Association of America Political  
 9 Victory Fund and Robert Owens, in his official  
 10 capacity as treasurer  
 11 National Rifle Association of America Institute for  
 12 Legislative Action and Robert Owens, in his  
 13 official capacity as treasurer  
 14 OnMessage, Inc.  
 15 Starboard Strategic, Inc.  
 16 Thom Tillis Committee and Collin McMichael in  
 17 his official capacity as treasurer  
 18 Cotton for Senate and Theodore V. Koch in his  
 19 official capacity as treasurer  
 20 Cory Gardner for Senate and Lisa Lisker in her  
 21 official capacity as treasurer  
 22 Ron Johnson for Senate, Inc. and James J.  
 23 Malczewski in his official capacity as treasurer  
 24 Matt Rosendale for Montana and Errol Galt in his  
 25 official capacity as treasurer  
 26  
 27 **MUR 7524**  
 28 DATE COMPLAINT FILED: Oct. 22, 2018  
 29 DATE OF NOTIFICATIONS: Oct. 29, 2018  
 30 DATE RESPONSE RECEIVED: Feb. 22, 2019  
 31 DATE ACTIVATED: Jan. 24, 2019  
 32  
 33 EARLIEST SOL: Aug. 3, 2023  
 34 LATEST SOL: Oct. 19, 2023  
 35 ELECTION CYCLES: 2018  
 36  
 37 **COMPLAINANTS:** Campaign Legal Center  
 38 Giffords  
 39  
 40 **RESPONDENTS:** National Rifle Association of America Political  
 41 Victory Fund and Robert Owens, in his official  
 42 capacity as treasurer  
 43 National Rifle Association of America Institute for  
 44 Legislative Action and Robert Owens, in his  
 45 official capacity as treasurer

MURs 7427, *et al.* (National Rifle Association of America Political Victory Fund, *et al.*)

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1 Thom Tillis Committee and Collin McMichael in  
 2 his official capacity as treasurer  
 3 Cotton for Senate and Theodore V. Koch in his  
 4 official capacity as treasurer  
 5 Cory Gardner for Senate and Lisa Lisker in her  
 6 official capacity as treasurer  
 7 Ron Johnson for Senate, Inc. and James J.  
 8 Malczewski in his official capacity as treasurer  
 9 Josh Hawley for Senate and Salvatore Purpura in  
 10 his official capacity as treasurer  
 11 OnMessage, Inc.  
 12 Starboard Strategic, Inc.  
 13 National Media Research and Placement, LLC  
 14 Red Eagle Media Group  
 15 American Media & Advocacy Group, LLC  
 16

**MUR 7553**

DATE COMPLAINT FILED: Dec. 7, 2018

DATE OF NOTIFICATIONS: Dec. 13, 2018

DATE RESPONSE RECEIVED: Jan. 28, 2019

DATE ACTIVATED: Feb. 11, 2019

22  
 23 EARLIEST SOL: June 24, 2021  
 24 LATEST SOL: Nov. 4, 2021  
 25 ELECTION CYCLE: 2016  
 26

**COMPLAINANTS:**

Campaign Legal Center  
 Giffords

**RESPONDENTS:**

National Rifle Association of America Political  
 Victory Fund and Robert Owens, in his official  
 capacity as treasurer  
 National Rifle Association of America Institute for  
 Legislative Action and Robert Owens, in his  
 official capacity as treasurer  
 Donald J. Trump for President, Inc. and Bradley T.  
 Crate in his official capacity as treasurer  
 OnMessage, Inc.  
 Starboard Strategic, Inc.  
 National Media Research and Placement, LLC  
 Red Eagle Media Group  
 American Media & Advocacy Group, LLC

**RELEVANT STATUTES  
 AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)

1 52 U.S.C. § 30116(f),  
 2 52 U.S.C. § 30118(a)  
 3 11 C.F.R. § 109.20  
 4 11 C.F.R. § 109.21  
 5

6 **INTERNAL REPORTS CHECKED:** Disclosure Reports  
 7

8 **FEDERAL AGENCIES CHECKED:** None  
 9

## 10 I. INTRODUCTION

11  
 12 These four matters involve allegations that the National Rifle Association of America  
 13 Political Victory Fund (the “NRA-PVF”) and the National Rifle Association Institute for  
 14 Legislative Action (the “NRA-ILA”) (collectively the “NRA Respondents”) provided millions of  
 15 dollars in excessive, prohibited, and unreported in-kind contributions to political committees  
 16 across the last three election cycles. In 2014, the three alleged recipient political committees  
 17 were the Thom Tillis Committee (the “Tillis Committee”), Cotton for Senate (the “Cotton  
 18 Committee”), and Cory Gardner for Senate (the “Gardner Committee”). In 2016, the two alleged  
 19 recipient committees were Donald J. Trump for President, Inc. (the “Trump Committee”) and  
 20 Ron Johnson for Senate, Inc. (the “Johnson Committee”). And in 2018, the two alleged recipient  
 21 committees were Matt Rosendale for Montana (the “Rosendale Committee”) and Josh Hawley  
 22 for Senate (the “Hawley Committee”).<sup>3</sup>

23 The MUR 7553 Complaint alleges that in the weeks leading up to the 2016 general  
 24 election, the NRA Respondents and the Trump Committee coordinated the placement of  
 25 advertisements using “common vendors” National Media Planning and Placement LLC  
 26 (“National Media”), Red Eagle Media Group (“Red Eagle”), and American Media & Advocacy

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<sup>3</sup> See Compl. ¶¶ 1-3, 18-22, 42, MUR 7427 (Aug. 16, 2018); Compl. ¶¶ 1-3, 51, MUR 7497 (Sept. 17, 2018);  
 Compl. ¶¶ 1-3, 58, MUR 7524 (Oct. 22, 2018); Compl. ¶¶ 1-3, 57, MUR 7553 (Dec. 7, 2018).

1 Group (“AMAG”).<sup>4</sup> According to this Complaint, National Media, Red Eagle, and AMAG are  
2 in reality the same company.<sup>5</sup> The MUR 7524 Complaint contains similar allegations, namely,  
3 that the NRA-PVF coordinated communications with the Hawley Committee through National  
4 Media, Red Eagle, and AMAG in the 2018 election cycle.<sup>6</sup>

5 In addition, three of the Complaints allege that the NRA Respondents coordinated  
6 communications with the Tillis, Cotton, Gardner, Johnson, Rosendale, and Hawley Committees  
7 (collectively the “Senate Committees”) through another set of common vendors: OnMessage,  
8 Inc. (“OnMessage”) and Starboard Strategic, Inc. (“Starboard”).<sup>7</sup> These Complaints allege that  
9 Starboard is a “shell company” created to hide OnMessage’s status as a common vendor between  
10 the NRA Respondents and the Senate Committees.<sup>8</sup>

11 Separately, the MUR 7497 Complaint includes an allegation that Rosendale assented to  
12 the NRA-ILA’s communications supporting him and attacking his opponent during the 2018  
13 election cycle.<sup>9</sup>

14 For the reasons that follow, we recommend that the Commission: (1) find reason to  
15 believe that the NRA-PVF and the NRA-ILA violated 52 U.S.C. §§ 30104(b), 30116(a), and  
16 30118(a), by making and failing to report excessive and prohibited in-kind contributions by  
17 coordinating communications with Donald J. Trump for President, Inc. and Bradley T. Crate in

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<sup>4</sup> See Compl. ¶¶ 2-3, 57-68, MUR 7553.

<sup>5</sup> See *id.* ¶¶ 13-16, 61-63, MUR 7553.

<sup>6</sup> See Compl. ¶¶ 67-76, MUR 7524.

<sup>7</sup> See Compl. ¶¶ 2, 42-55, MUR 7427; Compl. ¶¶ 3, 51-55, 60-66, MUR 7497; Compl. ¶¶ 2 63-66, MUR 7524.

<sup>8</sup> See Compl. ¶ 50, MUR 7427; Compl. ¶ 63, MUR 7497; Compl. ¶ 65, MUR 7524.

<sup>9</sup> See Compl. ¶¶ 2, 51-59, MUR 7497.

1 his official capacity as treasurer through National Media; (2) find reason to believe that the  
2 NRA-PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and failing to  
3 report excessive and prohibited in-kind contributions by coordinating communications with Josh  
4 Hawley for Senate and Salvatore Purpura in his official capacity as treasurer through National  
5 Media; (3) take no action at this time on the allegations that the NRA-PVF and the NRA-ILA  
6 coordinated communications through OnMessage and Starboard with the Thom Tillis Committee  
7 and Collin McMichael in his official capacity as treasurer, Cotton for Senate and Theodore V.  
8 Koch in his official capacity as treasurer, Cory Gardner for Senate and Lisa Lisker in her official  
9 capacity as treasurer, Ron Johnson for Senate and James J. Malczewski in his official capacity as  
10 treasurer, Josh Hawley for Senate and Salvatore Purpura in his official capacity as treasurer, and  
11 Matt Rosendale for Montana and Errol Galt in his official capacity as treasurer; and (4) take no  
12 action at this time on the claim that Rosendale assented to the NRA-ILA's suggestion of  
13 communications supporting him.

## 14 **II. FACTUAL BACKGROUND**

15  
16 The NRA-PVF is registered with the Commission as a separate segregated fund  
17 connected to the National Rifle Association of America ("NRA").<sup>10</sup> It makes contributions to  
18 candidates and political committees and makes independent expenditures through a separate  
19 account.<sup>11</sup> The NRA-ILA is a tax-exempt organization under Section 501(c)(4) of the Internal

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<sup>10</sup> The NRA-PVF's Amended Statement of Organization also notes that it is a Lobbyist/Registrant PAC. *See* NRA-PVF, Amended Statement of Organization (Mar. 16, 2019).

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

1 Revenue Code that, according to the Complaints, describes itself as “the principal lobbying arm  
2 of the NRA.”<sup>12</sup>

3 In 2014, Thom Tillis, Thomas Cotton, and Cory Gardner were candidates for the U.S.  
4 Senate from North Carolina, Arkansas, and Colorado, respectively.<sup>13</sup> In the 2016 general  
5 election, Donald J. Trump was the Republican nominee for President and Ron Johnson was a  
6 candidate for re-election to the U.S. Senate in Wisconsin.<sup>14</sup> In the 2018 election cycle, Matt  
7 Rosendale was a candidate for U.S. Senate in Montana and Josh Hawley was a candidate for  
8 U.S. Senate in Missouri.<sup>15</sup>

9 National Media is a Virginia company that organized in 2006 and provides political  
10 consulting services.<sup>16</sup> According to public state records, “Red Eagle Media Group” and

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<sup>12</sup> See, e.g., Compl. ¶ 7, MUR 7427.

<sup>13</sup> Thom Tillis, Statement of Candidacy (June 6, 2013); Thomas Cotton, Statement of Candidacy (Aug. 5, 2013); Cory Gardner, Statement of Candidacy (Mar. 3, 2014).

<sup>14</sup> See Donald J. Trump, Statement of Candidacy (July 29, 2016); Ron Johnson, Statement of Candidacy (Apr. 30, 2015).

<sup>15</sup> See Matt Rosendale, Statement of Candidacy (Aug. 14, 2017); Josh Hawley, Statement of Candidacy (Oct. 10, 2017).

<sup>16</sup> See National Media, Commonwealth of Virginia State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/S207052>. It is registered at 815 Slaters Lane, Alexandria, VA 22314.

1 “American Media & Advocacy” are fictitious names used by National Media.<sup>17</sup> In fact,  
 2 Respondents acknowledge that National Media, Red Eagle, and AMAG are the same company.<sup>18</sup>  
 3 National Media holds itself out as “a leader in media research, planning, and placement for issue  
 4 advocacy, corporate, and political campaigns.”<sup>19</sup>

5 OnMessage organized in 2005 as a Virginia company and has, over the years, provided  
 6 political consulting services to several political entities, including the NRA Respondents in 2010  
 7 and 2012.<sup>20</sup> In 2013, OnMessage officials formed another Virginia company, Starboard,<sup>21</sup> and  
 8 Starboard served as the NRA Respondents’ consultant for the creation of independent  
 9 expenditures from 2014 to the present.<sup>22</sup>

10 In the 2016 presidential election, the NRA-ILA made over \$21 million in independent  
 11 expenditures in support of Trump or in opposition to Hillary Clinton, and the NRA-PVF made

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<sup>17</sup> See, e.g., National Media, Certificate of Assumed or Fictitious Name “Red Eagle Media Group,” Commonwealth of Virginia State Corporation Commission (Mar. 27, 2014); National Media, Certificate of Assumed or Fictitious Name “American Media & Advocacy Group,” Commonwealth of Virginia State Corporation Commission (Dec. 12, 2018). Respondents argue that the Complaint in MUR 7553’s reference to “American Media & Advocacy Group, LLC . . . at Paragraph 46” is a separate legal entity from AMAG “that was created by National Media’s principals but has never had any operations.” NRA Resp. at 5 n.16, MUR 7553 (Jan. 29, 2019) (on behalf of NRA-ILA, NRA-PVF, and National Media). Respondents also contend that the “Complaint’s reference to ‘AMAG’ at Paragraph 47 is a reference to the fictitious name used by National Media.” *Id.* Paragraphs 46 and 47 of the MUR 7553 Complaint do not contain a reference to either of these entities. Further, while the relationship between these ostensibly related entities is unclear on this record, we note that, like National Media, AMAG, and Red Eagle, the company “American Media & Advocacy Group, LLC” is also registered at 815 Slaters Lane, Alexandria, VA 22314. See American Media & Advocacy Group, LLC, <https://sccfilefile.scc.virginia.gov/Business/S416256>.

<sup>18</sup> NRA Resp. at 5, MUR 7553.

<sup>19</sup> National Media, <http://www.natmedia.com/> (last visited May 9, 2019).

<sup>20</sup> See Compl. ¶¶ 9-12, MUR 7427; NRA Resp. at 2, MUR 7427 (Sept. 11, 2018) (on behalf of NRA-PVF, NRA-ILA, OnMessage, and Starboard).

<sup>21</sup> See NRA Resp. at 2, MUR 7427.

<sup>22</sup> *Id.*



1 close to \$9.3 million in such expenditures.<sup>23</sup> Of that approximately \$30 million, the NRA  
2 Respondents paid Starboard nearly \$26 million for advertising expenses.<sup>24</sup> Starboard, in turn,  
3 retained National Media personnel to place the NRA Respondents' ads, which they did under  
4 National Media's fictitious name, "Red Eagle."<sup>25</sup> Reports filed with the Commission show that  
5 the Trump Committee paid nearly \$74 million for "placed media" under National Media's other  
6 fictitious name, "AMAG."<sup>26</sup> In the 2018 U.S. Senate race in Missouri, the NRA-PVF disclosed  
7 nearly \$1.3 million in independent expenditures supporting Hawley or opposing his opponent,  
8 Claire McCaskill, which included expenditures for ads.<sup>27</sup> As in the 2016 presidential election,  
9 National Media officials distributed the NRA-PVF's ads supporting Hawley or attacking  
10 McCaskill under the "Red Eagle" fictitious name, and placed ads by the Hawley Committee  
11 under the "AMAG" fictitious name.<sup>28</sup>

12 During the 2014, 2016, and 2018 election cycles, the NRA Respondents paid Starboard  
13 over \$9 million to create communications that expressly advocated the election of Tillis, Cotton,  
14 Gardner, Johnson, Rosendale, and Hawley. In these same election cycles, the committees of

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<sup>23</sup> See NRA-PVF and NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Trump or Clinton, 2015-2016 (regularly scheduled reports).

<sup>24</sup> See Compl. ¶¶ 15-16, MUR 7553; *see also* NRA-PVF and NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Trump or Clinton, 2015-2016 (regularly scheduled reports).

<sup>25</sup> See NRA Resp. at 6, MUR 7553; Compl. ¶¶ 15, MUR 7553.

<sup>26</sup> See Trump Committee, Disbursements to AMAG, 2017-2018 (regularly scheduled reports); *see also* NRA Resp. at 6, MUR 7553; Compl. ¶ 17, MUR 7553.

<sup>27</sup> See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Hawley or McCaskill, 2017-2018 (regularly scheduled reports).

<sup>28</sup> See Compl. ¶¶ 40-47, MUR 7524; NRA Resp. at 4-5, MUR 7524 (Dec. 17, 2018) (on behalf of NRA-PVF, NRA-ILA, OnMessage, Starboard, and National Media).

- 1 these candidates contracted with OnMessage for over \$26 million in advertising and media  
 2 production, among other services. These expenditures are summarized in the following tables.

**NRA Payments to Starboard for IEs**

	<b>Tillis<sup>29</sup></b>	<b>Cotton<sup>30</sup></b>	<b>Gardner<sup>31</sup></b>	<b>Johnson<sup>32</sup></b>	<b>Rosendale<sup>33</sup></b>	<b>Hawley<sup>34</sup></b>	<b>Total</b>
<b>NRA-PVF</b>	\$2.3 million	\$1.6 million	\$2.6 million	\$125,289	\$93,746	\$1.1 million	\$7.7 million (Approx.)
<b>NRA-ILA</b>	\$812,658	N/A	\$529,186	\$48,537	\$383,196	N/A	\$1.7 million (Approx.)
							\$9.4 million (Approx.)

**The Committees' Payments to OnMessage**

<b>Committees</b>	<b>Amount</b>	<b>Dates</b>	<b>Purpose of Disbursements</b>
Tillis <sup>35</sup>	\$6.6 million (Approx.)	12/19/13-12/9/14	"Advertising" & "Media Consulting"
Cotton <sup>36</sup>	\$5.3 million (Approx.)	3/15/13-10/14/14	"Placed Media & Production," "Polling Consulting"
Gardner <sup>37</sup>	\$8 million (Approx.)	2/27/14-11/3/14	"Media Production" & "Web Service"
Johnson <sup>38</sup>	\$3.8 million (Approx.)	2/19/16-8/10/16	"Placed Media," "Strategy Consulting," & "Video Production"

<sup>29</sup> See NRA-PVF and NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Tillis and Kay Hagan, 2013-2014 (regularly scheduled reports).

<sup>30</sup> See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Cotton and Mark Pryor, 2013-2014 (regularly scheduled reports).

<sup>31</sup> See NRA-PVF and NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Gardner and Mark Udall, 2013-2014 (regularly scheduled reports).

<sup>32</sup> See NRA-PVF and NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Johnson and Russell Feingold, 2015-2016 (regularly scheduled reports).

<sup>33</sup> See NRA-PVF and NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Rosendale and Jon Tester, 2017-2018 (regularly scheduled reports).

<sup>34</sup> See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Hawley and McCaskill, 2017-2018 (regularly scheduled reports).

<sup>35</sup> See Tillis Committee, Disbursements to OnMessage, 2013-2014 (regularly scheduled reports).

<sup>36</sup> See Cotton Committee, Disbursements to OnMessage, 2013-2014 (regularly scheduled reports).

<sup>37</sup> See Gardner Committee, Disbursements to OnMessage, 2013-2014 (regularly scheduled reports).

<sup>38</sup> See Johnson Committee, Disbursements to OnMessage, 2015-2016 (regularly scheduled reports).

Committees	Amount	Dates	Purpose of Disbursements
Rosendale <sup>39</sup>	\$445,367	11/1/17-10/16/18	"Media" & "Political Strategy Consulting"
Hawley <sup>40</sup>	\$2.2 million (Approx.)	8/25/17-10/16/18	"Media," "Media Production," & "Survey Research"

### 1 III. LEGAL ANALYSIS

2 The Federal Election Campaign Act of 1971, as amended (the "Act"), defines the terms  
 3 "contribution" and "expenditure" to include "anything of value" made by any person for the  
 4 purpose of influencing an election.<sup>41</sup> The term "anything of value" includes in-kind  
 5 contributions.<sup>42</sup> In-kind contributions result when goods or services are provided without charge  
 6 or at less than the usual and normal charge,<sup>43</sup> and when a person makes an expenditure in  
 7 cooperation, consultation or in concert with, or at the request or suggestion of a candidate or the  
 8 candidate's authorized committee or their agents.<sup>44</sup>

9 Under Commission regulations, expenditures for "coordinated communications" are  
 10 addressed under a three-prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are  
 11 addressed under 11 C.F.R. § 109.20(b). The Commission has explained that section 109.20(b)  
 12 applies to "expenditures that are not made for communications but that are coordinated with a  
 13 candidate, authorized committee, or political party committee."<sup>45</sup> Under the three-prong test for

<sup>39</sup> See Rosendale Committee, Disbursements to OnMessage, 2017-2018 (regularly scheduled reports).

<sup>40</sup> See Hawley Committee, Disbursements to OnMessage, 2017-2018 (regularly scheduled reports).

<sup>41</sup> 52 U.S.C §§ 30101(8)(A)(i), 30101(9)(A)(i).

<sup>42</sup> 11 C.F.R. § 100.52(d).

<sup>43</sup> *Id.*

<sup>44</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20. See also *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

<sup>45</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003); see also Advisory Opinion 2011-14 (Utah Bankers Association).

1 coordinated communications, a communication is coordinated and treated as an in-kind  
2 contribution when it is paid for by someone other than a candidate, a candidate's authorized  
3 committee, a political party committee, or the authorized agents of either (the "payment prong");  
4 satisfies one of five content standards (the "content prong"); and satisfies one of five conduct  
5 standards (the "conduct prong").<sup>46</sup> A communication must satisfy all three prongs to be a  
6 "coordinated communication."

7 The "conduct prong" is satisfied by: (1) communications made at the "request or  
8 suggestion" of the relevant candidate or committee; (2) communications made with the "material  
9 involvement" of the relevant candidate or committee; (3) communications made after a  
10 "substantial discussion" with the relevant candidate or committee; (4) specific actions of a  
11 "common vendor;" (5) specific actions of a "former employee or independent contractor;" and  
12 (6) specific actions relating to the dissemination of campaign material.<sup>47</sup>

### 13 **A. Common Vendor Claims**

14 All four complaints include allegations of coordination through common vendors. The  
15 "common vendor" standard of the conduct prong has three elements: (i) the person paying for  
16 the communication, or an agent of such person, uses a "commercial vendor"<sup>48</sup> to create, produce,  
17 or distribute the communication; (ii) the vendor previously provided certain enumerated services

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<sup>46</sup> 11 C.F.R. § 109.21(a); *see also id.* § 109.21(b) (describing in-kind treatment and reporting of coordinated communications); *id.* §§ 109.21(c), (d) (describing content and conduct standards, respectively). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See id.* § 109.21(d)(6).

<sup>47</sup> *Id.* § 109.21(d).

<sup>48</sup> A commercial vendor includes "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services." 11 C.F.R. § 116.1(c). A "commercial vendor" also includes "any owner, officer, or employee of the commercial vendor." *Id.* § 109.21(d).

1 to the candidate identified in the communication during the previous 120 days; and (iii) the  
2 commercial vendor uses or conveys to the person paying for the communication:

3 (A) Information about the campaign plans, projects, activities, or needs of  
4 the clearly identified candidate, the candidate's opponent, or a political  
5 party committee, and that information is material to the creation,  
6 production, or distribution of the communication; or

7  
8 (B) Information used previously by the commercial vendor in providing  
9 services to the candidate who is clearly identified in the communication,  
10 or the candidate's authorized committee, the candidate's opponent, the  
11 opponent's authorized committee, or a political party committee, and that  
12 information is material to the creation, production, or distribution of the  
13 communication.<sup>49</sup>

14  
15 Commission regulations state that a candidate or authorized committee “does not receive  
16 or accept an in-kind contribution” resulting from coordination through a common vendor unless  
17 the communication was made at the request or suggestion of, with the material involvement of,  
18 or after substantial discussions with, the candidate or authorized committee.<sup>50</sup> Further, the  
19 Commission has crafted a safe harbor provision for commercial vendors that have established  
20 and implemented a written firewall policy that meets certain requirements.<sup>51</sup>

21 A firewall policy satisfies the “safe harbor” if it: (1) is “designed and implemented to  
22 prohibit the flow of information between employees or consultants providing services for the  
23 person paying for the communication and those employees or consultants currently or previously  
24 providing services to the candidate” who is identified in the communication, or “the candidate’s

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<sup>49</sup> 11 C.F.R. § 109.21(d)(4); *see id.* § 116.1(c) (defining commercial vendor as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services”).

<sup>50</sup> 11 C.F.R. § 109.21(b)(2); *see id.* § 109.21(d)(1)-(3).

<sup>51</sup> *Id.* § 109.21(h).

1 authorized committee, the candidate's opponent, the opponent's authorized committee, or a  
 2 political party committee;" and (2) "described in a written policy that is distributed to all relevant  
 3 employees, consultants, and clients affected by the policy."<sup>52</sup> The safe harbor, however, "does  
 4 not apply if specific information indicates that, despite the firewall, information about the  
 5 candidate's . . . campaign plans, projects, activities, or needs that is material to the creation,  
 6 production, or distribution of the communication was used or conveyed to the person paying for  
 7 the communication."<sup>53</sup>

8 1. There is Reason to Believe that the NRA Respondents Coordinated with the  
 9 Trump Committee Through National Media

10 The Complaint in MUR 7553 alleges that the NRA Respondents coordinated with the  
 11 Trump Committee through National Media. As an initial matter, there is no dispute that the  
 12 payment and content prongs of the coordinated communications test are satisfied.<sup>54</sup> Nor is there  
 13 any dispute regarding the first two common vendor elements.<sup>55</sup> Only the third element of the  
 14 common vendor conduct prong is in dispute.  
 15

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<sup>52</sup> *Id.* § 109.21(h)(1)-(2).

<sup>53</sup> *Id.* § 109.21(h).

<sup>54</sup> *See* NRA Resp. at 25, MUR 7553 (noting that the Commission should reject the Complaint's "invitation to find reason to believe solely on the basis that the 'payor' and 'content' standards are satisfied"); *see also supra* notes 23-24.

<sup>55</sup> *See* NRA Resp. at 6, 25, MUR 7553 (acknowledging that National Media is a common vendor because the first two parts of the test are satisfied but contending that there must be some evidence that the third part of the test is satisfied before finding reason to believe). National Media and its officials qualify as "commercial vendors," *see* 11 C.F.R. § 116.1(c), and distributed, from June through November 2016, the NRA Respondents' communications supporting Trump or opposing Clinton, *see* Compl., Exs. F-I, K-L, P, Q, MUR 7553. In addition, on or about September 16, 2016, through November 2016, National Media selected and purchased advertising — an enumerated service — for the Trump Committee, overlapping with the time period National Media provided services to the NRA Respondents. *See* Compl., Exs. J, M, R, MUR 7553; *see also* NRA Resp. at 17, MUR 7553; Trump Committee, Disbursements to AMAG, 2017-2018 (regularly scheduled report) (disclosing \$74 million to AMAG for "placed media" between September 19, 2016 and November 2016).

1           According to this Complaint, high-ranking National Media officials repeatedly placed ads  
2 for both the NRA Respondents and the Trump Committee.<sup>56</sup> These officials, the Complaint  
3 contends, used “their knowledge about the ‘plans, projects, activities or needs’ of the Trump  
4 campaign to most effectively place the [NRA Respondents’] ads supporting Trump.”<sup>57</sup> Attached  
5 as exhibits to the Complaint are a number of documents containing advertising information  
6 obtained from the Federal Communication Commission’s (“FCC”) public database.<sup>58</sup>

7           A review of these and other public FCC filings provides reason to believe that National  
8 Media officials used or conveyed non-public information to the NRA Respondents about the  
9 Trump Committee’s “plans, projects, activities or needs” that was material to the placement of  
10 the NRA Respondents’ communications. These filings show the same National Media officials  
11 were involved in the placement of ads for both the NRA Respondents and the Trump Committee,  
12 and they placed ads for both of them on the same television station, within days of each other, to  
13 run during the same time period. For example, the name of Jon Ferrell, National Media’s  
14 Director of Accounting, appears on a NRA-PVF “Agreement Form for Non-Candidate/Issue  
15 Advertisements” dated October 19, 2016, for “Pro Trump” “Anti Clinton” ads scheduled to run

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<sup>56</sup> Compl. ¶¶ 63-64, MUR 7553.

<sup>57</sup> *Id.* ¶ 64.

<sup>58</sup> A broadcast, cable, or satellite licensee must place information on political advertising “immediately” in its “political file,” which is available in the FCC’s online public database. 47 C.F.R. § 73.1943; *see* About Public Inspection Files, <https://publicfiles.fcc.gov/about-station-profiles/>. The political file must contain requests to purchase broadcast time made by candidates or communicates a message relating “to any political matter of national importance.” 47 U.S.C. § 315(e)(1). The file must include: (1) whether the request is accepted or rejected; (2) the rate charged; (3) the date and time the communication is to air; (4) the name of the candidate and the office and election referenced, or the issue referenced, if applicable; and (5) in the case of a request made by the candidate, the name of the candidate, candidate’s authorized committee, and treasurer; or in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person. *Id.* § 315(e)(2).

1 from October 25 to October 31, 2016, on a Norfolk, Virginia, television station.<sup>59</sup> Five days  
2 later, Ferrell's name appears on an October 24, 2016, "Agreement Form for Political Candidate  
3 Advertisements" on behalf of the Trump Committee for "Pro Trump" "Anti Clinton" ads  
4 scheduled to run on the same Norfolk station during the same week.<sup>60</sup>

5 National Media also placed ads for the Trump Committee and the NRA Respondents to  
6 be aired during several of the same ACC football games being broadcast by Raycom Sports  
7 Network ("Raycom Sports"), and it made those placements within days of each other. Ferrell  
8 signed an "Agreement Form for Non-Candidate/Issue Advertisements" dated September 15,  
9 2016, to place \$101,200 worth of NRA-ILA ads supporting Trump or opposing Clinton that ran  
10 during seven ACC football games between September and November 2016.<sup>61</sup> Five days later,  
11 National Media submitted another "Agreement Form for Political Candidate Advertisements"<sup>62</sup>

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<sup>59</sup> See Compl., Ex. Q, MUR 7553.

<sup>60</sup> See *id.*, Ex. R.

<sup>61</sup> See Compl., Ex. L, MUR 7553. It appears that Raycom Sports provided the television stations with the signed agreement forms. See, e.g., WCJB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/wcjb-tv/political-files/2016/non-candidate-issue-ads/9d5850ce-2662-dd72-2d86-9ad974e9fa3e/> (showing file labeled "NRA-ACC Games-Raycom" for five ACC football games that was uploaded on Sept. 16, 2016); WGNT, Political Files, <https://publicfiles.fcc.gov/tv-profile/wgnt/political-files/2016/non-candidate-issue-ads/nra/fce64b20-054b-8247-1260-f8e29776fb26/> (showing file labeled "Raycom Sports Network – ACC Football Sept-Oct 2016" for five football games uploaded on Sept. 16, 2016).

<sup>62</sup> The agreement form for the placement of these ads was not signed by Jon Ferrell. Compl., Ex. M, MUR 7553.



1 for the placement of \$35,700 in Trump Committee ads that ran during five of the same games.<sup>63</sup>

2 The Complaint cites an article by *Mother Jones/The Trace*, which states:

3           The purchases were mirror images of each other. In five of the games, both  
4           the NRA and Trump bought ads. When the NRA ran two spots either  
5           attacking Clinton or promoting Trump, the Trump campaign ran just one.  
6           And when the Trump campaign ran two spots, the NRA ran one. The  
7           pattern even persisted when there was no direct overlap: In the two games  
8           the Trump campaign sat out, the NRA ran two ads. And in the one game  
9           during which the NRA didn't buy time, Trump bought two slots. Side by  
10          side, the spots aired across the country on as many as 120 stations, according  
11          to data provided by Raycom.<sup>64</sup>  
12

13           In addition, other National Media employees appear on public filings for both the Trump  
14          Committee and the NRA Respondents. For instance, Kristy Kovatch, a senior media buyer at  
15          National Media,<sup>65</sup> appears as the contact on behalf of the Trump Committee on an NBC  
16          “Political Inquiry Record” dated September 16, 2016, regarding a request for advertising rates,<sup>66</sup>  
17          and also the contact for the NRA-ILA on a station request sheet dated September 19, 2016, for  
18          ads that mentioned “Hillary Clinton,” “Donald Trump,” and the “General Election, 11/8/16.”<sup>67</sup>

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<sup>63</sup>        *See id.*, Ex., M, MUR 7553. An invoice from Raycom Sports for the Trump Committee ads is addressed to Ben Angle, senior media buyer at National Media. *See id.* Further, like with the placement of the NRA-ILA's ads during these games, Raycom Sports appears to have provided the stations with the signed agreement forms. *See, e.g.*, WLWC, Political Files, <https://publicfiles.fcc.gov/tv-profile/wlwc/political-files/2016/federal/president/acc-presidential-advertisement/1783250b-5d2d-5439-33a0-207ed32aa122/> (showing three files labeled “Note-Sold by Raycom” for five games that were uploaded on Oct. 31, 2016 ); WCJB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/wcjb-tv/political-files/2016/federal/president/61c8c79f-5717-f10c-ce17-fdd1db2111d5/> (showing files labeled “Trump 9-24 via Raycom Sports” and “Trump 10-29 via Raycom Sports” that were uploaded Sept. 22 and Oct. 31, 2016 for two ACC football games).

<sup>64</sup>        Mike Spies, *Documents Point to Illegal Campaign Coordination Between Trump and the NRA*, MOTHER JONES, (Dec. 6, 2018), <https://www.motherjones.com/politics/2018/12/nra-trump-2016-campaign-coordination-political-advertising/>.

<sup>65</sup>        National Media, <https://www.natmedia.com/#the-team> (last visited May 8, 2019).

<sup>66</sup>        Compl., Ex. J, MUR 7553.

<sup>67</sup>        *Id.*, Ex. K.

1 Ben Angle, another senior media buyer at National Media, appears as the contact person on  
2 advertising request sheets dated September 23, 2016, and November 1, 2016, for the placement  
3 of Trump Committee ads on the Colorado station KMGH,<sup>68</sup> while a rate request form dated  
4 October 14, 2016, for the same station lists Angle as the contact for NRA-ILA ads that are “pro-  
5 Donald Trump and guns rights.”<sup>69</sup> In addition, Caroline Kowalski, a former media assistant at  
6 National Media, also appears on public records for NRA-PVF ad buys on August 11 and October  
7 28, 2016, and for Trump Committee ads on September 28, November 3, and November 4,  
8 2016.<sup>70</sup>

9 In a previous matter, the Commission found reason to believe that the third element of the  
10 common vendor conduct prong was satisfied and investigated where a principal of a common  
11 vendor, “while providing consulting services, arranging media buys, and producing television  
12 ads” for the candidate committee, was also providing the same services to an organization that  
13 supported the candidate.<sup>71</sup> These dual roles, the Commission explained, placed the principal of  
14 the common vendor “in a position to know non-public information regarding” the candidate’s  
15 campaign and the organization’s plans for the election cycle and to use or convey that

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<sup>68</sup> See KMGH, Political Files, <https://publicfiles.fcc.gov/tv-profile/kmgh-tv/political-files/2016/federal/president/trump-for-president/f2e5d6f0-1718-d38d-4c0a-7ba0560f2e0a/> (showing “Trump Rate Request 9.23.16” & “RNC-Trump President Rate Request General Election — American Media”).

<sup>69</sup> Compl., Ex. P, MUR 7553.

<sup>70</sup> See Compl. ¶ 63(d), Exs. I, N, S, U, W, MUR 7553. The referenced records are identified as “Traffic Instructions” documents, a “Station Issue Advertising Request Sheet,” and a “Political Inquiry Form.” *Id.*, Exs. I, N, S, U, W.

<sup>71</sup> See Factual & Legal Analysis at 3-4, 6-7, 10-11, MUR 5415 (Club for Growth).

1 information in advising and guiding both clients, including on issues related to the allocation of  
2 resources.<sup>72</sup>

3 Here, the available information similarly indicates that the same National Media  
4 officials — Angle, Kovatch, Ferrell, and Kowalski — were involved in both sides of the ad  
5 placements for the Trump Committee and the NRA Respondents. Their involvement in the  
6 placement of the Trump Committee's ads placed them in a position to know non-public  
7 information that may have informed the placement of the NRA Respondents' ads supporting  
8 Trump and opposing Clinton.<sup>73</sup> And as outlined above, the parallel placement and distribution of  
9 many of the ads by National Media provides additional support for the inference that non-public  
10 information about the Trump Campaign's plans, activities, and needs influenced National  
11 Media's placement of the NRA Respondents' pro-Trump ads.

12 Respondents advance several rebuttals, none of which persuasively refutes the specific  
13 information suggesting coordination.<sup>74</sup> National Media claims to have adopted and implemented  
14 a firewall policy,<sup>75</sup> and provides the affidavit of its president, Robin Roberts, attesting that “all

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<sup>72</sup> *Id.* The Commission ultimately voted to take no further action, concluding that the investigation produced no evidence of common vendor coordination. *See* Commission Certification, MUR 5415 (Nov. 12, 2008) (Club for Growth); Third General Counsel's Report at 15, MUR 5415 (Club for Growth).

<sup>73</sup> *See* Factual & Legal Analysis at 3-4, 6-7, 10-11, MUR 5415 (Club for Growth); *see also* First General Counsel's Report at 36-37, MUR 7350 (Cambridge Analytica, LLC, *et al.*) (recommending reason-to-believe because vendor provided services to candidate and super PAC that supported the candidate because common vendor's employee may have participated in the creation or dissemination of express advocacy after obtaining material, non-public information in the course of working for the candidate's campaign); Factual & Legal Analysis, MURs 5511, 5525 (finding reason to believe based on individual's dual role in the Bush-Cheney 2004 Veteran's National Steering Committee while appearing at the same time in a television advertisement funded by organization that shared goal of defeating Kerry).

<sup>74</sup> *See* NRA Resp., MUR 7553; Trump Committee Resp., MUR 7553 (Jan. 11, 2019).

<sup>75</sup> *See* NRA Resp. at 6-8, 17-21, Attach. F, MUR 7553.

1 employees operate[d] in accordance with National Media's then-current firewall policy."<sup>76</sup>  
2 Attached to their Response is an unsigned AMAG firewall policy, dated March 26, 2016, and the  
3 "Trump Firewall Policy," which supplemented the earlier policy and is dated September 15,  
4 2016.<sup>77</sup> The Trump Firewall Policy states that the same employees or consultants "cannot  
5 perform work relating to more than one client on opposite sides of the firewall for the same  
6 election or race."<sup>78</sup> Evan Tracey is listed as the team leader for media buying for the Trump  
7 Committee and Angle, Kovatch, Tracey Robinson, and Michelle Lawrence are identified as the  
8 team's media buyers.<sup>79</sup> A review of the policy, however, indicates that under its plain terms it  
9 did not apply to management or administrative employees such as Ferrell or Kowalski,<sup>80</sup> and, as  
10 noted above, there is information suggesting that media buyers Angle and Kovatch were working  
11 on both sides of the firewall during the same time period, indicating that any such firewall was

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<sup>76</sup> See NRA Resp., Robins Affidavit ¶ 3, Attach. B, MUR 7553.

<sup>77</sup> See NRA Resp., Ex. F, MUR 7553.

<sup>78</sup> *Id.*, Ex. F. In particular, the firewall policy states that an employee providing services to the Trump Committee is prohibited "from working for an independent expenditure client" and "from communicating with other company employees who provide services to an independent expenditure client" in connection with the presidential election regarding the substance of team member's work for the Trump Committee, or regarding the other employees' work for the independent expenditure client. *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Specifically, the firewall policy excludes "employees or consultants who provide exclusively administrative assistance (e.g., reception, clerical, or IT support)" or "employees who perform management functions (e.g., financial, strategic, or corporate leadership) which affect all AMAG clients" from the firewall policy. NRA Resp. at 6, Ex. F, MUR 7553.

1 ineffective.<sup>81</sup> Further, the firewall policy was not signed by any National Media employee, and  
2 Roberts's affidavit does not provide any details regarding when it was distributed and how it was  
3 implemented.<sup>82</sup> Under these circumstances, it appears unlikely that the firewall policy  
4 effectively prevented material information about the candidate's communication strategies from  
5 being used by National Media officials or passing to the NRA Respondents. As such, the  
6 firewall safe harbor does not apply.<sup>83</sup>

7 Respondents also argue that the NRA Respondents' ads were placed before the Trump  
8 Committee's ads and thus were publicly available "immediately" through the FCC's public  
9 database.<sup>84</sup> They thus reason that these ads cannot be deemed coordinated, and, therefore, the  
10 safe harbor applies.<sup>85</sup> However, Respondents' argument that the ad buys were publicly available

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<sup>81</sup> Kovatch and Angle assert that they performed work for the NRA Respondents in 2016 until September 15, 2016, and September 18, 2016, respectively. NRA Resp. at 17, 20, Angle Affidavit ¶¶ 4-9, Kovatch Affidavit ¶¶ 4-7, Attachs. E, F, MUR 7553. They state they performed work in accordance with the Trump Firewall policy and insist that the rate request documents that identify them as the contacts for ads on behalf of the NRA Respondents after those dates may not reflect current information and, in any event, they do not submit rate requests — this is done by media assistants such as Kowalski. *See* NRA Resp. at 14, 18-2, Ben Angle Affidavit ¶ 7, Kovatch Affidavit ¶ 7, MUR 7553. Whether these contemporaneous documents contain accurate information — as opposed to information in Kovatch's and Angle's *post hoc* affidavits — is a factual dispute that necessarily requires investigation. Further, Respondents state that Kowalski, as a media assistant, worked at the direction of the media buyers, such as Kovatch and Angle. *See* NRA Resp. at 14, MUR 7553 (noting that media assistants perform clerical and administrative support for the media buyers).

<sup>82</sup> *See* NRA Resp., Ex. F, MUR 7553; Robins Affidavit ¶ 3, MUR 7553. The Commission has stated that a "person paying for a communication seeking to use the firewall safe harbor should be prepared to provide reliable information (e.g., affidavits) about an organization's firewall, and how and when the firewall was distributed and implemented." Coordinated Communications, 71 Fed. Reg. 33,190, 33,205 (June 8, 2006). Notably, at the end of National Media's firewall policy is the following: "Please sign and date this policy statement acknowledging that you have read and understand the Policy Statement. *Return the signed copy to Robin.* An additional copy has been provided for your records." *See* NRA Resp., Attach. F (emphasis added).

<sup>83</sup> *See* 11 C.F.R. § 109.21(h).

<sup>84</sup> NRA Resp. at 21-26; Trump Committee Resp. at 1 n.1, MUR 7553. "To qualify for the safe harbor, the person paying for the communication bears the burden of showing that the information used in creating, producing, or distributing the communication was obtained from a publicly available source." 71 Fed. Reg. at 33,205.

<sup>85</sup> NRA Resp. at 2-3, 21-26, MUR 7553; Trump Committee Resp. at 1 n.1, MUR 7553.

1 ignores the key fact that the *same* company and personnel placed ads for both the payor and the  
2 candidate committee, undermining the contention that the relevant participants relied solely on  
3 information in the stations' public inspection files to make placement decisions. Importantly, the  
4 NRA Respondents do not argue in their responses or include statements in their affidavits that  
5 they relied on publicly available information to make their ad placement decisions, or even that  
6 they were aware of the information in the public inspection files.<sup>86</sup>

7 Relatedly, Respondents' argument that common vendor coordination is impossible  
8 because National Media placed the NRA's ads before the Trump Committee's ads is  
9 unconvincing.<sup>87</sup> According to Respondents, the NRA's ads that ran on Raycom Sports and on  
10 the Norfolk station were placed before the Trump Committee ads, making "common vendor"  
11 coordination impossible.<sup>88</sup> The third element of the common vendor standard, however, does not  
12 depend entirely on the sequencing of the ads; the element focuses on whether the commercial  
13 vendor uses or conveys to the person paying for the communication information that is material  
14 to its distribution, irrespective of when that communication airs.<sup>89</sup> If Respondents' position were  
15 correct, candidates and third parties could completely avoid common vendor coordination  
16 findings by strategically timing the placement of a third party's fully coordinated communication  
17 just before the candidate's message. Further, Respondents acknowledge that Angle, a senior

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<sup>86</sup> See NRA Resp. at 3-5, MUR 7553. Respondents' failure to assert that their ad placement decisions were based on information in the stations' public files distinguishes this matter from MUR 5506 (EMILY's List). See Commission Certification, MUR 5506 (Aug. 12, 2005), First General Counsel's Report at 5-7 (concluding that the response rebuts allegation of coordination because the committee "states that it made its decisions about placing and pulling ads on information that television stations are required to make public").

<sup>87</sup> See NRA Resp. at 21-26, MUR 7553.

<sup>88</sup> *Id.*

<sup>89</sup> See 11 C.F.R. § 109.21(d)(4)(iii).

1 media buyer, placed the ads that ran during the ACC football games on Raycom Sports for both  
2 the Trump Committee and the NRA-ILA,<sup>90</sup> and Respondents do not deny, let alone address, the  
3 pattern described in news reports that these ads were “mirror images” of each other.<sup>91</sup>

4 Respondents’ argument that Ferrell’s signature on the ad placement forms was merely an  
5 administrative step, and he was not involved in the creation, production, or distribution of the ads  
6 is also not persuasive.<sup>92</sup> Respondents assert that the “‘agreement forms’ are not contracts,” do  
7 not “authorize the airing” or placement of ads, and “have nothing whatsoever to do with the  
8 selection of audiences and time slots.”<sup>93</sup> Instead, Respondents argue, other documents contain  
9 the actual details of any ad buy.<sup>94</sup> However, according to the National Association of  
10 Broadcasters — the entity that created the ad placement forms themselves — these forms were  
11 “*designed to serve as actual contracts for the sale of political broadcast time and to satisfy FCC*

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<sup>90</sup> NRA Resp. at 21-22, MUR 7553.

<sup>91</sup> See *supra* note 64. Further, it is not clear whether Angle placed the NRA Respondents’ ads on August 25, 2016, a month before the Trump Committee ads were allegedly placed on or about September 20, 2016, as the agreement form signed by Ferrell for the placement of the NRA Respondents’ ads is dated September 15, 2016. See NRA Resp., Exs. L, M. Moreover, for ACC football games on November 5, 2016, Raycom Sports sent the signed agreement form for Trump Committee ads to a station on October 21, 2016, with a notation, “Teams TBD,” and sent the agreement form for NRA ads to a station on November 1, 2016. Thus, it is unclear whether all placement decisions for the Raycom Sports football games were made in either August or September for the Trump Committee and NRA Respondents. Compare WLWC, Political Files, <https://publicfiles.fcc.gov/tv-profile/wlwc/political-files/2016/federal/president/acc-presidential-advertisement/1783250b-5d2d-5439-33a0-207ed32aa122/> (showing file labeled “Note-Sold by Raycom 10 29 and 11 5” with upload date of Oct. 31, 2016 for Trump Committee ads), with WCJB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/wcjb-tv/political-files/2016/non-candidate-issue-ads/9d5850ce-2662-dd72-2d86-9ad974e9fa3e/> (showing file labeled “NRA-ACC Games-Raycom 11-5” with upload date of Nov. 3, 2016).

<sup>92</sup> NRA Resp. at 11-14, MUR 7553.

<sup>93</sup> *Id.* at 6, 11.

<sup>94</sup> *Id.* at 11.

1 record retention requirements.”<sup>95</sup> In addition, by signing the forms, Ferrell represented that the  
2 “payment for the above described broadcast time had been furnished” and that he was  
3 “authorized to announce the time as paid” by the NRA Respondents and Trump Committee.<sup>96</sup>  
4 Thus, Ferrell was in a position to know when and where the ads were being placed and the cost  
5 of the placements for both the Trump Committee and the NRA Respondents.<sup>97</sup> And Ferrell’s  
6 attempt to disclaim knowledge of the forms’ contents is undermined by his representations in  
7 them and his signatures on them.

8 Further, the fact that Ferrell and Kowalski may have been acting only in an  
9 “administrative” capacity does not preclude a coordination finding. As the Commission  
10 explained in the context of the “former employee” conduct standard, the “use or convey”  
11 standard “does not make any distinction between categories or ranks of employees.”<sup>98</sup> The  
12 Commission specifically declined to limit its application to “a specified class of employees who  
13 are likely to ‘possess material political information.’”<sup>99</sup> Under these circumstances, the  
14 Responses and Ferrell’s affidavit do not sufficiently refute the allegation that Ferrell or Kowalski

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<sup>95</sup> National Association of Broadcasters, Political Broadcast Agreement Forms, PB-18, <https://gab.org/wp-content/uploads/2016/06/pb18-form-final-c1.pdf>.

<sup>96</sup> *See, e.g.*, Compl., Exs. Q, R, MUR 7553. In fact, Ferrell signed the agreement form as the “agent of Donald J. Trump for President Inc.” *See id.*, Ex. R.

<sup>97</sup> Moreover, according to information on National Media’s website, Ferrell has experience “managing the financial details of campaigns,” “ensures that every penny allocated for media is spent according to election laws,” and “conducts post-election analysis of every account to substantiate and reconcile media buys.” National Media, <https://www.natmedia.com/#the-team>.

<sup>98</sup> *See* Advisory Opinion 2016-21 at 5 (Great America PAC); *see also* 11 C.FR. § 109.21(d)(5).

<sup>99</sup> *Id.* (quoting 68 Fed. Reg. at 437).



1 were in positions to have access to information that may have been material to the placement of  
2 the ads, even if they did not make the actual placement decisions.<sup>100</sup>

3 Accordingly, we recommend that the Commission find reason to believe that the NRA-  
4 PVF and the NRA-ILA violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a)<sup>101</sup> by making  
5 and failing to report excessive and prohibited in-kind contributions to the Trump Committee in  
6 the form of coordinated communications. The available information is insufficient to conclude  
7 that the Trump Committee engaged in any type of conduct indicating that it may have received  
8 or accepted an in-kind contribution resulting from a coordinated communication, *i.e.*, that  
9 committee requested or suggested, was materially involved with, or participated in substantial  
10 discussions about, the communications. However, because additional information may come to  
11 light as a result of an investigation, we recommend that the Commission take no action at this  
12 time on the coordination allegation against the Trump Committee.<sup>102</sup>

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<sup>100</sup> The Commission has stated that “common leadership or overlapping administrative personnel does not defeat the use of a firewall policy,” unless there is specific information that it did not prevent the flow of material information. 71 Fed. Reg. at 33,207. As noted above, the facts indicate that Ferrell and Kowalski had access to material information about ad placements for the NRA Respondents and the Trump Committee, and the pattern of these placements supports an inference that National Media may have used this information to maximize the effect of the ads it placed. This case stands in contrast to MUR 5823, where the Commission concluded that the common vendor standard was not satisfied because the media buyer vendor provided clerical and administrative support and did not have adequate decision-making control or knowledge of communications, *see* Factual & Legal Analysis at 10-11, MUR 5823 (Citizens Club for Growth). National Media does not argue, and the facts do not support, that as a company it was retained merely to provide administrative and clerical support for media buys, it lacked decision-making authority, or it lacked knowledge of the communications at issue.

<sup>101</sup> We include 52 U.S.C. § 30118(a) because the NRA Respondents are permitted to accept corporate contributions, but they are not permitted to contribute those funds to candidates.

<sup>102</sup> 11 C.F.R. § 109.21(b)(2); *see* 11 C.F.R. § 109.21(d)(1)-(3).

1                   2.       There is Reason to Believe that NRA-PVF Coordinated with the Hawley  
 2                                   Committee through National Media  
 3

4                   The Complaint in MUR 7524 also alleges that the NRA-PVF and the Hawley Committee  
 5 coordinated in the distribution and placement of communications through National Media in the  
 6 2018 election cycle.<sup>103</sup> According to the Complaint, on one occasion, the same National Media  
 7 official placed ads for the NRA-PVF and Hawley Committee on the same stations on the same  
 8 date.<sup>104</sup> As before, there is no dispute that the payment and content prongs of the coordinated  
 9 communication test are satisfied.<sup>105</sup> Similarly, there is no dispute that the first and second  
 10 common vendor elements are satisfied.<sup>106</sup> As with the Trump Committee and the NRA  
 11 Respondents, only the common vendor conduct prong is in dispute.

12                   Similar to the record concerning the 2016 election, the record raises a reasonable  
 13 inference that information National Media officials gained through their work for the Hawley  
 14 Committee was used by them or conveyed to others, including other National Media officials,  
 15 and the information influenced the placement of the NRA-PVF's pro-Hawley ads.<sup>107</sup> Documents

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<sup>103</sup> Compl. ¶¶ 67-76, MUR 7524.

<sup>104</sup> *Id.* ¶ 2.

<sup>105</sup> See NRA Resp. at 3-4, MUR 7524 (stating that the Commission should reject a finding of reason to believe on the basis that the “payor” and “content” standards are satisfied); see also *supra* notes 27, 34.

<sup>106</sup> See NRA Resp. at 2, 4, MUR 7524 (not disputing that National Media may be treated as a common vendor but explaining that in the absence of “credible evidence pertaining to the third part of the test,” the Commission should not find reason to believe on the basis that the first two parts of the common vendor test are satisfied). National Media qualifies as a “commercial vendor,” and the company distributed the NRA-PVF's pro-Hawley communications during the same time period it distributed the Hawley Committee's communications. See, e.g., Compl., Exs. J, K, Q, MUR 7524; KOAM-TV and KFJX-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/koam-tv/political-files/2018/non-candidate-issue-ads/nra-pvf/39da4b31-e695-2fd6-bfb9-4e8ebc10050a/> (showing NRA-PVF agreement form uploaded on Sept. 7, 2018); KSHB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/kshb-tv/political-files/2018/federal/us-senate/hawleyrepublicansenate/99c3bcd1-1299-9995-db1e-903f908a231e/> (showing political disclosure form for Hawley Committee ads by National Media on uploaded Aug. 31, 2018).

<sup>107</sup> See Factual & Legal Analysis at 3-4, 6-7, 10-11, MUR 5415 (Club for Growth).

1 uploaded to the FCC public database show that Ferrell signed agreements for the placement of  
2 ads on behalf of NRA-PVF and the Hawley Committee with the same television station on the  
3 same date.<sup>108</sup> Specifically, on September 6, 2018, Ferrell entered into an “Agreement Form for  
4 Non-Candidate/Issue Advertisements” with KYTV for NRA-PVF ads for the “Missouri General  
5 Election U.S. Senate.”<sup>109</sup> On the same day, Ferrell, as an agent of the Hawley Committee, also  
6 entered into an agreement with KYTV for a “coordinated buy” for “Josh Hawley for  
7 Senate/NRSC.”<sup>110</sup> In addition, on September 19, 2018, Kovatch asked to buy time to run NRA-  
8 PVF ads supporting Hawley on a Missouri station,<sup>111</sup> and two days later, Angle made a similar  
9 request to the same station to buy ad time on behalf of the Hawley Committee.<sup>112</sup> These  
10 circumstances support the inference that National Media used or conveyed non-public  
11 information to the NRA-PVF about the “plans, projects, activities or needs” of the Hawley  
12 Committee, and this information was material to the distribution of the NRA-PVF  
13 communications supporting Hawley.

14 The NRA Respondents, National Media, and the Hawley Committee deny the  
15 coordination allegations.<sup>113</sup> They again assert that Ferrell merely performed an administrative  
16 function by signing the “agreement forms,” and those acts alone are not evidence of

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<sup>108</sup> See Compl. ¶ 70(a)-(b), Exs. J, Q, MUR 7524.

<sup>109</sup> See *id.*, Ex. J.

<sup>110</sup> See *id.*, Ex. Q.

<sup>111</sup> See Compl., Ex. K, MUR 7524.

<sup>112</sup> See KSHB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/kshb-tv/political-files/2018/federal/us-senate/hawleyrepublicansenate/99c3bcd1-1299-9995-db1e-903f908a231e/> (showing political disclosure form for Hawley Committee ads by National Media on uploaded Sept. 21, 2018).

<sup>113</sup> NRA Resp. at 7-9, MUR 7524; Hawley Committee Resp. at 1-3, MUR 7524 (Dec. 3, 2018).

1 coordination.<sup>114</sup> They also assert that all placement decisions regarding advertisements in the  
2 2018 U.S. Senate race in Missouri were made in accordance with National Media's 2018  
3 Firewall Policy.<sup>115</sup> The firewall policy states that Angle and John Jay, another media buyer at  
4 National Media, were assigned to perform work for the Hawley Committee.<sup>116</sup> Kovatch and  
5 Tracey Robinson are listed as the media buyers for the NRA-PVF.<sup>117</sup> However, the policy did  
6 not apply to Ferrell, and it does not appear that it prevented the use or conveyance of material  
7 information from the Hawley Committee to the NRA respondents.<sup>118</sup> The policy is also not  
8 signed and it is unclear when and how it was distributed or implemented.<sup>119</sup> Thus, the firewall  
9 safe harbor does not apply.<sup>120</sup>

10 Accordingly, we recommend that the Commission find reason to believe that the NRA-  
11 PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a)<sup>121</sup> by making and failing to report

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<sup>114</sup> NRA Resp. at 7-9, Ferrell Affidavit ¶¶ 3-8, Attach. D, MUR 7524; *see* Hawley Committee Resp. at 1-3, MUR 7524.

<sup>115</sup> NRA Resp. at 7-8, MUR 7524.

<sup>116</sup> NRA Resp., Ex. E, MUR 7524. The policy states that whenever National Media determines that a firewall is required, the procedures that apply in that particular matter will be provided in a written memorandum, along with the firewall policy, to the relevant employees, consultants, and clients. *Id.* Unlike in MUR 7553, where National Media provided a document identified as the Trump Firewall Policy, National Media did not submit a separate memorandum outlining the policies that apply in the U.S. Senate race in Missouri.

<sup>117</sup> *Id.*

<sup>118</sup> *See* NRA Resp. at 8, Ex. E MUR 7524.

<sup>119</sup> Respondents also argue that the documents were publicly available in the stations' political file online. *See* NRA Resp. at 8 n.37, MUR 7524. They do not, however, state whether any National Media official relied on those documents in placing ads for the NRA-PVF, and do not address the fact that National Media placed ads for both the NRA-PVF and the Hawley Committee on the same date. *See id.* Thus, they have failed to carry their burden of showing that ad information from a publicly available source influenced their ad placement decisions. 71 Fed. Reg. 33,190, 33,205.

<sup>120</sup> *See* 11 C.F.R. § 109.21(h).

<sup>121</sup> We include 52 U.S.C. § 30118(a) because the NRA Respondents are permitted to accept corporate contributions, but they are not permitted to contribute those funds to candidates.

1 excessive and prohibited in-kind contributions to the Hawley Committee in the form of  
2 coordinated communications. As was the case with the Trump Committee, there is insufficient  
3 information to evaluate whether the Hawley Committee engaged in any type of conduct  
4 indicating that it received or accepted an in-kind contribution resulting from a coordinated  
5 communication. Accordingly, we recommend that the Commission take no action at this time on  
6 any coordination allegation against the Hawley Committee.

7 3. The Commission Should Take No Action at This Time on the Allegations  
8 that the NRA Respondents Coordinated Communications with the Tillis,  
9 Cotton, Gardner, Johnson, Rosendale, and Hawley Committees Through  
10 OnMessage and Starboard  
11

12 The Complaints in MURs 7427, 7497, and 7524 allege that the NRA Respondents  
13 coordinated communications with the Senate Committees through OnMessage and Starboard.  
14 Again, there is no dispute that the first and second prongs of the coordinated communications are  
15 satisfied.<sup>122</sup> As to the first and second elements of the common vendor test, OnMessage and  
16 Starboard “do not contest” that “by virtue of being operated and controlled by the same  
17 individuals” they may be treated as a ‘common vendor’” between the NRA Respondents and the  
18 Senate Committees.<sup>123</sup>

19 The Complaints allege that OnMessage created Starboard as a “shell company” to hide  
20 OnMessage’s status as a common vendor between the NRA Respondents and the candidates they  
21 supported, and to allow OnMessage to use or convey to the NRA Respondents information about

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<sup>122</sup> See NRA Resp. at 7, MUR 7427 (“Respondents acknowledge that the payment and content standards of the Commission’s coordinated communications test are satisfied[.]”); NRA Resp. at 3, MUR 7497; NRA Resp. at 3-4, MUR 7524; *see also supra* notes 29-34.

<sup>123</sup> NRA Resp. at 7, MUR 7427; *see* NRA Resp. at 3, MUR 7497; NRA Resp. at 4, MUR 7524.

1 those candidates plans, projects, and activities.<sup>124</sup> According to the Complaints, the two  
 2 companies function as a single company as they share the same officers,<sup>125</sup> operate from the  
 3 same addresses,<sup>126</sup> and OnMessage officials have made statements suggesting that the two  
 4 companies are indistinguishable.<sup>127</sup>

5 Whether Starboard and OnMessage functioned as a single company does not, by itself,  
 6 satisfy the third element of the common vendor standard. As the Commission has previously  
 7 explained, the “use or conveyance of information” does not focus on “the particular structure of  
 8 the vendor.”<sup>128</sup> The Complaints include unspecific and inferential allegations, such as the  
 9 suggestion that “the apparent[] deliberate routing of OnMessage’s NRA business through the

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<sup>124</sup> See Compl. ¶ 50, MUR 7427; Compl. ¶ 63, MUR 7497; Compl. ¶ 65, MUR 7524.

<sup>125</sup> The Complaints include the corporate documents of both companies, which confirm that the board of directors of both companies consist of the same people. See Compl., Exs. A-F, MUR 7427; Compl., Exs. A-F, MUR 7497; Compl., Exs. A-F, MUR 7524. In addition, the Complaints also cite a news article that reported “executives toggled between roles” at the two companies and have not publicly affiliated themselves with Starboard, and a former OnMessage employee who worked in the Alexandria, Virginia, office stated that “Starboard had no dedicated presence there.” See Mike Spies, *The Mystery Firm That Has Become the NRA’s Top Election Consultant*, Politico (July 13, 2018), <https://www.politico.com/magazine/story/2018/07/13/mystery-firm-nra-consultant-219004>; Mike Spies, *The Mystery Firm That Has Become the NRA’s Top Election Consultant*, The Trace (July 13, 2018), <https://www.thetrace.org/2018/07/nra-campaign-finance-onmessage-starboard-strategic/>.

<sup>126</sup> As support, the Complaints allege that the NRA Respondents frequently listed Starboard’s address as that of OnMessage in their reports to the Commission. See Compl., ¶¶ 18, 22, MUR 7427; Compl. ¶¶ 36, 65, MUR 7524. For instance, the NRA-PVF reported payments to Starboard for independent expenditures in connection with U.S. Senate races involving Tillis, Cotton, Johnson, and Hawley at 705 Melvin Ave. #105 Annapolis, Maryland, and the committees of these candidates reported disbursements to OnMessage at this same address. Compare NRA-PVF, Amended 2014 October Monthly Report at 742, 758 (Dec. 4, 2014), Amended 2016 Post-General Election Report at 520 (May 4, 2017), and 2018 Pre-General Election Report at 1,156 (Oct. 25, 2018), with Tillis Committee, 2014 Post-General Election Report at 839 (Dec. 4, 2014), Cotton Committee, 2014 Pre-General Election Report at 837 (Oct. 23, 2014), Johnson Committee, Amended 2016 October Quarterly Report at 2,662 (Jan. 13, 2017), and Hawley Committee, 2018 Post-General Election Report at 1,122 (Dec. 6, 2018).

<sup>127</sup> The Complaints cite to blog posts by OnMessage and Starboard directors Bradley Todd and Orrin Harrison, which announced that OnMessage was a finalist for and won industry awards for NRA ads that Starboard created during the 2016 election cycle. See Compl. ¶¶ 2, 50, MUR 7427; Compl. ¶ 63, MUR 7497; Compl. ¶ 65, MUR 7524. The Complaints point out that neither NRA-PVF nor NRA-ILA disclosed any disbursements to OnMessage for these or any other ads during the 2016 election cycle.

<sup>128</sup> See 68 Fed. Reg. at 436.

1 corporate shell of Starboard provides reason to believe that the purpose of OnMessage's creation  
2 of Starboard was to allow OnMessage to use or convey to the NRA Respondents information  
3 about the 'plans, projects, activities or needs' of the Senate Committees.<sup>129</sup> As Respondents  
4 argue,<sup>130</sup> these allegations are insufficient to support the third common vendor element.

5 The Complaints also allege, based on a joint article by *Politico* and *Trace*, that the third  
6 element is satisfied because OnMessage and Starboard director Bradley Todd worked as a  
7 consultant for the Senate Committees, while also reportedly providing strategic advice to Chris  
8 Cox, the executive director of the NRA-ILA and chairman of the NRA-PVF.<sup>131</sup> To support this  
9 allegation, the Complaints cite a news report that states Todd and Cox are friends, and former  
10 employees of the NRA-ILA observed Cox around their office "consulting with Brad over high-  
11 end issues that were deemed controversial."<sup>132</sup> This article, however, does not contain any  
12 information on the subject of these discussions, candidates, or races, or when the discussions  
13 allegedly took place.<sup>133</sup>

14 Moreover, Respondents submitted OnMessage and Starboard's firewall policies from the  
15 2014, 2016, and 2018 election cycles, and Todd's sworn affidavits as support for their argument  
16 that no one employee of Starboard or OnMessage worked on matters in the same U.S. Senate

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<sup>129</sup> See, e.g., Compl. ¶ 52, MUR 7427.

<sup>130</sup> See, e.g., NRA Resp. at 14-17, MUR 7427; Tillis Committee Resp. at 1-2, MUR 7427 (Sept. 20, 2018); Cotton Committee Resp. at 1-2, MUR 7427 (Sept. 19, 2018); Gardner Committee Resp. at 1-3, MUR 7427 (Sept. 28, 2018); Johnson Committee Resp. at 1-2, MUR 7427 (Sept. 28, 2018); Hawley Committee Resp. at 1-4, MUR 7524 (Nov. 30, 2018); Rosendale Committee Resp. at 3, 9.

<sup>131</sup> See, e.g., Compl., ¶¶ 18, 22, 51, MUR 7427; Compl., ¶ 8, MUR 7524.

<sup>132</sup> See Mike Spies, *The Mystery Firm That Has Become the NRA's Top Election Consultant*, POLITICO (July 13, 2018), <https://www.politico.com/magazine/story/2018/07/13/mystery-firm-nra-consultant-219004>; Mike Spies, *The Mystery Firm That Has Become the NRA's Top Election Consultant*, THE TRACE (July 13, 2018),

<sup>133</sup> *Id.*

1 race on behalf of NRA Respondents and the candidate committees they supported.<sup>134</sup> The  
2 firewall documents from these election cycles [which are unsigned and one of which is undated],  
3 state that OnMessage employees providing services to a senate candidate's campaign are  
4 prohibited from “[d]iscuss[ing] the private political plans, projects, activities, or needs, including  
5 messages” of that campaign with employees working for an organization making independent  
6 expenditures supporting that senate candidate or opposing that candidate's opponent.<sup>135</sup> In  
7 addition, Todd attests that he did not communicate or convey any non-public information about  
8 the campaign plans, activities, or needs of these candidates to any representative of the NRA-  
9 ILA or NRA-PVF.<sup>136</sup> He also attests that he was not involved in any decisions regarding the  
10 creation, production, or distribution of independent expenditures on behalf of the NRA-PVF or  
11 NRA-ILA in connection with the relevant U.S. Senate races.<sup>137</sup> Unlike our analysis of the  
12 common vendor test involving National Media, here, the record indicates that the firewall policy  
13 may have been effective.

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<sup>134</sup> See NRA Resp. at 1-4, Todd Affidavit, Attachs. A-B, MUR 7427; NRA Resp. at 2-3, Attachs. C-D, MUR 7497; NRA Resp. at 2, Attachs. A-B, MUR 7524.

<sup>135</sup> NRA Rep., Attachs. A-B, MUR 7427; NRA Resp., Attach. C, MUR 7497; NRA Resp., Attach. A, MUR 7254. Likewise, under the policy, employees providing services to an independent expenditure group are prohibited from “[d]iscuss[ing] the private political plans, projects activities, or needs, including messages” of that group with employees working for the campaigns of senate candidates supported by that group's independent expenditures. This sentence doesn't make sense as written. See, e.g., NRA Rep., Attach. A, MUR 7427.

<sup>136</sup> See NRA Resp., Todd Affidavit ¶¶ 3-7, MUR 7427; NRA Resp., Todd Affidavit ¶¶ 3-5, MUR 7497; NRA Resp., Todd Affidavit ¶¶ 3-7, MUR 7524.

<sup>137</sup> See NRA Resp., Todd Affidavit ¶¶ 3-7, MUR 7427; NRA Resp., Todd Affidavit ¶¶ 3-5, MUR 7497; NRA Resp., Todd Affidavit ¶¶ 3-7, MUR 7524. While Todd explains that he provided consulting services to the NRA Respondents during the 2014, 2016, and 2018 election cycles, he states that such services were in connection with elections other than races involving the Respondent candidates. See NRA Resp., Todd Affidavit ¶ 3, MUR 7427; NRA Resp., Todd Affidavit ¶ 3, MUR 7497; NRA Resp., Todd Affidavit ¶ 3, MUR 7524. In addition, Todd states that in 2018, OnMessage and Starboard did not provide any services to the NRA Respondents in the U.S. Senate race in Missouri, and it retained an independent contractor to provide “certain media-related services” in that race. See NRA Resp., Todd Affidavit ¶¶ 5-8, MUR 7524; see also NRA Resp., Heather Doiron Affidavit, Attach. C, MUR 7524.



1           Finally, as the Complaints point out, the Commission in earlier matters “has found reason  
2 to believe that FECA has been violated if the first two parts of the common vendor test are  
3 satisfied” and then proceeded to investigate the third element.<sup>138</sup> However, given Respondents  
4 denials and the absence of information sufficient to support the third element of the common  
5 vendor test, the record at this time does not provide a basis on which we recommend finding  
6 reason to believe Respondents coordinated communications through OnMessage and  
7 Starboard.<sup>139</sup> Nevertheless, because we may find information material to the third element  
8 during the investigation into the coordination allegations involving the NRA Respondents and  
9 the Trump and Hawley Committees, we recommend that the Commission take no action at this  
10 time on these allegations, pending resolution of the investigation in those matters.<sup>140</sup>

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<sup>138</sup> See, *e.g.*, Compl. ¶ 41, MUR 7427 (citing MURs 5546 (Progress for America Voter Fund), 5502 (Martinez for Senate), and 5403 & 5466 (America Coming Together, *et al.*)).

<sup>139</sup> See, *e.g.*, Factual & Legal Analysis at 6, MUR 6269 (Montandon for Governor); Factual & Legal Analysis at 11, MUR 6120 (“[T]he use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the conduct prong of the coordination test.”).

<sup>140</sup> The NRA Respondents, National Media, OnMessage, and Starboard jointly filed a supplemental response in MURs 7427, 7497, 7524, and 7553, arguing that past statements by the Campaign Legal Center indicate that the present complaints include false statements in violation of 18 U.S.C. § 1001. See NRA Supplemental Resp. at 1 (Feb. 21, 2019). Specifically, they note that the Campaign Legal Center took no issue when it was publicly reported in 2012 that GMMB, a media consulting vendor aligned with Democratic entities, and two entities, Waterfront Strategies and Great American Media, which were described in reports as “internal firm[s] from inside GMMB” or “branches of GMMB,” engaged in what Respondents contend are business practices similar to those by OnMessage and National Media. *Id.* at 2-3. In addressing GMMB’s business practice, a senior counsel for the Campaign Legal Center is quoted in a 2013 article cited by Respondents as saying, “[s]etting up spinoffs is more about ‘optics’ than skirting coordination rules.” *Id.* at 3. According to the Respondents, these statements show that the Complaints in these matters “contain knowing misrepresentations and outright lies” as the Campaign Legal Center’s sworn statements in these matters say “something completely different” from their prior statements. *Id.* at 4. They request that the Commission consider whether the Campaign Legal Center and its representative violated 18 U.S.C. § 1001 in filing the sworn complaints in these matters. *Id.* These allegations are outside the Commission’s jurisdiction, and we make no recommendation as to them.

1           **C.     The Commission Should Take No Action on the Allegation that Rosendale**  
 2           **“Assented” to the Communications Supporting Him and Opposing Tester**<sup>141</sup>

3  
 4           Separate from the common vendor allegations, the MUR 7497 Complaint includes an  
 5           allegation that Rosendale assented to Cox's suggestion that the NRA-ILA make public  
 6           communications supporting Rosendale's candidacy.<sup>142</sup> As previously noted, there is no dispute  
 7           that the first two prongs of the coordinated expenditures test are satisfied with respect to the  
 8           NRA Respondents' ads supporting Hawley or opposing his opponent.<sup>143</sup> At issue is whether the  
 9           conduct prong has been satisfied.

10           During his Senate race, Rosendale appeared at a July 2018 event in Washington, DC,  
 11           where he responded to questions about spending from outside groups on his behalf:

12           Questioner:    Outside groups started spending on your behalf?

13           Rosendale:     Yes, So, the uh, the Club for Growth has already started. Umm, there's  
 14                           another group that has already started. I can't even remember the name of  
 15                           it now. They just started recently. Outside groups have already started to  
 16                           come in. I fully expect that the U.S. Chamber is gonna come in, and I  
 17                           fully expect the NRA is gonna come in. I think both of them are coming  
 18                           in, probably right here in August, sometime.

19  
 20           Questioner:    This is a big race for the NRA.

21  
 22           Rosendale:     Yes. The, the uh, Supreme Court confirmations are big. That's what sent  
 23                           the NRA over the line. Because in 12, with [Republican Senate nominee  
 24                           Denny Rehberg], they stayed out. They stayed out. Chris Cox told me, he  
 25                           was like, “Well, we're gonna be in this race.”<sup>144</sup>

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<sup>141</sup>       Although the Complaint in MUR 7497 only named the NRA-ILA, the NRA-PVF also made independent expenditures in this race, as noted above. *See* NRA-PVF, IEs supporting/opposing Matt Rosendale and Jon Tester, 2017-2018 (regularly scheduled reports).

<sup>142</sup>       Compl. ¶ 2, MUR 7497.

<sup>143</sup>       *See* NRA-PVF, IEs supporting/opposing Matt Rosendale and Jon Tester, 2017-2018 (regularly scheduled reports); NRA-ILA, IEs supporting/opposing Matt Rosendale and Jon Tester, 2017-2018 (regularly scheduled reports); *see also* NRA Resp. at 2, MUR 7497.

<sup>144</sup>       *See* Compl. ¶¶ 10-12, MUR 7497; NRA Resp. at 4, MUR 7497.

1 On September 6, 2018, the NRA-ILA reported disseminating a total of \$404,496 in independent  
2 expenditures opposing Rosendale's opponent, Senator Jon Tester.<sup>145</sup>

3 Respondents deny that Cox suggested, and Rosendale assented to, the NRA's public  
4 communications in connection with the Montana Senate race.<sup>146</sup> In sworn affidavits, both Cox  
5 and Rosendale state that they spoke to each other on one occasion during the 2018 election cycle,  
6 which was during a meeting held on or about June 13, 2018.<sup>147</sup> Rosendale states that he met  
7 with Cox because he was seeking the NRA's endorsement, and Cox's affidavit corroborates that  
8 statement.<sup>148</sup> Both state that they did not discuss the timing or content of communications  
9 supporting Rosendale's candidacy.<sup>149</sup> Cox submits that he mentioned the "NRA's dissatisfaction  
10 with the vote against the confirmation of Justice Gorsuch by [Tester]" and informed Rosendale  
11 that "his race was a priority for the NRA, given the high profile nature and importance of that  
12 election and the importance of the Supreme Court to NRA members."<sup>150</sup> Cox acknowledges that  
13 he "may have said that the NRA anticipated it would be 'in the race,'" but "he was not ready to  
14 formally commit to the NRA's endorsement of [Rosendale's] candidacy at that time," "did not  
15 indicate that [the NRA's] involvement would take any particular form" and "was in no way

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<sup>145</sup> See NRA-ILA, October Quarterly Report (Oct. 11, 2018).

<sup>146</sup> See NRA Resp. at 4, MUR 7497; Rosendale Committee Resp. at 8-11, MUR 7497.

<sup>147</sup> Rosendale Affidavit ¶ 1, MUR 7497; Cox Affidavit ¶ 5, MUR 7497 (stating that "upon information and belief" that he spoke with Rosendale or a representative of his campaign once during the 2018 election cycle, which was on June 13, 2018).

<sup>148</sup> Rosendale Affidavit ¶ 2, MUR 7497; Cox Affidavit ¶ 8, MUR 7497.

<sup>149</sup> Rosendale Affidavit ¶ 4, MUR 7497; see Cox Affidavit ¶ 9-10, MUR 7497.

<sup>150</sup> Cox Affidavit ¶ 9, MUR 7497.

1 seeking Mr. Rosendale's approval or permission."<sup>151</sup> Cox attests that he became aware of  
2 Rosendale's comments from the July 2018 meeting when they were published on September 13,  
3 2018.<sup>152</sup>

4 The "request or suggest" conduct standard is satisfied under the Commission's regulation  
5 when the communication is "created, produced, or distributed at the suggestion of a person  
6 paying for the communication and the candidate [or] authorized committee . . . assents to the  
7 suggestion."<sup>153</sup> It "is a direct form of coordination resulting in a contribution."<sup>154</sup> A candidate's  
8 assent to a payor's suggestion satisfies this standard "whether or not there is agreement or formal  
9 collaboration."<sup>155</sup> In the coordinated expenditure rulemaking, the Commission explained "that  
10 the assent to a suggestion must be encompassed by this conduct standard to prevent the  
11 circumvention" of the "request or suggestion" test through "the expedient of implicit  
12 understandings without a formal request or suggestion."<sup>156</sup> While the regulations do not define  
13 the term "assent," the Commission observed in its rulemaking that it is "an expression of a desire  
14 to some person for something to be granted or done" and can "take many forms."<sup>157</sup> Merely

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<sup>151</sup> *Id.*

<sup>152</sup> Cox Affidavit ¶ 11, MUR 7497.

<sup>153</sup> 11 C.F.R. § 109.21(d)(1). The "request or suggestion" standard is also satisfied if the communication is created, produced or distributed "at the request or suggestion" of a candidate or a candidate's committee. *Id.* There is no difference between a "suggestion" from a candidate and "suggestion" from the payor to which the candidate assents. *See* 68 Fed. Reg. at 432 ("Assent to a suggestion is merely one form of a request.").

<sup>154</sup> 68 Fed. Reg. at 432.

<sup>155</sup> *Id.*; *see also* 11 C.F.R. § 109.21(e) ("Agreement or formal collaboration between the [payor] and the [candidate] is not required for a communication to be a coordinated communication.").

<sup>156</sup> 68 Fed. Reg. at 432.

<sup>157</sup> *Id.*

1 informing a candidate or political committee of the payor's plans would not result in  
2 coordination in the absence of assent by the candidate.<sup>158</sup> "A determination of whether assent to  
3 a suggestion occurs is necessarily a fact-based determination[.]"<sup>159</sup>

4 Here, the available information indicates that at the June 2018 meeting, Cox told  
5 Rosendale of his displeasure with Tester and of the importance of the Supreme Court to the  
6 NRA, and Cox acknowledges that he "may" have told Rosendale that the NRA anticipated being  
7 in the Montana U.S. Senate race, but there is no information that Cox or Rosendale discussed  
8 any public communications planned by the NRA Respondents at that time, or any other time.<sup>160</sup>  
9 Further, even though statements by Rosendale at the July event may indicate that he had inside  
10 knowledge of the NRA's plans to engage in the U.S. Senate race in Montana, the factual record  
11 is insufficient to determine the basis for those statements. Moreover, it does not appear that the  
12 NRA-ILA ran the ads as a result of Rosendale's statements, as Cox states that he did not learn of

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<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> This matter is, therefore, distinguishable from prior matters where the Commission concluded that the request or suggestion or the assent prong was satisfied. *See, e.g.*, Factual & Legal Analysis at 3, 6-7, MUR 6512 (Knollenberg for Congress Committee) (concluding that letter may have been created, produced, or distributed at the suggestion of an individual and candidate may have assented to the letter based on several meetings and the candidate's approval of the letter); Factual & Legal Analysis at 7-8, MUR 6049 (Democratic Executive Committee of Florida) (concluding that the candidate committee assented to the express advocacy phone bank by authorizing it); *see also* First General Counsel's Report at 12, MUR 7330 (Mia Love, *et al.*) (concluding that the available information indicates that the candidate committee cooperated with the party committee on the mailings and thus one or more of the conduct standards were satisfied, including: the mailings were created, produced or distributed at the request or suggestion of the committee or candidate, or the candidate or the committee assented to them); Second General Counsel's Report at 17-18, MUR 5879 (DCCC, *et al.*) (noting that the DCCC asked for, and the candidate's campaign provided, footage that the DCCC used to produce an ad and thus an argument could be made that the DCCC made a suggestion that it run an advertisement featuring the candidate, to which the campaign assented by sending the footage, but recommending that the Commission find no reason to believe that there was a violation because there was no specific information that the DCCC's communication was anything more than a generic request for footage).

1 the statements until September 13, 2018, when they became public, which was also after the first  
2 ads by the NRA-ILA ran on September 6, 2018.<sup>161</sup>

3           Given the Respondents' denials, and the absence of any information about other  
4 discussions between Rosendale and Cox and the NRA-ILA, the record at this time does not  
5 support a finding that Rosendale assented to the creation of the NRA-ILA's communications.<sup>162</sup>  
6 Nevertheless, we recommend that the Commission take no action at this time on this claim,  
7 pending the results of the investigation in the coordination claims involving the NRA  
8 Respondents.

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<sup>161</sup> NRA Resp., Cox Affidavit ¶ 11, MUR 7497; *see* NRA-ILA 48-Hour Report at 2 (Sept. 7, 2018).

<sup>162</sup> *See* Factual & Legal Analysis at 6-8, MUR 6407 (Senate Conservatives Fund) (concluding that leadership PAC's communications that supported candidate were not coordinated even though candidate and sponsor of leadership PAC appeared together during a campaign event in which both gave speeches, because there was no information linking sponsor's appearance with candidate to the public communications, no statements that the candidate requested or suggested that the leadership PAC run ads, nor any information that the candidate assented to the PAC's suggestion that it create, produce, or distribute the ads); Factual & Legal Analysis at 7-8, MUR 5831 (Softer Voices) (rejecting argument that candidate "assented" to the respondent's expenditure based on allegations that the respondent used material from the candidate's book in the ad and paid a fee to candidate's publisher, because the candidate denied being in contact with publisher over the expenditure); First General Counsel's Report at 7, MUR 5506 (EMILY's List) (concluding that responses sufficiently rebut allegation of coordination in that the committee denied that it had knowledge of or involvement with EMILY's List ads, and neither it nor agents discussed, suggested, or assented to the ads).

MURs 7427, *et al.* (National Rifle Association of America Political Victory Fund, *et al.*)

First General Counsel's Report

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1 **V. RECOMMENDATIONS**

2 **MUR 7553**

- 3 1. Find reason to believe that the NRA-PVF and the NRA-ILA violated 52 U.S.C.  
4 §§ 30104(b), 30116(a) and 30118(a) by making and failing to report excessive and  
5 prohibited in-kind contributions to Donald J. Trump for President, Inc. and Bradley T.  
6 Crate in his official capacity as treasurer by coordinating communications through  
7 National Media;
- 8 2. Take no action at this time as to Donald J. Trump for President, Inc. and Bradley T.  
9 Crate in his official capacity as treasurer;
- 10 3. Approve the Factual and Legal Analysis;
- 11 4. Authorize the use of compulsory process, including the issuance of appropriate  
12 interrogatories, document subpoenas, and deposition subpoenas, as necessary; and  
13
- 14 5. Approve the appropriate letter.

15 **MUR 7524**

- 16 1. Find reason to believe that the NRA-PVF violated 52 U.S.C. §§ 30104(b), 30116(a),  
17 and 30118(a) by making and failing to report excessive and prohibited in-kind  
18 contributions to Josh Hawley for Senate and Salvatore Purpura in his official capacity  
19 as treasurer by coordinating communications through National Media;
- 20 2. Take no action at this time as to the allegations that the NRA-PVF and NRA-ILA  
21 coordinated communications with the Thom Tillis Committee and Collin McMichael  
22 in his official capacity as treasurer, Cotton for Senate and Theodore V. Koch in his  
23 official capacity as treasurer, Cory Gardner for Senate and Lisa Lisker in her official  
24 capacity as treasurer, Ron Johnson for Senate, Inc. and James J. Malczewski in his  
25 official capacity as treasurer, and Josh Hawley for Senate and Salvatore Purpura in  
26 his official capacity as treasurer through OnMessage and Starboard;
- 27 3. Approve the Factual and Legal Analysis;
- 28 4. Authorize the use of compulsory process, including the issuance of appropriate  
29 interrogatories, document subpoenas, and deposition subpoenas, as necessary; and  
30
- 31 5. Approve the appropriate letter.  
32

33 **MUR 7497**

- 34 1. Take no action at this time as to the NRA-ILA; and



- 1           2. Take no action at this time as to the Thom Tillis Committee and Collin McMichael in  
 2 his official capacity as treasurer, Cotton for Senate and Theodore V. Koch in his  
 3 official capacity as treasurer, Cory Gardner for Senate and Lisa Lisker in her official  
 4 capacity as treasurer, Ron Johnson for Senate, Inc. and James J. Malczewski in his  
 5 official capacity as treasurer, and Matt Rosendale for Montana and Errol Galt in his  
 6 official capacity as treasurer.

7           **MUR 7427**

- 8           1. Take no action at this time as to the NRA-PVF and NRA-ILA; and  
 9  
 10          2. Take no action at this time as to the Thom Tillis Committee and Collin McMichael in  
 11 his official capacity as treasurer, Cotton for Senate and Theodore V. Koch in his  
 12 official capacity as treasurer, Cory Gardner for Senate and Lisa Lisker in her official  
 13 capacity as treasurer, and Ron Johnson for Senate, Inc. and James J. Malczewski in  
 14 his official capacity as treasurer.

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20           May 10, 2019

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Lisa J. Stevenson  
 Acting General Counsel

*Charles Kitcher*

Charles Kitcher  
 Acting Associate General Counsel for Enforcement

*Stephen Gura*

Stephen Gura  
 Deputy Associate General Counsel for Enforcement

*Lynn Y. Tran*

Lynn Y. Tran  
 Assistant General Counsel

*Jonathan A. Peterson*

Jonathan A. Peterson  
 Attorney

ELW edits 1/25/21

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

RESPONDENTS: National Rifle Association of America MURs 7553 and 7524  
Political Victory Fund and Robert Owens,  
in his official capacity as treasurer  
National Rifle Association of America Institute  
for Legislative Action and Robert Owens,  
in his official capacity as treasurer

**I. INTRODUCTION**

These matters were generated by two complaints filed with the Federal Election Commission (the “Commission”). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that the National Rifle Association of America Political Victory Fund (the “NRA-PVF”) and the National Rifle Association Institute for Legislative Action (the “NRA-ILA”) (collectively the “NRA Respondents”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by making excessive, prohibited, and unreported in-kind contributions to Donald J. Trump for President, Inc. (the “Trump Committee”) and Josh Hawley for Senate (the “Hawley Committee”) in the form of coordinated communications using “common vendors” National Media Planning and Placement LLC (“National Media”), Red Eagle Media Group (“Red Eagle”), and American Media & Advocacy Group (“AMAG”).<sup>1</sup> For the reasons that follow, the Commission finds reason to believe that: (1) the NRA-PVF and the NRA-ILA violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a), by making and failing to report excessive and prohibited in-kind contributions to Donald J. Trump for President, Inc. and Bradley T. Crate; and (2) the NRA-PVF violated U.S.C. §§ 30104(b), 30116(a), and 30118(a), by making and failing

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<sup>1</sup> *See* Compl. ¶¶ 2-3, 57-68, MUR 7553; Compl. ¶¶ 1-3, 58, MUR 7524 (Oct. 22, 2018).

MURs 7553 and 7524 (National Rifle Association of America Political Victory Fund, *et al.*)  
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1 to report excessive and prohibited in-kind contributions to Josh Hawley for Senate and Salvatore  
2 Purpura in his official capacity as treasurer.

## 3 **II. FACTUAL BACKGROUND**

4 The NRA-PVF is registered with the Commission as a separate segregated fund  
5 connected to the National Rifle Association of America (“NRA”).<sup>2</sup> It makes contributions to  
6 candidates and political committees and makes independent expenditures through a separate  
7 account.<sup>3</sup> The NRA-ILA is a tax-exempt organization under Section 501(c)(4) of the Internal  
8 Revenue Code that, according to the Complaints, describes itself as “the principal lobbying arm  
9 of the NRA.”<sup>4</sup>

10 In the 2016 general election, Donald J. Trump was the Republican nominee for  
11 President.<sup>5</sup> In the 2018 election cycle, Josh Hawley was a candidate for U.S. Senate in  
12 Missouri.<sup>6</sup> National Media is a Virginia company that organized in 2006 and provides political  
13 consulting services.<sup>7</sup> According to public state records, “Red Eagle Media Group” and

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<sup>2</sup> The NRA-PVF’s Amended Statement of Organization also notes that it is a Lobbyist/Registrant PAC. *See* NRA-PVF, Amended Statement of Organization (Mar. 16, 2019).

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

<sup>4</sup> *See, e.g.*, Compl. ¶ 8, MUR 7553.

<sup>5</sup> *See* Donald J. Trump, Statement of Candidacy (July 29, 2016); Ron Johnson, Statement of Candidacy (Apr. 30, 2015).

<sup>6</sup> Josh Hawley, Statement of Candidacy (Oct. 10, 2017).

<sup>7</sup> *See* National Media, Commonwealth of Virginia State Corporation Commission, <https://sccfilefile.scc.virginia.gov/Business/S207052>. It is registered at 815 Slaters Lane, Alexandria, VA 22314.

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1 “American Media & Advocacy” are fictitious names used by National Media.<sup>8</sup> In fact,  
2 Respondents acknowledge that National Media, Red Eagle, and AMAG are the same company.<sup>9</sup>  
3 National Media holds itself out as “a leader in media research, planning, and placement for issue  
4 advocacy, corporate, and political campaigns.”<sup>10</sup>

5 In the 2016 presidential election, the NRA-ILA made over \$21 million in independent  
6 expenditures in support of Trump or in opposition to Hillary Clinton, and the NRA-PVF made  
7 close to \$9.3 million in such expenditures.<sup>11</sup> Of that approximately \$30 million, the NRA  
8 Respondents paid Starboard Strategic, Inc. (“Starboard”) nearly \$26 million for advertising  
9 expenses.<sup>12</sup> Starboard, in turn, retained National Media personnel to place the NRA  
10 Respondents’ ads, which they did under National Media’s fictitious name, “Red Eagle.”<sup>13</sup>

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<sup>8</sup> See, e.g., National Media, Certificate of Assumed or Fictitious Name “Red Eagle Media Group,” Commonwealth of Virginia State Corporation Commission (Mar. 27, 2014); National Media, Certificate of Assumed or Fictitious Name “American Media & Advocacy Group,” Commonwealth of Virginia State Corporation Commission (Dec. 12, 2018). Respondents argue that the Complaint in MUR 7553’s reference to “American Media & Advocacy Group, LLC . . . at Paragraph 46” is a separate legal entity from AMAG “that was created by National Media’s principals but has never had any operations.” NRA Resp. at 5 n.16, MUR 7553 (Jan. 29, 2019) (on behalf of NRA-ILA, NRA-PVF, and National Media). Respondents also contend that the “Complaint’s reference to ‘AMAG’ at Paragraph 47 is a reference to the fictitious name used by National Media.” *Id.* Paragraphs 46 and 47 of the MUR 7553 Complaint do not contain a reference to either of these entities. Further, while the relationship between these ostensibly related entities is unclear on this record, we note that, like National Media, AMAG, and Red Eagle, the company “American Media & Advocacy Group, LLC” is also registered at 815 Slaters Lane, Alexandria, VA 22314. See American Media & Advocacy Group, LLC, <https://sccefile.scc.virginia.gov/Business/S416256>.

<sup>9</sup> NRA Resp. at 5, MUR 7553.

<sup>10</sup> National Media, <http://www.natmedia.com/> (last visited May 9, 2019).

<sup>11</sup> See NRA-PVF and NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Trump or Clinton, 2015-2016 (regularly scheduled reports).

<sup>12</sup> See Compl. ¶¶ 15-16, MUR 7553; see also NRA-PVF and NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Trump or Clinton, 2015-2016 (regularly scheduled reports).

<sup>13</sup> See NRA Resp. at 6, MUR 7553; Compl. ¶¶ 15, MUR 7553.

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1 Reports filed with the Commission show that the Trump Committee paid nearly \$74 million for  
2 “placed media” under National Media’s other fictitious name, “AMAG.”<sup>14</sup>

3 In the 2018 U.S. Senate race in Missouri, the NRA-PVF disclosed nearly \$1.3 million in  
4 independent expenditures supporting Hawley or opposing his opponent, Claire McCaskill, which  
5 included expenditures for ads.<sup>15</sup> As in the 2016 presidential election, National Media officials  
6 distributed the NRA-PVF’s ads supporting Hawley or attacking McCaskill under the “Red  
7 Eagle” fictitious name, and placed ads by the Hawley Committee under the “AMAG” fictitious  
8 name.<sup>16</sup>

### 9 III. LEGAL ANALYSIS

10 The Federal Election Campaign Act of 1971, as amended (the “Act”), defines the terms  
11 “contribution” and “expenditure” to include “anything of value” made by any person for the  
12 purpose of influencing an election.<sup>17</sup> The term “anything of value” includes in-kind  
13 contributions.<sup>18</sup> In-kind contributions result when goods or services are provided without charge  
14 or at less than the usual and normal charge,<sup>19</sup> and when a person makes an expenditure in

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<sup>14</sup> See Trump Committee, Disbursements to AMAG, 2017-2018 (regularly scheduled reports); *see also* NRA Resp. at 6, MUR 7553; Compl. ¶ 17, MUR 7553.

<sup>15</sup> See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Hawley or McCaskill, 2017-2018 (regularly scheduled reports).

<sup>16</sup> See Compl. ¶¶ 40-47, MUR 7524; NRA Resp. at 4-5, MUR 7524 (Dec. 17, 2018) (on behalf of NRA-PVF, NRA-ILA, OnMessage, Starboard, and National Media).

<sup>17</sup> 52 U.S.C §§ 30101(8)(A)(i), 30101(9)(A)(i).

<sup>18</sup> 11 C.F.R. § 100.52(d).

<sup>19</sup> *Id.*

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1 cooperation, consultation or in concert with, or at the request or suggestion of a candidate or the  
2 candidate's authorized committee or their agents.<sup>20</sup>

3 Under Commission regulations, expenditures for “coordinated communications” are  
4 addressed under a three-prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are  
5 addressed under 11 C.F.R. § 109.20(b). The Commission has explained that section 109.20(b)  
6 applies to “expenditures that are not made for communications but that are coordinated with a  
7 candidate, authorized committee, or political party committee.”<sup>21</sup> Under the three-prong test for  
8 coordinated communications, a communication is coordinated and treated as an in-kind  
9 contribution when it is paid for by someone other than a candidate, a candidate's authorized  
10 committee, a political party committee, or the authorized agents of either (the “payment prong”);  
11 satisfies one of five content standards (the “content prong”); and satisfies one of five conduct  
12 standards (the “conduct prong”).<sup>22</sup> A communication must satisfy all three prongs to be a  
13 “coordinated communication” under Commission regulations.

14 The “conduct prong” is satisfied by: (1) communications made at the “request or  
15 suggestion” of the relevant candidate or committee; (2) communications made with the “material  
16 involvement” of the relevant candidate or committee; (3) communications made after a  
17 “substantial discussion” with the relevant candidate or committee; (4) specific actions of a  
18 “common vendor;” (5) specific actions of a “former employee or independent contractor;” and

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<sup>20</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20. *See also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

<sup>21</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003); *see also* Advisory Opinion 2011-14 (Utah Bankers Association).

<sup>22</sup> 11 C.F.R. § 109.21(a); *see also id.* § 109.21(b) (describing in-kind treatment and reporting of coordinated communications); *id.* §§ 109.21(c), (d) (describing content and conduct standards, respectively). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See id.* § 109.21(d)(6).

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1 (6) specific actions relating to the dissemination of campaign material.<sup>23</sup>

2 The “common vendor” standard of the conduct prong has three elements: (i) the person  
3 paying for the communication, or an agent of such person, uses a “commercial vendor”<sup>24</sup> to  
4 create, produce, or distribute the communication; (ii) the vendor previously provided certain  
5 enumerated services to the candidate identified in the communication during the previous 120  
6 days; and (iii) the commercial vendor uses or conveys to the person paying for the  
7 communication:

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

13 (B) Information used previously by the commercial vendor in providing  
14 services to the candidate who is clearly identified in the communication,  
15 or the candidate’s authorized committee, the candidate’s opponent, the  
16 opponent’s authorized committee, or a political party committee, and that  
17 information is material to the creation, production, or distribution of the  
18 communication.<sup>25</sup>  
19

20 Commission regulations state that a candidate or authorized committee “does not receive  
21 or accept an in-kind contribution” resulting from coordination through a common vendor unless  
22 the communication was made at the request or suggestion of, with the material involvement of,  
23 or after substantial discussions with, the candidate or authorized committee.<sup>26</sup> Further, the

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<sup>23</sup> *Id.* § 109.21(d).

<sup>24</sup> A commercial vendor includes “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services.” 11 C.F.R. § 116.1(c). A “commercial vendor” also includes “any owner, officer, or employee of the commercial vendor.” *Id.* § 109.21(d).

<sup>25</sup> 11 C.F.R. § 109.21(d)(4); *see id.* § 116.1(c) (defining commercial vendor as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services”).

<sup>26</sup> 11 C.F.R. § 109.21(b)(2); *see id.* § 109.21(d)(1)-(3).

MURs 7553 and 7524 (National Rifle Association of America Political Victory Fund, *et al.*)  
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1 Commission has crafted a safe harbor provision for commercial vendors that have established  
2 and implemented a written firewall policy that meets certain requirements.<sup>27</sup>

3 A firewall policy satisfies the “safe harbor” if it: (1) is “designed and implemented to  
4 prohibit the flow of information between employees or consultants providing services for the  
5 person paying for the communication and those employees or consultants currently or previously  
6 providing services to the candidate” who is identified in the communication, or “the candidate’s  
7 authorized committee, the candidate’s opponent, the opponent’s authorized committee, or a  
8 political party committee;” and (2) “described in a written policy that is distributed to all relevant  
9 employees, consultants, and clients affected by the policy.”<sup>28</sup> The safe harbor, however, “does  
10 not apply if specific information indicates that, despite the firewall, information about the  
11 candidate’s . . . campaign plans, projects, activities, or needs that is material to the creation,  
12 production, or distribution of the communication was used or conveyed to the person paying for  
13 the communication.”<sup>29</sup>

14 **A. There is Reason to Believe that the NRA Respondents Coordinated with the**  
15 **Trump Committee Through National Media**  
16

17 The Complaint in MUR 7553 alleges that the NRA Respondents coordinated with the  
18 Trump Committee through National Media. As an initial matter, there is no dispute that the  
19 payment and content prongs of the coordinated communications test are satisfied.<sup>30</sup> Nor is there

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<sup>27</sup> *Id.* § 109.21(h).

<sup>28</sup> *Id.* § 109.21(h)(1)-(2).

<sup>29</sup> *Id.* § 109.21(h).

<sup>30</sup> *See* NRA Resp. at 25, MUR 7553 (noting that the Commission should reject the Complaint’s “invitation to find reason to believe solely on the basis that the ‘payor’ and ‘content’ standards are satisfied”); *see also supra* notes 23-24.



MURs 7553 and 7524 (National Rifle Association of America Political Victory Fund, *et al.*)  
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1 any dispute regarding the first two common vendor elements.<sup>31</sup> Only the third element of the  
2 common vendor conduct prong is in dispute.

3 According to this Complaint, high-ranking National Media officials repeatedly placed ads  
4 for both the NRA Respondents and the Trump Committee.<sup>32</sup> These officials, the Complaint  
5 contends, used “their knowledge about the ‘plans, projects, activities or needs’ of the Trump  
6 campaign to most effectively place the [NRA Respondents’] ads supporting Trump.”<sup>33</sup> Attached  
7 as exhibits to the Complaint are a number of documents containing advertising information  
8 obtained from the Federal Communication Commission’s (“FCC”) public database.<sup>34</sup>

9 A review of these and other public FCC filings provides reason to believe that National  
10 Media officials used or conveyed non-public information to the NRA Respondents about the  
11 Trump Committee’s “plans, projects, activities or needs” that was material to the placement of

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<sup>31</sup> See NRA Resp. at 6, 25, MUR 7553 (acknowledging that National Media is a common vendor because the first two parts of the test are satisfied but contending that there must be some evidence that the third part of the test is satisfied before finding reason to believe). National Media and its officials qualify as “commercial vendors,” see 11 C.F.R. § 116.1(c), and distributed, from June through November 2016, the NRA Respondents’ communications supporting Trump or opposing Clinton, see Compl., Exs. F-I, K-L, P, Q, MUR 7553. In addition, on or about September 16, 2016, through November 2016, National Media selected and purchased advertising — an enumerated service — for the Trump Committee, overlapping with the time period National Media provided services to the NRA Respondents. See Compl., Exs. J, M, R, MUR 7553; see also NRA Resp. at 17, MUR 7553; Trump Committee, Disbursements to AMAG, 2017-2018 (regularly scheduled report) (disclosing \$74 million to AMAG for “placed media” between September 19, 2016 and November 2016).

<sup>32</sup> Compl. ¶¶ 63-64, MUR 7553.

<sup>33</sup> *Id.* ¶ 64.

<sup>34</sup> A broadcast, cable, or satellite licensee must place information on political advertising “immediately” in its “political file,” which is available in the FCC’s online public database. 47 C.F.R. § 73.1943; see About Public Inspection Files, <https://publicfiles.fcc.gov/about-station-profiles/>. The political file must contain requests to purchase broadcast time made by candidates or communicates a message relating “to any political matter of national importance.” 47 U.S.C. § 315(e)(1). The file must include: (1) whether the request is accepted or rejected; (2) the rate charged; (3) the date and time the communication is to air; (4) the name of the candidate and the office and election referenced, or the issue referenced, if applicable; and (5) in the case of a request made by the candidate, the name of the candidate, candidate’s authorized committee, and treasurer; or in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person. *Id.* § 315(e)(2).

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1 the NRA Respondents' communications. These filings show the same National Media officials  
2 were involved in the placement of ads for both the NRA Respondents and the Trump Committee,  
3 and they placed ads for both of them on the same television station, within days of each other, to  
4 run during the same time period. For example, the name of Jon Ferrell, National Media's  
5 Director of Accounting, appears on a NRA-PVF "Agreement Form for Non-Candidate/Issue  
6 Advertisements" dated October 19, 2016, for "Pro Trump" "Anti Clinton" ads scheduled to run  
7 from October 25 to October 31, 2016, on a Norfolk, Virginia, television station.<sup>35</sup> Five days  
8 later, Ferrell's name appears on an October 24, 2016, "Agreement Form for Political Candidate  
9 Advertisements" on behalf of the Trump Committee for "Pro Trump" "Anti Clinton" ads  
10 scheduled to run on the same Norfolk station during the same week.<sup>36</sup>

11 National Media also placed ads for the Trump Committee and the NRA Respondents to  
12 be aired during several of the same ACC football games being broadcast by Raycom Sports  
13 Network ("Raycom Sports"), and it made those placements within days of each other. Ferrell  
14 signed an "Agreement Form for Non-Candidate/Issue Advertisements" dated September 15,  
15 2016, to place \$101,200 worth of NRA-ILA ads supporting Trump or opposing Clinton that ran  
16 during seven ACC football games between September and November 2016.<sup>37</sup> Five days later,

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<sup>35</sup> See Compl., Ex. Q, MUR 7553.

<sup>36</sup> See *id.*, Ex. R.

<sup>37</sup> See Compl., Ex. L, MUR 7553. It appears that Raycom Sports provided the television stations with the signed agreement forms. See, e.g., WCJB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/wcjb-tv/political-files/2016/non-candidate-issue-ads/9d5850ce-2662-dd72-2d86-9ad974e9fa3e/> (showing file labeled "NRA-ACC Games-Raycom" for five ACC football games that was uploaded on Sept. 16, 2016); WGNT, Political Files, <https://publicfiles.fcc.gov/tv-profile/wgnt/political-files/2016/non-candidate-issue-ads/nra/fce64b20-054b-8247-1260-f8e29776fb26/> (showing file labeled "Raycom Sports Network – ACC Football Sept-Oct 2016" for five football games uploaded on Sept. 16, 2016).

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1 National Media submitted another “Agreement Form for Political Candidate Advertisements”<sup>38</sup>  
2 for the placement of \$35,700 in Trump Committee ads that ran during five of the same games.<sup>39</sup>  
3 The Complaint cites an article by *Mother Jones/The Trace*, which states:

4 The purchases were mirror images of each other. In five of the games, both  
5 the NRA and Trump bought ads. When the NRA ran two spots either  
6 attacking Clinton or promoting Trump, the Trump campaign ran just one.  
7 And when the Trump campaign ran two spots, the NRA ran one. The  
8 pattern even persisted when there was no direct overlap: In the two games  
9 the Trump campaign sat out, the NRA ran two ads. And in the one game  
10 during which the NRA didn’t buy time, Trump bought two slots. Side by  
11 side, the spots aired across the country on as many as 120 stations, according  
12 to data provided by Raycom.<sup>40</sup>  
13

14 In addition, other National Media employees appear on public filings for both the Trump  
15 Committee and the NRA Respondents. For instance, Kristy Kovatch, a senior media buyer at  
16 National Media,<sup>41</sup> appears as the contact on behalf of the Trump Committee on an NBC  
17 “Political Inquiry Record” dated September 16, 2016, regarding a request for advertising rates,<sup>42</sup>  
18 and also the contact for the NRA-ILA on a station request sheet dated September 19, 2016, for

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<sup>38</sup> The agreement form for the placement of these ads was not signed by Jon Ferrell. Compl., Ex. M, MUR 7553.

<sup>39</sup> *See id.*, Ex., M, MUR 7553. An invoice from Raycom Sports for the Trump Committee ads is addressed to Ben Angle, senior media buyer at National Media. *See id.* Further, like with the placement of the NRA-ILA’s ads during these games, Raycom Sports appears to have provided the stations with the signed agreement forms. *See, e.g.*, WLWC, Political Files, <https://publicfiles.fcc.gov/tv-profile/wlwc/political-files/2016/federal/president/acc-presidential-advertisement/1783250b-5d2d-5439-33a0-207ed32aa122/> (showing three files labeled “Note-Sold by Raycom” for five games that were uploaded on Oct. 31, 2016 ); WCJB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/wcjb-tv/political-files/2016/federal/president/61c8c79f-5717-f10c-ce17-fdd1db2111d5/> (showing files labeled “Trump 9-24 via Raycom Sports” and “Trump 10-29 via Raycom Sports” that were uploaded Sept. 22 and Oct. 31, 2016 for two ACC football games).

<sup>40</sup> Mike Spies, *Documents Point to Illegal Campaign Coordination Between Trump and the NRA*, MOTHER JONES, (Dec. 6, 2018), <https://www.motherjones.com/politics/2018/12/nra-trump-2016-campaign-coordination-political-advertising/>.

<sup>41</sup> National Media, <https://www.natmedia.com/#the-team> (last visited May 8, 2019).

<sup>42</sup> Compl., Ex. J, MUR 7553.

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1 ads that mentioned “Hillary Clinton,” “Donald Trump,” and the “General Election, 11/8/16.”<sup>43</sup>  
2 Ben Angle, another senior media buyer at National Media, appears as the contact person on  
3 advertising request sheets dated September 23, 2016, and November 1, 2016, for the placement  
4 of Trump Committee ads on the Colorado station KMGH,<sup>44</sup> while a rate request form dated  
5 October 14, 2016, for the same station lists Angle as the contact for NRA-ILA ads that are “pro-  
6 Donald Trump and guns rights.”<sup>45</sup> In addition, Caroline Kowalski, a former media assistant at  
7 National Media, also appears on public records for NRA-PVF ad buys on August 11 and October  
8 28, 2016, and for Trump Committee ads on September 28, November 3, and November 4,  
9 2016.<sup>46</sup>

10 In a previous matter, the Commission found reason to believe that the third element of the  
11 common vendor conduct prong was satisfied and investigated where a principal of a common  
12 vendor, “while providing consulting services, arranging media buys, and producing television  
13 ads” for the candidate committee, was also providing the same services to an organization that  
14 supported the candidate.<sup>47</sup> These dual roles, the Commission explained, placed the principal of  
15 the common vendor “in a position to know non-public information regarding” the candidate’s  
16 campaign and the organization’s plans for the election cycle and to use or convey that

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<sup>43</sup> *Id.*, Ex. K.

<sup>44</sup> See KMGH, Political Files, <https://publicfiles.fcc.gov/tv-profile/kmgh-tv/political-files/2016/federal/president/trump-for-president/f2e5d6f0-1718-d38d-4c0a-7ba0560f2e0a/> (showing “Trump Rate Request 9.23.16” & “RNC-Trump President Rate Request General Election — American Media”).

<sup>45</sup> Compl., Ex. P, MUR 7553.

<sup>46</sup> See Compl. ¶ 63(d), Exs. I, N, S, U, W, MUR 7553. The referenced records are identified as “Traffic Instructions” documents, a “Station Issue Advertising Request Sheet,” and a “Political Inquiry Form.” *Id.*, Exs. I, N, S, U, W.

<sup>47</sup> See Factual & Legal Analysis at 3-4, 6-7, 10-11, MUR 5415 (Club for Growth).

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1 information in advising and guiding both clients, including on issues related to the allocation of  
2 resources.<sup>48</sup>

3 Here, the available information similarly indicates that the same National Media  
4 officials — Angle, Kovatch, Ferrell, and Kowalski — were involved in both sides of the ad  
5 placements for the Trump Committee and the NRA Respondents. Their involvement in the  
6 placement of the Trump Committee’s ads placed them in a position to know non-public  
7 information that may have informed the placement of the NRA Respondents’ ads supporting  
8 Trump and opposing Clinton.<sup>49</sup> And as outlined above, the parallel placement and distribution of  
9 many of the ads by National Media provides additional support for the inference that non-public  
10 information about the Trump Campaign’s plans, activities, and needs influenced National  
11 Media’s placement of the NRA Respondents’ pro-Trump ads.

12 Respondents advance several rebuttals, none of which persuasively refutes the specific  
13 information suggesting coordination.<sup>50</sup> National Media claims to have adopted and implemented  
14 a firewall policy,<sup>51</sup> and provides the affidavit of its president, Robin Roberts, attesting that “all  
15 employees operate[d] in accordance with National Media’s then-current firewall policy.”<sup>52</sup>  
16 Attached to their Response is an unsigned AMAG firewall policy, dated March 26, 2016, and the

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<sup>48</sup> *Id.* The Commission ultimately voted to take no further action, concluding that the investigation produced no evidence of common vendor coordination. *See* Commission Certification, MUR 5415 (Nov. 12, 2008) (Club for Growth); Third General Counsel’s Report at 15, MUR 5415 (Club for Growth).

<sup>49</sup> *See* Factual & Legal Analysis at 3-4, 6-7, 10-11, MUR 5415 (Club for Growth); *see also* Factual & Legal Analysis, MURs 5511, 5525 (finding reason to believe based on individual’s dual role in the Bush-Cheney 2004 Veteran’s National Steering Committee while appearing at the same time in a television advertisement funded by organization that shared goal of defeating Kerry).

<sup>50</sup> *See* NRA Resp., MUR 7553; Trump Committee Resp., MUR 7553 (Jan. 11, 2019).

<sup>51</sup> *See* NRA Resp. at 6-8, 17-21, Attach. F, MUR 7553.

<sup>52</sup> *See* NRA Resp., Robins Affidavit ¶ 3, Attach. B, MUR 7553.

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1 “Trump Firewall Policy,” which supplemented the earlier policy and is dated September 15,  
2 2016.<sup>53</sup> The Trump Firewall Policy states that the same employees or consultants “cannot  
3 perform work relating to more than one client on opposite sides of the firewall for the same  
4 election or race.”<sup>54</sup> Evan Tracey is listed as the team leader for media buying for the Trump  
5 Committee and Angle, Kovatch, Tracey Robinson, and Michelle Lawrence are identified as the  
6 team’s media buyers.<sup>55</sup> A review of the policy, however, indicates that under its plain terms it  
7 did not apply to management or administrative employees such as Ferrell or Kowalski,<sup>56</sup> and, as  
8 noted above, there is information suggesting that media buyers Angle and Kovatch were working  
9 on both sides of the firewall during the same time period, indicating that any such firewall was  
10 ineffective.<sup>57</sup> Further, the firewall policy was not signed by any National Media employee, and  
11 Roberts’s affidavit does not provide any details regarding when it was distributed and how it was

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<sup>53</sup> See NRA Resp., Ex. F, MUR 7553.

<sup>54</sup> *Id.*, Ex. F. In particular, the firewall policy states that an employee providing services to the Trump Committee is prohibited “from working for an independent expenditure client” and “from communicating with other company employees who provide services to an independent expenditure client” in connection with the presidential election regarding the substance of team member’s work for the Trump Committee, or regarding the other employees’ work for the independent expenditure client. *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Specifically, the firewall policy excludes “employees or consultants who provide exclusively administrative assistance (e.g., reception, clerical, or IT support)” or “employees who perform management functions (e.g., financial, strategic, or corporate leadership) which affect all AMAG clients” from the firewall policy. NRA Resp. at 6, Ex. F, MUR 7553.

<sup>57</sup> Kovatch and Angle assert that they performed work for the NRA Respondents in 2016 until September 15, 2016, and September 18, 2016, respectively. NRA Resp. at 17, 20, Angle Affidavit ¶¶ 4-9, Kovatch Affidavit ¶¶ 4-7, Attachs. E, F, MUR 7553. They state they performed work in accordance with the Trump Firewall policy and insist that the rate request documents that identify them as the contacts for ads on behalf of the NRA Respondents after those dates may not reflect current information and, in any event, they do not submit rate requests — this is done by media assistants such as Kowalski. See NRA Resp. at 14, 18-2, Ben Angle Affidavit ¶ 7, Kovatch Affidavit ¶ 7, MUR 7553. Whether these contemporaneous documents contain accurate information — as opposed to information in Kovatch’s and Angle’s *post hoc* affidavits — is a factual dispute that necessarily requires investigation. Further, Respondents state that Kowalski, as a media assistant, worked at the direction of the media buyers, such as Kovatch and Angle. See NRA Resp. at 14, MUR 7553 (noting that media assistants perform clerical and administrative support for the media buyers).

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1 implemented.<sup>58</sup> Under these circumstances, it appears unlikely that the firewall policy  
2 effectively prevented material information about the candidate’s communication strategies from  
3 being used by National Media officials or passing to the NRA Respondents. As such, the  
4 firewall safe harbor does not apply.<sup>59</sup>

5 Respondents also argue that the NRA Respondents’ ads were placed before the Trump  
6 Committee ads and thus were publicly available “immediately” through the FCC’s public  
7 database.<sup>60</sup> They thus reason that these ads cannot be deemed coordinated, and, therefore, the  
8 safe harbor applies.<sup>61</sup> However, Respondents’ argument that the ad buys were publicly available  
9 ignores the key fact that the *same* company and personnel placed ads for both the payor and the  
10 candidate committee, undermining the contention that the relevant participants relied solely on  
11 information in the stations’ public inspection files to make placement decisions. Importantly, the  
12 NRA Respondents do not argue in their responses or include statements in their affidavits that

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<sup>58</sup> See NRA Resp., Ex. F, MUR 7553; Robins Affidavit ¶ 3, MUR 7553. The Commission has stated that a “person paying for a communication seeking to use the firewall safe harbor should be prepared to provide reliable information (e.g., affidavits) about an organization’s firewall, and how and when the firewall was distributed and implemented.” Coordinated Communications, 71 Fed. Reg. 33,190, 33,205 (June 8, 2006). Notably, at the end of National Media’s firewall policy is the following: “Please sign and date this policy statement acknowledging that you have read and understand the Policy Statement. *Return the signed copy to Robin.* An additional copy has been provided for your records.” See NRA Resp., Attach. F (emphasis added).

<sup>59</sup> See 11 C.F.R. § 109.21(h).

<sup>60</sup> NRA Resp. at 21-26; Trump Committee Resp. at 1 n.1, MUR 7553. “To qualify for the safe harbor, the person paying for the communication bears the burden of showing that the information used in creating, producing, or distributing the communication was obtained from a publicly available source.” 71 Fed. Reg. at 33,205.

<sup>61</sup> NRA Resp. at 2-3, 21-26, MUR 7553; Trump Committee Resp. at 1 n.1, MUR 7553.

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1 they relied on publicly available information to make their ad placement decisions, or even that  
2 they were aware of the information in the public inspection files.<sup>62</sup>

3 Relatedly, Respondents' argument that common vendor coordination is impossible  
4 because National Media placed the NRA's ads before the Trump Committee's ads is  
5 unconvincing.<sup>63</sup> According to Respondents, the NRA's ads that ran on Raycom Sports and on  
6 the Norfolk station were placed before the Trump Committee ads, making "common vendor"  
7 coordination impossible.<sup>64</sup> The third element of the common vendor standard, however, does not  
8 depend entirely on the sequencing of the ads; the element focuses on whether the commercial  
9 vendor uses or conveys to the person paying for the communication information that is material  
10 to its distribution, irrespective of when that communication airs.<sup>65</sup> If Respondents' position were  
11 correct, candidates and third parties could completely avoid common vendor coordination  
12 findings by strategically timing the placement of a third party's fully coordinated communication  
13 just before the candidate's message. Further, Respondents acknowledge that Angle, a senior  
14 media buyer, placed the ads that ran during the ACC football games on Raycom Sports for both

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<sup>62</sup> See NRA Resp. at 3-5, MUR 7553. Respondents' failure to assert that their ad placement decisions were based on information in the stations' public files distinguishes this matter from MUR 5506 (EMILY's List). See Commission Certification, MUR 5506 (Aug. 12, 2005), First General Counsel's Report at 5-7 (concluding that the response rebuts allegation of coordination because the committee "states that it made its decisions about placing and pulling ads on information that television stations are required to make public").

<sup>63</sup> See NRA Resp. at 21-26, MUR 7553.

<sup>64</sup> *Id.*

<sup>65</sup> See 11 C.F.R. § 109.21(d)(4)(iii).



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1 the Trump Committee and the NRA-ILA,<sup>66</sup> and Respondents do not deny, let alone address, the  
2 pattern described in news reports that these ads were “mirror images” of each other.<sup>67</sup>

3 Respondents’ argument that Ferrell’s signature on the ad placement forms was merely an  
4 administrative step, and he was not involved in the creation, production, or distribution of the ads  
5 is also not persuasive.<sup>68</sup> Respondents assert that the “‘agreement forms’ are not contracts,” do  
6 not “authorize the airing” or placement of ads, and “have nothing whatsoever to do with the  
7 selection of audiences and time slots.”<sup>69</sup> Instead, Respondents argue, other documents contain  
8 the actual details of any ad buy.<sup>70</sup> However, according to the National Association of  
9 Broadcasters — the entity that created the ad placement forms themselves — these forms were  
10 “*designed to serve as actual contracts for the sale of political broadcast time and to satisfy FCC*  
11 *record retention requirements.*”<sup>71</sup> In addition, by signing the forms, Ferrell represented that the  
12 “payment for the above described broadcast time had been furnished” and that he was

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<sup>66</sup> NRA Resp. at 21-22, MUR 7553.

<sup>67</sup> See *supra* note 64. Further, it is not clear whether Angle placed the NRA Respondents’ ads on August 25, 2016, a month before the Trump Committee ads were allegedly placed on or about September 20, 2016, as the agreement form signed by Ferrell for the placement of the NRA Respondents’ ads is dated September 15, 2016. See NRA Resp., Exs. L, M. Moreover, for ACC football games on November 5, 2016, Raycom Sports sent the signed agreement form for Trump Committee ads to a station on October 21, 2016, with a notation, “Teams TBD,” and sent the agreement form for NRA ads to a station on November 1, 2016. Thus, it is unclear whether all placement decisions for the Raycom Sports football games were made in either August or September for the Trump Committee and NRA Respondents. Compare WLWC, Political Files, <https://publicfiles.fcc.gov/tv-profile/wlwc/political-files/2016/federal/president/acc-presidential-advertisement/1783250b-5d2d-5439-33a0-207ed32aa122/> (showing file labeled “Note-Sold by Raycom 10 29 and 11 5” with upload date of Oct. 31, 2016 for Trump Committee ads), with WCJB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/wcjb-tv/political-files/2016/non-candidate-issue-ads/9d5850ce-2662-dd72-2d86-9ad974e9fa3e/> (showing file labeled “NRA-ACC Games-Raycom 11-5” with upload date of Nov. 3, 2016).

<sup>68</sup> NRA Resp. at 11-14, MUR 7553.

<sup>69</sup> *Id.* at 6, 11.

<sup>70</sup> *Id.* at 11.

<sup>71</sup> National Association of Broadcasters, Political Broadcast Agreement Forms, PB-18, <https://gab.org/wp-content/uploads/2016/06/pb18-form-final-c1.pdf>.

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1 “authorized to announce the time as paid” by the NRA Respondents and Trump Committee.<sup>72</sup>  
2 Thus, Ferrell was in a position to know when and where the ads were being placed and the cost  
3 of the placements for both the Trump Committee and the NRA Respondents.<sup>73</sup> And Ferrell’s  
4 attempt to disclaim knowledge of the forms’ contents is undermined by his representations in  
5 them and his signatures on them.

6 Further, the fact that Ferrell and Kowalski may have been acting only in an  
7 “administrative” capacity does not preclude a coordination finding. As the Commission  
8 explained in the context of the “former employee” conduct standard, the “use or convey”  
9 standard “does not make any distinction between categories or ranks of employees.”<sup>74</sup> The  
10 Commission specifically declined to limit its application to “a specified class of employees who  
11 are likely to ‘possess material political information.’”<sup>75</sup> Under these circumstances, the  
12 Responses and Ferrell’s affidavit do not sufficiently refute the allegation that Ferrell or Kowalski

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<sup>72</sup> See, e.g., Compl., Exs. Q, R, MUR 7553. In fact, Ferrell signed the agreement form as the “agent of Donald J. Trump for President Inc.” See *id.*, Ex. R.

<sup>73</sup> Moreover, according to information on National Media’s website, Ferrell has experience “managing the financial details of campaigns,” “ensures that every penny allocated for media is spent according to election laws,” and “conducts post-election analysis of every account to substantiate and reconcile media buys.” National Media, <https://www.natmedia.com/#the-team>.

<sup>74</sup> See Advisory Opinion 2016-21 at 5 (Great America PAC); see also 11 C.FR. § 109.21(d)(5).

<sup>75</sup> *Id.* (quoting 68 Fed. Reg. at 437).

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1 were in positions to have access to information that may have been material to the placement of  
2 the ads, even if they did not make the actual placement decisions.<sup>76</sup>

3 Accordingly, the Commission finds reason to believe that the NRA-PVF and the NRA-  
4 ILA violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a)<sup>77</sup> by making and failing to report  
5 excessive and prohibited in-kind contributions to the Trump Committee in the form of  
6 coordinated communications.<sup>78</sup>

7 **B. There is Reason to Believe that NRA-PVF Coordinated with the Hawley**  
8 **Committee through National Media, Red Eagle, and AMAG**  
9

10 The Complaint in MUR 7524 also alleges that the NRA-PVF and the Hawley Committee  
11 coordinated in the distribution and placement of communications through National Media in the  
12 2018 election cycle.<sup>79</sup> According to the Complaint, on one occasion, the same National Media  
13 official placed ads for the NRA-PVF and Hawley Committee on the same stations on the same  
14 date.<sup>80</sup> As before, there is no dispute that the payment and content prongs of the coordinated

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<sup>76</sup> The Commission has stated that “common leadership or overlapping administrative personnel does not defeat the use of a firewall policy,” unless there is specific information that it did not prevent the flow of material information. 71 Fed. Reg. at 33,207. As noted above, the facts indicate that Ferrell and Kowalski had access to material information about ad placements for the NRA Respondents and the Trump Committee, and the pattern of these placements supports an inference that National Media may have used this information to maximize the effect of the ads it placed. This case stands in contrast to MUR 5823, where the Commission concluded that the common vendor standard was not satisfied because the media buyer vendor provided clerical and administrative support and did not have adequate decision-making control or knowledge of communications, *see* Factual & Legal Analysis at 10-11, MUR 5823 (Citizens Club for Growth). National Media does not argue, and the facts do not support, that as a company it was retained merely to provide administrative and clerical support for media buys, it lacked decision-making authority, or it lacked knowledge of the communications at issue.

<sup>77</sup> We include 52 U.S.C. § 30118(a) because the NRA Respondents are permitted to accept corporate contributions but they are not permitted to contribute them to candidates.

<sup>78</sup> 11 C.F.R. § 109.21(b)(2); *see* 11 C.F.R. § 109.21(d)(1)-(3).

<sup>79</sup> Compl. ¶¶ 67-76, MUR 7524.

<sup>80</sup> *Id.* ¶ 2.

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1 communication test are satisfied.<sup>81</sup> Similarly, there is no dispute that the first and second  
2 common vendor elements are satisfied.<sup>82</sup> As with the Trump Committee and the NRA  
3 Respondents, only the common vendor conduct prong is in dispute.

4           Similar to the record concerning the 2016 election, the record raises a reasonable  
5 inference that information National Media officials gained through their work for the Hawley  
6 Committee was used by them or conveyed to others, including other National Media officials,  
7 and the information influenced the placement of the NRA-PVF's pro-Hawley ads.<sup>83</sup> Documents  
8 uploaded to the FCC public database show that Ferrell signed agreements for the placement of  
9 ads on behalf of NRA-PVF and the Hawley Committee with the same television station on the  
10 same date.<sup>84</sup> Specifically, on September 6, 2018, Ferrell entered into an "Agreement Form for  
11 Non-Candidate/Issue Advertisements" with KYTV for NRA-PVF ads for the "Missouri General  
12 Election U.S. Senate."<sup>85</sup> On the same day, Ferrell, as an agent of the Hawley Committee, also  
13 entered into an agreement with KYTV for a "coordinated buy" for "Josh Hawley for

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<sup>81</sup> See NRA Resp. at 3-4, MUR 7524 (stating that the Commission should reject a finding of reason to believe on the basis that the "payor" and "content" standards are satisfied); *see also supra* notes 27, 34.

<sup>82</sup> See NRA Resp. at 2, 4, MUR 7524 (not disputing that National Media may be treated as a common vendor but explaining that in the absence of "credible evidence pertaining to the third part of the test," the Commission should not find reason to believe on the basis that the first two parts of the common vendor test are satisfied). National Media qualifies as a "commercial vendor," and the company distributed the NRA-PVF's pro-Hawley communications during the same time period it distributed the Hawley Committee's communications. *See, e.g.*, Compl., Exs. J, K, Q, MUR 7524; KOAM-TV and KFJX-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/koam-tv/political-files/2018/non-candidate-issue-ads/nra-pvf/39da4b31-e695-2fd6-bfb9-4e8ebc10050a/> (showing NRA-PVF agreement form uploaded on Sept. 7, 2018); KSHB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/kshb-tv/political-files/2018/federal/us-senate/hawleyrepublicansenate/99c3bcd1-1299-9995-db1e-903f908a231e/> (showing political disclosure form for Hawley Committee ads by National Media on uploaded Aug. 31, 2018).

<sup>83</sup> See Factual & Legal Analysis at 3-4, 6-7, 10-11, MUR 5415 (Club for Growth).

<sup>84</sup> See Compl. ¶ 70(a)-(b), Exs. J, Q, MUR 7524.

<sup>85</sup> *See id.*, Ex. J.

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1 Senate/NRSC.”<sup>86</sup> In addition, on September 19, 2018, Kovatch asked to buy time to run NRA-  
2 PVF ads supporting Hawley on a Missouri station,<sup>87</sup> and two days later, Angle made a similar  
3 request to the same station to buy ad time on behalf of the Hawley Committee.<sup>88</sup> These  
4 circumstances support the inference that National Media used or conveyed non-public  
5 information to the NRA-PVF about the “plans, projects, activities or needs” of the Hawley  
6 Committee and this information was material to the distribution of the NRA-PVF  
7 communications supporting Hawley.

8 The NRA Respondents, National Media, and the Hawley Committee deny the  
9 coordination allegations.<sup>89</sup> They again assert that Ferrell merely performed an administrative  
10 function by signing the “agreement forms,” and those acts alone are not evidence of  
11 coordination.<sup>90</sup> They also assert that all placement decisions regarding advertisements in the  
12 2018 U.S. Senate race in Missouri were made in accordance with National Media’s 2018  
13 Firewall Policy.<sup>91</sup> The firewall policy states that Angle and John Jay, another media buyer at  
14 National Media, were assigned to perform work for the Hawley Committee.<sup>92</sup> Kovatch and

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<sup>86</sup> *See id.*, Ex. Q.

<sup>87</sup> *See* Compl., Ex. K, MUR 7524.

<sup>88</sup> *See* KSHB-TV, Political Files, <https://publicfiles.fcc.gov/tv-profile/kshb-tv/political-files/2018/federal/us-senate/hawleyrepublicansenate/99c3bcd1-1299-9995-db1e-903f908a231e/> (showing political disclosure form for Hawley Committee ads by National Media on uploaded Sept. 21, 2018).

<sup>89</sup> NRA Resp. at 7-9, MUR 7524; Hawley Committee Resp. at 1-3, MUR 7524 (Dec. 3, 2018).

<sup>90</sup> NRA Resp. at 7-9, Ferrell Affidavit ¶¶ 3-8, Attach. D, MUR 7524; *see* Hawley Committee Resp. at 1-3, MUR 7524.

<sup>91</sup> NRA Resp. at 7-8, MUR 7524.

<sup>92</sup> NRA Resp., Ex. E, MUR 7524. The policy states that whenever National Media determines that a firewall is required, the procedures that apply in that particular matter will be provided in a written memorandum, along with the firewall policy, to the relevant employees, consultants, and clients. *Id.* Unlike in MUR 7553, where National Media provided a document identified as the Trump Firewall Policy, National Media did not submit a separate memorandum outlining the policies that apply in the U.S. Senate race in Missouri.

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1 Tracey Robinson are listed as the media buyers for the NRA-PVF.<sup>93</sup> However, the policy did not  
2 apply to Ferrell, and it does not appear that it prevented the use or conveyance of material  
3 information from the Hawley Committee to the NRA respondents.<sup>94</sup> The policy is also not  
4 signed and it is unclear when and how it was distributed or implemented.<sup>95</sup> Thus, the firewall  
5 safe harbor does not apply.<sup>96</sup>

6 Accordingly, the Commission finds reason to believe that the NRA-PVF violated  
7 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a)<sup>97</sup> by making and failing to report excessive and  
8 prohibited in-kind contributions to the Hawley Committee in the form of coordinated  
9 communications.

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<sup>93</sup> *Id.*

<sup>94</sup> *See* NRA Resp. at 8, Ex. E MUR 7524.

<sup>95</sup> Respondents also argue that the documents were publicly available in the stations' political file online. *See* NRA Resp. at 8 n.37, MUR 7524. They do not, however, state whether any National Media official relied on those documents in placing ads for the NRA-PVF, and do not address the fact that National Media placed ads for both the NRA-PVF and the Hawley Committee on the same date. *See id.* Thus, they have failed to carry their burden of showing that ad information from a publicly available source influenced their ad placement decisions. 71 Fed. Reg. 33,190, 33,205.

<sup>96</sup> *See* 11 C.F.R. § 109.21(h).

<sup>97</sup> We include 52 U.S.C. § 30118(a) because the NRA Respondents are permitted to accept corporate contributions, but they are not permitted to contribute those funds to candidates.