

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR 7558**

DATE COMPLAINT FILED: January 28, 2019
DATE OF NOTIFICATIONS: February 1, 2019
LAST RESPONSE RECEIVED: March 29, 2019
DATE ACTIVATED: May 21, 2019

EARLIEST SOL: October 19, 2021
LATEST SOL: October 25, 2021
ELECTION CYCLE: 2016

COMPLAINANT:

American Democracy Legal Fund

RESPONDENTS:

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

MUR 7560

DATE COMPLAINT FILED: January 28, 2019
DATE OF NOTIFICATIONS: February 1, 2019
LAST RESPONSE RECEIVED: March 21, 2019
DATE ACTIVATED: May 21, 2019

EARLIEST SOL: September 19, 2021
LATEST SOL: October 4, 2023
ELECTION CYCLES: 2016 and 2018

COMPLAINANT:

American Democracy Legal Fund

RESPONDENTS:

Richard Burr
The Richard Burr Committee and Timothy W.
Gupton, treasurer in his official capacity
Joshua David Hawley
Josh Hawley for Senate and Salvatore Purpura,
treasurer in his official capacity
Matt Rosendale

1 Matt Rosendale for Montana and Errol Galt,
 2 treasurer in his official capacity
 3 National Rifle Association of America Political
 4 Victory Fund and Robert G. Owens, treasurer in
 5 his official capacity
 6 National Rifle Association Institute for Legislative
 7 Action and Roger G. Owens, treasurer in his
 8 official capacity
 9 National Media Research Planning and Placement,
 10 LLC
 11 Red Eagle Media Group
 12 American Media & Advocacy Group, LLC
 13
 14 **MUR 7621¹**
 15 DATE COMPLAINT FILED: July 10, 2019
 16 DATE OF NOTIFICATIONS: July 11, 2019
 17 DATE RESPONSE RECEIVED: July 30, 2019
 18 DATE ACTIVATED: August 29, 2019
 19
 20 EARLIEST SOL: September 5, 2023
 21 LATEST SOL: September 6, 2023
 22 ELECTION CYCLE: 2018
 23
 24 **COMPLAINANTS:** Campaign Legal Center
 25 Giffords
 26
 27 **RESPONDENTS:** Matt Rosendale
 28 Matt Rosendale for Montana and Errol Galt,
 29 treasurer in his official capacity
 30 National Rifle Association Institute for
 31 Legislative Action and Robert Owens, treasurer in
 32 his official capacity
 33 National Media Research Planning and Placement,
 34 LLC
 35 Red Eagle Media Group
 36 American Media & Advocacy Group, LLC
 37
 38 **RELEVANT STATUTES**

¹ On February 8, 2019, the Campaign Legal Center and Giffords (collectively "CLC") submitted correspondence to the Commission labeled "Additional Facts Relevant to MUR #7497." *See* Mem. to Comm'n, *Submission by Campaign Legal Center*, MUR 7497 (circulated July 2, 2019) ("OGC Memo"). Due to an administrative oversight, the CLC's February submission was incorrectly excluded from the electronic working case file and was not addressed in the First General Counsel's Report circulated on May 10, 2019, in MURs 7427, 7497, 7524, and 7553. OGC Memo at 2. On July 2, 2019, we informed the Commission of our plan to open a new matter in connection with CLC's submission and address it with MUR 7560, as the allegations in the submission were already being considered in MUR 7560. *Id.* at 2-3. The submission is being considered as MUR 7621.

1 **AND REGULATIONS:** 52 U.S.C. § 30104(b)
 2 52 U.S.C. § 30116(a)
 3 52 U.S.C. § 30116(f),
 4 52 U.S.C. § 30118(a)
 5 11 C.F.R. § 109.20
 6 11 C.F.R. § 109.21

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 8 **INTERNAL REPORTS CHECKED:** Disclosure Reports

9
 10 **FEDERAL AGENCIES CHECKED:** None

11
 12 **I. INTRODUCTION**

13
 14 The Complaints in these three matters are the latest in a series of complaints alleging the
 15 National Rifle Association of America Political Victory Fund (the “NRA-PVF”) and the
 16 National Rifle Association Institute for Legislative Action (the “NRA-ILA”) (collectively the
 17 “NRA Respondents”) made excessive, prohibited, and unreported in-kind contributions to
 18 various political committees by financing coordinated communications during the 2016 and 2018
 19 election cycles.² In 2016, the political committees alleged to have benefited were Donald J.
 20 Trump for President, Inc. (the “Trump Committee”) and The Richard Burr Committee (the “Burr
 21 Committee”).³ In 2018, the committees alleged to have benefited were Josh Hawley for Senate
 22 (the “Hawley Committee”) and Matt Rosendale for Montana (the “Rosendale Committee”).⁴

23 Specifically, the Complaint in MUR 7558 alleges that the Trump Committee was
 24 materially involved in decisions regarding the creation, production, and distribution of the NRA-

² See Compl. at 1-2, MUR 7558 (Jan. 28, 2019); Compl. at 1-2, MUR 7560 (Jan. 28, 2019); Compl. at 1-2, MUR 7621 (July 10, 2019); *see also* 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).

³ Compl. at 1-2, MUR 7558; Compl. at 1-4, MUR 7560.

⁴ Compl. at 1-4, MUR 7560; Compl. at 1, MUR 7621.

1 PVF's television ads, and they coordinated the placement of those ads using "common vendors"
2 National Media Research Planning and Placement, LLC ("National Media"), Red Eagle Media
3 Group ("Red Eagle"), and American Media & Advocacy Group ("AMAG").⁵ According to this
4 Complaint, National Media, Red Eagle, and AMAG are in reality the same company.⁶ The
5 Complaints in MURs 7560 and 7621 contain similar allegations against the Burr, Rosendale, and
6 Hawley Committees, namely, that they were materially involved in decisions regarding the
7 creation, production, and distribution of the NRA Respondents' television ads, and the ads were
8 coordinated through National Media.⁷

9 For the reasons that follow, we recommend that the Commission find reason to believe
10 that: (1) the NRA-PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and
11 failing to report excessive and prohibited in-kind contributions in the form of coordinated
12 communications to Donald J. Trump for President, Inc. and Bradley T. Crate in his official
13 capacity as treasurer; (2) the NRA-PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a)
14 by making and failing to report excessive and prohibited in-kind contributions in the form of
15 coordinated communications to The Richard Burr Committee and Timothy W. Gupton in his
16 official capacity as treasurer; (3) the NRA-PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and
17 30118(a) by making and failing to report excessive and prohibited in-kind contributions in the
18 form of coordinated communications to Josh Hawley for Senate and Salvatore Purpura in his

⁵ Compl. at 6-7, MUR 7558.

⁶ *Id.* at 7-8.

⁷ Compl. at 9-10, MUR 7560; *see* Compl. at 2, 7-8, MUR 7621. The allegations in MUR 7621 that the NRA-ILA coordinated the placement of ads with the Rosendale Committee through another set of common vendors — OnMessage, Inc. and Starboard Strategic, Inc. — were addressed in the First General Counsel's Report in MURs 7427, 7497, 7524, and 7553.

1 official capacity as treasurer; and (4) the NRA-ILA violated 52 U.S.C. §§ 30104(b), 30116(a),
2 and 30118(a) by making and failing to report excessive and prohibited in-kind contributions in
3 the form of coordinated communications to Matt Rosendale for Montana and Errol Galt in his
4 official capacity as treasurer. We further recommend that the Commission take no action against
5 the Trump, Burr, Hawley, and Rosendale Committees.

6 **II. FACTUAL BACKGROUND**

7
8 The NRA-PVF is registered with the Commission as a separate segregated fund
9 connected to the National Rifle Association of America (“NRA”).⁸ It makes contributions to
10 candidates and political committees and makes independent expenditures through a separate
11 account.⁹ The NRA-ILA is a tax-exempt organization under Section 501(c)(4) of the Internal
12 Revenue Code that, according to the MUR 7560 Complaint, describes itself as “the lobbying
13 arm” of the NRA.¹⁰

14 During the 2016 election cycle, Donald J. Trump was the Republican nominee for
15 President, and Richard Burr was seeking reelection to the U.S. Senate in North Carolina.¹¹ In the
16 2018 election cycle, Matt Rosendale was a candidate for U.S. Senate in Montana, and Josh
17 Hawley was a candidate for U.S. Senate in Missouri.¹²

⁸ 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).

⁹ *Id.*

¹⁰ *See* Compl. at 3, MUR 7560.

¹¹ *See* Donald J. Trump, Statement of Candidacy (July 29, 2016); Richard M. Burr, Statement of Candidacy, (Mar. 5, 2016).

¹² *See* Matt Rosendale, Statement of Candidacy (Aug. 14, 2017); Josh Hawley, Statement of Candidacy (Oct. 10, 2017).

1 National Media is a Virginia company organized in 2006 that provides political
2 consulting services and operates under the names “Red Eagle Media Group” and “American
3 Media & Advocacy Group.”¹³ Respondents have previously acknowledged that National Media,
4 Red Eagle, and AMAG are the same company.¹⁴

5 In the 2016 general election, the NRA-PVF disclosed nearly \$9.3 million in independent
6 expenditures supporting Donald J. Trump or opposing Hillary Clinton.¹⁵ Of this amount, the
7 NRA-PVF paid Starboard Strategic, Inc. (“Starboard”) close to \$9 million for advertising
8 expenses.¹⁶ Starboard, in turn, retained National Media personnel to place the NRA-PVF’s pro-
9 Trump ads, which National Media did using the company’s fictitious name, “Red Eagle.”¹⁷
10 Reports filed with the Commission show that the Trump Committee paid National Media’s other
11 fictitious name, “AMAG,” nearly \$74 million for “placed media” during the 2016 election
12 cycle.¹⁸

¹³ See National Media, Commonwealth of Virginia State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/S207052>; 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).

¹⁴ See, e.g., NRA Resp. at 5, MUR 7553 (Jan. 29, 2019) (on behalf of NRA-ILA, NRA-PVF, and National Media); NRA Resp. at 4, MUR 7524 (Dec. 17, 2019) (on behalf of NRA-PVF, NRA-ILA, and National Media, among others).

¹⁵ See NRA-PVF, Disbursements for IEs supporting/opposing Trump or Clinton, 2015-2016 (regularly scheduled reports).

¹⁶ See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Trump or Clinton, 2015-2016 (regularly scheduled reports).

¹⁷ See Compl. at 2, MUR 7558; NRA Resp. at 6, MUR 7553.

¹⁸ See Trump Committee, Disbursements to AMAG, 2015-2016 (regularly scheduled reports); see also NRA Resp. at 6, MUR 7553; Compl. ¶ 17, MUR 7553.

1 Also in 2016, the NRA-PVF disclosed nearly \$3.6 million in independent expenditures
2 supporting Richard Burr or opposing his opponent, Deborah Ross, in North Carolina.¹⁹ As in the
3 presidential election that year, the NRA-PVF paid Starboard nearly \$3.3 million in “advertising
4 expenses,”²⁰ and it appears that Starboard retained Red Eagle to place the NRA-PVF’s pro-Burr
5 ads.²¹ The Burr Committee also purchased ads that National Media placed during this election
6 cycle.²²

7 In the 2018 election cycle, the NRA-PVF disclosed approximately \$1.3 million in
8 independent expenditures supporting Josh Hawley or opposing his opponent, Claire McCaskill,
9 in Missouri’s U.S. Senate race,²³ which included nearly \$1.1 million in disbursements to
10 Starboard for “advertising expenses.”²⁴ In the Montana Senate race, the NRA-ILA reported
11 disbursements of \$404,496 to Starboard for “advertising expenses” in connection with

¹⁹ See NRA-PVF, Disbursements for IEs supporting/opposing Burr or Ross, 2015-2016 (regularly scheduled reports).

²⁰ See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Burr or Ross, 2015-2016 (regularly scheduled reports).

²¹ See Compl., Exs. A-B, MUR 7560. In their Response, the NRA and National Media Respondents did not explicitly state that Starboard retained National Media to place the NRA-PVF’s pro-Burr ads. See generally NRA Resp., MUR 7560 (Mar. 21, 2019) (on behalf of NRA-PVF, NRA-ILA, and National Media). However, in their Response in MUR 7553, which they reference in their Response here, they state, in relevant part, that “the NRA-ILA and NRA-PVF did not engage in ad placements discussions directly with National Media personnel;” rather, “other consultants retained by NRA-ILA and NRA-PVF, namely Starboard Strategic, Inc. performed this role.” NRA Resp. at 6, MUR 7553.

²² Compl., Exs. C-E, MUR 7560. The Burr Committee reported approximately \$9 million in disbursements for “media buys” to National Media. See Burr Committee, Disbursements to National Media, 2015-2016 (regularly scheduled reports).

²³ See NRA-PVF, Disbursements for IEs supporting/opposing Hawley or McCaskill, 2017-2018 (regularly scheduled reports).

²⁴ See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Hawley or McCaskill, 2017-2018 (regularly scheduled reports).

1 independent expenditures supporting Matt Rosendale or opposing Jon Tester.²⁵ In both of these
2 Senate races, the NRA-PVF's and NRA-ILA's ads were placed by Red Eagle,²⁶ while the
3 Hawley and Rosendale Committees purchased ads that were placed by AMAG.²⁷

4 **III. LEGAL ANALYSIS**

5 The Federal Election Campaign Act of 1971, as amended (the "Act"), defines the terms
6 "contribution" and "expenditure" to include "anything of value" made by any person for the
7 purpose of influencing an election.²⁸ The term "anything of value" includes in-kind
8 contributions.²⁹ In-kind contributions result when goods or services are provided without charge
9 or at less than the usual and normal charge,³⁰ and when a person makes an expenditure in
10 cooperation, consultation or in concert with, or at the request or suggestion of a candidate or the
11 candidate's authorized committee or their agents.³¹

12 Under Commission regulations, expenditures for "coordinated communications" are
13 addressed under a three-prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are
14 addressed under 11 C.F.R. § 109.20(b). The Commission has explained that section 109.20(b)
15 applies to "expenditures that are not made for communications but that are coordinated with a

²⁵ See NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Rosendale or Tester, 2017-2018 (regularly scheduled reports).

²⁶ See Compl., Exs. G, I, J, MUR 7560.

²⁷ See *id.*, Exs. F, H, K; see also Hawley Resp. at 3, MUR 7560 (March 5, 2019); Rosendale Resp. at 3 (Mar. 5, 2019).

²⁸ 52 U.S.C §§ 30101(8)(A)(i), 30101(9)(A)(i).

²⁹ 11 C.F.R. § 100.52(d).

³⁰ *Id.*

³¹ 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).

1 candidate, authorized committee, or political party committee.”³² Under the three-prong test for
2 coordinated communications, a communication is coordinated and treated as an in-kind
3 contribution when it is paid for by someone other than a candidate, a candidate’s authorized
4 committee, a political party committee, or the authorized agents of either (the “payment prong”);
5 satisfies one of five content standards (the “content prong”); and satisfies one of six conduct
6 standards (the “conduct prong”).³³ A communication must satisfy all three prongs to be a
7 “coordinated communication.”

8 The “conduct prong” is satisfied by: (1) communications made at the “request or
9 suggestion” of the relevant candidate or committee; (2) communications made with the “material
10 involvement” of the relevant candidate or committee; (3) communications made after a
11 “substantial discussion” with the relevant candidate or committee; (4) specific actions of a
12 “common vendor;” (5) specific actions of a “former employee or independent contractor;” and
13 (6) specific actions relating to the dissemination of campaign material.³⁴

14 The “common vendor” standard of the conduct prong has three elements: (i) the person
15 paying for the communication, or an agent of such person, uses a “commercial vendor”³⁵ to
16 create, produce, or distribute the communication; (ii) the vendor previously provided certain

³² Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003); *see also* Advisory Opinion 2011-14 (Utah Bankers Association).

³³ 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).

³⁴ *Id.* § 109.21(d).

³⁵ 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.” *Id.* § 116.1(c). A “commercial vendor” also includes “any owner, officer, or employee of the commercial vendor.” *Id.* § 109.21(d).

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

4 (A) Information about the campaign plans, projects, activities, or
5 needs of the clearly identified candidate, the candidate's opponent,
6 or a political party committee, and that information is material to the
7 creation, production, or distribution of the communication; or
8

9 (B) Information used previously by the commercial vendor in
10 providing services to the candidate who is clearly identified in the
11 communication, or the candidate's authorized committee, the
12 candidate's opponent, the opponent's authorized committee, or a
13 political party committee, and that information is material to the
14 creation, production, or distribution of the communication.³⁶
15

16 Commission regulations state that a candidate or authorized committee “does not receive
17 or accept an in-kind contribution” resulting from coordination through a common vendor unless
18 the communication was made at the request or suggestion of, with the material involvement of,
19 or after substantial discussions with, the candidate or authorized committee.³⁷ Further, the
20 Commission has crafted a safe harbor provision for commercial vendors that have established
21 and implemented a written firewall policy that meets certain requirements.³⁸

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

³⁶ *Id.* § 109.21(d)(4); *see also id.* § 116.1(c).

³⁷ *Id.* § 109.21(b)(2), (d)(1)-(3).

³⁸ *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."³⁹ 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."⁴⁰

8 **A. There is Reason to Believe that the NRA-PVF Coordinated with the Trump**
9 **Committee through National Media**

10 The Complaint in MUR 7558 alleges that the NRA-PVF coordinated its ads with the
11 Trump Committee using National Media as a common vendor.⁴¹ There is no dispute that the
12 payment and content prongs of the coordinated communications test are satisfied.⁴² Nor is there
13 any dispute regarding the first two common vendor elements.⁴³ Only the third common vendor
14 element of the conduct prong is in dispute.
15

³⁹ *Id.* § 109.21(h)(1)-(2).

⁴⁰ *Id.* § 109.21(h).

⁴¹ Compl. at 6-7, MUR 7558.

⁴² *See* NRA Resp. at 1-3, MUR 7558 (Feb. 19, 2019) (on behalf of NRA-PVF, NRA-ILA, and National Media) (referring to 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"))).

⁴³ *See id.* at 1-3 (referring to 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 "common vendors," *see* 11 C.F.R. § 116.1(c), and distributed, from June through November 2016, the NRA-PVF's communications supporting Trump or opposing Clinton. *See* First General Counsel's Report at 14 & n.55, MURs 7427, 7497, 7524, 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 NRA-PVF. *See id.*

1 The MUR 7558 Complaint alleges that the same National Media official placed ads for
2 both the NRA-PVF and the Trump Committee, disseminating ads with the same message, the
3 same intended audience, on the same network, on the same week, and during the same time
4 slots.⁴⁴ Attached as exhibits to the Complaint are documents obtained from the Federal
5 Communication Commission's ("FCC") public database that contain information on ads
6 National Media placed for the NRA-PVF and the Trump Committee.⁴⁵

7 As explained below and in our analysis of these filings in MUR 7553,⁴⁶ the available
8 information indicates that National Media used or conveyed non-public information to the NRA-
9 PVF about the Trump Committee's "plans, projects, activities or needs" that was material to the
10 placement of the NRA-PVF's pro-Trump communications. The submitted FCC filings show the
11 same National Media official was involved in the placement of ads for both the NRA-PVF and
12 the Trump Committee, and the ads were placed on the same television station, within days of
13 each other, to run during the same time period. Specifically, Jon Ferrell, National Media's
14 Director of Accounting, appears on behalf of the NRA-PVF on an "Agreement Form for Non-
15 Candidate/Issue Advertisements" dated October 19, 2016, for "Pro Trump" "Anti Clinton" ads
16 scheduled to run from October 25 to October 31, 2016, on a Norfolk, Virginia, television
17 station.⁴⁷ Five days later, Ferrell signed an October 24, 2016, "Agreement Form for Political

⁴⁴ See Compl. at 1-2, 5-6, MUR 7558.

⁴⁵ These FCC filings were also attached to the Complaint in MUR 7553. See Compl., Exs. Q, R, MUR 7553.

⁴⁶ See First General Counsel's Report at 15-21, MURs 7427, 7497, 7524, 7553.

⁴⁷ See Compl., Ex. 1, MUR 7558.

1 Candidate Advertisements” as an agent of the Trump Committee for “Pro Trump” “Anti
2 Clinton” ads scheduled to run on the same Norfolk station during the same week.⁴⁸

3 In a previous matter, the Commission found reason to believe that the third element of the
4 common vendor conduct prong was satisfied and investigated where a principal of a common
5 vendor, “while providing consulting services, arranging media buys, and producing television
6 ads” for the candidate committee, was also providing the same services to an organization that
7 supported the candidate.⁴⁹ These dual roles, the Commission explained, placed the principal of
8 the common vendor “in a position to know non-public information regarding” the candidate’s
9 campaign and the organization’s plans for the election cycle and to use or convey that
10 information in advising and guiding both clients, including on issues related to the allocation of
11 resources.⁵⁰

12 Here, the available information similarly indicates that the same National Media official,
13 Ferrell, was involved in the placement of ads for both the NRA-PVF and the Trump Committee,
14 putting him in a position to know non-public information that may have informed the placement
15 of the NRA-PVF’s ads supporting Trump and opposing Clinton. The timing of the placement
16 and distribution of these ads provides additional support for the inference that non-public

⁴⁸ See *id.*, Ex. 2.

⁴⁹ See Factual & Legal Analysis at 3-4, 6-7, 10-11, MUR 5415 (Club for Growth).

⁵⁰ *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).

1 information about the Trump Committee's plans, activities, and needs influenced National
2 Media's placement of the NRA-PVF's pro-Trump ads.⁵¹

3 Respondents incorporate their previously articulated arguments that the Commission's
4 coordination standard is not met here.⁵² National Media, for instance, claims that it adopted and
5 implemented a firewall policy that prohibited the same employees or consultants from
6 performing "work relating to more than one client on opposite sides of the firewall, for the same
7 election or race"⁵³ but does not provide details regarding when it was distributed or how it was
8 implemented.⁵⁴ Furthermore, under its plain terms, the firewall policy did not apply to

⁵¹ The Complaint, relying on a *Mother Jones* article, states that "[o]ther current and former National Media employees have authorized similar ad buys in other markets for both the NRA-PVF and Trump's campaign." Compl. at 2-3, MUR 7558 (citing 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/> (Mother Jones Article)). While this Complaint only references Ferrell, the article it cites notes that Kristy Kovatch, Ben Angle, and Caroline Kowalski were also National Media employees whose names appeared on FCC filings in connection with ad placements for the Trump Committee and NRA Respondents during the 2016 presidential election. Mother Jones Article. These individuals' involvement in the placement of ads for the NRA Respondents and the Trump Committee was detailed in the Complaint in MUR 7553 and in OGC's First General Counsel's Report in that matter. *See* Compl., MUR 7553; First General Counsel's Report at 15-18, MUR 7427, 7497, 7524, 7553.

⁵² *See generally* NRA Resp., MUR 7558; Trump Committee Resp., MUR 7558 (Mar. 29, 2019).

⁵³ NRA Resp. at 3, MUR 7558 (referring to NRA Resp. at 6-8, 10-11, Ex. F, MUR 7553). 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. *See* NRA Resp., Ex. F, MUR 7553.

⁵⁴ 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). As we noted in MUR 7553, National Media has not provided this information. *See* First General Counsel's Report at 21, MUR 7427, 7497, 7524, 7553.

1 management and administrative employees such as Ferrell.⁵⁵ As such, the firewall safe harbor
2 does not apply.

3 Respondents further contend that common vendor coordination is impossible where, as in
4 this case, the NRA-PVF's ads were placed before the Trump Committee's ads and were publicly
5 disclosed "immediately" through the FCC's public database.⁵⁶ As discussed in the previous
6 matter, however, the third element of the common vendor standard focuses on whether the
7 commercial vendor uses or conveys to the person paying for the communication information that
8 is material to its distribution, irrespective of when the communication airs.⁵⁷ If Respondents'
9 position were correct, candidates and third parties could completely avoid common vendor
10 coordination findings by strategically timing the placement of a third party's fully coordinated
11 communication just before the candidate's message. In addition, the argument that the ad buys
12 were publicly available ignores the key fact that the *same* company and personnel placed ads for
13 both the payor and the candidate committee, undermining the contention that the relevant
14 participants relied solely on information in the stations' public inspection files to make
15 placement decisions. Importantly, the NRA Respondents did not argue in either MUR 7553 or in

⁵⁵ 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.

⁵⁶ See NRA Resp. at 2-3, MUR 7558 (referring to arguments at NRA Resp. at 21-26, MUR 7553); Trump Committee Resp. at 2, MUR 7558. "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.

⁵⁷ See 11 C.F.R. § 109.21(d)(4)(iii).

1 these matters that they relied on publicly available information to make their ad placement
2 decisions, or even that they were aware of the information in the public inspection files.⁵⁸
3 Respondents also contend that Ferrell's signature on the NAB Form PB-18, *i.e.*, the
4 "agreement form," is merely administrative and that Ferrell does not "authorize" the ad buys
5 placed by National Media's media buyers.⁵⁹ The agreement form, they insist, is not a contract,
6 but rather "is a template form that broadcast stations use to meet their public disclosure
7 obligations."⁶⁰ Whether the forms were actual contracts does not change the fact that Ferrell,⁶¹
8 even if he did not make the actual decisions on when and where to place the ads, was in a
9 position to know when and where the ads were being placed and the cost of the ad placements
10 for both the Trump Committee and the NRA-PVF,⁶² information that may have been material to

⁵⁸ See generally NRA Resp., MUR 7558; 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 First General Counsel's Report at 5-7, MUR 5506 (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"), Commission Certification, MUR 5506 (Aug. 12, 2005).

⁵⁹ See NRA Resp. at 1-2, MUR 7558; NRA Resp. at 11-14, MUR 7553.

⁶⁰ See NRA Resp. at 2, MUR 7558.

⁶¹ We note that, contrary to Respondents' argument, the National Association of Broadcasters, the entity that created the agreement forms, explained that the forms were "*designed to serve as actual contracts for the sale of political broadcast time* and to satisfy FCC record retention requirements." National Association of Broadcasters, Political Broadcast Agreement Forms, PB-18, <https://gab.org/wp-content/uploads/2016/06/pb18-form-final-c1.pdf> (emphasis added).

⁶² In signing the agreement forms, Ferrell represented that the "payment for the . . . described broadcast time had been furnished" and that he was "authorized to announce the time as paid" by the NRA-PVF and Trump Committee. See, e.g., Compl., Exs. 1-2, MUR 7558. Respondents, however, assert that "the form authorizes the broadcast station," not Ferrell, "to announce the purchase of air time." NRA Resp. at 2 n.2, MUR 7558. As previously stated, the forms serve a dual-purpose — they are designed to satisfy the broadcast station's record retention requirements for their public files and to serve as an agreement between the station and *the entity purchasing the air time*. See National Association of Broadcasters, Political Broadcast Agreement Forms, PB-18, <https://gab.org/wp-content/uploads/2016/06/pb18-form-final-c1.pdf>.

1 the placement of the NRA's pro-Trump ads.⁶³ That Ferrell may have been acting in an
2 "administrative" capacity does not preclude a coordination finding.⁶⁴

3 Accordingly, we recommend that the Commission find reason to believe that the NRA-
4 PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a)⁶⁵ by making and failing to report
5 excessive and prohibited in-kind contributions to the Trump Committee in the form of
6 coordinated communications. At this time, we recommend that the Commission take no action
7 on the Complaint's allegation that the Trump Committee accepted the in-kind contributions
8 resulting from the coordinated communications. The available information is insufficient to find
9 reason to believe that a representative of the Trump Committee was "materially involved in
10 decisions regarding the creation, production, and distribution of the NRA-PVF's
11 advertisements," or engaged in any other type of conduct indicating that it received or accepted
12 an in-kind contribution, *i.e.*, that it requested or suggested, or participated in substantial

⁶³ The Commission has explained 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 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 the 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, that it lacked decision-making authority, or that it lacked knowledge of the communications at issue.

⁶⁴ As the Commission explained in the context of the "former employee" conduct standard, the "use or convey" standard "does not make any distinction between categories or ranks of employees. *See* Advisory Opinion 2016-21 at 5 (Great America PAC); *see also* 11 C.F.R. § 109.21(d)(5). The Commission specifically declined to limit its application to "a specified class of employees who are likely to 'possess material political information.'" Advisory Opinion 2016-21 at 5 (Great America PAC) (quoting 68 Fed. Reg. at 437).

⁶⁵ 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 discussions about, communications.⁶⁶ Additional information may come to light as a result of
 2 our investigation that will allow us to determine whether the Trump Committee accepted any in-
 3 kind contributions.

4 **B. There is Reason to Believe that the NRA Respondents Coordinated with the**
 5 **Burr, Hawley, and Rosendale Committees through National Media**

6
 7 The Complaints in MURs 7560 and 7621 similarly allege that the NRA Respondents
 8 coordinated ads with the Burr, Hawley, and Rosendale Committees using National Media as a
 9 common vendor.⁶⁷ None of the Respondents dispute that the NRA Respondents' ads satisfy the
 10 payment and content prongs of the coordinated communications test and the first two elements of
 11 the common vendor standard of the conduct prong.⁶⁸ In dispute is whether the third element of
 12 the common vendor standard has been satisfied — *i.e.*, whether there was use or conveyance of
 13 material information.

14 As in the 2016 presidential race, the record raises a reasonable inference that information
 15 National Media gained by working for the Burr, Hawley, and Rosendale Committees was used

⁶⁶ 11 C.F.R. § 109.21(b)(2), (d)(1)-(3).

⁶⁷ *See* Compl. at 9-10, MUR 7560; Compl. at 2, 7-8, MUR 7621.

⁶⁸ *See generally* NRA Resp. at 4-8, MUR 7560; Burr Committee Resp., MUR 7560; Hawley Committee Resp., MUR 7560; Rosendale Committee Resp., MUR 7560; NRA Resp., MUR 7621 (July 30, 2019); *see also* First General Counsel's Report at 26, 29, 34, MURs 7427, 7497, 7524, 7553. National Media qualifies as a "commercial vendor," 11 C.F.R. § 116.1(c) and distributed, in September and October 2016, the NRA-PVF's ads supporting Burr and opposing Ross. *See* Compl., Exs. A-B, MUR 7560. National Media, in October and November 2016, selected and purchased advertising—an enumerated service—for the Burr Committee, overlapping with the time period National Media provided services to the NRA-PVF. *Id.*, Exs. C-E. As to the claim involving Rosendale, National Media distributed the NRA-ILA's ads in September 2018. *See* Compl., Ex. J, MUR 7560; Compl., Ex. D, MUR 7621. Between July 2018 and October 2018, National Media also selected and purchased advertising — an enumerated service — for the Rosendale Committee, covering part of the period that National Media provided services to the NRA-IL. *See* Compl., Ex. K, MUR 7560; Compl., Exs. A-C, E-F, MUR 7621. Finally, with respect to Hawley, which we addressed in connection with MUR 7524, National Media distributed the NRA-PVF's pro-Hawley ads and the Hawley Committee's ads during the same time period in September 2018. *See* Compl. Exs. F-I, MUR 7560; First General Counsel's Report at 26, MURs 7427, 7497, 7524, 7553.

1 by it or conveyed to others, and this information influenced the placement of the NRA's ads.
2 During the 2016 Senate race in North Carolina, FCC filings reveal multiple instances where
3 Ferrell of National Media was involved in ad buys for the NRA-PVF and the Burr Committee.
4 Specifically, Ferrell signed two agreement forms with the station WECT, one on September 19,
5 2016, and the other on October 21, 2016, for NRA-PVF ads described as "Anti-Ross for US
6 Senate."⁶⁹ On October 12, October 24, and November 1, 2016, Ferrell's signature appears on
7 agreement forms as an agent of the Burr Committee for the placement of ads for the Burr
8 Committee on the same station.⁷⁰

9 This pattern continued into the 2018 election cycle. For instance, in Missouri's Senate
10 race, Ferrell signed an agreement form dated September 6, 2018, for "Josh Hawley for
11 Senate/NRSC" ads on stations KOAM and KFJX, and the next day, his signature appears on a
12 form for the placement of NRA-PVF ads on the same television station.⁷¹ Ferrell's signature
13 also appears on an agreement form dated September 24, 2018, for the placement of ads for the
14 Hawley Committee on the station KMBC.⁷² Less than two weeks later, and in reference to the
15 same station, Ferrell's name appears once more on an agreement form dated October 4, 2018, for
16 the placement of NRA-PVF ads with the following notation: "Claire McCaskill sided with the

⁶⁹ Compl., Exs. A-B, MUR 7560.

⁷⁰ *See id.*, Exs. C-E.

⁷¹ *Id.*, Exs. F-G.

⁷² *Id.*, Ex. H. As was the case with the Trump and Burr Committees, Ferrell signed the "Candidate Certification pages" as the "agent for Josh Hawley for Senate." *Id.*, Exs. F, H.

1 left all 4 times on Supreme Court Justices. Viewers are encouraged to vote for Josh Hawley for
2 Senate.”⁷³

3 In Montana's U.S. Senate race, Ferrell's name similarly appears on agreement forms for
4 ad purchases on behalf of the Rosendale Committee and the NRA-ILA. The first agreement
5 form, dated August 31, 2018, is for the placement of ads on behalf of the Rosendale Committee
6 with the station KULR.⁷⁴ Days later, Ferrell's name appears on a September 4, 2018, agreement
7 form with the same station for the placement of NRA-ILA ads mentioning “John Tester.”⁷⁵ And
8 after one more week, an agreement form dated September 11, 2018, bears Ferrell's signature for
9 the placement of ads for the Rosendale Committee with the same station, KULR.⁷⁶ These ads,
10 according to reporting cited by the Complaint, “ran on many of the same shows that the NRA ads
11 did.”⁷⁷

12 Respondents deny that the above information is evidence of coordination, reiterating
13 arguments addressed above and previously submitted: (1) that the NAB agreement form is not a
14 contract or purchase order form; (2) that Ferrell is not an “ad buyer,” does not place ads,
15 “authorize ad buys,” or have any involvement in decisions related to ad purchases; and (3) that

⁷³ *Id.*, Ex. I.

⁷⁴ *See* Compl., Ex. C, MUR 7621. Attached to the Complaint is the order form, which shows the ads had flight dates of September 4 to September 10, 2018. *Id.*

⁷⁵ *Id.*, Ex. D; Compl., Ex. J, MUR 7560. According to the order, these ads were slated to run from September 6 to September 19, 2018. *See* Compl., Ex. D, MUR 7621.

⁷⁶ *See* Compl., Ex. E, MUR 7621; Compl., Ex. K, MUR 7560. These ads were slated to run between September 11 and September 17, 2018. *See* Compl., Ex. E, MUR 7621.

⁷⁷ Compl. at 5, MUR 7621 (quoting Christopher Hooks & Mike Spies, *Documents Show NRA and Republican Candidates Coordinated Ads in Key Senate Races*, MOTHER JONES (Jan. 11, 2019), <https://www.motherjones.com/politics/2019/01/nra-republicans-campaign-ads-senate-josh-hawley/>).

1 National Media maintained appropriate firewalls.⁷⁸ The Hawley and Rosendale Committees
2 specifically argue that they did not have any engagement or interaction with any agents of the
3 NRA Respondents, and the similarities in the content of the ads and their distribution are
4 insufficient to establish coordination.⁷⁹ In addition, the Burr Committee contends that its 2016
5 media strategy was shaped and implemented by Paul A. Shumaker, Jr., the campaign's political
6 consultant, and Douglas J. McAuliffe, the campaign's media strategist.⁸⁰ The Burr Committee
7 also asserts that Shumaker made all the decisions with respect to the markets, content, and the
8 timing of the ads and provided instructions to Kathleen Jones, the only National Media
9 individual with which the Burr Committee communicated, and she implemented those
10 instructions.⁸¹ According to its Response, "no one representing or acting on behalf of the Burr
11 Committee discussed or otherwise communicated with [Ferrell] during the 2016" race.⁸²

12 As previously discussed, by signing the NAB agreement forms, Ferrell was in a position
13 to know when and where the ads were being placed and the cost of the placements for the NRA
14 Respondents and the Burr, Hawley, and Rosendale Committees. This information, together with
15 the pattern of placement of the ads, supports a reasonable inference that National Media may

⁷⁸ See NRA Resp. at 4-8, MUR 7560; NRA Resp. at 1-6, John Ferrell Affidavit ¶¶ 3-7, MUR 7621; Hawley Committee Resp. at 1-5, MUR 7560; Rosendale Committee Resp. at 1-5, MUR 7560; Burr Committee Resp. at 2, MUR 7560.

⁷⁹ Hawley Committee Resp. at 2, 4-5, MUR 7560; Rosendale Committee Resp. at 2, 4-5, MUR 7560.

⁸⁰ See Burr Committee Resp. at 2, Paul A. Shumaker Affidavit ¶¶ 2-3, MUR 7560.

⁸¹ Burr Committee Resp. at 2, Shumaker Affidavit ¶¶ 3-4, MUR 7560.

⁸² Burr Committee Resp. at 3, MUR 7560. In his sworn affidavit, Shumaker states that Ferrell had no part in any media placement discussions with the Burr Committee, and the Burr Committee made media buys well in advance and adjusted occasionally based on publicly available information contained in periodic reports of spending by groups supporting Burr and opposing Ross. See Shumaker Affidavit ¶¶ 4-5, MUR 7560. According to Shumaker, National Media provided these reports which he testifies were "based upon data in the public F[C]C files at the television stations." See *id.* ¶ 5.

1 have used information about the Burr, Hawley, and Rosendale campaigns to place the NRA's ads
2 supporting these campaigns. While Respondents also contend that National Media implemented
3 and maintained an effective firewall policy, the available information indicates that such a policy
4 would not have applied to Ferrell,⁸³ and, in any event, it does not appear that it prevented the use
5 or conveyance of material information. Thus, the firewall safe harbor does not apply.⁸⁴

6 Accordingly, we recommend that the Commission find reason to believe that the NRA-
7 PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a)⁸⁵ by making and failing to report
8 excessive in-kind contributions to the Burr Committee and the Hawley Committee in the form of
9 coordinated communications; and that the NRA-ILA violated 52 U.S.C. §§ 30104(b), 30116(a),
10 and 30118(a) by making and failing to report excessive in-kind contributions to the Rosendale
11 Committee in the form of coordinated communications.⁸⁶ As in the case of the Trump

⁸³ Respondents incorporate by reference the unsigned firewall policies from their Responses in MURs 7524 and 7553, and argue that "National Media implemented and maintained an appropriate firewall policy with respect to" the Senate races involving Burr, Rosendale, and Hawley. NRA Resp. at 6-7, MUR 7560. But the referenced firewall policies in MURs 7524 and 7553 did not identify the National Media individuals who worked on the NRA Respondents' side of the firewall or the opposite side with the Burr and Rosendale Committees (such information was provided in connection with NRA-PVF and Hawley). *See* NRA Resp., Ex. E, MUR 7524; NRA Resp., Ex. F, MUR 7553. Further, these generic documents explicitly state, "Firewall policies that apply in a *particular matter* will be set forth in a *written memorandum* that will be provided, along with the copy of this policy statement, to all relevant" individuals in advance of starting work for the affected clients. *See* NRA Resp. Ex. E (emphasis added), MUR 7524. While National Media provided a memorandum concerning the "Trump Firewall Implementation," in MUR 7553, *see* NRA Resp., Ex. F, MUR 7553, it has not provided a separate memorandum for the U.S. Senate races involving Burr, Hawley, or Rosendale.

⁸⁴ *See* 11 C.F.R. § 109.21(h).

⁸⁵ 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.

⁸⁶ The MUR 7621 Complaint included public filings showing that the NRA-PVF also purchased pro-Rosendale ads that were placed by National Media on two stations. *See* Compl at 5-6, Exs. G-H, MUR 7621. It does not appear that National Media placed any ads for the Rosendale Committee on these stations. *See* KYSS-FM, Political Files 2018, <https://publicfiles.fcc.gov/fm-profile/kyss-fm/political-files/> (last visited August 12, 2019); KGVO, Political Files 2018, <https://publicfiles.fcc.gov/am-profile/kgvo/political-files/2018/06c9fb07-6c65-c71b-53b4-89756ecb07e5/> (last visited August 12, 2019). Thus, the current information is insufficient to support a finding that the NRA-PVF's ads were coordinated with the Rosendale Committee through National Media.

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1 Committee, the Burr, Hawley, and Rosendale Committees have denied engaging in any conduct
2 that would indicate that they received or accepted an in-kind contribution resulting from a
3 coordinated communication. In light of these denials and the absence of sufficient information
4 indicating that these committees engaged in activity demonstrating acceptance of an in-kind
5 contribution from the NRA Respondents, we recommend that the Commission take no action
6 against them at this time.

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V. RECOMMENDATIONS

MUR 7558

1. Find reason to believe that the National Rifle Association of America Political Victory Fund 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 in his official capacity as treasurer ;
2. Take no action at this time as to Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer;
3. Approve the Factual and Legal Analysis;
4. Authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary; and
5. Approve the appropriate letter.

MUR 7560

1. Find reason to believe that the National Rifle Association of America Political Victory Fund 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 The Richard Burr Committee and Timothy W. Gupton in his official capacity as treasurer;
2. Find reason to believe that the National Rifle Association of America Political Victory Fund 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 Josh Hawley for Senate and Salvatore Purpura in his official capacity as treasurer;
3. Find reason to believe that the National Rifle Association Institute for Legislative Action 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 Rosendale for Montana and Errol Galt in his official capacity as treasurer;

- 1 4. Take no action at this time as to The Richard Burr Committee and Timothy W.
2 Gupton in his official capacity as treasurer, Hawley for Senate and Salvatore Purpura
3 in his official capacity as treasurer , and Rosendale for Montana and Errol Galt in his
4 official capacity as treasurer;
- 5 5. Approve the Factual and Legal Analysis;
- 6 6. Authorize the use of compulsory process, including the issuance of appropriate
7 interrogatories, document subpoenas, and deposition subpoenas, as necessary; and
8
- 9 7. Approve the appropriate letters.

10

11


MUR 7621

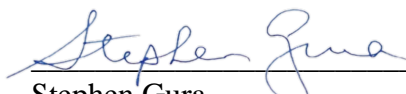
- 12 1. Find reason to believe that the National Rifle Association Institute for Legislative
13 Action violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and
14 failing to report excessive and prohibited in-kind contributions to Rosendale for
15 Montana and Errol Galt in his official capacity as treasurer;
- 16 2. Take no action at this time as to Matt Rosendale for Montana and Errol Galt in his
17 official capacity as treasurer;
- 18 3. Approve the Factual and Legal Analysis;
- 19 4. Authorize the use of compulsory process, including the issuance of appropriate
20 interrogatories, document subpoenas, and deposition subpoenas, as necessary; and
- 21 5. Approve the appropriate letter.

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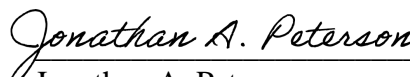
Lisa J. Stevenson
Acting General Counsel

September 18, 2019
Date


Charles Kitcher
Acting Associate General Counsel for Enforcement


Stephen Gura
Deputy Associate General Counsel for Enforcement


Lynn Y. Tran
Assistant General Counsel


Jonathan A. Peterson
Attorney

Attachments:
Factual and Legal Analysis (NRA-PVF and NRA-ILA)

ELW edits 1/25/21

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

RESPONDENTS: National Rifle Association of America MURs 7558, 7560, 7621
Political Victory Fund and Robert Owens,
in his official capacity as treasurer
National Rifle Association Institute
for Legislative Action and Robert Owens,
in his official capacity as treasurer

I. INTRODUCTION

13 These matters were generated by three complaints filed with the Federal Election
14 Commission (the “Commission”). *See* 52 U.S.C. § 30109(a)(1). The complaints allege that the
15 National Rifle Association of America Political Victory Fund (the “NRA-PVF”) and the
16 National Rifle Association Institute for Legislative Action (the “NRA-ILA”) (collectively the
17 “NRA Respondents”) violated the Federal Election Campaign Act of 1971, as amended (the
18 “Act”), by making excessive, prohibited, and unreported in-kind contributions to various
19 political committees by financing coordinated communications during the 2016 and 2018
20 election cycles.¹

21 The Complaint in MUR 7558 alleges that Donald J. Trump for President, Inc. (the
22 “Trump Committee”) was materially involved in decisions regarding the creation, production,
23 and distribution of the NRA-PVF’s television ads, and they coordinated the placement of those
24 ads using “common vendors” National Media Research Planning and Placement, LLC (“National
25 Media”), Red Eagle Media Group (“Red Eagle”), and American Media & Advocacy Group
26 (“AMAG”).² According to this Complaint, National Media, Red Eagle, and AMAG are in

¹ *See* Compl. at 1-2, MUR 7558 (Jan. 28, 2019); Compl. at 1-2, MUR 7560 (Jan. 28, 2019); Compl. at 1-2, MUR 7621 (July 10, 2019).

² Compl. at 6-7, MUR 7558.

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1 reality the same company.³ The Complaints in MURs 7560 and 7621 contain similar allegations
2 against The Richard Burr Committee (“Burr Committee”), Matt Rosendale for Montana (the
3 “Rosendale Committee”), and Josh Hawley for Senate (the “Hawley Committee”), namely, that
4 these committees were materially involved in decisions regarding the creation, production, and
5 distribution of the NRA Respondents’ television ads, and the ads were coordinated through
6 National Media.⁴

7 For the reasons that follow, the Commission finds reason to believe that: (1) the NRA-
8 PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and failing to report
9 excessive and prohibited in-kind contributions in the form of coordinated communications to
10 Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer; (2)
11 the NRA-PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and failing to
12 report excessive and prohibited in-kind contributions in the form of coordinated communications
13 to The Richard Burr Committee and Timothy W. Gupton in his official capacity as treasurer; (3)
14 the NRA-PVF violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and failing to
15 report excessive and prohibited in-kind contributions in the form of coordinated communications
16 to Josh Hawley for Senate and Salvatore Purpura in his official capacity as treasurer; and (4) the
17 NRA-ILA violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and failing to
18 report excessive and prohibited in-kind contributions in the form of coordinated communications
19 to Matt Rosendale for Montana and Errol Galt in his official capacity as treasurer.

20 **II. FACTUAL BACKGROUND**

³ *Id.* at 7-8.

⁴ Compl. at 9-10, MUR 7560; *see* Compl. at 2, 7-8, MUR 7621.

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1 The NRA-PVF is registered with the Commission as a separate segregated fund
2 connected to the National Rifle Association of America (“NRA”).⁵ It makes contributions to
3 candidates and political committees and makes independent expenditures through a separate
4 account.⁶ The NRA-ILA is a tax-exempt organization under Section 501(c)(4) of the Internal
5 Revenue Code that, according to the MUR 7560 Complaint, describes itself as “the lobbying
6 arm” of the NRA.⁷

7 During the 2016 election cycle, Donald J. Trump was the Republican nominee for
8 President, and Richard Burr was seeking reelection to the U.S. Senate in North Carolina.⁸ In the
9 2018 election cycle, Matt Rosendale was a candidate for U.S. Senate in Montana, and Josh
10 Hawley was a candidate for U.S. Senate in Missouri.⁹

11 National Media is a Virginia company organized in 2006 that provides political
12 consulting services and operates under the names “Red Eagle Media Group” and “American

⁵ 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).

⁶ *Id.*

⁷ *See* Compl. at 3, MUR 7560.

⁸ *See* Donald J. Trump, Statement of Candidacy (July 29, 2016); Richard M. Burr, Statement of Candidacy, (Mar. 5, 2016).

⁹ *See* Matt Rosendale, Statement of Candidacy (Aug. 14, 2017); Josh Hawley, Statement of Candidacy (Oct. 10, 2017).

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1 Media & Advocacy Group.”¹⁰ Respondents have previously acknowledged that National Media,
2 Red Eagle, and AMAG are the same company.¹¹

3 In the 2016 general election, the NRA-PVF disclosed nearly \$9.3 million in independent
4 expenditures supporting Donald J. Trump or opposing Hillary Clinton.¹² Of this amount, the
5 NRA-PVF paid Starboard Strategic, Inc. (“Starboard”) close to \$9 million for advertising
6 expenses.¹³ Starboard, in turn, retained National Media personnel to place the NRA-PVF’s pro-
7 Trump ads, which National Media did using the company’s fictitious name, “Red Eagle.”¹⁴
8 Reports filed with the Commission show that the Trump Committee paid National Media’s other
9 fictitious name, “AMAG,” nearly \$74 million for “placed media” during the 2016 election
10 cycle.¹⁵

11 Also in 2016, the NRA-PVF disclosed nearly \$3.6 million in independent expenditures
12 supporting Richard Burr or opposing his opponent, Deborah Ross, in North Carolina.¹⁶ As in the
13 presidential election that year, the NRA-PVF paid Starboard nearly \$3.3 million in “advertising

¹⁰ See National Media, Commonwealth of Virginia State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/S207052>; 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).

¹¹ See, e.g., NRA Resp. at 5, MUR 7553 (Jan. 29, 2019) (on behalf of NRA-ILA, NRA-PVF, and National Media); NRA Resp. at 4, MUR 7524 (Dec. 17, 2019) (on behalf of NRA-PVF, NRA-ILA, and National Media, among others).

¹² See NRA-PVF, Disbursements for IEs supporting/opposing Trump or Clinton, 2015-2016 (regularly scheduled reports).

¹³ See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Trump or Clinton, 2015-2016 (regularly scheduled reports).

¹⁴ See Compl. at 2, MUR 7558; NRA Resp. at 6, MUR 7553.

¹⁵ See Trump Committee, Disbursements to AMAG, 2015-2016 (regularly scheduled reports).

¹⁶ See NRA-PVF, Disbursements for IEs supporting/opposing Burr or Ross, 2015-2016 (regularly scheduled reports).

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1 expenses,”¹⁷ and it appears that Starboard retained Red Eagle to place the NRA-PVF’s pro-Burr
2 ads.¹⁸ The Burr Committee also purchased ads that National Media placed during this election
3 cycle.¹⁹

4 In the 2018 election cycle, the NRA-PVF disclosed approximately \$1.3 million in
5 independent expenditures supporting Josh Hawley or opposing his opponent, Claire McCaskill,
6 in Missouri’s U.S. Senate race,²⁰ which included nearly \$1.1 million in disbursements to
7 Starboard for “advertising expenses.”²¹ In the Montana Senate race, the NRA-ILA reported
8 disbursements of \$404,496 to Starboard for “advertising expenses” in connection with
9 independent expenditures supporting Matt Rosendale or opposing Jon Tester.²² In both of these

¹⁷ See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Burr or Ross, 2015-2016 (regularly scheduled reports).

¹⁸ See Compl., Exs. A-B, MUR 7560. In their Response, the NRA and National Media Respondents did not explicitly state that Starboard retained National Media to place the NRA-PVF’s pro-Burr ads. See generally NRA Resp., MUR 7560 (Mar. 21, 2019) (on behalf of NRA-PVF, NRA-ILA, and National Media). However, in their Response in MUR 7553, which they reference in their Response here, they state, in relevant part, that “the NRA-ILA and NRA-PVF did not engage in ad placements discussions directly with National Media personnel;” rather, “other consultants retained by NRA-ILA and NRA-PVF, namely Starboard Strategic, Inc. performed this role.” NRA Resp. at 6, MUR 7553.

¹⁹ Compl., Exs. C-E, MUR 7560. The Burr Committee reported approximately \$9 million in disbursements for “media buys” to National Media. See Burr Committee, Disbursements to National Media, 2015-2016 (regularly scheduled reports).

²⁰ See NRA-PVF, Disbursements for IEs supporting/opposing Hawley or McCaskill, 2017-2018 (regularly scheduled reports).

²¹ See NRA-PVF, Disbursements to Starboard for IEs supporting/opposing Hawley or McCaskill, 2017-2018 (regularly scheduled reports).

²² See NRA-ILA, Disbursements to Starboard for IEs supporting/opposing Rosendale or Tester, 2017-2018 (regularly scheduled reports).

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1 Senate races, the NRA-PVF’s and NRA-ILA’s ads were placed by Red Eagle,²³ while the
2 Hawley and Rosendale Committees purchased ads that were placed by AMAG.²⁴

3 **III. LEGAL ANALYSIS**

4 The Act defines the terms “contribution” and “expenditure” to include “anything of
5 value” made by any person for the purpose of influencing an election.²⁵ The term “anything of
6 value” includes in-kind contributions.²⁶ In-kind contributions result when goods or services are
7 provided without charge or at less than the usual and normal charge,²⁷ and when a person makes
8 an expenditure in cooperation, consultation or in concert with, or at the request or suggestion of a
9 candidate or the candidate’s authorized committee or their agents.²⁸

10 Under Commission regulations, expenditures for “coordinated communications” are
11 addressed under a three-prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are
12 addressed under 11 C.F.R. § 109.20(b). The Commission has explained that section 109.20(b)
13 applies to “expenditures that are not made for communications but that are coordinated with a
14 candidate, authorized committee, or political party committee.”²⁹ Under the three-prong test for
15 coordinated communications, a communication is coordinated and treated as an in-kind
16 contribution when it is paid for by someone other than a candidate, a candidate’s authorized

²³ See Compl., Exs. G, I, J, MUR 7560.

²⁴ See *id.*, Exs. F, H, K; see also Hawley Resp. at 3, MUR 7560 (March 5, 2019); Rosendale Resp. at 3 (Mar. 5, 2019).

²⁵ 52 U.S.C §§ 30101(8)(A)(i), 30101(9)(A)(i).

²⁶ 11 C.F.R. § 100.52(d).

²⁷ *Id.*

²⁸ 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).

²⁹ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003); see also Advisory Opinion 2011-14 (Utah Bankers Association).

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1 committee, a political party committee, or the authorized agents of either (the “payment prong”);
2 satisfies one of five content standards (the “content prong”); and satisfies one of five conduct
3 standards (the “conduct prong”).³⁰ A communication must satisfy all three prongs to be a
4 “coordinated communication” under the regulation.

5 The “conduct prong” is satisfied by: (1) communications made at the “request or
6 suggestion” of the relevant candidate or committee; (2) communications made with the “material
7 involvement” of the relevant candidate or committee; (3) communications made after a
8 “substantial discussion” with the relevant candidate or committee; (4) specific actions of a
9 “common vendor”; (5) specific actions of a “former employee or independent contractor”; and
10 (6) specific actions relating to the dissemination of campaign material.³¹

11 The “common vendor” standard of the conduct prong has three elements: (i) the person
12 paying for the communication, or an agent of such person, uses a “commercial vendor”³² to
13 create, produce, or distribute the communication; (ii) the vendor previously provided certain
14 enumerated services to the candidate identified in the communication during the previous 120
15 days; and (iii) the commercial vendor uses or conveys to the person paying for the
16 communication:

17 (A) Information about the campaign plans, projects, activities, or needs of
18 the clearly identified candidate, the candidate’s opponent, or a political

³⁰ 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).

³¹ *Id.* § 109.21(d).

³² 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).

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1 party committee, and that information is material to the creation,
2 production, or distribution of the communication; or
3

4 (B) Information used previously by the commercial vendor in providing
5 services to the candidate who is clearly identified in the communication,
6 or the candidate's authorized committee, the candidate's opponent, the
7 opponent's authorized committee, or a political party committee, and that
8 information is material to the creation, production, or distribution of the
9 communication.³³
10

11 Commission regulations state that a candidate or authorized committee “does not receive
12 or accept an in-kind contribution” resulting from coordination through a common vendor unless
13 the communication was made at the request or suggestion of, with the material involvement of,
14 or after substantial discussions with, the candidate or authorized committee.³⁴ Further, the
15 Commission has crafted a safe harbor provision for commercial vendors that have established
16 and implemented a written firewall policy that meets certain requirements.³⁵

17 A firewall policy satisfies the “safe harbor” if it: (1) is “designed and implemented to
18 prohibit the flow of information between employees or consultants providing services for the
19 person paying for the communication and those employees or consultants currently or previously
20 providing services to the candidate” who is identified in the communication, or “the candidate’s
21 authorized committee, the candidate’s opponent, the opponent’s authorized committee, or a
22 political party committee”; and (2) “described in a written policy that is distributed to all relevant
23 employees, consultants, and clients affected by the policy.”³⁶ The safe harbor, however, “does

³³ 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”).

³⁴ 11 C.F.R. § 109.21(b)(2); *see id.* § 109.21(d)(1)-(3).

³⁵ *Id.* § 109.21(h).

³⁶ *Id.* § 109.21(h)(1)-(2).

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1 not apply if specific information indicates that, despite the firewall, information about the
2 candidate's . . . campaign plans, projects, activities, or needs that is material to the creation,
3 production, or distribution of the communication was used or conveyed to the person paying for
4 the communication."³⁷

5 **A. There is Reason to Believe that the NRA-PVF Coordinated with the Trump**
6 **Committee Through National Media**
7

8 The Complaint in MUR 7558 alleges that the NRA-PVF coordinated its ads with the
9 Trump Committee using National Media as a common vendor.³⁸ There is no dispute that the
10 payment and content prongs of the coordinated communications test are satisfied.³⁹ Nor is there
11 any dispute regarding the first two common vendor elements.⁴⁰ Only the third common vendor
12 element of the conduct prong is in dispute.

13 The MUR 7558 Complaint alleges that the same National Media official placed ads for
14 both the NRA-PVF and the Trump Committee, disseminating ads with the same message, the
15 same intended audience, on the same network, on the same week, and during the same time
16 slots.⁴¹ Attached as exhibits to the Complaint are documents obtained from the Federal

³⁷ *Id.* § 109.21(h).

³⁸ Compl. at 6-7, MUR 7558.

³⁹ *See* NRA Resp. at 1-3, MUR 7558 (Feb. 19, 2019) (on behalf of NRA-PVF, NRA-ILA, and National Media) (referring to 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")).

⁴⁰ *See id.* at 1-3 (referring to 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 "common vendors." *See* 11 C.F.R. § 116.1(c). Information available to the Commission also indicates that National Media placed, from June through November 2016, the NRA-PVF's communications supporting Trump or opposing Clinton. Information available to the Commission also shows that 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 NRA-PVF.

⁴¹ *See* Compl. at 1-2, 5-6, MUR 7558.

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1 Communication Commission’s (“FCC”) public database that contain information on ads
2 National Media placed for the NRA-PVF and the Trump Committee.

3 As explained below, the available information indicates that National Media used or
4 conveyed non-public information to the NRA-PVF about the Trump Committee’s “plans,
5 projects, activities or needs” that was material to the placement of the NRA-PVF’s pro-Trump
6 communications. The submitted FCC filings show the same National Media official was
7 involved in the placement of ads for both the NRA-PVF and the Trump Committee, and the ads
8 were placed on the same television station, within days of each other, to run during the same
9 time period. Specifically, Jon Ferrell, National Media’s Director of Accounting, appears on
10 behalf of the NRA-PVF on an “Agreement Form for Non-Candidate/Issue Advertisements”
11 dated October 19, 2016, for “Pro Trump” “Anti Clinton” ads scheduled to run from October 25
12 to October 31, 2016, on a Norfolk, Virginia, television station.⁴² Five days later, Ferrell signed
13 an October 24, 2016, “Agreement Form for Political Candidate Advertisements” as an agent of
14 the Trump Committee for “Pro Trump” “Anti Clinton” ads scheduled to run on the same Norfolk
15 station during the same week.⁴³

16 In a previous matter, the Commission found reason to believe that the third element of the
17 common vendor conduct prong was satisfied and investigated where a principal of a common
18 vendor, “while providing consulting services, arranging media buys, and producing television
19 ads” for the candidate committee, was also providing the same services to an organization that
20 supported the candidate.⁴⁴ These dual roles, the Commission explained, placed the principal of

⁴² See Compl., Ex. 1, MUR 7558.

⁴³ See *id.*, Ex. 2.

⁴⁴ See Factual & Legal Analysis at 3-4, 6-7, 10-11, MUR 5415 (Club for Growth).

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1 the common vendor “in a position to know non-public information regarding” the candidate’s
2 campaign and the organization’s plans for the election cycle and to use or convey that
3 information in advising and guiding both clients, including on issues related to the allocation of
4 resources.⁴⁵

5 Here, the available information similarly indicates that the same National Media official,
6 Ferrell, was involved in the placement of ads for both the NRA-PVF and the Trump Committee,
7 putting him in a position to know non-public information that may have informed the placement
8 of the NRA-PVF’s ads supporting Trump and opposing Clinton. The timing of the placement
9 and distribution of these ads provides additional support for the inference that non-public
10 information about the Trump Committee’s plans, activities, and needs influenced National
11 Media’s placement of the NRA-PVF’s pro-Trump ads.⁴⁶

12 Respondents argue that the Commission’s coordination standard is not met here.⁴⁷
13 National Media, for instance, claims that it adopted and implemented a firewall policy that
14 prohibited the same employees or consultants from performing “work relating to more than one

⁴⁵ *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).

⁴⁶ The Complaint, relying on a *Mother Jones* article, states that “[o]ther current and former National Media employees have authorized similar ad buys in other markets for both the NRA-PVF and Trump’s campaign.” Compl. at 2-3, MUR 7558 (citing 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/> (Mother Jones Article)).

⁴⁷ *See generally* NRA Resp., MUR 7558; Trump Committee Resp., MUR 7558 (Mar. 29, 2019).

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1 client on opposite sides of the firewall, for the same election or race”⁴⁸ but does not provide
2 details regarding when it was distributed or how it was implemented.⁴⁹ Furthermore, under its
3 plain terms, the firewall policy did not apply to management and administrative employees such
4 as Ferrell.⁵⁰ As such, the firewall safe harbor does not apply.

5 Respondents further contend that common vendor coordination is impossible where, as in
6 this case, the NRA-PVF’s ads were placed before the Trump Committee’s ads and were publicly
7 disclosed “immediately” through the FCC’s public database.⁵¹ The third element of the common
8 vendor standard, however, focuses on whether the commercial vendor uses or conveys to the
9 person paying for the communication information that is material to its distribution, irrespective
10 of when the communication airs.⁵² If Respondents’ position were correct, candidates and third
11 parties could completely avoid common vendor coordination findings by strategically timing the
12 placement of a third party’s fully coordinated communication just before the candidate’s

⁴⁸ NRA Resp. at 3, MUR 7558 (referring to NRA Resp. at 6-8, 10-11, Ex. F, MUR 7553). 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. *See* NRA Resp., Ex. F, MUR 7553.

⁴⁹ 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).

⁵⁰ 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.

⁵¹ *See* NRA Resp. at 2-3, MUR 7558 (referring to arguments at NRA Resp. at 21-26, MUR 7553); Trump Committee Resp. at 2, MUR 7558. “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.

⁵² *See* 11 C.F.R. § 109.21(d)(4)(iii).

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1 message. In addition, the argument that the ad buys were publicly available ignores the key fact
2 that the *same* company and personnel placed ads for both the payor and the candidate committee,
3 undermining the contention that the relevant participants relied solely on information in the
4 stations' public inspection files to make placement decisions. Importantly, the NRA
5 Respondents do not argue that they relied on publicly available information to make their ad
6 placement decisions, or even that they were aware of the information in the public inspection
7 files.⁵³

8 Respondents also contend that Ferrell's signature on the NAB Form PB-18, *i.e.*, the
9 "agreement form," is merely administrative and that Ferrell does not "authorize" the ad buys
10 placed by National Media's media buyers.⁵⁴ The agreement form, they insist, is not a contract,
11 but rather "is a template form that broadcast stations use to meet their public disclosure
12 obligations."⁵⁵ Whether the forms were actual contracts⁵⁶ does not change the fact that Ferrell,⁵⁶
13 even if he did not make the actual decisions on when and where to place the ads, was in a
14 position to know when and where the ads were being placed and the cost of the ad placements

⁵³ See generally NRA Resp., MUR 7558; 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 First General Counsel's Report at 5-7, MUR 5506 (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"), Commission Certification, MUR 5506 (Aug. 12, 2005).

⁵⁴ See NRA Resp. at 1-2, MUR 7558; NRA Resp. at 11-14, MUR 7553.

⁵⁵ See NRA Resp. at 2, MUR 7558.

⁵⁶ We note that, contrary to Respondents' argument, the National Association of Broadcasters, the entity that created the agreement forms, explained that the forms were "*designed to serve as actual contracts for the sale of political broadcast time* and to satisfy FCC record retention requirements." National Association of Broadcasters, Political Broadcast Agreement Forms, PB-18, <https://gab.org/wp-content/uploads/2016/06/pb18-form-final-c1.pdf> (emphasis added).

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1 for both the Trump Committee and the NRA-PVF,⁵⁷ information that may have been material to
2 the placement of the NRA’s pro-Trump ads.⁵⁸ That Ferrell may have been acting in an
3 “administrative” capacity does not preclude a coordination finding.⁵⁹

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

8 **B. There is Reason to Believe that the NRA Respondents Coordinated with the**
9 **Burr, Hawley, and Rosendale Committees through National Media**

10
11 The Complaints in MURs 7560 and 7621 similarly allege that the NRA Respondents
12 coordinated ads with the Burr, Hawley, and Rosendale Committees using National Media as a

⁵⁷ In signing the agreement forms, Ferrell represented that the “payment for the . . . described broadcast time had been furnished” and that he was “authorized to announce the time as paid” by the NRA-PVF and Trump Committee. *See, e.g.,* Compl., Exs. 1-2, MUR 7558. Respondents, however, assert that “the form authorizes the broadcast station,” not Ferrell, “to announce the purchase of air time.” NRA Resp. at 2 n.2, MUR 7558. As previously stated, the forms serve a dual-purpose — they are designed to satisfy the broadcast station’s record retention requirements for their public files and to serve as an agreement between the station and *the entity purchasing the air time*. *See* National Association of Broadcasters, Political Broadcast Agreement Forms, PB-18, <https://gab.org/wp-content/uploads/2016/06/pb18-form-final-c1.pdf>.

⁵⁸ The Commission has explained 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 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 the 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, that it lacked decision-making authority, or that it lacked knowledge of the communications at issue.

⁵⁹ As the Commission explained in the context of the “former employee” conduct standard, the “use or convey” standard “does not make any distinction between categories or ranks of employees. *See* Advisory Opinion 2016-21 at 5 (Great America PAC); *see also* 11 C.F.R. § 109.21(d)(5). The Commission specifically declined to limit its application to “a specified class of employees who are likely to ‘possess material political information.’” Advisory Opinion 2016-21 at 5 (Great America PAC) (quoting 68 Fed. Reg. at 437).

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1 common vendor.⁶⁰ None of the Respondents dispute that the NRA Respondents’ ads satisfy the
2 payment and content prongs of the coordinated communications test and the first two elements of
3 the common vendor standard of the conduct prong.⁶¹ In dispute is whether the third element of
4 the common vendor standard has been satisfied — *i.e.*, whether there was use or conveyance of
5 material information.

6 As in the 2016 presidential race, the record raises a reasonable inference that information
7 National Media gained by working for the Burr, Hawley, and Rosendale Committees was used
8 by it or conveyed to others, and this information influenced the placement of the NRA’s ads.
9 During the 2016 Senate race in North Carolina, FCC filings reveal multiple instances where
10 Ferrell of National Media was involved in ad buys for the NRA-PVF and the Burr Committee.
11 Specifically, Ferrell signed two agreement forms with the station WECT, one on September 19,
12 2016, and the other on October 21, 2016, for NRA-PVF ads described as “Anti-Ross for US
13 Senate.”⁶² On October 12, October 24, and November 1, 2016, Ferrell’s signature appears on

⁶⁰ See Compl. at 9-10, MUR 7560; Compl. at 2, 7-8, MUR 7621.

⁶¹ See generally NRA Resp. at 4-8, MUR 7560; Burr Committee Resp., MUR 7560; Hawley Committee Resp., MUR 7560; Rosendale Committee Resp., MUR 7560; NRA Resp., MUR 7621 (July 30, 2019). National Media qualifies as a “commercial vendor,” 11 C.F.R. § 116.1(c) and distributed, in September and October 2016, the NRA-PVF’s ads supporting Burr and opposing Ross. See Compl., Exs. A-B, MUR 7560. National Media, in October and November 2016, selected and purchased advertising—an enumerated service—for the Burr Committee, overlapping with the time period National Media provided services to the NRA-PVF. *Id.*, Exs. C-E. As to the claim involving Rosendale, National Media distributed the NRA-ILA’s ads in September 2018. See Compl., Ex. J, MUR 7560; Compl., Ex. D, MUR 7621. Between July 2018 and October 2018, National Media also selected and purchased advertising — an enumerated service — for the Rosendale Committee, covering part of the period that National Media provided services to the NRA-IL. See Compl., Ex. K, MUR 7560; Compl., Exs. A-C, E-F, MUR 7621. Finally, with respect to Hawley, National Media distributed the NRA-PVF’s pro-Hawley ads and the Hawley Committee’s ads during the same time period in September 2018. See Compl. Exs. F-I, MUR 7560.

⁶² Compl., Exs. A-B, MUR 7560.

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1 agreement forms as an agent of the Burr Committee for the placement of ads for the Burr
2 Committee on the same station.⁶³

3 This pattern continued into the 2018 election cycle. For instance, in Missouri’s Senate
4 race, Ferrell signed an agreement form dated September 6, 2018, for “Josh Hawley for
5 Senate/NRSC” ads on stations KOAM and KFJX, and the next day, his signature appears on a
6 form for the placement of NRA-PVF ads on the same television station.⁶⁴ Ferrell’s signature
7 also appears on an agreement form dated September 24, 2018, for the placement of ads for the
8 Hawley Committee on the station KMBC.⁶⁵ Less than two weeks later, and in reference to the
9 same station, Ferrell’s name appears once more on an agreement form dated October 4, 2018, for
10 the placement of NRA-PVF ads with the following notation: “Claire McCaskill sided with the
11 left all 4 times on Supreme Court Justices. Viewers are encouraged to vote for Josh Hawley for
12 Senate.”⁶⁶

13 In Montana’s U.S. Senate race, Ferrell’s name similarly appears on agreement forms for
14 ad purchases on behalf of the Rosendale Committee and the NRA-ILA. The first agreement
15 form, dated August 31, 2018, is for the placement of ads on behalf of the Rosendale Committee
16 with the station KULR.⁶⁷ Days later, Ferrell’s name appears on a September 4, 2018, agreement

⁶³ See *id.*, Exs. C-E.

⁶⁴ *Id.*, Exs. F-G.

⁶⁵ *Id.*, Ex. H. As was the case with the Trump and Burr Committees, Ferrell signed the “Candidate Certification pages” as the “agent for Josh Hawley for Senate.” *Id.*, Exs. F, H.

⁶⁶ *Id.*, Ex. I.

⁶⁷ See Compl., Ex. C, MUR 7621. Attached to the Complaint is the order form, which shows the ads had flight dates of September 4 to September 10, 2018. *Id.*

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1 form with the same station for the placement of NRA-ILA ads mentioning “John Tester.”⁶⁸ And
2 after one more week, an agreement form dated September 11, 2018, bears Ferrell’s signature for
3 the placement of ads for the Rosendale Committee with the same station, KULR.⁶⁹ These ads,
4 according to reporting cited by the Complaint, “ran on many of the same shows that the NRA ads
5 did.”⁷⁰

6 Respondents deny that the above information is evidence of coordination, arguing: (1)
7 that the NAB agreement form is not a contract or purchase order form; (2) that Ferrell is not an
8 “ad buyer,” does not place ads, “authorize ad buys,” or have any involvement in decisions related
9 to ad purchases; and (3) that National Media maintained appropriate firewalls.⁷¹ The Hawley
10 and Rosendale Committees specifically argue that they did not have any engagement or
11 interaction with any agents of the NRA Respondents, and the similarities in the content of the
12 ads and their distribution are insufficient to establish coordination.⁷² In addition, the Burr
13 Committee contends that its 2016 media strategy was shaped and implemented by Paul A.
14 Shumaker, Jr., the campaign’s political consultant, and Douglas J. McAuliffe, the campaign’s
15 media strategist.⁷³ The Burr Committee also asserts that Shumaker made all the decisions with

⁶⁸ *Id.*, Ex. D; Compl., Ex. J, MUR 7560. According to the order, these ads were slated to run from September 6 to September 19, 2018. *See* Compl., Ex. D, MUR 7621.

⁶⁹ *See* Compl., Ex. E, MUR 7621; Compl., Ex. K, MUR 7560. These ads were slated to run between September 11 and September 17, 2018. *See* Compl., Ex. E, MUR 7621.

⁷⁰ Compl. at 5, MUR 7621 (quoting Christopher Hooks & Mike Spies, *Documents Show NRA and Republican Candidates Coordinated Ads in Key Senate Races*, MOTHER JONES (Jan. 11, 2019), <https://www.motherjones.com/politics/2019/01/nra-republicans-campaign-ads-senate-josh-hawley/>).

⁷¹ *See* NRA Resp. at 4-8, MUR 7560; NRA Resp. at 1-6, John Ferrell Affidavit ¶¶ 3-7, MUR 7621; Hawley Committee Resp. at 1-5, MUR 7560; Rosendale Committee Resp. at 1-5, MUR 7560; Burr Committee Resp. at 2, MUR 7560.

⁷² Hawley Committee Resp. at 2, 4-5, MUR 7560; Rosendale Committee Resp. at 2, 4-5, MUR 7560.

⁷³ *See* Burr Committee Resp. at 2, Paul A. Shumaker Affidavit ¶¶ 2-3, MUR 7560.

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1 respect to the markets, content, and the timing of the ads and provided instructions to Kathleen
2 Jones, the only National Media individual with which the Burr Committee communicated, and
3 she implemented those instructions.⁷⁴ According to its Response, “no one representing or acting
4 on behalf of the Burr Committee discussed or otherwise communicated with [Ferrell] during the
5 2016” race.⁷⁵

6 By signing the NAB agreement forms, Ferrell was in a position to know when and where
7 the ads were being placed and the cost of the placements for the NRA Respondents and the Burr,
8 Hawley, and Rosendale Committees. This information, together with the pattern of placement of
9 the ads, supports a reasonable inference that National Media may have used information about
10 the Burr, Hawley, and Rosendale campaigns to place the NRA’s ads supporting these campaigns.
11 While Respondents also contend that National Media implemented and maintained an effective
12 firewall policy, the available information indicates that such a policy would not have applied to

⁷⁴ Burr Committee Resp. at 2, Shumaker Affidavit ¶¶ 3-4, MUR 7560.

⁷⁵ Burr Committee Resp. at 3, MUR 7560. In his sworn affidavit, Shumaker states that Ferrell had no part in any media placement discussions with the Burr Committee, and the Burr Committee made media buys well in advance and adjusted occasionally based on publicly available information contained in periodic reports of spending by groups supporting Burr and opposing Ross. *See* Shumaker Affidavit ¶¶ 4-5, MUR 7560. According to Shumaker, National Media provided these reports which he testifies were “based upon data in the public F[C]C files at the television stations.” *See id.* ¶ 5.

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1 Ferrell,⁷⁶ and, in any event, it does not appear that it prevented the use or conveyance of material
2 information. Thus, the firewall safe harbor does not apply.⁷⁷

3 Accordingly, the Commission finds reason to believe that the NRA-PVF violated
4 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and failing to report excessive in-kind
5 contributions to the Richard Burr Committee and the Hawley Committee in the form of
6 coordinated communications; and that the NRA-ILA violated 52 U.S.C. §§ 30104(b), 30116(a),
7 and 30118(a) by making and failing to report excessive in-kind contributions to the Rosendale
8 Committee in the form of coordinated communications.

⁷⁶ Respondents incorporate by reference the unsigned firewall policies from their Responses in MURs 7524 and 7553, and argue that “National Media implemented and maintained an appropriate firewall policy with respect to” the Senate races involving Burr, Rosendale, and Hawley. NRA Resp. at 6-7, MUR 7560. But the referenced firewall policies in MURs 7524 and 7553 did not identify the National Media individuals who worked on the NRA Respondents’ side of the firewall or the opposite side with the Burr and Rosendale Committees (such information was provided in connection with NRA-PVF and Hawley). *See* NRA Resp., Ex. E, MUR 7524; NRA Resp., Ex. F, MUR 7553. Further, these generic documents explicitly state, “Firewall policies that apply in a *particular matter* will be set forth in a *written memorandum* that will be provided, along with the copy of this policy statement, to all relevant” individuals in advance of starting work for the affected clients. *See* NRA Resp. Ex. E (emphasis added), MUR 7524. While National Media provided a memorandum concerning the “Trump Firewall Implementation,” in MUR 7553, *see* NRA Resp., Ex. F, MUR 7553, it has not provided a separate memorandum for the U.S. Senate races involving Burr, Hawley, or Rosendale.

⁷⁷ *See* 11 C.F.R. § 109.21(h).