

**FEDERAL ELECTION COMMISSION****FIRST GENERAL COUNSEL'S REPORT****MUR 7760**

DATE COMPLAINT FILED: July 9, 2020

DATE OF NOTIFICATION: July 17, 2020

DATE OF LAST RESPONSE: Aug. 31, 2020

DATE ACTIVATED: Oct. 6, 2020

EXPIRATION OF SOL: June 15-29, 2025

ELECTION CYCLE: 2020

**COMPLAINANT:**

Kendra Arnold, Executive Director

Foundation for Accountability and Civic Trust

**RESPONDENTS:**Hickenlooper for Colorado and Mark Turnage in his  
official capacity as treasurer

John Hickenlooper

SMP and Rebecca Lambe in her official capacity as  
treasurer**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a), (f)

11 C.F.R. § 104.3

11 C.F.R. § 109.21

11 C.F.R. § 109.23

11 C.F.R. § 110.1(b)(1)

11 C.F.R. § 110.9

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

Federal Communications Commission

**I. INTRODUCTION**

The Complaint alleges that John Hickenlooper, Hickenlooper for Colorado and Mark Turnage in his official capacity as treasurer (the "Hickenlooper Committee"), and SMP and Rebecca Lambe in her official capacity as treasurer ("SMP") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations when SMP republished the Hickenlooper Committee's campaign materials in a coordinated communication. The allegations concern the Hickenlooper Committee's operation of a website, [getthefacts.co](http://getthefacts.co)

1 (“Get the Facts Website”), which, according to the Complaint, used “code language” to signal to  
2 outside groups that they should run advertisements using the messages and themes detailed on  
3 the website. The Complaint alleges that Respondents engaged in coordination when the  
4 Hickenlooper Committee made a request or suggestion by placing talking points on the Get the  
5 Facts Website using the title “Coloradans Need to Know,” and that SMP republished those  
6 talking points, as well as B-roll from an earlier Hickenlooper Committee advertisement, twelve  
7 days later in a television advertisement entitled “Honest Mistake.”

8 SMP and the Hickenlooper Committee argue that no republication occurred because  
9 “Honest Mistake” only used brief clips of publicly available footage of Hickenlooper, shared  
10 themes from the Get the Facts Website, and incorporated SMP’s own message. All Respondents  
11 deny that a coordinated communication occurred, contend the Complaint’s allegations are  
12 speculative, and assert that the Complaint’s alleged request or suggestion is insufficient to satisfy  
13 the conduct prong of the Commission regulations’ coordinated communications test because it is  
14 based on statements made on the Hickenlooper Committee’s publicly available website.

15 As discussed below, because the available information indicates that SMP republished  
16 the Hickenlooper Committee’s campaign materials in the form of video footage, we recommend  
17 that the Commission find reason to believe that SMP violated 52 U.S.C. § 30116(a)(1)(A) and  
18 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind contribution to the Hickenlooper  
19 Committee and violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report an  
20 in-kind contribution. In addition, we recommend that the Commission enter into pre-probable  
21 cause conciliation with SMP. However, because the record is insufficient to raise a reasonable  
22 inference that SMP coordinated with Hickenlooper and the Hickenlooper Committee, we  
23 recommend that the Commission find no reason to believe that Hickenlooper and the

1 Hickenlooper Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly  
2 accepting an excessive in-kind contribution and that the Hickenlooper Committee violated  
3 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report an in-kind contribution.

## 4 **II. FACTUAL BACKGROUND**

5 John Hickenlooper was a 2020 candidate for the U.S. Senate in Colorado.<sup>1</sup> Hickenlooper  
6 for Colorado is his principal campaign committee.<sup>2</sup> SMP is an independent expenditure-only  
7 political committee registered with the Commission.<sup>3</sup> Hickenlooper's opponent in the general  
8 election was then-incumbent U.S. Senator Cory Gardner.<sup>4</sup> During the 2020 election cycle, SMP  
9 reported making \$229,911,901 in independent expenditures, including \$7,836,779 in opposition  
10 to Gardner and \$2,700,142 in support of Hickenlooper.<sup>5</sup>

11 On August 22, 2019, Hickenlooper and the Hickenlooper Committee released a 90-  
12 second advertisement, entitled "Not Done Fighting," announcing his U.S. Senate campaign.<sup>6</sup>

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<sup>1</sup> John W. Hickenlooper, Amended Statement of Candidacy (Oct. 15, 2020), <https://docquery.fec.gov/pdf/382/202010159294211382/202010159294211382.pdf>. Hickenlooper won the 2020 general election. COLO. SEC'Y OF STATE, 2020 ABSTRACT OF VOTES CAST 103-04 (2020), <https://www.sos.state.co.us/pubs/elections/Results/Abstract/2020/2020BiennialAbstractBooklet.pdf>.

<sup>2</sup> Hickenlooper for Colo., Amended Statement of Organization at 2 (Dec. 3, 2020), <https://docquery.fec.gov/pdf/062/202012039341617062/202012039341617062.pdf>.

<sup>3</sup> SMP, Amended Statement of Organization at 1-2 (Mar. 20, 2022), <https://docquery.fec.gov/pdf/450/202203209494096450/202203209494096450.pdf>. SMP was formerly known as Senate Majority PAC, and, originally, Commonsense Ten. *See* Commonsense Ten, Statement of Organization at 1 (June 11, 2010), <https://docquery.fec.gov/pdf/921/10030344921/10030344921.pdf>; Senate Majority PAC, Amended Statement of Organization at 1 (Mar. 8, 2013), <https://docquery.fec.gov/pdf/709/13940341709/13940341709.pdf> (indicating a name change); SMP, Amended Statement of Organization at 1 (Nov. 15, 2017), <https://docquery.fec.gov/pdf/356/201711169086695356/201711169086695356.pdf> (same); *see also* Compl. at 1 n.1 (July 9, 2020).

<sup>4</sup> Cory Gardner, Amended Statement of Candidacy (Jan. 27, 2015), <https://docquery.fec.gov/pdf/070/15020035070/15020035070.pdf>.

<sup>5</sup> *See* SMP: Spending, FEC.GOV, <https://www.fec.gov/data/committee/C00484642/?tab=spending&cycle=2020> (last visited Oct. 20, 2022).

<sup>6</sup> Compl. at 4 n.9. "Not Done Fighting" is available on Hickenlooper's YouTube Channel. John Hickenlooper, *Not Done Fighting: John Hickenlooper Is Running for U.S. Senate*, YOUTUBE (Aug. 22, 2019) [hereinafter Not Done Fighting Video], <https://www.youtube.com/watch?v=-63689Ahyuk>

1 “Not Done Fighting” included six seconds of footage of Hickenlooper interacting with customers  
 2 inside a restaurant and interacting with employees in a factory (the “Video Footage”).<sup>7</sup> There is  
 3 no available information indicating that “Not Done Fighting” or the Video Footage ever  
 4 appeared on the Get the Facts Website.

5 On June 13, 2020, the Hickenlooper Committee posted talking points to the Get the Facts  
 6 Website, which it operated separate from its official campaign website, using the header  
 7 “Coloradans Need to Know the Facts About the Republican Attacks Against John  
 8 Hickenlooper.”<sup>8</sup> The header was followed by a one-paragraph message, dated June 13, 2020:

9 Republicans have attacked John Hickenlooper for his trips to bring  
 10 business to Colorado, here is what voters need to know if they do  
 11 so again: 95 of their 97 allegations were dismissed and *the Denver*  
 12 *Post* called the other two “relatively minor,” an “honest mistake.”  
 13 He testified fully. They call him “an ethical public servant.” But  
 14 the Republicans are attacking Hickenlooper because they know  
 15 he’s the only one who can beat Cory Gardner, who stands with  
 16 Trump 100% of the time — not Colorado.<sup>9</sup>

17 The message was followed by the heading “Get the facts” and summaries of news reports and  
 18 Colorado’s Independent Ethics Commission documents primarily concerning ethics allegations

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<sup>7</sup> Not Done Fighting Video. The Video Footage appears at 0:45 to 0:51 in “Not Done Fighting.” The Video Footage was also the subject of a separate enforcement complaint filed by the same Complainant. Compl. at 4 n.9; First Gen. Counsel’s Rpt. (“First GCR”) at 3-4, MUR 7670 (Hickenlooper for Colorado, *et al.*). The Complaint in MUR 7670 alleged that the Hickenlooper Committee received a prohibited transfer of an asset — the Video Footage — when it incorporated footage originally created for Hickenlooper’s 2014 gubernatorial campaign in “Not Done Fighting.” Compl. at 4 n.9; First GCR at 4-5, MUR 7670 (Hickenlooper for Colorado, *et al.*); *see also* Certification (“Cert.”) ¶ 2 (Sept. 30, 2022), MUR 7670 (Hickenlooper for Colorado, *et al.*) (dismissing the allegations against the Hickenlooper Committee and Hickenlooper’s state campaign committee).

<sup>8</sup> Compl. at 2-3; John Hickenlooper & Hickenlooper for Colorado Resp. at 2 (Aug. 31, 2020) [hereinafter Hickenlooper Resp.]; *see Coloradans Need to Know the Facts About the Republican Attacks Against John Hickenlooper*, GET THE FACTS (June 13, 2020) [hereinafter Get the Facts Website Archive], <https://www.getthefacts.co/> [<https://web.archive.org/web/20200618144429/https://www.getthefacts.co/>].

<sup>9</sup> Get the Facts Website Archive; *see* Compl., Ex. A (copy of the Get the Facts Website as it appeared on July 1, 2020). The “Coloradans Need to Know” header remained on the Get the Facts Website as late as July 11, 2020, but included a different message dated July 2, 2020. *Coloradans Need to Know the Facts About the Republican Attacks Against John Hickenlooper*, GET THE FACTS (July 2, 2020), <https://www.getthefacts.co/> [<https://web.archive.org/web/20200711001353/https://www.getthefacts.co/>].

1 against Hickenlooper, as well as information about Gardner.<sup>10</sup> The Get the Facts Website  
2 consisted of a single page containing the above-referenced information, without additional tabs  
3 or menus, and displayed a boxed disclaimer at the bottom stating that it was “Paid for by  
4 Hickenlooper for Colorado” along with a link to the Hickenlooper Committee’s official website,  
5 <https://hickenlooper.com/>.<sup>11</sup> The Get the Facts Website is no longer accessible as of the date of  
6 this Report.

7 On June 10, 2020, Melissa Miller, a Hickenlooper Committee staffer, tweeted: “Get the  
8 facts about the dark money attack on @Hickenlooper,” and included a link to the Get the Facts  
9 Website.<sup>12</sup> On June 13, 2020, Lauren Passalacqua, Democratic Senatorial Campaign Committee  
10 (“DSCC”) communication director, also tweeted a link to the Get the Facts Website with the

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<sup>10</sup> Get the Facts Website Archive; Compl., Ex. A.

<sup>11</sup> Get the Facts Website Archive; Compl., Ex. A.

<sup>12</sup> Melissa Miller (@Meliss1001), TWITTER (June 10, 2020, 8:15 PM), <https://twitter.com/Meliss1001/status/1270872176338460672>; Compl. at 3. It appears that Hickenlooper Committee campaign staff publicized the Get the Facts Website as early as June 1, 2020, but it is unclear whether the version available on that date included the “Coloradans Need to Know” language. *See, e.g.*, Melissa Miller (@Meliss1001), TWITTER (June 1, 2020, 11:05 AM), <https://twitter.com/Meliss1001/status/1267472396992172033>.

- 1 caption: "GOP has attacked Hickenlooper for trips to bring business to Colorado. Here's what  
 2 voters need to know."<sup>13</sup>



- 3 On or around June 25, 2020, SMP started airing a television advertisement entitled  
 4 "Honest Mistake."<sup>14</sup> "Honest Mistake" is 30 seconds long, approximately six seconds of which  
 5 feature the Video Footage from the Hickenlooper Committee's earlier "Not Done Fighting"  
 6 advertisement.<sup>15</sup> On-screen text and audio defend Hickenlooper against alleged lies regarding  
 7 ethics complaints, stating that "95 of the 97 Republican charges were dismissed" and quoting

<sup>13</sup> Lauren Passalacqua (@laurenvpass), TWITTER (June 13, 2020, 2:39PM), <https://twitter.com/laurenvpass/status/1271874926052589580>; Compl. at 3.

<sup>14</sup> SMP Resp. at 2 (Sept. 1, 2020); *see* Senate Majority PAC, *Honest Mistake*, ADMO CREATIVE ALERT [hereinafter *Honest Mistake Video*], <https://host2.advertisinganalyticsllc.com/admo/viewer/2339525> (last visited Oct. 20, 2022) Compl. at 3-4 & n.4; Hickenlooper Resp. at 2.

<sup>15</sup> *Compare* *Honest Mistake Video* at 0:24-0:30, *with* *Not Done Fighting Video* at 0:45-0:51. *See* Compl. at 4-5 (including screenshots from "Not Done Fighting" and "Honest Mistake" side-by-side); *see also* SMP Resp. at 8 ("['Honest Mistake'] only contains short snippets of candidate [B]-roll footage . . . which were shown on screen for a total of [six] seconds."); Hickenlooper Resp. at 6 ("SMP used only brief clips of publicly available footage from a Campaign advertisement.").

1 *The Denver Post* saying that Hickenlooper made an “honest mistake.”<sup>16</sup> Between June 15  
 2 and 29, 2020, SMP reported making \$2,697,141.57 in independent expenditures in support of  
 3 Hickenlooper, including four disbursements totaling \$48,945.64 for “Media Production,” and six  
 4 disbursements totaling \$2,648,195.93 for “Media Buy[s],” or “Digital Ad Buy.”<sup>17</sup> The available  
 5 information is not clear regarding which disbursements or portions thereof correspond to  
 6 “Honest Mistake.”<sup>18</sup>

7 The Complaint alleges that SMP republished the Hickenlooper Committee’s campaign  
 8 materials in “Honest Mistake” and impermissibly coordinated with the Hickenlooper Committee  
 9 in making expenditures related thereto.<sup>19</sup> Specifically, the Complaint alleges that SMP  
 10 republished the Video Footage from “Not Done Fighting” and the talking points from the Get the

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<sup>16</sup> See Honest Mistake Video.

<sup>17</sup> *FEC Independent Expenditures: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/independent-expenditures/?committee\\_id=C00484642&data\\_type=processed&q\\_spender=C00484642&is\\_notice=false&most\\_recent=true&candidate\\_id=S0CO00575&candidate\\_id=S4CO00395&min\\_date=06%2F01%2F2020&max\\_date=07%2F01%2F2020](https://www.fec.gov/data/independent-expenditures/?committee_id=C00484642&data_type=processed&q_spender=C00484642&is_notice=false&most_recent=true&candidate_id=S0CO00575&candidate_id=S4CO00395&min_date=06%2F01%2F2020&max_date=07%2F01%2F2020) (last visited Oct. 20, 2022) (reflecting 10 independent expenditure disbursements by SMP in support of Hickenlooper or in opposition to Gardner in June 2020); SMP, 2020 July Monthly Report at 3504-06, 3511-14, 3517 (July 20, 2020) [hereinafter SMP 2020 July Monthly Report], <https://docquery.fec.gov/pdf/213/202007209260163213/202007209260163213.pdf#navpanes=0>.

<sup>18</sup> The Complaint alleges that “Honest Mistake” started airing on June 25, 2020, but SMP’s Response states only that SMP ran the advertisement in June 2020. Compl. at 3; SMP Resp. at 2. Federal Communications Commission filings do not contain sufficient information to identify the advertisement connected to each filing in order to ascertain the exact air dates or the exact amount spent for “Honest Mistake.” See *About Public Inspection Files*, FED. COMM’NS COMM’N, <https://publicfiles.fcc.gov/about> (last visited Oct. 20, 2022). The available information indicates that “Honest Mistake” started airing shortly before the Colorado primary election held on June 30, 2020, but it appears that SMP may have aired more than one advertisement during that timeframe. See Reid Wilson & Gabby Birenbaum, *Democrats Spend Big to Bolster Struggling Hickenlooper*, HILL (June 23, 2020, 8:07 PM), <https://thehill.com/homenews/campaign/504217-democrats-spend-big-to-bolster-struggling-hickenlooper> (reporting that SMP planned to spend \$2.2 million “defending Hickenlooper in the two weeks before Colorado voters cast their ballots”); Greg Giroux (@greggiroux), TWITTER (June 25, 2020, 9:28 AM), <https://twitter.com/greggiroux/status/1276145224079814657> (discussing newly released advertisements, including “Honest Mistake,” for the Colorado Senate race). SMP ran a different advertisement beginning on or about June 17, 2020, with similar content to “Honest Mistake,” but that advertisement did not include the Video Footage. Greg Giroux (@greggiroux), TWITTER (June 17, 2020, 7:17 PM), <https://twitter.com/greggiroux/status/1273394409833463814>.

<sup>19</sup> Compl. at 7-12.

1 Facts Website in “Honest Mistake.”<sup>20</sup> Further, in support of its coordination allegation, the  
2 Complaint asserts the Hickenlooper Committee requested or suggested a coordinated  
3 communication through its Get the Facts Website, which used “code language”— *i.e.*,  
4 “Coloradans Need to Know,” similar to what “other candidates have successfully used to request  
5 or suggest” advertisements to outside groups — was publicized by campaign and DSCC  
6 communications staffers, and was published a short time before SMP ran “Honest Mistake.”<sup>21</sup>  
7 Respondents assert that “Honest Mistake” contained SMP’s own words, content, and  
8 message and that brief incorporation of short snippets and clips of B-roll footage and use of  
9 similar themes are insufficient to establish republication under Commission precedent.<sup>22</sup> The  
10 Hickenlooper Committee further contends that a candidate’s committee does not receive or  
11 accept a contribution via republished campaign material unless the republication is a coordinated  
12 communication, which it contends “Honest Mistake” was not.<sup>23</sup>

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<sup>20</sup> *Id.* at 4-8 & n.9. The Complaint calculates that, “[w]hen the messaging and video are examined together,” 25 seconds out of the 30 seconds of runtime in “Honest Mistake” republished the Hickenlooper Committee’s campaign materials. *Id.* at 4-6. In support of this analysis, the Complaint includes a side-by-side comparison of “Honest Mistake” and “Not Done Fighting,” displaying three frames of the republished Video Footage. *Id.* at 5. Additionally, the Complaint includes a side-by-side comparison of the narration and text from both advertisements to demonstrate their similarities, asserting that “60% of the messaging narration” was taken from the Get the Facts Website. *Id.* at 4.

<sup>21</sup> *Id.* at 2-3, 9, 12. The Complaint cites to other complaints filed by the same Complainant, alleging the campaigns for U.S. Senate candidates Gary Peters, Theresa Greenfield, and Sara Gideon operated websites similar to the Get the Facts Website that served as requests for outside groups to republish the materials posted thereon in violation of the Commission’s coordination regulations. *Id.* at 2 & n.3. The Commission found no reason to believe regarding coordination and republication allegations in the matter involving Gideon. Factual & Legal Analysis (“F&LA”) at 6-10, MUR 7727 (Sara Gideon, *et al.*). The Commission split on whether to find reason to believe, dismiss, or find no reason to believe regarding republication and coordination allegations, and closed the file, in the matters involving Peters and Greenfield. Certs. (Feb. 20, 2022), MURs 7666, 7675 (Peters for Mich., *et al.*); Amended Cert. (Apr. 20, 2022), MUR 7717 (Theresa Greenfield for Iowa, *et al.*). SMP was also a respondent in MUR 7717 (Theresa Greenfield for Iowa, *et al.*).

<sup>22</sup> SMP Resp. at 5-8; Hickenlooper Resp. at 5-6. Additionally, SMP contends that the Complaint’s side-by-side comparison of the narration and text from both advertisements further demonstrates that “Honest Mistake” expresses SMP’s own views because the two advertisements contain different phrasing and content. SMP Resp. at 6-7.

<sup>23</sup> Hickenlooper Resp. at 6.



1            Respondents argue that “Honest Mistake” was not coordinated because the talking points  
2            on the Get the Facts Website were publicly available, the Complaint fails to allege any non-  
3            speculative, non-public communications between the Respondents or any actual request or  
4            suggestion by the Hickenlooper Committee, and that temporal proximity and thematic  
5            similarities between the Get the Facts Website and “Honest Mistake” are insufficient to satisfy  
6            the conduct prong of the Commission’s coordination framework.<sup>24</sup> SMP states that it maintains  
7            a firewall policy to prevent coordination with any candidate or political party committee, but  
8            does not attach a copy of that policy to its Response.<sup>25</sup> Finally, SMP acknowledges that “Honest  
9            Mistake” contains six seconds of B-roll video footage featuring Hickenlooper but does not state  
10           from where it obtained that footage.<sup>26</sup>

### 11    **III.    LEGAL ANALYSIS**

#### 12            **A.    Relevant Law**

13            The Act prohibits any person from making, and any candidate or committee from  
14            knowingly accepting, an excessive contribution.<sup>27</sup> Independent expenditure-only political  
15            committees are prohibited from making contributions to candidates and their authorized

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<sup>24</sup>            SMP Resp. at 2-4; Hickenlooper Resp. at 3-5.

<sup>25</sup>            SMP Resp. at 4.

<sup>26</sup>            *See id.* at 2.

<sup>27</sup>            52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

1 committees.<sup>28</sup> Committee treasurers are required to disclose the identification of each political  
 2 committee that makes a contribution to the reporting committee during the reporting period,  
 3 along with the date and amount of any such contribution.<sup>29</sup> If a committee makes a contribution,  
 4 it shall disclose the name and address of the recipient and the contribution amount.<sup>30</sup>

5 Under the Act, “the financing by any person of the dissemination, distribution, or  
 6 republication, in whole or in part, of any broadcast or any written, graphic, or other form of  
 7 campaign materials prepared by the candidate, his campaign committees, or their authorized  
 8 agents shall be considered to be an expenditure.”<sup>31</sup> The Commission has previously concluded  
 9 that “campaign materials” include any material belonging to or emanating from a campaign,  
 10 including video footage.<sup>32</sup> Commission regulations further provide that the republication of  
 11 campaign materials “shall be considered a contribution for the purposes of [the Act’s]

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<sup>28</sup> Advisory Opinion 2017-10 at 2 (Citizens Against Plutocracy) (“An independent expenditure-only political committee ‘may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.’” (quoting Advisory Opinion 2016-21 at 3-4 (Great America PAC))); F&LA at 6, MUR 7813 (Iowa Democratic Party, *et al.*) (“Independent expenditure-only political committees . . . are prohibited from making contributions to candidates and their authorized committees.”); F&LA at 4, MUR 7168 (Catherine Cortez Masto, *et al.*) (“Super PACs are prohibited from making contributions to candidates and their authorized committees.”); F&LA at 8, MUR 7124 (Katie McGinty for Senate, *et al.*) (“[Independent expenditure-only political committees] and nonprofit corporations are prohibited from making contributions to candidates and their authorized committees.”); *see also* Advisory Opinion 2010-11 at 2-3 (Commonsense Ten) (stating that independent expenditure-only committees may receive unlimited funds and funds from corporations and labor organizations).

<sup>29</sup> 52 U.S.C. § 30104(b)(3)(B); 11 C.F.R. § 104.3(a).

<sup>30</sup> 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

<sup>31</sup> 52 U.S.C. § 30116(a)(7)(B)(iii); *see* 11 C.F.R. § 109.23(a). Expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate. 52 U.S.C. § 30116(a)(7)(B)(i).

<sup>32</sup> *See, e.g.*, F&LA at 6-7, MUR 6535 (Restore Our Future, Inc.) (determining that video footage from an advertisement produced and distributed by Mitt Romney’s 2008 presidential campaign committee was “campaign materials” for the purpose of republication); *see also* F&LA at 4-6, MUR 6783 (Indian Ams. for Freedom, NFPC, *et al.*) (finding reason to believe based on republication of identical text from a campaign committee advertisement); First GCR at 8, MUR 5743 (Betty Sutton for Congress, *et al.*) (concluding multicandidate political committee made an in-kind contribution by republishing pictures from a candidate committee’s website in its own mailers); Amended Cert. ¶ 2 (Dec. 5, 2006), MUR 5743 (Betty Sutton for Congress, *et al.*) (exercising prosecutorial discretion and dismissing republication allegation and sending an admonishment letter).

1 contribution limitations and reporting responsibilities of the person making the expenditure.”<sup>33</sup>  
2 Under Commission regulations, however, the candidate who prepared the materials is not  
3 considered to have received an in-kind contribution and is not required to report an expenditure  
4 unless the dissemination, distribution, or republication of campaign materials is a coordinated  
5 communication or a party coordinated communication.<sup>34</sup>

6 A communication is “coordinated” with a candidate, an authorized committee, a political  
7 party committee, or agent thereof, and is treated as an in-kind contribution, if the communication  
8 meets a three-part test under the Commission’s regulations: (1) payment for the communication  
9 by a third party; (2) satisfaction of one of five “content” standards of 11 C.F.R. § 109.21(c); and  
10 (3) satisfaction of one of six “conduct” standards of 11 C.F.R. § 109.21(d).<sup>35</sup> All three prongs  
11 are required for a communication to be considered a coordinated communication.<sup>36</sup> With respect  
12 to communications that satisfy the content standard by republication of campaign materials, three  
13 of the conduct prong standards — request or suggestion, material involvement, and substantial  
14 discussion — may be satisfied only on the basis of conduct between the campaign and third party  
15 “that occurs after the original preparation of the campaign materials that are disseminated,  
16 distributed, or republished.”<sup>37</sup>

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<sup>33</sup> 11 C.F.R. § 109.23(a).

<sup>34</sup> *Id.*; *see also id.* § 109.21 (coordinated communications); *id.* § 109.37 (party coordinated communications).

<sup>35</sup> *Id.* § 109.21.

<sup>36</sup> *Id.* § 109.21(a).

<sup>37</sup> *Id.* § 109.21(d)(6).

1           **B.       The Commission Should Find Reason to Believe That SMP Made and Failed**  
2           **to Report an Excessive In-Kind Contribution to the Hickenlooper Committee**  
3           **by Republishing Campaign Materials**

4           SMP republished the Hickenlooper Committee's campaign materials when it  
5 disseminated the "Honest Mistake" advertisement. The available information indicates that SMP  
6 incorporated six seconds of the Video Footage that previously appeared in the Hickenlooper  
7 Committee's "Not Done Fighting" advertisement into "Honest Mistake."<sup>38</sup> This campaign  
8 material constituted approximately one-fifth of the visual content in "Honest Mistake." SMP  
9 acknowledges that "Honest Mistake" contains four clips, totaling six seconds, of B-roll video  
10 footage featuring Hickenlooper but does not state from where it obtained that footage.<sup>39</sup> The  
11 Hickenlooper Committee recognizes that "Honest Mistake" contains footage from one of its

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<sup>38</sup> Compare Honest Mistake Video at 0:24-0:30, with Not Done Fighting Video at 0:45-0:51. See Compl. at 4-5 (including screenshots from "Not Done Fighting" and "Honest Mistake" side-by-side); *supra* note 15.

<sup>39</sup> See SMP Resp. at 2, 8. The Video Footage used in "Honest Mistake" is an edited version of footage originally produced for two advertisements disseminated by Hickenlooper's 2014 gubernatorial campaign. Compl. at 4 n.9; First GCR at 3-4, MUR 7670 (Hickenlooper for Colorado, *et al.*); see *supra* note 7. The Hickenlooper Committee subsequently pulled two seconds of footage from one state advertisement and four seconds of footage from a second state advertisement, altered the framing of the clips, and incorporated the consolidated six seconds of footage into "Not Done Fighting." First GCR at 5, 10 & n.41, MUR 7670 (Hickenlooper for Colorado, *et al.*). Although not an issue raised by the Respondents, we conclude under the circumstances that the Video Footage was "campaign material" of the Hickenlooper Committee subject to the Commission's republication regulation. The available information suggests that SMP likely obtained the Video Footage it incorporated into "Honest Mistake" from the Hickenlooper Committee's "Not Done Fighting." The Video Footage in "Honest Mistake" is the same six seconds of footage, arranged in the same sequence, as that in "Not Done Fighting." Compare Honest Mistake Video at 0:24-0:30, with Not Done Fighting Video at 0:45-0:51. See Compl. at 5. All six seconds appear to be closer frames or zoomed in versions of the same clips as arranged in "Not Done Fighting," which itself were closer frames or zoomed in versions of the four and two seconds of footage originally in the two state committee advertisements, but rearranged and consolidated into one six-second bloc. See First GCR at 10 n.41, MUR 7670 (Hickenlooper for Colorado, *et al.*). While the underlying footage was originally created for Hickenlooper's 2014 state committee, the Video Footage republished by SMP in "Honest Mistake" was the curated, arranged, and edited footage "prepared by" the Hickenlooper Committee for "Not Done Fighting." Cf. 52 U.S.C. § 30116(a)(7)(B)(iii); 11 C.F.R. § 109.23(a).

1 advertisements.<sup>40</sup>

2 By republishing the Video Footage, SMP made an in-kind contribution to the  
3 Hickenlooper Committee.<sup>41</sup> Although the available information is not clear regarding what  
4 portion of SMP's nearly \$50,000 in expenditures on "media production" and over \$2.6 million  
5 on "media" and "digital ad buy[s]" during the relevant timeframe correspond to its production  
6 and dissemination of "Honest Mistake,"<sup>42</sup> SMP is an independent expenditure-only political  
7 committee and, therefore, is prohibited from making contributions to the Hickenlooper  
8 Committee.<sup>43</sup>

9 SMP and the Hickenlooper Committee contend that their activity did not constitute  
10 republication under the Act and Commission regulations.<sup>44</sup> SMP argues that "Honest Mistake"  
11 "only contains short snippets of candidate [B]-roll which contain no audio and convey no  
12 messages" that were "shown on screen for a total of 6 seconds out of" the 30-second  
13 advertisement and that SMP added its "own text, graphics, audio, and narration" to create its own  
14 message.<sup>45</sup> The Hickenlooper Committee similarly argues that "Honest Mistake" "used only  
15 brief clips of publicly available footage" and that although it referenced themes from the Get the

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<sup>40</sup> See Hickenlooper Resp. at 6.

<sup>41</sup> See 11 C.F.R. § 109.23(a).

<sup>42</sup> See SMP 2020 July Monthly Report at 3504-06, 3511-14, 3517; *supra* notes 17-18.

<sup>43</sup> See *supra* note 28.

<sup>44</sup> SMP Resp. at 1, 5-8; Hickenlooper Resp. at 1, 5-6.

<sup>45</sup> SMP Resp. at 8.

1 Facts Website, SMP used its “own words and phrases.”<sup>46</sup> Respondents also assert that any  
2 republication would fall under the “brief quote” exemption.<sup>47</sup>

3         These contentions are unavailing. The Act and Commission regulations both expressly  
4 address “republication, *in whole or in part, of any . . . campaign materials.*”<sup>48</sup> The Commission  
5 has previously considered the incidental or *de minimis* nature of any republication in determining  
6 the appropriate Commission response to the violation, not whether a violation has occurred.<sup>49</sup> In  
7 particular, the Commission has exercised its prosecutorial discretion and dismissed partial  
8 republication allegations in matters in which third parties republished candidates’ photographs in  
9 newspaper advertisements and mailers and it appeared the republication was of *de minimis*

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<sup>46</sup> Hickenlooper Resp. at 6.

<sup>47</sup> See SMP Resp. at 5, 8; Hickenlooper Resp. at 6; *see also* 11 C.F.R. § 109.23(b)(4) (excepting republication “consist[ing] of a brief quote of materials that demonstrate a candidate’s position as a part of a person’s expression of its own views” from the general rule that republication constitutes a contribution to the candidate).

<sup>48</sup> 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added); 11 C.F.R. § 109.23(a) (emphasis added); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 455 (Jan. 3, 2003) [hereinafter Coordination E&J] (explaining that Congress addressed the republication provision of 52 U.S.C. § 30116(a)(7)(B)(iii) “in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit” (emphasis added)).

<sup>49</sup> See, e.g., F&LA at 7-8, MUR 6840 (All Citizens for Miss.); Amended Cert. ¶ 2, MUR 5743 (Betty Sutton for Congress, *et al.*).

- 1 value.<sup>50</sup> Alternatively, the Commission found reason to believe in matters involving the partial  
 2 republication of identical text from a candidate committee's mailer,<sup>51</sup> the partial republication of  
 3 candidate B-roll footage,<sup>52</sup> and wholesale republication of a candidate committee's  
 4 advertisement from a prior campaign cycle.<sup>53</sup>

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<sup>50</sup> See, e.g., F&LA at 7-8, MUR 6840 (All Citizens for Miss.) (exercising prosecutorial discretion and dismissing the allegation that an independent expenditure-only political committee made a prohibited contribution based on the republication of a candidate's photograph for one-sixth of a newspaper advertisement's dimensions where the value of the photograph appeared *de minimis* and the newspaper advertisement republishing it cost only \$800); Amended Cert. ¶ 2, MUR 5743 (Betty Sutton for Congress, *et al.*) (voting to exercise prosecutorial discretion and dismiss the allegation that a third party made an excessive contribution based on the republication of a candidate's photograph in a mailer); First GCR at 8, MUR 5743 (Betty Sutton for Congress, *et al.*) (recommending the Commission find reason to believe, but take no further action, regarding allegation that a third party made an excessive contribution where "determining the amount of the excessive contribution is problematic" and it was not clear the republication "would have any more than *de minimis* value"). In MUR 5996 (Tim Bee for Congress, *et al.*), the Commission was "unable to agree on whether the use of the 'head shot' in this matter constituted republication," but exercised its prosecutorial discretion and dismissed, pursuant to *Heckler v. Chaney*, allegations that a third party made an excessive or prohibited contribution to a candidate committee in the form of a coordinated communication based on the content prong. F&LA at 5-9, MUR 5996 (Educ. Fin. Reform Grp.). The Commission's determination regarding the republication content standard was informed by the allegedly republished "'head shot' photograph" being "publicly available for download at no charge from the campaign's website and was a small portion[, two seconds,] of the [30-second] television advertisement at issue." *Id.* at 8-9 (citing MUR 5743 (Betty Sutton for Congress, *et al.*)).

<sup>51</sup> F&LA at 5-6, MUR 6783 (Indian Ams. for Freedom, NFPC, *et al.*).

<sup>52</sup> In MUR 5879 (Harry Mitchell for Congress, *et al.*), a third party republished 15 seconds of footage of a candidate interacting with constituents, constituting one-half of the third party's advertisement's 30-second runtime on which it spent nearly \$200,000. After an investigation, the Commission split on whether to enter pre-probable cause conciliation with the third party regarding republication and found no reason to believe that the candidate's campaign committee had engaged in a coordinated communication with the third party. F&LA at 3-5, MUR 5879 (DCCC); Cert. ¶ 1 (Oct. 11, 2007), MUR 5879 (Harry Mitchell for Congress, *et al.*); F&LA at 4-8, MUR 5879 (Harry Mitchell for Congress, *et al.*); Cert. (Apr. 15, 2010), MUR 5879 (Harry Mitchell for Congress, *et al.*). This Office has recommended the Commission find reason to believe in similar recent republication matters involving the partial republication of video footage, which have resulted in split votes. See, e.g., First GCR at 4, 7, MUR 7717 (Theresa Greenfield for Iowa, *et al.*) (republishing video footage and photographs for 11-15 seconds of 30- and 31-second advertisements); Amended Cert. ¶¶ 1-3 (Apr. 20, 2022), MUR 7717 (Theresa Greenfield for Iowa, *et al.*) (reflecting split and failed votes); First GCR at 4-7, 11, MURs 7681, 7715 (VoteVets, *et al.*) (republishing video footage and photographs for 13-25 seconds of multiple 30-second advertisements); Cert. ¶¶ 1-3 (Feb. 20, 2022), MURs 7681, 7715 (VoteVets, *et al.*) (reflecting split and failed votes); First GCR at 4-6, 8-9, MURs 7666, 7675 (Peters for Mich., *et al.*) (republishing video footage and photographs for 15-22 seconds of multiple 30-second advertisements and 9 seconds of 15-second advertisement); Cert. ¶¶ 1-3 (Feb. 20, 2022), MURs 7666, 7675 (Peters for Mich., *et al.*) (reflecting split and failed votes); First GCR at 4-5, 7-8, MUR 7646 (1820 PAC, *et al.*) (republishing video footage for 22 seconds of 30-second advertisement); Cert. ¶¶ 2-5 (Feb. 22, 2022), MUR 7646 (1820 PAC, *et al.*) (reflecting split and failed votes).

<sup>53</sup> F&LA at 6-7, MUR 6535 (Restore Our Future, Inc.).

1           As described above, SMP republished six seconds of the Hickenlooper Committee's  
2 campaign materials in "Honest Mistake," which corresponds to one-fifth of the advertisement's  
3 visual content. SMP's reported disbursements of nearly \$50,000 in June 2020 for "media  
4 production" costs would have likely been higher had SMP itself had to produce footage of  
5 Hickenlooper or some other replacement footage, and SMP reported over \$2.6 million on  
6 "media" and "digital ad buy[s]" that appear to encompass the dissemination of "Honest  
7 Mistake," which indicate the partial republication was not of *de minimis* value.<sup>54</sup>

8           The "brief quote" exception is likewise inapplicable. The Commission explained that the  
9 exception is designed to "allow[] limited use of candidate materials in communications to  
10 illustrate a candidate's position on an issue."<sup>55</sup> Here, the republished Video Footage contains no  
11 audio or substantive content and depicts Hickenlooper interacting with constituents; it does not  
12 illustrate his position or view on any issue.

13           The Complaint alleges that the republished materials consisted of both the Video Footage  
14 of Hickenlooper and talking points from the Get the Facts Website, and therefore, comprised a  
15 majority (or 60%) of the "Honest Mistake" advertisement.<sup>56</sup> "Honest Mistake" uses quotes from  
16 news reports posted on, and to some extent focuses on the same themes as, the Get the Facts  
17 Website, but as SMP explains in its Response, the narration used in "Honest Mistake" differed  
18 from the language, and in one instance made a reference that had not been included, on the Get  
19 the Facts Website.<sup>57</sup> However, regardless of the degree to which "Honest Mistake" and the Get

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<sup>54</sup> See SMP 2020 July Monthly Report at 3506, 3513-3514, 3517.

<sup>55</sup> Coordination E&J, 68 Fed. Reg. at 443; see 11 C.F.R. § 109.23(b)(4).

<sup>56</sup> Compl. at 4.

<sup>57</sup> See Get the Facts Website Archive; Compl., Ex. A; Honest Mistake Video; SMP Resp. at 6-7 (providing a side-by-side comparison of the narration and text used in "Honest Mistake" and the Get the Facts Website and noting that only "Honest Mistake" uses the term "dark money group").



1 the Facts Website overlap substantively or appear thematically similar, or to which SMP added  
2 its own messaging, the republication is established by SMP's incorporation of the Video Footage  
3 of Hickenlooper.

4 Finally, the Hickenlooper Committee's suggestion that there is no republication where  
5 the campaign material is "publicly available" is foreclosed by the Commission's explanation in  
6 promulgating the republication regulation.<sup>58</sup> The Commission specifically rejected a proposal to  
7 adopt a "public domain" exception to republication, explaining that "virtually all campaign  
8 material that could be republished" could be considered in the public domain, and therefore such  
9 an exception could "swallow the rule."<sup>59</sup>

10 For these reasons, we recommend that the Commission find reason to believe that SMP  
11 violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind  
12 contribution to the Hickenlooper Committee and violated 52 U.S.C. § 30104(b) and 11 C.F.R.  
13 § 104.3(b) by failing to report an in-kind contribution.

14 **C. The Commission Should Find No Reason to Believe That the Hickenlooper**  
15 **Committee Accepted an Excessive In-Kind Contribution from SMP**

16 Respondents do not dispute that "Honest Mistake" satisfies the payment and content  
17 prongs.<sup>60</sup> SMP acknowledges that it ran the "Honest Mistake" advertisement and filed reports  
18 with the Commission in June 2020 disclosing over \$2.6 million in independent expenditures  
19 made in support of Hickenlooper, satisfying the payment prong.<sup>61</sup> Additionally, the "Honest  
20 Mistake" advertisement satisfies the content prong of the coordination test by republishing the

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<sup>58</sup> See Hickenlooper Resp. at 6.

<sup>59</sup> Coordination E&J, 68 Fed. Reg. at 442-43. The Commission also rejected a "fair use" exception. *Id.* at 443.

<sup>60</sup> SMP Resp. at 2; Hickenlooper Resp. at 2-3, 6.

<sup>61</sup> SMP Resp. at 2; SMP 2020 July Monthly Report; see 11 C.F.R. § 109.21(a)(1).

1 Video Footage and because it was distributed within 90 days of the primary election held on  
2 June 30, 2020.<sup>62</sup>

3 Therefore, whether “Honest Mistake” qualifies as a coordinated communication depends  
4 on whether it satisfies the conduct prong. As discussed below, the available information is  
5 insufficient to conclude that the conduct prong of the three-part coordination test is satisfied.

6 The Complaint alleges that the conduct prong was satisfied with respect to “Honest  
7 Mistake” because the Hickenlooper Committee’s actions amounted to a “request or suggestion”  
8 to republish the talking points on the Get the Facts Website.<sup>63</sup> The argument rests on assertions  
9 that: (a) the Hickenlooper Committee used “code language” on the Get the Facts Website (*i.e.*,  
10 “Coloradans Need to Know”); (b) Miller and Passalacqua publicized the Gets the Facts Website  
11 in tweets; and (c) the short time between the date the information was posted (*i.e.*, June 13,  
12 2020), and the date range in which SMP allegedly ran “Honest Mistake” on television (on or  
13 around June 25, 2020), which the Complaint contends “indicates there was likely some other  
14 communication between” SMP and the Hickenlooper Committee.<sup>64</sup> In addition, the Complaint  
15 alleges that SMP acted on the Hickenlooper Committee’s request or suggestion when it  
16 republished the talking points from the Get the Facts Website and Video Footage featuring  
17 Hickenlooper in “Honest Mistake.”<sup>65</sup>

18 The Commission has explained that a “request or suggestion encompasses the most direct  
19 form of coordination, given that the candidate or political party committee communicates desires  
20 to another person who effectuates them,” and that the determination of whether a third party

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<sup>62</sup> See 11 C.F.R. § 109.21(c)(2), (c)(4)(i).

<sup>63</sup> Compl. at 2-3, 9, 12.

<sup>64</sup> *Id.* at 2, 9, 12.

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

1 acted in response to a request or suggestion must be “based on specific facts, rather than  
2 presumed.”<sup>66</sup> The Commission clarified that the request or suggestion standard “is intended to  
3 cover requests or suggestions made to a select audience, but not those offered to the public  
4 generally.”<sup>67</sup> As a way of explaining when a request or suggestion is aimed at a particular  
5 audience, the Commission juxtaposed two scenarios: (1) “a request that is posted on a web page  
6 that is available to the general public is a request to the general public,” which does not trigger  
7 the conduct standard; and (2) “a request posted through an intranet service or sent via electronic  
8 mail directly to a discrete group of recipients,” which constitutes a request to a select audience  
9 and thereby does satisfy the conduct standard.<sup>68</sup> The Commission has analyzed previous matters  
10 alleging coordination on similar facts using this framework, concluding that general information  
11 on public websites does not satisfy the meaning of “request or suggest” under the conduct  
12 standard and finding no reason to believe.<sup>69</sup>

13 Here, the Get the Facts Website, the talking points and information contained thereon  
14 (with the exhortation that “Coloradans Need to Know”), as well as Miller and Passalacqua’s  
15 tweets,<sup>70</sup> appear to be more similar to “general requests” outside the purview of the request or  
16 suggestion conduct standard. They were publicly available and not clearly targeted at a specific

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<sup>66</sup> Coordination E&J, 68 Fed. Reg. at 432.

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

<sup>68</sup> *Id.*

<sup>69</sup> See, e.g., F&LA at 8-9, MUR 7797 (Sara Gideon for Me., *et al.*); F&LA at 8-10, MUR 7727 (Sara Gideon, *et al.*); F&LA at 6, MUR 7168 (Catherine Cortez Masto, *et al.*); F&LA at 7-8, MUR 6821 (Shaheen for Senate, *et al.*); F&LA at 9-10, MUR 7124 (Katie McGinty for Senate, *et al.*).

<sup>70</sup> Based on the available information, it is not clear that Passalacqua was an agent of the Hickenlooper Committee. See 11 C.F.R. § 109.3(b) (defining “agent” of a federal candidate for purposes of the Commission’s coordination regulations as any person possessing actual authority to engage in enumerated activities related to the conduct standards). The Complaint alleges, and the available information appears to confirm, that Passalacqua was Communications Director for the DSCC. Compl. at 3. There is no indication that she possessed actual authority to act on behalf of the Hickenlooper Committee.

1 audience. The talking points on the Get the Facts Website included summaries of, and links to,  
2 documents and news reports that were also publicly available. The perceived similarities and  
3 short time between the Get the Facts Website, tweets, and “Honest Mistake” do not indicate that  
4 any direct or private communications were made between the Hickenlooper Committee and  
5 SMP.<sup>71</sup>

6 In conclusion, the available information is insufficient to support a reasonable inference  
7 that the conduct prong of the coordinated communication test is satisfied.<sup>72</sup> Accordingly, we  
8 recommend that the Commission find no reason to believe that Hickenlooper and the  
9 Hickenlooper Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly  
10 accepting an excessive in-kind contribution and that the Hickenlooper Committee violated  
11 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report an in-kind contribution.

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<sup>71</sup> F&LA at 7-8, MUR 6821 (Shaheen for Senate, *et al.*) (“[T]he alleged thematic similarities of the two communications at issue and their rough temporal proximity do not give rise to a reasonable inference that any of the conduct standards were satisfied under the facts presented here.”); F&LA at 10, MUR 7124 (Katie McGinty for Senate, *et al.*) (“The cited similarities between the [alleged requests or suggestions] and the commercials, and the timing and geographic placement of the commercials, are insufficient to show that any additional private communications occurred.”); *see also* F&LA at 5, 8-9, MUR 7797 (Sara Gideon for Me., *et al.*) (finding no reason to believe regarding coordination allegations despite complaint’s specific allegations based on thematic similarities and timing of advertisement and alleged request or suggestion); F&LA at 4, 8-9, MUR 7727 (Sara Gideon, *et al.*) (same); F&LA at 2, 5-6, MUR 5963 (Club for Growth PAC) (same); F&LA at 7, 9-10 & n.6, MUR 6613 (Prosperity for Mich.) (exercising prosecutorial discretion and dismissing coordination allegations despite complaint’s allegations that, *inter alia*, the advertisements were “strikingly similar” and “began running on the same day”).

<sup>72</sup> *See* 11 C.F.R. § 109.21(a).

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7 **V. RECOMMENDATIONS**

- 8 1. Find reason to believe that SMP and Rebecca Lambe in her official capacity as  
9 treasurer violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by  
10 making an excessive in-kind contribution to Hickenlooper for Colorado and  
11 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report an in-  
12 kind contribution;
- 13 2. Find no reason to believe that John Hickenlooper and Hickenlooper for Colorado  
14 and Mark Turnage in his official capacity as treasurer violated 52 U.S.C.  
15 § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive in-kind  
16 contribution;
- 17 3. Find no reason to believe that Hickenlooper for Colorado and Mark Turnage in  
18 his official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R.  
19 § 104.3(a) by failing to report an in-kind contribution;

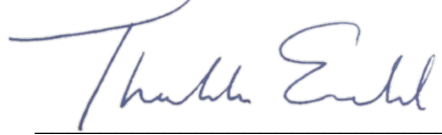
- 1           4.     Approve the attached Factual and Legal Analyses;
- 2           5.     Enter into pre-probable cause conciliation with SMP and Rebecca Lambe in her
- 3                 official capacity as treasurer;
- 4           6.     Approve the attached proposed Conciliation Agreement; and
- 5           7.     Approve the appropriate letters.

6    Lisa J. Stevenson  
 7    Acting General Counsel  
  
 8    Charles Kitcher  
 9    Associate General Counsel for Enforcement

10    October 20, 2022  
 11    Date

  
 \_\_\_\_\_  
 Claudio J. Pavia  
 Deputy Associate General Counsel for Enforcement

13    Mark Allen  
 14    Mark Allen  
 15    Assistant General Counsel

  
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 Thaddeus H. Ewald  
 Attorney

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