



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 31, 2023

VIA ELECTRONIC MAIL ONLY

melias@elias.law

jberkon@elias.law

Marc E. Elias, Esq.
Jonathan S. Berkon, Esq.
Elias Law Group LLP
10 G Street, NE
Suite 600
Washington, DC 20002

RE: MUR 7760
John Hickenlooper
Hickenlooper for Colorado and
Mark Turnage in his official capacity
as treasurer

Dear Messrs. Elias and Berkon:

On July 15, 2020, the Federal Election Commission notified your clients, John Hickenlooper and Hickenlooper for Colorado and Mark Turnage in his official capacity as treasurer (the "Committee"), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. Upon further review of the allegations contained in the complaint, information supplied by your clients, and after considering the circumstances of the matter, the Commission, on November 29, 2022, found no reason to believe that John Hickenlooper and the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive in-kind contribution, and no reason to believe that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report an in-kind contribution. On January 24, 2023, the Commission approved a Factual and Legal Analysis as to your clients and closed the file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

MUR 7760

Letter to Marc E. Elias, Esq., & Jonathan S. Berkon, Esq.

Page 2

If you have any questions, please contact Thaddeus H. Ewald, the attorney assigned to this matter, at (202) 694-1650 or tewald@fec.gov.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure:

Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Hickenlooper for Colorado and Mark Turnage in his MUR 7760
4 official capacity as treasurer
5 John Hickenlooper

6 **I. INTRODUCTION**

7 The Complaint alleges that John Hickenlooper and Hickenlooper for Colorado and Mark
8 Turnage in his official capacity as treasurer (the “Hickenlooper Committee”) violated the Federal
9 Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations when
10 SMP republished the Hickenlooper Committee’s campaign materials in a coordinated
11 communication. The allegations concern the Hickenlooper Committee’s operation of a website,
12 getthefacts.co (“Get the Facts Website”), which, according to the Complaint, used “code
13 language” to signal to outside groups that they should run advertisements using the messages and
14 themes detailed on the website. The Complaint alleges that Respondents engaged in
15 coordination when the Hickenlooper Committee made a request or suggestion by placing talking
16 points on the Get the Facts Website using the title “Coloradans Need to Know,” and that SMP
17 republished those talking points, as well as B-roll from an earlier Hickenlooper Committee
18 advertisement, twelve days later in a television advertisement entitled “Honest Mistake.”

19 Respondents deny that a coordinated communication occurred, contend the Complaint’s
20 allegations are speculative, and assert that the Complaint’s alleged request or suggestion is
21 insufficient to satisfy the conduct prong of the Commission regulations’ coordinated
22 communications test because it is based on statements made on the Hickenlooper Committee’s
23 publicly available website. As discussed below, because the record is insufficient to raise a
24 reasonable inference that SMP coordinated with Hickenlooper and the Hickenlooper Committee,
25 the Commission finds no reason to believe that Hickenlooper and the Hickenlooper Committee

1 violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive in-
2 kind contribution and that the Hickenlooper Committee violated 52 U.S.C. § 30104(b) and
3 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.¹ Hickenlooper
6 for Colorado is his principal campaign committee.² SMP is an independent expenditure-only
7 political committee registered with the Commission.³ Hickenlooper's opponent in the general
8 election was then-incumbent U.S. Senator Cory Gardner.⁴ 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.⁵

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.⁶

¹ 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>.

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

³ 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).

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

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

⁶ 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”).⁷ 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.”⁸ 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.⁹

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

⁷ 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).

⁸ 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/>].

⁹ 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.¹⁰ 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/>.¹¹ The Get the Facts Website is no longer accessible as of the date of
6 the Commission’s findings in this matter.

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.¹² 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

¹⁰ Get the Facts Website Archive; Compl., Ex. A.

¹¹ Get the Facts Website Archive; Compl., Ex. A.

¹² 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.”¹³



- 3 On or around June 25, 2020, SMP started airing a television advertisement entitled
 4 “Honest Mistake.”¹⁴ “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.¹⁵ 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
 8 *The Denver Post* saying that Hickenlooper made an “honest mistake.”¹⁶ Between June 15

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

¹⁴ 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.

¹⁵ 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 Hickenlooper Resp. at 6 (“SMP used only brief clips of publicly available footage from a Campaign advertisement.”).

¹⁶ See *Honest Mistake Video*.

1 and 29, 2020, SMP reported making \$2,697,141.57 in independent expenditures in support of
2 Hickenlooper, including four disbursements totaling \$48,945.64 for “Media Production,” and six
3 disbursements totaling \$2,648,195.93 for “Media Buy[s],” or “Digital Ad Buy.”¹⁷ The available
4 information is not clear regarding which disbursements or portions thereof correspond to
5 “Honest Mistake.”¹⁸

6 The Complaint alleges that the Hickenlooper Committee impermissibly coordinated with
7 SMP related to the “Honest Mistake” advertisement in which SMP republished the Hickenlooper
8 Committee’s campaign materials.¹⁹ Specifically, the Complaint alleges that the Hickenlooper
9 Committee requested or suggested a coordinated communication through its Get the Facts
10 Website, which used “code language”— *i.e.*, “Coloradans Need to Know,” similar to what “other
11 candidates have successfully used to request or suggest” advertisements to outside groups — was

¹⁷ *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 (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), <https://docquery.fec.gov/pdf/213/202007209260163213/202007209260163213.pdf#navpanes=0>.

¹⁸ The Complaint alleges that “Honest Mistake” started airing on June 25, 2020. Compl. at 3. 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>.

¹⁹ Compl. at 7-12.

1 publicized by campaign and DSCC communications staffers, and was published a short time
2 before SMP ran “Honest Mistake.”²⁰

3 Respondents contend that a candidate’s committee does not receive or accept a
4 contribution via republished campaign material unless the republication is a coordinated
5 communication, which it contends “Honest Mistake” was not.²¹ Respondents argue that “Honest
6 Mistake” was not coordinated because the talking points on the Get the Facts Website were
7 publicly available, the Complaint fails to allege any non-speculative, non-public communications
8 between the Respondents or any actual request or suggestion by the Hickenlooper Committee,
9 and that temporal proximity and thematic similarities between the Get the Facts Website and
10 “Honest Mistake” are insufficient to satisfy the conduct prong of the Commission’s coordination
11 framework.²²

12 **III. LEGAL ANALYSIS**

13 **A. Relevant Law**

14 The Act prohibits any person from making, and any candidate or committee from
15 knowingly accepting, an excessive contribution.²³ Independent expenditure-only political
16 committees are prohibited from making contributions to candidates and their authorized

²⁰ *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.*).

²¹ Hickenlooper Resp. at 6.

²² *Id.* at 3-5.

²³ 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

1 committees.²⁴ 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.²⁵ If a committee makes a contribution,
4 it shall disclose the name and address of the recipient and the contribution amount.²⁶

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.”²⁷ Further, under the Act, “expenditures made
9 by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a
10 candidate, his authorized political committees, or their agents, shall be considered to be a
11 contribution to such candidate.”²⁸

12 A communication is “coordinated” with a candidate, an authorized committee, a political
13 party committee, or agent thereof, and is treated as an in-kind contribution, if the communication
14 meets a three-part test under the Commission’s regulations: (1) payment for the communication
15 by a third party; (2) satisfaction of one of five “content” standards of 11 C.F.R. § 109.21(c); and

²⁴ 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).

²⁵ 52 U.S.C. § 30104(b)(3)(B); 11 C.F.R. § 104.3(a).

²⁶ 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

²⁷ 52 U.S.C. § 30116(a)(7)(B)(iii).

²⁸ *Id.* § 30116(a)(7)(B)(i).

1 (3) satisfaction of one of six “conduct” standards of 11 C.F.R. § 109.21(d).²⁹ All three prongs
2 are required for a communication to be considered a coordinated communication under
3 Commission regulations.³⁰

4 **B. The Commission Finds No Reason to Believe That the Hickenlooper**
5 **Committee Accepted an Excessive In-Kind Contribution from SMP**

6 As discussed below, the available information is insufficient to conclude that the conduct
7 prong of the three-part coordination test is satisfied, and therefore that the Hickenlooper
8 Committee accepted or failed to report any excessive in-kind contribution in the form of SMP’s
9 expenditures. The Complaint alleges that the conduct prong was satisfied with respect to
10 “Honest Mistake” because the Hickenlooper Committee’s actions amounted to a “request or
11 suggestion” to republish the talking points on the Get the Facts Website.³¹ The argument rests
12 on assertions that: (a) the Hickenlooper Committee used “code language” on the Get the Facts
13 Website (*i.e.*, “Coloradans Need to Know”); (b) Miller and Passalacqua publicized the Gets the
14 Facts Website in tweets; and (c) the short time between the date the information was posted (*i.e.*,
15 June 13, 2020), and the date range in which SMP allegedly ran “Honest Mistake” on television
16 (on or around June 25, 2020), which the Complaint contends “indicates there was likely some
17 other communication between” SMP and the Hickenlooper Committee.³² In addition, the
18 Complaint alleges that SMP acted on the Hickenlooper Committee’s request or suggestion when
19 it republished the talking points from the Get the Facts Website and Video Footage featuring
20 Hickenlooper in “Honest Mistake.”³³

²⁹ 11 C.F.R. § 109.21.

³⁰ *Id.* § 109.21(a).

³¹ Compl. at 2-3, 9, 12.

³² *Id.* at 2, 9, 12.

³³ *Id.*

1 The Commission has explained that a “request or suggestion encompasses the most direct
2 form of coordination, given that the candidate or political party committee communicates desires
3 to another person who effectuates them,” and that the determination of whether a third party
4 acted in response to a request or suggestion must be “based on specific facts, rather than
5 presumed.”³⁴ The Commission clarified that the request or suggestion standard “is intended to
6 cover requests or suggestions made to a select audience, but not those offered to the public
7 generally.”³⁵ As a way of explaining when a request or suggestion is aimed at a particular
8 audience, the Commission juxtaposed two scenarios: (1) “a request that is posted on a web page
9 that is available to the general public is a request to the general public,” which does not trigger
10 the conduct standard; and (2) “a request posted through an intranet service or sent via electronic
11 mail directly to a discrete group of recipients,” which constitutes a request to a select audience
12 and thereby does satisfy the conduct standard.³⁶ The Commission has analyzed previous matters
13 alleging coordination on similar facts using this framework, concluding that general information
14 on public websites does not satisfy the meaning of “request or suggest” under the conduct
15 standard and finding no reason to believe.³⁷

16 Here, the Get the Facts Website, the talking points and information contained thereon
17 (with the exhortation that “Coloradans Need to Know”), as well as Miller and Passalacqua’s

³⁴ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *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.*).

1 tweets,³⁸ appear to be more similar to “general requests” outside the purview of the request or
2 suggestion conduct standard. They were publicly available and not clearly targeted at a specific
3 audience. The talking points on the Get the Facts Website included summaries of, and links to,
4 documents and news reports that were also publicly available. The perceived similarities and
5 short time between the Get the Facts Website, tweets, and “Honest Mistake” do not indicate that
6 any direct or private communications were made between the Hickenlooper Committee and
7 SMP.³⁹

8 In conclusion, the available information is insufficient to support a reasonable inference
9 that the conduct prong of the coordinated communication test is satisfied.⁴⁰ Accordingly, the
10 Commission finds no reason to believe that Hickenlooper and the Hickenlooper Committee
11 violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting an excessive in-
12 kind contribution and that the Hickenlooper Committee violated 52 U.S.C. § 30104(b) and
13 11 C.F.R. § 104.3(a) by failing to report an in-kind contribution.

³⁸ 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.

³⁹ 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”).

⁴⁰ *See* 11 C.F.R. § 109.21(a).