

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL’S REPORT**

**MUR: 7781**

DATE COMPLAINT FILED: Aug. 17, 2020

DATE OF NOTIFICATION: Aug. 18, 2020

DATE OF LAST RESPONSE: Sept. 14, 2020

DATE ACTIVATED: Oct. 6, 2020

EXPIRATION OF SOL: June 12, 2025 –

June 23, 2025

ELECTION CYCLE: 2020

**COMPLAINANT:**

Foundation for Accountability and Civic Trust

**RESPONDENT:**Fight for the American Dream PAC and Megan  
Troy in her official capacity as treasurer**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)(1)(A), (a)(7)(B)(iii)

11 C.F.R. § 104(b)(3)

11 C.F.R. § 109.23(a)

11 C.F.R. § 110.1(b)(1)

11 C.F.R. § 110.4(b)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter involves allegations that Fight for the American Dream PAC and Megan Troy in her official capacity as treasurer (“FFAD”) made prohibited in-kind contributions to Mondaire for Congress (the “Committee”), the principal campaign committee of Mondaire Jones, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), by republishing campaign materials in social media video advertisements that supported Jones’s candidacy during the Democratic primary election.

As discussed below, the facts supporting the allegation that FFAD republished campaign materials are uncontested. FFAD admits to producing and paying to distribute four 30-second video ads supporting Jones on Facebook that incorporate b-roll video obtained from the Committee's YouTube page and photos from the Committee's website. One of the ads was entirely composed of visual material previously published by the Committee, and the remaining three ads contained between 14-16 seconds (47%-53%) of visual material previously published by the Committee. Under the Act and Commission regulations, republication of campaign materials is considered a contribution for purposes of the contribution limitations and reporting responsibilities of the person making the expenditure. Accordingly, we recommend that the Commission find reason to believe that FFAD violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind contribution to Jones and the Committee and, further, that FFAD violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report the in-kind contribution. In addition, we recommend that the Commission enter into pre-probable cause conciliation with FFAD.<sup>1</sup>

## **II. FACTUAL BACKGROUND**

FFAD is an independent-expenditure-only political committee that registered with the Commission on May 13, 2020.<sup>2</sup> It distributed four online advertisements supporting Mondaire Jones's candidacy in the 2020 Democratic primary election for New York's 17th congressional district.<sup>3</sup> The ads were disseminated on Facebook, and are available on the Facebook Ad

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<sup>1</sup> The Complaint does not allege that the Committee coordinated with FFAD regarding these advertisements, nor does the record include sufficient information to support a reasonable inference that such coordination occurred. Therefore, this Report does not make any recommendations regarding the Committee receiving an in-kind contribution from FFAD. *See* 11 C.F.R. § 109.23(a).

<sup>2</sup> Fight for the American Dream PAC, Statement of Org. (May 13, 2020).

<sup>3</sup> *See* Compl. at 2 (Aug. 17, 2020); Resp. at 2 (Sept. 15, 2020).

Library.<sup>4</sup> FFAD's reports filed with the Commission reflect \$161,674 in independent expenditures spent on behalf of Jones during the 2020 election cycle, \$86,000 of which appears to have been spent on the four Facebook ads at issue in this matter.<sup>5</sup>

FFAD acknowledges that it used b-roll taken from the Committee's YouTube page and photos from the Committee's website in all four online advertisements.<sup>6</sup> In the first ad, "Bio 1," all of the visual content was comprised of Committee b-roll footage or photos.<sup>7</sup> In the second ad, "Endorsements 1," 53% was comprised of Committee b-roll or photos.<sup>8</sup> FFAD states that it "discovered the amount of campaign footage integrated into each" ad and "quickly re-edited and disseminated new versions."<sup>9</sup> The new ads, "Bio 2" and "Endorsements 2" were each comprised of approximately 47% Committee b-roll or photos.<sup>10</sup> The original versions of these ads appear to have run between June 12, 2020, and June 17, 2020, and the revised versions appear to have run between June 18, 2020 and June 23, 2020.<sup>11</sup>

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<sup>4</sup> See FFAD, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=109068654174470&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=109068654174470&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped).

<sup>5</sup> Respondents assert based "on information and belief" that only \$62,912.43 of this amount was spent on the advertisements and that the remaining \$23,097.57 was spent on digital consulting. Resp. at 2. FFAD's reports filed with the Commission, on the other hand, itemize the full \$86,000 as going to online advertising (\$7,000 of which was spent on the production of the ads). FFAD 48-Hour Rpt. (June 12, 2020) (reporting \$7,000 for production cost and \$35,000 for online advertising supporting Mondaire Jones); FFAD 48-Hour Rpt. (June 16, 2020) (reporting \$12,000 for online advertising supporting Mondaire Jones); FFAD 48-Hour Rpt. (June 19, 2020) (reporting \$32,000 for online advertising supporting Mondaire Jones). In any event, even the \$62,912 figure exceeds the limits applicable to persons other than multicandidate committees.

<sup>6</sup> Resp. at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2, 14 (stating that 16:08 of the 30:00 seconds in the "Endorsements 1" ad included visuals of Committee b-roll or pictures).

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 5, 13, 15 (stating that 14:22 of the 30:00 seconds in the "Bio 2" ad and 14:09 of the 30:00 seconds in the "Endorsements 2" ad included visuals of Committee B-roll or pictures).

<sup>11</sup> See FFAD, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=109068654174470&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=109068654174470&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped).

### III. LEGAL ANALYSIS

#### A. Relevant Law

The Act prohibits any person from making, and any candidate or committee from knowingly accepting, an excessive contribution.<sup>12</sup> For the 2020 election cycle, contributions by persons other than multicandidate committees to any candidate and his or her authorized political committees were limited to \$2,800 per election.<sup>13</sup> Committee treasurers are required to disclose the identification of each person who makes one or more contributions to the Committee aggregating in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee), together with the date and amount of any such contribution.<sup>14</sup> If a committee makes a contribution, it shall disclose the name and address of the recipient.<sup>15</sup>

Under the Act, “the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure.”<sup>16</sup> Commission regulations further provide that the republication of campaign materials “shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.”<sup>17</sup> Under Commission regulations, however, the candidate who prepared the materials is not

<sup>12</sup> 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

<sup>13</sup> 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019). Multicandidate committees are subject to separate limits. *See* 52 U.S.C. § 30116(a)(2).

<sup>14</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

<sup>15</sup> 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

<sup>16</sup> 52 U.S.C. § 30116(a)(7)(B)(iii). 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. *Id.* § 30116(a)(7)(B)(i).

<sup>17</sup> 11 C.F.R. § 109.23(a).

considered to have received an in-kind contribution and is not required to report an expenditure unless the dissemination, distribution, or republication of campaign materials is a coordinated communication or a party coordinated communication.<sup>18</sup>

**B. The Commission Should Find Reason to Believe that FFAD Made an Excessive In-Kind Contribution to Mondaire for Congress and Failed to Report the Contribution**

The available information indicates that FFAD republished campaign materials. FFAD acknowledges that it used portions of video b-roll taken from the Committee's YouTube page and photos from its website in four ads and that it paid to disseminate on Facebook.<sup>19</sup> Because FFAD republished campaign materials, its payments to disseminate the ads were in-kind contributions to the Committee for the purposes of FFAD's contribution limitations and reporting responsibilities.<sup>20</sup> The amount of the in-kind contributions exceeds the applicable limit, and FFAD incorrectly reported the ads as independent expenditures, thus resulting in violations of the Act and Commission regulations.<sup>21</sup> FFAD, however, makes several arguments contending that its use of campaign materials was not republication under the Act and Commission regulations. None of these arguments is persuasive.

FFAD argues that it is entitled to republish campaign materials so long as the amount used in a given ad does not exceed 50 percent.<sup>22</sup> As explained below, there is no such exception under the Act or Commission regulations, under which republication in whole or in part is considered an in-kind contribution. FFAD states that it "discovered and rectified any potential

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<sup>18</sup> *Id.*; see also *id.* §§ 109.21 (coordinated communications), 109.37 (party coordinated communications).

<sup>19</sup> Resp. at 2.

<sup>20</sup> See 11 C.F.R. § 109.23(a).

<sup>21</sup> See 52 U.S.C. §§ 30116(a)(1)(A), 30104(b)(3)(A); 11 C.F.R. §§ 110.1(b)(1)(i), 110.4(b).

<sup>22</sup> Resp. at 5 (asserting that "an independent communication may, at a minimum, utilize approximately 50% of its imagery from sources that would be defined as 'campaign materials'").

issues” in “Bio 1” and “Endorsements 1” by editing and re-disseminating the ads to reduce the amount of republished campaign materials to what it argues are allowable amounts.<sup>23</sup> FFAD states that “since [it] proactively discovered a potential error in compliance, and fixed that error quickly,” the Commission should find no reason to believe that a violation occurred or, at most, issue a warning to FFAD.

To the contrary, the Commission has not established a 50% threshold with respect to a potential republication violation. Rather, the Commission has determined that materials are considered republished even when the republished portion is only an incidental part of the communication.<sup>24</sup> Indeed, the statute and regulation both expressly include “republication, *in whole or in part, of any . . . campaign materials.*”<sup>25</sup> Moreover, the Commission has explained that the republication provision is meant to apply “where the candidate/author generally views the republication of his or her campaign materials, even in part, *as a benefit.*”<sup>26</sup> The Committee made the b-roll available on its public YouTube page precisely so that groups could use the footage for the benefit of the candidate, and that is what FFAD did by using the footage to expressly advocate for Jones’s election.<sup>27</sup> Thus, it is not relevant that the re-edited versions of

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<sup>23</sup> *Id.* at 2. It is unclear what FFAD means by “discovered” and what circumstances would have previously deprived FFAD of knowledge regarding the source materials used in its own ads. Initially, 100% and 53% of the run time of the two ads included campaign materials, but in the revised versions of both ads, 47% included campaign materials. *Id.* at 2, 5.

<sup>24</sup> In such cases, the incidental nature of the republication is considered in determining the appropriate Commission response to the violation, not whether the violation occurred. *See, e.g.*, Factual & Legal Analysis at 7-8, MUR 5996 (Tim Bee) (exercising prosecutorial discretion to dismiss regarding republished photo that comprised two seconds of 30-second ad); *see also infra* note 38 (listing reason-to-believe recommendations in republication matters, including those involving instances using less than 50% campaign materials).

<sup>25</sup> 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added); 11 C.F.R. § 109.23(a) (same).

<sup>26</sup> Coordinated and Independent Expenditures Explanation and Justification, 68 Fed. Reg. 421, 443 (Jan. 8, 2003) (“Coordination E&J”).

<sup>27</sup> The b-roll is a composite of professionally-shot video produced by the campaign in order to present Jones in a way that the Committee deemed appealing, including through its choices of settings, imagery, participants, and the way Jones himself is presented, all choices that reflect the Committee’s desired electoral messaging. *See*

the advertisements used a lesser proportion of republished campaign materials; they still republished campaign materials.

Relatedly, FFAD argues that its use of republished materials was “only to augment [its] own message”<sup>28</sup> and therefore the republication provision should not apply. But the addition of an FFAD message has no bearing on the fact that the ads republished campaign materials and thus violated the Act and Commission regulations.<sup>29</sup> In support of its position, FFAD cites Statements of Reasons from several past matters, none of which garnered the votes of four or more Commissioners.<sup>30</sup> Though the Commission has carved out a regulatory exemption for “a brief quote of materials that demonstrate a candidate’s position as part of a person’s expression of its own views,” that exception does not apply here.<sup>31</sup> The use of campaign materials in the ads disseminated by FFAD does not appear to have been brief because each incorporated a significant amount of campaign materials (between 47% and 100%).<sup>32</sup> Moreover, the Commission explained that the exemption is designed to “illustrate a candidate’s position on an

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Campaign, Mondaire Jones, YOUTUBE, <https://www.youtube.com/watch?v=FZR7ZNszRrA>. Even if FFAD supplemented the Committee’s message with its own, it does not deprive the extended use of the source footage of its communicative content. FFAD did not simply use inconsequential raw material to devise an entirely new message, but rather used its resources to further disseminate materials that the Committee had spent its limited resources to produce and publish in order to present Jones in its chosen light.

<sup>28</sup> Resp. at 2.

<sup>29</sup> *Id.* at 2, 5-6.

<sup>30</sup> *Id.* at 5-6 (citing Statement of Reasons of Comm’rs Petersen, Hunter, & Goodman, MURs 6603 (Ben Chandler for Congress), 6777 (Kirkpatrick for Arizona), 6801 (Senate Majority PAC), 6870 (American Crossroads), 6902 (Al Franken for Senate 2014) (Dec. 17, 2015); Statement of Reasons of Comm’rs McGahn, Petersen, & Hunter, MUR 6357 (American Crossroads) (Feb. 22, 2012); Statement of Reasons of Comm’rs Weintraub and Spakovsky, MUR 5743 (Betty Sutton for Congress) (Jan. 23, 2007)). In MUR 5743, four Commissioners voted to dismiss as a matter of prosecutorial discretion but send respondents an admonishment letter. Certification ¶ 2, MUR 5743 (Nov. 28, 2006).

<sup>31</sup> See 11 C.F.R. § 109.23(b)(4).

<sup>32</sup> Resp. at 2, 5, 12-15.

issue.”<sup>33</sup> But the materials that FFAD incorporated into the ads were devoid of anything expressing the candidates’ positions on any issue.<sup>34</sup> Accordingly, the brief quote exemption does not apply. Instead, FFAD’s use of campaign materials fits squarely within the parameters for republication that the Commission has established.

Finally, FFAD argues that it is inappropriate for the Commission to “delineat[e] the narrow lines between permissible and impermissible speech by way of the enforcement process” and instead that it “must provide guidance through the regulation process.”<sup>36</sup> However, as stated above, the Act and Commission regulations make clear that “republication, *in whole or in part, of any . . . campaign materials*” is an in-kind contribution, and this case merely involves applying the long-existing language of the Act and Commission regulations to FFAD’s ads.<sup>37</sup>

In sum, because FFAD paid to republish campaign materials, its payments for the communications are treated as in-kind contribution for purposes of its contribution limitations and reporting requirements. Therefore, we recommend that the Commission find reason to believe that FFAD violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind contribution and violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report the contribution.<sup>38</sup>

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<sup>33</sup> Coordination E&J, 68 Fed. Reg. at 443.

<sup>34</sup> The b-roll footage on the Committee’s YouTube page consisted of over two hours of audio-free video of Jones talking with voters, Jones looking out over the Governor Mario M. Cuomo Bridge, and other video presumably taken around the New York 17th District. *See* Campaign, Mondaire Jones, YOUTUBE, <https://www.youtube.com/watch?v=FZR7ZNszRrA>.

<sup>36</sup> Resp. at 10

<sup>37</sup> 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added); 11 C.F.R. § 109.23(a) (same).

<sup>38</sup> The Commission has considered republication allegations relating to b-roll footage in previous matters, resulting in split votes on whether to approve reason to believe recommendations. *See, e.g.*, MUR 6357 (American Crossroads) (10-15 seconds of b-roll in a 30-second TV ad); MUR 6603 (Ben Chandler for Congress) (17 seconds



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11 **V. RECOMMENDATIONS**

- 12 1. Find reason to believe that Fight for the American Dream PAC and Megan Troy  
13 in her official capacity as treasurer violated 52 U.S.C. § 30116(a)(1)(A) and  
14 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind contribution and violated  
15 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report an in-kind  
16 contribution;
- 17 2. Approve the attached Factual and Legal Analysis;
- 18 3. Approve the attached Conciliation Agreement;
- 19 4. Approve the appropriate letters.

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of b-roll in a 30-second TV ad); MUR 6667 (House Majority PAC) (11 seconds of b-roll in a 33-second TV ad); MUR 7185 (Sheriff Scott Jones for Congress) (13-14 seconds of b-roll in a 30-second TV ad); MUR 6801 (Senate Majority PAC) (16 seconds of b-roll in a 30-second TV ad). We note that FFAD used more b-roll footage, as a percentage of its communication's content, than the payors of the communications the Commission considered in several of these prior matters.

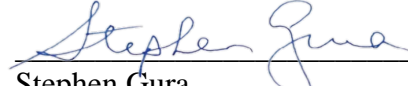
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Lisa J. Stevenson  
Acting General Counsel


Charles Kitcher  
Acting Associate General Counsel  
for Enforcement

12/18/2020

Date

  
Stephen Gura  
Deputy Associate General Counsel  
For Enforcement

  
Claudio J. Pavia  
Acting Assistant General Counsel

  
Nicholas O. Mueller  
Attorney

Attachments:  
Factual and Legal Analysis

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

**RESPONDENT:** Fight for the American Dream PAC                      **MUR: 7781**  
and Megan Troy in her official  
capacity as treasurer

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by the Foundation for Accountability and Civic Trust involving allegations that Fight for the American Dream PAC and Megan Troy in her official capacity as treasurer (“FFAD”) made prohibited in-kind contributions to Mondaire for Congress (the “Committee”), the principal campaign committee of Mondaire Jones, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), by republishing campaign materials in social media video advertisements that supported Jones’s candidacy during the Democratic primary election.

As discussed below, the facts supporting the allegation that FFAD republished campaign materials are uncontested. FFAD admits to producing and paying to distribute four 30-second video ads supporting Jones on Facebook that incorporate b-roll video obtained from the Committee’s YouTube page and photos from the Committee’s website. One of the ads was entirely composed of visual material previously published by the Committee, and the remaining three ads contained between 14-16 seconds (47%-53%) of visual material previously published by the Committee. Under the Act and Commission regulations, republication of campaign materials is considered a contribution for purposes of the contribution limitations and reporting responsibilities of the person making the expenditure. Accordingly, the Commission finds reason to believe that FFAD violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind contribution to Jones and the Committee and, further, that FFAD

violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report the in-kind contribution.

## II. FACTUAL BACKGROUND

FFAD is an independent-expenditure-only political committee that registered with the Commission on May 13, 2020.<sup>1</sup> It distributed four online advertisements supporting Mondaire Jones's candidacy in the 2020 Democratic primary election for New York's 17th congressional district.<sup>2</sup> The ads were disseminated on Facebook, and are available on the Facebook Ad Library.<sup>3</sup> FFAD's reports filed with the Commission reflect \$161,674 in independent expenditures spent on behalf of Jones during the 2020 election cycle, \$86,000 of which appears to have been spent on the four Facebook ads at issue in this matter.<sup>4</sup>

FFAD acknowledges that it used b-roll taken from the Committee's YouTube page and photos from the Committee's website in all four online advertisements.<sup>5</sup> In the first ad, "Bio 1," all of the visual content was comprised of Committee b-roll footage or photos.<sup>6</sup> In the second ad, "Endorsements 1," 53% was comprised of Committee b-roll or photos.<sup>7</sup> FFAD states that it

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<sup>1</sup> Fight for the American Dream PAC, Statement of Org. (May 13, 2020).

<sup>2</sup> See Compl. at 2 (Aug. 17, 2020); Resp. at 2 (Sept. 15, 2020).

<sup>3</sup> See FFAD, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=109068654174470&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=109068654174470&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped).

<sup>4</sup> Respondents assert based "on information and belief" that only \$62,912.43 of this amount was spent on the advertisements and that the remaining \$23,097.57 was spent on digital consulting. Resp. at 2. FFAD's reports filed with the Commission, on the other hand, itemize the full \$86,000 as going to online advertising (\$7,000 of which was spent on the production of the ads). FFAD 48-Hour Rpt. (June 12, 2020) (reporting \$7,000 for production cost and \$35,000 for online advertising supporting Mondaire Jones); FFAD 48-Hour Rpt. (June 16, 2020) (reporting \$12,000 for online advertising supporting Mondaire Jones); FFAD 48-Hour Rpt. (June 19, 2020) (reporting \$32,000 for online advertising supporting Mondaire Jones). In any event, even the \$62,912 figure exceeds the limits applicable to persons other than multicandidate committees.

<sup>5</sup> Resp. at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2, 14 (stating that 16:08 of the 30:00 seconds in the "Endorsements 1" ad included visuals of Committee b-roll or pictures).

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“discovered the amount of campaign footage integrated into each” ad and “quickly re-edited and disseminated new versions.”<sup>8</sup> The new ads, “Bio 2” and “Endorsements 2” were each comprised of approximately 47% Committee b-roll or photos.<sup>9</sup> The original versions of these ads appear to have run between June 12, 2020, and June 17, 2020, and the revised versions appear to have run between June 18, 2020 and June 23, 2020.<sup>10</sup>

### III. LEGAL ANALYSIS

#### A. Relevant Law

The Act prohibits any person from making, and any candidate or committee from knowingly accepting, an excessive contribution.<sup>11</sup> For the 2020 election cycle, contributions by persons other than multicandidate committees to any candidate and his or her authorized political committees were limited to \$2,800 per election.<sup>12</sup> Committee treasurers are required to disclose the identification of each person who makes one or more contributions to the Committee aggregating in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee), together with the date and amount of any such contribution.<sup>13</sup> If a committee makes a contribution, it shall disclose the name and address of the recipient.<sup>14</sup>

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 5, 13, 15 (stating that 14:22 of the 30:00 seconds in the “Bio 2” ad and 14:09 of the 30:00 seconds in the “Endorsements 2” ad included visuals of Committee B-roll or pictures).

<sup>10</sup> See FFAD, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=109068654174470&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=109068654174470&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped).

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

<sup>12</sup> 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019). Multicandidate committees are subject to separate limits. See 52 U.S.C. § 30116(a)(2).

<sup>13</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

<sup>14</sup> 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

Under the Act, “the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure.”<sup>15</sup> Commission regulations further provide that the republication of campaign materials “shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.”<sup>16</sup> Under Commission regulations, however, the candidate who prepared the materials is not considered to have received an in-kind contribution and is not required to report an expenditure unless the dissemination, distribution, or republication of campaign materials is a coordinated communication or a party coordinated communication.<sup>17</sup>

**B. The Commission Finds Reason to Believe that FFAD Made an Excessive In-Kind Contribution to Mondaire for Congress and Failed to Report the Contribution**

The available information indicates that FFAD republished campaign materials. FFAD acknowledges that it used portions of video b-roll taken from the Committee’s YouTube page and photos from its website in four ads and that it paid to disseminate on Facebook.<sup>18</sup> Because FFAD republished campaign materials, its payments to disseminate the ads were in-kind contributions to the Committee for the purposes of FFAD’s contribution limitations and reporting responsibilities.<sup>19</sup> The amount of the in-kind contributions exceeds the applicable

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<sup>15</sup> 52 U.S.C. § 30116(a)(7)(B)(iii). 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. *Id.* § 30116(a)(7)(B)(i).

<sup>16</sup> 11 C.F.R. § 109.23(a).

<sup>17</sup> *Id.*; *see also id.* §§ 109.21 (coordinated communications), 109.37 (party coordinated communications).

<sup>18</sup> Resp. at 2.

<sup>19</sup> *See* 11 C.F.R. § 109.23(a).

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limit, and FFAD incorrectly reported the ads as independent expenditures, thus resulting in violations of the Act and Commission regulations.<sup>20</sup> FFAD, however, makes several arguments contending that its use of campaign materials was not republication under the Act and Commission regulations. None of these arguments is persuasive.

FFAD argues that it is entitled to republish campaign materials so long as the amount used in a given ad does not exceed 50 percent.<sup>21</sup> As explained below, there is no such exception under the Act or Commission regulations, under which republication in whole or in part is considered an in-kind contribution. FFAD states that it “discovered and rectified any potential issues” in “Bio 1” and “Endorsements 1” by editing and re-disseminating the ads to reduce the amount of republished campaign materials to what it argues are allowable amounts.<sup>22</sup> FFAD states that “since [it] proactively discovered a potential error in compliance, and fixed that error quickly,” the Commission should find no reason to believe that a violation occurred or, at most, issue a warning to FFAD.

To the contrary, the Commission has not established a 50% threshold with respect to a potential republication violation. Rather, the Commission has determined that materials are considered republished even when the republished portion is only an incidental part of the communication.<sup>23</sup> Indeed, the statute and regulation both expressly include “republication, *in*

<sup>20</sup> See 52 U.S.C. §§ 30116(a)(1)(A), 30104(b)(3)(A); 11 C.F.R. §§ 110.1(b)(1)(i), 110.4(b).

<sup>21</sup> Resp. at 5 (asserting that “an independent communication may, at a minimum, utilize approximately 50% of its imagery from sources that would be defined as ‘campaign materials’”).

<sup>22</sup> *Id.* at 2. It is unclear what FFAD means by “discovered” and what circumstances would have previously deprived FFAD of knowledge regarding the source materials used in its own ads. Initially, 100% and 53% of the run time of the two ads included campaign materials, but in the revised versions of both ads, 47% included campaign materials. *Id.* at 2, 5.

<sup>23</sup> In such cases, the incidental nature of the republication is considered in determining the appropriate Commission response to the violation, not whether the violation occurred. See, e.g., Factual & Legal Analysis at 7-8, MUR 5996 (Tim Bee) (exercising prosecutorial discretion to dismiss regarding republished photo that comprised two seconds of 30-second ad).

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1 *whole or in part, of any . . . campaign materials.*<sup>24</sup> Moreover, the Commission has explained  
2 that the republication provision is meant to apply “where the candidate/author generally views  
3 the republication of his or her campaign materials, even in part, *as a benefit.*”<sup>25</sup> The Committee  
4 made the b-roll available on its public YouTube page precisely so that groups could use the  
5 footage for the benefit of the candidate, and that is what FFAD did by using the footage to  
6 expressly advocate for Jones’s election.<sup>26</sup> Thus, it is not relevant that the re-edited versions of  
7 the advertisements used a lesser proportion of republished campaign materials; they still  
8 republished campaign materials.

9 Relatedly, FFAD argues that its use of republished materials was “only to augment [its]  
10 own message”<sup>27</sup> and therefore the republication provision should not apply. But the addition of  
11 an FFAD message has no bearing on the fact that the ads republished campaign materials and  
12 thus violated the Act and Commission regulations.<sup>28</sup> In support of its position, FFAD cites  
13 Statements of Reasons from several past matters, none of which garnered the votes of four or  
14 more Commissioners.<sup>29</sup> Though the Commission has carved out a regulatory exemption for “a

<sup>24</sup> 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added); 11 C.F.R. § 109.23(a) (same).

<sup>25</sup> Coordinated and Independent Expenditures Explanation and Justification, 68 Fed. Reg. 421, 443 (Jan. 8, 2003) (“Coordination E&J”).

<sup>26</sup> The b-roll is a composite of professionally-shot video produced by the campaign in order to present Jones in a way that the Committee deemed appealing, including through its choices of settings, imagery, participants, and the way Jones himself is presented, all choices that reflect the Committee’s desired electoral messaging. *See* Campaign, Mondaire Jones, YOUTUBE, <https://www.youtube.com/watch?v=FZR7ZNszRrA>. Even if FFAD supplemented the Committee’s message with its own, it does not deprive the extended use of the source footage of its communicative content. FFAD did not simply use inconsequential raw material to devise an entirely new message, but rather used its resources to further disseminate materials that the Committee had spent its limited resources to produce and publish in order to present Jones in its chosen light.

<sup>27</sup> Resp. at 2.

<sup>28</sup> *Id.* at 2, 5-6.

<sup>29</sup> *Id.* at 5-6 (citing Statement of Reasons of Comm’rs Petersen, Hunter, & Goodman, MURs 6603 (Ben Chandler for Congress), 6777 (Kirkpatrick for Arizona), 6801 (Senate Majority PAC), 6870 (American Crossroads), 6902 (Al Franken for Senate 2014) (Dec. 17, 2015); Statement of Reasons of Comm’rs McGahn, Petersen, & Hunter, MUR 6357 (American Crossroads) (Feb. 22, 2012); Statement of Reasons of Comm’rs Weintraub and Spakovsky, MUR 5743 (Betty Sutton for Congress) (Jan. 23, 2007)). In MUR 5743, four Commissioners voted to



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brief quote of materials that demonstrate a candidate’s position as part of a person’s expression of its own views,” that exception does not apply here.<sup>30</sup> The use of campaign materials in the ads disseminated by FFAD does not appear to have been brief because each incorporated a significant amount of campaign materials (between 47% and 100%).<sup>31</sup> Moreover, the Commission explained that the exemption is designed to “illustrate a candidate’s position on an issue.”<sup>32</sup> But the materials that FFAD incorporated into the ads were devoid of anything expressing the candidates’ positions on any issue.<sup>33</sup> Accordingly, the brief quote exemption does not apply. Instead, FFAD’s use of campaign materials fits squarely within the parameters for republication that the Commission has established.

Finally, FFAD argues that it is inappropriate for the Commission to “delineat[e] the narrow lines between permissible and impermissible speech by way of the enforcement process” and instead that it “must provide guidance through the regulation process.”<sup>34</sup> However, as stated above, the Act and Commission regulations make clear that “republication, *in whole or in part, of any . . . campaign materials*” is an in-kind contribution, and this case merely involves applying the long-existing language of the Act and Commission regulations to FFAD’s ads.<sup>35</sup>

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dismiss as a matter of prosecutorial discretion but send respondents an admonishment letter. Certification ¶ 2, MUR 5743 (Nov. 28, 2006).

<sup>30</sup> See 11 C.F.R. § 109.23(b)(4).

<sup>31</sup> Resp. at 2, 5, 12-15.

<sup>32</sup> Coordination E&J, 68 Fed. Reg. at 443.

<sup>33</sup> The b-roll footage on the Committee’s YouTube page consisted of over two hours of audio-free video of Jones talking with voters, Jones looking out over the Governor Mario M. Cuomo Bridge, and other video presumably taken around the New York 17th District. See Campaign, Mondaire Jones, YOUTUBE, <https://www.youtube.com/watch?v=FZR7ZNszRrA>.

<sup>34</sup> Resp. at 10

<sup>35</sup> 52 U.S.C. § 30116(a)(7)(B)(iii) (emphasis added); 11 C.F.R. § 109.23(a) (same).

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1           In sum, because FFAD paid to republish campaign materials, its payments for the  
2   communications are treated as in-kind contribution for purposes of its contribution limitations  
3   and reporting requirements. Therefore, the Commission finds reason to believe that FFAD  
4   violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive in-kind  
5   contribution and violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by failing to report the  
6   contribution.