



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 6, 2022

VIA ELECTRONIC & FIRST CLASS MAIL

info@sussexcountywatchdog.com

Heinrich Heine
SussexCountyWatchdog.com
1 Spring St
Newton, NJ 07860

RE: MUR 7788
SussexCountyWatchdog.com

Dear Mr. Heine:

On September 10, 2020, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 24, 2022, the Commission found, on the basis of the information in the complaint, and information provided by Respondents that there is no reason to believe SussexCountyWatchdog.com made prohibited or excessive in-kind contributions, in violation of 52 U.S.C. §§ 30116(a), (f), 30118(a) and 11 C.F.R. §§ 110.1, 110.9, 114.2, by coordinating blog posts. In addition, the Commission dismissed the allegation that SussexCountyWatchdog.com made prohibited or excessive in-kind contributions, in violation of 52 U.S.C. §§ 30116(a), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2, by sharing an email list without charge. Accordingly, on May 24, 2022, the Commission closed the file in this matter.

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). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Pallotta for Congress and Amberle Gilroy
in her official capacity as treasurer
Kelly Ann Hart
JerseyConservative.org
SussexCountyWatchdog.com
Intellz, Inc.
The Trump Revolution
William Winkler
Baseline Research

MUR 7788

I. INTRODUCTION

15 This matter was generated by a Complaint filed with the Federal Election Commission
16 alleging that during the 2020 election, Pallotta for Congress and Amberle Gilroy in her official
17 capacity as treasurer (the “Committee”), the authorized committee of Frank Pallotta, “illegally
18 coordinated” with two political blogs, JerseyConservative.org (“Jersey Conservative”) and
19 SussexCountyWatchdog.com (“Sussex County Watchdog”), and violated the Federal Election
20 Campaign Act of 1971, as amended (the “Act”). Specifically, the Complaint alleges that the
21 Committee reported payments to Baseline Research, a political consulting company owned by
22 respondent William Winkler, that were, in actuality, intended for Jersey Conservative and Sussex
23 County Watchdog to publish blog posts supporting Pallotta and opposing McCann, Pallotta’s
24 primary opponent and the Complainant in this matter. The Complaint alleges that Pallotta’s
25 campaign manager, Kelly Ann Hart, facilitated or was otherwise involved in the transactions and
26 that Winkler actually controlled the blogs. The Complaint also makes the converse allegation
27 that the two websites, not the Committee, made payments to publish the articles, resulting in in-
28 kind contributions from the publishers to the Committee. The Complaint further alleges that
29 Jersey Conservative and Sussex County Watchdog made an in-kind contribution when they
30 shared an email list with the Committee without charge. Finally, the Complaint makes a separate

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 2 of 16

1 claim unrelated to the blogs, alleging that ads supporting Pallotta that appeared on The Trump
2 Revolution Facebook page lacked proper disclaimers and may have been paid for by a campaign
3 supporter in violation of the Act.

4 The Committee denies that its payments to Baseline Research were related to content
5 posted on Jersey Conservative and Sussex County Watchdog or that the Committee otherwise
6 coordinated with either of the websites. The Committee does not specifically address the
7 allegations regarding the shared email list. As to the allegation concerning the Facebook ads, the
8 Respondents state that the Committee paid for the ads in question but that any disclaimer
9 omissions resulted from a vendor error.¹

10 As explained below, the factual record does not provide a reasonable basis to infer that
11 the Committee's reported payments to Baseline Research were related to any content posted on
12 Sussex County Watchdog or Jersey Conservative. Moreover, it appears that the blog posts are
13 covered by the internet exemption. Further, the allegation regarding the shared email list is
14 vague, speculative, and unsupported by the available information.

15 Therefore, the Commission: (1) dismisses the allegation that the Committee violated
16 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b) by inaccurately reporting disbursements to
17 Sussex County Watchdog and Jersey Conservative as payments to Baseline Research;
18 (2) dismisses the allegation that Baseline Research violated the Act because the Complaint does
19 not appear to allege a cognizable violation against it; (3) finds no reason to believe that Jersey
20 Conservative and Sussex County Watchdog made, and the Committee knowingly accepted,

¹ Committee Resp. at 3-4 (Oct. 6, 2020); Intellz Resp. at 2-4; The Trump Revolution Resp. at 1 (Oct. 14, 2020) [hereinafter Regal Blue Media Response]. The Trump Revolution is a Facebook page operated and owned by Regal Blue Media.

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 3 of 16

1 prohibited or excessive in-kind contributions, in violation of 52 U.S.C. §§ 30116(a), (f),
 2 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2, by coordinating blog posts; (4) finds no
 3 reason to believe that Kelly Ann Hart and William Winkler made or knowingly accepted
 4 prohibited or excessive in-kind contributions in violation of 52 U.S.C. §§ 30116(a), (f), 30118(a)
 5 and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2 by coordinating blog posts; and (5) dismisses the
 6 allegation that Jersey Conservative and Sussex County Watchdog made, and the Committee
 7 knowingly accepted, prohibited or excessive in-kind contributions in violation of 52 U.S.C.
 8 §§ 30116(a), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2 by sharing an email list
 9 without charge. Further, the Commission dismisses, as a matter of prosecutorial discretion, the
 10 allegation that the Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b) by failing
 11 to include adequate disclaimers on the Facebook ads. Finally, the Commission finds no reason
 12 to believe that The Trump Revolution and Intellz, Inc.,² violated 52 U.S.C. § 30120(a) and
 13 11 C.F.R. § 110.11(b) because the duty to include adequate disclaimers does not apply to them.

14 **II. FACTUAL BACKGROUND**

15 On May 13, 2019, Frank Pallotta filed his Statement of Candidacy for New Jersey's 5th
 16 Congressional District.³ Pallotta for Congress is his principal campaign committee with
 17 Amberle Gilroy serving as treasurer.⁴ Pallotta won the Republican primary election on July 7,
 18 2020, and lost the general election on November 3, 2020.⁵ John J. McCann, the Complainant,

² Intellz was a digital advertising vendor that worked with the Trump Revolution Facebook page. Intellz Resp. at 1 (Dec. 19, 2020).

³ Frank Pallotta, Statement of Candidacy (May 13, 2019).

⁴ Pallotta for Congress, Amended Statement of Org. (Aug. 6, 2020).

⁵ 2020 Official Primary Results, U.S. House of Representatives Fifth Congressional District, N.J. SEC'Y OF STATE (<https://www.state.nj.us/state/elections/assets/pdf/election-results/2020/2020-official-primary-results-us-house-amended-0826.pdf>) (July 7, 2020); 2020 Official General Election Results: U.S. House of Representatives

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 4 of 16

1 was one of Pallotta’s opponents in the primary election.⁶ Jersey Conservative and Sussex
 2 County Watchdog are anonymous blogs that cover New Jersey politics.⁷ According to its
 3 website, Jersey Conservative is “run and maintained by a group of volunteers, some of whom
 4 have their own websites.”⁸ The Sussex County Watchdog website states that: “[i]t is committed
 5 to citizen journalism with a local, independent-minded perspective.”⁹

6 The Complaint alleges that the Committee secretly routed payments to Sussex County
 7 Watchdog and Jersey Conservative to pay for articles posted on those websites supporting
 8 Pallotta and opposing McCann.¹⁰ The Complaint also argues, relatedly but conversely, that the
 9 two websites paid to publish the articles on behalf of the Committee, resulting in in-kind
 10 contributions.¹¹

11 To support these allegations, the Complainant states that he “personally witnessed”
 12 Pallotta Campaign Manager Kelly Ann Hart at a January 7, 2020, Bergen County Republican
 13 Organization meeting “type and create a letter” that was anonymously posted that same day as an
 14 article on Sussex County Watchdog.¹² Six days later, on January 13, 2020, the Committee made
 15 a \$2,500 payment for “Research” to Baseline Research, a political consulting company owned by

5 Fifth Congressional District, N.J. SEC’Y OF STATE, (<https://www.state.nj.us/state/elections/assets/pdf/election-results/2020/2020-official-general-results-us-house.pdf>) (Nov. 3, 2020).

6 Compl. at 2 (Sept. 1, 2020).

7 *Id.* at 3; Committee Resp. at 2; *see id.*, Attach. (Affidavit of Kelly Ann Hart ¶ 9 (Sept. 29, 2020) [hereinafter Hart Affidavit].

8 About Us – Jersey Conservative, <https://www.jerseyconservative.org/about-us> (last visited Feb. 19, 2021).

9 Home – Sussex County Watchdog, <https://www.sussexcountywatchdog.com/home> (last visited Feb. 19, 2021).

10 Compl. at 4 (alleging that the Committee may have “paid for . . . exposure on the well-known blogs”).

11 *Id.* at 7-9 (alleging that the communications were “paid for by a third party,” *i.e.*, Sussex County Watchdog and Jersey Conservative, and arguing that the three prongs of the coordinated communication test are satisfied).

12 *Id.* at 2-3; *Should a Bergen County Party Boss Choose Sussex County’s Congressman?*, SussexCountyWatchdog.com (Jan. 7, 2020) (the post has no author listed).

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 5 of 16

1 William Winkler, who “is believed and alleged” to operate Sussex County Watchdog and Jersey
 2 Conservative.¹³ The Complaint alleges that Winkler operates the blogs based upon information
 3 gleaned from various sources, yet none of the cited information states that Winkler operates the
 4 specific blogs, only that he is a blogger.¹⁴

5 The Complaint asserts that the true purpose of the \$2,500 payment to Baseline Research
 6 was for Sussex County Watchdog to post the article allegedly written by Hart.¹⁵ Sussex County
 7 Watchdog and Jersey Conservative published at least three additional articles supporting Pallotta
 8 and opposing McCann during the primary, and the Committee made an additional \$7,200
 9 payment to Baseline Research on April 20, 2020, which the Complaint alleges was for the
 10 purpose of publishing the additional articles.¹⁶ Separately, the Complaint makes allegations that
 11 the two websites, that made payments to publish the articles in the form of web hosting and
 12 email fees, made in-kind contributions to the Committee.¹⁷

13 In Response, the Committee asserts that its payments to Baseline Research were
 14 unrelated to the articles posted on those websites and instead were for “Messaging / Strategy.”¹⁸
 15 It asserts that the Complaint has failed to provide sufficient evidence that Hart or Winkler wrote

¹³ Compl. at 3; Pallotta for Congress 2020 April Quarterly Rpt. at 12 (Apr. 15, 2020).

¹⁴ Compl. at 12-13 (citing Anonymous, *Will legislator be sued for trying to silence blog?* JERSEYCONSERVATIVE.ORG (Dec. 15, 2016); Anonymous, *How the Herald Almost Started the WatchDog*, SUSSEXCOUNTYWATCHDOG.COM (Apr. 18, 2017); Paul Mulshine, *Tea-Partiers Need to Wake Up and Smell the Coffee*, NJ.COM, Apr. 14, 2011 (updated Jan. 18, 2019), https://www.nj.com/njv_paul_mulshine/2011/04/post_94.html).

¹⁵ See Compl. at 4.

¹⁶ *Id.* at 4, 8.

¹⁷ Compl. at 7-8.

¹⁸ Committee Resp. at 2-3 (“Mr. Winkler [of Baseline Research] was hired to provide strategic consulting, not to blog.”) (Oct. 6, 2020); *see also* Hart Aff. ¶ 13 (attesting that the reported payments to Baseline Research were for “messaging and strategic consulting”).

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 6 of 16

1 any of the blog posts on Sussex County Watchdog or Jersey Conservative.¹⁹ And it specifically
 2 challenges the Complainant's claim that he personally witnessed Hart writing a blog post with an
 3 affidavit from Hart, attesting that, "I did not write any articles . . . for the Blogs referenced in the
 4 complaint."²⁰ Finally, the Committee argues that even if Hart or other Committee staff had
 5 written blog posts on their own, it would fall within the internet exemption.²¹

6 In addition, the Complaint states that Sussex County Watchdog and Jersey Conservative
 7 use an email list to "blast" their posts to readers and that, "[b]ased on information and belief, the
 8 email list between Pallotta for Congress and the blogs are shared."²² The Complaint, however,
 9 does not cite to any specific information.²³ In its Response, the Committee does not address this
 10 allegation.

11 The final allegation relates to six Pallotta ads that appeared on the Trump Revolution
 12 Facebook page, and cost \$2,695.²⁴ The Complaint asserts that the ads were paid for by the
 13 Trump Revolution Facebook page owner Dora Louise Collier in coordination with the
 14 Committee and constitute impermissible contributions.²⁵ Five of the ads contained a disclaimer
 15 generated by Facebook, stating that they were paid for by Collier (two of which also contained a

¹⁹ Committee Resp. at 4.

²⁰ Hart Aff. ¶ 9.

²¹ Committee Resp. at 2-4 (citing 11 C.F.R. § 100.155).

²² Compl. at 5.

²³ See *id.* ("Based on information and belief, the email list between Pallotta for Congress and the blogs are shared.").

²⁴ Compl. at 5; *The Trump Revolution*, 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=388475271497575&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=388475271497575&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped)) [hereinafter, "The Trump Revolution Facebook Ad Library"]; *Pallotta for Congress*, Facebook Ad Library, FACEBOOK [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=pallotta%20for%20congress&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&q=pallotta%20for%20congress&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) [hereinafter, "Pallotta for Congress Facebook Ad Library"].

²⁵ Compl. at 10-12.

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 7 of 16

1 disclaimer within the text of the ad stating that they were paid for by the Committee).²⁶ Only

2 one ad contained a single disclaimer stating that it was paid for by the Committee.²⁷

3 In its Response, the Committee acknowledges that it paid Intellz to place digital
 4 advertisements, including the Facebook ads at issue in the Complaint.²⁸ Separately, Intellz and
 5 Regal Blue Media (operator of The Trump Revolution Facebook page) confirmed in their
 6 response that the Committee retained Intellz and that Intellz, in turn, subcontracted the
 7 assignment to Regal Blue Media, owned by William Collier and Dora Louise Collier.²⁹ They
 8 assert that because the Committee's Facebook account was at the time awaiting verification,
 9 Regal Blue Media purchased the ads in question using the Ms. Collier's Facebook account and
 10 manually entered disclaimers stating that the ads were paid for by the Committee.³⁰ However,
 11 according to Intellz and Regal Blue Media, Facebook automatically appended disclaimers stating
 12 "Paid for by Dora Louise Collier," which led to ads containing dual disclaimers.³¹

²⁶ The Trump Revolution Facebook Ad Library (ads with the identification numbers of 616377048948088; 504656297146472; and 2470597446489117 contained disclaimers that they were paid for by Collier; ads with the identified numbers of 807803029630704 and 519844875604275 contained dual disclaimers).

²⁷ Pallotta for Congress Facebook Ad Library (ad with identification number 638185140305037).

²⁸ Compl. at 3-4; *see* Hart Aff. ¶ 13; *see also* Pallotta for Congress, April 2020 Quarterly Rpt. at 45 (Apr. 15, 2020) (March 10, 2020, disbursement to Intellz, Inc. for "media consulting.")

²⁹ Regal Blue Media Resp. at 1.

³⁰ *Id.*; Intellz Resp. at 3-4; *see also* Blue Regal Media Resp. at 1 (acknowledging that, for at least one of the ads, Regal Blue Media failed to manually enter a disclaimer stating that it was paid for by the Committee, which it contends was "due to inadvertent human error").

³¹ Regal Blue Media Resp. at 1; Intellz Resp. at 3.

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 8 of 16

1 **III. LEGAL ANALYSIS**

2 **A. The Commission Dismisses the Allegation that the Committee Inaccurately**
3 **Reported Disbursements to Jersey Conservative and Sussex County**
4 **Watchdog as Payments to Baseline Research**

5 The Act and Commission’s regulations require political committees to report the name
6 and address of each person to whom they make disbursements aggregating more than \$200 per
7 calendar year, or per election cycle for authorized committees, as well as the date, amount, and
8 purpose of such payments.³² The Act and Commission’s regulations “are silent with respect to
9 any definition or description of the person to whom an expenditure is made. Moreover, they do
10 not address the concepts of ultimate payees, vendors, agents, contractors, or subcontractors in
11 this context.”³³ However, the Commission has determined that reporting the immediate recipient
12 of a disbursement will not satisfy the Act’s reporting requirements when the facts indicate that
13 the immediate recipient is “merely a conduit for the intended recipient of the funds.”³⁴

14 The Complaint alleges that the Committee made payments to Baseline Research that
15 were, in actuality, intended for Sussex County Watchdog and Jersey Conservative to publish
16 blog posts favorable to Pallotta.³⁵ However, there is no information to reasonably suggest that
17 the Committee’s reported payments to Baseline Research were intended to pay for the articles
18 published on Sussex County Watchdog and Jersey Conservative.

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

³³ Advisory Op. 1983-25 (Mondale) at 2.

³⁴ Factual & Legal Analysis at 9, MUR 6724 (Bachmann for President, *et al.*).

³⁵ Compl. at 3-4.

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 9 of 16

1 The Complaint points to the temporal proximity between one of the articles and one of
 2 the Committee’s payments to Baseline Research (six days),³⁶ but this alone is not sufficient to
 3 imply a relationship between the two, especially in light of the Committee’s denial and Hart’s
 4 denial in her sworn affidavit.³⁷ The Complaint provides a vague explanation for why Winkler,
 5 owner of Baseline Research, might also operate the two anonymous blogs, Sussex County
 6 Watchdog and Jersey Conservative.³⁸ Even assuming, *arguendo*, that the Complaint’s surmise is
 7 correct, this would not mean that the reported payments to Winkler’s consulting company were
 8 not legitimate. The Committee maintains that the payments were for “Messaging / Strategy” and
 9 Hart similarly attested in her sworn affidavit that the payments were for “messaging and strategic
 10 consulting.”³⁹ Next, the Complainant avers that he “personally witnessed” Hart, the Pallotta
 11 Campaign Manager, write a letter anonymously published as an article on Sussex County
 12 Watchdog.⁴⁰ In her affidavit, Hart denies writing content for either website.⁴¹ Yet, even if Hart
 13 did write the article, this would not imply that the Committee’s payments to Baseline Research
 14 were intended for Sussex County Watchdog to publish the article.⁴²

³⁶ There was a seven-day gap between the January 7, 2020, blog post and the Committee’s \$2,500 to Baseline Research on January 13, 2020. However, there were much longer gaps between the next payment on April 20, 2020 in the amount of \$7,200 and additional posts published in March and June.

³⁷ Compl. at 2-4; Committee Resp. at 2-4; Hart Aff. at ¶13; *cf.* Factual & Legal Analysis at 2, 4, MUR 7091 (Friends of Patrick Murphy, *et al.*) (finding no reason to believe with respect to conduit contribution allegations based primarily on relationships between the named contributors and the timing of when the contributions were made); Factual & Legal Analysis at 5-7, MUR 6246 (Brennan, *et al.*) (finding no reason to believe with regard to the allegations of reimbursed contributions, given “the lack of specific information” and the sworn denials from the respondents and representations of counsel following an internal investigation.)

³⁸ *Supra* note 14 and accompanying text.

³⁹ Committee Resp. at 2-3; Hart Aff. ¶ 9.

⁴⁰ Compl. at 2-3.

⁴¹ Hart Aff. at ¶ 8.

⁴² Under 11 C.F.R. §§ 100.94, 100.155, uncompensated individual internet activity, either when the individual is “acting independently or in coordination with any candidate, authorized committee, or political party committee”

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 10 of 16

1 In short, given the available information, there is no basis to infer that the Committee
 2 used Baseline Research as a conduit for payments directed to Sussex County Watchdog or Jersey
 3 Conservative to publish articles favorable to the Committee.

4 Therefore, the Commission dismisses the allegation that the Committee violated
 5 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b) by inaccurately reporting disbursements to
 6 Sussex County Watchdog and Jersey Conservative as payments to Baseline Research. The
 7 Commission further dismisses the allegation that Baseline Research violated the Act because the
 8 Complaint does not appear to allege any cognizable violations of the Act.⁴³

9 **B. The Commission Finds No Reason to Believe that Jersey Conservative and**
 10 **Sussex County Watchdog Made, and the Committee Knowingly Accepted,**
 11 **Excessive or Prohibited In-Kind Contributions by Coordinating Blog Posts**

12 The Act prohibits corporations from making contributions to federal candidates, and
 13 likewise bars candidates, political committees (other than independent expenditure-only political
 14 committees and committees with hybrid accounts), and other persons, from knowingly accepting
 15 or receiving corporate contributions.⁴⁴ For the 2019-2020 election cycle, the Act prohibits any
 16 person from making contributions to any candidate and the candidate's authorized political
 17 committee with respect to any election for Federal office that, in the aggregate, exceeds \$2,800.⁴⁵

shall not be treated as a contribution or expenditure; moreover, the term “internet activities” includes “blogging” and “any other form of communication distributed over the Internet.”

⁴³ The Complaint alleges that the Committee inaccurately reported payments to Baseline Research that were, in actuality, made to Sussex County Watchdog and Jersey Conservative, but does not point to any conduct on the part of Baseline Research itself or any provisions of the Act relevant to a person who allegedly serves as a conduit to hide payments to the true recipients of disbursements from a political committee.

⁴⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

⁴⁵ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b); *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 84 Fed. Reg. 2,504, 2,505 (Feb. 7, 2019) (adjusting certain limitations for the 2019-2020 election cycle).

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 11 of 16

1 Likewise, the Act prohibits any candidate or committee from knowingly accepting an excessive
 2 contribution.⁴⁶

3 A communication that is coordinated with a candidate or their authorized committee is
 4 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting
 5 requirements of the Act.⁴⁷ The Commission's regulations provide that a communication is
 6 coordinated if it is: (1) paid for, in whole or in part, by a person other than the candidate or
 7 authorized committee;⁴⁸ (2) satisfies a content standard in 11 C.F.R. § 109.21(c);⁴⁹ and
 8 (3) satisfies a conduct standard in 11 C.F.R. § 109.21(d).⁵⁰ All three prongs must be satisfied
 9 for a communication to be considered coordinated under the regulations.⁵¹

10 The blog posts at issue here are exempt from the definition of "coordinated
 11 communication" because the content prong of the three-part coordinated communication test is
 12 not satisfied.⁵² The content standards all require, at a minimum, that there be an "electioneering
 13 communication" or a "public communication," neither of which applies to the blog posts. An
 14 electioneering communication is "any broadcast, cable, or satellite communication" that refers to
 15 a "clearly identified candidate for Federal office," is publicly distributed within a certain time

⁴⁶ 52 U.S.C. § 30116(f), 11 C.F.R. § 110.9.

⁴⁷ 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

⁴⁸ 11 C.F.R. § 109.21(a)(1).

⁴⁹ *Id.* § 109.21(c)(1)-(5).

⁵⁰ *Id.* § 109.21(d)(1)-(6). The six types of conduct between the payor and the candidate's committee, whether or not there is formal agreement, or collaboration, which can satisfy the conduct prong, include: (1) a request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) dissemination, distribution, or republication of campaign material. *Id.* § 109.21(d).

⁵¹ *Id.* § 109.21(a); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (Explanation and Justification) ("Coordinated and Independent Expenditures E&J").

⁵² 11 C.F.R. § 109.21(c); Advisory Op. 2011-14 (Utah Bankers Ass'n) at 5.

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 12 of 16

1 before an election, and meets certain requirements regarding the audience.⁵³ The blog posts
 2 were published on the internet, not broadcast, cable, or satellite, and therefore were not
 3 electioneering communications.

4 A public communication is “a communication by means of any broadcast, cable, or
 5 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
 6 telephone bank to the general public, or any other form of general public political advertising.”⁵⁴
 7 Commission regulations provide that public communications “shall not include communications
 8 over the Internet, except for communications placed for a fee on another person’s Web site,” a
 9 provision referred to as the “internet exemption.”⁵⁵ The internet exemption applies to the blog
 10 posts because they were published on Sussex County Watchdog’s and Jersey Conservative’s own
 11 websites and there is no indication that the Sussex County Watchdog or Jersey Conservative also
 12 placed them for a fee on another person’s website.⁵⁶

13 Further, to the extent that Sussex County Watchdog and Jersey Conservative sent the
 14 articles to recipients as part of email “blasts” for which the Complaint alleges “there are likely
 15 fees associated,”⁵⁷ this too fails the content prong. “Electronic mail” is specifically exempted
 16 from the definition of electioneering communication and does not fall within the meaning of

⁵³ 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 109.29 (same).

⁵⁴ 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).

⁵⁵ 11 C.F.R. § 100.26.

⁵⁶ In promulgating the internet exemption, the Commission reiterated that where a particular website that customarily charges for advertising space provides such advertising space to a committee at a reduced charge or free of charge, it makes an in-kind contribution to that committee, notwithstanding that the communication might fall under the internet exemption. Internet Communications, 71 Fed. Reg. 18,589, 18,599 (April 12, 2006). As discussed above, although the Complaint alleges that Hart created one of the articles in question, Hart denies in her affidavit writing content for either website. Even if she did write the article, the available information does not indicate that Sussex County Watchdog or Jersey Conservative customarily charged to place content on their pages.

⁵⁷ Compl. at 7.

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 13 of 16

1 public communication, which, as noted above, does not include internet communications except
 2 those placed for a fee on another person's website.⁵⁸ Finally, the Complaint alleges that Hart,
 3 the Campaign Manager, and Winkler, a campaign consultant and the alleged operator of Sussex
 4 County Watchdog and Jersey Conservative, participated in the alleged coordination but does not
 5 specifically allege that either person paid for the blogs posts.⁵⁹

6 Therefore, the Commission finds no reason to believe that Jersey Conservative and
 7 Sussex County Watchdog made, and the Committee knowingly accepted, prohibited or excessive
 8 in-kind contributions, in violation of 52 U.S.C. §§ 30116(a), (f), 30118(a) and 11 C.F.R.
 9 §§ 110.1(b)(1), 110.9, 114.2, by coordinating blog posts. The Commission further finds no
 10 reason to believe that Kelly Ann Hart and William Winkler made or knowingly accepted
 11 prohibited or excessive in-kind contributions in violation of 52 U.S.C. §§ 30116(a), (f), 30118(a)
 12 and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2, by coordinating blog posts.

13 **C. The Commission Dismisses the Allegations that Jersey Conservative and
 14 Sussex County Watchdog Made, and the Committee Knowingly Accepted,
 15 Excessive or Prohibited In-Kind Contributions by Sharing an Email List
 16 Without Charge**

17 A contribution is "a gift, subscription, loan (except for a loan made in accordance with
 18 11 C.F.R. § 100.82 and 100.83) advance, or deposit of money or anything of value made by any
 19 person for the purpose of influencing a federal election.⁶⁰ "Anything of value" includes all in-
 20 kind contributions.⁶¹ Unless specifically exempted, the provision of goods or services without

⁵⁸ 11 C.F.R. § 100.29(c)(1); *see id.* § 100.26.

⁵⁹ *See* Compl. at 7-9.

⁶⁰ 52 U.S.C. § 30101(8)(a); 11 C.F.R. § 100.52(a).

⁶¹ 11 C.F.R. § 100.52(d)(1).

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 14 of 16

1 charge or at a charge that is less than the usual and normal charge is a contribution.⁶² Examples
 2 of such goods or services include membership lists and mailing lists.⁶³

3 According to the Complaint, “the email list between Pallotta for Congress and the blogs
 4 are shared.”⁶⁴ The Complaint does not point to any specific information in support of this
 5 allegation. The Complaint does not cite to a particular email or set of emails sent by any of the
 6 entities or suggest there was an overlap in the members of the email list used by the Committee
 7 and the two blogs. In sum, the allegation is speculative and not supported by the available
 8 information.⁶⁵

9 Therefore, the Commission dismisses the allegation that Jersey Conservative and Sussex
 10 County Watchdog made, and the Committee knowingly accepted, prohibited or excessive in-
 11 kind contributions, in violation of 52 U.S.C. §§ 30116(a), (f), 30118(a) and 11 C.F.R.
 12 §§ 110.1(b)(1), 110.9, 114.2 by sharing an email list without charge.

13 **D. The Commission Dismisses, as a Matter of Prosecutorial Discretion, the**
 14 **Allegation That the Committee Failed to Include Adequate Disclaimers on**
 15 **the Facebook Ads**

16 The Act and Commission’s regulations require that whenever a political committee
 17 makes a disbursement for a “public communication,” such communication must include a
 18 disclaimer.⁶⁶ The term “public communication” is defined as a communication by means of any

62 *Id.*

63 *Id.*

64 Compl. at 8.

65 Statement of Reasons at 1, Comm’rs Mason, Sandstrom, Smith & Thomas, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Comm., *et al.*) (stating that the Commission may find reason to believe if a complaint “sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act],” and that “[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true.”) (citing 11 C.F.R. § 111.4(d)(2)).

66 52 U.S.C. § 30120(a)(1); 11 C.F.R. §§ 100.26, 110.1 l(a)-(b).

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 15 of 16

1 broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility,
 2 mass mailing, or telephone bank to the general public, or any other form of general public
 3 political advertising.⁶⁷ Further, “[t]he term general public political advertising shall not include
 4 communications over the Internet, except for communications placed for a fee on another
 5 person’s Web site.”⁶⁸ If a communication that requires a disclaimer is paid for and authorized by
 6 a candidate, authorized committee of a candidate, or an agent thereof, the disclaimer must clearly
 7 state that the communication has been paid for by the authorized committee.⁶⁹

8 The Committee, through its vendor Intellz and subvendor Regal Blue Media, purchased
 9 six Facebook ads totaling \$2,695. Because the ads were general public political advertising
 10 placed for a fee on another person’s website, they required adequate disclaimers. Only one ad
 11 contained an adequate disclaimer stating that it was paid for by the Committee.⁷⁰ The remaining
 12 five ads, totaling \$2,296, erroneously stated that they were paid for by Dora Louise Collier or
 13 contained contradictory disclaimers (stating in one place that it was paid for by the Committee
 14 and in another place that it was paid for by Dora Louise Collier).⁷¹ Though four of these ads did
 15 contain a disclaimer for the Committee, the contradictory disclaimer stating that Ms. Collier paid
 16 for the ad negates the requirement that a disclaimer “must *clearly* state” that it was paid for by

⁶⁷ 11 C.F.R. § 100.26.

⁶⁸ *Id.* Accordingly, the Commission has explained that internet communications placed on another person’s website for a fee constitute “general public political advertising,” and are “public communications.” Explanation and Justification for the Regulations on Internet Communications (“Internet Communications E&J), 71 Fed. Reg. 18,589, 18,593 (Apr.12, 2006).

⁶⁹ 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1).

⁷⁰ Pallotta for Congress Facebook Ad Library (ad identification number 638185140305037).

⁷¹ The Trump Revolution Facebook Ad Library (ads with the identification numbers 616377048948088; 504656297146472; and 2470597446489117 contained disclaimers that they were paid for by Collier; ads with the identified numbers 807803029630704 and 519844875604275 contained dual disclaimers).

MUR 7788 (Pallotta for Congress, *et al.*)

Factual and Legal Analysis

Page 16 of 16

1 authorized political committee.⁷² The Committee did not provide any explanation for the
 2 problems with the disclaimer.⁷³ Intellz and Regal Blue Media contend that the disclaimer issues
 3 were the result of inadvertent oversight, whereby a disclaimer for the Committee was manually
 4 entered into the text of the ad, but Facebook automatically appended Ms. Collier's name on a
 5 separate disclaimer because Regal Blue Media used an account with her name to purchase the
 6 ads (she is a co-owner of Regal Blue Media).⁷⁴ The amount in violation is low and the vendor
 7 and subvendor admit that the problems were caused by their oversight.⁷⁵

8 Therefore, the Commission exercises its prosecutorial discretion pursuant to *Heckler v.*
 9 *Chaney*,⁷⁶ and dismisses the allegation that the Committee violated 52 U.S.C. § 30120(a) and
 10 11 C.F.R. § 110.11(b) by failing to include the appropriate disclaimers on the Facebook ads. The
 11 Commission further finds no reason to believe that The Trump Revolution and Intellz, Inc.,
 12 violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b) because the duty to include adequate
 13 disclaimers does not apply to them.⁷⁷

⁷² 11 C.F.R. § 110.11(b)(1) (emphasis added).

⁷³ Committee Resp. at 4-5.

⁷⁴ Regal Blue Media Resp. at 1; Intellz Resp. at 2-3.

⁷⁵ The Commission has not pursued disclaimer violations that result from confirmed inadvertent vendor error. *See, e.g.*, Factual & Legal Analysis at 5-6, MUR 6125 (McClintock for Congress) (dismissing disclaimer violation and sending cautionary letter where omission of an appropriate disclaimer at the end of some of the committee's phone bank recordings was possibly due to vendor error during transmission of the message); Factual & Legal Analysis at 8, MUR 5991 (U.S. Term Limits) (dismissing disclaimer violation where committee did not authorize vendor to add caption containing express advocacy to its YouTube video, which may have resulted in having to include a disclaimer, and the vendor took prompt remedial action); Factual & Legal Analysis at 4-5, MUR 5775R (Deborah Pryce for Congress) (dismissing disclaimer violation where television ad contained requisite written disclaimers but lacked the candidate's oral "stand by your ad" statement due to vendor mistakenly cutting off the first few seconds of ad).

⁷⁶ 470 U.S. 821 (1985).

⁷⁷ The disclaimer requirement extends to the person making or financing the communication, not to other persons acting as their agents in purchasing or disseminating the communication. *See* 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); Factual & Legal Analysis at 9, MUR 5158 (Brady Campaign to Prevent Gun Violence) ("[C]ommittees, not vendors, are responsible for ensuring that proper disclaimers appear on communications.") (citing MUR 4759 (Maloof); MUR 4741 (Mary Bono Committee); MUR 3682 (Fox for Congress Committee)).