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1 **FEDERAL ELECTION COMMISSION**  
2 **999 E Street, N.W.**  
3 **Washington, D.C. 20463**

4 **FIRST GENERAL COUNSEL'S REPORT**

5 MUR: 6651  
6 DATE COMPLAINT FILED: September 25, 2012  
7 DATE OF NOTIFICATION: October 1, 2012  
8 LAST RESPONSE RECEIVED: April 5, 2013  
9 DATE ACTIVATED: April 23, 2013

10  
11 ELECTION CYCLE: 2012  
12 LIMITATIONS PERIOD EXPIRES:<sup>1</sup>  
13 Earliest: November 30, 2017  
14 Latest: February 14, 2018

15 **COMPLAINANT:** Brian Rothenberg  
16 **RESPONDENTS:** Murray Energy Corporation  
17 Romney for President, Inc. and Darrell Crate in his  
18 official capacity as treasurer  
19 **STATUTES AND REGULATIONS:** 2 U.S.C. § 434(b)  
20 2 U.S.C. § 441b  
21 11 C.F.R. § 114.2  
22 **INTERNAL REPORTS:** Disclosure Reports  
23 **FEDERAL AGENCIES:**

24 **I. INTRODUCTION**

25 In the days following a rally for presidential candidate Mitt Romney at a coal mine in  
26 Ohio, miners began to complain that their managers required them to attend the event, kept an

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<sup>1</sup> Murray Energy entered into a tolling agreement extending any applicable limitations period by a total of 108 days. See Consent to Extend the Time to Institute a Civil Law Enforcement Suit (Jan. 4, 2013). The limitation period applicable to the Romney Committee expires August 14, 2017 (earliest) and February 14, 2018 (latest).

1504-1140-1

1 attendance list, and docked their pay by closing the mine. These complaints were aired in the  
2 news media, and the Complaint in this matter followed.

3 The Complaint alleges two violations of the Federal Election Campaign Act (the "Act").  
4 First, according to the Complaint, Murray Energy Corporation, the mine's owner, made a  
5 prohibited corporate contribution to Romney for President, Inc. and Darrell Crate in his official  
6 capacity as treasurer (the "Romney Committee") when it required its employees to attend the  
7 Romney rally, thereby providing something of value to Romney's campaign. Second, the  
8 Complaint alleges that by requiring attendance, Murray Energy impermissibly facilitated the  
9 making of contributions from its employees to Romney's campaign. Murray Energy and the  
10 Romney Committee deny the allegations.

11 Regarding the first alleged violation, mandating employee attendance at a campaign  
12 event may constitute a contribution under the Act since it would provide the candidate with the  
13 benefits associated with greater attendance than the candidate might otherwise generate were  
14 attendance voluntary. Here, reasonably credible information suggests that attendance at the  
15 event may have been mandatory. Nevertheless, the isolated nature of the apparent violation,  
16 when considered in light of the extensive investigation necessary to develop a comprehensive  
17 record and to determine the actual scope of the violation, suggests that further action would not  
18 be a prudent use of Commission resources. Accordingly, we recommend that the Commission  
19 dismiss with caution the allegation that Murray Energy made, and the Romney Committee  
20 accepted, a prohibited corporate in-kind contribution by requiring its employees to attend the  
21 Romney rally.

22 As for the Complaint's second allegation — corporate facilitation of employee  
23 contributions to a federal candidate — we recommend that the Commission find no reason to

1 believe a violation occurred. While the Act and Commission regulations broadly define the term  
2 "contribution," the allegation here is premised on the notion that an individual makes a  
3 contribution to a candidate merely by attending a campaign event, without anything more.  
4 Neither the Act nor the Commission's regulations reach that far.

## 5 II. FACTUAL SUMMARY

### 6 A. Romney Rally at the Century Mine

7 On August 14, 2012, the Romney Committee held a campaign rally on the premises of  
8 Murray Energy's Century Mine located in Beallsville, Ohio.<sup>3</sup> About 2,200 people attended,  
9 including Century Mine employees and their families.<sup>4</sup> Afterwards, several employees emailed  
10 David Bloomquist, a local radio talk show host, claiming that Murray Energy required them to  
11 attend, tracked their attendance, and docked their pay by closing the mine during the event.<sup>5</sup>  
12 Bloomquist discussed these complaints during a segment on his radio show, which aired on  
13 News Radio 1170 WWVA on or about August 27, 2012:

14 [W]hat I gathered was employees feel they were forced to go. They had to take  
15 the day off without pay. That they took a roll call, and they had a list of who was  
16 there and who wasn't and felt they wouldn't have a job if they did not attend.<sup>6</sup>

17 Bloomquist then read from emails he had received, including, for example, one that said,

18 "Yes, we are in fact told that the Romney event was mandatory and would be without pay . . . .

<sup>3</sup> Planning for the rally began after an "informal suggestion" by the Romney Committee. Murray Energy Resp. at 3 (Apr. 5, 2013). Century Mine is run by American Energy Corporation, a subsidiary of Murray Energy. *Id.* at 2.

<sup>4</sup> *Id.* at 5 ("approximately 2,200 people attended (when mine workers, their family members, certain management employees of Murray Energy [] and its related subsidiaries and their family members, and a few other invited guests like Senator Portman are added together."); see also *id.*, Ex. 2, Ryan Murray Aff. ¶ 3.

<sup>5</sup> Compl. at 1 n.1 (Sept. 25, 2012) (citing the *Bloomdaddy Experience* (News Radio 1170 WWVA broadcast Aug. 27, 2012), available at <http://www.newsradio1170.com/media/play/22385072/> (transcript on file) (hereinafter "Bloomquist Transcript")).

<sup>6</sup> Bloomquist Transcript at 1.



1 Hughes further confirms that he told employees the company would keep a registration  
2 list, but he suggests that the purpose of the list also was misunderstood:

3 At the shift change meetings I explained that a registration list was required to get  
4 a count of how many employees and family members would be attending in order  
5 to plan bus transportation, food, and refreshments, and provide check-in  
6 capability on the day of the event for security, crowd management, and bus  
7 logistics. It is possible that someone might have misunderstood the purpose of the  
8 registration list, but again, I did not convey any direct or indirect threat of job  
9 action or financial reprisal for non-attendance. The registration list was not used  
10 by me or anyone I am aware of to track which employees did not attend the  
11 event.<sup>14</sup>

12 Ryan Murray, Murray Energy's Vice President of Operations, states in his declaration  
13 that he was "involved in the logistical planning for the Romney appearance, and assisted in  
14 organizing the bus transportation and check-in process."<sup>15</sup> Echoing Hughes, Murray explains  
15 that the registration list was used for event logistics purposes.<sup>16</sup> It "was not intended to track  
16 which employees did not attend the event, nor was it utilized for that purpose."<sup>17</sup> Murray states  
17 that the list was computerized "so that multiple copies of the check-in sheets could be used when  
18 the crowds arrived to get on the buses."<sup>18</sup> And he recalls "tossing the numerous copies of the  
19 check-in list into the trash on the same day as the event."<sup>19</sup>

20 On the day of the rally, the midnight shift was cancelled, the day shift was shortened and  
21 rescheduled, and the employees assigned to those shifts lost compensation accordingly.<sup>20</sup>

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<sup>14</sup> *Id.* ¶ 6.

<sup>15</sup> Murray Energy Resp., Ex. 2 ¶ 6.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ¶ 4; Murray Energy Resp., Ex. 1 ¶ 3.

1 Murray states that safety concerns led to the decision to shut down the midnight shift.<sup>21</sup> And  
2 because the mine was closed during the event, the hourly workers in attendance were “‘off the  
3 clock’ in a volunteer capacity.”<sup>22</sup> Hughes states, “I told the workers whose midnight shifts were  
4 affected that I would make a replacement shift available to them. . . . In this case, however, no  
5 employee requested to work a replacement shift.”<sup>23</sup>

6 Murray and Hughes each aver that no one was punished for failing to attend the rally.  
7 Murray states that he is not aware of “any employees [who] suffered any sort of penalty or  
8 reprimand for not attending the event.”<sup>24</sup> Hughes states that he did not question or object when  
9 several employees told him that they could not attend and he is “certain that no employee  
10 suffered any penalties or reprimands for not attending the event.”<sup>25</sup>

## 11 B. Complaint and Responses

12 The Complaint alleges that Murray Energy made, and Romney for President accepted,  
13 corporate contributions in violation of the Act. First, the Complaint contends that Murray  
14 Energy made a prohibited corporate contribution by requiring its employees to attend the  
15 Romney rally. Noting that the employees later were featured in Romney campaign advertising,  
16 the Complaint alleges “the required attendance of the miners was something of value given from  
17 Murray Energy to the Romney campaign.”<sup>26</sup> The Complainant adds that the allegedly compelled

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<sup>21</sup> Murray Energy Resp., Ex. 2 ¶ 4.

<sup>22</sup> *Id.* ¶¶ 5, 8.

<sup>23</sup> Murray Energy Resp., Ex. 1 ¶ 3. Hughes added, “It is not unusual for a shift to miss its normal rotation when the mine has to be shut down for repairs, equipment installations, or similar reasons . . . .” *Id.*

<sup>24</sup> Murray Energy Resp., Ex. 2 ¶¶ 5, 7.

<sup>25</sup> Murray Energy Resp., Ex. 1 ¶ 7.

<sup>26</sup> Compl. at 1.

1 attendance “has an even greater value, as images of miners, who were required to attend, are now  
2 part of at least two [] new Romney television ads that began to run in Ohio on or about  
3 September 19, 2012.”<sup>27</sup> Second, the Complaint also alleges that, by coercing its employees to  
4 attend the Romney rally — “essentially forcing these employees to make a contribution to a  
5 candidate” — Murray Energy facilitated the employees’ contributions, conduct which is  
6 prohibited under the Act and Commission regulations.<sup>28</sup> In support of these allegations, the  
7 Complaint cites the WWVA radio broadcast, the *Cleveland Plain-Dealer* and *Los Angeles Times*  
8 articles that generally summarize the broadcast, and a later *Cleveland Plain-Dealer* article  
9 regarding a Romney Committee ad showing scenes from the rally.<sup>29</sup>

10 Murray Energy challenges the Complaint on three grounds. First, it argues that the  
11 allegations are inherently unreliable because they “rely[] on anonymous hearsay” and therefore  
12 fail to satisfy the pleading standards required by the Act.<sup>30</sup> Second, Murray Energy argues that it  
13 did not coerce its employees to attend the event.<sup>31</sup> And third, it argues that even if it did coerce  
14 its employees, “there is no anti-coercion rule to apply” in this instance because the event was  
15 unrelated to fundraising.<sup>32</sup>

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<sup>27</sup> *Id.* (citing Henry J. Gomez, *Romney Campaign Targets Eastern Ohio Voters with Two New Ads Emphasizing Coal Industry (Video)*, CLEVELAND PLAIN-DEALER (Sept. 19, 2012), available at [http://www.cleveland.com/open/index.ssf/2012/09/romney\\_campaign\\_targets\\_easter.html](http://www.cleveland.com/open/index.ssf/2012/09/romney_campaign_targets_easter.html)).

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.* at 1 nn.1-3.

<sup>30</sup> Murray Energy Resp. at 1-2.

<sup>31</sup> *Id.* at 6-7.

<sup>32</sup> *Id.* at 7-8.

1 In addition to the Hughes and Murray declarations, Murray Energy submits a copy of two  
2 letters describing some of the circumstances surrounding the Romney rally.<sup>33</sup> The letters are  
3 dated October 10 and 11, 2012, and several hundred Century Mine employees purportedly  
4 signed them. In the first letter, addressed to President Obama, the signatories complain about  
5 "false ads" the Obama campaign broadcast — apparently responding to the Romney campaign  
6 ads depicting the rally — in which the Obama campaign claimed that Murray Energy compelled  
7 mine employees to attend the rally.<sup>34</sup> In the second letter, addressed to Bloomquist, the  
8 signatories complain of Bloomquist's "disingenuous reporting of the event."<sup>35</sup> In both letters,  
9 the signatories say they were not forced to attend the event, attendance was not tracked, and there  
10 were no penalties for failing to attend.<sup>36</sup>

11 Murray Energy also submits a copy of an October 12, 2012, invoice totaling \$57,503.97  
12 issued to the Romney Committee for "Romney Rally Expenses."<sup>37</sup> Among the items included in  
13 this invoice are food services, kids' entertainment, hard hats, tour buses, trashcans, chairs,  
14 tenting, golf carts, and other similar items. The Romney Committee reported that it paid this  
15 invoice on October 16, 2012, according to its amended 12-Day Pre-General Report, filed with  
16 the Commission on February 14, 2013.<sup>38</sup>

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<sup>33</sup> Murray Energy Resp., Ex. 3 (October 2012 letters to President Obama and Mr. Bloomquist).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*, Ex. 5 (October 2012 Romney Campaign Invoice). The invoice is dated almost two months after the rally took place but little more than a week after the Respondents were notified of the Complaint in this matter.

<sup>38</sup> FEC Form 3, Report of Receipts & Disbursements at 50,726 (Feb. 14, 2013).

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1           The Romney Committee also denies the Complainant's allegations. First, the Romney  
2 Committee points out that it paid Murray Energy for event-related costs, so it did not accept a  
3 corporate contribution.<sup>39</sup> Second, it contends that the employees' attendance at the event had no  
4 commercial value and therefore their attendance was not an in-kind contribution to the Romney  
5 Committee.<sup>40</sup> Third, the Romney Committee argues that the Complaint essentially fails to state a  
6 claim of coercion because it does not allege that Murray Energy urged an individual to make a  
7 contribution or engage in fundraising activities and the Romney Committee staff observed no  
8 such conduct during the event.<sup>41</sup> Finally, the Romney Committee points to other candidates'  
9 visits to industrial facilities and argues that events like the one at issue here "are a staple of  
10 presidential politics."<sup>42</sup>

### 11    **III.    LEGAL ANALYSIS**

#### 12           **A.    The Record Reflects That Murray Energy Likely Made a Prohibited** 13           **Corporate In-Kind Contribution by Requiring Its Employees to Attend the** 14           **Romney Rally**

##### 15                   1.    **Mandating Employee Attendance at a Campaign Event May Constitute a** 16                   **Prohibited Corporate In-Kind Contribution**

17           The Act prohibits corporations from making contributions to candidates or their  
18 committees in connection with federal elections.<sup>43</sup> It also prohibits corporate officers and  
19 directors from consenting to, and candidates from knowingly accepting, corporate

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<sup>39</sup> Romney Comm. Resp. at 1 (Oct. 24, 2012).

<sup>40</sup> *Id.* at 2.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> *Id.* (attaching four news articles describing visits by President Obama and Vice President Biden to other corporate facilities).

<sup>43</sup> 2 U.S.C. § 441b(a).

PROBATION REPORT

1 contributions.<sup>44</sup> A "contribution" includes any direct or indirect payment, gift of money, or  
2 "anything of value" made to any candidate or campaign committee in connection with any  
3 federal election.<sup>45</sup> "Anything of value" includes in-kind contributions, such as the provision of  
4 goods or services without charge, or at a charge less than the usual and normal charge.<sup>46</sup> For  
5 example, it would be impermissible for a corporation to provide free or reduced-charge facilities,  
6 equipment, supplies, personnel, advertising services, membership lists, or mailing lists to  
7 candidates or their campaign committees.<sup>47</sup>

8 The corporate contribution alleged in this matter is an employer's requirement that its  
9 employees attend a campaign rally. This presents the question whether providing a large crowd  
10 for a candidate's rally by coercing employees to attend constitutes "anything of value" — and  
11 therefore a contribution — under the Act.

12 We conclude that it does. The Act broadly defines a contribution to include "any direct  
13 or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or  
14 anything of value."<sup>48</sup> "Read naturally, the word 'any' has an expansive meaning, that is, 'one or  
15 some indiscriminately of whatever kind.'"<sup>49</sup> As the U.S. Court of Appeals for the Eleventh

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<sup>44</sup> *Id.*

<sup>45</sup> 2 U.S.C. § 441b(b)(2); 11 C.F.R. §§ 100.52(d)(1), 114.1(a)(1); *see also* 2 U.S.C. 431(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>46</sup> 11 C.F.R. § 100.52(d)(1).

<sup>47</sup> *Id.* Although not applicable here, a limited exception permits corporation-sponsored candidate appearances at forums on corporate premises and at meetings attended by employees. *See id.* § 114.4(b); *see* Advisory Op. 1999-02 (Premier Blue Cross) (subsection 114.4(b) permits corporation to stage candidate forums for employees at corporate headquarters); *see also infra* n.73.

<sup>48</sup> 2 U.S.C. § 441b(b)(2) (emphasis added); *see also id.* § 431(8)(A)(i).

<sup>49</sup> *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY 97 (1976)); *see also United States v. Alvarez-Sanchez*, 511 U.S. 350, 358 (1994) (noting that statute referring to "any law enforcement officer" includes "federal, state, or local" officers); *Collector v. Hubbard*, 12 Wall. 1, 15, 20 L. Ed.





1 fodder — a sign of momentum when they are large or a sign of faltering support when they are  
2 small.<sup>61</sup> Given the importance of crowds, candidates often employ advance and event production  
3 personnel who are paid, as part of their jobs, to generate crowds for campaign events.<sup>62</sup> It also  
4 appears that a commercial market exists, as candidates can hire a vendor in the business of  
5 providing crowds to attend political rallies and protests.<sup>63</sup> Thus, requiring employees to attend a  
6 candidate's rally — and thereby providing a crowd for the event — would be a service to the  
7 candidate, who would receive the benefits associated with having a larger crowd. It therefore  
8 falls within the naturally expansive term "anything of value" under the Act.

9           2.        The Available Information Suggests That Murray Energy Required  
10                    Employees to Attend the Rally

11           Here, the complaints described by Bloomquist on his radio show reflect a belief among at  
12           least some employees that attendance was mandatory. As one email said, "Yes, we are in fact

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<sup>61</sup> See, e.g., *id.*; see also Jackie Calmes, *Obama Drawing Big Crowds, But Not Like '08*, N.Y. TIMES (Aug. 9, 2012), available at [http://www.nytimes.com/2012/08/10/us/politics/campaign-events-for-president-obama-are-not-drawing-crowds-like-2008.html?\\_r=4&pagewanted=print](http://www.nytimes.com/2012/08/10/us/politics/campaign-events-for-president-obama-are-not-drawing-crowds-like-2008.html?_r=4&pagewanted=print) ("But four years ago Mr. Obama often was drawing five-digit throngs, filling arenas' nosebleed seats and overflow rooms and regularly requiring shutdown orders from the local fire marshals. Which raises a couple of questions: Where are the crowds now? And what does it mean for the results in November?"); Ashley Parker, *In the Romney Campaign, Precision Has Its Pitfalls*, N.Y. TIMES (Feb. 26, 2012), available at <http://www.nytimes.com/2012/02/27/us/politics/detroit-stadium-event-is-exception-to-romney-precision.html?pagewanted=print> ("After a poor debate performance last month, Mr. Romney's advance team failed to generate much of crowd for a rally in Florence, S.C. The result: a scaled-down version of what would happen in Detroit, with Mr. Romney pictured in the next day's newspapers in an oversize ballroom, addressing a crowd more typical of a city comptroller's race."); John Gallagher, *Romney Camp's Game Plan: Make Ford Field Look Crowded*, DETROIT FREE-PRESS (Feb. 24, 2012), available at <http://www.freep.com/article/20120224/NEWS15/202240437> ("It won't be hard to fit 1,200 members of the Detroit Economic Club into 65,000-seat Ford Field for today's speech by GOP presidential hopeful Mitt Romney. What will be hard is making it look like Romney isn't speaking to a nearly empty stadium."); Howard Portnoy, *Obama Plays to a Half-Empty House at Miami Fundraiser*, EXAMINER (June 14, 2011), available at <http://www.examiner.com/article/obama-plays-to-a-half-empty-house-at-miami-fundraiser> ("Last night's turnout, as a case in point, was embarrassingly low, especially since the ticket prices were likewise, starting at an affordable \$44. The official attendance was reported to be above 980 — less than half the capacity of the 2,200-seat concert hall at the Adrienne Arsht Center for Performing Arts.").

<sup>62</sup> See Ashley Parker, *Romney Advance Team Works Every Angle in Pursuit of Visual Perfection*, N.Y. TIMES (Nov. 1, 2012), available at <http://www.nytimes.com/2012/11/02/us/politics/romneys-advance-team-tirelessly-pursues-perfection.html?pagewanted=all&pagewanted=print>.

<sup>63</sup> See, e.g., CROWDS ON DEMAND, <http://crowdsondemand.com/> (last visited Mar. 20, 2014).

1 told that the Romney event was mandatory and would be without pay . . . .<sup>64</sup> And Moore,  
2 Murray Energy's Chief Financial Officer, acknowledged as much when he responded to those  
3 complaints: "We had managers that communicated to our workforce that the attendance at the  
4 Romney event was mandatory . . . ."<sup>65</sup>

5 Presented with Moore's acknowledgement that the rally was mandatory, Murray Energy  
6 argues in its Response that Moore's comments "do[] not reflect a first person knowledge of what  
7 actually was said to employees by Mr. Hughes," the Century Mine's General  
8 Manager/Superintendent.<sup>66</sup> It offers instead Hughes's declaration where he states that he "did  
9 not convey any direct or indirect threat of job action or financial reprisal for non-attendance."<sup>67</sup>  
10 But Hughes adds two significant equivocations — he "do[es] not recall the specific words" he  
11 used; and he admits that some employees might have "misunderstood" his message.<sup>68</sup> More to  
12 the point, Hughes's after-the-fact declaration does not assert that Moore's contemporaneous  
13 comments were inaccurate. It also fails to aver that Hughes or anyone else informed employees  
14 that their attendance was voluntary and there would be no adverse consequence for failing to  
15 attend.<sup>69</sup> And the Hughes declaration does not foreclose the prospect — suggested by Moore's

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<sup>64</sup> Bloomquist Transcript at 3.

<sup>65</sup> *Id.* at 4.

<sup>66</sup> Murray Energy Resp. at 4 n.2.

<sup>67</sup> *Id.*, Ex. 1 ¶ 5.

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

<sup>69</sup> Similarly, although Murray's declaration states that he informed the group of management personnel with whom he worked in planning the rally that their "volunteering/work for this event" was "strictly voluntary," Murray, like Hughes, fails to aver that he, Hughes, or anyone else ever informed Murray Energy employees that their attendance at the event would be voluntary. *Id.*, Ex. 2 ¶ 8.

1 comments — that other managers told employees that the event was mandatory, even if Hughes  
2 did not.

3 Murray Energy also argues that the Hughes and Murray declarations — as well as the  
4 letters purportedly signed by several hundred Century Mine employees — show that the  
5 registration list was not used to track attendance and there were no adverse consequences for  
6 those employees who failed to attend the rally.<sup>70</sup> Even if ultimately no adverse consequences  
7 followed and the registration list was not used to track non-attendance, these facts would not  
8 negate the Complaint's allegation that employees were required to attend. Whether management  
9 actually punished those who did not attend — or rewarded those who did — does not eliminate  
10 the service Murray Energy provided to the Romney Committee by assembling a crowd for the  
11 rally in the first instance.<sup>71</sup> And although Murray Energy invoiced the Romney Committee for a  
12 variety of event-related costs, it issued that invoice two weeks after the Complaint and two  
13 months after the event, it did not include the crowd-building service in the invoice, and there is  
14 no indication that the Romney Committee otherwise paid for it.

15 For its part, the Romney Committee argues that the rally was like those of other  
16 presidential candidates, citing news accounts of other candidates' visits to industrial facilities.<sup>72</sup>  
17 But the events described in the news articles do not appear to be analogous to the Romney rally.  
18 Most critically, none appears to be a campaign rally in which the employers allegedly required

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<sup>70</sup> Murray Energy Resp. at 5, 7. Neither the Hughes nor Murray declaration state that employees were told that the registration list was being kept only for logistical purposes. Nor do they state that employees were told there would be no adverse consequence if they chose not to attend. And while Murray states that he recalls discarding the list on the day of the event, he does not state what happened to the computerized version of the list.

<sup>71</sup> Indeed, the Romney Committee's later use of images from the rally, including its attendees, in a campaign ad illustrates that the Romney Committee realized a benefit from this crowd-building service. See Compl. at 1 n.3 (providing link to Romney Committee ad with images from the rally).

<sup>72</sup> See Romney Comm. Resp. at 3.

1 their employees to attend. And while Commission regulations permit certain corporation-  
2 sponsored candidate appearances on corporate premises, as noted above, the available  
3 information does not show that the Romney rally satisfies the requirements for appearances at  
4 corporation-sponsored candidate forums.<sup>73</sup>

5 Finally, as a procedural matter, relying on allegations made by unnamed sources does not  
6 invalidate a complaint, despite Murray Energy's contention otherwise.<sup>74</sup> The Act requires that a  
7 complaint be signed and sworn.<sup>75</sup> But there is no requirement that complaints must be based  
8 only on personal knowledge. Indeed, the Commission's regulations expressly provide the  
9 contrary: a complainant may allege a violation of the Act "based upon information and belief."<sup>76</sup>  
10 The fact that the Complainant's information and belief rests on unnamed sources quoted during a  
11 radio broadcast "does not in and of itself render the complaint insufficient on its face."<sup>77</sup>

<sup>73</sup> See *supra* n.47 (discussing 11 C.F.R. § 114.4(b)). For a presidential candidate appearance to be permissible under Commission regulations, the corporation must, among other requirements, make a similar opportunity to appear available to other presidential candidates and refrain from express advocacy in conjunction with the event. Here, the Respondents do not argue that the Romney rally satisfies these or the other requirements for candidate appearances at corporation-sponsored candidate forums. Moreover, the Romney rally was proposed by the Romney Committee and staged by Murray Energy as a rally to promote Governor Romney's campaign, and there is nothing to indicate that a similar opportunity would have been made available to other candidates.

<sup>74</sup> Murray Energy Resp. at 6.

<sup>75</sup> 2 U.S.C. § 437g(a)(1).

<sup>76</sup> 11 C.F.R. § 111.4(c), (d); see also Guidebook for Complainants and Respondents on the FEC Enforcement Process at 6 (May 2012) ("Statements not based on personal knowledge should identify the source of the information."); Mem. to the Comm'n from William C. Oldaker, General Counsel, FEC, *Complaints Based on News Articles* (Comm'n Mem. No. 663) (Nov. 5, 1979) (adopted by Comm'n Nov. 15, 1979) ("the legislative concern that complaints not be frivolous or malicious would seem to not preclude those complaints based on news articles which were well-documented and substantial, if the other complaint filing criteria of signing and notarization were met").

<sup>77</sup> Factual and Legal Analysis at 8 n.5, MUR 6276 (Weiser, et al.) (May 6, 2011) (citing MUR 6023 (McCain/Loeffler Group)). In MUR 6276, the Commission concluded that the "unequivocal," "specific," statements contained in 17 sworn affidavits rebutted allegations made by a single anonymous source. *Id.* at 3, 5, 9. By contrast, here, there are multiple sources—identified only as employees allegedly because they fear retaliation—whose allegations have not been unequivocally refuted by Murray Energy. See, e.g., *supra* pp.14-15 & n.70 (addressing the Hughes and Murray declarations).

1           Moreover, while the sources are unnamed, we do have information regarding the  
2           credibility of their allegations. First, the allegations are based on their first-hand knowledge as  
3           Murray Energy employees.<sup>78</sup> Second, there is not just one source; Bloomquist indicated that  
4           multiple employees contacted him with similar complaints, thereby providing cross-  
5           corroboration. Third, the employees' claimed reason for requesting anonymity — their fear of  
6           adverse employment action for speaking out against their employer — is plausible under the  
7           circumstances.<sup>79</sup> Fourth, there is no evidence that the complaining Murray Energy employees  
8           are associated with the Complainant.<sup>80</sup> Lastly, their allegations are specific — not vague or  
9           speculative — and Murray Energy does not contend that it lacks sufficient information to  
10          understand what conduct allegedly violated the Act and Commission regulations. Further,  
11          neither declaration submitted in response to the allegations unequivocally refutes the anonymous  
12          sources' allegation that attendance at the Romney rally was required. Therefore, the Complainant's  
13          reliance on unnamed sources would not preclude a reason-to-believe finding in this matter.

14                   3.       Under the Circumstances, Dismissal with Caution is Appropriate

15           Although the available information suggests that attendance at the event was mandatory  
16           and such crowd-building services would be something of value under the Act, we recommend  
17           that the Commission exercise its discretion to dismiss the apparent violation in this case with

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<sup>78</sup> Bloomquist Transcript at 3 ("This is my first-hand encounter. . . . Yes, we [were] in fact told that the Romney event was mandatory and would be without pay.").

<sup>79</sup> *Id.* at 1 ("Please do not give out my email address. If it [*sic*] were not, if I were not a current employee I would not have a problem. At this point, I need my income. Jobs are hard to find. But it is wrong what we were made to do because of the outcome if we don't.").

<sup>80</sup> This lack of association with the Complainant distinguishes this matter from others in which association with the complainant has been cited as a basis for drawing a negative inference about anonymous sources' credibility. See Statement of Reasons of Vice Chairman Petersen & Comm'rs Hunter and McGahn at 11, MUR 6056 (Protect Colorado Jobs, Inc., et al.) (June 2, 2009) (arguing that "information provided to a reporter by anonymous sources associated with a complainant" is insufficient to support a reason-to-believe finding), cited in Murray Energy Resp. at 6 n.7.

1 caution. The Commission previously determined as a matter of policy that such a dismissal is  
2 appropriate in cases where “a violation of the Act did or very probably did occur, but the size or  
3 significance of the apparent violation is not sufficient to warrant further pursuit.”<sup>81</sup> That is the  
4 case here. Although Murray Energy did or may well have violated the Act by coercing  
5 employees to attend the rally for the benefit of the Romney Committee, the inquiry necessary to  
6 determine whether there is more than merely reason to believe that the violation occurred, the  
7 scope of that alleged violation, and the resulting amount in violation would be disproportionately  
8 resource-intensive under the circumstances.

9         Should the Commission pursue this matter further, the inquiry would focus on two  
10 critical issues: the degree to which attendance was mandatory and the value of the crowd-  
11 building benefit resulting from that mandatory attendance. The first issue would require a  
12 detailed investigation that ultimately may prove inconclusive because it requires an assessment  
13 of the individual circumstances of each Murray Energy employee who attended the event.<sup>82</sup>  
14 Similarly, determining the value of Murray Energy’s contribution would be a resource-intensive  
15 task likely to lead to ambiguous results — especially since the Romney Committee already paid  
16 Murray Energy approximately \$57,500 for “Romney Rally Expenses,” Murray Energy is not a  
17 commercial vendor of crowd-building services, Century Mine had to be closed for safety and

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<sup>81</sup> See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (“RTB Policy”) (“dismissal with admonishment” appropriate where complaint “convincingly alleges a violation, but the significance of the violation is not sufficient to warrant further pursuit by the Commission.”).

<sup>82</sup> For example, given the reported attendance figures, there likely are hundreds of potential witnesses. And these many witnesses may have differing, possibly contradictory recollections of what Murray Energy managers conveyed about attendance at the Romney rally, how they responded to those managers’ comments, or what part of the crowd consisted of employees who nonetheless attended entirely on a voluntary basis. So the substantial inquiry that we believe would be necessary to prepare this case for a potential probable cause determination or subsequent litigation may in fact do little to clarify the record concerning the alleged violation or aid the Commission in determining the scope of that violation.

1 security reasons during the rally, Murray Energy employees were off the clock during the rally,  
2 and a substantial proportion of the employees in attendance may have appeared voluntarily.

3 In sum, the following factors, when taken together, suggest that further enforcement  
4 action would not be a prudent use of Commission resources: the need for a disproportionately  
5 comprehensive inquiry to untangle the relevant factual questions; the possibility that the  
6 difficult-to-ascertain value of the contribution at issue could be low; and the Romney  
7 Committee's payment of other event-related costs. Moreover, the unique circumstances of this  
8 case — including the unusual and inchoate nature of the benefit provided — also suggest that a  
9 letter of caution would adequately vindicate the Commission's interest in ensuring compliance  
10 and deterring future similar violations of the Act. We therefore recommend that the Commission  
11 exercise its prosecutorial discretion and dismiss with caution the allegation that Murray Energy  
12 made, and the Romney Committee knowingly accepted, a prohibited corporate in-kind  
13 contribution in the form of crowd-building services when Murray Energy required its employees  
14 to attend the Romney rally.<sup>83</sup>

15 **B. There Is No Reason to Believe Murray Energy Coerced Employees to Make**  
16 **Individual Contributions by Requiring Them to Attend the Romney Rally**

17 Corporations are prohibited from facilitating the making of contributions by means of  
18 “coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal,  
19 or the threat of force, to urge any individual to make a contribution or engage in fundraising  
20 activities on behalf of a [federal] candidate or political committee.”<sup>84</sup> Here, the Complaint  
21 alleges that, in requiring its employees to attend the Romney rally, Murray Energy “essentially

<sup>83</sup> See RTB Policy, 72 Fed. Reg. at 12,546; *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>84</sup> 11 C.F.R. § 114.2(f)(2)(iv).

1 forc[ed] these employees to make a contribution to a candidate.”<sup>85</sup> But the Complaint does not  
2 allege — and we do not have information showing — that the company “urge[d] any individual  
3 to make a contribution or engage in fundraising activities” as part of their attendance at the  
4 Romney rally.

5 Thus, the Complainant’s allegation rests on the premise that under the Act an individual’s  
6 mere attendance at a rally, by itself, constitutes a contribution from the individual to the  
7 candidate. We have not identified any authority supporting this proposition. As we have noted,  
8 the Act defines “contribution” broadly to include providing a committee with “anything of  
9 value.”<sup>86</sup> But the term is not so broad as to transform an individual’s mere presence in the  
10 audience of a candidate’s rally, among a large number of other attendees, into a contribution  
11 from that individual to the committee.

12 The Romney Committee argues that event attendance cannot be something of value under  
13 the Act because it has no commercial value.<sup>87</sup> We note that while it may be difficult to ascertain  
14 a market value for unique goods or services, the lack of a commercial market does not  
15 necessarily equate to a lack of value under the Act.<sup>88</sup> Thus, it is not an asserted lack of  
16 commercial value that leads to our conclusion here. Indeed, as noted earlier, a commercial  
17 market does exist for crowd-building services.<sup>89</sup> Rather, our conclusion is guided by the fact that  
18 an individual’s mere presence among a crowd of other individuals in the audience of a large

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<sup>85</sup> Compl. at 2.

<sup>86</sup> See 2 U.S.C. § 441b(b)(2); see also *id.* § 431(8)(A)(i).

<sup>87</sup> Romney Comm. Resp. at 2.

<sup>88</sup> See First GCR at n.12, MUR 5409 (Grover Norquist, *et al.*).

<sup>89</sup> See *supra* n.63 and accompanying text.

1 event, without more, is neither a good nor service provided to the candidate by *that* individual.  
2 By contrast, event promotion, and crowd-building in particular, is a service that provides  
3 something of value to candidates.<sup>90</sup>

4 We therefore recommend that the Commission find no reason to believe that Murray  
5 Energy facilitated the making of individual contributions by its employees to the Romney  
6 Committee.<sup>91</sup>

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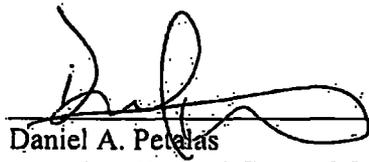
<sup>90</sup> See *supra* section III.A.

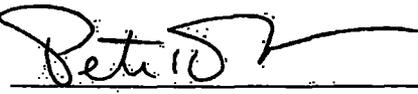
<sup>91</sup> See RTB Policy, 72 Fed. Reg. at 12,546 (providing that a no-reason-to-believe finding is appropriate where "even if the allegations were true, [they] would not constitute a violation of the law.").

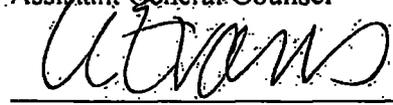
1 **IV. RECOMMENDATIONS**

- 2 1. Dismiss with caution the allegation that Murray Energy Corporation and Romney  
3 for President, Inc. and Darrell Crate in his official capacity as treasurer each  
4 violated 2 U.S.C. § 441b;
- 5 2. Find no reason to believe that Murray Energy Corporation violated 11 C.F.R.  
6 § 114.2(f);
- 7 3. Approve the attached Factual and Legal Analyses;
- 8 4. Approve the appropriate letters; and
- 9 5. Close the file.

10 Dated: 3/20/14

11   
12 Daniel A. Petalas  
Associate General Counsel for Enforcement

13   
14 Peter G. Blumberg  
15 Assistant General Counsel

16   
17 Leonard O. Evans III  
18 Attorney, Enforcement Division

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