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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**

CELA

5 MUR: 6661
6 COMPLAINT FILED: October 9, 2012
7 NOTIFICATION: October 12, 2012
8 SUPPLEMENT: September 16, 2014
9 LAST RESPONSE: July 10, 2015
10 DATE ACTIVATED: April 23, 2013

11
12 ELECTION CYCLES: 2008, 2010, 2012
13 LIMITATIONS PERIOD EXPIRES:²
14 Earliest: October 2, 2013
15 Latest: July 22, 2017

16 **COMPLAINANT:** Melanie Sloan, Citizens for Responsibility and
17 Ethics in Washington

18 **RESPONDENTS:** Robert E. Murray

19
20 Murray Energy Corporation

21
22 Murray Energy Corporation PAC and Michael G.
23 Ruble in his official capacity as treasurer

24 **STATUTES AND REGULATIONS:** 52 U.S.C. § 30118
25 52 U.S.C. § 30122
26 11 C.F.R. § 114.2
27 11 C.F.R. § 114.5

28 **INTERNAL REPORTS:** Disclosure Reports

29 **FEDERAL AGENCIES:**

² The Respondents 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).

1 **II. FACTUAL SUMMARY**

2 Based in Ohio, Murray Energy reportedly is one of the largest privately held coal-mining
3 companies in the United States, with eight mines in six states.⁴ Robert E. Murray is its
4 Chairman, President, and CEO.⁵ Murray Energy has a separate segregated fund ("SSF") called
5 the Murray Energy Corporation Political Action Committee ("MECPAC"), which received
6 contributions totaling about \$892,000 and made disbursements totaling about \$1 million between
7 2008 and 2012.⁶ MECPAC solicits contributions from company personnel, and according to a
8 declaration submitted in response to the Complaint by Michael Ruble, MECPAC's treasurer, in
9 2012, 151 of 354 management personnel contributed to MECPAC.⁷ In addition to MECPAC's
10 solicitations, Murray personally solicits his employees for contributions to MECPAC,
11 contributions to his preferred federal candidates, and to participate in fundraising events for his
12 preferred federal candidates.

13 **A. Complaint**

14 **1. Coercion Allegations**

15 The Complaint alleges that since about 2007, Robert Murray, Murray Energy, and
16 MECPAC have coerced Murray Energy employees into making contributions by "threatening
17 employees with financial reprisals, including the loss of their jobs, if they failed to contribute" to
18 MECPAC.⁸ In support of these allegations, the Complaint attaches an October 4, 2012, article

⁴ Compl., Ex. A at 2 (Oct. 9, 2012).

⁵ *Id.*

⁶ See FEC Form 3X, Report of Receipts & Disbursements (year end reports filed on June 1, 2009 (for 2008), April 14, 2010 (for 2009), January 14, 2011 (for 2010), and April 18, 2013 (for 2011 and 2012)).

⁷ Resp., Ex. 2 ¶ 5 (Apr. 4, 2013) ("Declaration of Michael Ruble").

⁸ Compl. at 3-5.

1 this whether you want to or not.”¹⁵ The second source (“Source B”) was quoted saying, “They
2 will give you a call if you’re not giving . . . It’s expected you give Mr. Murray what he asks
3 for.”¹⁶ As Source A reportedly explains, employees targeted with repeated solicitations feel
4 pressure either to comply or provide explanations to management why they have not:

5 “People are very upset about being constantly asked for the checks, because
6 people have lives and families and expenses,” says [Source A,] a political
7 independent. “They say, ‘This isn’t right I don’t think they’re allowed to do
8 this.’ Most people do it grudgingly.”

9 Those who decline, [Source A] says, prepare to be questioned. “When they’re
10 pressuring people to write checks, if they haven’t by the deadline, you hear people
11 making excuses — I just had to repair my car, I had an unexpected bill, I just had
12 to pay tuition.”¹⁷

13 The article references several Murray, Murray Energy, and MECPAC documents
14 “show[ing] just how upset Murray becomes when employees fail to join the giving.”¹⁸ The first
15 document is a March 7, 2012, interoffice memorandum from Murray apparently to his
16 managerial personnel in which he complained:

17 What is so difficult about asking a well-paid salaried employee to give us three
18 (3) hours of his/her time every two months? We have been insulted by every
19 salaried employee who does not support our efforts. More importantly, we are
20 going to lose what friends we have in Washington, D.C. at this very critical time,
21 while mines are closing all around us I do not recall ever seeing the attached
22 list of employees [redacted] at one of our fundraisers.¹⁹

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ Resp., Ex. 9 (attaching memorandum); *see also* Compl., Ex. A at 2. (partially quoting memorandum). The recipients of this memorandum are unidentified because the document provided to the Commission was redacted.

1 The second document is an earlier interoffice memorandum from Murray regarding an
2 upcoming fundraiser, dated August 3, 2011, and apparently directed to his management staff:

3 I am asking you to rally all of your salaried employees and have them make their
4 contribution to our event as soon as possible. . . . We need both their contribution
5 and their attendance Please see that our salaried employees 'step up' [] for
6 their own sakes and those of their employees.²⁰

7 The third document is a September 15, 2010, letter from Murray apparently to
8 management personnel in which he followed up on an August 28, 2010, letter seeking MECPAC
9 contributions: "The response to [the August 28] letter of appeal has been poor. . . . If we do not
10 win [this election], the coal industry will be eliminated and so will your job, if you want to
11 remain in this industry. Please positively respond to our request."²¹ In the referenced August 28,
12 2010, letter, Murray writes of "the need for additional funding of MECPAC," and requests "a
13 one-time contribution to MECPAC as soon as possible in the maximum amount that you can
14 afford. Your contributions are strictly voluntary and will remain anonymous, except to the
15 Chairman and Treasurer of the MECPAC."²² The letter closes by noting that MECPAC's
16 treasurer, Michael Ruble, or another Murray Energy employee "will follow up with you."²³

17 Murray also sent employees several solicitations seeking contributions for presidential
18 candidates Rick Perry and Mitt Romney, then-Senator Gordon Smith, and other federal

²⁰ Resp., Ex. 8 (attaching memorandum); *see also* Compl., Ex. A at 3 (partially quoting memorandum). The recipients of this memorandum are unidentified because the document provided to the Commission lists the recipients only as "Those Listed."

²¹ Compl., Ex. A at 3 (partially quoting letter); *see also* Compl., Ex. B (attaching letter); Resp., Ex. 1 (same). The recipients of this letter are unidentified because the document provided to the Commission was redacted.

²² Resp., Ex. 3 at 1-2.

²³ *Id.*, Ex. 3 at 2.

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1 candidates.²⁴ According to Sources A and B, "Murray sends letters to employees' homes. . . .
2 The letters feature suggested amounts depending on their salary level The letters come with
3 great frequency. Before the 2008 election, there were nine fund-raisers in less than three
4 months."²⁵

5 The Respondents submit a joint Response in which they challenge the Complaint on three
6 grounds. First, they argue that the Complaint is inadequate because it is "founded on anonymous
7 sources."²⁶ Second, they contend that although "[a] manager here or there may have been
8 bothered, annoyed, frustrated, or philosophically or politically perturbed," Murray's "colorful
9 language" did not rise to the level of threats of detrimental job action, financial reprisal, or force,
10 and therefore were not coercive.²⁷ The Response includes six solicitation letters, three other
11 Murray Energy documents, and a declaration by Michael Ruble, who is the MEC PAC treasurer
12 and Human Resources Director at American Energy Corporation, a Murray Energy subsidiary.²⁸
13 Respondents acknowledge that "some tracking takes place to ascertain who has responded to
14 previous solicitations and that follow-up requests are sometimes made,"²⁹ but contend that there

²⁴ Compl., Ex. A at 3; *see also* Resp., Ex. 5 (Sept. 29, 2008, solicitation for contributions to Gordon Smith), Ex. 6 (Aug. 27, 2011, solicitation for contributions to Rick Perry), Ex. 7 (Apr. 6, 2012, solicitation for contributions to Mitt Romney).

²⁵ Compl., Ex. A at 3.

²⁶ Resp. at 12.

²⁷ *Id.* at 13, 14.

²⁸ *Id.*, Exs. 1-10.

²⁹ *Id.* at 13.

1 is nothing "unusual about tracking whether people solicited have given so that follow-up
2 requests might be made by Mr. Murray or someone who helps him."³⁰

3 In his declaration, Ruble states that "care is taken to include the required notice to those
4 solicited," including that MECPAC contributions are voluntary and that the specified
5 contribution amount "is just a suggestion and such a decision is voluntary."³¹ Ruble concedes,
6 however, that the September 15, 2010, letter discussed in the *New Republic* article "did not itself
7 contain the disclaimer about voluntariness" but that the August 28 letter it referenced did.³²
8 Ruble also states, "To my knowledge, no employee has suffered any reprisals for not
9 contributing to MECPAC or for contributing less than requested."³³ He makes the same
10 statement with regard to candidate contributions.³⁴ Ruble also states that in 2012,
11 "approximately 354 management personnel were solicited for the PAC, but only 151
12 contributed."³⁵

³⁰ Supp. Resp. at 2. This evidence and the Supplemental Response are inconsistent with a Murray Energy statement to a reporter attached to the Supplemental Response, which states that "As Mr. Murray has repeatedly stated that he deliberately never knows who gives to his fundraisers and who does not." *Id.*, Attach. 1. Further, in response to a question about company policy with respect to "encouraging employee campaign contributions," the company spokesperson claimed that "[t]hese are Mr. Murray's personal fundraisers, which have nothing to do with Murray Energy Corporation." *Id.* Yet the solicitation by Murray attached to the wrongful termination complaint filed by Jean F. Cochenour in *Cochenour v. Murray, et al.*, 14-C-681 (Monangalia Cty. W.Va. Cir. Ct. Sept. 4, 2014) (attached to Supplemental Complaint) ("Cochenour Civil Complaint"), apparently sent to employees of a company Murray recently acquired, refers to candidates appearing at a fundraiser as "[o]ur important guests," references "our Century Mine," and states that "[w]e are requesting" two hundred dollar contributions to each of the candidates using separate checks. *Id.*, Ex. A.

³¹ Declaration of Michael Ruble ¶ 2.

³² *Id.* ¶ 3.

³³ *Id.* ¶ 6.

³⁴ *Id.* ¶ 7.

³⁵ *Id.* ¶ 5.

1 The Supplemental Complaint filed on September 16, 2014, adds that a former Murray
2 employee, Jean F. Cochenour, filed a wrongful termination complaint (“Cochenour Civil
3 Complaint”) alleging, among other things, that Murray solicited contributions for specific
4 contribution amounts, and that a manager informed her and other forepersons that “failing to
5 contribute as Mr. Murray requested could adversely affect their jobs.”³⁶ Cochenour alleges that
6 she received frequent solicitations for contributions, that Murray was aware of or tracked who
7 among his employees made contributions, and that “those who attend the Murray defendants’
8 ‘college’ for managers [are told] that the managers are expected to voluntarily contribute 1% of
9 their salary to Mr. Murray’s political action committee[.]”³⁷

10 Respondents deny the former employee’s allegations, assert that Cochenour was fired for
11 different reasons, and state that Cochenour’s allegations are not based on personal knowledge
12 and that “there is no evidence whatsoever” that Murray requires employees to make
13 contributions.³⁸ After a request by Commissioners for information about the discovery in the
14 Cochenour case, Respondents provided redacted transcripts of the depositions of Cochenour and
15 another witness.³⁹ Cochenour states that she felt coerced into making political contributions on
16 the basis of the solicitation letters she received from Murray requesting contributions and
17 statements by Randy Tennant that “if we didn’t contribute that it could affect our jobs.”⁴⁰
18 Tennant stated the following relating to the allegations: he attended a training for managers

³⁶ Cochenour Civil Compl. ¶¶ 12-22.

³⁷ *Id.* ¶¶ 8, 16, 17, 22.

³⁸ Supp. Resp. at 1-3.

³⁹ Second Supp. Resp. at Exs. 1, 2.

⁴⁰ Deposition of Jean F. Cochenour, 113-16, 124 (Apr. 14, 2015).

1 ("Murray College") where Murray solicited contributions and asked for a show of hands of who
2 contributed⁴¹; he received solicitation letters and made contributions to the candidates supported
3 by Murray about 60 percent of the time⁴²; he never believed that he would get fired if he did not
4 contribute, but he did believe that election results could affect his job⁴³; he was never told by
5 anyone with any authority that if he did not contribute that it could affect his job⁴⁴; he could not
6 recall any conversations or rumors about Murray keeping lists of which employees made
7 contributions,⁴⁵ and; he could not recall any complaints from vendors about pressure to make
8 contributions.⁴⁶

9 **2. Corporate Reimbursement Allegations**

10 The Complaint also alleges that Murray and Murray Energy violated the Act by
11 reimbursing employee contributions to the MEC PAC with bonus payments.⁴⁷ And in paying
12 those bonuses with corporate funds, the Complaint alleges, Murray and Murray Energy made
13 prohibited corporate contributions.⁴⁸

14 According to Sources A and B, "the pressure to give begins as soon as employees enter
15 the company," but employees' contributions are made up through Murray Energy's bonus
16 program:

⁴¹ Deposition of Randy Tennant at 43 (Apr. 21, 2015).

⁴² *Id.* at 45.

⁴³ *Id.* at 49-50.

⁴⁴ *Id.* at 51.

⁴⁵ *Id.* at 52, 171.

⁴⁶ *Id.* at 176, 178-181.

⁴⁷ Compl. at 4-6.

⁴⁸ *Id.* at 6.

1 he or she would be 'expected to' contribute . . . or that any suggested contribution amount such
2 as 1% of salary would be 'made up' through bonus payments."⁵⁴

3 **III. LEGAL ANALYSIS**

4 **A. There is Reason to Believe Murray and Murray Energy Coerced Employees**
5 **to Contribute and MECPAC Spent Funds Obtained Through Coercion**

6 The Act prohibits corporations from making contributions to candidates or their
7 committees in connection with federal elections.⁵⁵ Corporations also are prohibited from
8 facilitating the making of contributions to federal candidates and committees.⁵⁶ Prohibited
9 corporate facilitation activities involve "using corporate . . . resources or facilities to engage in
10 fundraising activities"⁵⁷ and include, for example, using means of "coercion, such as the threat of
11 a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge
12 any individual to make a contribution or engage in fundraising activities on behalf of a [federal]
13 candidate or political committee."⁵⁸

14 Although they may not fundraise for federal candidates, corporations may solicit
15 employees for contributions to SSFs like MECPAC.⁵⁹ But these contributions must be
16 voluntary, and the Act and Commission regulations seek to prevent coerced contributions to
17 SSFs by requiring employers who solicit employees for SSF contributions to inform the
18 employee at the time of each solicitation of "the political purposes of the fund at the time of such

⁵⁴ Declaration of Michael Ruble ¶ 4.

⁵⁵ 52 U.S.C. § 30118(a).

⁵⁶ 11 C.F.R. § 114.2(f)(1).

⁵⁷ *Id.*

⁵⁸ *Id.* § 114.2(f)(2)(iv).

⁵⁹ 52 U.S.C. § 30118(b)(2)(C).

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1 solicitation” and his or her “right to refuse to so contribute without any reprisal.”⁶⁰ If the
2 solicitation includes guidelines for contribution amounts, it must also state “[t]hat the guidelines
3 are merely suggestions,” “[t]hat the individual is free to contribute more or less,” and that “the
4 corporation . . . will not favor or disadvantage anyone by reason of the amount of their
5 contribution or their decision not to contribute.”⁶¹ SSFs are further prohibited from “mak[ing] a
6 contribution or expenditure by utilizing money or anything of value secured by physical force,
7 job discrimination, financial reprisals, or the threat of force, job discrimination, or financial
8 reprisal.”⁶²

9 Here, two of the three submitted MEPCAC solicitations — those dated August 28 and
10 September 15, 2010 — lack the anti-coercion information required by the Act and Commission
11 regulations. While the August 28, 2010, solicitation letter describes MECPAC’s political
12 purposes and states that contributions are “strictly voluntary,” it does not inform employees of
13 their right to refuse to contribute without reprisal.⁶³ Similarly, the September 15, 2010, letter
14 from Murray Energy’s top executive to his employees fails to state that employees will not suffer
15 reprisal should they refuse to contribute.⁶⁴ Therefore, it appears that MECPAC failed to include

⁶⁰ *Id.* § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4).

⁶¹ 11 C.F.R. § 114.5(a)(2). The requirements of Section 114.5(a)(2)-(4) apply to all solicitations directed to any employee for SSF contributions. Section 30118(b)(4), however, draws a distinction between solicitations directed to executive or administrative personnel and those sent to rank-and-file employees and limits to twice annually the number of SSF solicitations that may be directed to rank-and-file employees. *See* 52 U.S.C. § 52 U.S.C. § 30118(b)(7) (defining “executive or administrative personnel” to be “individuals employed on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities”). Because at this stage the solicitation practices in this matter appear to have been aimed only at Murray Energy’s executive or administrative personnel, Section 30118(b)(4)’s limitation on the number of solicitations to other employees is not at issue.

⁶² 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a) (1).

⁶³ *See Resp.*, Ex. 3.

⁶⁴ *Id.*, Ex. 1.

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1 required anti-coercion language in its August 28, 2010, and September 15, 2010, solicitations.⁶⁵
2 Because the apparent anti-coercion disclaimer violations contained in these solicitations are
3 beyond the five year statute of limitations,⁶⁶ we do not make a recommendation as to 11 U.S.C.
4 § 114.5(a)(2)-(5). The apparent lack of anti-coercion language in solicitations, however, is
5 relevant to whether Murray Energy employees were coerced into making contributions based on
6 Murray's actions, which are alleged to have been part of a pattern of behavior lasting for several
7 years, up to and including the 2012 election cycle.⁶⁷

8 Along with the absence of anti-coercion information in MECPAC solicitations, the
9 presently available record suggests that Murray and Murray Energy solicited employees for
10 contributions to individual candidates in a manner that further elevated the pressure to contribute,
11 including the implicit threat that potential job-related reprisals may follow for not doing so. The
12 allegations, if true, demonstrate that: (a) multiple employees of Murray Energy report feeling
13 "compelled" or "coerced" by, among other things, the frequency of the solicitations and the fact
14 that they came directly from the CEO; (b) the expectation to contribute is identified during the
15 job interview and a manager training program ("Murray College") during which Murray asked
16 for a show of hands indicating which employees had contributed; (c) Murray sent an interoffice

⁶⁵ Conciliation Agreement at 5, MUR 5337 (First Consumers Nat'l Bank) (Mar. 10, 2003) ("[M]erely including the word [voluntary] once does not diminish the coercive nature of the solicitations or satisfy the requirements of 11 C.F.R. § 114.5(a)(2)-(4)."); *see* Advisory Opinion 1998-19 (a solicitation's use of "voluntary" is not a sufficient substitute for stating that there will be no reprisal should the member refuse to contribute); Factual and Legal Analysis at 4, MUR 6129 (ARDA-ROC PAC) (Nov. 19, 2008) (citing AO 1998-19); Factual and Legal Analysis at 3, MUR 5681 (High Point Regional Ass'n of Realtors) (Nov. 1, 2006) (same); Conciliation Agreement at 4, MUR 5208 (Jersey Bankers PAC) (Oct. 28, 2002) ("although the JebPAC solicitations did not contain the specific language required by 11 C.F.R. § 114.5(a), they included a statement that contributions to JebPAC are solicited on a voluntary basis"); *Explanation and Justification for Part 114* at 107 (Jan. 12, 1977) (highlighting the importance of the "reprisal" language).

⁶⁶ 28 U.S.C. § 2462.

⁶⁷ *See supra* pp. 3-6; Compl. at 1-2; Resp., Exs. 6-9.

1 memo stating that he viewed the failure of “well-paid” employees to participate as an “insult”;
2 (d) employee participation is tracked by the CEO, who then makes decisions about employee
3 compensation and bonuses; and (e) Murray ordered his managers to pressure subordinates to
4 participate and circulated a list singling out employees who did not contribute or attend
5 fundraisers.⁶⁸

6 Although the available information does not include an explicit threat of reprisal, the
7 prohibition on “threat[s] of a detrimental job action, [or] the threat of any other financial
8 reprisal” is not limited only to expressly stated threats against an employee.⁶⁹ For example, in
9 MUR 5379 (CarePlus Medical Centers., Inc.), there was not an explicit threat of detrimental job
10 action or other financial reprisal, but the Commission nevertheless found reason to believe that a
11 senior executive’s e-mail coercively solicited contributions from the company’s employees. The
12 Commission’s finding took into account three facts: (i) the recipients knew “that the person who
13 is ultimately responsible for making decisions regarding salaries, bonuses, and promotions is
14 asking them to contribute”; (ii) the message stated that the CEO had “asked for an accounting of
15 the individuals who do and do not contribute”; and (iii) the message made clear that executive
16 level staff were “‘expected’ to contribute, thereby signifying that this [was] a requirement and
17 not merely a request.”⁷⁰ Likewise, the circumstances in the present case reflect that contributions
18 were not merely being requested — there was pressure to participate to avoid the adverse
19 consequences that might follow an employee’s failure to “positively respond” to Murray’s
20 solicitations, and Murray affirmatively maintained lists and tracked particular employees’

⁶⁸ See *supra* pp. 3-6.

⁶⁹ 11 C.F.R. § 114.2(f)(2)(iv); see also *id.* § 114.5(a)(1); 52 U.S.C. § 30118(b)(3)(A).

⁷⁰ Factual and Legal Analysis at 4, MUR 5379 (CarePlus Medical Centers, Inc.) (Mar. 11, 2004).

1 participation, all while determining whether the affected employees would receive bonuses for
2 their value to the company.

3 Such lists and tracking activities are notably absent from the record in MUR 5666 (MZM,
4 Inc.). In that matter, the Commission (after an "extensive investigation") entered into a \$1
5 million settlement with MZM based on its involvement in a widespread conduit contribution
6 scheme. In reaching that resolution, the Commission also agreed with this Office that the
7 aggressive fundraising practices presented in that matter did not warrant an additional finding of
8 coercion.⁷¹ Unlike the allegations in the present matter, however, the Commission's
9 investigation into the solicitation and fundraising practices at MZM did not reveal that senior
10 management actively maintained and circulated lists of non-participating employees to other
11 managers with direct instructions that they should ensure that those employees complied with
12 fundraising requests; did not regularly follow up with non-participating employees both at home
13 and work concerning their lack of participation; and did not evaluate bonuses for non-
14 participating employees based on the subjective view of the same senior manager who generated
15 the lists and demanded their compliance. Taken together, these additional allegations amply
16 support finding reason to believe that there may have been a violation of the anti-coercion
17 provisions of the Commission's regulations.⁷²

⁷¹ General Counsel's Report #2 at 19, MUR 5666 (MZM, Inc.) (July 5, 2007).

⁷² See, e.g., General Counsel's Report #3 at 12-13, MUR 5379 (CarePlus Medical Centers, Inc.) (Nov. 29, 2007) (finding coercion on basis of e-mail solicitation lacking anti-coercion language despite lack of explicit threats or actual reprisals, and despite sworn statements from multiple employees that their contributions were voluntary); Factual and Legal Analysis at 3-4, MUR 5681 (High Point Reg'l Ass'n of Realtors) (Nov. 1, 2006) (finding reason to believe respondent coerced SSF contributions by omitting anti-coercion information and singling out those who declined to contribute); Factual & Legal Analysis at 3, MUR 5437 (SEIU COPE) (Oct. 4, 2004) (finding reason to believe respondents coerced SSF contributions where employee complained employees were told contributions "were needed to help them keep their jobs"); Conciliation Agreement at 5, MUR 5337 (First Consumers Nat'l Bank) (bank's solicitations for contributions used coercion and implied threats of financial reprisal and detrimental job action despite stating that the contributions were "voluntary" where the names of those who did not contribute were

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1 The lone declaration submitted by the Respondents does not refute the alleged coercion.
2 Under the Act and Commission regulations, coercion may be found on the basis of actual or
3 threatened reprisals. The Ruble declaration, however, addresses only actual reprisals, stating,
4 "[t]o my knowledge, no employee has suffered reprisals for not contributing" to MEC PAC or
5 Murray's favored candidates.⁷³ Ruble's lack of personal knowledge concerning actual reprisals
6 does not negate the Complaint's claim that employees were coerced into making contributions.
7 Similarly, the Supplemental Response focuses on information developed by counsel suggesting
8 that, at the company where Cochenour worked, there was little or no correlation between
9 employees who were terminated and employees who did not contribute in response to Murray's
10 solicitations.⁷⁴ This assertion in response to Cochenour's allegation that she was wrongfully
11 terminated does not refute the allegation that a manager stated to her that failing to contribute
12 could lead to unspecified adverse employment consequences.

disclosed to bank employees). *Cf.* General Counsel's Report #2 at 12-14, MUR 5666 (MZM, Inc.) (July 5, 2007) (determining after "extensive investigation" that there was insufficient information to find coercion where executive did not follow up with employees after solicitation letters and did not keep and circulate lists of contributing employees); First General Counsel's Report at 14-15, MUR 4780 (Harris Corporation) (July 10, 2000) (finding no reason to believe facilitation took place and no coercion, in part because the employer kept no records and made no inquiries regarding who contributed).

⁷³ Declaration of Michael Ruble ¶¶ 6, 7. Ruble also states that less than half of those Murray Energy management personnel solicited for contributions actually contributed to MEC PAC in 2012. Ruble then asserts that this figure is "clear evidence that the PAC solicitation process is not coercive." *Id.* ¶ 5. We disagree. First, Ruble points to figures for 2012, but the MEC PAC solicitations omitting the anti-coercion information were circulated in 2010. He does not provide the contribution rate for that year or for any other years. Second, Ruble's figures apply only to MEC PAC while the allegations in this matter also relate to candidate contributions. Ruble does not provide any data about those types of contributions. Third, Ruble's assertion suggests that a PAC contribution rate of about 43% (*i.e.*, 151 of 354 employees solicited) is low and therefore not coercive, but he provides no baseline data or context to substantiate this assertion. One could just as well argue that a 43% contribution rate is unusually high and therefore tends to support the allegation of coercion. Most importantly, under the Act and Commission regulations, the determination whether certain solicitation practices are coercive does not turn on their perceived success rate.

⁷⁴ Supp. Resp. at 3-4.

1 As to the threshold sufficiency of the evidence, a reason to believe determination is not
2 conclusive that an allegation is true; rather, it recognizes the seriousness of the allegations and
3 provides an opportunity to conduct further fact finding to resolve whether in fact a violation
4 occurred. A reason-to-believe finding is therefore appropriate "in cases where the available
5 evidence in the matter is at least sufficient to warrant conducting an investigation."⁷⁵ The
6 information available in this matter adequately supports the conclusion that the Respondents may
7 have violated the Act for the reasons described above. That further investigation may not yield
8 affirmative evidence of a violation or may reveal that no violation occurred does not render the
9 allegations speculative or insufficient to proceed at the reason to believe stage.⁷⁶ We therefore
10 recommend that the Commission find reason to believe that Murray and Murray Energy violated
11 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(f)(2)(iv) by coercing Murray Energy employees to
12 make contributions to federal candidates and participate in fundraising activities supporting
13 federal candidates. And because MECPAC's disclosure reports indicate that it received
14 contributions following the coercive solicitations and then made contributions and
15 expenditures,⁷⁷ we also recommend that the Commission find reason to believe that MECPAC
16 violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(1).

⁷⁵ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) ("RTB Policy") (reason-to-believe finding appropriate where complaint "credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope").

⁷⁶ See *id.*

⁷⁷ See, e.g., FEC Form 3X, July 2012 Quarterly Report of Receipts & Disbursements at 2-3 (Apr. 18, 2013) (amended) (reporting \$46,193 in contributions received from individuals and \$52,000 in contributions made to federal candidates and committees).

REASON TO BELIEVE

1 **B. Take No Action at this Time Regarding Murray Energy's Alleged**
2 **Reimbursement of Employee Contributions**

3 The Act and Commission regulations prohibit a person from making a contribution in the
4 name of another or knowingly permitting his or her name to be used to effect such a
5 contribution.⁷⁸ This prohibition extends to "those who initiate or instigate or have some
6 significant participation in a plan or scheme to make a contribution in the name of another."⁷⁹
7 Commission regulations also prohibit an employer from paying an employee "for his or her
8 [SSF] contribution through a bonus, expense account, or other form of direct or indirect
9 compensation."⁸⁰ No person therefore may participate in a program that pays employees for
10 their SSF contributions or reimburses them for making campaign contributions.⁸¹

11 Given that we are recommending an investigation into allegations of coercion that may
12 affect the factual record before us, we recommend that the Commission take no action at this
13 time as to the allegations concerning corporate reimbursement by Murray Energy of employee
14 contributions.

⁷⁸ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i)-(iii). Just as one may not make a contribution in the name of another, the Act and Commission regulations also prohibit a person from knowingly accepting a contribution made by one person in the name of another. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(iv).

⁷⁹ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989) (explanation and justification).

⁸⁰ 11 C.F.R. § 114.5(b)(1).

⁸¹ See, e.g., *United States v. Boender*, 649 F.3d 650, 661 (7th Cir. 2011) (concluding § 441f "unambiguously criminalized both straw man and false name contributions"); *United States v. O'Donnell*, 608 F.3d 546 (9th Cir. 2010) (same); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (concluding "[p]roscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core of the [Buckley] Court's analysis" and therefore upholding § 441f); see also *United States v. Danielczyk*, 788 F. Supp. 2d 472, 478-85 (E.D. Va. 2011), *rev'd on other grounds*, 683 F.3d 611 (4th Cir. 2012) (Section 441f prohibits "pass-through contributions"); *United States v. Hsu*, 643 F. Supp. 2d 574, 576 (S.D.N.Y. 2009) (evidence sufficient to support conviction in "unlawful straw donor scheme").

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1 **IV. INVESTIGATION**

2 While the available information is sufficient to support a reason-to-believe finding, an
3 investigation is necessary to clarify the factual record concerning the coercion allegations. For
4 example, document requests and witness information are likely to aid the Commission in
5 determining whether, in fact, Murray Energy's solicitation practices were coercive, including
6 whether employees made any specific contributions or participated in any specific fundraising
7 activities based on direct or indirect threats or intimidation.⁸² In short, gathering more
8 information about MECPAC and candidate solicitation practices is likely to provide the
9 Commission with the substantial evidence necessary to determine whether a violation in fact
10 occurred and, if so, what further action may be appropriate, or, if not, to support closure of the
11 file based on that evidence.⁸³

12 We will attempt to conduct our proposed investigation using informal, cooperative
13 means. Should our efforts fail, however, formal means of discovery may be necessary, and we
14 therefore request that the Commission authorize the use of compulsory process as necessary.
15

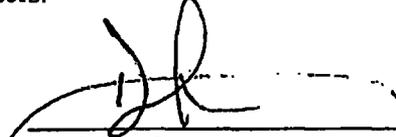
⁸² See, e.g., MUR 5437 (SEIU COPE) (2007) (where respondent produced copy of check-off authorization form in response to employee's complaint of coercion, Commission stated, "[G]iven the factual dispute here, further information is needed to determine whether union members were coerced into signing this form, as [Complainant] alleges.").

⁸³ See *La Botz*, 889 F. Supp. 2d at 61-63 (reversing and remanding Commission decision that relied on summary, *post hoc* affidavit that also was contradicted by contemporaneous document because Commission's decision was not based on "substantial evidence").

V. RECOMMENDATIONS

1. Find reason to believe that Robert E. Murray and Murray Energy Corporation violated 52 U.S.C. §§ 30118(a) and 11 C.F.R. §§ 114.2(f) by coercing Murray Energy employees to make contributions to federal candidates and participate in fundraising activities supporting federal candidates;
2. Find reason to believe that Murray Energy Corporation PAC and Michael G. Ruble in his official capacity as treasurer violated 52 U.S.C. §§ 30118(b)(3)(A) and 11 C.F.R. §§ 114.5(a)(1);
3. Take no action at this time as to whether any of the respondents violated 52 U.S.C. §§ 30122 or 30118 by reimbursing employee contributions with corporate funds.
4. Approve the attached Factual and Legal Analysis;
5. Authorize an investigation, including the use of compulsory process as necessary; and
6. Approve the appropriate letters.

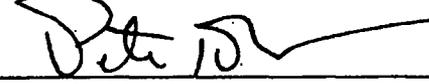
Dated: 2/1/16



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