



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matters of)	
)	
Ben Chandler for Congress, <i>et al.</i> ,)	MUR 6603
)	
Kirkpatrick for Arizona, <i>et al.</i> ,)	MUR 6777
)	
Senate Majority PAC, <i>et al.</i> ,)	MUR 6801
)	
American Crossroads, <i>et al.</i> , and)	MUR 6870
)	
Al Franken for Senate 2014, <i>et al.</i>)	MUR 6902

STATEMENT OF REASONS
Vice Chairman MATTHEW S. PETERSEN and
Commissioners CAROLINE C. HUNTER and LEE E. GOODMAN

Each of these matters involves organizations that financed independent expenditures containing partial clips of video footage obtained from publicly available websites, and they present materially indistinguishable facts from those in MUR 6357 (American Crossroads). In that matter, two of us voted against finding reason to believe that the ad at issue amounted to “republishing of campaign materials” under 52 U.S.C. § 30116(a)(7)(B) because “the few fleeting images” from the ad were “incorporated into a communication in which [the respondent] add[ed] its own text, graphics, audio, and narration to create its own message.”¹ In addition, we stated that:

The Act’s republication provision is designed to capture situations where third parties, in essence, subsidize a candidate’s campaign by expanding the distribution of communications whose content, format, and overall message are devised by the candidate. But clearly that is not what happened here. [The respondent] did not repeat verbatim the [candidate’s] message; rather, it created its own.²

¹ MUR 6357 (American Crossroads), Statement of Reasons, Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, at 4.

² *Id.* The reasoning of that statement in MUR 6357 is incorporated by reference.

The reasoning in those prior MURs is equally applicable here – republication requires more than respondents creating and paying for advertisements that incorporate as background footage brief segments of video footage posted on publicly accessible websites by authorized committees of federal candidates. Here, snippets of b-roll footage of federal candidates were “incorporated into [] communication[s] in which [respondents] add[ed their] own text, graphics, audio, and narration to create [their] own message.”³ Because these matters are practically identical to those prior MURs, we voted against finding reason to believe that the respondents in these matters republished campaign materials.⁴

In addition to the republication allegations, in MURs 6902 (Al Franken for Senate 2014) and 6603 (Ben Chandler for Congress), Complainants alleged impermissible coordination between authorized committees and committees alleged to have republished campaign materials.⁵ These allegations are wholly speculative based primarily on the proximity of time between placement of the footage online and airing of the ads, as well as thematic similarities of the communications. OGC recommended a reason to believe finding in MUR 6603 and to take no action at this time in MUR 6902, but we disagreed. On this issue, OGC’s analysis in MUR 6821 (Shaheen for Senate) should guide the Commission: “[T]he alleged similarities of the two communications at issue and their rough temporal proximity do not give rise to a reasonable inference that any of the conduct standards were satisfied under the facts presented here, particularly where no other information indicating that the Respondents engaged in any of the activities outlined in the relevant conduct standards.”⁶ We believe that analysis is equally applicable in these two matters since there is no other information that supports the allegation that Respondents engaged in activities that met the conduct prong for coordination.⁷ Therefore, we voted against OGC’s recommendations that these respondents illegally coordinated their activities.

³ *See id.*

⁴ An additional point is necessary on the republication recommendations: It has been noted that the Office of General Counsel (“OGC”) has shifted its views regarding the republication of campaign materials by a committee that accepts corporate contributions. MUR 6617 (Christie Vilsack) & MUR 6667 (Cherie Bustos), Statement of Reasons, Commissioners Caroline C. Hunter and Matthew S. Petersen, at 2, n. 4. This is troubling because it exposes the tension between the Act’s treatment of republication as an expenditure (52 U.S.C. § 30116(a)(7)(B)(iii)) and Commission regulations’ treatment of republication as a contribution (11 C.F.R. § 109.23). A straightforward reading of the Act precludes any conclusion that non-coordinated republication constitutes a contribution, including any potentially prohibited corporate contribution.

⁵ *See* MUR 6902 (Al Franken for Senate 2014), Compl. at 1-5 and MUR 6603 (Ben Chandler for Congress), Compl. at 3-6.

⁶ MUR 6821 (Shaheen for Senate), First General Counsel’s Report, at 8-9. *See also*, MUR 6613 (Prosperity for Michigan) (dismissing allegations of coordination based solely on thematic similarities and timing in matter in which respondents denied the advertisement was coordinated); MUR 5963 (Club for Growth) (same).

⁷ 11 C.F.R. § 109.21(d). We also note that the Patriot Majority ads in MUR 6603, which we conclude did not republish campaign materials, did not meet any of the content standards.

12/17/2015
Date

Matthew S. Petersen
Matthew S. Petersen
Vice Chairman

12/17/15
Date

Caroline C. Hunter
Caroline C. Hunter
Commissioner

12/17/15
Date

Lee E. Goodman
Lee E. Goodman
Commissioner