

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
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GIFFORDS
P.O. Box 51196
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v.

MUR No. _____

NATIONAL RIFLE ASSOCIATION
OF AMERICA INSTITUTE FOR
LEGISLATIVE ACTION
Mary Rose Adkins, Treasurer
11250 Waples Mill Road
Fairfax, VA 22030

MATT ROSENDALE FOR MONTANA
Errol Galt, Treasurer
P.O. Box 4907
Helena, MT 596044

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that the National Rifle Association of America Institute for Legislative Action (“NRA-ILA”) (ID: C90013301) and Matt Rosendale for Montana (ID: C00548289) have violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. Montana U.S. Senate candidate Matt Rosendale stated at a fundraising event that the NRA-ILA’s political director, Chris Cox, had told him that the group would be making expenditures supporting Rosendale, and Rosendale accurately described both the content of

the NRA-ILA's communications and their timing, even though the communications had not yet been disseminated and would not be disseminated until weeks later. Rosendale's statements provide reason to believe that he assented to the NRA-ILA's planned spending. The NRA-ILA then spent \$400,000 on independent expenditures attacking Rosendale's opponent.

3. Moreover, the NRA-ILA paid the political consulting firm, Starboard Strategic, Inc. ("Starboard") for those independent expenditures, while at the same time Matt Rosendale for Montana contracted with the consulting firm OnMessage, Inc. ("OnMessage"), which is functionally indistinguishable from Starboard; therefore, there is reason to believe that OnMessage/Starboard used strategic information derived from its work for the Rosendale campaign to develop the NRA-ILA advertisements expressly advocating against his opponent.
4. As a result, for these two separate and independent reasons, there is reason to believe that the NRA-ILA made illegal, unreported, and excessive in-kind contributions to Matt Rosendale for Montana in the form of coordinated communications, 11 C.F.R. § 109.21, in violation of FECA's source prohibitions, reporting requirements, and contribution limits.
5. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation" 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).
6. Campaign Legal Center ("CLC") is a nonpartisan, nonprofit 501(c)(3) organization whose mission is to protect and strengthen the U.S. democratic process through litigation and other

legal advocacy. CLC participates in judicial and administrative matters throughout the nation regarding campaign finance, voting rights, redistricting, and government ethics issues.

7. Giffords is a nonpartisan, nonprofit 501(c)(4) organization headquartered in Washington, D.C.¹ Founded by former Congresswoman Gabrielle Giffords and retired Navy combat veteran and NASA astronaut Captain Mark Kelly, Giffords researches, writes, and proposes policies designed to reduce gun violence and mobilizes voters and lawmakers in support of safer gun laws. Giffords educates political candidates about issues and policies related to gun violence, and endorses candidates for local, state, and federal office who support strong gun-violence-prevention laws. Many candidates supported by Giffords, including the opponents of Thom Tillis and Corey Gardner in their 2014 campaigns for U.S. Senate and the opponent of Ron Johnson in his 2016 campaign for U.S. Senate, are opposed by the National Rifle Association Political Victory Fund (“NRA-PVF”) and NRA-ILA.²

FACTS

8. Matt Rosendale is a candidate for U.S. Senate in Montana. Matt Rosendale for Montana is his authorized campaign committee.³

¹ Giffords was founded in 2013 under the name Americans for Responsible Solutions, and was renamed Giffords in October 2017.

² Giffords has a sister organization, Giffords Law Center to Prevent Gun Violence, a nonprofit, nonpartisan 501(c)(3) based in San Francisco that works to research, write, enact, and defend laws, policies, and programs proven to reduce gun violence and save lives. Giffords’ political action committee, Giffords PAC, works to support candidates and elected officials who promote policies to reduce gun violence and oppose the influence of the gun industry and the NRA, including by making political contributions and independent expenditures.

³ Matt Rosendale for Montana, Statement of Organization, FEC Form 1, at 2 (amended July 13, 2018), <http://docquery.fec.gov/pdf/236/201807180200564236/201807180200564236.pdf>.

9. The NRA-ILA is a tax-exempt corporation organized under Section 501(c)(4) of the Internal Revenue Code that describes itself as “the lobbying arm of the NRA.”⁴ It reports independent expenditures to the Commission.⁵ Chris Cox is the NRA-ILA’s executive director.⁶
10. At a July 2018 event in Washington, D.C., Rosendale was asked whether “outside groups [have] started spending on your behalf,” and he replied:
- Yes. So, the uh, the Club for Growth has already started. Umm, there’s another group that has already started. I can’t even remember the name of it now. They just started recently. Outside groups have already started to come in. I fully expect that the U.S. Chamber is gonna come in, and I fully expect the NRA is gonna come in. I think both of them are coming in, probably right here in August, sometime.⁷
11. The questioner stated, “This is a big race for the NRA,” and Rosendale replied:
- Yes. The, the uh, Supreme Court confirmations are big—that’s what sent the NRA over the line. Because in ‘12, with Denny [Rehberg, a Montana U.S. Senate candidate] they stayed out. Chris Cox told me—he was like ‘well, we’re gonna be in this race.’”⁸
12. Beginning on September 6, 2018, the NRA-ILA disseminated a total of \$404,496 in independent expenditures opposing Rosendale’s opponent, Jon Tester, according to its reports filed with the Commission.⁹

⁴ *About*, NATIONAL RIFLE ASSOCIATION INSTITUTE FOR LEGISLATIVE ACTION, <https://www.nraila.org/about/> (last visited Sept. 13, 2018).

⁵ National Rifle Association Institute for Legislative Action, Financial Summary, 2015-16, <https://www.fec.gov/data/committee/C90013301/?cycle=2016>.

⁶ *Chris W. Cox*, NATIONAL RIFLE ASSOCIATION INSTITUTE FOR LEGISLATIVE ACTION, <https://www.nraila.org/about/chris-cox-nra/> (last visited Sept. 13, 2018).

⁷ *Matt Rosendale on NRA support*, SOUNDCLOUD (uploaded Sept. 13, 2018), <https://soundcloud.com/user-379527848/matt-rosendale-on-nra-support>; see also Lachlan Markay, *Exclusive: Audio Reveals Potentially Illegal Coordination Between NRA and Montana Senate Hopeful Matt Rosendale*, DAILY BEAST (Sept. 13, 2018), <https://www.thedailybeast.com/exclusive-audio-reveals-potentially-illegal-coordination-between-nra-and-montana-senate-hopeful-matt-rosendale?ref=wrap>.

⁸ *Id.*

⁹ National Rifle Association Institute for Legislative Action, Report of Independent Expenditures Made and Contributions Received, FEC Form 5, at 2 (filed Sept. 7, 2018), <http://docquery.fec.gov/pdf/388/201809079121597388/201809079121597388.pdf>.

13. The advertisement, which began running in the midst of confirmation hearings for U.S. Supreme Court nominee Brett Kavanaugh, criticized Tester for his votes on Supreme Court nominees.¹⁰

Facts Relevant to OnMessage and Starboard Strategic

14. The NRA-ILA's independent expenditures disseminated on September 6, 2018 consisted of a \$383,196 disbursement to Starboard Strategic for "Television advertising," and \$21,300 to RedPrint Strategy LLC for "Production costs for television advertisement."¹¹
15. Matt Rosendale for Montana has reported \$445,367 in disbursements to OnMessage for "media" and "political strategy consulting," as of September 13, 2018, according to its reports filed with the Commission.¹²
16. OnMessage is a political consulting firm that has performed contracting work for dozens of campaigns and political committees. The *Washington Post* recently called OnMessage "a powerhouse GOP consulting firm."¹³

¹⁰ NRA, *Defend Freedom. Defeat Two-Faced Tester*, YOUTUBE (Sep. 6, 2018), https://www.youtube.com/watch?v=AuqwhCm_MZs ("In all three votes on Supreme Court Justices, Tester sided with Chuck Schumer and the anti-gun liberal left. AGAINST your right to self-defense. What Jon Tester says in Montana, isn't what he does in Washington, D.C..."); see also *NRA Announces Six-Figure Ad Campaign Against Sen. Tester*, NRA-ILA (Sept. 6, 2018), <https://www.nraila.org/articles/20180906/nra-announces-six-figure-ad-campaign-against-sen-tester>.

¹¹ National Rifle Association Institute for Legislative Action, Report of Independent Expenditures Made and Contributions Received, FEC Form 5, at 2 (filed Sept. 7, 2018), <http://docquery.fec.gov/pdf/388/201809079121597388/201809079121597388.pdf#navpanes=0>.

¹² Matt Rosendale for Montana, Disbursements to OnMessage, 2017-2018, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00548289&recipient_name=onmessage&min_date=01%2F01%2F2017&max_date=09%2F13%2F2018 (last visited Sept. 13, 2018).

¹³ James Hohmann, *The Daily 202: Trump voters stay loyal because they feel disrespected*, WASH. POST (May 14, 2018), https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2018/05/14/daily-202-trump-voters-stay-loyal-because-they-feel-disrespected/5af8aac530fb0425887994cc/?utm_term=.8cfa8c40d816.

17. OnMessage was registered in Virginia on April 13, 2005,¹⁴ and was incorporated in Maryland on April 20, 2006.¹⁵ Its website provides detailed information about its staff, past clients, and portfolio of work.¹⁶
18. In the 2012 election cycle, the NRA-ILA reported paying OnMessage over \$3.5 million for independent expenditures described as “Advertising Expenses.”¹⁷
19. On March 22, 2013, Starboard was incorporated in Virginia by OnMessage officials.¹⁸ The incorporation certificate lists five directors: Curtis Anderson, Wesley Anderson, Bradley Todd, Graham Shafer, and Timothy Teepell.¹⁹ At the time, three of those directors—Anderson, Anderson, and Todd—were also directors at OnMessage.²⁰ By the following year, 2014, Shafer and Teepell had been added to OnMessage’s board, as was Orrin “Guy” Harrison;²¹ Harrison, in turn, was added to Starboard’s board the year after, in 2015.²² Both Starboard’s and OnMessage’s boards still consist of these same six directors (Anderson,

¹⁴ *OnMessage, Inc.*, Commonwealth of Virginia State Corporation Commission, <https://sccfile.scc.virginia.gov/Business/0636043> (last visited July 16, 2018).

¹⁵ *OnMessage, Inc.: General Information*, Maryland Business Express, <https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/F11249893> (last visited July 16, 2018).

¹⁶ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited July 16, 2018).

¹⁷ National Rifle Association Institute for Legislative Action, Independent Expenditures to On Message, Inc. (regularly scheduled reports), 2011-12, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C70000716&committee_id=C90013301&cycle=2012&is_notice=true&payee_name=message&min_date=01%2F01%2F2011&max_date=12%2F31%2F2012. The address given for OnMessage, Inc. is 815 Slaters Lane in Alexandria, Virginia, which was the firm’s address at that time. See archived version of OnMessage.com (April 5, 2012), <https://web.archive.org/web/20120405025059/https://onmessageinc.com> (listing OnMessage’s address at 815 Slaters Lane). This is also the address on OnMessage’s corporate registration. See *OnMessage, Inc.*, Commonwealth of Virginia State Corporation Commission, *supra* note 14.

¹⁸ *Articles of Incorporation: Starboard Strategic, Inc.*, Commonwealth of Virginia State Corporation Commission (Mar. 22, 2013) (attached as Exhibit A).

¹⁹ *Id.*

²⁰ See *2013 Annual Report: OnMessage, Inc.* Commonwealth of Virginia State Corporation Commission (Mar. 9, 2013) (attached as Exhibit B).

²¹ See *2014 Annual Report: OnMessage, Inc.* Commonwealth of Virginia State Corporation Commission (Jun. 2, 2014) (attached as Exhibit C).

²² See *2015 Annual Report: Starboard Strategic, Inc.* Commonwealth of Virginia State Corporation Commission (Feb. 24, 2015) (attached as Exhibit D).

Anderson, Todd, Shafer, Teepell, and Harrison).²³ Starboard's registered agent, Craig M. Palik, is also the registered agent for OnMessage Holdings, Inc.²⁴

20. According to a recent *POLITICO* article, “[i]nternal emails indicate executives toggled between roles” at both Starboard and OnMessage, and that “none of Starboard’s partners has publicly affiliated himself with the company; four of them have LinkedIn pages, for instance, and their profiles only mention OnMessage.”²⁵
21. In the 2014 election cycle, the NRA-ILA and the NRA’s PAC, the National Rifle Association Political Victory Fund (“NRA-PVF”) paid Starboard approximately \$20.5 million combined: the NRA-ILA paid Starboard \$6.6 million for independent expenditures,²⁶ and the NRA-PVF paid Starboard \$12.54 million for independent expenditures²⁷ and \$1.38 million in other disbursements.²⁸ Neither the NRA-ILA nor NRA-PVF reported any payments to OnMessage during the 2014 cycle.²⁹

²³ See *Starboard Strategic, Inc.*, 2018 Annual Report (Feb. 24, 2018) (attached as Exhibit E); *OnMessage, Inc.*, 2018 Annual Report (Feb. 27, 2018) (attached as Exhibit F).

²⁴ See Exhibit A; see also *OnMessage Holdings, Inc.*, Commonwealth of Virginia State Corporation Commission, <https://sccfile.scc.virginia.gov/Business/0770961> (last visited June 15, 2018).

²⁵ Mike Spies, *The Mystery Firm That Became the NRA’s Top Election Consultant*, *POLITICO* (July 13, 2018), <https://www.politico.com/magazine/story/2018/07/13/mystery-firm-nra-consultant-219004>.

²⁶ National Rifle Association Institute for Legislative Action, Independent Expenditures to Starboard Strategic, Inc. (regularly scheduled reports), 2013-14, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C70000716&committee_id=C90013301&is_notice=false&payee_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

²⁷ National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. (regularly scheduled reports), 2013-14, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&is_notice=false&payee_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

²⁸ National Rifle Association of America Political Victory Fund, Disbursements to Starboard Strategic, Inc., 2013-14, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2014&data_type=processed&committee_id=C00053553&recipient_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

²⁹ The NRA-PVF and NRA-ILA may have continued using OnMessage for some of its work aside from federal independent expenditures. For example, OnMessage was a finalist for a Reed Award for its production of the NRA-ILA’s 2014 ad, “Insult.” *2015 Reed Award Finalists*, Campaigns & Elections, <https://www.campaignsandelections.com/campaign-insider/2015-reed-award-finalists> (last visited June 15, 2018). The ad attacked New York City mayor Michael Bloomberg and ran nationally on cable television, as well as on broadcast stations in Colorado. Fredreka Schouten, *Exclusive: NRA launches anti-Bloomberg ad campaign*, USA TODAY (Aug. 19, 2014), <https://www.usatoday.com/story/news/politics/2014/08/19/nra-ad-campaign-targets->

22. The NRA-ILA reported paying Starboard for “Advertising Expenses” in the 2014 cycle. The address reported for each Starboard disbursement was 817 Slaters Lane in Alexandria, Virginia,³⁰ the same address as OnMessage’s Virginia office.³¹
23. The NRA-PVF reported paying Starboard for expenses related to television, radio, and digital advertising in the 2014 cycle. The address reported for each Starboard disbursement was 705 Melvin Avenue #105 in Annapolis, Maryland,³² the same address and suite number as OnMessage’s Maryland office.³³
24. The NRA’s 2014 “focus” included “three major Senate races,” and was aimed at “boosting Republican Senate challengers in Arkansas, Colorado and North Carolina,” according to published reports.³⁴ Reports filed with the Commission show that the NRA-PVF supported candidates in these U.S. Senate races—Tom Cotton, Cory Gardner, and Thom Tillis—with independent expenditures contracted through Starboard. The NRA-ILA also supported two of these candidates—Gardner and Tillis—with independent expenditures contracted through Starboard. At or around the same time, these same three candidates were contracting with OnMessage for advertising and media consulting.³⁵

a) North Carolina U.S. Senate Candidate Thom Tillis:

[michael-bloomberg/14296467/](http://www.michael-bloomberg.com/14296467/). However, OnMessage also took credit for federal independent expenditures for which the NRA-PVF and NRA-ILA had paid Starboard. *See infra* ¶¶ 30-31.

³⁰ *See, e.g.*, National Rifle Association Institute for Legislative Action, Itemized Independent Expenditures, January 31 Year-End Report, <http://docquery.fec.gov/cgi-bin/fecimg/?15950524359>.

³¹ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited June 15, 2018).

³² *See, e.g.*, National Rifle Association of America Political Victory Fund, Itemized Independent Expenditures, Monthly Report for September 2014, 758, <http://docquery.fec.gov/cgi-bin/fecimg/?14952928564>.

³³ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited June 15, 2018).

³⁴ Kevin Bohn, *NRA focuses on three major Senate races*, CNN (Sept. 17, 2014), <https://www.cnn.com/2014/09/17/politics/nra-senate-races/index.html>.

³⁵ *Our Clients*, ONMESSAGE, INC., <https://onmessageinc.com/our-clients/> (last visited June 15, 2018). In addition to these three senatorial candidates, Florida gubernatorial candidate Rick Scott also hired OnMessage in 2014 and there is evidence that Starboard was simultaneously producing advertisements supporting Scott on behalf of the NRA (although Florida law does not require groups making independent expenditures to disclose who they are supporting). *See Spies, supra* note 25.

- i. The NRA-PVF paid \$2.3 million to Starboard for independent expenditures supporting Tillis or opposing his opponent,³⁶ and the NRA-ILA paid Starboard \$812,658 for Tillis independent expenditures.³⁷
- ii. Tillis's authorized campaign committee, the Thom Tillis Committee, reported paying OnMessage \$6.6 million during the same cycle for "advertising" and "media consulting."³⁸
- iii. The Thom Tillis Committee reported disbursements to OnMessage at the address 705 Melvin Ave. #105 in Annapolis, Maryland.³⁹ The NRA-PVF also reported disbursements to Starboard at this address in its reports in the 2014 cycle, including for its independent expenditures supporting Tillis.⁴⁰
- iv. OnMessage Founding Partner and Starboard Director Bradley Todd was described in news reports as a Tillis campaign "media strategist."⁴¹

b) Arkansas U.S. Senate Candidate Tom Cotton:

³⁶ National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. in support of Thom Tillis or opposing Kay Hagan (regularly scheduled reports), 2013-14, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&is_notice=false&payee_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

³⁷ National Rifle Association of America Institute for Legislative Action, Independent Expenditures to Starboard Strategic, Inc. in support of Thom Tillis or opposing Kay Hagan (regularly scheduled reports), 2013-14, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90013301&is_notice=false&candidate_id=S4NC00162&candidate_id=S8NC00239&payee_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

³⁸ Thom Tillis Committee, Disbursements to OnMessage, Inc., 2013-14, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2014&data_type=processed&committee_id=C00545772&recipient_name=onmessage&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

³⁹ See, e.g., Thom Tillis Committee, Report of Receipts and Disbursements, April 15 Quarterly Report, 452, (Apr. 15, 2014) <http://docquery.fec.gov/pdf/893/14020293893/14020293893.pdf#navpanes=0>.

⁴⁰ See sources cited ¶23.

⁴¹ David Catanese, *It's Tillis v. Hagan in North Carolina*, U.S. NEWS & WORLD REPORT (May 6, 2014), <https://www.usnews.com/news/articles/2014/05/06/thom-tillis-advances-faces-kay-hagan-in-north-carolina-senate-race>.

- i. The NRA-PVF paid \$1.6 million to Starboard for independent expenditures supporting Cotton or opposing his opponent.⁴² The NRA-ILA did not pay Starboard for any independent expenditures in this race.
 - ii. Cotton’s authorized campaign committee, Cotton for Senate, reported paying OnMessage \$5.3 million during the same cycle for “Placed Media & Production,” “Polling Consulting,” and related services.⁴³
 - iii. Cotton for Senate reported disbursements to OnMessage at its Annapolis, Maryland address.⁴⁴ The NRA-PVF also reported disbursements to Starboard at this address on its reports in the 2014 cycle, including for its independent expenditures supporting Cotton.⁴⁵
 - iv. OnMessage’s/Starboard’s Todd was described in news reports as an “ad consultant” for Cotton’s campaign.⁴⁶
- c) Colorado U.S. Senate Candidate Cory Gardner:

⁴² National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. in support of Tom Cotton or opposing Mark Pryor (regularly scheduled reports), 2013-14, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&is_notice=false&candidate_id=S0AR00028&cand_idate_id=S4AR00103&payee_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

⁴³ Cotton for Senate, Disbursements to OnMessage, Inc., 2013-14, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2014&data_type=processed&committee_id=C00499988&recipient_name=onmessage&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

⁴⁴ See, e.g., Cotton for Senate, October 2014 Quarterly Report, FEC Form 3, at 1947, (Oct. 15, 2014) <http://docquery.fec.gov/cgi-bin/fecimg/?14020824088>.

⁴⁵ See sources cited ¶23.

⁴⁶ Andrea Drusch, *Inside Ad-Makers’ Outrageous Arkansas Senate Strategy*, THE ATLANTIC (Sept. 23, 2014), <https://www.theatlantic.com/politics/archive/2014/09/inside-ad-makers-outrageous-arkansas-senate-strategy/435168/>.

- i. The NRA-PVF paid \$2.6 million to Starboard for independent expenditures supporting Gardner or opposing his opponent.⁴⁷ The NRA-ILA paid \$529,186 to Starboard for Gardner independent expenditures.⁴⁸
- ii. Gardner’s authorized campaign committee, Cory Gardner for Senate, reported paying OnMessage \$8.0 million during the same cycle for “media production,” “web services,” and similar services.⁴⁹
- iii. Cory Gardner for Senate reported disbursements to OnMessage at its Alexandria, Virginia offices.⁵⁰ The NRA-ILA also reported disbursements to Starboard at this address on its reports in the 2014 cycle, including for its independent expenditures supporting Gardner.⁵¹
- iv. OnMessage’s/Starboard’s Todd was described in news reports as a “consultant” for the Gardner campaign for OnMessage.⁵²

⁴⁷ National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. in support of Cory Gardner or opposing Mark Udall (regularly scheduled reports), 2013-14, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&is_notice=false&candidate_id=S4CO00395&cand_idate_id=S8NM00184&payee_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

⁴⁸ National Rifle Association of America Institute for Legislative Action, Independent Expenditures to Starboard Strategic, Inc. in support of Cory Gardner or opposing Mark Udall (regularly scheduled reports), 2013-14, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90013301&is_notice=false&candidate_id=S4CO00395&cand_idate_id=S8CO00172&payee_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

⁴⁹ Cory Gardner for Senate, Disbursements to OnMessage, Inc., 2013-14, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00492454&recipient_name=onmessage&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁵⁰ See, e.g., Cory Gardner for Senate, 2014 Pre-General Report, FEC Form 3 at 556, (Oct. 23, 2014) <http://docquery.fec.gov/cgi-bin/fecimg/?14021141823>. The committee reported paying OnMessage at 815 Slaters Lane, the address on its corporate documents, see sources cited ¶19, rather than 817 Slaters Lane, the address listed on its website, onmessageinc.com.

⁵¹ See sources cited ¶22.

⁵² Alexis Levinson, *Democrats Try to Turn Cory Gardner into Todd Akin (Video)*, ROLL CALL (July 15, 2014), <https://www.rollcall.com/news/hobby-lobby-mark-udall-cory-gardner-2014>; Emily Schultheis, *Republicans Will Need to Sweep to Hold Onto Senate Majority in 2016*, THE ATLANTIC (Sept. 16, 2014), <https://www.theatlantic.com/politics/archive/2014/09/republicans-will-need-to-sweep-to-hold-onto-senate-majority-in-2016/457608/>.

25. In the 2016 cycle, the NRA-PVF and the NRA-ILA together paid Starboard a total of approximately \$40.7 million: the NRA-PVF paid Starboard \$17.0 million for independent expenditures⁵³ and \$305,483 in other disbursements,⁵⁴ and the NRA-ILA paid Starboard \$23.4 million for independent expenditures.⁵⁵ Together, the NRA-PVF and the NRA-ILA spent about \$55 million on independent expenditures for the 2016 federal election;⁵⁶ the payments to Starboard represented a majority of that spending.
26. The NRA-PVF reported paying Starboard for expenses related to television, radio, and digital advertising in the 2016 cycle. As was the case in the previous cycle, the address reported on each NRA-PVF disbursement to Starboard⁵⁷ was the same address and suite number as OnMessage's Maryland office.⁵⁸
27. The NRA-ILA reported paying Starboard for "Advertising Expenses" in the 2016 cycle. As was the case in the previous cycle, the address reported on each NRA-ILA disbursement to Starboard⁵⁹ was the same address as OnMessage's Virginia office.⁶⁰

⁵³ National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. (regularly scheduled reports), 2015-16, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&is_notice=false&payee_name=starboard&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁵⁴ National Rifle Association of America Political Victory Fund, Disbursements to Starboard Strategic, Inc., 2015-16, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00053553&recipient_name=onmessage&recipient_name=starboard&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁵⁵ National Rifle Association Institute for Legislative Action, Independent Expenditures to Starboard Strategic, Inc. (regularly scheduled reports), 2015-16, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C70000716&committee_id=C90013301&is_notice=false&payee_name=starboard&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁵⁶ National Rifle Association of America Political Victory Fund, Financial Summary, 2015-16, <https://www.fec.gov/data/committee/C00053553/?cycle=2016>.

⁵⁷ See, e.g., National Rifle Association of America Political Victory Fund, Itemized Independent Expenditures, 30-Day Post-Election Report, 2016 General Election, 520, <http://docquery.fec.gov/cgi-bin/fecimg/?201705049053504739>.

⁵⁸ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited June 15, 2018).

⁵⁹ See, e.g., National Rifle Association Institute for Legislative Action, Itemized Independent Expenditures, January 31 Year-End Report, 2016, 90, <http://docquery.fec.gov/cgi-bin/fecimg/?201701309041564790>.

⁶⁰ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited June 15, 2018).

28. The NRA-PVF and the NRA-ILA paid Starboard for independent expenditures supporting Wisconsin U.S. Senate candidate Ron Johnson, and Johnson’s authorized campaign committee also contracted with OnMessage for media expenditures.

a) Wisconsin U.S. Senate candidate Ron Johnson:

- i. In the 2016 election cycle, the NRA-PVF paid \$315,066 to Starboard for independent expenditures supporting Johnson or opposing his opponent.⁶¹ The NRA-ILA paid \$48,537 to Starboard for Johnson independent expenditures.⁶²
- ii. Johnson’s authorized campaign committee, Ron Johnson for Senate, Inc., reported paying OnMessage \$3.8 million during the same cycle for “placed media,” “strategy consulting,” and other services.⁶³
- iii. Ron Johnson for Senate Inc. reported disbursements to OnMessage at its Annapolis, Maryland offices.⁶⁴ The NRA-PVF also reported disbursements to Starboard at this address on its reports in the 2016 cycle, including for its independent expenditures supporting Johnson.⁶⁵

⁶¹ National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. in support of Ron Johnson or opposing Russ Feingold (regularly scheduled reports), 2015-16, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&is_notice=false&candidate_id=S0WI00197&cand_id=S8WI00026&payee_name=starboard&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁶² National Rifle Association of America Institute for Legislative Action, Independent Expenditures to Starboard Strategic, Inc. in support of Ron Johnson or opposing Russ Feingold (regularly scheduled reports), 2015-16, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90013301&is_notice=false&candidate_id=S0WI00197&cand_id=S8WI00026&payee_name=starboard&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁶³ Ron Johnson for Senate Inc., Disbursements to OnMessage Inc., 2015-16, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00482984&recipient_name=onmessage&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁶⁴ See, e.g., Ron Johnson for Senate, Inc., October 2015 Quarterly Report, FEC Form 3 at 2663 (amended) (Jan. 13, 2017) <http://docquery.fec.gov/cgi-bin/fecimg/?201701190200016744>.

⁶⁵ See sources cited ¶26.

iv. Bradley Todd was a consultant for Johnson's campaign who worked on "media and polling" through August 2016.⁶⁶

29. Neither the NRA-ILA nor NRA-PVF reported any disbursements to OnMessage in federal races for the 2016 election cycle.⁶⁷ However, despite this, OnMessage was nominated for, and won, industry awards for NRA-ILA and NRA-PVF ads that had been contracted through Starboard.
30. Specifically, on January 20, 2017, OnMessage Founding Partner Bradley Todd announced that OnMessage was a finalist for Reed Awards for two ads paid for by the NRA-ILA and NRA-PVF opposing presidential candidate Hillary Clinton titled "Nightstand" and "Jet."⁶⁸ Todd declared that "OnMessage Inc was proud to partner with the NRA and produce their ads in this election."⁶⁹ Both "Nightstand"⁷⁰ and "Jet"⁷¹ are prominently featured on OnMessage's website as "featured" examples of "our work." On February 20, 2017, Todd

⁶⁶ See, e.g., WisPolitics, *Johnson Downplays Consultant's Departure* (Aug. 18, 2016), <http://elections.wispolitics.com/2016/08/jonson-downplays-consultants-departure.html>; Bill Glauber, *Strategic Change Pays Off for Johnson*, MILWAUKEE JOURNAL SENTINEL (Nov. 9, 2016), <https://www.jsonline.com/story/news/politics/elections/2016/11/09/johnson-lays-out-100-day-goals-gop/93538466/>.

⁶⁷ However, the NRA may have continued to contract with OnMessage to produce advertisements for non-federal races. In 2016, OnMessage also won a Reed Award for its 2015 ad produced for the NRA-ILA, "Tradition," which supported a Texas ballot initiative. *2016 Reed Award Winners*, Campaigns & Elections (Feb. 19, 2016), <https://www.campaignsandelections.com/campaign-insider/2016-reed-award-winners> (last visited June 15, 2018).

⁶⁸ Brad Todd, *Two NRA Presidential Ads in Running for Top Reed Award*, ONMESSAGE, INC. (Jan. 20, 2017), <https://onmessageinc.com/blog/012017/> (last visited July 16, 2018). The NRA-PVF paid Starboard \$3,344,906 for independent expenditures opposing Clinton in the 2016 cycle. National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. opposing candidate Hillary Clinton, <https://bit.ly/2md0ynG>. The NRA-ILA paid Starboard \$341,724 for independent expenditures opposing Clinton in the 2016 cycle. National Rifle Association of America Institute for Legislative Action, Independent Expenditures to Starboard Strategic, Inc. opposing candidate Hillary Clinton, <https://bit.ly/2uotuNg>. Neither the NRA-PVF nor the NRA-ILA reported any disbursements to OnMessage in the 2016 cycle.

⁶⁹ *Id.*

⁷⁰ *Our Work: Nightstand*, ONMESSAGE, INC., <https://onmessageinc.com/our-work/nightstand/> (last visited July 16, 2018). The disclaimer at the end of "Nightstand" states it was paid for by the NRA-ILA.

⁷¹ *Our Work: Jet*, ONMESSAGE, INC., <https://onmessageinc.com/our-work/jet/> (last visited July 16, 2018). The disclaimer at the end of "Jet" states it was paid for by the NRA-ILA; however, a version of the ad released on August 9, 2016 stated it was paid for by NRA-PVF. See Eliza Collins, *NRA launches \$3 million anti-Clinton ad buy*, USA TODAY (Aug. 9, 2016), <https://www.usatoday.com/story/news/politics/onpolitics/2016/08/09/nra-ad-hillary-clinton-trump/88489624/>.

announced on OnMessage’s blog that “Nightstand” had won the Reed Award for Best Ad for an Independent Expenditure Campaign (Presidential).⁷² In the blog, Todd credited OnMessage for having “brought home” this award.⁷³

31. On March 30, 2017, OnMessage Partner Orrin “Guy” Harrison posted on the company’s blog that OnMessage had won five awards at the American Association of Political Consultants Awards Conference, noting “[w]e’re especially proud that our work on the National Rifle Association’s efforts to elect President Trump received the highest honor in both TV and digital categories.”⁷⁴ The blog noted that OnMessage won Best Presidential Independent Expenditure Digital Campaign for its work on the NRA’s independent expenditures campaign “Donald Trump for President.”⁷⁵ It won Best Ad for Presidential Independent Expenditure Campaign for producing the NRA-ILA’s ad “Nightstand.”⁷⁶ And it won a Bronze award for Best Ad for U.S. Senate Independent Expenditure for the NRA-ILA’s ad “The Chair,” attacking Indiana U.S. Senate candidate Evan Bayh.⁷⁷

⁷² Brad Todd, *OnMessage Wins Four Reed Awards*, ONMESSAGE, INC. (Feb. 20, 2017), <https://onmessageinc.com/blog/02202017/> (last visited July 16, 2018).

⁷³ *Id.*

⁷⁴ Guy Harrison, *OnMessage Wins Five Pollie Awards for TV and Digital Work*, ONMESSAGE, INC. (Mar. 20, 2017), <https://onmessageinc.com/blog/03202017/> (last visited July 16, 2018).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* “The Chair” was paid for by the NRA-ILA and was released in late October. Theodore Schleifer, *NRA calls for check on Hillary Clinton by defeating Evan Bayh*, CNN (Oct. 25, 2016), <https://www.cnn.com/2016/10/25/politics/nra-checks-and-balances-evan-bayh-hillary-clinton/index.html>. In October, the NRA-ILA reported paying \$895,533 to Starboard for television advertising costs related to independent expenditures opposing Hillary Clinton. National Rifle Association Institute for Legislative Action, *Itemized Independent Expenditures, January 31 Year-End Report*, 77, 85, <http://docquery.fec.gov/pdf/701/201701309041564701/201701309041564701.pdf#navpanes=0>. The NRA-ILA did not report any payments to OnMessage.

32. So far in the 2018 election cycle, the NRA-PVF has reported \$2.4 million in disbursements to Starboard.⁷⁸ The NRA-PVF has also reported paying Starboard \$1.1 million for independent expenditures, all in the Alabama, Montana, and Georgia special elections.⁷⁹
33. Starboard’s website (starboardstrategicinc.com) currently includes a generic email address (info@starboardstrategicinc.com) and provides neither a list of staff nor a portfolio of work.⁸⁰ Several of the site’s links are broken. According to *POLITICO*, OnMessage director Wesley Anderson registered Starboard’s website, and the mailing address for the “admin contact” and the “tech contact” on Starboard’s website registration begins “OnMessage Inc. ATTN STARBOARDSTRATEGIC.COM.”⁸¹
34. There are many similarities in the language used on Starboard’s and OnMessage’s websites. For example, Starboard’s “Creative” page reads, “**In today’s fragmented media age, advertisers must entertain or lose.** Superior marketing carries the day and **we strive to make our ads watchable** and memorable. It’s a tough battle, but **we’ve got a team with the talent and the determination** to win the fight.”⁸² OnMessage’s webpage describing its creative services reads “**In today’s fragmented media age, advertisers must entertain or lose.** The only thing voters hate more than politics is political advertising and **we strive to**

⁷⁸ National Rifle Association of America Political Victory Fund, Disbursements to Starboard Strategic, Inc., 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00053553&recipient_name=onmessage&recipient_name=starboard&min_date=01%2F01%2F2017&max_date=05%2F10%2F2018 (last visited Sept. 13, 2018).

⁷⁹ National Rifle Association of America Political Victory Fund, Independent Expenditures to Starboard Strategic, Inc. (regularly scheduled reports), 2017-18, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&is_notice=true&payee_name=onmessage&payee_name=starboard&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018 (last visited Sept. 13, 2018).

⁸⁰ STARBOARD STRATEGIC, INC., <https://starboardstrategicinc.com/> (last visited Sept. 13, 2018).

⁸¹ Spies, *supra* note 25; see also Starboard Strategic Inc. website registration certificate, available at <https://www.documentcloud.org/documents/4519937-Starboardregistration.html#document/p1/a437455> (last visited July 16, 2018).

⁸² *Creative*, STARBOARD STRATEGIC, INC., <https://starboardstrategicinc.com/creative/> (last visited Sept. 13, 2018) (emphasis added).

make our ads watchable to even the most jaded voter. It's a steep climb up a rugged path, and **we've got a team with the talent and the determination** to blaze any trail."⁸³

35. On July 13, 2018, *POLITICO* reported:

Despite Starboard's impressive run in 2014, there appeared to be no attempt to market the new company to other prospective clients. In fact, according to FEC reports, other than a small sum it received from the National Republican Congressional Committee—business worth less than \$20,000—it has never had another federal election client besides the NRA. Moreover, none of Starboard's partners has publicly affiliated himself with the company; four of them have LinkedIn pages, for instance, and their profiles only mention OnMessage. One of them is Todd, who used the email address brad@starboardstrategicinc.com to offer the former OnMessage employee a job.

There is also no indication that Starboard has a distinct team of employees working within the offices of OnMessage. As with the partners, there are no staff members who publicly list themselves as working for Starboard, though a second email shows acknowledgment of double duty. Vicki Tomchik is OnMessage's longtime chief financial officer; the job is the only one she lists on her LinkedIn page. But in 2014, when the former OnMessage employee received an email from Tomchik, there were two references below her signature. One was OnMessage, and the other was Starboard. (Tomchik did not respond to a request for comment.)⁸⁴

36. *POLITICO* also reported that:

A former OnMessage employee who worked out of the Alexandria location in 2014 says Starboard had no separate dedicated presence there. "Beyond some Starboard-labeled thumb-drives lying around, I don't recall anything within our office that was called or associated with Starboard," said the former employee who requested anonymity to avoid retribution.⁸⁵

37. Finally, *POLITICO* reported that Starboard's/OnMessage's Todd is close friends with Chris Cox, the executive director of the NRA-ILA (and chairman of the NRA-PVF).⁸⁶ NRA

⁸³ *Our Story*, ONMESSAGE, INC., <https://onmessageinc.com/our-story/> (last visited Sept. 13, 2018) (emphasis added).

⁸⁴ Spies, *supra* note 25.

⁸⁵ *Id.*

⁸⁶ *Id.*

employees reported seeing Todd around their office, and one employee noted “[t]here was consulting with [Todd] over high-end issues that were deemed controversial.”⁸⁷

SUMMARY OF THE LAW

38. Federal law limits to \$2,700 the amount of a contribution that a senatorial candidate or her authorized campaign committee may accept from an individual donor. 52 U.S.C. § 30116(a)(1). FECA also prohibits a corporation or labor union from making a contribution to a federal candidate. 52 U.S.C. § 30118(a).
39. Generally, contributions from a person to political committees other than candidate and party committees may not exceed, in the aggregate, \$5,000 per calendar year, 52 U.S.C. § 30116(a)(1)(C), and candidates cannot accept contributions from a non-multicandidate political committee in excess of \$2,700, *id.* § 30116(a)(1).
40. A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. §§ 100.52(a), 114.1(a)(1); for purposes of the corporate contribution ban, a contribution “includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services or anything of value . . . to any candidate, [or] campaign committee . . . in connection with any election.” 52 U.S.C. § 30118. “Anything of value” includes all in-kind contributions. 11 C.F.R. § 100.52(d)(1). An in-kind contribution includes the provision without charge (or at less than the usual and normal charge) of any goods or services, including, but not limited to, “facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.” *Id.*

⁸⁷ *Id.*

41. An “expenditure” includes “any purchase, payment . . . or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A).
42. Any expenditure made in coordination with a candidate—i.e., “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents”—is an in-kind contribution to the candidate, 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20, and must be reported as a contribution to that candidate by the person that made the payment, 11 C.F.R. § 109.21(b).⁸⁸
43. In enacting the Bipartisan Campaign Reform Act, Congress mandated that the Commission promulgate “new regulations on coordinated communications” to address, among other things, “payments for the use of a common vendor” and “payments for communications made by a person after substantial discussion about the communication with a candidate,” and that such regulations “shall not require agreement or formal collaboration to establish coordination.”⁸⁹ Those “coordinated communications” regulations are at 11 C.F.R. § 109.21.
44. Under the regulations, a communication is coordinated with a candidate and/or that candidate’s authorized committee, and is thus a contribution to that candidate’s committee, when the communication (1) is paid for, in whole or in part, by a person other than the candidate or committee; (2) satisfies at least one of the “content standards” in the regulation; and (3) satisfies at least one of the “conduct standards” in the regulation. *Id.* § 109.21(a).

⁸⁸ Contributions in the form of “coordinated communications” resulting from conduct described in 11 C.F.R. § 109.21(d)(4) (“common vendor”) need not be reported as received by the campaign committee with which the communication is “coordinated,” absent other conduct. *Id.* § 109.21(b)(2).

⁸⁹ See Pub. L. No. 107-155, sec. 214(c)(2), 116 Stat. 81, 94-95 (2002); see also note to 52 U.S.C. § 30116(a)(7).

45. The second prong, the “content standard,” is met if the communication “expressly advocates . . . the election or defeat of a clearly identified candidate for Federal office.” *Id.* § 109.21(c)(3).
46. The “conduct standard” of the regulation is satisfied if a communication “is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate . . . assents to the suggestion.” *Id.* § 109.21(d)(1)(ii).
47. The candidate’s assent satisfies the conduct standard “whether or not there is agreement or formal collaboration.” 11 C.F.R. § 109.21(d); *see also* 11 C.F.R. § 109.21(e) (“Agreement or formal collaboration between the [payor] and the [candidate] is not required for a communication to be a coordinated communication.”); BCRA § 214(c), 116 Stat. 95 (“[FEC] regulations shall not require agreement or formal collaboration to establish coordination.”). As the Commission has noted, section 109.21(d)(1)(ii) “is intended to prevent circumvention of the statutory ‘request or suggestion’ test . . . by, for example, the expedient of implicit understandings without a formal request or suggestion.” *Coordinated and Independent Expenditures*, 68 Fed. Reg. at 432; *McConnell v. FEC*, 540 U.S. 93, 222 (2003) (“[FECA] permits a finding of coordination or cooperation notwithstanding the absence of a pre-existing agreement.”).
48. Commission regulations take into account that “the assent of a candidate may take many different forms.” *Coordinated and Independent Expenditures*, 68 Fed. Reg. at 432. In Advisory Opinion 2016-12 (Citizen Super PAC), the Commission considered a scenario in which an outside spender (a “super PAC”) asked whether its activity would be coordinated if the super PAC unilaterally informed a candidate about its plans to spend funds to assist the candidate and the candidate never responded but instead independently asked his supporters

to contribute to the super PAC. *See* Advisory Opinion Request 2016-12 at 7 (Citizen Super PAC).⁹⁰ The Commission ultimately deadlocked on the request on other grounds, but all six Commissioners agreed that the proposed conduct would meet the conduct prong of the coordinated communication test under section 109.21(d)(1)(ii). Specifically, three Commissioners voted to approve an advisory opinion concluding that if the candidate took actions that “manifest[ed] his assent” to the planned spending, even without conveying that assent to the spender, the spending would be coordinated “under the plain text of 11 C.F.R. § 109.21(d)(1)(ii).” Advisory Opinion Request 2016-12 (Citizen Super PAC), Draft A at 5 (Oct. 20, 2016).⁹¹ The other three Commissioners similarly voted to approve an advisory opinion concluding that “a payor’s action taken after making such a private suggestion to a candidate and receiving the candidate’s assent is coordinated.” Advisory Opinion Request 2016-12 (Citizen Super PAC), Draft C at 7 (Nov. 2, 2016).⁹² Those Commissioners reasoned that “unlike the coincidental use by two parties of public information, a payor’s action taken after making such a private suggestion to a candidate and receiving the candidate’s assent is coordinated because it represents ‘something more than what one might call passive simultaneous action.’” *Id.* (quoting Hearing before the Subcomm. on Privileges and Elections of the S. Comm. on Rules and Admin., 94th Cong. 145 (Feb. 18, 1976) (testimony of Antonin Scalia, Asst. Att’y Gen’l)). In sum, all six Commissioners agreed that a payment is “coordinated” if the payor tells the candidate or committee that the payor intends to make the payment, and the candidate or committee takes action that explicitly or implicitly manifests

⁹⁰ Available at http://saos.fec.gov/aodocs/201612R_1.pdf.

⁹¹ Available at <http://saos.fec.gov/aodocs/201612.pdf>; *see also* FEC, Certification (Nov. 4, 2016), http://saos.fec.gov/aodocs/201612V_1.pdf (noting that three Democratic Commissioners voted to approve draft).

⁹² Available at http://saos.fec.gov/aodocs/201612_2.pdf; *see also* FEC, Certification (Nov. 4, 2016), http://saos.fec.gov/aodocs/201612V_2.pdf (noting that three Republican Commissioners voted to approve draft).

assent to that suggestion. *See also McConnell*, 540 U.S. at 221-22 (“[E]xpenditures made after a ‘wink or nod’ often will be ‘as useful to the candidate as cash.’ . . . A supporter easily could comply with a candidate’s request or suggestion without first agreeing to do so, and the resulting expenditure would be ‘virtually indistinguishable from [a] simple contributio[n].’” (quoting *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 441-46 (2001); other quotations and citations omitted)). As the relevant statute and regulation explicitly provide, coordination may be accomplished through either the candidate or the campaign or their agents. 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a).

49. The “conduct” standard is also satisfied if the political committee paying for the communication (a) uses a commercial vendor⁹³ to create, produce, or distribute the communication⁹⁴ that (b) during the previous 120 days also provided certain services to the candidate identified in the communication or a political party committee,⁹⁵ such as development of media strategy and selection of advertising slots; selection of audiences; polling; developing the content of communications; voter identification; or otherwise providing political or media advice,⁹⁶ and (c) the vendor uses or conveys to the political committee information about the candidate’s or party committee’s “plans, projects, activities or needs” (or information used previously by the commercial vendor in providing services to

⁹³ The regulation cross-references the definition of “commercial vendor” at 11 C.F.R. § 116.1(c), which includes “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services.” *Id.*

⁹⁴ 11 C.F.R. § 109.21(d)(4)(i).

⁹⁵ *Id.* § 109.21(d)(4)(ii). For purposes of this analysis, the commercial vendor includes “any owner, officer, or employee of the commercial vendor.” *Id.*

⁹⁶ *Id.* § 109.21(d)(4)(ii)(A-I).

the candidate) and “that information is material to the creation, production, or distribution of the communication.”⁹⁷ 11 C.F.R. § 109.21(d)(4).⁹⁸

50. The Commission has found reason to believe that FECA has been violated if the first two parts of the common vendor test are satisfied. In MUR 5546, for example, the Commission concluded that, “[b]ecause the first two parts of the common vendor test are met, there is reason to investigate whether the use or exchange of information occurred as described in 11 C.F.R. § 109.21(D)(4)(iii).” MUR 5546 (Progress for America Voter Fund), Notification with Factual and Legal Analysis at 9 (Jul. 5, 2005);⁹⁹ *see also* MUR 5502 (Martinez for Senate), Notification with Factual and Legal Analysis at 8 (May 18, 2005).¹⁰⁰ Additionally, in MURs 5403 and 5406, the Commission found reason to believe that the political committee America Coming Together had engaged in coordinated communications pursuant to the § 109.21(d)(4) shared vendor “conduct standard” by contracting with the commercial vendor Dewey Square Group to run a phone bank operation supporting John Kerry’s presidential campaign, since that vendor had previously provided voter identification services to the Kerry campaign committee. *Id.*, Notification with Factual and Legal Analysis to America Coming Together at 9-13 (Oct. 20, 2004).¹⁰¹ The fact that the vendor provided services to both the campaign and the political committee was sufficient to find reason to

⁹⁷ *Id.* § 109.21(d)(4)(iii).

⁹⁸ These requirements are not satisfied if the material information was obtained from a publicly available source, 11 C.F.R. § 109.21(d)(5)(ii), or if the committee establishes and implements a firewall in a written policy that prohibits the flow of information about the candidate’s campaign plans, projects, activities or needs to those responsible for the creation, production, or distribution of the communications, pursuant to 11 C.F.R. § 109.21(h). However, in promulgating the rules, the Commission emphasized that “the mere existence of a confidentiality agreement or ethical screen should provide a *de facto* bar to the enforcement of the limits on coordinated communication imposed by Congress. Without some mechanism to ensure enforcement, these private arrangements are unlikely to prevent the circumvention of the rules.” 68 Fed. Reg. 421, 435 (Jan. 3, 2003).

⁹⁹ Available at <http://eqs.fec.gov/eqsdocsMUR/00005ABC.pdf>.

¹⁰⁰ Available at <http://eqs.fec.gov/eqsdocsMUR/000057D4.pdf>.

¹⁰¹ Available at <http://eqs.fec.gov/eqsdocsMUR/0000615D.pdf>.

believe that FECA had been violated; the Commission then investigated whether the vendor used or conveyed to the political committee information about the candidates' plans, projects, activities, or needs. *Id.* at 12.

CAUSES OF ACTION

I. The NRA-ILA Has Illegally Made Excessive, Corporate, and Unreported In-Kind Contributions to Matt Rosendale for Montana

51. There is reason to believe that the NRA-ILA has made illegal, excessive, and unreported in-kind contributions to Matt Rosendale for Montana by financing \$404,496 in coordinated communications.
52. A political committee makes a “coordinated communication” when the communication (1) is paid for, in whole or in part, by a person other than the candidate or committee; (2) satisfies at least one of the “content standards” in the regulation, for example by “expressly advocat[ing] . . . the election or defeat of a clearly identified candidate for Federal office”; and (3) satisfies at least one of the “conduct standards” in the regulation, including when a communication “is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate . . . assents to the suggestion.” 11 C.F.R. § 109.21(d)(1)(ii), or through the use of a “common vendor,” *id.* § 109.21(a).
53. The NRA-ILA’s communications in support of Rosendale satisfy the “payment” prong because they were paid for in whole by the NRA-ILA. *Id.* § 109.21(a)(1).
54. The communications satisfy the “content” prong because they are public communications,¹⁰² disseminated on television, that expressly advocate for the defeat of Rosendale’s opponent, Jon Tester. *Id.* § 109.21(c)(2).

¹⁰² A public communication is a “communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 11 C.F.R. § 100.26.

55. The NRA-ILA’s communications satisfy the “conduct” prong in two ways.
56. First, the communications satisfied the “conduct” prong at 11 C.F.R. § 109.21(d)(1)(ii) because the NRA-ILA (through its executive director, Chris Cox) suggested to Rosendale that the NRA-ILA planned to pay for the communications, and Rosendale apparently “assent[ed] to the suggestion.” 11 C.F.R. § 109.21(d)(1)(ii).
57. At a July 2018 event in Washington D.C., Rosendale was asked whether “outside groups [have] started spending on your behalf,” and he replied by stating, “outside groups have already started to come in,” and named the Club for Growth, which reported spending six figures on independent expenditures supporting Rosendale in June and July of 2018,¹⁰³ and then stated, “I fully expect that the NRA is going to come in” and spend money in the race, “probably, right here, in August sometime.”¹⁰⁴ Rosendale further stated that “the Supreme Court confirmations are big—that’s what sent the NRA over the line,” and that the NRA-ILA’s “Chris Cox told me—he was like ‘well, we’re gonna be in this race.’”¹⁰⁵
58. In early September, in the middle of confirmation hearings for Supreme Court nominee Brett Kavanaugh, the NRA-ILA spent \$404,496¹⁰⁶ on television advertisements expressly

¹⁰³ Indeed, by the end of July 2018, Club for Growth Action had already spent, since the June 5th primary, \$10,737 on independent expenditures supporting Rosendale or opposing Tester, and CFG Action Montana had already spent \$618,810 opposing Tester, including, most significantly, a single \$599,910 television ad buy purchased on July 17, 2018. Club for Growth Action and CFG Action Montana, Independent Expenditures Mentioning Candidate Matt Rosendale or Candidate Jon Tester (24- and 48-Hour Reports), 2017-2018, FEC.GOV https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00487470&committee_id=C00669242&is_notice=true&candidate_id=S6MT00162&candidate_id=S8MT00234&candidate_id=S8MT00218&candidate_id=S8MT00275&candidate_id=S8MT00200&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018.

¹⁰⁴ *Matt Rosendale on NRA support*, SOUND CLOUD, *supra* note 7.

¹⁰⁵ *Id.*

¹⁰⁶ National Rifle Association Institute for Legislative Action, Report of Independent Expenditures Made and Contributions Received, FEC Form 5, at 2 (filed Sept. 7, 2018), <http://docquery.fec.gov/pdf/388/201809079121597388/201809079121597388.pdf>.

advocating against Rosendale's opponent, Jon Tester, with the communications criticizing Tester for his votes on Supreme Court nominees.¹⁰⁷

59. The evidence indicates that the NRA-ILA's political director told Rosendale that his group would be creating, producing, and distributing communications supporting Rosendale; apparently described the focus of the ads (the Supreme Court), and also described the approximate timing (August, although the ads were ultimately run in the first week of September).¹⁰⁸ Rosendale's favorable reference to this planned activity on his behalf in response to a question about spending by "outside groups" provides reason to believe that Rosendale assented to Cox's plan. This satisfies the "request or suggestion" conduct standard at 11 C.F.R. § 109.21(d)(1)(ii).
60. Second, the communications additionally satisfy the "conduct" prong at 11 C.F.R. § 109.21(a)(3) and (d)(4), which is met when the person paying for the communication (a) uses a commercial vendor to create, produce, or distribute the communication that (b) during the previous 120 days also provided certain services to the candidate identified in the communication or a political party committee, and (c) the vendor uses or conveys to the political committee information about the candidates' or party committee's "plans, projects,

¹⁰⁷ NRA, *Defend Freedom. Defeat Two-Faced Tester*, YOUTUBE (Sep. 6, 2018), https://www.youtube.com/watch?v=AuqwhCm_MZs ("...In all three votes on Supreme Court justices, Tester sided with Chuck Schumer and the anti-gun liberal left. AGAINST your right to self-defense. What Jon Tester says in Montana, isn't what he does in Washington, D.C..."); see also *NRA Announces Six-Figure Ad Campaign Against Sen. Tester*, NRA-ILA (Sept. 6, 2018), <https://www.nraila.org/articles/20180906/nra-announces-six-figure-ad-campaign-against-sen-tester>.

¹⁰⁸ Notably, in July, when Rosendale made his remarks, many observers were expecting Kavanaugh's confirmation hearings to be held in August. For example, CNN reported that "GOP officials have told CNN they are targeting a confirmation hearing in late August—an aggressive timeline, but one that would set up a mid-September vote. Sen. John Cornyn told CNN's Ted Barrett that an August hearing is 'entirely realistic.'" Phil Mattingly, *Supreme Court Watch: What Brett Kavanaugh's Paper Trail Means for the Confirmation Timeline*, CNN (July 11, 2018), <https://www.cnn.com/2018/07/11/politics/brett-kavanaugh-congress-senator-meetings/index.html>. The hearings were later scheduled for the week of September 4, 2018, when the NRA-ILA's communications were ultimately disseminated. See *Judge Brett Kavanaugh: Nominee to Serve as an Associate Justice on the Supreme Court of the United States*, U.S. SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/kavanaugh> (last visited Sept. 13, 2018).

activities or needs” (or information used previously by the commercial vendor in providing services to the candidate) and “that information is material to the creation, production, or distribution of the communication.” 11 C.F.R. § 109.21(d)(4).

61. The NRA-ILA contracted with Starboard, a commercial vendor within the meaning of the regulation,¹⁰⁹ to create, produce, or distribute communications expressly advocating against Rosendale’s opponent.
62. During the relevant time period, OnMessage provided several of the regulation’s enumerated services to Rosendale’s principal campaign committees.¹¹⁰
63. OnMessage, Inc. and Starboard Strategic, Inc. are functionally indistinguishable. The two entities are led by the same people;¹¹¹ during the 2014 and 2016 election cycles NRA-ILA and NRA-PVF consistently reported payments to Starboard at OnMessage’s addresses;¹¹² and OnMessage has repeatedly taken credit for advertisements that the NRA-ILA and NRA-PVF paid Starboard to produce (and has even won awards for such ads).¹¹³ Former employees say that Starboard had no presence at OnMessage offices, an email from an OnMessage partner/Starboard director offering a job at OnMessage was sent from his Starboard email address, and Starboard’s partners have never publicly associated themselves with the company.¹¹⁴ Therefore, although the two companies are incorporated separately,

¹⁰⁹ OnMessage and Starboard are engaged in the regular business of content development and thus qualify as commercial vendors. *Id.* at § 116.1.

¹¹⁰ The enumerated services under the statute are “(A) Development of media strategy, including the selection or purchasing of advertising slots; (B) Selection of audiences; (C) Polling; (D) Fundraising; (E) Developing the content of a public communication; (F) Producing a public communication; (G) Identifying voters or developing voter lists, mailing lists, or donor lists; (H) Selecting personnel, contractors, or subcontractors; or (I) Consulting of otherwise providing political or media advice.” *Id.* at § 109.21(d)(4)(ii). OnMessage appears to have developed content for public communications by Rosendale’s campaign and provided political or media advice for the campaign.

¹¹¹ See sources cited ¶19.

¹¹² See sources cited ¶¶ 22-23, 26-27.

¹¹³ See ¶¶ 29-31.

¹¹⁴ See ¶¶ 35-36.

they appear to effectively function as a single vendor. Indeed, after years of NRA-ILA and NRA-PVF contracting with OnMessage, the individuals in charge of the firm created Starboard, and the NRA-ILA and NRA-PVF became effectively its only clients,¹¹⁵ while the independent expenditures that Starboard created for the NRA-ILA and NRA-PVF supported candidates that were contracting with OnMessage. In effect, the evidence indicates that Starboard was created as a shell company to hide OnMessage's status as a common vendor between the NRA-PVF and the candidates it supports.

64. These facts and this pattern of activity provide reason to believe that Starboard/OnMessage used or conveyed to the NRA-ILA information about the “plans, projects, activities or needs” of Matt Rosendale for Montana, and that such information was “material to the creation, production, or distribution of the communication[s],” *id.* § 109.21(d)(4). Furthermore, the apparently deliberate routing of OnMessage's NRA business through the corporate shell of Starboard provides reason to believe that the purpose of OnMessage's creation of Starboard was to allow OnMessage to use or convey to the NRA-ILA information about the “plans, projects, activities or needs” of Matt Rosendale for Montana, and that such information was “material to the creation, production, or distribution” of the NRA-ILA's communications supporting Rosendale.¹¹⁶ For these reasons, there is reason to believe that the NRA-ILA and

¹¹⁵ The 2013-14 election cycle was the only time a candidate or committee besides the two NRA entities listed Starboard as a vendor on reports filed with the Commission. In May 2013, the National Republican Congressional Committee (ID: C00075820) made two “media” disbursements to Starboard, totaling \$18,500. National Republican Congressional Committee, Disbursements to Starboard Strategic, Inc., 2013-14, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2014&data_type=processed&committee_id=C00075820&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

¹¹⁶ Although a vendor may establish and implement a firewall in a written policy to prohibit the flow of strategic information from a political party or candidate to an independent expenditure committee, 11 C.F.R. § 109.21(h), there is no evidence of a firewall between Starboard and OnMessage. In any case, in promulgating the common vendor rules, the Commission dismissed the idea that “the mere existence of a confidentiality agreement or ethical screen should provide a *de facto* bar to the enforcement of the limits on coordinated communication imposed by Congress,” and emphasized that “[w]ithout some mechanism to ensure enforcement, these private arrangements are unlikely to prevent the circumvention of the rules.” 68 Fed. Reg. 421, 435 (Jan. 3, 2003).

Matt Rosendale for Montana satisfied the “conduct” standard by coordinating their communications through a “common vendor.” 11 C.F.R. § 109.21(d)(4).

65. A payment for a coordinated communication is an in-kind contribution to the candidate committee or political party committee with which it is coordinated. 11 C.F.R. § 109.21(b).
66. Therefore, because the NRA-ILA’s advertisements supporting Rosendale satisfy Section 109.21’s three prong test, there is reason to believe that the NRA-ILA has made in-kind contributions to Matt Rosendale for Montana in the form of coordinated communications, in excess of FECA’s \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), in violation of FECA’s prohibition on contributions to a candidate using corporate funds, 52 U.S.C. § 30118(a), (b)(2), and in violation of FECA’s reporting requirements. 52 U.S.C. § 30104(b).

PRAYER FOR RELIEF

67. Wherefore, the Commission should find reason to believe that the NRA-ILA and Matt Rosendale for Montana violated 52 U.S.C. § 30101 *et seq.*, and should conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
68. The Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,



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September 14, 2018

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

BF

Brendan M. Fischer

Sworn to and subscribed before me this 17 day of September 2018.

[Signature]

Notary Public



For Giffords

[Signature]

Alison Damaskos

Sworn to and subscribed before me this 14th day of September 2018.

Bianca Gutierrez [Signature]

Notary Public

BIANCA GUTIERREZ
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires September 30, 2020

