



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 10, 2015

**VIA ELECTRONIC AND**  
**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

J. Gerald Hebert  
Campaign Legal Center  
1411 K Street, N.W.  
Suite 1400  
Washington, D.C. 20005

RE: MUR 6535 (Restore Our Future)

Dear Mr. Hebert:

We previously attempted to send you the attached notification package, which was subsequently returned to us. We are now resending it to you at your new location.

If you have any questions, please contact me at (202) 694-1530.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jin Lee". The signature is fluid and cursive, with a large initial "J" and "L".

Jin Lee  
Attorney

Enclosures



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**NOV 19 2015**

J. Gerald Hebert  
Campaign Legal Center  
215 E Street, N.E.  
Washington, D.C. 20002

RE: MUR 6535 (Restore Our Future)

Dear Mr. Hebert:

This is in reference to the complaint you filed with the Federal Election Commission on February 27, 2012. The Commission found that there was reason to believe Restore Our Future and Charles R. Spies in his official capacity as treasurer ("ROF") violated 52 U.S.C. §§ 30104(b) and 30116(a), provisions of the Federal Election Campaign Act of 1971, as amended. On November 12, 2015, a conciliation agreement signed by ROF was accepted by the Commission.

In addition, the Commission found no reason to believe that Romney for President and Darrell Crate in his official capacity as treasurer violated 52 U.S.C. § 30116(f) by accepting excessive contributions from ROF. Accordingly, the Commission closed the file in this matter on November 12, 2015.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). A copy of the conciliation agreement is enclosed for your information, along with the Commission's Factual and Legal Analyses.

If you have any questions, please contact me at (202) 694-1530.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jin Lee".

Jin Lee  
Attorney

Enclosures  
Conciliation Agreement(s)  
Factual and Legal Analyses

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )  
4 )  
5 Restore Our Future and )  
6 Charles R. Spies in his official capacity as )  
7 Treasurer )

MUR 6535

8  
9 **CONCILIATION AGREEMENT**

10  
11 This matter was generated by a complaint filed with the Federal Election Commission  
12 (“Commission”). The Commission found reason to believe that Restore Our Future and Charles  
13 R. Spies, in his official capacity as treasurer, (collectively “Respondents”) violated 52 U.S.C.  
14 §§ 30104(b) and 30116(a).

15 NOW, THEREFORE, the Commission and the Respondents, having participated in  
16 informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree  
17 as follows:

- 18 I. The Commission has jurisdiction over the Respondents and the subject matter of this  
19 proceeding, and this agreement has the effect of an agreement entered pursuant to 52  
20 U.S.C. § 30109(a)(4)(A)(i).
- 21 II. Respondents have had a reasonable opportunity to demonstrate that no action should be  
22 taken in this matter.
- 23 III. Respondents enter voluntarily into this agreement with the Commission.
- 24 IV. The pertinent facts in this matter are as follows:

25 **FACTUAL BACKGROUND**

- 26 1. Restore Our Future is an independent expenditure-only political committee  
27 registered with the Commission. Charles R. Spies is the treasurer of Restore Our  
28 Future.

1           2.     Mitt Romney was a candidate for President of the United States in 2008 and 2012.  
2                     Romney for President was Romney's authorized campaign committee for both of  
3                     those election cycles.

4           3.     In 2007, Romney for President paid to broadcast an advertisement entitled "The  
5                     Search" that featured Romney's efforts in 1996 to help find the missing daughter  
6                     of a Bain Capital colleague.

7           4.     In 2012, Restore Our Future paid to broadcast a version of "The Search" that it  
8                     entitled "Saved." The Saved advertisement contained different footage of New  
9                     York City and Romney and different disclaimers, but was otherwise identical.

10   **LAW**

11  
12          5.     The Federal Election Campaign Act of 1971, as amended (the "Act") provides  
13                     that "the financing by any person of the dissemination, distribution, or  
14                     republication, in whole or in part, of any broadcast or any written, graphic, or  
15                     other form of campaign materials prepared by the candidate, his campaign  
16                     committees, or their authorized agents shall be considered to be an expenditure."  
17                     52 U.S.C. § 30116(a)(7)(B)(iii).

18          6.     Commission regulations provide that the republication of campaign materials  
19                     "prepared by the candidate, the candidate's authorized committee, or an agent of  
20                     either of the foregoing" is considered a contribution for purposes of contribution  
21                     limitations and reporting responsibilities of the person making the expenditure.  
22                     11 C.F.R. § 109.23.

23          7.     Respondents contend that they operated under the good faith belief that Mitt  
24                     Romney as a candidate for president in 2008 was legally distinct from Romney as  
25                     a candidate for president in 2012.

1           8.     The Commission acknowledged in its Factual and Legal Analysis in this matter  
2                   that “[t]his is a case of first impression, and Restore Our Future's reading of the  
3                   regulation concerning the scope of the definition of ‘candidate’ was not  
4                   unreasonable.”

5 V.     Solely for the purpose of settling this matter expeditiously and avoiding costly litigation,  
6           without admission with respect to any other proceeding, and with no finding of probable  
7           cause by the Commission, Respondents agree not to contest the Commission’s  
8           conclusions, as stated herein, that:

9           1.     Respondents made excessive in-kind contributions to Romney for President by  
10                   republishing campaign materials prepared by Romney for President in violation of  
11                   52 U.S.C. § 30116(a).

12          2.     Respondents failed to report the expenditures as contributions to Romney for  
13                   President in violation of 52 U.S.C. § 30104(b).

14 VI.    Respondents will take the following actions:

15          1.     Respondents will pay a civil penalty to the Federal Election Commission in the  
16                   amount of fifty thousand dollars (\$50,000) pursuant to 52 U.S.C.  
17                   § 30109(a)(5)(A).

18          2.     Respondents will cease and desist from violating 52 U.S.C. §§ 30104 and  
19                   30116(a).


20 VII.   The Commission, on request of anyone filing a complaint under 52 U.S.C § 30109(a)(1)  
21           concerning the matters at issue herein or on its own motion, may review compliance with  
22           this agreement. If the Commission believes that this agreement or any requirement  
23           thereof has been violated, it may institute a civil action for relief in the United States  
24           District Court for the District of Columbia.

1 VIII. This agreement shall become effective as of the date that all parties hereto have executed  
2 the same and the Commission has approved the entire agreement.

3 IX. Except as otherwise provided, Respondents shall have no more than 30 days from the  
4 date this agreement becomes effective to comply with and implement the requirements  
5 contained in this agreement and to so notify the Commission.

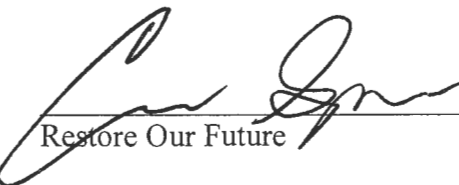
6 X. This Conciliation Agreement constitutes the entire agreement between the parties on the  
7 matters raised herein, and no other statement, promise, or agreement, either written or  
8 oral, made by either party or by agents of either party, that is not contained in this written  
9 agreement shall be enforceable.

10 FOR THE COMMISSION:

11   
12 \_\_\_\_\_  
13 Kathleen Guith  
14 Acting Associate General Counsel  
15 for Enforcement

11-16-15  
\_\_\_\_\_  
Date

16  
17 FOR THE RESPONDENTS:

18   
19 \_\_\_\_\_  
20 Restore Our Future  
21

10/22/15  
\_\_\_\_\_  
Date

1  
2  
3 **FEDERAL ELECTION COMMISSION**

4  
5 **FACTUAL AND LEGAL ANALYSIS**

6  
7 **RESPONDENT:** Restore Our Future, Inc. and **MUR 6535**  
8 Charles R. Spies in his official capacity as Treasurer  
9

10 **I. INTRODUCTION**

11  
12 The Complaint in this matter alleges that Restore Our Future, Inc. (“ROF”), an  
13 independent expenditure-only political committee,<sup>1</sup> made a prohibited in-kind contribution to  
14 Mitt Romney and his principal campaign committee, Romney for President, Inc. (“Romney for  
15 President”), in 2012 by financing the republication of a television advertisement prepared by  
16 Romney, his campaign committees, or authorized agents. ROF denies the allegation, asserting  
17 that, because the advertisement at issue was prepared by Romney and his campaign during his  
18 2008 candidacy, the advertisement cannot be considered “campaign materials prepared by the  
19 candidate” for purposes of his 2012 candidacy. ROF Resp. at 4 (Apr. 17, 2012) (citing 11 C.F.R.  
20 § 109.23(a)).

21 As set forth below, the Commission finds reason to believe that ROF violated 52 U.S.C.  
22 §§ 30116(a) and 30104(b) (formerly 2 U.S.C. §§ 441a(a), and 434(b)) by making excessive and  
23 prohibited in-kind contributions to Romney for President and failing to report those contributions  
24 when it republished Romney for President’s campaign materials.

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<sup>1</sup> ROF has not established a separate account for contributions subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the “Act”). See Stipulated Order and Consent Judgment in *Carey v. FEC*, No. 11-259-RMC (Aug. 19, 2011); see also FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

1     **II.     FACTUAL BACKGROUND**

2             Mitt Romney was a candidate for President of the United States in 2008 and designated  
3     Romney for President as his principal campaign committee. Statement of Candidacy for Mitt  
4     Romney (Feb. 13, 2007). Romney for President registered with the Commission on February 13,  
5     2007. Statement of Organization (Feb. 13, 2007). Romney was unsuccessful in his 2008  
6     presidential bid and withdrew from the race in February 2008. *See* ROF Resp. at 3.

7             On April 11, 2011, Romney filed a statement of candidacy to run for President in 2012,  
8     designating his campaign committee formed in 2007 — Romney for President — as his  
9     “principal committee” and renaming it “Romney for President Exploratory Committee.” *See*  
10    Letter from Mitt Romney to FEC (Apr. 11, 2011). On June 2, 2011, following Romney’s formal  
11    public announcement that he would seek the office of President, the Committee again changed  
12    its name — reverting back to “Romney for President.” Amended Statement of Organization  
13    (Jun. 2, 2011).

14            The Complaint references an article in *Politico* reporting on an ROF ad called “Saved,”  
15    which highlighted Romney’s efforts in 1996 to help track down the daughter of a Bain Capital  
16    colleague, Robert Gay. Complaint at 2-3. Gay narrates the 30-second video as follows:

17            My fourteen year old daughter had disappeared in New York City for  
18    three days. No one could find her. My business partner stepped forward  
19    to take charge. He closed the company and brought almost all our  
20    employees to New York. He said “I don’t care how long it takes, we’re  
21    going to find her.” He set up a command center and searched through the  
22    night. The man who helped save my daughter was Mitt Romney. Mitt’s  
23    done a lot of things that people say are nearly impossible. But, for me, the  
24    most important thing he’s ever done is to help save my daughter.

25  
26    Emily Schultheis, *Pro-Romney Super PAC Runs Footage From Romney '07 Ad*,  
27    POLITICO, Feb. 23, 2012. A female voice at end of the ad says “Restore Our Future is



1 responsible for the content of this message,” along with the text “PAID FOR BY  
2 RESTORE OUR FUTURE, INC., WHICH IS RESPONSIBLE FOR THE CONTENT  
3 OF THIS MESSAGE. NOT AUTHORIZED BY ANY CANDIDATE OR  
4 CANDIDATE’S COMMITTEE. WWW.RESTOREOURFUTURE.COM.” Compl. at 3;  
5 Schultheis, *supra*. According to the *Politico* article cited by the Complaint, the “Saved”  
6 ad aired in February 2012, in advance of the Arizona and Michigan primaries that both  
7 occurred on February 28, 2012. *See* Compl. at 2.

8           The Complaint alleges that the “Saved” ad “appear[s] identical” to an ad run in 2007 by  
9 the Romney campaign called, “The Search,” except for the “final frame” containing the  
10 disclaimers.<sup>2</sup> Compl. at 3. “The Search” ad was reportedly aired by the Romney campaign in  
11 2007. Compl. at 2, citing Schultheis, *supra*. “The Search” ad concludes with Romney stating,  
12 “I’m Mitt Romney and I approved this message,” along with the text “PAID FOR BY ROMNEY  
13 FOR PRESIDENT, INC. APPROVED BY MITT ROMNEY.” Compl. at 3; Schultheis, *supra*.

14           ROF does not dispute that Romney’s 2008 campaign prepared the video footage used in  
15 the “Saved” ad. ROF asserts, however, that “Mitt Romney, as a candidate for President in 2012,  
16 or agents of this candidate and/or his current campaign, had nothing to do with the preparation of  
17 ROF’s current television advertisement ‘Saved.’” ROF Resp. at 3. Based upon the regulatory  
18 definition of “candidate,” *see* 11 C.F.R. § 100.3(b), ROF contends that Mitt Romney as a  
19 “candidate” for President in 2008 is an “entirely different entity” than Mitt Romney as a  
20 “candidate” for President in 2012. ROF Resp. at 4. Therefore, ROF argues that because  
21 “The Search” was “not prepared by Romney, as a current [2012] candidate for President, or his

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<sup>2</sup> In comparing the advertisements, there are two other immaterial differences. First, video of the skyline over New York City during the first few seconds of each ad has been slightly altered; it appears to have been shot from different vantage points. Second, the two ads very briefly display different shots of Romney at approximately the 22-second mark as well as during the last few seconds.

1 authorized committee, or his agents,” there has been no republication of any footage or campaign  
2 materials prepared by a current “candidate” or campaign for federal office, and therefore no  
3 violation of the Act or regulations. *Id.*

4 ROF further asserts that it purchased a license to “use the archival footage” in its “Saved”  
5 ad from the “owner,” Cold Harbor Films, and that there was no coordination or contact with the  
6 Romney campaign. *Id.* at 5. ROF states that the purchase was “an arms-length transaction” and  
7 that Cold Harbor Films is not a vendor for Romney’s current campaign and thus not an “agent”  
8 of the campaign. *Id.*<sup>3</sup>

### 9 III. LEGAL ANALYSIS

10 Under the Act, “the financing by any person of the dissemination, distribution, or  
11 republication, in whole or in part, of any broadcast or any written, graphic, or other form of  
12 campaign materials prepared by the candidate, his campaign committees, or their authorized  
13 agents shall be considered an expenditure.” 52 U.S.C. §30116(a)(7)(B)(iii). Commission  
14 regulations further provide that the republication of campaign materials “prepared by the  
15 candidate, the candidate’s authorized committee, or an agent of the foregoing” is considered a  
16 contribution for purposes of contribution limitations and reporting responsibilities of the person  
17 making the expenditure. 11 C.F.R. § 109.23(a). Under Commission regulations, however, the  
18 candidate who prepared the materials is not considered to have received an in-kind contribution  
19 and is not required to report an expenditure, unless the republication is a coordinated  
20 communication under 11 C.F.R. §§ 109.21 or 109.37. *Id.* § 109.23(a).

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<sup>3</sup> ROF’s disclosure reports filed to date do not appear to show any disbursements to Cold Harbor Films in  
ROF’s disclosure reports filed to date. Romney for President disclosed a \$2,515 payment to Cold Harbor Films,  
however, dated January 18, 2008, for “media.”

1           ROF argues that “Saved” “was not prepared by Romney as a current candidate” but  
2           instead “was prepared and produced by Mitt Romney’s prior candidacy and campaign in 2007.”  
3           ROF Resp. at 4. In support of its interpretation, ROF points to 11 C.F.R. § 100.3, which states  
4           that the date on which an “individual” becomes a “candidate” is a function of when the  
5           candidate’s contributions or expenditures aggregate to \$5,000. ROF argues “Mitt Romney as a  
6           ‘candidate’ in 2008 is an entirely different entity from Mitt Romney as a ‘candidate’ in 2012.”  
7           And as such, ROF’s 2011 production of the 2008 campaign “Saved” advertisement did not  
8           violate the Commission’s republication provisions, because there was no republication of  
9           “current” (2012) campaign materials. ROF Resp. at 4.

10           The Commission has not previously considered whether the phrase “campaign materials  
11           prepared by the candidate [or] his campaign committees” is limited to campaign materials  
12           prepared during the same election cycle in which a third party republishes the materials.<sup>4</sup> The  
13           statutory and regulatory republication provisions do not state whether there is any temporal  
14           limitation. And there is no guidance in the Commission’s explanation and justification of the  
15           Commission republication regulation that would indicate whether or not a third party could use a  
16           candidate’s ad from a previous cycle, regardless of how far back in time a candidate may have

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<sup>4</sup>           There is one enforcement matter, MUR 5672 (Save American Jobs Association), that involved the use of “campaign materials” distributed by a third party that were produced in a prior election cycle; however, there was no substantive discussion of the timing issue in any Commission-approved documents. The Complaint in MUR 5672 alleged, among other things, that Save American Jobs Association (“Association”), a 501(c)(4) corporation, republished campaign materials by hosting on its website a campaign video during Jack Davis’s 2006 congressional campaign; the video had been produced by the Davis campaign during his 2004 candidacy for the same office. The Office of General Counsel recommended that the Commission find reason to believe that the hosting of the video constituted a republication of campaign materials, but to take no further action and admonish the Association in light of the likely *de minimis* costs involved. The Commission dismissed the allegation “in the proper ordering of its priorities” without further explanation, citing *Heckler v. Chaney*, 470 U.S. 821 (1985). See Statement of Reasons, Comm’rs Lenhard, Mason, von Spakovsky, and Weintraub, MUR 5672 (May 31, 2007). The Commission did not admonish the Association or make any finding or statement that could be construed either as accepting or disputing OGC’s republication analysis.

<sup>5</sup>           *Explanation and Justification on Coordinated and Independent Expenditures*, 68 Fed. Reg. 441 – 443 (Jan. 3, 2003).

1 run for office.<sup>5</sup>

2 The statute states that republication "... of campaign materials prepared by the candidate,  
3 his campaign committees, or their authorized agents" shall be considered a contribution. 52 USC  
4 30116(a)(7)(b)(iii); *see also* 11 C.F.R. § 109.23(a). Romney's 2008 campaign committee  
5 prepared the 2007 "Search" advertisement from which the video footage was used in ROF's  
6 2012 "Saved" advertisement. Despite the fact that Romney was a candidate in two separate  
7 campaigns – 2008 and 2012 – the "Saved" advertisement uses the materially identical video  
8 footage that was prepared by Romney's 2008 campaign committee with the same message.  
9 Because the Act defines republication to include materials prepared by the candidate's  
10 "campaign committees," in the plural form and there is nothing in the statute or Commission  
11 regulations or precedent that limits republication to within the same election cycle, we conclude  
12 that ROF republished campaign materials originally prepared by one of Romney's campaign  
13 committees.<sup>6</sup> The Commission therefore finds reason to believe that ROF violated 52 U.S.C.  
14 §§ 30116(a) and 30104(b) (formerly 2 U.S.C. §§ 441a(a), and 434(b)) by making prohibited and  
15 excessive in-kind contributions to the Committee when it republished Romney for President's

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<sup>5</sup> *Explanation and Justification on Coordinated and Independent Expenditures*, 68 Fed. Reg. 441 – 443 (Jan. 3, 2003).

<sup>6</sup> The ROF ad "Saved" replicates the Romney campaign ad "The Search" with only minor variations (e.g., the disclaimer at the end of each ad), which distinguishes this matter from previous republication matters in which there were substantive differences between the "campaign materials" and the third-party communications. *See, e.g.*, MUR 6502 (Nebraska Democratic Party) (no republication where state party ads used common political phrase previously used in a "tweet" posted by candidate's campaign but contained significant additional language that differed from the campaign materials); MUR 6037 (Merkley) (no republication where state party ads featured candidate and contained issues and messages similar to candidate's press releases but also included different language and phrases). MUR 5743 (Betty Sutton for Congress/Emily's List) (Commission dismissed, with an admonishment, a complaint involving the alleged republication of campaign photographs in third-party mailers). *See also* MUR 5743, Statement of Reasons of Comm'rs Weintraub and von Spakovsky; MUR 5996 (Tim Bee, *et al.*) (Commission was unable to agree as to republication, but exercised prosecutorial discretion to dismiss the matter; MUR 5996, Statement of Reasons of Vice Chairman Petersen and Comm'rs Hunter and McGahn. Commissioners have also found that republication does not occur when the campaign materials are not materially the same. *See, e.g.*, MURs 6617 (Vilsack) and 6667 (Bustos) Statement of Reasons of Comm'rs Hunter and Petersen; MURs 6357 (American Crossroads), MUR 5879 (Harry Mitchell/Democratic Senatorial Campaign Committee) Statements of Reasons of Chair Hunter and Comm'rs McGahn and Petersen.

1 campaign materials, and by failing to disclose the expenditures as contributions to the  
2 Committee.

3 This is a case of first impression, and ROF's reading of the regulation concerning the  
4 scope of the definition of "candidate" was not unreasonable. Therefore, given the unique  
5 circumstances presented here, the Commission exercises its discretion not to open an  
6 investigation and instead will seek to engage in pre-probable cause conciliation with  
7 Respondents.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Romney for President and **MUR 6535**  
Darrell Crate in his official capacity as Treasurer

**I. INTRODUCTION**

The Complaint in this matter alleges that Restore Our Future, Inc. (“ROF”), an independent expenditure-only political committee,<sup>1</sup> made a prohibited in-kind contribution to Mitt Romney and his principal campaign committee, Romney for President, Inc. (“Romney for President”), in 2012 by financing the republication of a television advertisement prepared by Romney or his agents. As set forth below, the Commission finds no reason to believe that Romney for President violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting excessive or prohibited in-kind contributions from ROF.

**II. FACTUAL BACKGROUND**

Mitt Romney was a candidate for President of the United States in 2008 and designated Romney for President as his principal campaign committee. Statement of Candidacy for Mitt Romney (Feb. 13, 2007). Romney for President registered with the Commission on February 13, 2007. Statement of Organization (Feb. 13, 2007). Romney was unsuccessful in his 2008 presidential bid and withdrew from the race in February 2008. *See* ROF Resp. at 3.

On April 11, 2011, Romney filed a statement of candidacy to run for President in 2012, designating his campaign committee formed in 2007 — Romney for President — as his “principal committee” and renaming it “Romney for President Exploratory Committee.” *See*

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<sup>1</sup> ROF has not established a separate account for contributions subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the “Act”). *See* Stipulated Order and Consent Judgment in *Carey v. FEC*, No. 11-259-RMC (Aug. 19, 2011); *see also* FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

1 Letter from Mitt Romney to FEC (Apr. 11, 2011). On June 2, 2011, following Romney’s formal  
2 public announcement that he would seek the office of President, the Committee again changed  
3 its name — reverting back to “Romney for President.” Amended Statement of Organization  
4 (Jun. 2, 2011).

5 The Complaint references an article in *Politico* reporting on an ROF ad called “Saved,”  
6 which highlighted Romney’s efforts in 1996 to help track down the daughter of a Bain Capital  
7 colleague, Robert Gay. Complaint at 2-3. Gay narrates the 30-second video as follows:

8 My fourteen year old daughter had disappeared in New York City for  
9 three days. No one could find her. My business partner stepped forward  
10 to take charge. He closed the company and brought almost all our  
11 employees to New York. He said “I don’t care how long it takes, we’re  
12 going to find her.” He set up a command center and searched through the  
13 night. The man who helped save my daughter was Mitt Romney. Mitt’s  
14 done a lot of things that people say are nearly impossible. But, for me, the  
15 most important thing he’s ever done is to help save my daughter.

16  
17 Emily Schultheis, *Pro-Romney Super PAC Runs Footage From Romney ’07 Ad*,  
18 POLITICO, Feb. 23, 2012. A female voice at end of the ad says “Restore Our Future is  
19 responsible for the content of this message,” along with the text “PAID FOR BY  
20 RESTORE OUR FUTURE, INC., WHICH IS RESPONSIBLE FOR THE CONTENT  
21 OF THIS MESSAGE. NOT AUTHORIZED BY ANY CANDIDATE OR  
22 CANDIDATE’S COMMITTEE. [WWW.RESTOREOURFUTURE.COM](http://WWW.RESTOREOURFUTURE.COM).” Compl. at 3;  
23 Pro-Romney Super PAC Runs Footage from Romney ’07 Ad, POLITICO, Feb. 23, 2012.  
24 According to the *Politico* article cited by the Complaint, the “Saved” ad aired in February  
25 2012 in advance of the Arizona and Michigan primaries, which both occurred on  
26 February 28, 2012. See Compl. at 2.

27 The Complaint alleges that the “Saved” ad “appear[s] identical” to an ad run in 2007 by  
28 the Romney campaign called “The Search,” except for the “final frame” containing the

1 disclaimers.<sup>2</sup> Compl. at 3. “The Search” ad was reportedly aired by the Romney campaign in  
2 2007. Compl. at 2, citing Pro-Romney Super PAC Runs Footage from Romney ’07 Ad,  
3 POLITICO, Feb. 23, 2012. The ad concludes with Romney stating, “I’m Mitt Romney and I  
4 approved this message,” along with the text “PAID FOR BY ROMNEY FOR PRESIDENT,  
5 INC. APPROVED BY MITT ROMNEY.” Compl. at 3; Pro-Romney Super PAC Runs  
6 Footage from Romney ’07 Ad, POLITICO, Feb. 23, 2012.

### 7 **III. LEGAL ANALYSIS**

8 Under the Act, “the financing by any person of the dissemination, distribution, or  
9 republication, in whole or in part, of any broadcast or any written, graphic, or other form of  
10 campaign materials prepared by the candidate, his campaign committees, or their authorized  
11 agents shall be considered to be an expenditure.” 52 U.S.C. §30116(a)(7)(B)(iii). Commission  
12 regulations further provide that the republication of campaign materials “prepared by the  
13 candidate, the candidate’s authorized committee, or an agent of either of the foregoing” is  
14 considered a contribution for purposes of contribution limitations and reporting responsibilities  
15 of the person making the expenditure. 11 C.F.R. § 109.23(a). Under Commission regulations,  
16 however, the candidate who prepared the materials is not considered to have received an in-kind  
17 contribution and is not required to report an expenditure, unless the republication is a  
18 coordinated communication under 11 C.F.R. §§ 109.21 or 109.37. *Id.* § 109.23(a).

19 A communication is coordinated with a candidate, a candidate’s authorized committee, or  
20 agent of the candidate or committee when the communication satisfies the three-pronged test set  
21 forth in 11 C.F.R. § 109.21(a): (1) the communication is paid for by a person other than that

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<sup>2</sup> In comparing the advertisements, there are two other immaterial differences. First, video of the skyline over New York City during the first few seconds of each ad has been slightly altered; it appears to have been shot from different vantage points. Second, the two ads very briefly display different shots of Romney at approximately the 22-second mark as well as during the last few seconds.



1 candidate or authorized committee; (2) the communication satisfies at least one of the content  
2 standards set forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of  
3 the conduct standards set forth in 11 C.F.R. § 109.21(d).<sup>3</sup>

4 **A. Payment**

5 The payment prong of the coordination regulation, 11 C.F.R. § 109.21(a)(1), is satisfied.  
6 There is no dispute that ROF paid for the ad.

7 **B. Content**

8 The content prong of the coordination regulation is also satisfied. The content prong is  
9 satisfied, *inter alia*, if a communication is an electioneering communication under 11 C.F.R.  
10 § 100.29 or a public communication that refers, in relevant part, to a clearly identified  
11 Presidential candidate, and is publicly distributed or disseminated in a jurisdiction 120 days  
12 before the primary in that jurisdiction, up to and including the day of the general election. *See* 11  
13 C.F.R. § 109.21(c).

14 The “Saved” ad identified Presidential candidate Mitt Romney and was reportedly  
15 broadcast on television in Michigan and Arizona within a week of the February 28, 2012,  
16 primary elections in those states. Thus, the ad qualifies as a public communication referring to a  
17 clearly identified candidate distributed within 120 days of a primary election in the relevant  
18 jurisdiction. 11 C.F.R. § 109.21(c)(4)(ii). It also appears to qualify as an electioneering  
19 communication, as it refers to a clearly identified federal candidate, was broadcast within 30  
20 days of a primary election, and the broadcast likely could be received by 50,000 or more persons  
21 in a state holding a primary. *See* 11 C.F.R. § 100.29.

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<sup>3</sup> The Commission’s regulations at 11 C.F.R. § 109.21 provide that coordinated communications constitute in-kind contributions from the party paying for such communications to the candidate, the candidate’s authorized committee, or the political party committee which coordinates the communication. As an in-kind contribution, the costs of coordinated communications must not exceed a political committee’s applicable contribution limits. *See* 52 U.S.C. § 30116.

1           **C.     Conduct**

2           The Commission's regulations set forth the following six types of conduct between the  
3 payor and the committee, regardless of whether there is an agreement or formal collaboration,  
4 that satisfy the conduct prong of the coordination standard: (1) the communication "is created,  
5 produced, or distributed at the request or suggestion of a candidate [or an] authorized  
6 committee," or if the communication is created, produced, or distributed at the suggestion of the  
7 payor, the candidate or authorized committee assents to the suggestion; (2) the candidate, his or  
8 her committee, or their agent is materially involved in, *inter alia*, the content, intended audience,  
9 or means or mode of communication; (3) the communication is created, produced, or distributed  
10 after at least one substantial discussion about the communication between the person paying for  
11 the communication, or that person's employees or agents, and the candidate or his or her  
12 authorized committee, his or her opponent or opponent's authorized committee, or a political  
13 party committee; (4) a common vendor uses or conveys information material to the creation,  
14 production or distribution of the communication; and (5) a former employee or independent  
15 contractor uses or conveys information material to the creation, production, or distribution of the  
16 communication. 11 C.F.R. § 109.21(d)(1)-(5). A sixth conduct prong instructs that the  
17 dissemination, distribution, or republication of campaign materials applies only if there were a  
18 request or suggestion, material involvement, or substantial discussion that took place after the  
19 original preparation of the campaign materials that are disseminated, distributed, or republished.  
20 *See* 11 C.F.R. § 109.21(d)(6); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 439  
21 (Jan. 3, 2003).<sup>4</sup>

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<sup>4</sup> The conduct standards of subsections (d)(4) (common vendor) and (d)(5) (former employee or independent contractor) may also apply to such communications. *Id.*

1           The material involvement, substantial discussion, common vendor, and former employee  
2 or independent contractor standards of the conduct prong are not satisfied “if the information  
3 material to the creation, production, or distribution of the communication was obtained from a  
4 publicly available source.” 11 C.F.R. § 109.21(d)(2)-(5); *see* Coordinated Communications, 71  
5 Fed. Reg. 33,190, 33,205 (June 8, 2006) (explaining that “[u]nder the new safe harbor, a  
6 communication created with information found . . . on a candidate’s or political party’s Web site,  
7 or learned from a public campaign speech . . . is not a coordinated communication . . .”). To  
8 qualify for the safe harbor for the use of publicly available information, “the person paying for  
9 the communication bears the burden of showing that the information used in creating, producing  
10 or distributing the communication was obtained from a publicly available source.” 71 Fed. Reg.  
11 at 33,205.

12           The available information indicates that ROF purchased the footage from Cold Harbor  
13 Films through an arms-length transaction. And there is no information suggesting that Mitt  
14 Romney’s 2012 campaign had any knowledge of — much less authorized — the transaction  
15 between ROF and Cold Harbor Films. Romney for President, for its part, declines to provide  
16 any information, accurately noting that the Complaint has not alleged that it “did anything  
17 inappropriate.” Romney for President Resp. at 1.

18           In short, there is nothing in the record showing that the communication at issue was  
19 coordinated with the Romney campaign. The Commission therefore finds no reason to believe  
20 that Romney for President violated 52 U.S.C. §§ 30116(f) or 30118(a) and closes the file as to  
21 Romney for President.

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