

BEFORE THE FEDERAL ELECTION COMMISSION

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Washington, DC 20005
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v.

MUR No. _____

NATIONAL RIFLE ASSOCIATION
OF AMERICA POLITICAL VICTORY FUND
Mary Rose Adkins, Treasurer
11250 Waples Mill Road
Fairfax, VA 22030

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

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 Political Victory Fund (“NRA-PVF”) (ID: C00053553) and the National Rifle Association of America Institute for Legislative Action (“NRA-ILA”) (ID: C90013301) have violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. During the 2010 and 2012 election cycles, both the NRA-PVF and the NRA-ILA contracted with a political consulting firm called OnMessage, Inc. (“OnMessage”). In 2013, OnMessage officials formed an additional political consulting firm, Starboard Strategic, Inc.

(“Starboard”). Beginning in the 2014 election cycle, both the NRA-PVF and the NRA-ILA stopped contracting with OnMessage, and began contracting with Starboard for independent expenditures supporting senatorial candidates—Thom Tillis, Tom Cotton, and Cory Gardner—whose campaign committees were simultaneously paying OnMessage. In the 2016 cycle, both the NRA-PVF and the NRA-ILA paid Starboard for independent expenditures supporting Ron Johnson, whose authorized campaign committee was simultaneously paying OnMessage. In reports to the Commission, the NRA-ILA and NRA-PVF consistently listed Starboard’s address as that of OnMessage and the NRA-ILA and NRA-PVF are effectively Starboard’s only clients. Evidence shows that Starboard was functionally indistinguishable from OnMessage; in fact, OnMessage has repeatedly taken credit for advertisements that the NRA-PVF and NRA-ILA paid Starboard to produce (and has even won awards for such ads). Therefore, there is reason to believe that OnMessage/Starboard used strategic information derived from its work for the Cotton, Tillis, Gardner, and Johnson campaigns to develop NRA-PVF and NRA-ILA advertisements expressly advocating for those same candidates, and that the NRA-PVF and NRA-ILA made coordinated communications with those campaign committees through the use of a “common vendor.” Indeed, it appears that OnMessage created Starboard for the purpose of disguising the NRA-PVF’s and NRA-ILA’s coordinated communications. As a result, the NRA-PVF and the NRA-ILA made excessive and unreported contributions to those campaign committees, in violation of FECA’s reporting requirements and contribution limits.

3. “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).

4. 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.

FACTS

5. The NRA-PVF is the NRA’s political action committee. Among other things, it makes contributions to candidates and to other committees and makes independent expenditures.¹
6. The NRA-ILA is a tax-exempt organization under Section 501(c)(4) of the Internal Revenue Code that describes itself as “the principal lobbying arm of the NRA.”² It reports independent expenditures to the Commission.³
7. OnMessage is a political consulting firm that has performed contracting work for dozens of campaigns and committees. The *Washington Post* recently called OnMessage “a powerhouse GOP consulting firm.”⁴

¹ National Rifle Association of America Political Victory Fund, Financial Summary, 2017-18, <https://www.fec.gov/data/committee/C00053553/>.

² NATIONAL RIFLE ASSOCIATION INSTITUTE FOR LEGISLATIVE ACTION, <https://www.nraila.org/> (last visited June 15, 2018).

³ National Rifle Association Institute for Legislative Action, Financial Summary, 2015-16, <https://www.fec.gov/data/committee/C90013301/?cycle=2016>.

⁴ 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.

8. OnMessage was registered in Virginia on April 13, 2005,⁵ and was incorporated in Maryland on April 20, 2006.⁶ Its website provides detailed information about its staff, past clients, and portfolio of work.⁷
9. In the 2010 election cycle, the NRA-PVF reported paying OnMessage over \$4.5 million, primarily for television and radio ad production,⁸ including approximately \$3.2 million for federal independent expenditures,⁹ according to reports filed with the Commission. The NRA-ILA did not disclose any payments to OnMessage for the 2010 election cycle on its reports filed with the Commission.
10. In the 2012 election cycle, the NRA-PVF reported paying OnMessage \$7.7 million for independent expenditures¹⁰ and \$42,866 in other disbursements.¹¹ All of the independent expenditure payments were for “Advertising Expenses,” and the disbursements were also for television and radio advertising expenses.

⁵ *OnMessage, Inc.*, Commonwealth of Virginia State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/0636043> (last visited July 16, 2018).

⁶ *OnMessage, Inc.: General Information*, Maryland Business Express, <https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/F11249893> (last visited July 16, 2018).

⁷ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited July 16, 2018).

⁸ National Rifle Association of America Political Victory Fund, Disbursements to OnMessage, Inc., 2009-10, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2010&data_type=processed&committee_id=C00053553&committee_id=C70000716&committee_id=C90013301&recipient_name=onmessage&min_date=01%2F01%2F2009&max_date=12%2F31%2F2010. Some of these Schedule B disbursements are described as “independent expenditure,” but the underlying report suggests the expenditures were in connection with state, not federal, candidates.

⁹ National Rifle Association of America Political Victory Fund, Independent Expenditures to OnMessage, Inc. (regularly scheduled reports), 2009-2010, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&is_notice=true&payee_name=onmessage&max_date=12%2F31%2F2010.

¹⁰ National Rifle Association of America Political Victory Fund, Independent Expenditures to OnMessage, Inc. (regularly scheduled reports), 2011-12, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00053553&cycle=2012&is_notice=false&payee_name=onmessage&min_date=01%2F01%2F2011&max_date=12%2F31%2F2012.

¹¹ National Rifle Association of America Political Victory Fund, Disbursements to OnMessage, Inc., 2011-12, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2012&data_type=processed&committee_id=C00053553&recipient_name=onmessage&min_date=01%2F01%2F2011&max_date=12%2F31%2F2012.

11. In the 2012 election cycle, the NRA-ILA reported paying OnMessage over \$3.5 million for independent expenditures described as “Advertising Expenses.”¹²
12. On March 22, 2013, Starboard was incorporated in Virginia by OnMessage officials.¹³ The incorporation certificate lists five directors: Curtis Anderson, Wesley Anderson, Bradley Todd, Graham Shafer, and Timothy Teepell.¹⁴ At the time, three of those directors—Anderson, Anderson, and Todd—were also directors at OnMessage.¹⁵ By the following year, 2014, Shafer and Teepell had been added to OnMessage’s board, as was Orrin “Guy” Harrison;¹⁶ Harrison, in turn, was added to Starboard’s board the year after, in 2015.¹⁷ Both Starboard’s and OnMessage’s boards still consist of these same six directors (Anderson, Anderson, Todd, Shafer, Teepell, and Harrison).¹⁸ Starboard’s registered agent, Craig M. Palik, is also the registered agent for OnMessage Holdings, Inc.¹⁹
13. 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

¹² 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 On Message 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 5.

¹³ *Articles of Incorporation: Starboard Strategic, Inc.*, Commonwealth of Virginia State Corporation Commission (Mar. 22, 2013) (attached as Exhibit A).

¹⁴ *Id.*

¹⁵ See *2013 Annual Report: OnMessage, Inc.* Commonwealth of Virginia State Corporation Commission (Mar. 9, 2013) (attached as Exhibit B).

¹⁶ See *2014 Annual Report: OnMessage, Inc.* Commonwealth of Virginia State Corporation Commission (Jun. 2, 2014) (attached as Exhibit C).

¹⁷ See *2015 Annual Report: Starboard Strategic, Inc.* Commonwealth of Virginia State Corporation Commission (Feb. 24, 2015) (attached as Exhibit D).

¹⁸ 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).

¹⁹ 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).

publicly affiliated himself with the company; four of them have LinkedIn pages, for instance, and their profiles only mention OnMessage.”²⁰

14. In the 2014 election cycle, the NRA-PVF and the NRA-ILA paid Starboard approximately \$20.5 million combined: the NRA-PVF paid Starboard \$12.54 million for independent expenditures²¹ and \$1.38 million in other disbursements,²² and the NRA-ILA paid Starboard \$6.6 million for independent expenditures.²³ Neither the NRA-PVF nor the NRA-ILA reported any payments to OnMessage during the 2014 cycle.²⁴
15. 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,²⁵ the same address and suite number as OnMessage’s Maryland office.²⁶

²⁰ 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>.

²¹ 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.

²² 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.

²³ 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.

²⁴ 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-michael-bloomberg/14296467/>. However, OnMessage also took credit for federal independent expenditures for which the NRA-PVF and NRA-ILA had paid Starboard. *See infra* ¶¶ 23-24.

²⁵ *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>.

²⁶ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited June 15, 2018).

16. 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,²⁷ the same address as OnMessage’s Virginia office.²⁸
17. 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.²⁹ 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.³⁰

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

- i. The NRA-PVF paid \$2.3 million to Starboard for independent expenditures supporting Tillis or opposing his opponent,³¹ and the NRA-ILA paid Starboard \$812,658 for Tillis independent expenditures.³²

²⁷ 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>.

²⁸ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited June 15, 2018).

²⁹ 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>.

³⁰ *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 20.

³¹ 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.

³² 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/>

- 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.”³³
 - iii. The Thom Tillis Committee reported disbursements to OnMessage at the address 705 Melvin Ave. #105 in Annapolis, Maryland.³⁴ 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.³⁵
 - iv. OnMessage Founding Partner and Starboard Director Bradley Todd was described in news reports as a Tillis campaign “media strategist.”³⁶
- b) Arkansas U.S. Senate Candidate Tom Cotton:
- i. The NRA-PVF paid \$1.6 million to Starboard for independent expenditures supporting Cotton or opposing his opponent.³⁷ The NRA-ILA did not pay Starboard for any independent expenditures in this race.

https://www.fec.gov/data/expenditures/?data_type=processed&committee_id=C90013301&is_notice=false&candidate_id=S4NC00162&cand_idate_id=S8NC00239&payee_name=starboard&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

³³ 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.

³⁴ 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>.

³⁵ See sources cited ¶15.

³⁶ 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>.

³⁷ 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.

- 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.³⁸
 - iii. Cotton for Senate reported disbursements to OnMessage at its Annapolis, Maryland address.³⁹ 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.⁴⁰
 - iv. OnMessage’s/Starboard’s Todd was described in news reports as an “ad consultant” for Cotton’s campaign.⁴¹
- c) Colorado U.S. Senate Candidate Cory Gardner:
- i. The NRA-PVF paid \$2.6 million to Starboard for independent expenditures supporting Gardner or opposing his opponent.⁴² The NRA-ILA paid \$529,186 to Starboard for Gardner independent expenditures.⁴³

³⁸ 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.

³⁹ 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>.

⁴⁰ See sources cited ¶15.

⁴¹ 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/>.

⁴² 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.

⁴³ 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.

- 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.⁴⁴
- iii. Cory Gardner for Senate reported disbursements to OnMessage at its Alexandria, Virginia offices.⁴⁵ 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.⁴⁶
- iv. OnMessage’s/Starboard’s Todd was described in news reports as a “consultant” for the Gardner campaign for OnMessage.⁴⁷

18. 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 expenditures⁴⁸ and \$305,483 in other disbursements,⁴⁹ and the NRA-ILA paid Starboard

⁴⁴ 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.

⁴⁵ 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 ¶12, rather than 817 Slaters Lane, the address listed on its website, onmessageinc.com.

⁴⁶ See sources cited ¶16.

⁴⁷ 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/>.

⁴⁸ 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.

⁴⁹ 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.

\$23.4 million for independent expenditures.⁵⁰ Together, the NRA-PVF and the NRA-ILA spent about \$55 million on independent expenditures for the 2016 federal election;⁵¹ the payments to Starboard represented a majority of that spending.

19. 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 Starboard⁵² was the same address and suite number as OnMessage's Maryland office.⁵³
20. 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 Starboard⁵⁴ was the same address as OnMessage's Virginia office.⁵⁵
21. 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.⁵⁶

⁵⁰ 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.

⁵¹ National Rifle Association of America Political Victory Fund, Financial Summary, 2015-16, <https://www.fec.gov/data/committee/C00053553/?cycle=2016>.

⁵² 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>.

⁵³ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited June 15, 2018).

⁵⁴ 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>.

⁵⁵ ONMESSAGE, INC., <https://onmessageinc.com/> (last visited June 15, 2018).

⁵⁶ 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->

The NRA-ILA paid \$48,537 to Starboard for Johnson independent expenditures.⁵⁷

- 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.⁵⁸
- iii. Ron Johnson for Senate Inc. reported disbursements to OnMessage at its Annapolis, Maryland offices.⁵⁹ 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.⁶⁰
- iv. Bradley Todd was a consultant for Johnson’s campaign who worked on “media and polling” through August 2016.⁶¹

22. Neither the NRA-PVF nor the NRA-ILA reported any disbursements to OnMessage in the 2016 election cycle.⁶² However, despite this, OnMessage was nominated for, and won,

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.

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ 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>.

⁶⁰ See sources cited ¶19.

⁶¹ 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/>.

⁶² 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).

industry awards for NRA-PVF and NRA-ILA ads that had been contracted through Starboard.

23. 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.”⁶³ Todd declared that “OnMessage Inc was proud to partner with the NRA and produce their ads in this election.”⁶⁴ Both “Nightstand”⁶⁵ and “Jet”⁶⁶ are prominently featured on OnMessage’s website as “featured” examples of “our work.” On February 20, 2017, Todd announced on OnMessage’s blog that “Nightstand” had won the Reed Award for Best Ad for an Independent Expenditure Campaign (Presidential). Todd credited OnMessage for having “brought home” this award.⁶⁷
24. 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

⁶³ 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.

⁶⁴ *Id.*

⁶⁵ *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.

⁶⁶ *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/>.

⁶⁷ Brad Todd, *OnMessage Wins Four Reed Awards*, ONMESSAGE, INC. (Feb. 20, 2017), <https://onmessageinc.com/blog/02202017/> (last visited July 16, 2018).

digital categories.”⁶⁸ 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.”⁶⁹ It won Best Ad for Presidential Independent Expenditure Campaign for producing the NRA-ILA’s ad “Nightstand.”⁷⁰ 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.⁷¹

25. So far in the 2018 election cycle, the NRA-PVF has reported \$2.4 million in disbursements to Starboard.⁷² The NRA-PVF has also reported paying Starboard \$1.1 million for independent expenditures, all in the Alabama, Montana, and Georgia special elections.⁷³
26. 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.⁷⁴ 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

⁶⁸ 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).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *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.

⁷² 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.

⁷³ 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.

⁷⁴ Starboard Strategic, Inc. Homepage, <https://starboardstrategicinc.com/> (last visited July 12, 2018).

contact” and the “tech contact” on Starboard’s website registration begins “OnMessage Inc. ATTN STARBOARDSTRATEGIC.COM.”⁷⁵

27. 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.”**⁷⁶ 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 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.”**⁷⁷
28. 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

⁷⁵ Spies, *supra* note 20; *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).

⁷⁶ *Creative*, STARBOARD STRATEGIC, INC., <https://starboardstrategicinc.com/creative/> (last visited July 12, 2018) (emphasis added).

⁷⁷ *Our Story*, ONMESSAGE, INC., <https://onmessageinc.com/our-story/> (last visited July 12, 2018) (emphasis added).

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.)⁷⁸

29. *POLTICO* 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.⁷⁹

30. 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.⁸⁰ NRA employees reported seeing Todd around their office, and noted “[t]here was consulting with [Todd] over high-end issues that were deemed controversial.”⁸¹

SUMMARY OF THE LAW

31. 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).

32. 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).

⁷⁸ Spies, *supra* note 20.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

33. 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). “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.*
34. 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).
35. 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).⁸²
36. 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 that such regulations “shall not require agreement or formal collaboration to establish coordination.”⁸³ Those “coordinated communications” regulations are at 11 C.F.R. § 109.21.

⁸² 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).

⁸³ *See* Public Law 107–155, sec. 214(c)(2) (March 27, 2002); *see also* note to 52 U.S.C. § 30116(a)(7).

37. 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).
38. 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).
39. The "conduct standard" of the regulation is satisfied if the political committee paying for the communication (a) uses a commercial vendor⁸⁴ to create, produce, or distribute the communication⁸⁵ that (b) during the previous 120 days also provided certain services to the candidate identified in the communication or a political party committee,⁸⁶ 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,⁸⁷ 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

⁸⁴ 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.*

⁸⁵ 11 C.F.R. § 109.21(d)(4)(i).

⁸⁶ *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.*

⁸⁷ *Id.* § 109.21(d)(4)(ii)(A-I).

the candidate) and “that information is material to the creation, production, or distribution of the communication.”⁸⁸ 11 C.F.R. § 109.21(d)(4).⁸⁹

40. 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);⁹⁰ *see also* MUR 5502 (Martinez for Senate), Notification with Factual and Legal Analysis at 8 (May 18, 2005).⁹¹ 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).⁹² The fact that the vendor provided services to both the campaign and the political committee was sufficient to find reason to believe that

⁸⁸ *Id.* § 109.21(d)(4)(iii).

⁸⁹ 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).

⁹⁰ Available at <http://eqs.fec.gov/eqsdocsMUR/00005ABC.pdf>.

⁹¹ Available at <http://eqs.fec.gov/eqsdocsMUR/000057D4.pdf>.

⁹² Available at <http://eqs.fec.gov/eqsdocsMUR/0000615D.pdf>.

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-PVF Has Illegally Made Excessive, Corporate, and Unreported In-Kind Contributions to the Thom Tillis Committee, Cotton for Senate, Cory Gardner for Senate, and/or Ron Johnson for Senate, Inc., and the NRA-ILA Has Illegally Made Excessive, Corporate, and Unreported In-Kind Contributions to the Thom Tillis Committee, Cory Gardner for Senate, and/or Ron Johnson for Senate, Inc.

41. The NRA-PVF has made illegal, excessive, and unreported in-kind contributions to the Thom Tillis Committee, Cotton for Senate, Cory Gardner for Senate, and/or Ron Johnson for Senate, Inc. by financing coordinated communications through the use of a common vendor.
42. The NRA-ILA has made illegal, excessive, and unreported in-kind contributions to the Thom Tillis Committee, Cory Gardner for Senate, and/or Ron Johnson for Senate, Inc. by financing coordinated communications through the use of a common vendor.
43. 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;” (3) satisfies at least one of the “conduct standards” in the regulation, such as the use of a “common vendor.” 11 C.F.R. § 109.21(a).
44. The NRA-ILA’s communications in support of Tillis, Gardner, and Johnson, and the NRA-PVF’s communications in support of those same three candidates and Cotton, satisfy the “payment” prong because they were paid for in whole by the NRA-PVF and the NRA-ILA. *Id.* § 109.21(a)(1).

45. The communications satisfy the “content” prong because they were public communications⁹³ disseminated on television, radio, and online that expressly advocated for the election of Tillis, Cotton, Gardner, and Johnson or for the defeat of their opponents. *Id.* § 109.21(c)(2).
46. The communications by the NRA-PVF and the NRA-ILA 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, 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.”⁹⁴ 11 C.F.R. § 109.21(d)(4).
47. The NRA-PVF and the NRA-ILA contracted with Starboard, a commercial vendor within the meaning of the regulation,⁹⁵ to create, produce, or distribute communications expressly advocating for Tillis, Cotton, Gardner, and Johnson.
48. During the relevant time period, OnMessage provided several of the regulation’s enumerated services to Tillis’s, Cotton’s, Gardner’s, and Johnson’s principal campaign committees.⁹⁶

⁹³ 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.

⁹⁴ *Id.* § 109.21(d)(4)(iii).

⁹⁵ OnMessage and Starboard are engaged in the regular business of content development and thus qualify as commercial vendors. *Id.* at § 116.1.

⁹⁶ 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

49. OnMessage, Inc. and Starboard Strategic, Inc. are functionally indistinguishable. The two entities are led by the same people;⁹⁷ during the 2014 and 2016 election cycles the NRA-PVF and NRA-ILA consistently reported payments to Starboard at OnMessage’s addresses;⁹⁸ and OnMessage has repeatedly taken credit for advertisements that the NRA-PVF and NRA-ILA paid Starboard to produce (and has even won awards for such ads).⁹⁹ 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.¹⁰⁰ Therefore, although the two companies are incorporated separately, they appear to effectively function as a single vendor. Indeed, after years of the NRA-PVF and NRA-ILA contracting with OnMessage, the individuals in charge of the firm created Starboard, and the NRA-PVF and NRA-ILA became effectively its only clients,¹⁰¹ while the independent expenditures that Starboard created for the NRA-PVF and NRA-ILA 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/NRA-ILA and the candidates supported by those entities.

content for public communications by the campaigns, produced those communications, and served as media consultants for the campaigns.

⁹⁷ See sources cited ¶12.

⁹⁸ See sources cited ¶¶ 15-16, 19-20.

⁹⁹ See ¶¶ 22-24.

¹⁰⁰ See ¶¶ 13, 28-29.

¹⁰¹ 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.

50. The evidence additionally provides reason to believe that Starboard/OnMessage used or conveyed to the NRA-PVF and NRA-ILA information about the “plans, projects, activities or needs” of the various principal campaign committees, and that such information was “material to the creation, production, or distribution of the communication[s],” *id.* § 109.21(d)(4). Starboard director and OnMessage partner Bradley Todd worked as a “media strategist” or a “consultant” for Tillis, Cotton, Gardner, and Johnson, while also reportedly providing strategic advice to the executive director of the NRA-ILA and chair of the NRA-PVF. OnMessage’s public statements taking ownership of ads paid for by the NRA-ILA, despite only Starboard receiving payment to create those ads, support this conclusion.
51. 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-PVF and NRA-ILA information about the “plans, projects, activities or needs” of the Tillis, Cotton, Gardner and Johnson campaign committees, and that such information was “material to the creation, production, or distribution” of the NRA-PVF and NRA-ILA communications in support of those candidates.¹⁰²
52. For these reasons, there is reason to believe that the NRA-PVF and NRA-ILA and the four senatorial candidates listed above coordinated their communications through a “common vendor.”

¹⁰² 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).

53. 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). Because there is reason to believe that Starboard/OnMessage used strategic information from the senatorial candidates' principal campaign committees in developing the NRA's independent expenditures supporting those candidates, the costs of those communications were in-kind contributions to those Senate campaigns.¹⁰³
54. Therefore, there is reason to believe that the NRA-PVF has made in-kind contributions to the Thom Tillis Committee, Cotton for Senate, Cory Gardner for Senate, and/or Ron Johnson for Senate, Inc., and that the NRA-ILA has made in-kind contributions to the Thom Tillis Committee, Cory Gardner for Senate, and/or Ron Johnson for Senate, Inc., 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).

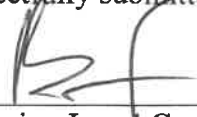
PRAYER FOR RELIEF

55. Wherefore, the Commission should find reason to believe that the NRA-PVF and the NRA-ILA violated 52 U.S.C. § 30101 *et seq.*, and should conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
56. 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

¹⁰³ Contributions in the form of "coordinated communications" resulting from conduct described in 11 C.F.R. § 109.21(d)(4) ("common vendor") and (d)(5) ("former employee") need not be reported as received by the party committee or candidate committee with which the communication is "coordinated," absent other conduct by that committee. *Id.* § 109.21(b)(2).

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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Sandhya Bathija

July 16, 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 Sandhya Bathija

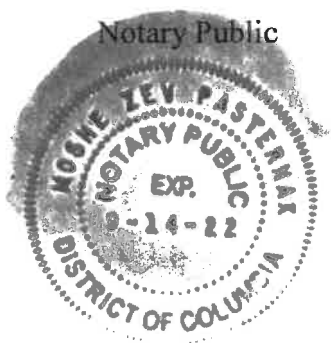


Sandhya Bathija

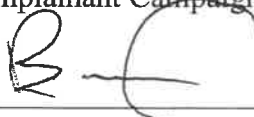
Sworn to and subscribed before me this 16 day of July 2018.



Notary Public



For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 16 day of July 2018.



Notary Public

