



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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JUL 11 2019

RE: MUR 7391

Dear Messrs. Elias and Wilson and Ms. Poston:

On May 31, 2018, the Federal Election Commission notified your clients, Democratic Congressional Campaign Committee ("DCCC") and Daniel Sena as treasurer, Jason Crow for Congress and Kristen Bear as treasurer, and Jason Crow of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On June 20, 2019, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe the DCCC and Daniel Sena, in his official capacity as treasurer, violated 52 U.S.C. § 30116(a); no reason to believe that Jason Crow for Congress and Kristen Bear in her official capacity as treasurer and Jason Crow violated 52 U.S.C. § 30116(f); and no reason to believe the DCCC and Daniel Sena, in his official capacity as treasurer, and Jason Crow for Congress and Kristen Bear in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(4) by failing to report disbursements. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302.

Sincerely,

Jim Lee

Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

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3 **RESPONDENTS:** Jason Crow for Congress and Kristen Bear MUR 7391  
4 in her official capacity as treasurer  
5 Jason Crow  
6 Democratic Congressional Campaign  
7 Committee and Daniel Sena in his  
8 official capacity as treasurer

9 **I. INTRODUCTION**

10 The Complaint alleges that the Democratic Congressional Campaign Committee  
11 (“DCCC”), Jason Crow, and Jason Crow for Congress and Kristen Bear in her official capacity  
12 as treasurer (“Crow Committee”) violated the Federal Election Campaign Act of 1971, as  
13 amended (the “Act”) by making and receiving excessive in-kind contributions in the form of  
14 polling information, mailing lists, and other resources.<sup>1</sup> The Complaint also alleges that neither  
15 the DCCC nor the Crow Committee reported these alleged in-kind contributions.

16 As discussed below, the available information indicates that the DCCC and the Crow  
17 Committee jointly purchased polling services and split the costs in accordance with Commission  
18 regulations on allocating polling expenses. Further, it appears that the DCCC did not provide the  
19 Crow Committee with any mailing list or other assistance that would constitute in-kind  
20 contributions. Accordingly, the Commission finds no reason to believe that the DCCC, the Crow  
21 Committee, and Jason Crow violated 52 U.S.C. § 30116(a) and (f) by making and accepting  
22 excessive contributions. Additionally, the Commission finds no reason to believe that the DCCC  
23 and the Crow Committee violated 52 U.S.C. § 30104(b)(4) by failing to report disbursements  
24 associated with the polling services.

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<sup>1</sup> Compl. at 1 (May 23, 2018).

1 **II. FACTS**

2 The Crow Committee is the principal campaign committee for Jason Crow, a 2018  
3 candidate for Colorado's 6th Congressional District.<sup>2</sup> Citing news reports, the Complaint alleges  
4 that the DCCC sought to support Crow as its preferred candidate for the 2018 Democratic  
5 primary election, and it made unreported, excessive in-kind contributions to the Crow Committee  
6 in the form of polling data and email lists.<sup>3</sup>

7 The Respondents deny that the DCCC provided Crow or the Crow Committee with any  
8 mailing lists, including email lists, or other resources.<sup>4</sup> The Response states that both the Crow  
9 Committee and the DCCC obtained the same polling research from the same polling consultant,  
10 Global Strategy Group ("GSG").<sup>5</sup> The Response states that, pursuant to the Commission's  
11 regulation on the allocation of polling expenditures at section 106.4(e)(2), the committees evenly  
12 split the cost of the polling and both committees properly reported the corresponding  
13 expenditures.<sup>6</sup>

14 Although the Response does not indicate the amount that respondents paid for the  
15 polling, Commission disclosure reports show that the DCCC and the Crow Committee each  
16 made a series of disbursements totaling \$41,023.29 to Global Strategy Group, LLC for polling

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<sup>2</sup> Crow Committee Statement of Organization (Apr. 11, 2017). Crow won the 2018 General Election.

<sup>3</sup> The primary support for the allegations is an article published by the *Intercept*, which quotes one of Crow's primary opponents as saying, "... [the DCCC] made polling data available to Crow that they did not make available to me. They made other resources available to Crow that they did not make available to me, such as mailing lists for fundraising purposes." Compl. Attach. A at 11. The Complaint also alleges that the DCCC urged Crow's primary opponents to withdraw, but does not argue that this constituted an in-kind contribution. Compl. at 2.

<sup>4</sup> Resp. at 2 (July 16, 2018).

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.*



1 things of value.<sup>12</sup> Therefore, the purchase of opinion poll results by an unauthorized political  
2 committee and the subsequent acceptance of such results (absent payment) by the candidate or  
3 candidate's authorized committee is an in-kind contributions from the unauthorized committee to  
4 the candidate or the authorized committee.<sup>13</sup> The value of such a contribution is determined  
5 using one of the allocation formulas outlined in 11 C.F.R. § 106.4(e).<sup>14</sup> One such method  
6 includes dividing the overall cost of the poll equally among candidates or political committees  
7 receiving the results.<sup>15</sup>

8 Respondents state that both the DCCC and the Crow Committee requested the polling  
9 data and divided the costs equally. Each committee reported payments of \$41,023.28 to the  
10 same polling vendor, which appears to corroborate Respondents' statement, and is consistent  
11 with section 106.4(e)(2). Thus, it does not appear that the DCCC made an excessive, in-kind  
12 contribution in the form of polling services.

13 With respect to the allegations that the DCCC provided the Crow Committee with  
14 mailing lists and other support, the Complaint's sole support for the allegation is a press report  
15 quoting one of Crow's primary opponents as saying "[the DCCC] made other resources available  
16 to Crow that they did not make available to me, such as email lists for fundraising."<sup>16</sup>

<sup>12</sup> See 11 C.F.R. § 100.52(d)(1) (specifically enumerating mailing lists as a thing of value); *id.* § 106.4 (stating that receipt by a political committee of polling results paid for by another committee constitutes an in-kind contribution).

<sup>13</sup> 11 C.F.R. § 106.4(b); Advisory Op. 1998-18 (Washington State Democratic Committee) at 3 ("AO 1998-18").

<sup>14</sup> 11 C.F.R. § 106.4(e)(2).

<sup>15</sup> *Id.*; see also Advisory Op. 2007-24 (Burkee/Walz) (concluding that no in-kind contribution results when two committees jointly purchase goods or services for the benefit of both committees and the vendor bills each committee separately for their share as determined using the appropriate allocation formula for the particular goods and services). Other acceptable allocation methods include (a) using the cost allocation formula provided by the polling firm; (b) allocation based on the proportion of question results each committee receives; and (c) any other method which "reasonably reflects the benefit derived." 11 C.F.R. § 106.4(e)(1), (3), (4).

<sup>16</sup> Compl., Attach. A at 11.

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1 Respondents deny that the DCCC provided Crow with mailing lists or any other goods or  
2 services, and we have found no information indicating otherwise.

3 Accordingly, the Commission finds no reason to believe that the Democratic  
4 Congressional Campaign Committee and Daniel Sena in his official capacity as treasurer made,  
5 and Jason Crow and Jason Crow for Congress and Kristen Bear in her official capacity as  
6 treasurer accepted, excessive in-kind contributions in violation of 52 U.S.C. § 30116(a) and (f).

7 **B. Respondents Properly Reported Disbursements for the Polling Expenses**

8 Political Committees must report disbursements for operating expenses in accordance  
9 with 52 U.S.C. § 30104(b)(4). Here, the DCCC's purchase of the polling, for its own use, is  
10 considered an operating expense,<sup>17</sup> which the DCCC reported as disbursements to Global  
11 Strategy Group on Schedule B of the committee's disclosure reports for the relevant periods.<sup>18</sup>  
12 Similarly, the Crow Committee's purchase of the polling is an expenditure, which the committee  
13 properly reported on Schedule B of its relevant reports.<sup>19</sup>

14 Accordingly, the Commission finds no reason to believe that the Democratic  
15 Congressional Campaign Committee and Daniel Sena in his official capacity as treasurer and  
16 Jason Crow for Congress and Kristen Bear in her official capacity as treasurer violated 52 U.S.C.  
17 § 30104(b)(4) by failing to report disbursements associated with the polling services.

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<sup>17</sup> See AO 1998-18 at 3 (stating that the purchase of polling and poll results by an unauthorized political committee for its own use, in whole or in part, is an overhead expenditure by the political committee under 11 C.F.R. § 106.1(c)(1) to the extent of the benefit derived by the committee).

<sup>18</sup> See *supra* note 7.

<sup>19</sup> See *id.*

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