

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:)
)
GOP Data Trust LLC, *et al.*) **MUR 6888**
)

RESPONSE OF GOP DATA TRUST LLC TO THE COMPLAINT

This responds on behalf of our client, the GOP Data Trust LLC (the "Trust"), to the notification from the Federal Election Commission (the "Commission") that a complaint and supplemental complaint (collectively, the "Complaint") were filed against it in the above-captioned matter. The Complaint, filed by an organization whose sole reason for existence is to file politically motivated, generally frivolous complaints and litigation against Republican and conservative organizations, misstates the facts, misrepresents the law, and thereby fails to provide adequate evidence to support its legal theories. For the reasons set forth below, the Commission should dismiss the Complaint against the Trust, close the file, and take no further action.

FACTUAL BACKGROUND

Established in 2011 as a for-profit company, the Trust is a vendor to conservative and Republican organizations that participate in the political process and undertake issue advocacy campaigns. American Democracy Legal Fund ("ADLF") bases its Complaint on inaccurate media reports and on a misunderstanding and misrepresentation of the facts behind the Trust's formation, business plans, and daily operation. The Trust provides the following factual summary to correct the record.

A. Origin and Structure of the Trust

In 2011, individuals with experience in the political process and issue advocacy campaigns recognized a need in the commercial marketplace for sophisticated data products aimed at conservative and Republican organizations. Although data was available to conservative and Republican organizations and committees, there was no market leader targeting this customer base by providing high quality, enhanced, and reasonably priced data. Seeing the business opportunities among conservative groups and Republican entities, the Trust became a for-profit commercial vendor targeting this client base.

From his tenure in 2007-08 as Republican National Committee (“RNC”) Chair, the Trust’s first Chairman, Robert M. (“Mike”) Duncan knew that the RNC had perhaps the most complete voter files available on the conservative side of the political spectrum but that the RNC had not been adequately updating its files with the increasingly sophisticated modern consumer data that can be used to help predict voter behavior. With this at the core of the business opportunity, the Trust approached the RNC with a proposal that was consummated with an August 2011 Data Exchange and Enhancement Agreement. Ex. 1 Declaration of John DeStefano (“DeStefano Decl.”) ¶ 4.¹ This agreement relied on long-standing Commission precedent concerning list exchanges between political committees and private entities. See Advisory Opinion 2002-14 at 5 (Jan. 31, 2003). Under the agreement, the RNC would license portions of its voter list and data² to the Trust in exchange for the Trust’s enhancing the files with its data valued at the same fair market value as the license for the RNC list. DeStefano Decl. ¶ 5. Each party would continue its independent efforts to grow its own voter file, and information gained thereby would be exchanged on a wholesale basis between the parties. *Id.* Each party

¹ The Agreement itself is protected by a Confidentiality Provision binding on the parties.

² For example, none of the RNC’s donor history and information is included in the exchange. DeStefano Decl. ¶ 5.

would also continue to manage its own data. Contrary to the Complaint, the Trust has never performed list management services for the RNC. *Compare* Complaint at 5 (falsely claiming that the Trust “manag[es] RNC data”), *with* DeStefano Decl. ¶ 5. Pursuant to the terms of the agreement, at its expiration, the value of the data the RNC provided to the Trust was required to equal the value of data the Trust provided to the RNC. DeStefano Decl. ¶ 6. Because of the RNC’s historic relationship with state, local, and other national party committees and their candidates, the agreement further provided that the Trust was not to market the RNC’s data to candidates or Republican Party committees without the consent of the RNC. *Id.* The Trust has never sought such permission and has made the business decision to thus far focus on entities other than candidate or political party committees.

The Trust designed its corporate structure to protect its most valuable asset: its data. Two separate entities comprise the Trust. Data Trust is a Virginia business trust that holds title to the intellectual property, which includes (1) the data generated by its wholly-owned operating company, GOP Data Trust LLC; (2) data gained through the Data Exchange Agreement with the RNC; and (3) other intellectual property. It also issues unregistered stock to private investors who choose to invest in the Trust. Like shareholders in any private venture, these investors are entitled to receive payments when the Trust turns a profit and the board elects to make a distribution to the shareholders. The GOP Data Trust LLC has a lease arrangement with the Virginia business trust so that the LLC receives the information from the exchange with the RNC and then exchanges data, leases data, and sells data services to the Trust’s clients. The same board governs both the Virginia business trust and the LLC. All employees work for the Trust’s LLC, and all consultants have arrangements with the LLC.

Following the 2012 election, the Trust engaged in a lengthy evaluation of its product offerings, corporate structure, and potential customers. The Trust's board met with its clients as well as with potential clients whom the Trust would like to service in the future to learn in what areas it did well, in what areas it needed to improve, and what types of data products and services clients would need for the future. It also met with vendors and consultants who offered their opinions on what products and services the Trust needed to offer and what it would cost to create these new capabilities. The board determined that the Trust had to expand beyond data and offer related services — including building applications to view and interact with the Trust's data — to become more competitive in the marketplace. The Trust saw its opportunity in the marketplace as being the best source of data products for conservative and Republican entities. To accomplish this, its products needed to close the advantage held by Democrat candidates and liberal issue groups through their vendors such as Catalist and VPN Van. This expansion would require more active management of the Trust's data operations, more employees to provide the data services clients now expected, and increased revenue and investment to support the Trust's growth.

While the Trust evaluated its efforts and reorganized its operations and personnel, the remainder of the political data market did not sit still. Disappointed with the results from the 2012 elections and the Democrats' and Left's reported dominance of data, new competitors entered the conservative political data market. One of those competitors was Liberty Works, which announced plans to build an entirely new data platform to manage and improve conservatives' digital efforts from its offices in San Mateo, California. Data Trust and Liberty Works at one point considered merging as the expiration of the Trust's Data Exchange Agreement with the RNC approached. DeStefano Decl. ¶¶ 7-8. The merger talks, however,

faltered despite the RNC's reported expression of support. See Thomas Edsall, *In Data We Trust*, N.Y. Times, May 8, 2013, available at <http://opinionator.blogs.nytimes.com/2013/05/08/in-data-we-trust> (reporting the RNC's expression of approval for the Trust to work together with Liberty Works).

In the interim, the Trust hired John DeStefano — formerly a congressional campaign manager, an operative at the National Republican Congressional Committee, and an aide to House Speaker John Boehner — and developed its comprehensive plan to improve its product offerings for 2014 and gain new investors. The Liberty Works merger did not occur, as the Trust and Liberty Works could not reach mutually agreeable terms. When Liberty Works subsequently began to falter, the Trust took over Liberty Works' California office and hired a number of its former engineers. Today, despite the claims of ADLF to the contrary, Liberty Works has no relationship with the Trust. The founder of Liberty Works, according to press reports, is still involved in political data efforts. See Kenneth P. Vogel & Darren Samuelsohn, *The Secret GOP Tech Summit to Plot 2016*, Politico, Dec. 8, 2014, available at <http://www.politico.com/story/2014/12/republican-technology-2016-113412.html> (detailing Liberty Works and its founder's current data efforts).

After its self-evaluation and the aborted merger discussions with Liberty Works, the Trust restructured and expanded in 2013 and 2014, hiring a chief technology officer; a development director; multiple data engineers, including those formerly employed by Liberty Works; and regional data coordinators along with a professional office staff to handle its increased responsibilities and customer base. The Trust also negotiated an extension of its Data Exchange Agreement with the RNC. DeStefano Decl. ¶ 9. Again recognizing the RNC's historic role, the new agreement maintained the prior agreement's condition that the Trust not

market data obtained through the agreement with the RNC to campaigns and party committees without the RNC's approval. But it also recognizes that the Trust may in the future develop, market, and sell applications and other analytical services to campaigns and party committees with the proper firewalls. *Id.*

B. Customer Relationships, Products, and Services

Aside from misunderstanding the Trust's basic structure, the Complaint also misrepresents the Trust's relationship with its clients.³ The Trust's core product offering is its data. The base information in the Trust's file is the voter data gained through both (1) additional voter registration data appended to the file through the Trust's own fifty-state collection effort and (2) the Data Exchange Agreement with the RNC. Addresses, phone numbers, and e-mail addresses are added and updated through a variety of commercially available databases, including the U.S. Postal Service's change-of-address database. The Trust also has contracted with a number of the nation's leading commercial sources of consumer data in order to add information on individuals' interests, predispositions, past purchases, and thousands of other data points. This allows the Trust's clients to decide which variables each believes will reveal voters and citizens most receptive to the causes each client is advocating. The Trust packages all of this data together on a person-by-person basis and sells it to its clients, including political action committees, 527 organizations, 501(c)(4)s, polling firms, and other advocacy groups.

The Trust charges market rates for access to its data, and clients pay based on the amount of data to which they want access. For example, access to the base voter file data is less expensive than access to data enhanced with consumer profile information. Clients generally

³ It is important to emphasize that the RNC is not one of the Trust's clients. While it exchanges information on a wholesale basis through its Data Exchange Agreement with the RNC, the Trust does not provide the data licensing services described below to the RNC.

limit the data they purchase based on whom they are trying to reach and by geographic location, *i.e.*, by legislative district, state, or nationwide. The Trust negotiates a license agreement with each client. Ex. 2 (sample license agreement). The basic costs as well as certain terms are standard in every contract, including limitations on the use of the data to comply with the Trust's legal obligations, *see id.* ¶¶ 3, 5; confidentiality and security provisions to protect the data from unauthorized disclosure, *see id.* ¶ 18, Attach. 1; and standard contractual terms governing choice-of-law, limiting legal liability, waiving certain implied warranties, and establishing the term length for the agreement. *See id.* ¶¶ 6, 10-12, 14.

Factored into the price the Trust charges each client is the requirement that each client report "data modifications" back to the Trust. *Id.* ¶ 4. Data modifications are the new data clients gain by contacting individuals based on the data licensed to them by the Trust. Being able to add this information into its products helps keep the Trust's products current. This new data is incorporated into the Trust's database, but clients are not informed that new data has arrived. It is also available to the RNC through the Data Exchange Agreement, again without specifically being flagged as new data. Data modifications consist of raw data that may be gleaned from such diverse sources as the answers to the questions potential voters are asked; changes in phone numbers or addresses discovered in database searches; reviews of public information about individuals; and, in some states, Department of Motor Vehicle records. The Trust does not provide labels indicating which client of the Trust collected the new data, when the data was collected, or who else has accessed the data. *See DeStefano Decl.* ¶¶ 10-11. Further, clients make independent decisions about which data fields are relevant to their efforts and request data accordingly. The Trust does not suggest geographic areas, competitive races of interest, or relevant voter characteristics to its customers. It only responds to client requests.

Clients receive the information they request based on what each has independently chosen is relevant to them. The Trust sells data — not political strategy, as the Complaint erroneously alleges. Nor does the Trust engage in, consult on, or produce any public communications. *Id.* ¶¶ 11-12. The Trust has no communications with campaigns or party committees concerning their private plans, projects, activities, or needs in connection with the creation, production, and distribution of any public communications. *Id.*

A Data Exchange Agreement between the Trust and i360 executed in August 2014 further expanded the amount of data available to the Trust's clients (and to i360's). DeStefano Decl. ¶ 13. The agreement obligated i360 and the Trust to provide each other with periodic updates from each party's own database. As with the Trust's own data modifications, data received from i360 does not contain any indication of which group collected the data, when the data was collected, or who else has used the data. *Id.* It also does not indicate that the data originated with a client of i360. Trust clients have access to the data from the exchange with i360 as part of their already existing data requests. *Id.*

The Trust has recently decided to expand into the development of application programming interfaces ("APIs") to make it easier for customers to interact with its data. The first (and so far, only) API allows users access to data to help customers determine which persons are likely to be supporters of Republican or conservative candidates and causes. The Trust also offers data services to vendors to allow them to integrate Trust data with their own software programs or applications. Although these data services currently provide just a small portion of the Trust's total revenue, APIs and data services are an area the Trust has identified for growth as it enters the 2016 election cycle. The RNC contracted with the Trust to gain a license to use its API and to provide data services to the RNC as needed at fair market rates. *Id.*

¶ 14. The Trust has received \$45,000 for these services since August 2014. *See* Ex. 3 (RNC Post-General 2014 FEC Report). Currently, the Trust's leadership is reviewing the results of the 2014 election and consulting with its clients to prepare for their needs in the 2016 presidential election cycle.

ARGUMENT

ADLF makes three primary — and fallacious — accusations in its Complaint against the Trust. It claims that the Trust is providing a litany of data services to the RNC at a price below the market rate. Complaint at 15-17. It asserts that the RNC “appears” to have established and is currently financing, maintaining, and controlling the Trust. *Id.* at 17. And it speculates that the Trust has violated coordination rules by being a “common vendor” to outside groups engaging in independent expenditure efforts. *Id.* at 11-15. All three claims are specious.

The Trust has an arm's length business relationship with the RNC. Under longstanding Commission precedent, the Trust and the RNC have entered into a Data Exchange Agreement that provides data of equal value to both. For all other services, the Trust receives monetary compensation at fair market rates. Further, the Trust is an independent, for-profit corporation with a board and officers who make their decisions based on the business needs of the Trust. The Commission has declined to find that a prohibited sponsor established, financed, maintained, or controlled an entity when presented with the same “evidence” ADLF proffers here. Similarly, there can be no coordination because the Trust is in the data business — not the communication or advertising business. The Trust does not create, produce, or distribute commercials; and the commoditized data it sells reveals no campaign or party committee's private plans, projects, activities, or needs. Rather than smoke or fire, ADLF's Complaint reveals only hot air. Because

the arguments advanced in the Complaint are both legally and factually meritless, the Trust requests that the Commission find no reason to believe exists and close the file.

I. THE TRUST RECEIVES MARKET RATE COMPENSATION FOR ALL SERVICES PROVIDED.

Citing only the most minimal of evidence, ADLF alleges that the Data Trust has provided the RNC with “excessive contributions in the form of in-kind data services.” *Id.* at 15. That evidence consists of (1) an unsupported assertion that the Trust manages the RNC’s data, (2) a flatly incorrect claim that the RNC has made only a single payment to the Trust of \$25,000, and (3) an observation from the only research ADLF appears to have conducted that American Crossroads paid the Trust \$1 million for data, far less than ADLF speculates the RNC paid for the same services. *Id.* at 15-17. As with the remainder of its Complaint, ADLF’s claims are both wrong and frivolous.

The Trust does not manage the RNC’s data operations. *See* DeStefano Decl. ¶ 5. As reported in the media, the RNC has its own data division that is responsible for all aspects of its digital strategy, including social media, online fundraising, and management of the RNC’s voter file. The RNC’s digital team has offices in both Washington, D.C., and Silicon Valley; and it employs more than forty people to run and manage its digital and data effort. Sushannah Walshe, *RNC Plays Catch-Up on Data, Ground Game*, ABC News (May 7, 2014), available at <http://abcnews.go.com/blogs/politics/2014/05/rnc-plays-catch-up-on-data-ground-game/>; Jon Ward, *The Behind the Scenes Story of the RNC’s Quest for Data Supremacy*, Huffington Post (Apr. 18, 2014), available at http://www.huffingtonpost.com/2014/04/18/rnc-data_n_5153927.html. The answer to ADLF’s question as to why the RNC does not pay millions of dollars to the Trust for managing the RNC’s voter file is therefore simple: The RNC does not do so because the RNC spends millions of dollars to manage its voter file and digital.

efforts itself. The Trust does not do this work for the RNC. DeStefano Decl. ¶ 5. Thus, there is no in-kind contribution or violation of any sort.

The RNC also maintains its own independent data operation that services all Republican campaigns. See Ward, *The Behind the Scenes Story of the RNC's Quest for Data Supremacy*. The RNC and the Trust have entered into an exchange agreement whereby the RNC provides access to its voter data in return for data of equal value from the Trust: an arrangement the Commission has approved since 1981. See Advisory Opinion 1981-46 (Dellums). For all other services and products received, the RNC pays the Trust fees established by arm's length negotiated contracts. The Trust makes no in-kind contributions to the RNC of any type. ADLF's claims to the contrary are unsupported and demonstrably false.

The Trust first entered into an Exchange Agreement with the RNC in August 2011. The parties renewed the agreement March 2014. DeStefano Decl. ¶¶ 4, 9. The RNC agreed to provide the Trust with its voter file. In return, the Trust agreed to provide the RNC with consumer and other data to enhance the RNC's voter list that would be of equal value. *Id.* ¶ 5. The RNC and Trust have each continued its own efforts to develop its respective data files on potential voters. That information is exchanged, as well. *Id.* The agreements require the fair market value of all data exchanged between the parties to be equal and provide for the parties to adjust the amount of data exchanged should the amount ever fall out of equilibrium. *Id.* ¶ 6.

The Commission has approved such agreements between party committees and for-profit corporations for more than thirty years. Advisory Opinion 1981-46 found that "no contribution or expenditure would result and the transaction would not be reportable under the Act" where "a corporation exchanges names with [a] Committee." A.O. 1981-46 at 2. The exchange must be "a bargained-for exchange of consideration in a commercial transaction," but the exchange does

not have to take place all at once. *Id.* A Committee can provide names to another entity and then receive names on a gradual basis for future use. *Id.* As long as the exchange, at its conclusion, is of equal fair market value, no prohibited corporate in-kind contribution occurs. *Id.*

The Commission reiterated its holding in Advisory Opinion 2002-14. There, it once again held that lists may be exchanged “at the usual and normal charge in a bone fide, arm’s length transaction; and the list must be used in a commercially reasonable manner consistent” with the negotiated agreement. A.O. 2002-14 at 4 (Libertarian National Committee); *see also id.* at 5 (reaffirming that committees may enter into such exchange agreements with “for-profit corporations”).

That is exactly the case here. In 2011 and 2014, the Trust and the RNC entered into Data Exchange and Enhancement Agreements like those contemplated in the Commission’s advisory opinions. Those agreements were the result of extensive negotiations between the parties within the guidelines set by the Commission’s guidance. The 2011 agreement expired on March 15, 2013. While negotiations began before its expiration, the parties entered into short-term extensions and did not reach a final consensus on a successor agreement until March 2014 — a year later. DeStefano Decl. ¶ 9. The new agreement, like its predecessor, requires the data exchange to be of equal value and provides for a mechanism to modify the exchange in the event equilibrium is not reached. *See id.* ¶ 6. Simply put, money did not change hands for the data exchange and enhancement because it did not need to. That ADLF makes no mention of the Data Exchange and Enhancement Agreement reveals its Complaint for what it actually is: a political act with no merit.

Finally, ADLF's assertion that the only payment the RNC made was a single payment for \$25,000 is demonstrably false.⁴ In August 2014, the Trust and the RNC entered into an arm's length negotiated agreement whereby the RNC would pay the Trust \$15,000 per month in exchange for (1) a license to use the Trust's API for the RNC's own data efforts and (2) the Trust's assistance in answering technical questions that the RNC's own technology team cannot handle. *See* DeStefano Decl. ¶ 14. The RNC also paid the Trust \$150,000 in July 2014 to purchase a partly completed software program known as Data Beacon. The Trust sold Data Beacon after deciding to focus on data acquisition and application development rather than software in the aftermath of the 2012 election. The RNC and the Trust negotiated the sale price taking into consideration (1) the amount of money the Trust had spent developing it, (2) its unfinished status, (3) the \$5,000 per month in fees the RNC had earlier paid for access to a beta version of the software, and (4) the substantial investment the RNC would need to make to complete development of the product. *See id.* ¶ 15 Both the Data Trust and the RNC were mindful of the FEC's proscriptions on fair market value sales of products throughout the negotiations. *Id.*

ADLF's assertion that the Trust has made prohibited in-kind contributions to the RNC is without merit. The RNC and Trust exchange data based on a negotiated data exchange agreement of the type long-approved by Commission precedent. ADLF's Complaint — containing only unsupported speculation — can demonstrate nothing to the contrary. Consequently, the Commission should find no reason to believe that the Trust violated 52 U.S.C.

⁴ In fact, the RNC's payments to Data Trust, discussed below, were included in the appropriate RNC Reports of Receipts and Disbursements. That ADLF failed to disclose this in either its original or supplemental complaints is emblematic of the inaccuracy of the allegations in the Complaint

§ 30118(a) or 11 C.F.R. § 114.2(b) by making a prohibited corporate contribution to a party committee.

II. THE TRUST IS AN INDEPENDENT ENTITY, NEITHER ESTABLISHED, FINANCED, MAINTAINED, NOR CONTROLLED BY THE RNC.

ADLF's next unsupported allegation is that the Trust was established or is financed, maintained, or controlled by the RNC in violation of 52 U.S.C. § 30125(a) and 11 C.F.R. § 300.2(c). It cites only two main "facts" in support of its assertion: (1) the Trust has at least two board members or officers who "have ties to the Republican Party apparatus" and (2) a blanket allegation that the RNC established the Trust, supported only by anonymous quotes in newspaper articles. Complaint at 18. Commission precedent forecloses a finding based solely on reports of informal ties between Trust executives and former political associates and information contained solely in newspaper articles. ADLF's allegation, therefore, should be dismissed.

The Bipartisan Campaign Reform Act ("BCRA") prohibits a national committee of a political party, such as the RNC, from establishing, financing, maintaining, or controlling any entity contributions or donations to which "are not subject to the limitations, prohibitions, and reporting requirements of [the] Act." 52 U.S.C. § 30125(a)(1); 11 C.F.R. § 300.2(c)(2)(i)-(x). ADLF's Complaint can point only to alleged ties between one director and one officer with the RNC. Complaint at 18 n.n.65-66. While former RNC Chairman Robert M. Duncan was instrumental in starting the Trust and continues to sit on its board and John DeStefano, a former senior advisor to House Speaker John Boehner who has never worked for the RNC, serves as the Trust's president, that is hardly sufficient to show establishment, financing, maintenance, or control. *See* DeStefano Decl. ¶¶ 2, 4. The only other "evidence" ADLF can point to is an anonymous source quoted in a New York Times blog post claiming that the RNC established the

Trust. See Complaint at 18 (quoting Edsall, *In Data We Trust*, available at <http://opinionator.blogs.nytimes.com/2013/05/08/in-data-we-trust>).⁵

The Commission examined similar allegations in MUR 5338, involving the Leadership Forum and, following the advice of the Office of General Counsel, refused to recommend finding reason to believe that the Forum had been established, financed, maintained, or controlled by the National Republican Congressional Committee ("NRCC"). See MUR 5338 First General Counsel's Report (Mar. 27, 2003) [hereinafter "MUR 5338 GC Report"]. The Leadership Forum was incorporated on November 5, 2002. *Id.* at 5. Its president, vice-president, secretary-treasurer, and incorporator all were either employed by the NRCC at one time in the past or worked for members of the House Republican leadership. *Id.* at 6-7. Indeed, Forum Vice President L. William Paxon was a former House member and former chairman of the NRCC. *Id.* at 6. Contemporary press reports quoted then-NRCC chairman Rep. Tom Davis as saying that the NRCC was "having stuff set up right now . . . so that issue advocacy continues." *Id.* at 8 (emphasis removed). Soon-to-be-Forum-President Susan Hirschmann was also quoted as saying that the NRCC was trying to determine what type of organization to establish "to get that message out." *Id.*

Despite the allegations and on-the-record press quotations, the Commission declined to find reason to believe that the NRCC or the Forum had violated BCRA. On the question of whether the past employment of the Forum's officers met the criteria for finding that the NRCC controlled the Forum, the General Counsel's office concluded "something more than the mere

⁵ "The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." 52 U.S.C. § 30109; see also Statement of Reasons of Commissioners Petersen, Hunter, McGahn, MUR 6056 at 6 n.12 ("The Commission must have more than anonymous suppositions, unsworn statements, and unanswered questions before it can vote to find RTB. . .").

fact of such informal, ongoing relationships between the personnel of a potentially sponsoring and potentially sponsored entity is necessary to support a conclusion of ‘establishment, financing, maintenance or control.’” *Id.* at 18. Furthermore, “while former employees and colleagues may exercise influence, influence is not necessarily control”; and the statute requires control. *Compare id.* (noting the allegations of ongoing relationships with past employers amount to nothing more than allegations of influence), with 52 U.S.C. § 30125(a)(2) (prohibiting the establishment of an entity “controlled by such a national committee”). On-the-record press quotations added to informal ties therefore were not enough to find reason to believe that an entity was established, financed, maintained, or controlled by a national party committee. MUR 5338 GC Report at 19.⁶

ADLF has even less supporting its allegations: an anonymous quote in a blog post and an observation that one Trust director had ties to a party committee and one Trust officer had ties to the “Republican Party apparatus.” *See* Complaint at 18. Such “informal” relationships cannot support a finding that the RNC established, financed, maintained, or controlled the Trust. *See* MUR 5388 GC Report at 18. Similarly, if on-the-record quotes from officers of the Forum cannot support a finding of reason-to-believe, then anonymous, ill-informed speculation found in blog posts and articles cannot act as a stronger foundation for ADLF’s claim.⁷ Anonymous attacks aside, the Trust was established by independent incorporators, not the RNC, to take

⁶ The General Counsel’s Report also discussed whether a separate liberal organization was affiliated with the Democratic National Committee. The alleged facts involving the DNC are inapposite here. *See* MUR 5338 GC Report at 25-34. Furthermore, the Commission declined to find reason to believe existed, as the Complaint was dismissed on alternative grounds. *See* MUR 5338 Vote Certification (Apr. 8, 2003).

⁷ In fact, the Commission has found that “[c]omplaints not based on upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented.” MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Comms. David Mason, Karl Sandstrom, Bradley Smith, and Scott Thomas at 1; *see, e.g.*, MUR 4850 (Committee to Re-Elect Vito Fosella), Statement of Reasons of Comms. Darryl Wold, David Mason, and Scott Thomas at 2.

advantage of a business opportunity to provide data to Republican and conservative causes. *See* DeStefano Decl. ¶ 3.

ADLF's final effort is an assertion that the RNC, rather than either party to the contract, announced an agreement between Liberty Works and the Trust. Complaint at 18. However, as detailed in the factual summary, no agreement between Liberty Works and the Trust was ever consummated. *Compare* Edsall, *In Data We Trust* (stating that the RNC expressed its desire for the Trust to work together with Liberty Works), *with* DeStefano Decl. ¶ 8 (noting the Trust's rejection of the proposed deal). Rather than supporting an inference that the Trust is financed, maintained, or controlled by the RNC, the Trust's rejection of the proposed merger demonstrates the Trust's independence.

The Complaint's allegations are both factually incorrect and legally unsupported. The Commission's decision in MUR 5338 forecloses any argument that there is reason to believe the Trust is established, financed, maintained, or controlled by the RNC. The Commission should consequently find no reason to believe exists that the RNC established, finances, maintains, or controls the Trust, close the file, and take no further action.

III. THE TRUST DOES NOT ENGAGE IN ILLEGAL COORDINATION.

ADLF's final allegation is that the Trust engages in illegally coordinated campaign activity with Super PACs, the RNC, and federal campaigns. Complaint at 11-15. This allegation either ignores or fails to understand both the legal standards required to make such an allegation and the basic operations of data providers. The regulations at issue apply only to those who create, produce, or distribute communications. The Trust is a data company — not a communications company — so that the common vendor regulation alleged to be violated is wholly inapplicable. Even were it applicable, the Trust sells only data, not voter lists marketing

specific characteristics (e.g., “reliable conservatives,” “new voters in \$100,000+ homes”), communications, or any of the other services covered by the regulation. Nor does the Trust convey the private plans, projects, activities, or needs of any campaign or political party committee to any outside group or vice versa. ADLF’s complaint therefore gives the Commission no reason to believe that any violation has occurred, and the Commission should close the file and take no further action.

A. The Trust Is Not A Commercial Vendor of Communications.

Federal statute provides that “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate.” 52 U.S.C. § 30116(a)(7)(B)(i). The same rule exists for expenditures made in cooperation, consultation, or concert with a national committee of a political party. *Id.* § 30116(a)(7)(B)(ii). ADLF alleges that the Trust has facilitated illegal coordination between the RNC, campaigns, outside groups such as American Crossroads, and i360 by serving as a common vendor to those organizations and sharing their private plans, projects, activities, or needs. Complaint at 11-15. If such coordination had occurred, ADLF correctly asserts it would result in illegal corporate contributions to the campaigns and political committees helped. *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii). There is just one problem. The common vendor regulation is wholly inapplicable to the Trust.

To satisfy the common vendor regulation, three criteria must be met. A third-party must pay for the disputed communication; that communication must satisfy at least one of the content

standards;⁸ and the three portions of the separate common vendor test must all apply. 11 C.F.R. § 109.21(a)(1), (c), (d)(4). The first requirement of the common vendor test is “The person paying for the communication . . . contracts with or employs a *commercial vendor* . . . to create, produce, or distribute the communication.” *Id.* § 109.21(d)(4)(i) (emphasis added). The Commission’s regulations define a commercial vendor as any entity “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.*” 11 C.F.R. § 116.1(c) (emphasis added). Its comments accompanying the promulgation of the coordination regulations confirm the point, emphasizing that the “standard only applies to a vendor whose usual and normal business includes the creation, production, or distribution of communications, and does not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture.” Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003). The Trust does none of these things.

The Trust is a data company. It sells only data, APIs, and technological know-how. It has never created, produced, or distributed a public communication. *Compare* DeStefano Decl. ¶ 12 (stating that the Trust does not create, produce, or distribute communications), *with* 11 C.F.R. § 100.26 (defining public communications to include television, newspaper, magazine, or mass mailing advertisements; telephone banking; “or any other form of general political advertising”). The Trust’s employees are listed on its website. *See* <http://www.gopdatatrust.com> (last visited Jan. 6, 2015). Not a single employee has or ever had a title remotely suggesting his or her

⁸ As noted below, ADLF does not identify any specific communication it alleges the Trust created, produced, or distributed. It cannot identify a specific communication for the simple reason that the Trust does not create, produce, or distribute communications. Accordingly, the content standard cannot be met; and the Complaint fails to meet its burden of showing that a violation can be proven from the facts as alleged. *See FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations.”).

position has anything to do with creating, producing, or distributing communications. *See id.*; DeStefano Decl. ¶ 12 (affirming this fact). Further, the Complaint fails to allege a single specific advertisement or other public communication that the Trust allegedly created, produced, or distributed. *Compare* Complaint at 11-15, with MUR 6077 First General Counsel's Report at 8 (requiring the complaint to allege "specific communication(s) . . . have been coordinated"). This is because none exists.

The regulation only applies to commercial vendors who are "contracted to create, produce, or distribute a communication by the person paying for that communication." 68 Fed. Reg. at 435; *see also* 11 C.F.R. § 109.21(d)(4)(i). The Trust does not hold itself out to perform, nor does it perform, such work. As this Commission has held before, "[P]urely speculative charges, especially when accompanied by direct refutation, do not form an adequate basis to find reason to believe that a violation of FECA has occurred." MUR 4960 Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas at 3 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee) (Dec. 21, 2000). Because the regulation whose violation is alleged does not apply to the Trust and ADLF has identified no specific communication that it alleges the Trust created, produced, or distributed, there is no reason to believe any coordination violation has occurred.

B. The Trust Does Not Sell or Develop Voter Lists, Etc.

Even if the Commission wrongly were to believe that the common vendor regulation was applicable to the Trust, ADLF still has not alleged a violation. The second prong of the common vendor analysis requires the vendor to provide at least one of nine enumerated services. *See* 11 C.F.R. § 109.21(d)(4)(ii)(A)-(I). ADLF alleges that the Trust "indentif[ies] voters or develop[s] voter lists, mailing lists, or donor lists." *See id.* § 109.21(d)(4)(ii)(G); Complaint at 13 ("Stated

plainly, the Data Trust provides the RNC with services to 'identify voters' and 'develop lists' on a continuous basis, using the most valuable voter data available." The Trust does no such thing. The Trust sells a commodity: data. That data is available to anyone who buys the Trust's product. The lists that are pulled from the Trust's database and any analyses made from them are of the customers' making, not the Trust's. ADLF's assertion to the contrary is incorrect.

ADLF's accusation appears to rest on the faulty factual premise that the Trust "build[s] and maintain[s] the GOP's voter file." See Complaint at 17 (quoting the uninformed and incorrect speculations of a *National Review Online* reporter for support). As noted above and in Mr. DeStefano's declaration, the Trust does not provide lists or list management services to the RNC. See discussion *supra* Part I; DeStefano Decl. ¶ 5. The RNC is not a client of the Trust and does not "query" the Trust's database. Instead, the RNC has a team that develops and maintains its voter file on an ongoing basis. See Ward, *The Behind the Scenes Story of the RNC's Quest for Data Supremacy*. That team develops its own voter and donor lists without the participation of the Trust. *Id.* Indeed, the current Data Exchange Agreement with the RNC identifies this data as originating with and belonging to the RNC. DeStefano Decl. ¶ 5. The agreement specifically excludes the Trust from receiving the RNC's donor data for the purpose of passing it on to any other client and from marketing data obtained through the RNC agreement to any campaign or party committee without the RNC's approval. *Id.* Because the RNC develops its own voter and donor lists internally, the Complaint's allegations are demonstrably false. Further, because the Trust does not provide any of the enumerated services to any party committee or campaign committee clients, it is not a common vendor.

Looking beyond the accusation's factual falsity, it is also legally incorrect. The Trust's primary product is data, and data is a commodity. Any client with a subscription to the Trust's

data can access the same data as any other client with a similar subscription. The value of that data comes from the ingenuity of the client's own internal analyses and the uses to which it puts the data. In this respect, the Trust is no different than LexisNexis or Westlaw, which sell access to case law and statutory law along with a search engine that allows their clients to quickly access the cases and statutes they believe are relevant. A client with a Lexis subscription has access to the same database as any other client with a similar subscription; but no person would say that Lexis, by selling such a subscription, develops legal arguments or authors briefs. The onus to put the Lexis data to productive use is on the lawyer. That lawyer must (1) determine what types of cases are relevant, (2) devise search terms that enable him or her to retrieve those relevant cases, (3) review the search results for helpful legal principles, and (4) combine the case law obtained with arguments derived from other sources to write a compelling legal brief.

The same holds true for clients of the Trust. The secret to developing successful issue advocacy and campaign strategies lies in the actions and analyses of those clients rather than in the commoditized data sold by the Trust. Outside groups must (1) identify the causes or individual races in which they are interested and the message they want to disseminate, (2) determine which individuals are most important to target, (3) determine which data points will allow them to isolate those individuals, (4) search for those data points within the Trust's available data, (5) analyze that data to determine the proper message to reach these key individuals, and (6) successfully execute the determined strategy. The Trust only comes into play on step four, allowing the client to search for the data it determines it needs. This is not "identifying voters or developing voter lists, mailing lists, or donor lists" any more than what Lexis does is "identifying or developing legal arguments or strategies." It is the clients that

identify and develop the lists of relevant categories and people. The data accessed is only as valuable as the minds of the users who employ it.

Because the Trust sells a commodity and relies upon the creativity of its clients to put that commodity to good use, it does not identify or develop voter lists, mailing lists, or donor lists. See 11 C.F.R. § 109.21(d)(4)(ii)(G). ADLF's assertion to the contrary is without factual or legal merit.

C. Selling Commoditized Data Does Not Convey the Private Plans, Projects, Activities, or Needs of Any Candidate or Political Committee.

The common vendor test requires ADLF to satisfy all three prongs before it can allege any violation. *Id.* § 109.21(d)(4) (requiring “[a]ll of the following statements” in paragraphs (i) – (iii) to be true). As with the test's first two prongs, ADLF has not and cannot allege a violation of the third prong. That test requires that a common vendor — which the Trust is not —

uses or conveys to the person paying for the communication . . . [i]nformation about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

Id. § 109.21(d)(4)(iii)(A). The test is also satisfied if the vendor uses or conveys information “used previously by the commercial vendor in providing services to” candidates or political committees. *Id.* § 109.21(4)(d)(iii)(B). The Trust fails to satisfy this test for three reasons. First, as noted above, the Trust does not provide data to campaigns or party committees other than the RNC. Thus, there is no possibility that an outside group could gain information about campaigns' or committees' private plans, projects, activities, or needs because the Trust has none. Second, the information that the Trust *does* provide to its clients does not contain information about any clients' or the RNC's private plans, projects, activities, or needs. The Trust does not indicate which client (or the RNC) collected the data, when the data was

collected, who has accessed the data, or whether the client collecting the data was a client of the Trust or i360. Third, Commission precedent forecloses any finding of reason to believe based on ADLF's allegations. *See* MUR 6038 (Lamborn). Thus, the Complaint's ruminations fail to state any violations.

The most fundamental reason ADLF's speculative allegations fail is that the Trust has not provided data to campaigns or candidate committees. It has no campaign committee clients, and its only interactions with any party committee involving data have been through the Data Exchange and Enhancement Agreement—not as a vendor. None of the Trust's data has information on from where or from what source its data points came. Both the original 2011 Data Exchange and Enhancement Agreement and the current 2014 version prohibit the Trust from marketing RNC provided data to candidates, their committees, or other party committees without the consent of the RNC chief of staff.⁹ DeStefano Decl. ¶¶ 6, 9. The Trust has never sought the permission of the RNC to provide data to the covered candidate and party committees. Instead, it has made a business decision to focus thus far on entities other than candidates and political party committees. *Id.* Because the Trust has not provided data to candidates or party committees, it necessarily cannot transfer information about their “plans, projects, activities, or needs” to outside groups or to any other client. ADLF's unsupported speculation otherwise is simply incorrect.

Regardless of the clients the Trust services, the data it provides does not contain details of the private plans, projects, activities, or needs of any client. ADLF, in breathless language, alleges that the RNC “is also telegraphing, on a movement-by-movement basis, which types of

⁹ This provision of the Agreement recognizes and protects the national party committee's historic role with and relationships to its state and local parties, the other national party committees, and their candidates.

voters it is talking to, how it is structuring its field outreach and targeting, and its overall strategy for voter contact and persuasion.” Complaint at 13. It goes on to allege that this “telegraphing” allows the RNC to signal to outside groups on “which doors it is knocking an[d] which phone numbers it is dialing” along with “the big picture of its inside strategies.” *Id.* This is complete and utter nonsense devoid of any supporting evidence whatsoever. *Compare id.* (containing no citation for the quoted accusations), with 11 C.F.R. § 111.4(d)(2) (“Statements [in complaints] which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant’s belief in the truth of such statements”).

The Trust does not provide labels for any client to signal any other client. It has not established its database to allow a client to determine (1) who collected the data; (2) whether the collector was a client of the Trust or i360, the RNC, or any campaign or party committee, (3) when the data was collected, or (4) what other clients have accessed the data. DeStefano Decl. ¶ 11. In other words, the exact information the RNC or any outside group would need to signal others to its strategy does not appear in the labels the Trust provides its clients. *Id.* Without any information about who generated the data, when it was generated, and who is using the data, Trust clients have no way to use the data to coordinate with others in violation of the common vendor rules. *Id.*; see also 68 Fed. Reg. at 436 (clarifying that a violation only occurs with “the sharing of information about plans, projects, activities, or needs of a candidate or political party . . . to the spender who pays for a communication”). When one adds that clients must also independently (1) determine on which races they should focus, (2) determine which voters are relevant, (3) decide which data characteristics will be helpful in isolating those voters, and (4)

develop a message that they believe will motivate them to vote, it becomes evident that the Trust is not serving as a coordinating vendor.

Finally, this is not the Commission's first time to consider coordination allegations involving the sharing of data procured from an alleged common vendor. In MUR 6038, the Commission considered specific allegations that the campaign manager for the congressional campaign of Doug Lamborn had ordered a data vendor on whose board of directors he sat to sell the same absentee voter list used by the campaign to the Christian Coalition. MUR 6038 First General Counsel's Report at 2, 6 (Feb. 18, 2010) [hereinafter "Lamborn GC Report"]. The Christian Coalition then used that list to send fliers targeting Lamborn's primary opponents. *Id.* at 2. The Coalition's executive director was also the brother of Lamborn's campaign manager. *Id.* at 7. TDS, the data vendor, "enhanced" the absentee ballot data it collected from the county clerk with an additional ten to fourteen filters before selling it to both the Lamborn Campaign and the Coalition. *Id.* An affidavit from the former president of TDS supported the complaint. *Id.* at 4. Despite the specific allegations, the Commission *unanimously* voted to dismiss the complaint. MUR 6038 Statement of Reasons at 5. The Commission, rejecting the advice of the General Counsel's Office, determined that the complaint did not raise an issue of coordination requiring further investigation. *Id.* at 4-5.

Lamborn makes quick work of ADLF's cornucopia of newspaper clippings. Here, there is no affidavit supporting ADLF's speculation with concrete details. Only the inaccurate musings of reporters combined with a hodgepodge of anonymous quotes undergird ADLF's Complaint. Even in ADLF's breathless verse, there is no allegation that named campaign operatives gave orders to provide a specific set of data to an outside group so that it could target the same voters. Indeed, the Trust has not provided data to campaigns; and the data it does

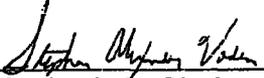
provide to its clients does not detail anyone's private plans, projects, activities, or needs. If the Commission could unanimously determine that no further investigation was necessary in *Lamborn*, there can be no doubt that no reason to believe exists here.

ADLF's Complaint fails to demonstrate that the Trust is a common vendor; fails to show that the Trust identifies voters or develops voter, mailing, or donor lists; and wholly fails to meet the high threshold necessary to show that the Trust provided plans, project, activities, or needs of any campaign or party committee to an outside group. Because ADLF's Complaint fails to meet either its factual or legal burden to demonstrate any improper coordination, the Commission should find no reason to believe exists, close the file, and take no further action.

CONCLUSION

ADLF's Complaint reveals neither smoke nor fire. The Trust provides its services at market rates to paying clients based on arm's length negotiated contracts. Because this does not violate any provision of campaign finance law, the Trust respectfully asks the Commission to dismiss the Complaint.

Respectfully submitted,



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Facsimile: (202)-626-1700
Attorneys for the GOP Data Trust LLC

EXHIBIT 3

FEC FORM 3X

REPORT OF RECEIPTS AND DISBURSEMENTS For Other Than An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT Example: If typing, type over the lines. 12FE4M5
REPUBLICAN NATIONAL COMMITTEE

ADDRESS (number and street) 310 FIRST STREET SE
Check it different than previously reported. (ACC) WASHINGTON DC 20003

2. FEC IDENTIFICATION NUMBER C C00003418
3. IS THIS REPORT NEW OR AMENDED (N) OR (X) (A)

4. TYPE OF REPORT (Choose One)
(a) Quarterly Reports: April 15 Quarterly Report (Q1), July 15 Quarterly Report (Q2), October 15 Quarterly Report (Q3), January 31 Year-End Report (YE), July 31 Mid-Year Report (Non-election Year Only) (MY), Termination Report (TER)
(b) Monthly Report Due On: Feb 20 (M2), Mar 20 (M3), Apr 20 (M4), May 20 (M5), Jun 20 (M6), Jul 20 (M7), Aug 20 (M8), Sep 20 (M9), Oct 20 (M10), Nov 20 (M11) (Non-Election Year Only), Dec 20 (M12) (Non-Election Year Only), Jan 31 (YE)
(c) 12-Day PRE-Election Report for the: Primary (12P), General (12G), Runoff (12R), Convention (12C), Special (12S)
(d) 30-Day POST-Election Report for the: General (30G), Runoff (30R), Special (30S)
Election on: 11 04 2014 in the State of

5. Covering Period 10 16 2014 through 11 24 2014

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Mr Anthony W Parker

Signature of Treasurer Mr Anthony W Parker [Electronically Filed] Date 12 04 2014

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

Office Use Only grid with FEC FORM 3X Rev. 12/2004

**SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)						PAGE 106540F 11182
	<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26	
	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b	

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
REPUBLICAN NATIONAL COMMITTEE

Full Name (Last, First, Middle Initial) A. FRAGER'S HARDWARE		Date of Disbursement M O B D Y Y Y Y 10 29 2014
Mailing Address 1115 PENNSYLVANIA AVE SE		Transaction ID : 2014G30L2100288
City WASHINGTON State DC Zip Code 20003	Purpose of Disbursement OFFICE SUPPLIES	
Candidate Name	Category/Type	Amount of Each Disbursement this Period 42.83
Office Sought: House Senate President	Disbursement For: Primary General Other (specify) ▼	
State: District:		

Full Name (Last, First, Middle Initial) B. BOB GOODLATTE FOR CONGRESS COMMITTEE		Date of Disbursement M O B D Y Y Y Y 10 29 2014
Mailing Address 4208 BRAMBLETON AVE		Transaction ID : 2014G30L2100289
City ROANOKE State VA Zip Code 24018	Purpose of Disbursement RENT	
Candidate Name	Category/Type	Amount of Each Disbursement this Period 526.25
Office Sought: House Senate President	Disbursement For: Primary General Other (specify) ▼	
State: District:		

Full Name (Last, First, Middle Initial) C. GOP DATA TRUST LLC		Date of Disbursement M O B D Y Y Y Y 10 29 2014
Mailing Address PO BOX 12365		Transaction ID : 2014G30L2100290
City ARLINGTON State VA Zip Code 22219	Purpose of Disbursement IT SUPPORT/MAINTENANCE	
Candidate Name	Category/Type	Amount of Each Disbursement this Period 45000.00
Office Sought: House Senate President	Disbursement For: Primary General Other (specify) ▼	
State: District:		

SUBTOTAL of Disbursements This Page (optional).....▶	45569.08
TOTAL This Period (last page this line number only).....▶	