FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

	MUR 6940
	DATE COMPLAINT FILED: May 27, 2015 DATE OF NOTIFICATION: June, 2, 2015 DATE OF LAST RESPONSE: July 20, 2015 DATE ACTIVATED: April 20, 2017
	EXPIRATION OF SOL: May 12, 2020 – Nov. 8, 2021 ELECTION CYCLE: 2016
COMPLAINANT:	Foundation for Accountability and Civic Trust
RESPONDENTS:	Correct the Record and Elizabeth Cohen in her official capacity is treasurer Hillary for America and Elizabeth Jones in her official capacity as treasurer[1]
	MUR 7097[2]
	DATE COMPLAINT FILED: July 6, 2016 DATE OF NOTIFICATION: July 12, 2016 DATE OF LAST RESPONSE: June 7, 2017 DATE ACTIVATED: April 20, 2017
	EXPIRATION OF SOL: June 23, 2021 ELECTION CYCLE: 2016
COMPLAINANT:	Dr. Jack A. Shulman
RESPONDENTS:	Correct the Record and Elizabeth Cohen in her official capacity is treasurer Hillary for America and Elizabeth Jones in her official capacity as treasurer

[1] On May 31, 2018, Hillary for America filed an amended Statement of Organization naming Elizabeth Jones as its treasurer. Jose H. Villarreal was the treasurer when the activities described in this Report occurred as to each of the complaints.

	Priorities USA Action and Greg Speed in his official capacity as treasurer
	David Brock
	MUR 7146
	DATE COMPLAINT FILED: Oct. 6, 2016
	DATE OF NOTIFICATION: Oct. 14, 2016
	DATE OF LAST RESPONSE: Jan. 24, 2017
	DATE ACTIVATED: April 20, 2017
	EXPIRATION OF SOL: May 12, 2020 – Nov. 8, 2021
	ELECTION CYCLE: 2016
COMPLAINANTS:	Campaign Legal Center
	Catherine Hinckley Kelley
RESPONDENTS:	Correct the Record and Elizabeth Cohen in her official capacity is treasurer
	Hillary for America and Elizabeth Jones in her official capacity as treasurer
	MUR 7160
	DATE COMPLAINT FILED: Oct. 24, 2016
	DATE OF NOTIFICATION: Oct. 28, 2016
	DATE OF LAST RESPONSE: Dec. 20, 2016
	DATE ACTIVATED: April 20, 2017
	EXPIRATION OF SOL: July 2020 – Nov. 2021
	ELECTION CYCLE: 2016
COMPLAINANT:	William Pflaum
RESPONDENTS:	Correct the Record and Elizabeth Cohen in her official capacity is treasurer
	Hillary for America and Elizabeth Jones in her official capacity as treasurer
	Hillary Rodham Clinton
	DNC Services Corp./DNC and William Q. Derrough in his official capacity as treasurer[3]
	David Brock
	Charlie Baker
	John Podesta
	Robby Mook

[3] On March 2, 2017, DNC Services Corp./DNC filed an amended Statement of Organization naming William Q. Derrough as its treasurer. Andrew Tobias was the treasurer when the activities described in this Report occurred as to MURs 7160 and 7193.

	Dennis Cheng
	E. Christina Reynolds
	Karen Finney
	Mary Pat Bonner
	American Bridge 21st Century and Rodell Mollineau in his official capacity as treasurer
	MUR 7193[4]
	DATE COMPLAINT FILED: Nov. 7, 2016
	DATE OF NOTIFICATION: Nov. 15, 2016
	DATE OF LAST RESPONSE: Feb. 26, 2018
	DATE ACTIVATED: June 12, 2017
	EXPIRATION OF SOL: July 2020 – Nov. 2021
	ELECTION CYCLE: 2016
COMPLAINANT:	William Pflaum
RESPONDENTS:	Correct the Record and Elizabeth Cohen in her official capacity is treasurer
	Hillary for America and Elizabeth Jones in her official capacity as treasurer
	DNC Services Corp./DNC and William Q. Derrough in his official capacity as treasurer
	John Podesta
	Mary Pat Bonner
	Elizabeth Christina Reynolds
	David Brock

[4]

RELEVANT STATUTES AND REGULATIONS:	52 U.S.C. § 30101(8)(A)(i) 52 U.S.C. § 30101(9)(A)(i) 52 U.S.C. § 30116(a) 52 U.S.C. § 30118(a) 11 C.F.R. § 109.20 11 C.F.R. § 109.21 11 C.F.R. § 100.26 11 C.F.R. § 100.52(d)
INTERNAL REPORTS CHECKED:	Disclosure Reports
FEDERAL AGENCIES CHECKED:	None

I. INTRODUCTION

The five Complaints in these matters make a variety of allegations against a number of Respondents with one universal area of overlap: all five Complaints allege that Correct the Record ("CTR") made, and Hillary Clinton's authorized committee, Hillary for America and Elizabeth Jones in her official capacity as treasurer ("HFA"), accepted, impermissible in-kind contributions by coordinating on CTR's activities in support of Clinton. The Complaints allege widespread violations because CTR's very purpose was to fully coordinate its activities with the Clinton campaign, citing a 2015 CTR press release describing itself as a "strategic research and rapid response team designed to defend Hillary Clinton" that "will be allowed to coordinate" with her campaign."[5] Complainants, with varying degrees of specificity, allege that CTR's expenditures for activities such as opposition research, strategic message development and deployment, surrogate media training and bookings, video production, fundraising, "rapid response" outreach to press, and a social media defense team were in-kind contributions to HFA

[5] MUR 6940 Compl. at 2 (describing CTR Press Release, "Correct the Record Launches as a New Pro-Clinton SuperPAC" (May 12, 2015) and attaching that press release as Exhibit A to the Complaint).

either directly or in the form of coordinated expenditures because CTR regularly and publicly acknowledged that it could coordinate its activities with HFA and did, in fact, do so.

CTR and HFA argue that CTR's expenditures are not in-kind contributions because CTR limited its activities to communications that would not qualify as contributions if coordinated. Specifically, they note that because CTR's communications were distributed on its own websites or on free online platforms such as Twitter, Facebook, and YouTube, CTR's activity does not meet the coordinated communication definition in the Commission's regulations. These Respondents additionally assert that, for a smaller category of CTR's activity comprised of research and tracking materials, HFA paid for the materials and there is no factual basis for determining that HFA paid CTR less than fair market value for HFA's use of that material.

The available information indicates that CTR raised and spent approximately $9 million on a wide array of activities, most of which are not fairly characterized as "communications," in furtherance of its stated mission of working in support of Clinton's candidacy in coordination with HFA. As such, these payments for CTR's coordinated activities constitute coordinated expenditures and thus contributions to HFA. On this basis, we recommend that the Commission find reason to believe that CTR and HFA violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by making and accepting, respectively, in-kind prohibited and excessive contributions and by failing to disclose those contributions.

In addition to the allegations regarding CTR, some of the five Complaints make allegations as to other Respondents including: 1) that American Bridge 21st Century ("American Bridge") impermissibly coordinated with HFA;[6] 2) that Hillary Clinton, David

[6] *See* MUR 7160 Compl. at ¶ 23.

Brock (CTR's founder and chairman), and other individuals who were officers or employees of CTR or HFA impermissibly coordinated through their personal actions;[7] 3) that DNC Services Corp./Democratic National Committee ("DNC") impermissibly coordinated with HFA;[8] and 4) that CTR and Priorities USA had impermissible financial backing by foreign nationals.[9]

We recommend the Commission dismiss the allegation that American Bridge impermissibly coordinated expenditures, take no action at this time with respect to Hillary Clinton, David Brock, and the other named individual Respondent employees and officers of HFA and CTR, and find no reason to believe that CTR and Priorities USA violated 52 U.S.C. § 30121 by accepting foreign national contributions. We further recommend that the Commission take no action at this time as to the DNC-related coordinated allegations in MURs 7160 and 7193, pending resolution of overlapping (and broader) allegations made in MURs 7304 and 7331 that the DNC systematically and impermissibly coordinated with HFA.[10]

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7 *See* MUR 7097 Compl.; MUR 7160 Compl.; MUR 7193 Compl.

8 *See* MUR 7160 Compl. at ¶¶ 13, 15, 20, 22; MUR 7193 Compl. at ¶¶ 4, 6.

9 *See* MUR 7097 Compl. at 2.

10 *See* First General Counsel's Report, MURs 7304 and 7331

II. FACTUAL AND LEGAL ANALYSIS

A. There is Reason to Believe that CTR Impermissibly Coordinated With HFA

1. Factual Background

On April 13, 2015, Hillary Rodham Clinton filed a Statement of Candidacy with the Commission for the 2016 presidential election, designating HFA as her principal campaign committee.[11]

Less than a month later, on May 12, 2015, CTR, then a project of American Bridge,[12] issued a press release announcing that it was splitting off from American Bridge and registering with the Commission as "a separate SuperPAC."[13] The next day, May 13, 2015, CTR registered as a non-profit corporation in Washington, D.C.; on June 5, 2015, CTR registered with the Commission as a "hybrid" political committee with a "Carey" non-contribution account.[14]

In the press release announcing its establishment as a separate committee, CTR president Brad Woodhouse stated that CTR would "work in support of Hillary Clinton's candidacy for

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[11] Hillary Rodham Clinton Statement of Candidacy (Apr. 13, 2015).

[12] Correct the Record was reportedly created in 2013 as a project of American Bridge, which itself was also founded by CTR founder and Chairman Brock, as "a dedicated research and response communications project to prevent Republicans from denigrating potential Democratic candidates from baseless attacks, while potential Republican candidates reinvent themselves and their records without scrutiny." MUR 7146 Compl. at ¶ 7 (citing Michael Cook, *Arkansas Democrats Helping 'Correct the Record,'* TALK BUSINESS, Nov. 20, 2013); *see also* Aaron Blake, *Top Hillary supporters launch 'Correct the Record' Effort*, WASHINGTON POST (Nov. 1, 2013).

[13] MUR 6940 Compl. Ex. A.

[14] Statement of Organization, Correct the Record (June 5, 2015). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. *See* Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), available at http://www fec.gov/press/press2011/20111006postcarey.shtml ("*Carey* Press Release").

President, aggressively responding to false attacks and misstatements" of her record.[15] CTR described itself in this press releases as "a strategic research and rapid response team designed to defend Hillary Clinton from right-wing baseless attacks."[16] CTR further stated it would not be engaged in "paid media and thus, will be allowed to coordinate with campaigns and Party Committees."[17] In another statement to the press days after the press release, a CTR spokesperson asserted that "FEC rules permit some activity – in particular activity on an organization's website, in email, and on social media – to be legally coordinated with candidates and political parties."[18]

CTR raised $9.63 million and spent $9.61 million during the 2016 election cycle.[19] Of that amount, all but $7,131 in receipts and $4,580 in expenditures were deposited into and spent from CTR's non-contribution account.[20] CTR, as a hybrid committee, accepted contributions to

15 MUR 6940 Compl. Ex. A (quoting president Brad Woodhouse).

16 *Id.*

17 *Id.*

18 *Id.* at Ex. C (reprinting Matea Gold, *How a Super PAC Plans to Coordinate Directly with Hillary Clinton's Campaign*, WASHINGTON POST (May 12, 2015)).

19 2015-2016 Financial Summary, Correct the Record, available at https://www.fec.gov/data/committee/C00578997/?cycle=2016; 2015 Year-End Rpt. at 3-4, Correct the Record (Jan. 31, 2016); 2016 Amended Year-End Rpt. at 3-4, Correct the Record (Apr. 15, 2017).

20 *Id.*

its non-contribution account from otherwise impermissible sources[21] and in amounts that would otherwise be in excess of the Act's contribution limits.[22]

CTR's and HFA's FEC disclosure reports reflect only two transactions between them, both near the time that CTR split from American Bridge. On May 27, 2015, HFA disbursed $275,615 to CTR for "research, non-contribution account"[23] and on July 17, 2015, HFA disbursed $6,346 to CTR for "research services."[24] Although an unnamed HFA official was reported to have stated that HFA would purchase from CTR "any nonpublic information of value" that CTR shared with it, it is not clear that the two reported HFA disbursements to CTR are for that purpose.[25]

CTR's reported disbursements provide information about the scope and manner of CTR's activities. CTR reports 2015-2016 payments for some communication-specific purposes such as "graphic services" and "web hosting" but the bulk of CTR's reported disbursements are for purposes that are not communication-specific, including payroll, salary, travel, lodging, meals, rent, fundraising consulting, computers, digital software, domain services, email services, equipment, event tickets, hardware, insurance, office supplies, parking, and shipping in addition

[21] *See, e.g.*, 2015 Year-End Rpt. at 12, Correct the Record (Jan. 31, 2016); Amended 2016 Oct. Quarterly Rpt. at 21, 46, Correct the Record (Dec. 8, 2016); Amended 2016 Pre-General Rpt. at 8, Correct the Record (Dec. 8, 2016).

[22] *See, e.g.*, 2016 Apr. Quarterly Rpt. at 8, Correct the Record (Apr. 15, 2016); Amended 2016 Oct. Quarterly Rpt. at 40, Correct the Record (Dec. 8, 2016).

[23] Amended 2015 July Quarterly Rpt. at 13,869, Hillary for America (Sept. 3, 2015); 2015 Mid-Year Rpt. at 8, Correct the Record (July 31, 2015) (reporting date of receipt as June 1, 2015).

[24] Amended 2015 October Quarterly Rpt. at 16,745, Hillary for America (July 5, 2016); 2015 Year-End Rpt. at 17, Correct the Record (Jan. 31, 2016). *See also* MUR 7146 HFA Resp. at 8-9; MUR 7146 CTR Resp. at 5-6 (describing these payments as for research and tracking materials).

[25] Matea Gold, *2016 Race's Theme Song: Blurred Lines; Campaigns Seize on Porous Rules, Lax Regulation to Push Alliances with Super PACs to the Legal Limit*, CHICAGO TRIBUNE (July 12, 2015).

to payments for explicitly mixed purposes such as "video consulting and travel" and "communication consulting and travel."[26]

Further, the Complaint in MUR 7146, relying on public reports and CTR's statements, notes several expenditures CTR made for internet communications, including for the production costs for a YouTube video and for emails to reporters "at the rate of about one every four minutes" during a Trump speech.[27] That Complaint also lists several examples of CTR's expenditures for non-communication activities in support of Clinton's candidacy during the 2016 election cycle, including that CTR:[28]

- Employed staff to: (1) conduct "opposition research," (2) run a "30-person war room" to defend Clinton during hearings before the House Select Committee on Benghazi, including blasting reporters with "46 research-fueled press releases, fact-checks, reports, videos and other multimedia releases during the hearing," and distributing a 140-page opposition research book to a variety of media outlets "that impugns the character of Republicans on the committee,"[29] and (3) "develop relationships with Republicans," "sleuth out confidential information from the Trump campaign," and distribute that information to reporters;

- Conducted talking-point tutorials and media-training classes for Clinton surrogates led by an expert specializing in coaching people for television interviews;

- Employed and deployed "trackers" to travel to states across the country to record the public events of Clinton's opponents;

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[26] 2015-2016 Disbursements, Correct the Record, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

[27] *See, e.g.*, MUR 7146 Compl. at ¶¶ 5, 35, 90 (noting approximately $300k for video production expenses).

[28] CTR did not, in its Response, deny or rebut the description or scope of its activities on behalf of HFA as set forth in the MUR 7146 Complaint.

[29] According to the MUR 7146 Complaint, the effort later won Correct the Record a gold "Pollie" award from the American Association of Political Consultants for "Most Original/Innovative Collateral Material," since "the book and rapid-response efforts received extensive earned media coverage [including 30 mentions on TV]" and successfully "shift[ed] the narrative . . . about the politically-fueled investigation." MUR 7146 Compl. at ¶ 38. That Complaint notes that CTR's Benghazi activity did not win a Pollie in any of the "dozens" of "Internet/Digital" categories. *Id.*

- Commissioned a private polling firm to conduct polls that showed Clinton winning a Democratic debate; and

- Paid a consulting firm "to help oversee an aggressive surrogate booking program, connecting regional and national surrogates with radio and television news outlets across the country in support of Hillary Clinton."[30]

CTR and its officers' public statements further explain the manner in which CTR coordinated with HFA while conducting its activities. For example, Brock, in a December 2016 podcast interview with a reporter, discussed how CTR actually had coordinated with HFA.[31] Brock explained that "the coordinated status was, you're basically under their thumb but you don't have to run everything by them."[32] Brock also acknowledged that he would pick up the phone and talk to Clinton campaign manager Robbie Mook and occasionally campaign chairman John Podesta. Brock related, as an example, that when he publicly raised the absence of Bernie Sanders' medical records without first discussing the issue with HFA, "John [Podesta] tweeted that I should chill out and that we weren't running a fitness, physical fitness test for presidency or something like that." Brock added that "I took my lumps and then I obeyed. And so, the out-of-box thinking, that one might have had or the more aggressive things one might have had, basically that ended." Brock discussed another example of CTR's apparent deference to HFA on whether to mount a defense of the Clinton Foundation. Brock described a conversation he had with HFA campaign manager Mook in which the two disagreed about CTR's defense

30 *See, e.g.*, MUR 7146 Compl. at ¶ 90.

31 December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2.

32 *Id.*

activities; Brock explained that ultimately CTR did not defend the Clinton Foundation because "we are a surrogate arm of the campaign and you need the Campaign on board for this."[33]

The internal communications of HFA further explain the scope of the coordination between CTR and HFA on some of CTR's activities. An internal HFA memo dated July 25, 2015, describes steps for defending Clinton against attacks and includes HFA's expectations concerning CTR's role in these plans.[34] The Memo proposes to counter "pay-to-play" attacks against Clinton, including attacks concerning the Clinton Foundation, "through work of CTR and other allies."[35] Although the Memo does not specify the manner in which CTR would do this, the Brock interview, discussed above, goes into further details. The Memo also states that HFA will "[w]ork with CTR and DNC to publicize specific GOP candidate vulnerabilities on issues of transparency, ethics, and donor favoritism." Other HFA Memo entries closely correlate with CTR's activities listed above, such as defending Hillary Clinton in the Benghazi hearing by "using outside voices, groups and the campaign to undermine and destroy the credibility of Gowdy's Benghazi investigation before HRC's appearance in October. Tactics can include briefing editors on the facts, calculator on time and money spent, reports from outside groups, opeds and blanketing of TV with surrogates."[36]

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33 *Id.*

34 *See* MUR 7160 Compl. at ¶ 13 (citing MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf); MUR 7193 Compl. at ¶ 4. The allegations in the MUR 7160 Complaint are supported exclusively by internal materials released on Wikileaks. The allegations in the MUR 7193 Complaint appear to be based on the same source materials, although the MUR 7193 Complaint sources its information to "emails" or "memos" without further citations.

35 MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf).

36 *Id.* at 14-15.

Another internal HFA communication discusses the use of Governor Jennifer Granholm as a surrogate while she is paid by CTR; after discussing that the employment by CTR would preclude HFA from calling Granholm a spokesman or scheduling her, Charlie Baker, identified in the MUR 7160 Complaint as HFA's Chief Administrative Officer, notes: "If she were at Correct the Record we could at least make sure her speaking and media opportunities met our needs/requests."[37] Additionally, HFA's Christina Reynolds, on November 3, 2015, emailed an HFA meeting agenda which included a proposed discussion about which "Tactics on attacks" "should go through HRC, surrogates, DNC, CTR."[38] Additionally, a January 4, 2016, HFA email proposes a call to "figure out how we're going to rally the troops to defend" an anticipated attack on a Clinton aide and notes: "We will need to engage CTR and Media Matters as well."[39] The Complaint in MUR 7160 also cites to an internal HFA email in which HFA staffer Karen Finney volunteers to "reach out to David" Brock about responding to an attack against Clinton's husband.[40]

Communications between HFA and CTR also provide further explanation of the manner and scope of CTR's coordination with HFA in CTR's activities. For example, CTR fundraiser Mary Pat Bonner, in an attachment labeled "CTR Update" to a December 2015 email to John Podesta, details many of the research, surrogacy, and consulting activities described above in a

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37 MUR 7160 Compl. at ¶ 20 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/16024 (subject: "Re:")).

38 MUR 7160 Compl. at ¶ 15 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/5267 (subject: "Agenda for Thursday Meeting")); MUR 7193 Compl. at ¶ 6.

39 MUR 7193 Compl. at ¶ 11.

40 MUR 7160 Compl. at ¶ 14 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/6119 (subject: "Did you see this? (Rubio Fundraising off fake Bill Clinton quote")).

list of CTR's "CORE FUNCTIONS AND PRODUCTS."[41] The CTR Update explains that its structure "allows CTR to retain its independence but coordinate directly and strategically with the Hillary campaign."[42]

2. Legal Analysis

The Complaints allege that CTR made, and HFA accepted, impermissible in-kind contributions by coordinating activities in support of Clinton's presidential candidacy. Hybrid political committees, like CTR, are prohibited from making contributions, including in-kind contributions, to candidates and their authorized committees from their non-contribution accounts.[43]

Under the Act, the terms "contribution" and "expenditure" include "anything of value" made by any person for the purpose of influencing an election.[44] The term "anything of value" includes in-kind contributions.[45] In-kind contributions result when goods or services are provided without charge or at less than the usual and normal charge,[46] and when a person makes

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41 *See* MUR 7160 Compl. ¶ 23 (citing WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx")), MUR 7193 Compl. ¶ 7.

42 *See id.*

43 *See Carey* Press Release (explaining that Commission's non-enforcement of hybrid committees' receipt of funds that would otherwise be outside the Act's source prohibitions or amount limitations to a non-contribution account is conditioned on not using such funds for contributions); *see also* 52 U.S.C. §§ 30116(f), 30118(a); *accord* Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 ("An independent expenditure-only political committee may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.") (Internal quotations and citations omitted); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

44 52 U.S.C §§ 30101(8)(A)(i) and 30101(9)(A)(i).

45 11 C.F.R. § 100.52(d).

46 *Id.*

an expenditure in cooperation, consultation or in concert with, or at the request or suggest of a candidate or the candidate's authorized committee or their agents.[47]

Expenditures for "coordinated communications" are addressed under a three prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are addressed under 11 C.F.R. § 109.20(b). The Commission has explained that section 109.20(b) applies to "expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee."[48] Under the three-prong test for coordinated communications, a communication is coordinated and treated as an in-kind contribution when it is paid for by someone other than a candidate, a candidate's authorized committee, a political party committee, or the authorized agents of either (the "payment prong"); satisfies one of five content standards (the "content prong"), and satisfies one of five conduct standards (the "conduct prong").[49] A communication must satisfy all three prongs to be a "coordinated communication."

Any person who is otherwise prohibited from making contributions to candidates under the Act or Commission regulations is prohibited from making an in-kind contribution in the form of paying for a coordinated communication or coordinated expenditure; similarly, in-kind contributions from permissible sources are subject to the Act's contribution limits.[50]

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[47] 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20. *See also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

[48] Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) ("2003 Coordination E&J"); *see also* Advisory Opinion 2011-14 (Utah Bankers Association).

[49] 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications); 11 C.F.R. §§ 109.21(c), (d) (describing content and conduct standards, respectively). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See* 11 C.F.R. § 109.21(d)(6).

[50] *See* 52 U.S.C. §§ 30116(f), 30118(a).

The available information shows that CTR systematically coordinated with HFA on its activities. From its first week of existence as a "separate" entity, as evidenced by the press release announcing its establishment, CTR has consistently stated that the entirety of its work would be made for the purpose of benefiting Clinton and in coordination with her campaign.[51] Brock publicly explained the "coordinated status" of CTR and described CTR as "a surrogate arm" of HFA.[52] Moreover, these representations by CTR are not the puffery of an entity acting outside the attention of HFA; communications by and with senior HFA personnel confirm that CTR and HFA had a close relationship and worked together to benefit HFA. Internal memos and emails from both HFA and CTR discuss coordination, generally and with respect to particular activities, between the committees.[53] For example, as described above, CTR fundraiser Bonner explained in a communication sent to HFA Chair Podesta that CTR's structure as a SuperPAC "allows CTR to retain its independence but coordinate directly and strategically with the Hillary campaign."[54] And the record includes several examples of how HFA and CTR coordinated on specific activities. Internal documents, for example, set out HFA's strategy for outside groups to carry out the Benghazi response and public information shows that CTR later

51 *See* MUR 6940 Compl. Ex. A.

52 December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2.

53 *See* MUR 7160 Compl. at ¶¶ 13, 23 (citing MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf and WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx"), respectively); MUR 7193 Compl. at ¶¶ 4, 7.

54 WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx").

conducted its Benghazi-related activity in exactly that manner, even winning an industry award for its efforts.[55]

The record contains additional information about the extent of CTR and HFA interaction during the course of the coordinated activity in order to ensure that HFA's needs were met. In fact, it appears that part of HFA's strategy in outsourcing certain activities to CTR was to give CTR some level of freedom to accomplish HFA's goals while maintaining communication between CTR and HFA as necessary to ensure CTR's ongoing concert with HFA's needs. For example, an internal HFA email between HFA staff suggests having former Michigan Governor Granholm work with CTR because "[i]f she were at Correct the Record we could at least make sure her speaking and media opportunities met our needs/requests."[56] Brock's post-election podcast provides several examples of how HFA would "make sure" that CTR activity met HFA's needs. In the podcast, Brock details several interactions with senior HFA personnel, including about CTR's activity regarding attacks on the Clinton Foundation, before concluding that "the coordinated status was, you're basically under their thumb but you don't have to run everything by them."[57] In that same podcast interview, Brock described an instance where he was "under the thumb" of HFA and chastised by John Podesta for CTR's public comments on

[55] *See* MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf; MUR 7146 Compl. at ¶ 38.

[56] MUR 7160 Compl. at ¶ 20; *see also id.* at ¶ 15 (noting HFA meeting agenda item to discuss "tactics on attacks" from Bernie Sanders and the Republicans and "what should go through HRC, surrogates, DNC, CTR."); *id.* at ¶ 11 (detailing internal HFA email regarding forthcoming Vanity Fair article on top HRC staffer and HFA's need to engage CTR to defend against article's content).

[57] December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2. HFA's Clinton Foundation strategy is also discussed in internal HFA documents. *See* MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf.

Bernie Sander's failure to make his medical records public; according to Brock, CTR "obeyed" Podesta and ended the "more aggressive things one might have had."

HFA and CTR urge the Commission to dismiss the alleged violations premised on facts drawn from documents hacked by Russian intelligence services in connection with a broader attack on the 2016 presidential election and published on Wikileaks, which it argues are unreliable.[58] Strictly speaking, the case law indicates that federal agencies may consider stolen documents in administrative proceedings, so long as the agency was not involved in the underlying criminal act.[59] Even without the Wikileaks information, however, the record contains ample evidence, in the form of press releases and public interviews with CTR officers, as well as public tweets, as Brock referenced in his podcast interview, to support a coordination determination. In fact, the non-Wikileaks information detailed above shows that CTR existed *solely* to make expenditures in cooperation, consultation or concert with, or at the request or suggestion of Clinton and HFA and that it conducted its activities, as Brock phrased it, under HFA's thumb.

CTR and HFA make a number of arguments as to why none of CTR's over $9 million in expenditures constitute in-kind contributions to HFA. The primary argument is that CTR's

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[58] *See* MUR 7160 HFA Resp. at 1-2; MUR 7160 CTR Resp. at 1-3; MUR 7193 HFA Resp. at 1-2. The United States Intelligence Community has assessed that one of the motives was to "undermine public faith in the US democratic process." OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, INTELLIGENCE COMMUNITY ASSESSMENT: ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS at 1 (Jan. 6, 2017).

[59] *See Nat'l Labor Relations Bd. v. S. Bay Daily Breeze*, 415 F.2d 360, 364 (9th Cir. 1969) ("There is no logic in excluding evidence to prevent the government from violating an individual's constitutional rights in a case when the government is not guilty of such a violation."); *Knoll Associates, Inc. v. Fed. Trade Comm'n*, 397 F.2d 530, 533 (7th Cir. 1968). HFA further argues that admitting the documents would detract from the FEC's core purpose of ensuring election integrity. MUR 7160 HFA Resp. at 1-3; MUR 7193 HFA Resp. at 2-3. The Ninth Circuit in *S. Bay Daily Breeze* rejected a similar argument that using stolen documents would undermine the National Labor Relation Board's goal of fostering "industrial peace." *S. Bay Daily Breeze*, 415 F.2d at 364. The Court of Appeals advised that the Board could achieve the same goal by enforcing the statute against the respondent. *Id.*; *see id.* (recognizing that the illegal act is prohibited by other statutes).

expenditures are not in-kind contributions because CTR limited its activities to communications that do not meet the "coordinated communication" three-prong test.[60] The content prong of the "coordinated communication" test at section 109.21(c) limits application of the rule to either "electioneering communications"[61] or "public communications" that satisfy certain other content requirements.[62] By definition, an "electioneering communication" includes only certain broadcast, cable, or satellite communications,[63] which the Complaints do not allege CTR to have made. And, by definition, a "public communication" "shall not include communications over the Internet, except for communications placed for a fee on another person's Web site."[64] CTR argues that, because none of its expenditures for communications were for electioneering communications or public communications, it cannot have made "coordinated communications." CTR further asserts that costs associated with producing research and materials distributed free online, including, for example, the costs of conducting a poll whose results were posted on CTR's website, are similarly costs of internet activities not fairly within the definition of "public communication."[65]

In support of its argument, CTR cites several MURs involving individual or occasional communications from third parties allegedly coordinated with candidate committees, where the Commission found that the communications were not public communications and thus did not

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60 *See, e.g.*, MUR 7146 CTR Resp. at 1-5; MUR 7146 HFA Resp. at 1-7.

61 11 C.F.R. § 109.21(c)(1).

62 11 C.F.R. § 109.21(c)(2)-(5).

63 11 C.F.R. § 100.29.

64 11 C.F.R. § 100.26.

65 MUR 7146 CTR Resp. at 4.

satisfy the coordinated communications test.[66] While CTR and HFA are correct that the scope of the "coordinated communication" rule is limited to those communications enumerated therein, this argument fails to address CTR's non-communication expenditures made in coordination with HFA.

Contrary to CTR's argument, available information supports the conclusion that much of CTR's approximately $9 million in disbursements for activity during the 2016 election cycle cannot fairly be described as for "communications," public or otherwise, unless that term covers almost every conceivable political activity.[67] Take, for example, the costs CTR incurred for placing poll results on its own website, which CTR argues cannot be deemed coordinated. CTR is correct that the costs for the online placement of the poll results on its own website would not be a cost for a "public communication" under 11 C.F.R. § 100.26, but this has no bearing on the conclusion that CTR's payment for the underlying polling, made in coordination with HFA as it appears all CTR activity was, would be a coordinated expenditure under 11 C.F.R. § 109.20(b) and, thus, an in-kind contribution. The fact that the polling results were subsequently transmitted over the internet does not retroactively render the costs of the polling a "communication" cost.[68]

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[66] *See* MUR 7146 CTR Resp. at 3-4.

[67] *See* 2015-2016 Disbursements, Correct the Record, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016. HFA and CTR do address the small subset of CTR "research" activity for which HFA reported paying CTR. *See* MUR 7146 HFA Resp.at 8-9; MUR 7146 CTR Resp. at 5-6. As noted above, HFA disclosed payments to CTR of $275,615.43 and $6,346 for "research," and the Respondents note that no Complaint alleges that this does not reflect fair market value payment for those services. While these amounts would not be included in the apparent in-kind contribution from CTR to HFA, we recommend investigating the payments in order to determine how they relate to CTR's overall activity.

[68] *See, e.g.*, 11 C.F.R. § 106.4(b) (describing circumstances in which non-connected committee's purchase of poll results to make expenditures and candidate committee's subsequent acceptance of poll results is in-kind contribution to that candidate committee); Advisory Opinion 2011-14 (Utah Bankers) at 4 n.3 (noting that coordinated expenditures are "in-kind contributions to the candidates with whom they are coordinated" under 11 C.F.R. § 109.20(b)); *Campaign Guide for Nonconnected Committees* at 25, available at

Moreover, CTR does not even attempt to explain how other costs it paid, such as the costs for staff to "develop relationships with Republicans" or for "trackers" to travel across the country to Clinton's opponents' campaign events, are fairly "communication" costs. CTR reported disbursing over $589,000 for the purpose of "travel" in 2015-2016;[69] these are not disbursements for "communications" costs.

Analyzing CTR's payments for its coordinated activity under the "coordinated expenditure" provision, rather than the "coordinated communication" provision is consistent with prior matters. In one matter cited by CTR, the Commission found reason to believe that a party committee made, and a candidate committee received, an excessive contribution in the form of coordinated expenditures relating to a voter canvassing effort, an activity involving a communicative element.[70] In that matter, the party paid employees to canvass potential voters, arranged for housing for some canvassers, and opened field offices to support volunteers' canvassing effort, all non-communication expenses serving subsequent communications that were not "public communications." The Commission's Factual and Legal Analysis in that matter states that disbursements for activities that are not communications (the party committee also engaged in a telephone bank, which the Commission determined should be treated under the "party coordinated communication" framework) should be treated as coordinated expenditures

https://www.fec.gov/resources/cms-content/documents/nongui.pdf ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee.").

69 *See* Correct the Record, Disbursements 2015-2016 (Description: Travel), https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016&disbursement_description=travel.

70 MUR 5564 (Alaska Democratic Party) (later dismissed at the conciliation stage).

under 11 C.F.R. § 109.20(b).[71] Following the approach taken in that matter requires concluding that CTR's payments, made in coordination with HFA, for the costs of activities in support of Clinton's election such as the conduct of polls, the payment and training of staff, and the hiring of consultants to support the general activities of the committee, are properly analyzed as in-kind contributions to HFA under the coordinated expenditure provision of 11 C.F.R. § 109.20(b) rather than the coordinated communication provision of 11 C.F.R. § 109.21.

CTR also makes a number of arguments with respect to some of its specific programs or activities. First, CTR asserts that its surrogate trainings do not constitute coordinated expenditures and therefore contributions to HFA because CTR trained volunteers but not "official Clinton surrogates (as identified by HFA) or HFA staff."[72] But the available information indicates that CTR worked closely with HFA in all of its activities, including its surrogacy efforts, regardless of the persons serving as surrogates, and that HFA was well aware of CTR's surrogacy activities and attempted to "make sure" CTR surrogates "met our needs/requests."[73] As with the polling costs discussed above, CTR's expenditures for the management of its surrogate program, including costs it incurred for salary to its employees and payments to outside consultants, are not, themselves, expenditures for communications, though

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[71] MUR 5564 FLA for Tony Knowles for U.S. Senate at 12; *see also* 11 C.F.R. § 109.37 (describing party coordinated communications). After an investigation in MUR 5564, we recommended that the Commission enter into pre-probable cause conciliation with Respondents. *See* MUR 5564 GCR #2. The vote failed 3-1. *See* MUR 5564 Commission Certification (Nov. 29, 2007). CTR cites the MUR 5564 SOR by Commissioner Lenhard, who opposed the recommendation, *see* MUR 7146 Resp. at 3 n.19, although two other Commissioners penned an SOR supporting it (SOR by Cmrs Mason and von Spakovsky).

[72] MUR 7146 CTR Resp. at 5. CTR does not explain a legal basis for this distinction.

[73] *See* MUR 7160 Compl. ¶ 23 (citing WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails//fileid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx") for CTR "core function and products" including "more than 300 surrogates"); *id.* at ¶ 20 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/16024 (subject: "Re:") (regarding Gov. Granholm's surrogacy); MUR 7193 Compl. ¶ 7.

some of the surrogates trained in that program may have made subsequent communications that may or may not have been within the definition of "public communication." And, as shown in MUR 5564 (Alaska Democratic Party), discussed above, a party committee's payments, in coordination with a candidate committee, for the costs of volunteers' activities in support of that candidate are in-kind contributions to the candidate committee.[74]

Second, CTR argues that its contacts to reporters are not public communications and therefore are not in-kind contributions.[75] But paying CTR staffers for this activity – activity that HFA appeared to depend on CTR to conduct – is more akin to a non-coordinated in-kind contribution such as paying for personal services rendered to a political committee without charge than to a coordinated mass communication to the general public.[76] HFA and CTR's insistence that these, and all of CTR's costs, be analyzed only through the lens of the "public communication" definition does not withstand scrutiny. The costs CTR incurred to train and pay staffers to engage in private communications with reporters are not fairly analyzed as the costs of "public communications," a term which the Commission has explained encompasses paid advertising for "mass communication."[77] Although reporters may report in media that utilizes "mass communication," the public relations efforts of CTR in speaking, behind the scenes, with such reporters is not CTR's own "mass communication."[78] Indeed, the Commission has, in the

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[74] *See also* MUR 7035 (Australian Labor Party, *et al.*) (accepting conciliation agreements for violations of foreign national prohibition resulting from foreign national's payment of costs underlying volunteers' activities, including canvassing and other communications, for presidential campaign committee).

[75] *See* CTR MUR 7146 Resp. at 4-5.

[76] *See* 52 U.S.C. § 30101(8)(A)(ii) (including payment for personal services in "anything of value").

[77] *See,* Internet Communications, 71 Fed. Reg. 18589, 18594 (Apr. 12, 2006) ("2006 Internet E&J").

[78] Similarly, CTR's assertion that the Act's press exemption applies to its contacts with reporters is equally unavailing. *See* CTR MUR 7146 Resp. at 4-5. The salary and related costs that CTR paid, in coordination with

context of communication-adjacent activity such as campaign events or rallies that are not themselves "mass communications," deemed the provision to a campaign committee of back-end costs such as labor in support of such events or activities to be the provision of an in-kind contribution.[79]

At its core, CTR existed for only one purpose – to elect Clinton – and it accomplished its purpose via openly coordinating its efforts with HFA. CTR and HFA would have their purported lack of "public communications" swallow the Act's longstanding prohibition on coordinated expenditures. This position does not withstand scrutiny. CTR's characterization of most of its activity as communications is inconsistent with CTR's known activity, CTR's reported

HFA, for its employees to call reporters are not costs incurred by the media entities employing those reporters, which is the entity that can claim the press exception. *See* 11 C.F.R. § 100.73.

[79] *See* MUR 6858 FLA for Malone PAC-Delegate at 2, 4 (finding RTB committee had accepted in-kind contribution in the form of unpaid prison labor to set up event with tent and banner); *see also* First Gen. Counsel's Rpt. at 7-8, MUR 6961 (Donald J. Trump for President, Inc., *et al.*) (noting that payment to assemble crowd for campaign event or rally constitutes "anything of value" as an "administrative service" to the campaign); First Gen. Counsel's Rpt. at 10-13, MUR 6651 (Murray Energy Corp. *et al.*) (enumerating wide variety of communication-adjacent costs that constitute "anything of value" within "contribution" definition, including hair and makeup artists, publicists, and the assembling of a crowd at a rally as "stagecraft"); *accord Buckley*, 424 U.S. at 19 (noting that "Speeches and rallies generally necessitate hiring a hall and publicizing the event"); 2006 Internet E&J at 18599 (explaining that, when political committee transfers "tangible" digital asset, such as email list, to another committee, there is "no need to show that a coordinated communication resulted from such a transfer for the actual asset to be an in-kind contribution to that committee" under 11 C.F.R. § 100.52); *id.* at 18604 (explaining that "volunteer internet exceptions" at 11 C.F.R. §§ 100.94 and 100.155 from the definitions of "contribution" and "expenditure" for certain online activities by volunteers are not available for same activities when done by paid employees of political committees); *id.* at 18606-18607 (explaining that political committee's backend expenditures in support of blogger's "unpaid" internet communication are "akin" to vendor payments and must be reported as such); *Campaign Guide for Nonconnected Committees* at 25, available at https://www.fec.gov/resources/cms-content/documents/nongui.pdf ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee."); *Purposes of Disbursements*, available at https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/ (detailing acceptable "purposes" for reporting purposes, including polling, research, and advertising and inadequate purposes, such as "advocacy"); *Campaign Guide for Congressional Candidates and Committees* at 49 (noting that, in hosting candidate events, "SSF must pay in advance for any use of corporate/labor staff, food service or mailing lists. Additionally, it is advisable that the SSF pay for rooms and equipment in advance to avoid a prohibited contribution from the organization.").

disbursements for that activity, and the Commission's approach to coordinated expenditures as in-kind contributions.

The scale of the close coordination between CTR, a hybrid committee that accepted corporate funds and contributions from individuals in excess of the Act's contribution limits, and HFA suggests that most of CTR's entire range of activity during 2015-16 represents coordinated expenditures and therefore a contribution to HFA. Accordingly, we recommend that the Commission find reason to believe that Correct the Record made unreported excessive and prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116(a), 30118(a) and 30104(b) and that Hillary for America accepted unreported excessive and prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116(f), 30118(a) and 30104(b).

B. The Commission Should Dismiss the Allegation that American Bridge Impermissibly Coordinated With HFA

The Complaint in MUR 7160 alleges that American Bridge impermissibly coordinated with HFA in the same manner that CTR and HFA coordinated. In support of this allegation, the Complainant cites a Wikileaks email from fundraiser Bonner to HFA Chair Podesta about a fundraising event that evening, noting which attendees were the "best hits for both Correct the Record and American Bridge on the Presidential."[80] The Complaint notes that four of the referenced persons gave $725,000 to American Bridge, but does not provide any information about whether Podesta interacted with those persons or solicited funds from them.

The facts alleged in the Complaint present indicia of interaction between HFA and American Bridge at the highest levels of those committees but do not present sufficient information from which to conclude that HFA coordinated its activities so that American

[80] *See* MUR 7160 Compl. at ¶ 23.

Bridge's expenditures should be considered in-kind contributions to HFA. We therefore recommend that the Commission dismiss the allegations regarding the interactions between HFA and American Bridge, as a matter of prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).[81]

C. There is No Reason to Believe that CTR and Priorities USA Accepted Foreign National Contributions

The Complainant in MUR 7097 alleges, citing unnamed "sources in Saudi Arabia," that CTR and Priorities USA appear to "have foreign backing." The Complaint specifically alleges, based on an unidentified Saudi Arabian source of the Complainant, that Talal Bin Abdulaziz, who the Complaint asserts is a minister to the Saudi Royal Family, "has put $30-40 million behind Mrs. Clinton, among others" possibly via charity. Because the information is vague and unsupported, we recommend that the Commission find no reason to believe the allegation that CTR and Priorities USA violated 52 U.S.C. § 30121 by accepting foreign national contributions.[82]

III. PROPOSED INVESTIGATION

The proposed investigation would focus on assessing the extent of CTR's contribution to HFA. We request authority to conduct formal discovery, if needed.

[81] *See also* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12546 (Mar. 16, 2007)(stating that the Commission will dismiss when the matter does not merit further use of the Commission resources, due to factors such as the vagueness or weakness of the evidence).

[82] *See id.* (stating that the Commission will find no reason to believe when complaint alleges a violation but is either not credible or is so vague that an investigation would be effectively impossible).

IV. RECOMMENDATIONS

MURs 6940, 7097, 7146, 7160, and 7193

1. Find reason to believe that Correct the Record and Elizabeth Cohen in her official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a) and 30104(b);

2. Find reason to believe that Hillary for America and Elizabeth Jones in her official capacity as treasurer violated 52 U.S.C. §§ 30116(f), 30118(a) and 30104(b);

3. Authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas and deposition subpoenas, as necessary;

MURs 7160 and 7193

4. Take no action at this time as to the allegations that DNC Services Corp./DNC and William Q. Derrough in his official capacity as treasurer violated 52 U.S.C. §§ 30116(a), (d);

MUR 7097

5. Find no reason to believe that Priorities USA Action and Greg Speed in his official capacity as treasurer violated 52 U.S.C. § 30121;

6. Find no reason to believe that Correct the Record and Elizabeth Cohen in her official capacity as treasurer violated 52 U.S.C. § 30121;

MURs 7097, 7160, and 7193

7. Take no action at this time with regard to allegations that David Brock violated the Act;

MURs 7160 and 7193

8. Take no action at this time regarding allegations that John Podesta, Mary Pat Bonner, and Elizabeth Christina Reynolds violated the Act;

MUR 7160

9. Dismiss the allegation that American Bridge 21st Century and Rodell Mollineau in his official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a) and 30104(b);

10. Take no action at this time with regard to allegations that Hillary Clinton, Robby Mook, Karen Finney, Dennis Cheng, and Charlie Baker violated the Act;

MURs 6940, 7097, 7146, 7160, and 7193

11. Approve the attached Factual and Legal Analyses; and

12. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Dated: 10/16/18

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Dawn M. Odrowski
Dawn M. Odrowski
Attorney

Attachments:
1. Factual and Legal Analysis for Correct the Record
2. Factual and Legal Analysis for Hillary for America

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYIS**

4 RESPONDENTS: Correct the Record and Elizabeth Cohen MURs 6940, 7097, 7146,
5 in her official capacity as treasurer 7160 & 7193
6

7 **I. INTRODUCTION**

8 The Complaints in these five matters allege that Correct the Record and Elizabeth Cohen
9 as its treasurer ("CTR") made impermissible in-kind contributions to Hillary Clinton's
10 authorized committee, Hillary for America and Elizabeth Jones in her official capacity as
11 treasurer ("HFA") by coordinating on CTR's activities in support of Clinton. The Complaints
12 allege widespread violations because CTR's very purpose was to fully coordinate its activities
13 with the Clinton campaign, citing a 2015 CTR press release describing itself as a "strategic
14 research and rapid response team designed to defend Hillary Clinton" that "will be allowed to
15 coordinate" with her campaign.[1] Complainants, with varying degrees of specificity, allege that
16 CTR's expenditures for activities such as opposition research, strategic message development
17 and deployment, surrogate media training and bookings, video production, fundraising, "rapid
18 response" outreach to press, and a social media defense team were in-kind contributions to HFA
19 either directly or in the form of coordinated expenditures because CTR regularly and publicly
20 acknowledged that it could coordinate its activities with HFA and did, in fact, do so.
21 CTR argues that its expenditures are not in-kind contributions because it limited its
22 activities to communications that would not qualify as contributions if coordinated. Specifically,
23 CTR notes that because its communications were distributed on its own websites or on free

[1] MUR 6940 Compl.at 2 (describing CTR Press Release, "Correct the Record Launches as a New Pro-Clinton SuperPAC" (May 12, 2015) and attaching that press release as Exhibit A to the Complaint).

online platforms such as Twitter, Facebook, and YouTube, its activity does not meet the coordinated communication definition in the Commission's regulations. CTR additionally asserts that, for a smaller category of CTR's activity comprised of research and tracking materials, HFA paid for the materials and there is no factual basis for determining that HFA paid CTR less than fair market value for HFA's use of that material.

The available information indicates that CTR raised and spent approximately $9 million on a wide array of activities, most of which are not fairly characterized as "communications," in furtherance of its stated mission of working in support of Clinton's candidacy in coordination with HFA. As such, these payments for CTR's coordinated activities constitute coordinated expenditures and thus contributions to HFA. On this basis, the Commission finds reason to believe that CTR violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by making in-kind prohibited and excessive contributions and by failing to disclose those contributions.

In addition, the Complaint in MUR 7097 alleges that CTR had impermissible financial backing by foreign nationals.[2] For the reasons discussed below, the Commission finds no reason to believe that CTR violated 52 U.S.C. § 30121 by accepting foreign national contributions.

[2] *See* MUR 7097 Compl. at 2.

II. FACTUAL AND LEGAL ANALYSIS

A. There is Reason to Believe that CTR Impermissibly Coordinated With HFA

1. Factual Background

On April 13, 2015, Hillary Rodham Clinton filed a Statement of Candidacy with the Commission for the 2016 presidential election, designating HFA as her principal campaign committee.[3]

Less than a month later, on May 12, 2015, CTR, then a project of American Bridge,[4] issued a press release announcing that it was splitting off from American Bridge and registering with the Commission as "a separate SuperPAC."[5] The next day, May 13, 2015, CTR registered as a non-profit corporation in Washington, D.C.; on June 5, 2015, CTR registered with the Commission as a "hybrid" political committee with a "Carey" non-contribution account.[6]

In the press release announcing its establishment as a separate committee, CTR president Brad Woodhouse stated that CTR would "work in support of Hillary Clinton's candidacy for

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[3] Hillary Rodham Clinton Statement of Candidacy (Apr. 13, 2015).

[4] Correct the Record was reportedly created in 2013 as a project of American Bridge, which itself was also founded by CTR founder and Chairman Brock, as "a dedicated research and response communications project to prevent Republicans from denigrating potential Democratic candidates from baseless attacks, while potential Republican candidates reinvent themselves and their records without scrutiny." MUR 7146 Compl. at ¶ 7 (citing Michael Cook, *Arkansas Democrats Helping 'Correct the Record,'* TALK BUSINESS, Nov. 20, 2013); *see also* Aaron Blake, *Top Hillary supporters launch 'Correct the Record' Effort*, WASHINGTON POST (Nov. 1, 2013).

[5] MUR 6940 Compl. Ex. A.

[6] Statement of Organization, Correct the Record (June 5, 2015). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. *See* Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), available at http://www.fec.gov/press/press2011/20111006postcarey.shtml ("*Carey* Press Release").

President, aggressively responding to false attacks and misstatements" of her record.[7] CTR described itself in this press releases as "a strategic research and rapid response team designed to defend Hillary Clinton from right-wing baseless attacks."[8] CTR further stated it would not be engaged in "paid media and thus, will be allowed to coordinate with campaigns and Party Committees."[9] In another statement to the press days after the press release, a CTR spokesperson asserted that "FEC rules permit some activity – in particular activity on an organization's website, in email, and on social media – to be legally coordinated with candidates and political parties."[10]

CTR raised $9.63 million and spent $9.61 million during the 2016 election cycle.[11] Of that amount, all but $7,131 in receipts and $4,580 in expenditures were deposited into and spent from CTR's non-contribution account.[12] CTR, as a hybrid committee, accepted contributions to

7 MUR 6940 Compl. Ex. A (quoting president Brad Woodhouse).

8 *Id.*

9 *Id.*

10 *Id.* at Ex. C (reprinting Matea Gold, *How a Super PAC Plans to Coordinate Directly with Hillary Clinton's Campaign*, WASHINGTON POST (May 12, 2015)).

11 2015-2016 Financial Summary, Correct the Record, available at https://www.fec.gov/data/committee/C00578997/?cycle=2016; 2015 Year-End Rpt. at 3-4, Correct the Record (Jan. 31, 2016); 2016 Amended Year-End Rpt. at 3-4, Correct the Record (Apr. 15, 2017).

12 *Id.*

its non-contribution account from otherwise impermissible sources[13] and in amounts that would otherwise be in excess of the Act's contribution limits.[14]

CTR's and HFA's FEC disclosure reports reflect only two transactions between them, both near the time that CTR split from American Bridge. On May 27, 2015, HFA disbursed $275,615 to CTR for "research, non-contribution account"[15] and on July 17, 2015, HFA disbursed $6,346 to CTR for "research services."[16] Although an unnamed HFA official was reported to have stated that HFA would purchase from CTR "any nonpublic information of value" that CTR shared with it, it is not clear that the two reported HFA disbursements to CTR are for that purpose.[17]

CTR's reported disbursements provide information about the scope and manner of CTR's activities. CTR reports 2015-2016 payments for some communication-specific purposes such as "graphic services" and "web hosting" but the bulk of CTR's reported disbursements are for purposes that are not communication-specific, including payroll, salary, travel, lodging, meals, rent, fundraising consulting, computers, digital software, domain services, email services, equipment, event tickets, hardware, insurance, office supplies, parking, and shipping in addition

[13] *See, e.g.*, 2015 Year-End Rpt. at 12, Correct the Record (Jan. 31, 2016); Amended 2016 Oct. Quarterly Rpt. at 21, 46, Correct the Record (Dec. 8, 2016); Amended 2016 Pre-General Rpt. at 8, Correct the Record (Dec. 8, 2016).

[14] *See, e.g.*, 2016 Apr. Quarterly Rpt. at 8, Correct the Record (Apr. 15, 2016); Amended 2016 Oct. Quarterly Rpt. at 40, Correct the Record (Dec. 8, 2016).

[15] Amended 2015 July Quarterly Rpt. at 13,869, Hillary for America (Sept. 3, 2015); 2015 Mid-Year Rpt. at 8, Correct the Record (July 31, 2015) (reporting date of receipt as June 1, 2015).

[16] Amended 2015 October Quarterly Rpt. at 16,745, Hillary for America (July 5, 2016); 2015 Year-End Rpt. at 17, Correct the Record (Jan. 31, 2016). *See also* MUR 7146 CTR Resp. at 5-6 (describing these payments as for research and tracking materials).

[17] Matea Gold, *2016 Race's Theme Song: Blurred Lines; Campaigns Seize on Porous Rules, Lax Regulation to Push Alliances with Super PACs to the Legal Limit*, CHICAGO TRIBUNE (July 12, 2015).

to payments for explicitly mixed purposes such as "video consulting and travel" and "communication consulting and travel."[18]

Further, the Complaint in MUR 7146, relying on public reports and CTR's statements, notes several expenditures CTR made for internet communications, including for the production costs for a YouTube video and for emails to reporters "at the rate of about one every four minutes" during a Trump speech.[19] That Complaint also lists several examples of CTR's expenditures for non-communication activities in support of Clinton's candidacy during the 2016 election cycle, including that CTR:[20]

- Employed staff to: (1) conduct "opposition research," (2) run a "30-person war room" to defend Clinton during hearings before the House Select Committee on Benghazi, including blasting reporters with "46 research-fueled press releases, fact-checks, reports, videos and other multimedia releases during the hearing," and distributing a 140-page opposition research book to a variety of media outlets "that impugns the character of Republicans on the committee,"[21] and (3) "develop relationships with Republicans," "sleuth out confidential information from the Trump campaign," and distribute that information to reporters;

- Conducted talking-point tutorials and media-training classes for Clinton surrogates led by an expert specializing in coaching people for television interviews;

- Employed and deployed "trackers" to travel to states across the country to record the public events of Clinton's opponents;

[18] 2015-2016 Disbursements, Correct the Record, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

[19] *See, e.g.*, MUR 7146 Compl. at ¶¶ 5, 35, 90 (noting approximately $300k for video production expenses).

[20] CTR did not, in its Response, deny or rebut the description or scope of its activities on behalf of HFA as set forth in the MUR 7146 Complaint.

[21] According to the MUR 7146 Complaint, the effort later won Correct the Record a gold "Pollie" award from the American Association of Political Consultants for "Most Original/Innovative Collateral Material," since "the book and rapid-response efforts received extensive earned media coverage [including 30 mentions on TV]" and successfully "shift[ed] the narrative . . . about the politically-fueled investigation." MUR 7146 Compl. at ¶ 38. That Complaint notes that CTR's Benghazi activity did not win a Pollie in any of the "dozens" of "Internet/Digital" categories. *Id.*

- Commissioned a private polling firm to conduct polls that showed Clinton winning a Democratic debate; and

- Paid a consulting firm "to help oversee an aggressive surrogate booking program, connecting regional and national surrogates with radio and television news outlets across the country in support of Hillary Clinton."[22]

CTR and its officers' public statements further explain the manner in which CTR coordinated with HFA while conducting its activities. For example, CFR founder and chairman David Brock, in a December 2016 podcast interview with a reporter, discussed how CTR actually had coordinated with HFA.[23] Brock explained that "the coordinated status was, you're basically under their thumb but you don't have to run everything by them."[24] Brock also acknowledged that he would pick up the phone and talk to Clinton campaign manager Robbie Mook and occasionally campaign chairman John Podesta. Brock related, as an example, that when he publicly raised the absence of Bernie Sanders' medical records without first discussing the issue with HFA, "John [Podesta] tweeted that I should chill out and that we weren't running a fitness, physical fitness test for presidency or something like that." Brock added that "I took my lumps and then I obeyed. And so, the out-of-box thinking, that one might have had or the more aggressive things one might have had, basically that ended." Brock discussed another example of CTR's apparent deference to HFA on whether to mount a defense of the Clinton Foundation. Brock described a conversation he had with HFA campaign manager Mook in which the two disagreed about CTR's defense activities; Brock explained that ultimately CTR did not defend

[22] *See, e.g.*, MUR 7146 Compl. at ¶ 90.

[23] December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2.

[24] *Id.*

the Clinton Foundation because "we are a surrogate arm of the campaign and you need the Campaign on board for this."[25]

The internal communications of HFA further explain the scope of the coordination between CTR and HFA on some of CTR's activities. An internal HFA memo dated July 25, 2015, describes steps for defending Clinton against attacks and includes HFA's expectations concerning CTR's role in these plans.[26] The Memo proposes to counter "pay-to-play" attacks against Clinton, including attacks concerning the Clinton Foundation, "through work of CTR and other allies."[27] Although the Memo does not specify the manner in which CTR would do this, the Brock interview, discussed above, goes into further details. The Memo also states that HFA will "[w]ork with CTR and DNC to publicize specific GOP candidate vulnerabilities on issues of transparency, ethics, and donor favoritism." Other HFA Memo entries closely correlate with CTR's activities listed above, such as defending Hillary Clinton in the Benghazi hearing by "using outside voices, groups and the campaign to undermine and destroy the credibility of Gowdy's Benghazi investigation before HRC's appearance in October. Tactics can include briefing editors on the facts, calculator on time and money spent, reports from outside groups, opeds and blanketing of TV with surrogates."[28]

[25] *Id.*

[26] *See* MUR 7160 Compl. at ¶ 13 (citing MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf); MUR 7193 Compl. at ¶ 4. The allegations in the MUR 7160 Complaint are supported exclusively by internal materials released on Wikileaks. The allegations in the MUR 7193 Complaint appear to be based on the same source materials, although the MUR 7193 Complaint sources its information to "emails" or "memos" without further citations.

[27] MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf).

[28] *Id.* at 14-15.

Another internal HFA communication discusses the use of Governor Jennifer Granholm as a surrogate while she is paid by CTR; after discussing that the employment by CTR would preclude HFA from calling Granholm a spokesman or scheduling her, Charlie Baker, identified in the MUR 7160 Complaint as HFA's Chief Administrative Officer, notes: "If she were at Correct the Record we could at least make sure her speaking and media opportunities met our needs/requests."[29] Additionally, HFA's Christina Reynolds, on November 3, 2015, emailed an HFA meeting agenda which included a proposed discussion about which "Tactics on attacks" "should go through HRC, surrogates, DNC, CTR."[30] Additionally, a January 4, 2016, HFA email proposes a call to "figure out how we're going to rally the troops to defend" an anticipated attack on a Clinton aide and notes: "We will need to engage CTR and Media Matters as well."[31] The Complaint in MUR 7160 also cites to an internal HFA email in which HFA staffer Karen Finney volunteers to "reach out to David" Brock about responding to an attack against Clinton's husband.[32]

Communications between HFA and CTR also provide further explanation of the manner and scope of CTR's coordination with HFA in CTR's activities. For example, CTR fundraiser Mary Pat Bonner, in an attachment labeled "CTR Update" to a December 2015 email to John Podesta, details many of the research, surrogacy, and consulting activities described above in a

[29] MUR 7160 Compl. at ¶ 20 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/16024 (subject: "Re:")).

[30] MUR 7160 Compl. at ¶ 15 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/5267 (subject: "Agenda for Thursday Meeting")); MUR 7193 Compl. at ¶ 6.

[31] MUR 7193 Compl. at ¶ 11.

[32] MUR 7160 Compl. at ¶ 14 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/6119 (subject: "Did you see this? (Rubio Fundraising off fake Bill Clinton quote)")).

list of CTR's "CORE FUNCTIONS AND PRODUCTS."[33] The CTR Update explains that its structure "allows CTR to retain its independence but coordinate directly and strategically with the Hillary campaign."[34]

2. Legal Analysis

The Complaints allege that HFA accepted, impermissible in-kind contributions by coordinating activities in support of Clinton's presidential candidacy. Hybrid political committees, like CTR, are prohibited from making contributions, including in-kind contributions, to candidates and their authorized committees from their non-contribution accounts.[35]

Under the Act, the terms "contribution" and "expenditure" include "anything of value" made by any person for the purpose of influencing an election.[36] The term "anything of value" includes in-kind contributions.[37] In-kind contributions result when goods or services are provided without charge or at less than the usual and normal charge,[38] and when a person makes

[33] *See* MUR 7160 Compl. ¶ 23 (citing WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx")), MUR 7193 Compl. ¶ 7.

[34] *See id.*

[35] *See Carey* Press Release (explaining that Commission's non-enforcement of hybrid committees' receipt of funds that would otherwise be outside the Act's source prohibitions or amount limitations to a non-contribution account is conditioned on not using such funds for contributions); *see also* 52 U.S.C. §§ 30116(f), 30118(a); *accord* Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 ("An independent expenditure-only political committee may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.") (Internal quotations and citations omitted); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

[36] 52 U.S.C §§ 30101(8)(A)(i) and 30101(9)(A)(i).

[37] 11 C.F.R. § 100.52(d).

[38] *Id.*

an expenditure in cooperation, consultation or in concert with, or at the request or suggest of a candidate or the candidate's authorized committee or their agents.[39]

Expenditures for "coordinated communications" are addressed under a three prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are addressed under 11 C.F.R. § 109.20(b). The Commission has explained that section 109.20(b) applies to "expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee."[40] Under the three-prong test for coordinated communications, a communication is coordinated and treated as an in-kind contribution when it is paid for by someone other than a candidate, a candidate's authorized committee, a political party committee, or the authorized agents of either (the "payment prong"); satisfies one of five content standards (the "content prong"), and satisfies one of five conduct standards (the "conduct prong").[41] A communication must satisfy all three prongs to be a "coordinated communication."

Any person who is otherwise prohibited from making contributions to candidates under the Act or Commission regulations is prohibited from making an in-kind contribution in the form of paying for a coordinated communication or coordinated expenditure; similarly, in-kind contributions from permissible sources are subject to the Act's contribution limits.[42]

[39] 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20. *See also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

[40] Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) ("2003 Coordination E&J"); *see also* Advisory Opinion 2011-14 (Utah Bankers Association).

[41] 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications); 11 C.F.R. §§ 109.21(c), (d) (describing content and conduct standards, respectively). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See* 11 C.F.R. § 109.21(d)(6).

[42] *See* 52 U.S.C. §§ 30116(f), 30118(a).

The available information shows that CTR systematically coordinated with HFA on its activities. From its first week of existence as a "separate" entity, as evidenced by the press release announcing its establishment, CTR has consistently stated that the entirety of its work would be made for the purpose of benefiting Clinton and in coordination with her campaign.[43] Brock publicly explained the "coordinated status" of CTR and described CTR as "a surrogate arm" of HFA.[44] Moreover, these representations by CTR are not the puffery of an entity acting outside the attention of HFA; communications by and with senior HFA personnel confirm that CTR and HFA had a close relationship and worked together to benefit HFA. Internal memos and emails from both HFA and CTR discuss coordination, generally and with respect to particular activities, between the committees.[45] For example, as described above, CTR fundraiser Bonner explained in a communication sent to HFA Chair Podesta that CTR's structure as a SuperPAC "allows CTR to retain its independence but coordinate directly and strategically with the Hillary campaign."[46] And the record includes several examples of how HFA and CTR coordinated on specific activities. Internal documents, for example, set out HFA's strategy for outside groups to carry out the Benghazi response and public information shows that CTR later

[43] *See* MUR 6940 Compl. Ex. A.

[44] December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2.

[45] *See* MUR 7160 Compl. at ¶¶ 13, 23 (citing MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf and WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx"), respectively); MUR 7193 Compl. at ¶¶ 4, 7.

[46] WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx").

conducted its Benghazi-related activity in exactly that manner, even winning an industry award for its efforts.[47]

The record contains additional information about the extent of CTR and HFA interaction during the course of the coordinated activity in order to ensure that HFA's needs were met. In fact, it appears that part of HFA's strategy in outsourcing certain activities to CTR was to give CTR some level of freedom to accomplish HFA's goals while maintaining communication between CTR and HFA as necessary to ensure CTR's ongoing concert with HFA's needs. For example, an internal HFA email between HFA staff suggests having former Michigan Governor Granholm work with CTR because "[i]f she were at Correct the Record we could at least make sure her speaking and media opportunities met our needs/requests."[48] Brock's post-election podcast provides several examples of how HFA would "make sure" that CTR activity met HFA's needs. In the podcast, Brock details several interactions with senior HFA personnel, including about CTR's activity regarding attacks on the Clinton Foundation, before concluding that "the coordinated status was, you're basically under their thumb but you don't have to run everything by them."[49] In that same podcast interview, Brock described an instance where he was "under the thumb" of HFA and chastised by John Podesta for CTR's public comments on

[47] *See* MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf; MUR 7146 Compl. at ¶ 38.

[48] MUR 7160 Compl. at ¶ 20; *see also id.* at ¶ 15 (noting HFA meeting agenda item to discuss "tactics on attacks" from Bernie Sanders and the Republicans and "what should go through HRC, surrogates, DNC, CTR."); *id.* at ¶ 11 (detailing internal HFA email regarding forthcoming Vanity Fair article on top HRC staffer and HFA's need to engage CTR to defend against article's content).

[49] December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2. HFA's Clinton Foundation strategy is also discussed in internal HFA documents. *See* MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf.

Bernie Sander's failure to make his medical records public; according to Brock, CTR "obeyed" Podesta and ended the "more aggressive things one might have had."

CTR urges the Commission to dismiss the alleged violations premised on facts drawn from documents hacked by Russian intelligence services in connection with a broader attack on the 2016 presidential election and published on Wikileaks, which it argues are unreliable.[50] Strictly speaking, the case law indicates that federal agencies may consider stolen documents in administrative proceedings, so long as the agency was not involved in the underlying criminal act.[51] Even without the Wikileaks information, however, the record contains ample evidence, in the form of press releases and public interviews with CTR officers, as well as public tweets, as Brock referenced in his podcast interview, to support a coordination determination. In fact, the non-Wikileaks information detailed above shows that CTR existed *solely* to make expenditures in cooperation, consultation or concert with, or at the request or suggestion of Clinton and HFA and that it conducted its activities, as Brock phrased it, under HFA's thumb.

CTR makes a number of arguments as to why none of its over $9 million in expenditures constitute in-kind contributions to HFA. The primary argument is that CTR's expenditures are not in-kind contributions because CTR limited its activities to communications that do not meet

[50] *See* MUR 7160 CTR Resp. at 1-3. The United States Intelligence Community has assessed that one of the motives was to "undermine public faith in the US democratic process." OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, INTELLIGENCE COMMUNITY ASSESSMENT: ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS at 1 (Jan. 6, 2017).

[51] *See Nat'l Labor Relations Bd. v. S. Bay Daily Breeze*, 415 F.2d 360, 364 (9th Cir. 1969) ("There is no logic in excluding evidence to prevent the government from violating an individual's constitutional rights in a case when the government is not guilty of such a violation."); *Knoll Associates, Inc. v. Fed. Trade Comm'n*, 397 F.2d 530, 533 (7th Cir. 1968). Nor would admitting the documents detract from the FEC's core purpose of ensuring election integrity. The Ninth Circuit in *S. Bay Daily Breeze* rejected a similar argument that using stolen documents would undermine the National Labor Relation Board's goal of fostering "industrial peace." *S. Bay Daily Breeze*, 415 F.2d at 364. The Court of Appeals advised that the Board could achieve the same goal by enforcing the statute against the respondent. *Id.*; *see id.* (recognizing that the illegal act is prohibited by other statutes).

the "coordinated communication" three-prong test.[52] The content prong of the "coordinated communication" test at section 109.21(c) limits application of the rule to either "electioneering communications"[53] or "public communications" that satisfy certain other content requirements.[54] By definition, an "electioneering communication" includes only certain broadcast, cable, or satellite communications,[55] which the Complaints do not allege CTR to have made. And, by definition, a "public communication" "shall not include communications over the Internet, except for communications placed for a fee on another person's Web site."[56] CTR argues that, because none of its expenditures for communications were for electioneering communications or public communications, it cannot have made "coordinated communications." CTR further asserts that costs associated with producing research and materials distributed free online, including, for example, the costs of conducting a poll whose results were posted on CTR's website, are similarly costs of internet activities not fairly within the definition of "public communication."[57]

In support of its argument, CTR cites several MURs involving individual or occasional communications from third parties allegedly coordinated with candidate committees, where the Commission found that the communications were not public communications and thus did not

[52] *See, e.g.*, MUR 7146 CTR Resp. at 1-5.

[53] 11 C.F.R. § 109.21(c)(1).

[54] 11 C.F.R. § 109.21(c)(2)-(5).

[55] 11 C.F.R. § 100.29.

[56] 11 C.F.R. § 100.26.

[57] MUR 7146 CTR Resp. at 4.

satisfy the coordinated communications test.[58] While CTR is correct that the scope of the "coordinated communication" rule is limited to those communications enumerated therein, this argument fails to address CTR's non-communication expenditures made in coordination with HFA.

Contrary to CTR's argument, available information supports the conclusion that much of CTR's approximately $9 million in disbursements for activity during the 2016 election cycle cannot fairly be described as for "communications," public or otherwise, unless that term covers almost every conceivable political activity.[59] Take, for example, the costs CTR incurred for placing poll results on its own website, which CTR argues cannot be deemed coordinated. CTR is correct that the costs for the online placement of the poll results on its own website would not be a cost for a "public communication" under 11 C.F.R. § 100.26, but this has no bearing on the conclusion that CTR's payment for the underlying polling, made in coordination with HFA as it appears all CTR activity was, would be a coordinated expenditure under 11 C.F.R. § 109.20(b) and, thus, an in-kind contribution. The fact that the polling results were subsequently transmitted over the internet does not retroactively render the costs of the polling a "communication" cost.[60]

[58] *See* MUR 7146 CTR Resp. at 3-4.

[59] *See* 2015-2016 Disbursements, Correct the Record, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016. CTR addresses the small subset of CTR "research" activity for which HFA reported paying CTR. *See* MUR 7146 CTR Resp. at 5-6. As noted above, HFA disclosed payments to CTR of $275,615.43 and $6,346 for "research," and CTR notes that no Complaint alleges that this does not reflect fair market value payment for those services.

[60] *See, e.g.*, 11 C.F.R. § 106.4(b) (describing circumstances in which non-connected committee's purchase of poll results to make expenditures and candidate committee's subsequent acceptance of poll results is in-kind contribution to that candidate committee); Advisory Opinion 2011-14 (Utah Bankers) at 4 n.3 (noting that coordinated expenditures are "in-kind contributions to the candidates with whom they are coordinated" under 11 C.F.R. § 109.20(b)); *Campaign Guide for Nonconnected Committees* at 25, available at https://www.fec.gov/resources/cms-content/documents/nongui.pdf ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee.").

Moreover, CTR does not even attempt to explain how other costs it paid, such as the costs for staff to "develop relationships with Republicans" or for "trackers" to travel across the country to Clinton's opponents' campaign events, are fairly "communication" costs. CTR reported disbursing over $589,000 for the purpose of "travel" in 2015-2016;[61] these are not disbursements for "communications" costs.

Analyzing CTR's payments for its coordinated activity under the "coordinated expenditure" provision, rather than the "coordinated communication" provision is consistent with prior matters. In one matter cited by CTR, the Commission found reason to believe that a party committee made, and a candidate committee received, an excessive contribution in the form of coordinated expenditures relating to a voter canvassing effort, an activity involving a communicative element.[62] In that matter, the party paid employees to canvass potential voters, arranged for housing for some canvassers, and opened field offices to support volunteers' canvassing effort, all non-communication expenses serving subsequent communications that were not "public communications." The Commission's Factual and Legal Analysis in that matter states that disbursements for activities that are not communications (the party committee also engaged in a telephone bank, which the Commission determined should be treated under the "party coordinated communication" framework) should be treated as coordinated expenditures under 11 C.F.R. § 109.20(b).[63] Following the approach taken in that matter requires concluding

[61] *See* Correct the Record, Disbursements 2015-2016 (Description: Travel), https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016&disbursement_description=travel.

[62] MUR 5564 (Alaska Democratic Party) (later dismissed at the conciliation stage).

[63] MUR 5564 FLA for Tony Knowles for U.S. Senate at 12; *see also* 11 C.F.R. § 109.37 (describing party coordinated communications). After an investigation in MUR 5564, the Commission failed to garner four votes to enter into pre-probable cause conciliation with Respondents. *See* MUR 5564 GCR #2. *See* MUR 5564 Commission Certification (Nov. 29, 2007). CTR cites the MUR 5564 SOR by Commissioner Lenhard, who opposed the

that CTR's payments, made in coordination with HFA, for the costs of activities in support of Clinton's election such as the conduct of polls, the payment and training of staff, and the hiring of consultants to support the general activities of the committee, are properly analyzed as in-kind contributions to HFA under the coordinated expenditure provision of 11 C.F.R. § 109.20(b) rather than the coordinated communication provision of 11 C.F.R. § 109.21.

CTR also makes a number of arguments with respect to some of its specific programs or activities. First, CTR asserts that its surrogate trainings do not constitute coordinated expenditures and therefore contributions to HFA because CTR trained volunteers but not "official Clinton surrogates (as identified by HFA) or HFA staff."[64] But the available information indicates that CTR worked closely with HFA in all of its activities, including its surrogacy efforts, regardless of the persons serving as surrogates, and that HFA was well aware of CTR's surrogacy activities and attempted to "make sure" CTR surrogates "met our needs/requests."[65] As with the polling costs discussed above, CTR's expenditures for the management of its surrogate program, including costs it incurred for salary to its employees and payments to outside consultants, are not, themselves, expenditures for communications, though some of the surrogates trained in that program may have made subsequent communications that may or may not have been within the definition of "public communication." And, as shown in

recommendation, *see* MUR 7146 Resp. at 3 n.19, although two other Commissioners penned an SOR supporting it (SOR by Cmrs Mason and von Spakovsky).

64 MUR 7146 CTR Resp. at 5. CTR does not explain a legal basis for this distinction.

65 *See* MUR 7160 Compl. ¶ 23 (citing WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails//fileid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx") for CTR "core function and products" including "more than 300 surrogates"); *id.* at ¶ 20 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/16024 (subject: "Re:") (regarding Gov. Granholm's surrogacy); MUR 7193 Compl. ¶ 7.

MUR 5564 (Alaska Democratic Party), discussed above, a party committee's payments, in coordination with a candidate committee, for the costs of volunteers' activities in support of that candidate are in-kind contributions to the candidate committee.[66]

Second, CTR argues that its contacts to reporters are not public communications and therefore are not in-kind contributions.[67] But paying CTR staffers for this activity – activity that HFA appeared to depend on CTR to conduct – is more akin to a non-coordinated in-kind contribution such as paying for personal services rendered to a political committee without charge than to a coordinated mass communication to the general public.[68] HFA and CTR's insistence that these, and all of CTR's costs, be analyzed only through the lens of the "public communication" definition does not withstand scrutiny. The costs CTR incurred to train and pay staffers to engage in private communications with reporters are not fairly analyzed as the costs of "public communications," a term which the Commission has explained encompasses paid advertising for "mass communication."[69] Although reporters may report in media that utilizes "mass communication," the public relations efforts of CTR in speaking, behind the scenes, with such reporters is not CTR's own "mass communication."[70] Indeed, the Commission has, in the

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66 *See also* MUR 7035 (Australian Labor Party, *et al.*) (accepting conciliation agreements for violations of foreign national prohibition resulting from foreign national's payment of costs underlying volunteers' activities, including canvassing and other communications, for presidential campaign committee).

67 *See* CTR MUR 7146 Resp. at 4-5.

68 *See* 52 U.S.C. § 30101(8)(A)(ii) (including payment for personal services in "anything of value").

69 *See,* Internet Communications, 71 Fed. Reg. 18589, 18594 (Apr. 12, 2006) ("2006 Internet E&J").

70 Similarly, CTR's assertion that the Act's press exemption applies to its contacts with reporters is equally unavailing. *See* CTR MUR 7146 Resp. at 4-5. The salary and related costs that CTR paid, in coordination with HFA, for its employees to call reporters are not costs incurred by the media entities employing those reporters, which is the entity that can claim the press exception. *See* 11 C.F.R. § 100.73.

context of communication-adjacent activity such as campaign events or rallies that are not themselves "mass communications," deemed the provision to a campaign committee of back-end costs such as labor in support of such events or activities to be the provision of an in-kind contribution.[71]

At its core, CTR existed for only one purpose – to elect Clinton – and it accomplished its purpose via openly coordinating its efforts with HFA. CTR and HFA would have their purported lack of "public communications" swallow the Act's longstanding prohibition on coordinated expenditures. This position does not withstand scrutiny. CTR's characterization of most of its activity as communications is inconsistent with CTR's known activity, CTR's reported disbursements for that activity, and the Commission's approach to coordinated expenditures as in-kind contributions.

[71] *See* MUR 6858 FLA for Malone PAC-Delegate at 2, 4 (finding RTB committee had accepted in-kind contribution in the form of unpaid prison labor to set up event with tent and banner); *see also* First Gen. Counsel's Rpt. at 7-8, MUR 6961 (Donald J. Trump for President, Inc., *et al.*) (noting that payment to assemble crowd for campaign event or rally constitutes "anything of value" as an "administrative service" to the campaign); First Gen. Counsel's Rpt. at 10-13, MUR 6651 (Murray Energy Corp. *et al.*) (enumerating wide variety of communication-adjacent costs that constitute "anything of value" within "contribution" definition, including hair and makeup artists, publicists, and the assembling of a crowd at a rally as "stagecraft"); *accord Buckley*, 424 U.S. at 19 (noting that "Speeches and rallies generally necessitate hiring a hall and publicizing the event"); 2006 Internet E&J at 18599 (explaining that, when political committee transfers "tangible" digital asset, such as email list, to another committee, there is "no need to show that a coordinated communication resulted from such a transfer for the actual asset to be an in-kind contribution to that committee" under 11 C.F.R. § 100.52); *id.* at 18604 (explaining that "volunteer internet exceptions" at 11 C.F.R. §§ 100.94 and 100.155 from the definitions of "contribution" and "expenditure" for certain online activities by volunteers are not available for same activities when done by paid employees of political committees); *id.* at 18606-18607 (explaining that political committee's backend expenditures in support of blogger's "unpaid" internet communication are "akin" to vendor payments and must be reported as such); *Campaign Guide for Nonconnected Committees* at 25, available at https://www.fec.gov/resources/cms-content/documents/nongui.pdf ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee."); *Purposes of Disbursements*, available at https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/ (detailing acceptable "purposes" for reporting purposes, including polling, research, and advertising and inadequate purposes, such as "advocacy"); *Campaign Guide for Congressional Candidates and Committees* at 49 (noting that, in hosting candidate events, "SSF must pay in advance for any use of corporate/labor staff, food service or mailing lists. Additionally, it is advisable that the SSF pay for rooms and equipment in advance to avoid a prohibited contribution from the organization.").

The scale of the close coordination between CTR, a hybrid committee that accepted corporate funds and contributions from individuals in excess of the Act's contribution limits, and HFA suggests that most of CTR's entire range of activity during 2015-16 represents coordinated expenditures and therefore a contribution to HFA. Accordingly, the Commission finds reason to believe that Correct the Record made unreported excessive and prohibited in-kind contributions to Hillary for America in violation of 52 U.S.C. §§ 30116(a), 30118(a) and 30104(b).

B. There is No Reason to Believe that CTR Accepted Foreign National Contributions

The Complainant in MUR 7097 alleges in part, citing unnamed "sources in Saudi Arabia," that CTR appears to "have foreign backing." The Complaint specifically alleges, based on an unidentified Saudi Arabian source of the Complainant, that Talal Bin Abdulaziz, who the Complaint asserts is a minister to the Saudi Royal Family, "has put $30-40 million behind Mrs. Clinton, among others" possibly via charity. Because the information is vague and unsupported, the Commission finds no reason to believe the allegation that CTR violated 52 U.S.C. § 30121 by accepting foreign national contributions.[72]

[72] *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12546 (Mar. 16, 2007) (stating that the Commission will find no reason to believe when complaint alleges a violation but is either not credible or is so vague that an investigation would be effectively impossible).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYIS

RESPONDENTS: Hillary for America and Elizabeth Cohen in her official capacity as treasurer[1] MURs 6940, 7097, 7146, 7160 & 7193

I. INTRODUCTION

The Complaints in these five matters allege that Hillary Clinton's authorized committee, Hillary for America and Elizabeth Jones in her official capacity as treasurer ("HFA"), accepted impermissible in-kind contributions by coordinating on activities conducted by Correct the Record and Elizabeth Cohen in her official capacity as treasurer ("CTR"). The Complaints allege widespread violations because CTR's very purpose was to fully coordinate its activities with the Clinton campaign, citing a 2015 CTR press release describing itself as a "strategic research and rapid response and research team designed to defend Hillary Clinton" that "will be allowed to coordinate" with her campaign."[2] Complainants, with varying degrees of specificity, allege that CTR's expenditures for activities such as opposition research, strategic message development and deployment, surrogate media training and bookings, video production, fundraising, "rapid response" outreach to press, and a social media defense team were in-kind contributions to HFA either directly or in the form of coordinated expenditures because CTR regularly and publicly acknowledged that it could coordinate its activities with HFA and did, in fact, do so.

[1] On May 31, 2018, Hillary for America filed an amended Statement of Organization naming Elizabeth Jones as its treasurer. Jose H. Villarreal was the treasurer when the activities described occurred as to each of the complaints.

[2] MUR 6940 Compl. at 2 (describing CTR Press Release, "Correct the Record Launches as a New Pro-Clinton SuperPAC" (May 12, 2015) and attaching that press release as Exhibit A to the Complaint).

HFA argues that CTR's expenditures are not in-kind contributions because CTR limited its activities to communications that would not qualify as contributions if coordinated. Specifically, HFA notes that because CTR's communications were distributed on its own websites or on free online platforms such as Twitter, Facebook, and YouTube, CTR's activity does not meet the coordinated communication definition in the Commission's regulations. HFA additionally asserts that, for a smaller category of CTR's activity comprised of research and tracking materials, HFA paid for the materials and there is no factual basis for determining that HFA paid CTR less than fair market value for HFA's use of that material.

The available information indicates that CTR raised and spent approximately $9 million on a wide array of activities, most of which are not fairly characterized as "communications," in furtherance of its stated mission of working in support of Clinton's candidacy in coordination with HFA. As such, these payments for CTR's coordinated activities constitute coordinated expenditures and thus contributions to HFA. On this basis, the Commission finds reason to believe that HFA violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by accepting in-kind prohibited and excessive contributions and by failing to disclose those contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. There is Reason to Believe that HFA Impermissibly Coordinated With CTR

1. Factual Background

On April 13, 2015, Hillary Rodham Clinton filed a Statement of Candidacy with the Commission for the 2016 presidential election, designating HFA as her principal campaign committee.[3]

Less than a month later, on May 12, 2015, CTR, then a project of American Bridge,[4] issued a press release announcing that it was splitting off from American Bridge and registering with the Commission as "a separate SuperPAC."[5] The next day, May 13, 2015, CTR registered as a non-profit corporation in Washington, D.C.; on June 5, 2015, CTR registered with the Commission as a "hybrid" political committee with a "Carey" non-contribution account.[6]

In the press release announcing its establishment as a separate committee, CTR president Brad Woodhouse stated that CTR would "work in support of Hillary Clinton's candidacy for

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3 Hillary Rodham Clinton Statement of Candidacy (Apr. 13, 2015).

4 Correct the Record was reportedly created in 2013 as a project of American Bridge, which itself was also founded by CTR founder and Chairman David Brock, as "a dedicated research and response communications project to prevent Republicans from denigrating potential Democratic candidates from baseless attacks, while potential Republican candidates reinvent themselves and their records without scrutiny." MUR 7146 Compl. at ¶ 7 (citing Michael Cook, *Arkansas Democrats Helping 'Correct the Record,'* TALK BUSINESS, Nov. 20, 2013); *see also* Aaron Blake, *Top Hillary supporters launch 'Correct the Record' Effort*, WASHINGTON POST (Nov. 1, 2013).

5 MUR 6940 Compl. Ex. A.

6 Statement of Organization, Correct the Record (June 5, 2015). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. *See* Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), available at http://www fec.gov/press/press2011/20111006postcarey.shtml ("*Carey* Press Release").

President, aggressively responding to false attacks and misstatements" of her record.[7] CTR described itself in this press releases as "a strategic research and rapid response team designed to defend Hillary Clinton from right-wing baseless attacks."[8] CTR further stated it would not be engaged in "paid media and thus, will be allowed to coordinate with campaigns and Party Committees."[9] In another statement to the press days after the press release, a CTR spokesperson asserted that "FEC rules permit some activity – in particular activity on an organization's website, in email, and on social media – to be legally coordinated with candidates and political parties."[10]

CTR raised $9.63 million and spent $9.61 million during the 2016 election cycle.[11] Of that amount, all but $7,131 in receipts and $4,580 in expenditures were deposited into and spent from CTR's non-contribution account.[12] CTR, as a hybrid committee, accepted contributions to

7 MUR 6940 Compl. Ex. A (quoting president Brad Woodhouse).

8 *Id.*

9 *Id.*

10 *Id.* at Ex. C (reprinting Matea Gold, *How a Super PAC Plans to Coordinate Directly with Hillary Clinton's Campaign*, WASHINGTON POST (May 12, 2015)).

11 2015-2016 Financial Summary, Correct the Record, available at https://www.fec.gov/data/committee/C00578997/?cycle=2016; 2015 Year-End Rpt. at 3-4, Correct the Record (Jan. 31, 2016); 2016 Amended Year-End Rpt. at 3-4, Correct the Record (Apr. 15, 2017).

12 *Id.*

its non-contribution account from otherwise impermissible sources[13] and in amounts that would otherwise be in excess of the Act's contribution limits.[14]

CTR's and HFA's FEC disclosure reports reflect only two transactions between them, both near the time that CTR split from American Bridge. On May 27, 2015, HFA disbursed $275,615 to CTR for "research, non-contribution account"[15] and on July 17, 2015, HFA disbursed $6,346 to CTR for "research services."[16] Although an unnamed HFA official was reported to have stated that HFA would purchase from CTR "any nonpublic information of value" that CTR shared with it, it is not clear that the two reported HFA disbursements to CTR are for that purpose.[17]

CTR's reported disbursements provide information about the scope and manner of CTR's activities. CTR reports 2015-2016 payments for some communication-specific purposes such as "graphic services" and "web hosting" but the bulk of CTR's reported disbursements are for purposes that are not communication-specific, including payroll, salary, travel, lodging, meals, rent, fundraising consulting, computers, digital software, domain services, email services,

[13] *See, e.g.*, 2015 Year-End Rpt. at 12, Correct the Record (Jan. 31, 2016); Amended 2016 Oct. Quarterly Rpt. at 21, 46, Correct the Record (Dec. 8, 2016); Amended 2016 Pre-General Rpt. at 8, Correct the Record (Dec. 8, 2016).

[14] *See, e.g.*, 2016 Apr. Quarterly Rpt. at 8, Correct the Record (Apr. 15, 2016); Amended 2016 Oct. Quarterly Rpt. at 40, Correct the Record (Dec. 8, 2016).

[15] Amended 2015 July Quarterly Rpt. at 13,869, Hillary for America (Sept. 3, 2015); 2015 Mid-Year Rpt. at 8, Correct the Record (July 31, 2015) (reporting date of receipt as June 1, 2015).

[16] Amended 2015 October Quarterly Rpt. at 16,745, Hillary for America (July 5, 2016); 2015 Year-End Rpt. at 17, Correct the Record (Jan. 31, 2016). *See also* MUR 7146 HFA Resp. at 8-9 (describing these payments as for research and tracking materials).

[17] Matea Gold, *2016 Race's Theme Song: Blurred Lines; Campaigns Seize on Porous Rules, Lax Regulation to Push Alliances with Super PACs to the Legal Limit,* CHICAGO TRIBUNE (July 12, 2015).

equipment, event tickets, hardware, insurance, office supplies, parking, and shipping in addition to payments for explicitly mixed purposes such as "video consulting and travel" and "communication consulting and travel."[18]

Further, the Complaint in MUR 7146, relying on public reports and CTR's statements, notes several expenditures CTR made for internet communications, including for the production costs for a YouTube video and for emails to reporters "at the rate of about one every four minutes" during a Trump speech.[19] That Complaint also lists several examples of CTR's expenditures for non-communication activities in support of Clinton's candidacy during the 2016 election cycle, including that CTR:

- Employed staff to: (1) conduct "opposition research," (2) run a "30-person war room" to defend Clinton during hearings before the House Select Committee on Benghazi, including blasting reporters with "46 research-fueled press releases, fact-checks, reports, videos and other multimedia releases during the hearing," and distributing a 140-page opposition research book to a variety of media outlets "that impugns the character of Republicans on the committee,"[20] and (3) "develop relationships with Republicans," "sleuth out confidential information from the Trump campaign," and distribute that information to reporters;

- Conducted talking-point tutorials and media-training classes for Clinton surrogates led by an expert specializing in coaching people for television interviews;

- Employed and deployed "trackers" to travel to states across the country to record the public events of Clinton's opponents;

[18] 2015-2016 Disbursements, Correct the Record, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

[19] *See, e.g.*, MUR 7146 Compl. at ¶¶ 5, 35, 90 (noting approximately $300k for video production expenses).

[20] According to the MUR 7146 Complaint, the effort later won Correct the Record a gold "Pollie" award from the American Association of Political Consultants for "Most Original/Innovative Collateral Material," since "the book and rapid-response efforts received extensive earned media coverage [including 30 mentions on TV]" and successfully "shift[ed] the narrative . . . about the politically-fueled investigation." MUR 7146 Compl. at ¶ 38. That Complaint notes that CTR's Benghazi activity did not win a Pollie in any of the "dozens" of "Internet/Digital" categories. *Id.*

- Commissioned a private polling firm to conduct polls that showed Clinton winning a Democratic debate; and

- Paid a consulting firm "to help oversee an aggressive surrogate booking program, connecting regional and national surrogates with radio and television news outlets across the country in support of Hillary Clinton."[21]

CTR and its officers' public statements further explain the manner in which CTR coordinated with HFA while conducting its activities. For example, CTR founder and chairman David Brock, in a December 2016 podcast interview with a reporter, discussed how CTR actually had coordinated with HFA.[22] Brock explained that "the coordinated status was, you're basically under their thumb but you don't have to run everything by them."[23] Brock also acknowledged that he would pick up the phone and talk to Clinton campaign manager Robbie Mook and occasionally campaign chairman John Podesta. Brock related, as an example, that when he publicly raised the absence of Bernie Sanders' medical records without first discussing the issue with HFA, "John [Podesta] tweeted that I should chill out and that we weren't running a fitness, physical fitness test for presidency or something like that." Brock added that "I took my lumps and then I obeyed. And so, the out-of-box thinking, that one might have had or the more aggressive things one might have had, basically that ended." Brock discussed another example of CTR's apparent deference to HFA on whether to mount a defense of the Clinton Foundation. Brock described a conversation he had with HFA campaign manager Mook in which the two disagreed about CTR's defense activities; Brock explained that ultimately CTR did not defend

21 *See, e.g.*, MUR 7146 Compl. at ¶ 90.

22 December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2.

23 *Id.*

the Clinton Foundation because "we are a surrogate arm of the campaign and you need the Campaign on board for this."[24]

The internal communications of HFA further explain the scope of the coordination between CTR and HFA on some of CTR's activities. An internal HFA memo dated July 25, 2015, describes steps for defending Clinton against attacks and includes HFA's expectations concerning CTR's role in these plans.[25] The Memo proposes to counter "pay-to-play" attacks against Clinton, including attacks concerning the Clinton Foundation, "through work of CTR and other allies."[26] Although the Memo does not specify the manner in which CTR would do this, the Brock interview, discussed above, goes into further details. The Memo also states that HFA will "[w]ork with CTR and DNC to publicize specific GOP candidate vulnerabilities on issues of transparency, ethics, and donor favoritism." Other HFA Memo entries closely correlate with CTR's activities listed above, such as defending Hillary Clinton in the Benghazi hearing by "using outside voices, groups and the campaign to undermine and destroy the credibility of Gowdy's Benghazi investigation before HRC's appearance in October. Tactics can include briefing editors on the facts, calculator on time and money spent, reports from outside groups, opeds and blanketing of TV with surrogates."[27]

[24] *Id.*

[25] *See* MUR 7160 Compl. at ¶ 13 (citing MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf); MUR 7193 Compl. at ¶ 4. The allegations in the MUR 7160 Complaint are supported exclusively by internal materials released on Wikileaks. The allegations in the MUR 7193 Complaint appear to be based on the same source materials, although the MUR 7193 Complaint sources its information to "emails" or "memos" without further citations.

[26] MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf).

[27] *Id.* at 14-15.

Another internal HFA communication discusses the use of Governor Jennifer Granholm as a surrogate while she is paid by CTR; after discussing that the employment by CTR would preclude HFA from calling Granholm a spokesman or scheduling her, Charlie Baker, identified in the MUR 7160 Complaint as HFA's Chief Administrative Officer, notes: "If she were at Correct the Record we could at least make sure her speaking and media opportunities met our needs/requests."[28] Additionally, HFA's Christina Reynolds, on November 3, 2015, emailed an HFA meeting agenda which included a proposed discussion about which "Tactics on attacks" "should go through HRC, surrogates, DNC, CTR."[29] Additionally, a January 4, 2016, HFA email proposes a call to "figure out how we're going to rally the troops to defend" an anticipated attack on a Clinton aide and notes: "We will need to engage CTR and Media Matters as well."[30] The Complaint in MUR 7160 also cites to an internal HFA email in which HFA staffer Karen Finney volunteers to "reach out to David" Brock about responding to an attack against Clinton's husband.[31]

Communications between HFA and CTR also provide further explanation of the manner and scope of CTR's coordination with HFA in CTR's activities. For example, CTR fundraiser Mary Pat Bonner, in an attachment labeled "CTR Update" to a December 2015 email to John Podesta, details many of the research, surrogacy, and consulting activities described above in a

[28] MUR 7160 Compl. at ¶ 20 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/16024 (subject: "Re:")).

[29] MUR 7160 Compl. at ¶ 15 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/5267 (subject: "Agenda for Thursday Meeting")); MUR 7193 Compl. at ¶ 6.

[30] MUR 7193 Compl. at ¶ 11.

[31] MUR 7160 Compl. at ¶ 14 (citing WIKILEAKS – THE PODESTA EMAILS, https://wikileaks.org/podesta-emails/emailid/6119 (subject: "Did you see this? (Rubio Fundraising off fake Bill Clinton quote)")).

list of CTR's "CORE FUNCTIONS AND PRODUCTS."[32] The CTR Update explains that its structure "allows CTR to retain its independence but coordinate directly and strategically with the Hillary campaign."[33]

2. Legal Analysis

The Complaints allege that HFA accepted impermissible in-kind contributions by coordinating activities with CTR in support of Clinton's presidential candidacy. Hybrid political committees, like CTR, are prohibited from making contributions, including in-kind contributions, to candidates and their authorized committees from their non-contribution accounts.[34]

Under the Act, the terms "contribution" and "expenditure" include "anything of value" made by any person for the purpose of influencing an election.[35] The term "anything of value" includes in-kind contributions.[36] In-kind contributions result when goods or services are provided without charge or at less than the usual and normal charge,[37] and when a person makes

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32 *See* MUR 7160 Compl. ¶ 23 (citing WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx")), MUR 7193 Compl. ¶ 7.

33 *See id.*

34 *See Carey* Press Release (explaining that Commission's non-enforcement of hybrid committees' receipt of funds that would otherwise be outside the Act's source prohibitions or amount limitations to a non-contribution account is conditioned on not using such funds for contributions); *see also* 52 U.S.C. §§ 30116(f), 30118(a); *accord* Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 ("An independent expenditure-only political committee may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.") (Internal quotations and citations omitted); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

35 52 U.S.C §§ 30101(8)(A)(i) and 30101(9)(A)(i).

36 11 C.F.R. § 100.52(d).

37 *Id.*

an expenditure in cooperation, consultation or in concert with, or at the request or suggest of a candidate or the candidate's authorized committee or their agents.[38]

Expenditures for "coordinated communications" are addressed under a three prong test at 11 C.F.R. § 109.21 and other coordinated expenditures are addressed under 11 C.F.R. § 109.20(b). The Commission has explained that section 109.20(b) applies to "expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee."[39] Under the three-prong test for coordinated communications, a communication is coordinated and treated as an in-kind contribution when it is paid for by someone other than a candidate, a candidate's authorized committee, a political party committee, or the authorized agents of either (the "payment prong"); satisfies one of five content standards (the "content prong"), and satisfies one of five conduct standards (the "conduct prong").[40] A communication must satisfy all three prongs to be a "coordinated communication."

Any person who is otherwise prohibited from making contributions to candidates under the Act or Commission regulations is prohibited from making an in-kind contribution in the form of paying for a coordinated communication or coordinated expenditure; similarly, in-kind contributions from permissible sources are subject to the Act's contribution limits.[41]

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38 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20. *See also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

39 Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) ("2003 Coordination E&J"); *see also* Advisory Opinion 2011-14 (Utah Bankers Association).

40 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications); 11 C.F.R. §§ 109.21(c), (d) (describing content and conduct standards, respectively). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See* 11 C.F.R. § 109.21(d)(6).

41 *See* 52 U.S.C. §§ 30116(f), 30118(a).

The available information shows that CTR systematically coordinated with HFA on its activities. From its first week of existence as a "separate" entity, as evidenced by the press release announcing its establishment, CTR has consistently stated that the entirety of its work would be made for the purpose of benefiting Clinton and in coordination with her campaign.[42] Brock publicly explained the "coordinated status" of CTR and described CTR as "a surrogate arm" of HFA.[43] Moreover, these representations by CTR are not the puffery of an entity acting outside the attention of HFA; communications by and with senior HFA personnel confirm that CTR and HFA had a close relationship and worked together to benefit HFA. Internal memos and emails from both HFA and CTR discuss coordination, generally and with respect to particular activities, between the committees.[44] For example, as described above, CTR fundraiser Bonner explained in a communication sent to HFA Chair Podesta that CTR's structure as a SuperPAC "allows CTR to retain its independence but coordinate directly and strategically with the Hillary campaign."[45] And the record includes several examples of how HFA and CTR coordinated on specific activities. Internal documents, for example, set out HFA's strategy for outside groups to carry out the Benghazi response and public information shows that CTR later

[42] *See* MUR 6940 Compl. Ex. A.

[43] December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2.

[44] *See* MUR 7160 Compl. at ¶¶ 13, 23 (citing MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf and WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx"), respectively); MUR 7193 Compl. at ¶¶ 4, 7.

[45] WIKILEAKS – THE PODESTA EMAILS, https://www.wikileaks.org/podesta-emails/emailid/5636 (subject: "Info for Tonight") (go to attachment tab, attachment labeled "CTR Update.docx").

conducted its Benghazi-related activity in exactly that manner, even winning an industry award for its efforts.[46]

The record contains additional information about the extent of CTR and HFA interaction during the course of the coordinated activity in order to ensure that HFA's needs were met. In fact, it appears that part of HFA's strategy in outsourcing certain activities to CTR was to give CTR some level of freedom to accomplish HFA's goals while maintaining communication between CTR and HFA as necessary to ensure CTR's ongoing concert with HFA's needs. For example, an internal HFA email between HFA staff suggests having former Michigan Governor Granholm work with CTR because "[i]f she were at Correct the Record we could at least make sure her speaking and media opportunities met our needs/requests."[47] Brock's post-election podcast provides several examples of how HFA would "make sure" that CTR activity met HFA's needs. In the podcast, Brock details several interactions with senior HFA personnel, including about CTR's activity regarding attacks on the Clinton Foundation, before concluding that "the coordinated status was, you're basically under their thumb but you don't have to run everything by them."[48] In that same podcast interview, Brock described an instance where he was "under the thumb" of HFA and chastised by John Podesta for CTR's public comments on

[46] *See* MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf; MUR 7146 Compl. at ¶ 38.

[47] MUR 7160 Compl. at ¶ 20; *see also id.* at ¶ 15 (noting HFA meeting agenda item to discuss "tactics on attacks" from Bernie Sanders and the Republicans and "what should go through HRC, surrogates, DNC, CTR."); *id.* at ¶ 11 (detailing internal HFA email regarding forthcoming Vanity Fair article on top HRC staffer and HFA's need to engage CTR to defend against article's content).

[48] December 12, 2016 Politico "Off Message" podcast with reporter Glenn Thrush, available at https://itunes.apple.com/us/podcast/politicos-off-message/id987591126?mt=2. HFA's Clinton Foundation strategy is also discussed in internal HFA documents. *See* MEMORANDUM TO HILLARY CLINTON at 15-16, https://assets.documentcloud.org/documents/3125946/Strategic-Imperatives-Memo.pdf.

Bernie Sander's failure to make his medical records public; according to Brock, CTR "obeyed" Podesta and ended the "more aggressive things one might have had."

HFA urges the Commission to dismiss the alleged violations premised on facts drawn from documents hacked by Russian intelligence services in connection with a broader attack on the 2016 presidential election and published on Wikileaks, which it argues are unreliable.[49] Strictly speaking, the case law indicates that federal agencies may consider stolen documents in administrative proceedings, so long as the agency was not involved in the underlying criminal act.[50] Even without the Wikileaks information, however, the record contains ample evidence, in the form of press releases and public interviews with CTR officers, as well as public tweets, as Brock referenced in his podcast interview, to support a coordination determination. In fact, the non-Wikileaks information detailed above shows that CTR existed *solely* to make expenditures in cooperation, consultation or concert with, or at the request or suggestion of Clinton and HFA and that it conducted its activities, as Brock phrased it, under HFA's thumb.

HFA makes a number of arguments as to why none of CTR's over $9 million in expenditures constitute in-kind contributions to HFA. The primary argument is that CTR's expenditures are not in-kind contributions because CTR limited its activities to communications

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[49] *See* MUR 7160 HFA Resp. at 1-2; MUR 7193 HFA Resp. at 1-2. The United States Intelligence Community has assessed that one of the motives was to "undermine public faith in the US democratic process." OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, INTELLIGENCE COMMUNITY ASSESSMENT: ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS at 1 (Jan. 6, 2017).

[50] *See Nat'l Labor Relations Bd. v. S. Bay Daily Breeze*, 415 F.2d 360, 364 (9th Cir. 1969) ("There is no logic in excluding evidence to prevent the government from violating an individual's constitutional rights in a case when the government is not guilty of such a violation."); *Knoll Associates, Inc. v. Fed. Trade Comm'n*, 397 F.2d 530, 533 (7th Cir. 1968). HFA further argues that admitting the documents would detract from the FEC's core purpose of ensuring election integrity. MUR 7160 HFA Resp. at 1-3; MUR 7193 HFA Resp. at 2-3. The Ninth Circuit in *S. Bay Daily Breeze* rejected a similar argument that using stolen documents would undermine the National Labor Relation Board's goal of fostering "industrial peace." *S. Bay Daily Breeze*, 415 F.2d at 364. The Court of Appeals advised that the Board could achieve the same goal by enforcing the statute against the respondent. *Id.*; *see id.* (recognizing that the illegal act is prohibited by other statutes).

that do not meet the "coordinated communication" three-prong test.[51] The content prong of the "coordinated communication" test at section 109.21(c) limits application of the rule to either "electioneering communications"[52] or "public communications" that satisfy certain other content requirements.[53] By definition, an "electioneering communication" includes only certain broadcast, cable, or satellite communications,[54] which the Complaints do not allege CTR to have made. And, by definition, a "public communication" "shall not include communications over the Internet, except for communications placed for a fee on another person's Web site."[55] HFA argues that, because none of its expenditures for communications were for electioneering communications or public communications, it cannot have made "coordinated communications."

In support of its argument, HFA cites several MURs involving individual or occasional communications from third parties allegedly coordinated with candidate committees, where the Commission found that the communications were not public communications and thus did not satisfy the coordinated communications test.[56] While HFA is correct that the scope of the "coordinated communication" rule is limited to those communications enumerated therein, this argument fails to address CTR's non-communication expenditures made in coordination with HFA.

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51 *See, e.g.*, MUR 7146 HFA Resp. at 1-7.

52 11 C.F.R. § 109.21(c)(1).

53 11 C.F.R. § 109.21(c)(2)-(5).

54 11 C.F.R. § 100.29.

55 11 C.F.R. § 100.26.

56 *See* MUR 7146 HFA Resp. at 4-6.

Contrary to HFA's argument, available information supports the conclusion that much of CTR's approximately $9 million in disbursements for activity during the 2016 election cycle cannot fairly be described as for "communications," public or otherwise, unless that term covers almost every conceivable political activity.[57] Take for example, the costs CTR incurred for placing poll results on its own website. It is correct that the costs for the online placement of the poll results on its own website would not be a cost for a "public communication" under 11 C.F.R. § 100.26, but this has no bearing on the conclusion that CTR's payment for the underlying polling, made in coordination with HFA as it appears all CTR activity was, would be a coordinated expenditure under 11 C.F.R. § 109.20(b) and, thus, an in-kind contribution. The fact that the polling results were subsequently transmitted over the internet does not retroactively render the costs of the polling a "communication" cost.[58] Moreover, there is no attempt to explain how other costs CTR paid, such as the costs for staff to "develop relationships with Republicans" or for "trackers" to travel across the country to Clinton's opponents' campaign

[57] *See* 2015-2016 Disbursements, Correct the Record, available at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016. HFA addresses the small subset of CTR "research" activity for which HFA reported paying CTR. *See* MUR 7146 HFA Resp.at 8-9. As noted above, HFA disclosed payments to CTR of $275,615.43 and $6,346 for "research," and HFA note that no Complaint alleges that this does not reflect fair market value payment for those services.

[58] *See, e.g.*, 11 C.F.R. § 106.4(b) (describing circumstances in which non-connected committee's purchase of poll results to make expenditures and candidate committee's subsequent acceptance of poll results is in-kind contribution to that candidate committee); Advisory Opinion 2011-14 (Utah Bankers) at 4 n.3 (noting that coordinated expenditures are "in-kind contributions to the candidates with whom they are coordinated" under 11 C.F.R. § 109.20(b)); *Campaign Guide for Nonconnected Committees* at 25, available at https://www.fec.gov/resources/cms-content/documents/nongui.pdf ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee.").

events, are fairly "communication" costs. CTR reported disbursing over $589,000 for the purpose of "travel" in 2015-2016;[59] these are not disbursements for "communications" costs.

Analyzing CTR's payments for its coordinated activity under the "coordinated expenditure" provision, rather than the "coordinated communication" provision is consistent with prior matters. In one matter, the Commission found reason to believe that a party committee made, and a candidate committee received, an excessive contribution in the form of coordinated expenditures relating to a voter canvassing effort, an activity involving a communicative element.[60] In that matter, the party paid employees to canvass potential voters, arranged for housing for some canvassers, and opened field offices to support volunteers' canvassing effort, all non-communication expenses serving subsequent communications that were not "public communications." The Commission's Factual and Legal Analysis in that matter states that disbursements for activities that are not communications (the party committee also engaged in a telephone bank, which the Commission determined should be treated under the "party coordinated communication" framework) should be treated as coordinated expenditures under 11 C.F.R. § 109.20(b).[61] Following the approach taken in that matter requires concluding that CTR's payments, made in coordination with HFA, for the costs of activities in support of Clinton's election such as the conduct of polls, the payment and training of staff, and the hiring

[59] *See* Correct the Record, Disbursements 2015-2016 (Description: Travel), https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016&disbursement_description=travel.

[60] MUR 5564 (Alaska Democratic Party) (later dismissed at the conciliation stage).

[61] MUR 5564 FLA for Tony Knowles for U.S. Senate at 12; *see also* 11 C.F.R. § 109.37 (describing party coordinated communications). After an investigation in MUR 5564, the Commission failed to garner four votes to enter into pre-probable cause conciliation with Respondents. *See* MUR 5564 GCR #2. *See* MUR 5564 Commission Certification (Nov. 29, 2007).

of consultants to support the general activities of the committee, are properly analyzed as in-kind contributions to HFA under the coordinated expenditure provision of 11 C.F.R. § 109.20(b) rather than the coordinated communication provision of 11 C.F.R. § 109.21.

HFA's insistence that all of CTR's costs be analyzed only through the lens of the "public communication" definition does not withstand scrutiny. For example, the costs CTR incurred to train and pay staffers to engage in private communications with reporters are not fairly analyzed as the costs of "public communications," a term which the Commission has explained encompasses paid advertising for "mass communication."[62] Although reporters may report in media that utilizes "mass communication," the public relations efforts of CTR in speaking, behind the scenes, with such reporters is not CTR's own "mass communication."[63] Indeed, the Commission has, in the context of communication-adjacent activity such as campaign events or rallies that are not themselves "mass communications," deemed the provision to a campaign committee of back-end costs such as labor in support of such events or activities to be the provision of an in-kind contribution.[64]

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62 *See*, Internet Communications, 71 Fed. Reg. 18589, 18594 (Apr. 12, 2006) ("2006 Internet E&J").

63 Any assertion that the Act's press exemption applies to its contacts with reporters is equally unavailing. The salary and related costs that CTR paid, in coordination with HFA, for its employees to call reporters are not costs incurred by the media entities employing those reporters, which is the entity that can claim the press exception. *See* 11 C.F.R. § 100.73.

64 *See* MUR 6858 FLA for Malone PAC-Delegate at 2, 4 (finding RTB committee had accepted in-kind contribution in the form of unpaid prison labor to set up event with tent and banner); *see also* First Gen. Counsel's Rpt. at 7-8, MUR 6961 (Donald J. Trump for President, Inc., *et al.*) (noting that payment to assemble crowd for campaign event or rally constitutes "anything of value" as an "administrative service" to the campaign); First Gen. Counsel's Rpt. at 10-13, MUR 6651 (Murray Energy Corp. *et al.*) (enumerating wide variety of communication-adjacent costs that constitute "anything of value" within "contribution" definition, including hair and makeup artists, publicists, and the assembling of a crowd at a rally as "stagecraft"); *accord Buckley*, 424 U.S. at 19 (noting that "Speeches and rallies generally necessitate hiring a hall and publicizing the event"); 2006 Internet E&J at 18599 (explaining that, when political committee transfers "tangible" digital asset, such as email list, to another committee, there is "no need to show that a coordinated communication resulted from such a transfer for the actual asset to be an in-kind contribution to that committee" under 11 C.F.R. § 100.52); *id.* at 18604 (explaining that "volunteer internet exceptions" at 11 C.F.R. §§ 100.94 and 100.155 from the definitions of "contribution" and "expenditure" for certain online activities by volunteers are not available for same activities when done by paid employees of

At its core, CTR existed for only one purpose – to elect Clinton – and it accomplished its purpose via openly coordinating its efforts with HFA. CTR and HFA would have their purported lack of "public communications" swallow the Act's longstanding prohibition on coordinated expenditures. This position does not withstand scrutiny. The characterization of most of CTR's activity as communications is inconsistent with CTR's known activity, CTR's reported disbursements for that activity, and the Commission's approach to coordinated expenditures as in-kind contributions.

The scale of the close coordination between CTR, a hybrid committee that accepted corporate funds and contributions from individuals in excess of the Act's contribution limits, and HFA suggests that most of CTR's entire range of activity during 2015-16 represents coordinated expenditures and therefore a contribution to HFA. Accordingly, the Commission finds reason to believe that Hillary for America accepted unreported excessive and prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116(f), 30118(a) and 30104(b).

political committees); *id.* at 18606-18607 (explaining that political committee's backend expenditures in support of blogger's "unpaid" internet communication are "akin" to vendor payments and must be reported as such); *Campaign Guide for Nonconnected Committees* at 25, available at https://www.fec.gov/resources/cms-content/documents/nongui.pdf ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee."); *Purposes of Disbursements*, available at https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/ (detailing acceptable "purposes" for reporting purposes, including polling, research, and advertising and inadequate purposes, such as "advocacy"); *Campaign Guide for Congressional Candidates and Committees* at 49 (noting that, in hosting candidate events, "SSF must pay in advance for any use of corporate/labor staff, food service or mailing lists. Additionally, it is advisable that the SSF pay for rooms and equipment in advance to avoid a prohibited contribution from the organization.").