



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 12, 2021

VIA ELECTRONIC MAIL

Marc E. Elias, Esq.
Perkins Coie LLP
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Washington, DC 20005
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RE: MUR 7153

Dear Mr. Elias:

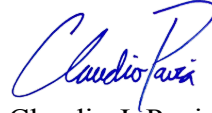
On October 24, 2016, the Federal Election Commission notified your client, Hillary for America and Elizabeth Jones in her official capacity as treasurer ("HFA"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 20, 2021, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe that HFA violated 52 U.S.C. §§ 30104(b)(3)(A), 30116(f), 30118(a) by knowingly accepting or failing to report excessive or corporate in-kind contributions from certain media entities. In addition, the Commission dismissed the allegations that HFA violated 52 U.S.C. §§ 30104(b)(3)(A), 30116(f) by knowingly accepting and failing to report an excessive in-kind contribution in the form of a debate question; dismissed the allegations that HFA violated 52 U.S.C. §§ 30104(b)(3)(A), 30116(f) by knowingly accepting and failing to report excessive in-kind contributions from volunteer filmmakers; dismissed the allegation that HFA violated 52 U.S.C. § 30120 by failing to include proper disclaimers on the Filmmakers for Hillary website and videos; dismissed the allegations that HFA violated 52 U.S.C. §§ 30104(b), 30116(f) by knowingly accepting and failing to report an excessive in-kind contribution from another political committee; dismissed the allegation that HFA violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing, transferring, or spending non-federal funds arising out of its interactions with Priorities USA Action; and dismissed the allegations that HFA made excessive contributions to Priorities USA Action, in the form of donor information in violation of 52 U.S.C. § 30116(a)(1)(C). Accordingly, the Commission closed its file in this matter.

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

Marc E Elias, Esq.
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If you have any questions, please contact me at cpavia@fec.gov or (202) 694-1597.

Sincerely,

A handwritten signature in blue ink, appearing to read "Claudio Pavia". The signature is fluid and cursive, with the first name "Claudio" and the last name "Pavia" clearly distinguishable.

Claudio J. Pavia
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

I. INTRODUCTION

First, the Complaint alleges that HFA impermissibly coordinated with reporters from news organizations such as the *New York Times*, the *Boston Globe*, CNBC, Univision, and with

1 The Commission administratively severed allegations that Hillary for America impermissibly coordinated with Priorities USA Action from MURs 7097, 7160, and 7193 into this matter. Consequently, the complainant in MUR 7097, Jack A. Shulman; the complainant in MUR 7160, William Pflaum; the complainant in MUR 7193, Jill Stein; and the respondents in MUR 7160, Jim Messina, Jonathan Mantz, and Paul Begala, are now parties in this matter. References to the “Complaint” refer to the Complaint in MUR 7153, unless otherwise specified.

1 an individual who wrote an op-ed in *The Hill*.² Second, the Complaint alleges that HFA failed to
 2 report an in-kind contribution from CNN contributor Donna Brazile in the form of a debate
 3 question she emailed to HFA in advance of a presidential debate. Third, the Complaint alleges
 4 that HFA coordinated with, and failed to report in-kind contributions from, various filmmakers
 5 who produced videos for a project titled “Filmmakers for Hillary.” Fourth, the Complaint and
 6 relevant portions of the MUR 7097, 7160, and 7193 Complaints³ allege that HFA impermissibly
 7 coordinated with Priorities USA Action and Greg Speed in his official capacity as treasurer
 8 (“Priorities”), an independent expenditure-only political committee.

9 Respondents generally deny the allegations. Among other things, they assert that the
 10 contacts between HFA and the Media Respondents were protected by the press exemption; that
 11 the provision of a debate question was not a contribution under the Act; that the activities of the
 12 filmmakers were covered by the Act’s volunteer services and uncompensated internet activity
 13 exemptions; and that the alleged interactions between HFA and Priorities did not result in a
 14 contribution. HFA also requests that the Commission “exercise its discretion” and dismiss the
 15 Complaint because it “relies exclusively on personal emails that Russian security agencies stole
 16 from [HFA’s] campaign chair, John Podesta,” which were disseminated by WikiLeaks and other
 17 platforms.⁴ HFA further argues that admitting the documents would “detract from the FEC’s

² Hereinafter, the *New York Times*, *Politico*, *The Hill*, the *Boston Globe*, CNBC, Univision, Maggie Haberman, John Harwood, and Peter Huffman are collectively referred to as “Media Respondents.”

³ See *supra* note 1.

⁴ MUR 7153 HFA Resp. at 1 (Dec. 14, 2016) (“HFA Resp.”); see also OFFICE OF THE DIR. OF NAT’L INTELLIGENCE, INTELLIGENCE COMMUNITY ASSESSMENT: ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS at 2-3 (Jan. 6, 2017) (“ICA”) (describing the 2016 Russian election interference operation); SPECIAL COUNSEL ROBERT S. MUELLER, III, U.S. DEP’T OF JUSTICE, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION at 3 (Mar. 22, 2019) (vol. 1) (same) (“SCR”). The Commission notes that one of the hacked documents cited by the Complaint, an internal memo pertaining to the

core purpose of ensuring election integrity.”⁵ Relatedly, Priorities states that the authenticity of some of the hacked materials cannot be confirmed or verified.⁶

For the reasons set forth below, the Commission has determined not to pursue these allegations and closes the file as to all Respondents.

II. FACTUAL BACKGROUND AND LEGAL ANALYSIS

A. The Commission Finds No Reason to Believe that HFA Impermissibly Coordinated with Media Respondents

1. Factual Background

The Complaint alleges that HFA coordinated with various media entities and journalists. As support, the Complaint cites to an October 9, 2016, news article by *The Intercept*.⁷ The article linked to and published excerpts from hacked documents. Based on one such document, the Complaint alleges that Maggie Haberman, a journalist for the *New York Times*, published two stories “on behalf of” Clinton’s campaign.⁸ The Complaint asserts that this was “clear coordination.”⁹

In addition, the Complaint mentions an unspecified Fox News report in which CNBC’s John Harwood allegedly “advises” HFA, arguing that “any reporting he does is as a surrogate for

allegations involving HFA and Priorities, not only originates from a state-sponsored cyberattack but also appears to be a privileged attorney-client communication.

⁵ HFA Resp. at 1.

⁶ MUR 7160 Priorities Resp. at 1 (Nov. 15, 2016); MUR 7193 Priorities Resp. at 1 (Dec. 6, 2016).

⁷ Compl. at 2 (Oct. 17, 2016); *see also* Glenn Greenwald and Lee Fang, *Exclusive: New Email Leak Reveals Clinton Campaign’s Cozy Press Relationship*, THE INTERCEPT, Oct. 9, 2016 (Attach. 1 to the Complaint), available at <https://theintercept.com/2016/10/09/exclusive-new-email-leak-reveals-clinton-campaigns-cozy-press-relationship/>.

⁸ Compl. at 2; *id.*, Attach. 1 (referencing and linking to the two Haberman articles); *see* Maggie Haberman, *Hillary Clinton Begins Process of Vetting – Herself*, N.Y. TIMES, Feb. 20, 2015; Maggie Haberman, *Hillary Clinton Aides are in Talks to Fill Top Campaign Roles*, N.Y. TIMES, Feb. 27, 2015.;

⁹ Compl. at 2.

the campaign” and “needs to be reported.”¹⁰ Further, without providing specifics, the Complaint alleges that the *New York Times* was a “surrogate” for HFA and allowed the campaign “to edit quotes”; that the *Boston Globe* agreed to help Clinton “pump up” her campaign; and that Univision “collaborated” with HFA to attack her general election opponent Donald J. Trump.¹¹

Finally, the Complaint alleges that HFA coordinated with Peter Huffman on an op-ed he wrote supporting Clinton that was published in *The Hill* on October 2, 2015. To support this allegation, the Complaint attached a hacked HFA email between HFA officials. The Complaint asserts that Huffman’s apparent contact with HFA prior to drafting the op-ed was a “clear violation of FEC regulations.”¹²

2. Legal Analysis

The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹³ Further, the Act limits the amount an individual may contribute to an authorized committee per election (\$2,700 during the 2016 cycle) and provides that no candidate or committee shall knowingly accept an excessive contribution.¹⁴ In addition, the Act prohibits corporations from making contributions to a candidate or authorized committee and similarly

¹⁰ *Id.*

¹¹ *Id.* at 2-3.

¹² Compl. at 1.

¹³ 52 U.S.C. § 30101(8)(A)(i); *see also id.* § 30101(9)(A)(i) (defining “expenditure” as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office”).

¹⁴ 52 U.S.C. § 30116(a)(1)(A), (f); *see also* 11 C.F.R. §§ 110.1(b), 110.9; *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

1 provides that no person shall knowingly accept a prohibited corporate contribution.¹⁵ Political
2 committees are required to report the identifying information of each person who makes an
3 aggregate contribution in excess of \$200 within the calendar year (or election cycle, in the case
4 of an authorized committee), together with the date and amount of any such contribution.¹⁶

5 The Act and Commission regulations, however, exempt from the definitions of
6 contribution and expenditure “any news story, commentary, or editorial distributed through the
7 facilities of any broadcasting station, newspaper, magazine, or other periodical publication,
8 unless such facilities are owned or controlled by any political party, political committee, or
9 candidate.”¹⁷ This exclusion is generally referred to as the “press exemption” or the “media
10 exemption.” The Commission has determined whether the exemption applies by first assessing
11 whether the entity that engaged in the challenged activity is a “press entity.”¹⁸ Second, the
12 Commission determines the scope of the exemption by applying the two-part analysis presented
13 in *Reader’s Digest Ass’n v. FEC*: (1) whether the entity is owned or controlled by a political
14 party, political committee, or candidate; and (2) whether the entity is acting within its “legitimate
15 press function.”¹⁹ To determine whether the press entity is acting within its legitimate press
16 function, the Commission considers whether the entity’s materials are available to the general

¹⁵ 52 U.S.C. § 30118(a); *see also* 11 C.F.R. § 114.2.

¹⁶ 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.13(a).

¹⁷ 52 U.S.C. § 30101(9)(B)(i) (expenditures); *see* 11 C.F.R. § 100.73 (contributions).

¹⁸ *See, e.g.*, Advisory Op. 2011-11 at 6-7 (Colbert) (“AO”) (collecting cases); AO 2005-16 at 5 (Fired Up!).

¹⁹ *See Reader’s Digest*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); AO 2011-11 at 7-9 (Colbert); AO 2010-08 at 6-7 (Citizens United); AO 2005-16 at 4 (Fired Up!).

1 public and whether the materials are comparable in form to those ordinarily issued by the
 2 entity.²⁰

3 As discussed below, the press exemption clearly applies to some of the alleged activities
 4 presented by the Complaint, and the remaining allegations are vague, speculative, and otherwise
 5 unsupported by the available information. First, the *New York Times*, *Boston Globe*, CNBC,
 6 *Politico*, *The Hill*, and Univision are all qualifying press entities.²¹ “[T]he Commission has
 7 focused on whether the entity is in the business of producing on a regular basis a program that
 8 disseminates news stories, commentary, and/or editorials.”²² That description applies to each of
 9 these Respondent entities.²³ Second, there is no suggestion or information that the entities were
 10 owned or controlled by a political party, political committee, or candidate.²⁴ Third, there is no
 11 indication that the Respondent entities acted outside of their legitimate press functions in
 12 connection with the events described in the Complaint. Further, the *New York Times* articles
 13 written by Maggie Haberman and the op-ed published by Peter Huffman were available to the
 14 general public and appear to be comparable in form to others ordinarily issued by those entities.
 15 They contain either original commentary or editorial content, activities specifically exempt by

²⁰ AO 2010-08 at 6 (Citizens United); AO 2005-16 at 4 (Fired Up!).

²¹ The Media Respondent entities assert that they are bona fide press entities. *See* Boston Globe Media Partners, LLC Resp. at 4 (Nov. 17, 2016); NBCUniversal Media, LLC Resp. at 1 (Nov. 21, 2016); The Hill Resp. at 3 (Nov. 28, 2016); Univision Communications, Inc. Resp. at 2 (Nov. 30, 2016); New York Times Resp. at 1 (Mar. 16, 2018). In prior enforcement matters, the Commission has recognized that several of these Respondents were “press entities” entitled to the media exemption. *See, e.g.*, MUR 5117 (New York Times, *et al.*) (finding no reason to believe the *New York Times* and *Boston Globe* violated Act); MUR 4929 (NBC, Inc., *et al.*) (same, with respect to CNBC, *New York Times*, and *Boston Globe*).

²² AO 2010-08 at 5 (Citizens United); AO 2008-14 at 4 (Melothe, Inc.).

²³ *See* Boston Globe Media Partners Resp. at 4 (describing regular program of news reporting); The Hill Resp. at 3 (same); NBCUniversal Media Resp. at 1 (same); Univision Communications Resp. at 2 (same).

²⁴ *See* Boston Globe Media Partners Resp. at 4 (denying ownership by a party, committee, or candidate); The Hill Resp. at 3 (same); Univision Communications Resp. at 2-3 (same); New York Times Resp. at 1 (same).

the Act’s statutory text.²⁵ Moreover, to the extent that either author was promoting a candidate, the Commission has stated that a publication need not be free of bias in order to qualify for the press exemption.²⁶

Finally, the Complaint includes a series of unsupported allegations.²⁷ For instance, the Complaint asserts that “Fox News reported that CNBC’s John Harwood advises [HFA]” and argues that “[t]his collaboration needs to be reported.”²⁸ The Complaint does not submit any description of the alleged activity and does not identify a specific Fox News report.²⁹ Similarly, the Complaint alleges that the *New York Times* allowed HFA to edit quotes and acted as a “surrogate” for the Clinton campaign, the *Boston Globe* agreed to “pump up” the Clinton campaign, and that Univision “collaborated” with HFA to attack Trump.³⁰ Because the Complaint lacks information to support these allegations, and the Commission is aware of none, there is insufficient indication that the alleged activity occurred.³¹

²⁵ See 52 U.S.C. § 30101(9)(B)(i); see also Compl., Attach. 1 at 4 (describing the NYT articles as “more sophisticated, nuanced, and even somewhat more critical than what the Clinton memo envisioned”).

²⁶ Advisory Op. 2005-19 at 5 (Inside Track Productions) (citing First General Counsel’s Report, MUR 5449 (CBS Broadcasting, Inc.)).

²⁷ Compl. at 2.

²⁸ *Id.*

²⁹ *Id.*; see 11 C.F.R. § 111.4(d)(2) (“Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainants belief in the truth of such statements.”). The Commission is aware of a contemporaneous Fox News article suggesting that Harwood emailed HFA “on some occasions to request an interview and other times to offer advice,” but the only example of advice identified in the article was an email to HFA warning that “Ben Carson could give you real trouble.” *Bias Alert: WikiLeaks Exposes Media’s Secret Support of Clinton*, FOX NEWS, Oct. 12, 2016. NBC Universal asserts that Harwood “did not serve as an advisor to or a surrogate for the [Clinton] campaign.” NBCUniversal Media, LLC Resp. at 1.

³⁰ Compl. at 2-3.

³¹ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007) (explaining that a finding of “no reason to believe” is appropriate where “[a] complaint alleges a violation but is either not credible or is so vague that an investigation would be effectively impossible”).

Therefore, the Commission finds: (1) no reason to believe that the *New York Times*, *Politico*, Maggie Haberman, *The Hill*, Peter Huffman, CNBC, John Harwood, the *Boston Globe*, and Univision violated 52 U.S.C. §§ 30116(a)(1)(A) or 30118(a) by making excessive or corporate contributions; (2) no reason to believe that HFA violated 52 U.S.C. §§ 30116(f) or 30118(a) by knowingly accepting excessive and corporate contributions from these Media Respondents; and (3) no reason to believe that HFA violated 52 U.S.C. § 30104(b)(3)(A) by failing to report in-kind contributions from these Media Respondents.

B. The Commission Dismisses the Remaining Allegations as a Matter of Prosecutorial Discretion

The Complaint alleges that HFA coordinated with Donna Brazile, then-vice chair of the Democratic National Committee and a CNN contributor, when she sent HFA an email with a question she expected would be asked at an upcoming Democratic primary debate sponsored by CNN.³² In addition, the Complaint alleges that HFA coordinated with various individual filmmakers on a project called “Filmmakers for Hillary” (“FFH Project”) and that that resulted in a number of disclaimer and reporting violations.³³ Finally, the Complaint alleges that HFA impermissibly “coordinated” with Priorities,³⁴ an independent-expenditure-only committee that supported Clinton’s 2016 campaign.³⁵

The Commission must consider the source of the documents that form the basis of these allegations. It is the well-documented and unanimous opinion of the U.S. Intelligence

³² Compl. at 2.

³³ *Id.* at 2.

³⁴ MUR 7153 Compl. at 2; MUR 7160 Compl. ¶ 17 (Oct. 24, 2016); MUR 7193 Compl. ¶ 12 (Nov. 7, 2016); *see* MUR 7097 Compl. at 1-2 (July 6, 2016).

³⁵ *See* Priorities USA Action Statement of Organization (April 29, 2011); Priorities USA Action 24/48 Hour Rpt. of Independent Expenditures (Nov. 4, 2016). Priorities reported total contributions of \$186,799,354 during the

1 Community and the U.S. Department of Justice³⁶ that these documents were stolen by the
2 Russian Federation and distributed specifically to interfere in the 2016 presidential election.
3 Some Commissioners believe that this fact alone justifies our invocation of prosecutorial
4 discretion, while others consider it one factor in the overall analysis. Moreover, all of these
5 allegations either have already slipped past our five-year statute of limitations or will soon do so.
6 In addition, the memo written by HFA's legal counsel regarding Priorities USA's fundraising
7 activities is subject to the attorney-client privilege.

8 In these circumstances the Commission exercises its prosecutorial discretion and
9 dismisses these allegations.³⁷

10 Additionally, because the Complaint is silent as to any specific violations they are alleged
11 to have committed, the Commission dismisses the allegations that individual Respondents who
12 worked for Priorities, Jim Messina, Jonathan Mantz, and Paul Begala, violated the Act in
13 connection with Priorities' fundraising interactions with HFA.

2016 election cycle. Priorities USA Action, 2015 Year-End Rpt. at 3 (Jan. 31, 2016); Priorities USA Action, 2016 Year-End Rpt. at 3 (Jan. 31, 2017).

³⁶ OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, INTELLIGENCE COMMUNITY ASSESSMENT: ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS at 2-3 (Jan. 6, 2017); SPECIAL COUNSEL ROBERT S. MUELLER, III, U.S. DEP'T OF JUSTICE, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION at 3 (Mar. 22, 2019) (vol. 1).

³⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985).