

MUR: 7157
DATE COMPLAINT FILED: 10/20/2016
DATE OF NOTIFICATION: 10/27/2016
SUPPLEMENTAL COMPLAINT FILED: 3/23/2017
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EARLIERST SOL: 3/11/2021
LATEST SOL: 9/23/2021
ELECTION CYCLE: 2016

COMPLAINANTS:

Project Veritas Action Fund

RESPONDENTS:

Hillary For America and Jose Villarreal in his
official capacity as treasurer
The Democratic National Committee and
Andrew Tobias in his official capacity as
treasurer
Priorities USA Action
Democracy Partners
Americans United for Change
Scott Foval DBA The Foval Group
Alliance for Retired Americans

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30116(a), (b), (d), (f)
52 U.S.C. § 30118
11 C.F.R. § 109.20
11 C.F.R. § 109.21
11 C.F.R. § 109.22
11 C.F.R. § 109.37

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaints allege that Priorities USA Action ("Priorities USA"), Democracy
Partners, Bob Creamer, Americans United for Change ("Americans United"), Scott Foval DBA
The Foval Group ("Foval"), Voces de la Frontera Action ("Voces"), and Alliance for Retired
Americans made prohibited in-kind contributions in the form of coordinated expenditures to

1 Hillary for America and Jose Villarreal in his official capacity as treasurer (“HFA”) and the
2 Democratic National Committee and Andrew Tobias in his official capacity as treasurer (the
3 “DNC”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”) and
4 Commission regulations. The Complaint also alleges that HFA and DNC accepted these
5 contributions and did not report them.¹

6 Because the available information does not indicate that any of the activities identified in
7 the Complaints resulted in prohibited or excessive contributions, we recommend that the
8 Commission find no reason to believe that Respondents violated the Act and close the files.

9 II. FACTS

10 HFA is the principal campaign committee for Hillary Clinton’s 2016 presidential
11 campaign.² Priorities USA is an independent-expenditure-only political committee (“IEOPC”)
12 that made independent expenditures during the 2016 general election advocating for Hillary
13 Clinton and against Donald Trump.³ Alliance for Retired Americans and Voces are both
14 nonprofit organizations registered under section 501(c)(4) of the Internal Revenue Code.⁴

¹ See Compl. at 3-4 (MUR 7155) (Oct. 19, 2016); Compl. at 14-15 (MUR 7157) (Oct. 20, 2016); Supp. Compl. at 9-13 (MUR 7157) (Mar. 27, 2017) (“Supp.”).

² Statement of Organization, Hillary for America (Apr. 13, 2015).

³ See generally 2016 28/48-Hour Notices of Independent Expenditures, Priorities USA (showing that Priorities USA made more than \$126 million in independent expenditures related to the 2016 general election for President).

⁴ PROPUBLICA NONPROFIT EXPLORER: ALLIANCE FOR RETIRED AMERICANS, <https://projects.propublica.org/nonprofits/organizations/522277805> (last visited Mar. 21, 2017) (The associated PAC is registered under Committee ID C00436188 which reported no contributions or independent expenditures during the 2016 election cycle.); VOCES DE LA FRONTERA ACTION, http://www.vdlfa.org/about_us/ (last visited Apr. 25, 2017).

1 Democracy Partners is a political consulting firm with partners who each maintain their
2 own businesses.⁵ Bob Creamer, a partner at Democracy Partners, maintains Mobilize, Inc.
3 (“Mobilize”), and he is affiliated with Americans United, a section 501(c)(4) organization.⁶
4 Scott Foval was employed by Americans United from August 2016 through October 17, 2016.⁷

5 Project Veritas Action Fund (“Project Veritas Action”), the Complainant in MUR 7157,
6 released a series of four hidden camera videos (the “PVA videos”), the first of which contained
7 conversations between Foval, Creamer, and undercover PVA representatives posing as agents for
8 a donor named “Charles Roth.”⁸ These PVA videos and other documents collected during the
9 undercover investigation form the basis for the Complaints.

10 The Complaint in MUR 7155 alleges that Americans United, Voces, Democracy
11 Partners, and Foval made coordinated communications at the request or suggestion of, or after
12 substantial discussions with, HFA and the DNC.⁹ The Complaint and its supplement in MUR
13 7157 allege that Priorities USA, Alliance for Retired Americans, Americans United, HFA, and
14 the DNC engaged in a criminal conspiracy to knowingly and willfully violate the Act and
15 Commission regulations by making, accepting, and not reporting prohibited and excessive

⁵ Democracy Partners Resp. at 1 (MUR 7155) (Dec. 22, 2016).

⁶ See Democracy Partners, Robert C. Creamer, <http://www.democracypartners.com/?q=partners/robert-creamer> (last viewed May 1, 2017) (describing Creamer as a “General Consultant to Americans United for Change where he helped coordinate the campaigns to pass President Obama’s landmark jobs and economic recovery legislation”); Compl. Ex. G (MUR 7155) (email from Creamer sending a proposal for \$50,000 in “voter mobilization” services on behalf of Americans United and Voces).

⁷ See Compl. Ex. A at 5 (MUR 7157).

⁸ Philip Elliot, *Everything We Know about the Latest James O’Keefe Video Sting*, TIME (Oct. 18, 2016), <http://time.com/4536212/james-okeefe-project-veritas-video-democrats>.

⁹ Compl. at 3-4 (MUR 7155).

1 contributions in the form of coordinated communications.¹⁰ The specific activities alleged in the

2 Complaints are:

- 3
- 4 • Americans United coordinated with HFA and the DNC on an operation known as
5 "Donald Ducks," which consisted of a person in a duck costume appearing at Trump
6 campaign events and carrying a sign reading "Donald Ducks Releasing His Tax
7 Returns;"¹¹
 - 8 • Democracy Partners, Americans United, Creamer, and Foval coordinated with HFA and
9 the DNC to pay protesters to appear at Trump rallies;¹²
 - 10
 - 11 • Americans United and Voces coordinated with HFA and the DNC on a get-out-the-vote
12 drive called "Vote November 8th for a Stronger Economy that Makes Us Stronger
13 Together" (the "Fall Plan"), which involved alleged fraudulent registration of non-
14 residents in Wisconsin;¹³ and
 - 15
 - 16 • Priorities USA, Americans United, Alliance for Retired Americans, Democracy Partners,
17 Voces, Foval, and Creamer made public communications based on "shared electoral
18 strategy" and messaging developed in coordination with HFA and the DNC.¹⁴
 - 19

20 **A. "Donald Ducks"**

21 The Complaints argue that "Donald Ducks" was a public communication by Americans
22 United, made after substantial discussions and with material involvement from both HFA and the
23 DNC. Specifically, the Complaints allege that Americans United implemented the "Donald
24 Ducks" operation that the DNC and HFA originally developed.¹⁵

¹⁰ Compl. at 2, 14-15 (MUR 7157); Supp. at 9-13 (MUR 7157).

¹¹ See Compl. at 9 (MUR 7157); Compl. at 5, Ex. D (MUR 7155); Supp. at 9-13 (MUR 7157).

¹² See Compl. at 3 (MUR 7155); Compl. at 14-15 (MUR 7157); Supp. at 9-13 (MUR 7157).

¹³ See Compl. at 4 (MUR 7155); Compl. at 14-15 (MUR 7157); Supp. at 9-13 (MUR 7157).

¹⁴ See *id.*

¹⁵ See *id.*

1 The DNC argues that it conducted the “Donald Ducks” operation through a contract with
2 Mobilize, and it provided invoices showing that the DNC paid the associated expenses.¹⁶
3 Mobilize, in turn, subcontracted with Foval, although it is unclear whether Mobilize contracted
4 with Foval individually, with Foval’s LLC, or with Americans United.¹⁷ Foval provided services
5 under the subcontract from June 2016 until October 17, 2016, when Americans United
6 terminated him.¹⁸ Although both the Complaints and several press reports suggest that “Donald
7 Ducks” was “transferred” from the DNC to Americans United at some point — after the DNC
8 received negative press regarding possible copyright infringement — Americans United’s
9 President, Brad Woodhouse, provided two sworn declarations stating that Americans United did
10 not pay for any expenses associated with “Donald Ducks.”¹⁹

¹⁶ The DNC provided invoices showing that it paid for the “Donald Ducks” operation under a contract that the DNC and Mobilize entered into in June 2016 (the “Mobilize contract”) for Mobilize to “coordinate events and actions” related to the 2016 Presidential Election. Democracy Partners Resp. at 1 (MUR 7155). Disclosure reports show disbursements from the DNC to Mobilize, Inc., which mirror the invoices. See DNC Resp. at 2 (MUR 7155) (Dec. 19, 2016); DNC 2016 Amended October Monthly Report (Jun. 1, 2017). Disclosure reports also indicate that Mobilize’s work for the DNC was not limited to the “Donald Ducks” operation. See DNC 2016 Amended August Monthly Report (Jun. 1, 2017); DNC 2016 Amended September Monthly Report (Jun. 1, 2017); DNC 2016 Amended October Monthly Report (Jun. 1, 2017); DNC 2016 Amended Pre-General Report (Jun. 1, 2017); DNC 2016 Amended Pre-General Report (Jun. 1, 2017); DNC 2016 Amended Year-End Report (Jun. 1, 2017) (disclosing a total of \$183,408.93 in payments from the DNC to Mobilize). Respondents provided documentation showing that \$41,338.95 of the disbursements related to services for the “Donald Ducks” operation, but did not provide itemized invoices showing the services included in the remaining \$142,069.98.

¹⁷ See Democracy Partners Resp. at 1 (MUR 7155) (“Scott Foval was engaged as a sub-contractor in June of 2016.”); Compl. Ex. F at 2 (MUR 7155) (quoting Foval as saying “I am contracted with [Bob Creamer] . . . DNC pays Democracy Partners, Democracy Partners pays the Foval Group, The Foval Group goes and executes . . .”); see also Compl. Ex. A at 5-9 (MUR 7157) (Foval alternates between identifying himself as a “contractor” and “consultant”).

¹⁸ See Democracy Partners Resp. at 1 (MUR 7155); David Weigel, *Two Democratic Operatives Lose Jobs After James O’Keefe Sting*, THE WASHINGTON POST (Oct. 19, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/10/19/two-democratic-operatives-lose-jobs-after-james-okeefe-sting/?tid=pm_pop_b (stating that “Foval was laid off Monday [Oct. 17, 2016] by Americans United for Change, where he had been national field director”).

¹⁹ See Americans United Resp. Attach. A (MUR 7155) (Dec. 16, 2016); Americans United Resp. Attach. A (MUR 7157) (Dec. 16, 2016). In both declarations, Woodhouse states that the Americans United’s “sole expenses associated with the effort consisted of staff time to prepare and issue press releases about the effort over the internet, along with unpaid Twitter messaging.” *Id.*

1 **B. Paid Protesters**

2 The Complaints allege generally that Democracy Partners, Creamer, Foval, and
3 Americans United paid and coached protesters at Trump campaign rallies; that HFA and the
4 DNC reviewed and approved the messages the protestors used; and that these activities
5 constituted coordinated communications by Democracy Partners, Creamer, Foval, and
6 Americans United.²⁰ Specifically, the Complaints point to press coverage of a Trump rally in
7 Chicago on March 11, 2016, and portions of the PVA Videos during which a Democracy
8 Partners employee says “[s]o the Chicago protest when they shut all that, that was us.”²¹ In
9 support of the more general allegation regarding paying and training protesters, the Complaints
10 highlight Foval’s statements in the PVA videos claiming that he and Creamer are the primary
11 organizers of the protests at Trump campaign events and that the DNC and HFA “cleared” the
12 protesters’ proposed messaging.²² The Complaint also relies on Foval’s statements referring to
13 paying protesters:

- 14 • “We have to be really careful because what we don’t need is for it to show up on CNN
15 that the DNC paid for X people to; that’s not going to happen.”²³
- 16 • “I’m saying we have mentally ill people that we pay to do [expletive], make no mistake.
17 Over the last 20 years, I have paid off a few homeless guys to do some crazy stuff”²⁴

18 The PVA videos on which the Complaints rely provide no specific context for these statements.

²⁰ Compl. at 2 (MUR 7155); Compl. at 5-7, 14 (MUR 7157).

²¹ See Compl. Ex. C, Ex. F at 4 (MUR 7155).

²² See Compl. at 5-7, Ex. A at 5-9 (MUR 7155); see also Project Veritas Action, *Rigging the Election – Video I: Clinton Campaign and DNC Incite Violence at Trump Rallies* [video] at 7:20, 7:28, 8:40, 8:50, YOUTUBE (Oct 17, 2017), https://www.youtube.com/watch?time_continue=3&v=5IuJGHuIkzY (“Rigging the Election”).

²³ Rigging the Election at 10:20.

²⁴ Rigging the Election at 13:50.

1 HFA and the DNC question the authenticity of the PVA videos, arguing that Project
2 Veritas “devised the questions themselves, cherry-picked excerpts of responses, and presented
3 them out of context.”²⁵ The DNC also argues that the Complaints fail to present facts which
4 support the coordination allegation.²⁶ Americans United also challenges the videos’ authenticity
5 and provided an affidavit in which Brad Woodhouse attests that Americans United neither paid
6 any protesters to appear at the Chicago Trump rally nor paid for any signs carried by protesters at
7 Trump rallies.²⁷ Democracy Partners also questions the videos’ authenticity, characterizing
8 Foval’s statements cited in the Complaint as factually inaccurate “puffery and bragging by a
9 short-term contractor.”²⁸ Democracy Partners specifically denies paying protesters and cites
10 contemporaneous news articles in which several prominent protesters at Trump rallies denied
11 being trained or induced by any third parties.²⁹

12 **C. Voter Registration and GOTV Activity in Wisconsin**

13 The Complaints allege that Americans United and Voces engaged in the Fall Plan, which
14 resulted in prohibited in-kind contributions to HFA and the DNC. In support, both Complaints
15 provided copies of the Fall Plan, which was written on Americans United letterhead.³⁰ The
16 Complaints allege that Americans United and Voces developed and executed the Fall Plan in

²⁵ See DNC Resp. at 2 (MUR 7155); DNC Resp. at 1 (MUR 7157), HFA Resp. at 2 (MUR 7155).

²⁶ DNC Resp. at 2 (MUR 7155).

²⁷ Americans United Resp. Attach. A (MUR 7155) (“AUFC did not pay anyone to protest at a Trump rally in Chicago on March 11, 2016 . . .”); Americans United Resp. Attach. A (MUR 7157) (Dec. 16, 2016) (“AUFC did not pay for signs carried by protesters at Trump rallies that read ‘#DumpTrump,’ ‘No Hate, No Racism, No Trump,’ or ‘Nope’ with images of Trump.”).

²⁸ Democracy Partners Resp. at 4 (MUR 7155).

²⁹ Democracy Partners Resp. at 3 (MUR 7155).

³⁰ See Compl. Ex. A (MUR 7155); Compl. Exs. C, D (MUR 7157).

1 consultation with HFA and the DNC. The Complaints also allege that the voter registration and
2 GOTV activity listed in the Fall Plan were targeted to reach voters likely to support Clinton and
3 that they may have intentionally registered non-residents.³¹

4 Respondents state that the Fall Plan was only a proposal distributed by Americans United
5 and Voces through a press release to generate interest in funding the proposed activities.³² In his
6 declarations, Woodhouse states that Americans United did not carry out the Fall Plan and did not
7 incur any expenses in connection with the proposed activities.³³

8 **D. Shared Electoral Strategy and Messaging**

9 The Complaints allege that HFA and the DNC conducted weekly conference calls with
10 the other respondents to “determine shared electoral strategy” and discuss plans to “shape
11 content and messaging to benefit HFA and the DNC.”³⁴ The Complaints allege that these calls
12 involved “material discussion” about the “timing, content, and audience” for public
13 communications disseminated by these outside groups “at or with the direction, approval, [or]
14 suggestion” of HFA and the DNC.³⁵

³¹ See Compl. Ex. C (MUR 7157).

³² Americans United Resp. at 1 (MUR 7155). Voces filed a designation of counsel in MUR 7155, but did not submit a response.

³³ *Id.* at Attach. A; Americans United Resp. Attach. A (MUR 7157).

³⁴ Compl. at 10 (MUR 7157).

³⁵ Compl. at 4 (MUR 7155).

1 Respondents argue that this allegation is speculative and unsubstantiated by any
2 information describing either the content of these alleged discussions or any specific examples of
3 alleged coordinated communications.³⁶

4 **III. LEGAL ANALYSIS**

5 **A. Coordination Allegations**

6 The Act prohibits any person from making, and any candidate or committee from
7 accepting or receiving, excessive or prohibited contributions.³⁷ In addition, corporations and
8 independent-expenditure-only political committees are prohibited from making contributions to
9 federal candidates.³⁸ The term "contribution" includes anything of value given for the purpose
10 of influencing a federal election.³⁹ Further, any expenditure made by a person "in cooperation,
11 consultation, or concert, with, or at the request or suggestion of, a candidate, authorized political
12 committee, or a national or state party committee" is considered an in-kind contribution.⁴⁰ These
13 expenditures are deemed "coordinated"⁴¹ and qualify as contributions to the candidate and must
14 be reported as expenditures made by the candidate's authorized committee or political party
15 committee.⁴²

³⁶ See *Priorities USA Resp.* at 1 (MUR 7157) (Jan. 9, 2017); *Alliance for Retired Americans Resp.* at 1 (MUR 7157) (Nov. 9, 2016); *DNC Resp.* at 3 (MUR 7157) (Dec. 19, 2016); *HFA Resp.* at 4 (MUR 7157) (Dec. 19, 2016); *Democracy Partners Resp.* at 3 (MUR 7157)(Dec. 22, 2016).

³⁷ 52 U.S.C. § 30116(a), (f); *see, e.g.*, 52 U.S.C. § 30118(a) (prohibiting making or knowingly receiving corporate or union contributions).

³⁸ Advisory Op. 2010-11 (Commonsense Ten).

³⁹ 52 U.S.C. § 30101(8)(A)(i).

⁴⁰ *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

⁴¹ 11 C.F.R. § 109.20(a).

⁴² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a).

1 A communication that is coordinated with a candidate or his authorized committee or a
2 political party committee is considered an in-kind contribution and is subject to the limits,
3 prohibitions, and reporting requirements of the Act.⁴³ Under Commission regulations, a
4 communication is coordinated with the candidate, the candidate's authorized committee, a
5 political party committee, or an agent of the candidate, authorized committee, or party committee
6 if it meets a three-prong test: (1) it is paid for, in whole or part, by a person other than the
7 candidate, authorized committee, or national or state party committee; (2) it satisfies one of five
8 content standards in 11 C.F.R. § 109.21(c);⁴⁴ and (3) it satisfies one of six conduct standards
9 described in 11 C.F.R. § 109.21(d).⁴⁵ All three prongs must be satisfied for a communication to
10 be coordinated under these regulations.⁴⁶

11 In addition, the national committee of a political party may make coordinated party
12 expenditures in connection with the presidential general election, subject to the limits established
13 by the Act and Commission regulations.⁴⁷ Coordinated party expenditures include

⁴³ 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

⁴⁴ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication that, in relevant part, refers to a clearly identified Presidential candidate, and is publicly distributed or disseminated in a jurisdiction 120 days or fewer before the candidate's primary election or nominating caucus in that jurisdiction; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

⁴⁵ The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. 11 C.F.R. § 109.21(d)(1)-(6).

⁴⁶ 11 C.F.R. § 109.21(a); *see also* Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) ("Coordination E&J"). *See* Factual and Legal Analysis at 5, MUR 7029 (McGinty).

⁴⁷ 52 U.S.C. § 30116(d); 11 C.F.R. §§ 109.30, 109.32.

1 disbursements for communications that are coordinated with the candidate.⁴⁸ For the 2016
2 general election, national party committees were limited to making \$23,821,100 in coordinated
3 party expenditures for presidential candidates.⁴⁹

4 The regulations further provide that an expenditure that is coordinated with a candidate,
5 authorized committee, or political party committee within the meaning of section 109.20(a), but
6 was not made for either a coordinated communication or a party coordinated communication is
7 either an in-kind contribution to the candidate, authorized committee, or party committee, or a
8 party coordinated expenditure.⁵⁰

9 1. Coordinated Communications

10 Priorities USA disclosed numerous independent expenditures for public communications
11 supporting Clinton and criticizing Trump during the 2016 election cycle.⁵¹ Thus, both the
12 payment and content prongs of the coordinated communications test are satisfied as to Priorities
13 USA.

14 As to the conduct prong, the Complaint in MUR 7157 makes a general allegation that all
15 of the communications Priorities USA reported as independent expenditures were, in fact,
16 coordinated with the Clinton campaign, but it fails to provide any specific information to support
17 the allegation. This factual insufficiency, by itself, supports a no-reason-to-believe finding as to

⁴⁸ 11 C.F.R. § 109.30. *See also* 11 C.F.R. § 109.37 (defining a party coordinated communication as a communication that is (a) paid for by a political party committee or its agent; (b) satisfies at least one of three content standards; and (c) satisfies at least one of the conduct standards in 11 C.F.R. §§ 109.21(d)(1) through (d)(6)).

⁴⁹ Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 81 Fed. Reg. 7,103 (Feb. 10, 2016); *see also* *Coordinated Party Expenditures for 2016*, FEDERAL ELECTION COMMISSION, http://www.fec.gov/info/charts_cpe_2016.shtml.

⁵⁰ 11 C.F.R. § 109.20(b).

⁵¹ *See supra* note 3.

1 Priorities USA. In addition, the Complaints' general allegations of coordination between the
2 HFA and Priorities USA are sufficiently rebutted by Respondents' specific denials.⁵²

3 The Commission has previously found that there was insufficient information on which
4 to base an investigation into whether the conduct standard was met where a PAC had "ongoing
5 communications" with party officials and elected officials, but the complainants neither
6 identified which particular conduct standard would apply nor connected the discussions to any
7 alleged coordinated communications.⁵³ Respondents argue that these Complaints are similarly
8 lacking.⁵⁴ The Complaints do not establish how these alleged discussions involving Priorities
9 USA, HFA, and the DNC satisfy the conduct prong and do not link any particular discussions to
10 any specific public communications. The factual record, therefore, does not support a conclusion
11 that the conduct prong is satisfied regarding Priorities USA's independent expenditures.⁵⁵

12 In addition, as the available information does not indicate that any Respondent other than
13 Priorities USA and the DNC satisfies the payment prong of the coordinated communications test,

⁵² See *supra* note 36.

⁵³ See Factual & Legal Analysis at 3, MUR 5754 (MoveOn.org Voter Fund) ("Although the complaint alleges that 'MoveOn.org has made no secret of its ongoing communications with Democratic party officials . . . and the elected Democratic leadership in the Senate and House,' it does not connect any such discussions to [MoveOn.org's] alleged 'coordinated communications.'").

⁵⁴ The DNC argues that because the Complaints failed to make any connections between supposed discussions and alleged coordinated communications, determining that they met the conduct prong would involve "rank speculation" in which the Commission has previously declined to engage. DNC Resp. at 4 (MUR 7157) (citing Factual & Legal Analysis at 3-4, MUR 5754 (MoveOn.org Voter Fund)). HFA and the DNC argue that the Complaints do not provide any information which, if true, would satisfy the conduct standard. Specifically, they contend that the Complaints do not detail any specific calls, do not tie any specific discussions to any specific public communications, and "leave open the question of whether respondents even participated [in any conference calls] at all." See HFA Resp. at 2 (MUR 7155); see also DNC Resp. at 2 (MUR 7155).

⁵⁵ See First Gen. Counsel's Rpt. at 5, MUR 5467 (Michael Moore) ("The Commission cannot entertain complaints based on mere speculation that a person may violate the law at some future date."); Statement of Reasons, Comm'rs. Mason, Sandstrom, Smith & Thomas at 3, MUR 4960 (Hillary Rodham Clinton for Senate) ("[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.") (citation omitted).

1 there is no basis to conclude that any other Respondent made or accepted excessive or prohibited
2 contributions in the form of coordinated communications.

3 **2. Party Coordinated Expenditures**

4 There is information in the record that the DNC paid its vendors to conduct the “Donald
5 Ducks” operation, and may have paid its vendors to train or support protestors at Trump rallies.⁵⁶
6 The DNC provided documentation showing that it paid for the “Donald Ducks” operation
7 pursuant to a contract with Mobilize.⁵⁷ Democracy Partners, Americans United, Foval, and
8 Creamer were involved in the “Donald Ducks” operation as vendors performing services —
9 either directly or as subcontractors — under Mobilize’s contract with the DNC.

10 As to the allegations regarding paying, organizing, and training protestors, Americans
11 United stated that it did not pay anyone to protest at one Trump rally in Chicago and did not pay
12 for any signs carried by protestors at Trump rallies, and there is no information in the Complaints
13 linking Americans United with training or organizing any protestors.⁵⁸ HFA, the DNC, and
14 Democracy Partners, however, do not specifically address the broad allegation that they trained
15 and organized protestors who appeared at Trump rallies, and some statements in the PVA videos
16 suggest that Foval and Creamer may have provided these kinds of services. During the time the
17 alleged training and organizing occurred, Democracy Partners, Creamer, and Foval were
18 providing general political consulting services to the DNC under a contract between the DNC

⁵⁶ See *supra* note 16.

⁵⁷ The DNC’s and Democracy Partners’s statements are corroborated by invoices the DNC provided and disclosure reports showing corresponding disbursements from the DNC to Mobilize. See DNC Resp. at 2-3, Ex. A (MUR 7155); Democracy Partners Resp. at 3-4 (MUR 7155).

⁵⁸ Americans United Resp. Attach. A (MUR 7155); Americans United Resp. Attach. A (MUR 7157).

1 and Mobilize.⁵⁹ The invoices the DNC provided do not itemize the services that Mobilize and its
2 various subcontractors performed under the contract, so it is possible that the services included
3 organizing and training protesters, as suggested by Foval and Creamer's statements cited in the
4 Complaints.⁶⁰

5 Even so, the coordination claims regarding "Donald Ducks" and protestor training and
6 support fail for a different reason; the expenses associated with these activities fit within the
7 DNC's available coordinated party expenditure limit. The DNC reported \$23,383,306.68 in
8 coordinated party expenditures supporting Clinton in the 2016 general election.⁶¹ Both party
9 coordinated communications and other types of coordinated party expenditures are aggregated
10 and counted against the \$23,821,100 limit.⁶² Therefore, even if all of the DNC's \$183,408.93 in
11 disbursements to Mobilize were coordinated with HFA, the DNC's total party coordinated
12 expenses for the 2016 presidential general election would have been \$23,566,715.61 — still
13 below the legal limit.⁶³

14 3. Coordinated Expenditures

15 As to the remainder of the coordination allegations, the Complaints do not provide any
16 information indicating that the activities outlined in the Fall Plan and any associated GOTV

⁵⁹ See Democracy Partners Resp. at 1 (MUR 7155) (identifying Foval as a subcontractor performing services under the Mobilize/DNC contract beginning in June, 2016).

⁶⁰ Disclosure reports indicate that the DNC paid Mobilize \$183,408.93 for political consulting services in 2016. See *supra* note 16. Invoices show that \$41,338.95 of what Mobilize received was related to services for the "Donald Ducks" project, but Respondents did not provide itemized invoices showing the services included in the remaining \$142,069.98.

⁶¹ See DNC Amended 2016 Year-End Report at 4 (Jun. 1, 2017); DNC 2017 April Monthly Report at 4 (Apr. 20, 2017).

⁶² See 11 C.F.R. § 109.37(b).

⁶³ See *supra* notes 16 and 49.

1 activities actually occurred, and do not identify any associated expenditures by any Respondent.
2 Additionally, Americans United stated that it “did not carry out, and incurred no expenses” in
3 connection with the proposed Fall Plan and that it was merely a proposal distributed by
4 Americans United and Voces through a press release to generate interest in funding the proposed
5 activities.⁶⁴ In light of the lack of supporting information in the Complaints and Respondents’
6 specific denials, the available information does not support a finding that any Respondent made
7 or accepted in-kind contributions in the form of coordinated expenditures in connection with the
8 Fall Plan.

9 As the information in the record does not support the coordination allegations outlined in
10 the Complaints, we recommend that the Commission find that there is no reason to believe that
11 Respondents violated the Act by making or accepting excessive or prohibited in-kind
12 contributions.

13 **B. Reporting Violations**

14 The Complaints allege that if the activities at issue are found to be coordinated
15 communications, then HFA and the DNC failed to disclose the resulting contributions. As we
16 conclude that there is no reason to believe regarding the coordination allegations, we recommend
17 that the Commission also find that there is no reason to believe that Respondents violated the
18 reporting provisions of the Act.

⁶⁴ See Americans United Resp. at 1, Attach. A (MUR 7155); Americans United Resp. Attach. A (MUR 7157). Voces filed a designation of counsel in MUR 7155, but did not submit a response.

1 **IV. RECOMMENDATIONS**

- 2 1. Find no reason to believe that Hillary for America and Jose Villareal in his official
3 capacity as treasurer and the Democratic National Committee and Andrew Tobias in
4 his official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(f), and
5 30118(a) by accepting and failing to report excessive or prohibited in-kind
6 contributions;
- 7 2. Find no reason to believe that Bob Creamer and Scott Foval violated 52 U.S.C.
8 § 30116(a) by making excessive in-kind contributions;
- 9 3. Find no reason to believe that Priorities USA Action, Democracy Partners, Americans
10 United for Change, The Foval Group, Voces de la Frontera, and the Alliance for
11 Retired Americans violated 52 U.S.C. §§ 30116(a)(2)(A) or 30118(a) by making
12 excessive or prohibited in-kind contributions;
- 13 4. Approve the attached Factual and Legal Analysis;
- 14 5. Approve the appropriate letters; and
- 15 6. Close the file.

16 Lisa J. Stevenson
17 Acting General Counsel


18
19
20 Kathleen M. Guith
21 Associate General Counsel for Enforcement

22
23 5.2.2018

24
25 Date

26 
27 _____
28 Stephen Gura
29 Deputy Associate General Counsel

30 
31 _____
32 Lynn Y. Tran
33 Assistant General Counsel

34 
35 _____
36 Ray L. Wolcott
37 Attorney

38
39 Attachment
40 Factual and Legal Analysis

NOT OUTSIDE

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Hillary for America and Jose Villarreal in his **MUR: 7155**
6 official capacity as treasurer
7 The Democratic National Committee and
8 Andrew Tobias in his official capacity as
9 treasurer
10 Democracy Partners
11 Bob Creamer
12 Americans United for Change
13 Scott Foval DBA The Foval Group
14 Voces de la Frontera Action

15
16 **RESPONDENTS:** Hillary for America and Jose Villarreal in his **MUR: 7157**
17 official capacity as treasurer
18 The Democratic National Committee and
19 Andrew Tobias in his official capacity as
20 treasurer
21 Priorities USA Action
22 Democracy Partners
23 Americans United for Change
24 Scott Foval DBA The Foval Group
25 Alliance for Retired Americans

26 **I. INTRODUCTION**

27 The Complaints allege that Priorities USA Action ("Priorities USA"), Democracy
28 Partners, Bob Creamer, Americans United for Change ("Americans United"), Scott Foval DBA
29 The Foval Group ("Foval"), Voces de la Frontera Action ("Voces"), and Alliance for Retired
30 Americans made prohibited in-kind contributions in the form of coordinated expenditures to
31 Hillary for America and Jose Villarreal in his official capacity as treasurer ("HFA") and the
32 Democratic National Committee and Andrew Tobias in his official capacity as treasurer (the
33 "DNC"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act") and

1 Commission regulations. The Complaint also alleges that HFA and DNC accepted these
2 contributions and did not report them.¹

3 Because the available information does not indicate that any of the activities identified in
4 the Complaints resulted in prohibited or excessive contributions, the Commission finds no reason
5 to believe that Respondents violated the Act and closes the files.

6 **II. FACTUAL BACKGROUND**

7 HFA is the principal campaign committee for Hillary Clinton's 2016 presidential
8 campaign.² Priorities USA is an independent-expenditure-only political committee ("IEOPC")
9 that made independent expenditures during the 2016 general election advocating for Hillary
10 Clinton and against Donald Trump.³ Alliance for Retired Americans and Voces are both
11 nonprofit organizations registered under section 501(c)(4) of the Internal Revenue Code.⁴

12 Democracy Partners is a political consulting firm with partners who each maintain their
13 own businesses.⁵ Bob Creamer, a partner at Democracy Partners, maintains Mobilize, Inc.

¹ See Compl. at 3-4 (MUR 7155) (Oct. 19, 2016); Compl. at 14-15 (MUR 7157) (Oct. 20, 2016); Supp. Compl. at 9-13 (MUR 7157) (Mar. 27, 2017) ("Supp.").

² Statement of Organization, Hillary for America (Apr. 13, 2015).

³ See generally 2016 28/48-Hour Notices of Independent Expenditures, Priorities USA (showing that Priorities USA made more than \$126 million in independent expenditures related to the 2016 general election for President).

⁴ PROPUBLICA NONPROFIT EXPLORER: ALLIANCE FOR RETIRED AMERICANS, <https://projects.propublica.org/nonprofits/organizations/522277805> (last visited Mar. 21, 2017) (The associated PAC is registered under Committee ID C00436188 which reported no contributions or independent expenditures during the 2016 election cycle.); VOCES DE LA FRONTERA ACTION, http://www.vdlfa.org/about_us/ (last visited Apr. 25, 2017).

⁵ Democracy Partners Resp. at 1 (MUR 7155) (Dec. 22, 2016).

1 (“Mobilize”), and he is affiliated with Americans United, a section 501(c)(4) organization.⁶

2 Scott Foval was employed by Americans United from August 2016 through October 17, 2016.⁷

3 Project Veritas Action Fund (“Project Veritas Action”), the Complainant in MUR 7157,
4 released a series of four hidden camera videos (the “PVA videos”), the first of which contained
5 conversations between Foval, Creamer, and undercover PVA representatives posing as agents for
6 a donor named “Charles Roth.”⁸ These PVA videos and other documents collected during the
7 undercover investigation form the basis for the Complaints.

8 The Complaint in MUR 7155 alleges that Americans United, Voces, Democracy
9 Partners, and Foval made coordinated communications at the request or suggestion of, or after
10 substantial discussions with, HFA and the DNC.⁹ The Complaint and its supplement in MUR
11 7157 allege that Priorities USA, Alliance for Retired Americans, Americans United, HFA, and
12 the DNC engaged in a criminal conspiracy to knowingly and willfully violate the Act and
13 Commission regulations by making, accepting, and not reporting prohibited and excessive
14 contributions in the form of coordinated communications.¹⁰ The specific activities alleged in the
15 Complaints are:

- 16 • Americans United coordinated with HFA and the DNC on an operation known as
17 “Donald Ducks,” which consisted of a person in a duck costume appearing at Trump

⁶ See Democracy Partners, Robert C. Creamer, <http://www.democracypartners.com/?q=partners/robert-creamer> (last viewed May 1, 2017) (describing Creamer as a “General Consultant to Americans United for Change where he helped coordinate the campaigns to pass President Obama’s landmark jobs and economic recovery legislation”); Compl. Ex. G (MUR 7155) (email from Creamer sending a proposal for \$50,000 in “voter mobilization” services on behalf of Americans United and Voces).

⁷ See Compl. Ex. A at 5 (MUR 7157).

⁸ Philip Elliot, *Everything We Know about the Latest James O’Keefe Video Sting*, TIME (Oct. 18, 2016), <http://time.com/4536212/james-okeefe-project-veritas-video-democrats>.

⁹ Compl. at 3-4 (MUR 7155).

¹⁰ Compl. at 2, 14-15 (MUR 7157); Supp. at 9-13 (MUR 7157).

1 campaign events and carrying a sign reading “Donald Ducks Releasing His Tax
2 Returns;”¹¹

- 3
- 4 • Democracy Partners, Americans United, Creamer, and Foval coordinated with HFA and
5 the DNC to pay protesters to appear at Trump rallies;¹²
 - 6
 - 7 • Americans United and Voces coordinated with HFA and the DNC on a get-out-the-vote
8 drive called “Vote November 8th for a Stronger Economy that Makes Us Stronger
9 Together” (the “Fall Plan”), which involved alleged fraudulent registration of non-
10 residents in Wisconsin;¹³ and
 - 11
 - 12 • Priorities USA, Americans United, Alliance for Retired Americans, Democracy Partners,
13 Voces, Foval, and Creamer made public communications based on “shared electoral
14 strategy” and messaging developed in coordination with HFA and the DNC.¹⁴

15 **A. “Donald Ducks”**

16 The Complaints argue that “Donald Ducks” was a public communication by Americans
17 United, made after substantial discussions and with material involvement from both HFA and the
18 DNC. Specifically, the Complaints allege that Americans United implemented the “Donald
19 Ducks” operation that the DNC and HFA originally developed.¹⁵

20 The DNC argues that it conducted the “Donald Ducks” operation through a contract with
21 Mobilize, and it provided invoices showing that the DNC paid the associated expenses.¹⁶

¹¹ See Compl. at 9 (MUR 7157); Compl. at 5, Ex. D (MUR 7155); Supp. at 9-13 (MUR 7157).

¹² See Compl. at 3 (MUR 7155); Compl. at 14-15 (MUR 7157); Supp. at 9-13 (MUR 7157).

¹³ See Compl. at 4 (MUR 7155); Compl. at 14-15 (MUR 7157); Supp. at 9-13 (MUR 7157).

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ The DNC provided invoices showing that it paid for the “Donald Ducks” operation under a contract that the DNC and Mobilize entered into in June 2016 (the “Mobilize contract”) for Mobilize to “coordinate events and actions” related to the 2016 Presidential Election. Democracy Partners Resp. at 1 (MUR 7155). Disclosure reports show disbursements from the DNC to Mobilize, Inc., which mirror the invoices. See DNC Resp. at 2 (MUR 7155) (Dec. 19, 2016); DNC 2016 Amended October Monthly Report (Jun. 1, 2017). Disclosure reports also indicate that Mobilize’s work for the DNC was not limited to the “Donald Ducks” operation. See DNC 2016 Amended August Monthly Report (Jun. 1, 2017); DNC 2016 Amended September Monthly Report (Jun. 1, 2017); DNC 2016 Amended October Monthly Report (Jun. 1, 2017); DNC 2016 Amended Pre-General Report (Jun. 1, 2017); DNC 2016 Amended Pre-General Report (Jun. 1, 2017); DNC 2016 Amended Year-End Report (Jun. 1, 2017) (disclosing a total of \$183,408.93 in payments from the DNC to Mobilize). Respondents provided documentation showing that

1 Mobilize, in turn, subcontracted with Foval, although it is unclear whether Mobilize contracted
2 with Foval individually, with Foval's LLC, or with Americans United.¹⁷ Foval provided services
3 under the subcontract from June 2016 until October 17, 2016, when Americans United
4 terminated him.¹⁸ Although both the Complaints and several press reports suggest that "Donald
5 Ducks" was "transferred" from the DNC to Americans United at some point — after the DNC
6 received negative press regarding possible copyright infringement — Americans United's
7 President, Brad Woodhouse, provided two sworn declarations stating that Americans United did
8 not pay for any expenses associated with "Donald Ducks."¹⁹

9 **B. Paid Protesters**

10 The Complaints allege generally that Democracy Partners, Creamer, Foval, and
11 Americans United paid and coached protesters at Trump campaign rallies; that HFA and the
12 DNC reviewed and approved the messages the protestors used; and that these activities
13 constituted coordinated communications by Democracy Partners, Creamer, Foval, and
14 Americans United.²⁰ Specifically, the Complaints point to press coverage of a Trump rally in

\$41,338.95 of the disbursements related to services for the "Donald Ducks" operation, but did not provide itemized invoices showing the services included in the remaining \$142,069.98.

¹⁷ See Democracy Partners Resp. at 1 (MUR 7155) ("Scott Foval was engaged as a sub-contractor in June of 2016."); Compl. Ex. F at 2 (MUR 7155) (quoting Foval as saying "I am contracted with [Bob Creamer] . . . DNC pays Democracy Partners, Democracy Partners pays the Foval Group, The Foval Group goes and executes . . ."); see also Compl. Ex. A at 5-9 (MUR 7157) (Foval alternates between identifying himself as a "contractor" and "consultant").

¹⁸ See Democracy Partners Resp. at 1 (MUR 7155); David Weigel, *Two Democratic Operatives Lose Jobs After James O'Keefe Sting*, THE WASHINGTON POST (Oct. 19, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/10/19/two-democratic-operatives-lose-jobs-after-james-okeefe-sting/?tid=pm_pop_b (stating that "Foval was laid off Monday [Oct. 17, 2016] by Americans United for Change, where he had been national field director").

¹⁹ See Americans United Resp. Attach. A (MUR 7155) (Dec. 16, 2016); Americans United Resp. Attach. A (MUR 7157) (Dec. 16, 2016). In both declarations, Woodhouse states that the Americans United's "sole expenses associated with the effort consisted of staff time to prepare and issue press releases about the effort over the internet, along with unpaid Twitter messaging." *Id.*

²⁰ Compl. at 2 (MUR 7155); Compl. at 5-7, 14 (MUR 7157).

1 Chicago on March 11, 2016, and portions of the PVA Videos during which a Democracy
2 Partners employee says “[s]o the Chicago protest when they shut all that, that was us.”²¹ In
3 support of the more general allegation regarding paying and training protesters, the Complaints
4 highlight Foval’s statements in the PVA videos claiming that he and Creamer are the primary
5 organizers of the protests at Trump campaign events and that the DNC and HFA “cleared” the
6 protesters’ proposed messaging.²² The Complaint also relies on Foval’s statements referring to
7 paying protesters:

- 8 • “We have to be really careful because what we don’t need is for it to show up on CNN
9 that the DNC paid for X people to; that’s not going to happen.”²³
- 10 • “I’m saying we have mentally ill people that we pay to do [expletive], make no mistake.
11 Over the last 20 years, I have paid off a few homeless guys to do some crazy stuff”²⁴

12 The PVA videos on which the Complaints rely provide no specific context for these statements.

13 HFA and the DNC question the authenticity of the PVA videos, arguing that Project
14 Veritas “devised the questions themselves, cherry-picked excerpts of responses, and presented
15 them out of context.”²⁵ The DNC also argues that the Complaints fail to present facts which
16 support the coordination allegation.²⁶ Americans United also challenges the videos’ authenticity
17 and provided an affidavit in which Brad Woodhouse attests that Americans United neither paid
18 any protesters to appear at the Chicago Trump rally nor paid for any signs carried by protesters at

²¹ See Compl. Ex. C, Ex. F at 4 (MUR 7155).

²² See Compl. at 5-7, Ex. A at 5-9 (MUR 7155); see also Project Veritas Action, *Rigging the Election – Video I: Clinton Campaign and DNC Incite Violence at Trump Rallies* [video] at 7:20, 7:28, 8:40, 8:50, YOUTUBE (Oct 17, 2017), https://www.youtube.com/watch?time_continue=3&v=5IuJGHulkzY (“Rigging the Election”).

²³ Rigging the Election at 10:20.

²⁴ Rigging the Election at 13:50.

²⁵ See DNC Resp. at 2 (MUR 7155); DNC Resp. at 1 (MUR 7157), HFA Resp. at 2 (MUR 7155).

²⁶ DNC Resp. at 2 (MUR 7155).

1 Trump rallies.²⁷ Democracy Partners also questions the videos' authenticity, characterizing
2 Foval's statements cited in the Complaint as factually inaccurate "puffery and bragging by a
3 short-term contractor."²⁸ Democracy Partners specifically denies paying protesters and cites
4 contemporaneous news articles in which several prominent protesters at Trump rallies denied
5 being trained or induced by any third parties.²⁹

6 **C. Voter Registration and GOTV Activity in Wisconsin**

7 The Complaints allege that Americans United and Voces engaged in the Fall Plan, which
8 resulted in prohibited in-kind contributions to HFA and the DNC. In support, both Complaints
9 provided copies of the Fall Plan, which was written on Americans United letterhead.³⁰ The
10 Complaints allege that Americans United and Voces developed and executed the Fall Plan in
11 consultation with HFA and the DNC. The Complaints also allege that the voter registration and
12 GOTV activity listed in the Fall Plan were targeted to reach voters likely to support Clinton and
13 that they may have intentionally registered non-residents.³¹

14 Respondents state that the Fall Plan was only a proposal distributed by Americans United
15 and Voces through a press release to generate interest in funding the proposed activities.³² In his

²⁷ Americans United Resp. Attach. A (MUR 7155) ("AUFC did not pay anyone to protest at a Trump rally in Chicago on March 11, 2016 . . ."); Americans United Resp. Attach. A (MUR 7157) (Dec. 16, 2016) ("AUFC did not pay for signs carried by protesters at Trump rallies that read '#DumpTrump,' 'No Hate, No Racism, No Trump,' or 'Nope' with images of Trump.").

²⁸ Democracy Partners Resp. at 4 (MUR 7155).

²⁹ Democracy Partners Resp. at 3 (MUR 7155).

³⁰ See Compl. Ex. A (MUR 7155); Compl. Exs. C, D (MUR 7157).

³¹ See Compl. Ex. C (MUR 7157).

³² Americans United Resp. at 1 (MUR 7155). Voces filed a designation of counsel in MUR 7155, but did not submit a response.

1 declarations, Woodhouse states that Americans United did not carry out the Fall Plan and did not
2 incur any expenses in connection with the proposed activities.³³

3 **D. Shared Electoral Strategy and Messaging**

4 The Complaints allege that HFA and the DNC conducted weekly conference calls with
5 the other respondents to “determine shared electoral strategy” and discuss plans to “shape
6 content and messaging to benefit HFA and the DNC.”³⁴ The Complaints allege that these calls
7 involved “material discussion” about the “timing, content, and audience” for public
8 communications disseminated by these outside groups “at or with the direction, approval, [or]
9 suggestion” of HFA and the DNC.³⁵ Respondents argue that this allegation is speculative and
10 unsubstantiated by any information describing either the content of these alleged discussions or
11 any specific examples of alleged coordinated communications.³⁶

12 **I. LEGAL ANALYSIS**

13 **A. Coordination Allegations**

14 The Act prohibits any person from making, and any candidate or committee from
15 accepting or receiving, excessive or prohibited contributions.³⁷ In addition, corporations and
16 independent-expenditure-only political committees are prohibited from making contributions to
17 federal candidates.³⁸ The term “contribution” includes anything of value given for the purpose

³³ *Id.* at Attach. A; Americans United Resp. Attach. A (MUR 7157).

³⁴ Compl. at 10 (MUR 7157).

³⁵ Compl. at 4 (MUR 7155).

³⁶ *See* Priorities USA Resp. at 1 (MUR 7157) (Jan. 9, 2017); Alliance for Retired Americans Resp. at 1 (MUR 7157) (Nov. 9, 2016); DNC Resp. at 3 (MUR 7157) (Dec. 19, 2016); HFA Resp. at 4 (MUR 7157) (Dec. 19, 2016); Democracy Partners Resp. at 3 (MUR 7157)(Dec. 22, 2016).

³⁷ 52 U.S.C. § 30116(a), (f); *see, e.g.*, 52 U.S.C. § 30118(a) (prohibiting making or knowingly receiving corporate or union contributions).

³⁸ Advisory Op. 2010-11 (Commonsense Ten).

1 of influencing a federal election.³⁹ Further, any expenditure made by a person “in cooperation,
2 consultation, or concert, with, or at the request or suggestion of, a candidate, authorized political
3 committee, or a national or state party committee” is considered an in-kind contribution.⁴⁰ These
4 expenditures are deemed “coordinated”⁴¹ and qualify as contributions to the candidate and must
5 be reported as expenditures made by the candidate’s authorized committee or political party
6 committee.⁴²

7 A communication that is coordinated with a candidate or his authorized committee or a
8 political party committee is considered an in-kind contribution and is subject to the limits,
9 prohibitions, and reporting requirements of the Act.⁴³ Under Commission regulations, a
10 communication is coordinated with the candidate, the candidate’s authorized committee, a
11 political party committee, or an agent of the candidate, authorized committee, or party committee
12 if it meets a three-prong test: (1) it is paid for, in whole or part, by a person other than the
13 candidate, authorized committee, or national or state party committee; (2) it satisfies one of five
14 content standards in 11 C.F.R. § 109.21(c);⁴⁴ and (3) it satisfies one of six conduct standards

³⁹ 52 U.S.C. § 30101(8)(A)(i).

⁴⁰ See 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); see also 11 C.F.R. §§ 109.20, 109.21(b).

⁴¹ 11 C.F.R. § 109.20(a).

⁴² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a).

⁴³ 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

⁴⁴ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication that, in relevant part, refers to a clearly identified Presidential candidate, and is publicly distributed or disseminated in a jurisdiction 120 days or fewer before the candidate’s primary election or nominating caucus in that jurisdiction; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

1 described in 11 C.F.R. § 109.21(d).⁴⁵ All three prongs must be satisfied for a communication to
2 be coordinated under these regulations.⁴⁶

3 In addition, the national committee of a political party may make coordinated party
4 expenditures in connection with the presidential general election, subject to the limits established
5 by the Act and Commission regulations.⁴⁷ Coordinated party expenditures include
6 disbursements for communications that are coordinated with the candidate.⁴⁸ For the 2016
7 general election, national party committees were limited to making \$23,821,100 in coordinated
8 party expenditures for presidential candidates.⁴⁹

9 The regulations further provide that an expenditure that is coordinated with a candidate,
10 authorized committee, or political party committee within the meaning of section 109.20(a), but
11 was not made for either a coordinated communication or a party coordinated communication is
12 either an in-kind contribution to the candidate, authorized committee, or party committee, or a
13 party coordinated expenditure.⁵⁰

⁴⁵ The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. 11 C.F.R. § 109.21(d)(1)-(6).

⁴⁶ 11 C.F.R. § 109.21(a); *see also* Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (“Coordination E&J”). *See* Factual and Legal Analysis at 5, MUR 7029 (McGinty).

⁴⁷ 52 U.S.C. § 30116(d); 11 C.F.R. §§ 109.30, 109.32.

⁴⁸ 11 C.F.R. § 109.30. *See also* 11 C.F.R. § 109.37 (defining a party coordinated communication as a communication that is (a) paid for by a political party committee or its agent; (b) satisfies at least one of three content standards; and (c) satisfies at least one of the conduct standards in 11 C.F.R. §§ 109.21(d)(1) through (d)(6)).

⁴⁹ Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 81 Fed. Reg. 7,103 (Feb. 10, 2016); *see also* *Coordinated Party Expenditures for 2016*, FEDERAL ELECTION COMMISSION, http://www.fec.gov/info/charts_cpe_2016.shtml.

⁵⁰ 11 C.F.R. § 109.20(b).

1 **1. Coordinated Communications**

2 Priorities USA disclosed numerous independent expenditures for public communications
3 supporting Clinton and criticizing Trump during the 2016 election cycle.⁵¹ Thus, both the
4 payment and content prongs of the coordinated communications test are satisfied as to Priorities
5 USA.

6 As to the conduct prong, the Complaint in MUR 7157 makes a general allegation that all
7 of the communications Priorities USA reported as independent expenditures were, in fact,
8 coordinated with the Clinton campaign, but it fails to provide any specific information to support
9 the allegation. This factual insufficiency, by itself, supports a no-reason-to-believe finding as to
10 Priorities USA. In addition, the Complaints' general allegations of coordination between the
11 HFA and Priorities USA are sufficiently rebutted by Respondents' specific denials.⁵²

12 The Commission has previously found that there was insufficient information on which
13 to base an investigation into whether the conduct standard was met where a PAC had "ongoing
14 communications" with party officials and elected officials, but the complainants neither
15 identified which particular conduct standard would apply nor connected the discussions to any
16 alleged coordinated communications.⁵³ Respondents argue that these Complaints are similarly
17 lacking.⁵⁴ The Complaints do not establish how these alleged discussions involving Priorities

⁵¹ See *supra* note 3.

⁵² See *supra* note 36.

⁵³ See Factual & Legal Analysis at 3, MUR 5754 (MoveOn.org Voter Fund) ("Although the complaint alleges that 'MoveOn.org has made no secret of its ongoing communications with Democratic party officials . . . and the elected Democratic leadership in the Senate and House,' it does not connect any such discussions to [MoveOn.org's] alleged 'coordinated communications.'").

⁵⁴ The DNC argues that because the Complaints failed to make any connections between supposed discussions and alleged coordinated communications, determining that they met the conduct prong would involve "rank speculation" in which the Commission has previously declined to engage. DNC Resp. at 4 (MUR 7157) (citing Factual & Legal Analysis at 3-4, MUR 5754 (MoveOn.org Voter Fund)). HFA and the DNC argue that the Complaints do not provide any information which, if true, would satisfy the conduct standard. Specifically, they

1 USA, HFA, and the DNC satisfy the conduct prong and do not link any particular discussions to
2 any specific public communications. The factual record, therefore, does not support a conclusion
3 that the conduct prong is satisfied regarding Priorities USA's independent expenditures.⁵⁵

4 In addition, as the available information does not indicate that any Respondent other than
5 Priorities USA and the DNC satisfies the payment prong of the coordinated communications test,
6 there is no basis to conclude that any other Respondent made or accepted excessive or prohibited
7 contributions in the form of coordinated communications.

8 2. Party Coordinated Expenditures

9 There is information in the record that the DNC paid its vendors to conduct the "Donald
10 Ducks" operation, and may have paid its vendors to train or support protestors at Trump rallies.⁵⁶
11 The DNC provided documentation showing that it paid for the "Donald Ducks" operation
12 pursuant to a contract with Mobilize.⁵⁷ Democracy Partners, Americans United, Foval, and
13 Creamer were involved in the "Donald Ducks" operation as vendors performing services —
14 either directly or as subcontractors — under Mobilize's contract with the DNC.

15 As to the allegations regarding paying, organizing, and training protesters, Americans
16 United stated that it did not pay anyone to protest at one Trump rally in Chicago and did not pay

contend that the Complaints do not detail any specific calls, do not tie any specific discussions to any specific public communications, and "leave open the question of whether respondents even participated [in any conference calls] at all." *See* HFA Resp. at 2 (MUR 7155); *see also* DNC Resp. at 2 (MUR 7155).

⁵⁵ *See* First Gen. Counsel's Rpt. at 5, MUR 5467 (Michael Moore) ("The Commission cannot entertain complaints based on mere speculation that a person may violate the law at some future date."); Statement of Reasons, Comm'rs. Mason, Sandstrom, Smith & Thomas at 3, MUR 4960 (Hillary Rodham Clinton for Senate) ("[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.") (citation omitted).

⁵⁶ *See supra* note 16.

⁵⁷ The DNC's and Democracy Partners's statements are corroborated by invoices the DNC provided and disclosure reports showing corresponding disbursements from the DNC to Mobilize. *See* DNC Resp. at 2-3, Ex. A (MUR 7155); Democracy Partners Resp. at 3-4 (MUR 7155).

1 for any signs carried by protesters at Trump rallies, and there is no information in the Complaints
2 linking Americans United with training or organizing any protesters.⁵⁸ HFA, the DNC, and
3 Democracy Partners, however, do not specifically address the broad allegation that they trained
4 and organized protesters who appeared at Trump rallies, and some statements in the PVA videos
5 suggest that Foval and Creamer may have provided these kinds of services. During the time the
6 alleged training and organizing occurred, Democracy Partners, Creamer, and Foval were
7 providing general political consulting services to the DNC under a contract between the DNC
8 and Mobilize.⁵⁹ The invoices the DNC provided do not itemize the services that Mobilize and its
9 various subcontractors performed under the contract, so it is possible that the services included
10 organizing and training protesters, as suggested by Foval and Creamer's statements cited in the
11 Complaints.⁶⁰

12 Even so, the coordination claims regarding "Donald Ducks" and protestor training and
13 support fail for a different reason; the expenses associated with these activities fit within the
14 DNC's available coordinated party expenditure limit. The DNC reported \$23,383,306.68 in
15 coordinated party expenditures supporting Clinton in the 2016 general election.⁶¹ Both party
16 coordinated communications and other types of coordinated party expenditures are aggregated
17 and counted against the \$23,821,100 limit.⁶² Therefore, even if all of the DNC's \$183,408.93 in

⁵⁸ Americans United Resp. Attach. A (MUR 7155); Americans United Resp. Attach. A (MUR 7157).

⁵⁹ See Democracy Partners Resp. at 1 (MUR 7155) (identifying Foval as a subcontractor performing services under the Mobilize/DNC contract beginning in June, 2016).

⁶⁰ Disclosure reports indicate that the DNC paid Mobilize \$183,408.93 for political consulting services in 2016. See *supra* note 16. Invoices show that \$41,338.95 of what Mobilize received was related to services for the "Donald Ducks" project, but Respondents did not provide itemized invoices showing the services included in the remaining \$142,069.98.

⁶¹ See DNC Amended 2016 Year-End Report at 4 (Jun. 1, 2017); DNC 2017 April Monthly Report at 4 (Apr. 20, 2017).

⁶² See 11 C.F.R. § 109.37(b).

1 disbursements to Mobilize were coordinated with HFA, the DNC's total party coordinated
2 expenses for the 2016 presidential general election would have been \$23,566,715.61 — still
3 below the legal limit.⁶³

4 3. Coordinated Expenditures

5 As to the remainder of the coordination allegations, the Complaints do not provide any
6 information indicating that the activities outlined in the Fall Plan and any associated GOTV
7 activities actually occurred, and do not identify any associated expenditures by any Respondent.
8 Additionally, Americans United stated that it “did not carry out, and incurred no expenses” in
9 connection with the proposed Fall Plan and that it was merely a proposal distributed by
10 Americans United and Voces through a press release to generate interest in funding the proposed
11 activities.⁶⁴ In light of the lack of supporting information in the Complaints and Respondents'
12 specific denials, the available information does not support a finding that any Respondent made
13 or accepted in-kind contributions in the form of coordinated expenditures in connection with the
14 Fall Plan.

15 As the information in the record does not support the coordination allegations outlined in
16 the Complaints, the Commission finds that there is no reason to believe that Respondents
17 violated the Act by making or accepting excessive or prohibited in-kind contributions.

18 B. Reporting Violations

19 The Complaints allege that if the activities at issue are found to be coordinated
20 communications, then HFA and the DNC failed to disclose the resulting contributions. As the
21 Commission concludes that there is no reason to believe regarding the coordination allegations,

⁶³ See *supra* notes 16 and 49.

⁶⁴ See Americans United Resp. at 1, Attach. A (MUR 7155); Americans United Resp. Attach. A (MUR 7157). Voces filed a designation of counsel in MUR 7155, but did not submit a response.

- 1 the Commission also finds that there is no reason to believe that Respondents violated the
- 2 reporting provisions of the Act.