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Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20002

Re: MUR 7449

Dear Mr. Jordan:

We write as counsel to: (1) Hillary for America and Elizabeth Jones, in her official capacity as treasurer, (2) DNC Services Corp./Dem. Nat'l Committee and William Derrough, in his official capacity as treasurer, (3) Perkins Coie LLP, and (4) Marc E. Elias (the "Respondents") regarding the complaint filed by the Coolidge Reagan Foundation ("Complainant") on August 8, 2018 (the "Complaint").

The Federal Election Commission ("FEC" or "Commission") should dismiss the Complaint and close the file, as it fails to allege any violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act") or the Commission's accompanying regulations, and does not contain specific facts that could substantiate that a legal violation occurred.[1] The Complaint consists of nothing more than baseless legal conclusions and speculation, which are not entitled to weight or consideration pursuant to the Commission's standard.[2] The Commission should, as it has in the past when faced with claims of a similar nature, conclude that "the complaint does not meet the threshold for finding reason to believe" any violation occurred.[3]

The core of the Complaint is a false allegation that Hillary for America and DNC Services Corp./Dem. Nat'l Committee (the "Committees") failed to properly report disbursements on their FEC reports. In fact, the expenditures at issue were properly reported. As discussed below in additional detail, the Committees retained Perkins Coie LLP to provide legal services and paid Perkins Coie for these services. In accordance with the Act, the Committees properly disclosed the identity of the payee (Perkins Coie), the amount of the disbursements, and the purpose of the

[1] *See* Statement of Reasons, Matter Under Review 4960 (Dec. 21, 2000) (a complaint that fails to provide "a sufficiently specific allegation [] so as to warrant a focused investigation that can prove or disprove the charge" must be dismissed)
[2] Statement of Reasons, Matter Under Review 5141 (Apr. 17, 2002).
[3] First General Counsel's Report, Matter Under Review 5304 (Jan. 21, 2004).

disbursements (e.g., "Legal and Compliance Consulting") in their FEC filings. The Committees fully complied with their reporting and disclosure obligations.

The allegation that the Committees should have also disclosed the payments that Perkins Coie made to its sub-vendors is without any legal basis at all. For more than thirty years, the FEC has consistently held that:

> [N]either the Act nor the Commission's regulations require authorized committees to report expenditures or disbursements to their vendors' sub-vendors. To the contrary, the Commission has concluded that a committee need not separately report its consultant's payments to other persons – such as those payments for services or goods used in the performance of the consultant's contract with the committee.[4]

The law could not be more clear: authorized committees disclose payments to their vendors, *not* to their vendors' sub-vendors. The Committees fully complied with their obligations. Accordingly, the Complaint's allegation regarding reporting should be dismissed.

The Complaint's remaining allegations either fail to set forth a cognizable legal violation within the Commission's jurisdiction, allege no violation on the part of Respondents, or lack any basis in fact or evidence that would warrant further consideration. Respondents did not solicit, accept, or substantially assist with any contribution or expenditure by a foreign national, the Complaint does not set forth any actual allegation to suggest that a foreign national was engaged in the decision making of the Democratic National Committee or Hillary for America, and "aiding and abetting" a campaign finance violation is simply not a cognizable allegation before the Commission. All of the allegations in the Complaint should also be dismissed and the Commission should close the file immediately.

BACKGROUND

The Committees retained Perkins Coie LLP (the "Firm") to serve as their counsel and to provide comprehensive legal services. Both Committees have a standard contractual relationship with the Firm for the provision of legal services. At all times, the Committees properly disclosed payments made to the Firm, generally reporting the purpose of those disbursements as "Legal Services" (in the case of Hillary for America) or "Legal and Compliance Consulting" (in the case of DNC Services Corp.).[5]

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[4] First General Counsel's Report, Matter Under Review 6510, at 16 (Mar. 8, 2013).

[5] *See Federal Election Commission, Hillary for America, 2015-2016 Reports,* https://www.fec.gov/data/committee/C00575795/?tab=filings&cycle=2016#reports; Federal Election Commission, *DNC Services Corp./Dem. Nat'l Committee, 2015-2016 Reports,*

As the Firm described in a letter dated October 24, 2017, the Firm contracted with the research firm Fusion GPS in April of 2016 to "assist in its representation of the DNC and Hillary for America."[6] The Firm retained Fusion GPS through a standard commercial agreement for research services. As part of its engagement, Fusion GPS "perform[ed] a variety of research services during the 2016 election cycle."[7] The research conducted by Fusion GPS was for the purpose of supporting the Firm's representation of the Committees. The Firm was substantially involved in overseeing and directing the services provided by Fusion GPS, to ensure that its activities supported the Firm's provision of legal services and ultimately served the Committees' legal objectives and needs. The Firm also billed Hillary for America and the Democratic National Committee for the work that it did in connection with conducting and managing the Fusion GPS research. Fusion GPS is a research and strategic intelligence firm that provides services to a wide range of clients. Fusion GPS was co-founded in 2011 by several former investigative reporters and journalists. The Committees did not contract with Fusion GPS or make any payments to Fusion GPS. The Committees properly disclosed this activity on its filings with the FEC.

The services provided by Fusion GPS on behalf of the Firm were limited to research tasks in support of the Firm's representation of the Committees. At no point did Fusion GPS or any of its employees or officers solicit contributions from foreign nationals (or from any person) or make donations or expenditures on behalf of the Firm or the Committees. Nor did any contract with Fusion GPS authorize or direct Fusion GPS to engage in such conduct. Rather, at all times, Fusion GPS acted as a commercial vendor of research services.

DISCUSSION

I. Law Firms Often Retain Sub-Vendors To Support Their Legal Representation of Clients

It is common for law firms to retain third parties to support their representation of clients. For instance, firms regularly contract with experts, document review specialists, e-discovery services, private transcription services, interpreters, and investigators, among other third parties.[8] The academic literature and current industry practices show that these relationships are "common" and

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https://www.fec.gov/data/committee/C00010603/?tab=filings&cycle=2016#reports. In some instances, the DNC separately described its payments to the Firm for expenses auxiliary to its legal services, such as for "Travel," "Data Services Subscription," "Administrative Fees," "Office Supplies," "Postage and Shipping," etc. In one instance, the first time that the Committee made a payment to the Firm for its legal consulting supported by the research efforts of Fusion GPS, it described the purpose of that payment as "Research Consulting." Subsequently, all of the other payments to the Firm for all of its legal services, including the work subcontracted to Fusion GPS, were reported as "Legal and Compliance Consulting."

[6] Letter from Matthew J. Gehringer to William W. Taylor, III, Oct. 24, 2017 (Exh. 1).

[7] *Id.*

[8] *See generally* Donna Lee Elm, Sean Broderick, *Third-Party Case Services and Confidentiality*, Crim. Just., Spring 2014, at 15, 17-18.

advantageous for clients.[9] For example, the American Bar Association has clearly recognized the standard practice of firms retaining third parties to assist in their representation of clients.[10]

Law firms have a particularized need for sub-vendors that can assist in the development of detailed factual records.[11] For example, it is widely recognized that attorneys "regularly retain private investigators in their practices."[12] For attorneys representing political entities, the analogue to a private investigator is a specialized firm that can provide comprehensive research services. These firms can assist lawyers in assessing their own political clients' vulnerabilities or those of their clients' political opponents. Lawyers need these services, along with many other resources, such as research libraries reflecting statements and activities by political candidates or past political advertisements, to properly serve their clients; as a result, lawyers representing political organizations regularly contract with sub-vendors to provide them with these essential services. Here, the Firm retained Fusion GPS to assist in its representation of the Committees. For the clients, in this case the Committees, these sub-vendor costs are part of the overall scope of "legal and compliance consulting" and "legal services" that the clients had retained its law firm to provide.

II. Payments by Political Committee Vendors to Bona Fide Sub-Vendors Are Not Disclosed on FEC Reports

a. *The Act Does Not Provide for the Disclosure of Payments by Campaign Vendors to Bona Fide Sub-Vendors*

Over the last three decades, the Commission has said over and over again that political committees are not required to disclose payments by their vendors to their vendors' *bona fide* sub-vendors. In a 1983 advisory opinion, the FEC concluded that payments by a vendor "to other persons, which are made to purchase services or products used in performance of [the vendor's] contract with the Committee [] do not have to be separately reported."[13] As noted in the introduction, the Office of General Counsel ("OGC") reiterated in 2013 that "neither the Act nor the Commission's regulations require authorized committees to report expenditures or disbursements to their vendors' sub-vendors" and a committee "need not separately report its consultant's payments to

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[9] *Id.*; *see also* Sumedha Ahuja, *A Balanced Approach to Patent Process Outsourcing: Its Challenges and Rewards*, 40 AIPLA Q.J. 483, 500-01 (2012); Lisa Stansky, *Staking Out A Detective*, ABA J., Sept. 2001, at 68 ("investigators often are more successful than lawyers at gathering information from people"); Jonny J. Frank & Bart M. Schwartz, *Private Eyes: Using Investigators in Criminal Defense Matters*, Crim. Just., Fall 1996, at 21("effective investigative firm can assist counsel" in various respects).

[10] *See* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 08-451 (2008).

[11] *See* ABA J., Sept. 2001, at 68; Jonny J. Frank & Bart M. Schwartz, *Private Eyes: Using Investigators in Criminal Defense Matters*, Crim. Just., Fall 1996, at 21 ("effective investigative firm can assist counsel" in various respects).

[12] Douglas R. Richmond, *Watching over, Watching Out: Lawyers' Responsibilities for Nonlawyer Assistants*, 61 U. Kan. L. Rev. 441, 482-83 (2012).

[13] FEC Adv. Op. 1983-25 (Mondale for President).

other persons – such as those payments for services or goods used in the performance of the consultant's contract with the committee."[14] Two years later, OGC repeated that "where a committee vendor makes a payment to a sub-vendor for services or goods used in the performance of the vendor's contract with the committee, a committee need not separately report its vendor's payment."[15] The full Commission affirmed both OGC reports unanimously.[16]

This issue was also recently before the Commission when, during a rulemaking on "ultimate payees," the Commission did not alter its previous guidance. The Commission set forth the rule that committees should report disbursements to ultimate payees *only* in the three following instances, none of which is applicable here: (1) committee reimbursement of an individual who used personal funds to pay more than $200 to a single vendor; (2) committee payment of credit card bills that include charges of more than $200 to a single vendor; and (3) unreimbursed candidate payments of personal funds to vendors without receiving reimbursement.[17] The interpretive rule expressly addressed campaign vendor payments to sub-vendors, stating that it is "**only addressing the three issues . . . and is not extending the clarification to situations in which a vendor, acting as the committee's agent, purchases goods and services on the committee's behalf from subvendors**."[18] Again, the Commission reaffirmed the longstanding rule that committees do not disclose their vendors' payments to sub-vendors for services rendered on behalf of a committee.[19]

b. The Only Exception to the General Rule That Sub-Vendor Payments Are Not Disclosed Is Wholly Inapplicable

The Commission has recognized a very limited exception to this general rule for extreme cases where the purported campaign vendor does not have a *bona fide* contractual relationship with the purported sub-vendor. In one case from the 1990s, the Commission determined that a Senate candidate violated federal reporting law when it disguised a payment to David Duke's consulting firm by funneling the payment through an intermediary.[20] There, the Senate campaign already had a contract in place with Duke's firm (the purported sub-vendor) and, only after the fact, decided to funnel the payment to Duke's firm through another firm.[21] The purported vendor did not have any "involvement whatsoever" with the services provided by the vendor.[22] In that enforcement

[14] First General Counsel's Report, Matter Under Review 6510, at 16 (Mar. 8, 2013).
[15] First General Counsel's Report, Matter Under Review 6894, at 3 (Aug. 26, 2015).
[16] Certification, Matter Under Review 6894 (Oct. 27, 2015); Certification, Matter Under Review 6510 (July 9, 2013).
[17] *Reporting Ultimate Payees of Political Committee Disbursements*, 78 Fed. Reg. 40625 (Jul 8, 2013).
[18] *Id.* at 40626 (emphasis added).
[19] *See* First General Counsel's Report, Matter Under Review 6510, at 16 n.13 (Mar. 8, 2013) (citing interpretative rule); First General Counsel's Report, Matter Under Review 6894, at 3 n.9 (Aug. 26, 2015) (same).
[20] Conciliation Agreement, Matter Under Review 4872 (Feb. 15, 2002).
[21] *Id.* at 4.
[22] *Id.* at 3-4.

action, the Commission found that the purported vendor's only role "was to serve as a conduit for payment . . . so as to conceal the transaction with [the ultimate payee]."[23]

As recently as 2016, the Commission voted to dismiss a complaint that alleged an undisclosed sub-vendor payment, demonstrating the very limited nature of the exception discussed above. At issue in the matter was an apparent effort by Charles Boustany for Congress to conceal a payment made through several layers of intermediaries—including at least one that was closely linked to the committee—in order to obtain the endorsement of United Ballot PAC. There, (1) the committee had used entities "merely to serve as conduits for payment so as to conceal the transaction through which the committee obtained United Ballot's endorsement," (2) the committee's use of multiple intermediaries supported an inference that the payments were structured to conceal the committee's connection to the ultimate payee, (3) one intermediary was wholly owned by the committee's campaign manager, (4) several intermediaries were closely related, and (5) respondents did not provide any information refuting that conduits were used to conceal the disbursement's purpose.[24] Yet three commissioners voted against finding a violation of FECA because of the general rule that "the Act does not require committees to disclose the 'ultimate payees' (that is, final recipients) of the disbursements at issue."[25] Discussing the 2013 interpretive rule, the commissioners stated that "committees are required to disclose the ultimate payee **only in certain, limited contexts**."[26] Only in very narrow, limited circumstances is there an obligation to disclose a vendor's payments to a sub-vendor, none of which is present in this case.

c. Statements of Purpose Must Explain Why a Disbursement Was Made

FECA and the Commission's accompanying regulations require committees to report the purpose of each expenditure in excess of $200 that they itemize on their periodic FEC reports.[27] The "purpose" of an expenditure means "a brief statement or description of why the disbursement was made."[28] Examples of specific purposes that meet this requirement include "dinner expenses, media, salary, polling, travel," among others.[29] The Commission has explicitly stated that "legal services," "legal consulting," and "compliance consulting" are all appropriate descriptions of purpose under FEC guidelines.[30] The FEC has always indicated that the range of diverse legal

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[23] *Id.* at 4.
[24] First General Counsel's Report, Matter Under Review 6698, at 2 (Sept. 3, 2014).
[25] Statement of Reasons of Commissioners Petersen, Hunter & Goodman, Matter Under Review 6698, at 1 (Dec. 5, 2016).
[26] *Id.* at 3 (emphasis added).
[27] 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(a), (b).
[28] 11 C.F.R. § 104.3(b)(3)(i)(A).
[29] *Id.* § (B).
[30] Federal Election Commission, *Purposes of disbursements*, https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/; *Statement of Policy: "Purpose of Disbursement" Entries for Filings With the Commission,* 72 Fed. Reg. 887 (Jan. 9, 2007).

services provided by attorneys can be disclosed as "legal services."[31] For example, when attorneys litigate, provide advice about trademark issues, engage in vetting of staff and consultants, draft complaints or responses to administrative matters, or help candidates prepare for debates, all of these services are properly described as "legal services" or "legal consulting." Unlike in other circumstances (for example, where the Commission has advised committees to distinguish between "internet consulting" and "polling consulting") never has the Commission indicated that a committee should further specify on its FEC reports the specific type of legal work that was performed.[32]

III. Under Clear and Well-Established Precedent, the Committees Complied with the Act's Reporting Requirements (*Counts I and II*)

a. The Committees Complied with Their Obligation to Disclose Payments by the Firm to Fusion GPS, as the Services Were Provided by a Bona Fide Sub-Vendor in Connection with the Firm's Provision of Legal Services to the Committees

The Committees properly reported their disbursements to the Firm. Because the Firm provided legal services directly to the Committees and retained a sub-vendor, Fusion GPS, to "assist in its representation of" the Committees,[33] it was lawful and appropriate for the Committees to have disclosed disbursements to the Firm, and no further itemization was required.

The Committees' reporting was proper given that the Firm's relationship with Fusion GPS was that of a legitimate vendor with a bona fide sub-vendor. As is common in the legal profession, the Firm contracted with a third party to provide services in support of its representation of the Committees. The arrangement between the Firm and Fusion GPS was consistent with standard industry practice, which commonly involves the retention of outside experts and investigators to advance a client's legal representation.[34] The Committees had engagement letters with the Firm for the provision of legal services, and the Firm in turn had an engagement letter with Fusion GPS to support the Firm in its representation of the Committees. In addition, the Firm supervised and oversaw the work by Fusion GPS and charged Hillary for America and the Democratic National Committee for the Firm's work in addition to the expenses of Fusion GPS. There was no direct

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[31] *See id.*
[32] *Id.*
[33] Letter from Matthew J. Gehringer to William W. Taylor, III, Oct. 24, 2017 (Exh. 1).
[34] *See generally* Donna Lee Elm, Sean Broderick, *Third-Party Case Services and Confidentiality*, Crim. Just., Spring 2014, at 15, 17-18; Sumedha Ahuja, *A Balanced Approach to Patent Process Outsourcing: Its Challenges and Rewards*, 40 AIPLA Q.J. 483, 500-01 (2012); Lisa Stansky, *Staking Out A Detective*, ABA J., Sept. 2001, at 68 ("investigators often are more successful than lawyers at gathering information from people"); Jonny J. Frank & Bart M. Schwartz, *Private Eyes: Using Investigators in Criminal Defense Matters*, Crim. Just., Fall 1996, at 21 ("effective investigative firm can assist counsel" in various respects); Douglas R. Richmond, *Watching over, Watching Out: Lawyers' Responsibilities for Nonlawyer Assistants*, 61 U. Kan. L. Rev. 441, 482–83 (2012).

contractual relationship between the Committees and Fusion GPS, not did the Committees supervise the work of Fusion GPS. Thus, the relationship between the Firm and Fusion GPS was indistinguishable from the many transactions between vendors and bona fide sub-vendors in which the Commission has found no obligation to disclose payments to sub-vendors.[35]

Because the Firm retained Fusion GPS in order to support its provision of legal services to the Committees, the Committees correctly followed the Commission's precedent regarding the reporting of payments. In keeping with the Commission's longstanding rules regarding the disclosure of payments to sub-vendors, the services rendered by Fusion GPS were "in connection with services [the Firm] provided to the Committee[s]," namely providing legal services to the Committees.[36] In addition, the facts in this case are materially indistinguishable from those in *Mondale*, where (1) the vendor had a legal existence as a corporation that was separate from the committee; (2) the vendor's principals did not hold staff positions with the campaign; (3) the committee conducted arms-length negotiations with the vendor that resulted in a final contract; (4) the vendor expected to serve other clients; and (5) the committee had no interest in these contracts.[37] Here, the Firm is plainly a separate entity from the Committees, in line with the core principles of the *Mondale* opinion. This matter is ultimately indistinguishable from multiple enforcement proceedings dismissed by the Commission because the sub-vendor's services to the Firm were "in connection with services the vendor provided to the Committee[s]."[38]

b. The Committees Properly Reported the Purpose of the Expenditures

The Committees complied with their duty to report the purpose of each expenditure in excess of $200.[39] As discussed above, all of the services provided by Fusion GPS were to "assist in [the Firm's] representation of the" Committees.[40] Thus, the relevant expenditures were made for "Legal Services" or "Legal and Compliance Consulting," which are the descriptions that the Committees used in disclosing the majority of these expenditures.[41] In one instance, the first time DNC Services Corp. made a payment to the Firm for legal services that had been subcontracted to Fusion GPS, the Committee did report the purpose of the expenditure as "Research Consulting." However, all of these descriptions are sufficient to convey what was actually being paid for under the Commission's guidance. In all instances, the payments were made directly to the Firm for the

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[35] *See* FEC Adv. Op. 1983-25 (Mondale for President); First General Counsel's Report, Matter Under Review 6510, at 16-17 (Mar. 8, 2013); First General Counsel's Report, Matter Under Review 6894, at 3 (Aug. 26, 2015).
[36] *See, e.g.*, First General Counsel's Report, Matter Under Review 6894 (Aug. 26, 2015).
[37] FEC Adv. Op. 1983-25 (Mondale).
[38] First General Counsel's Report, Matter Under Review 6894 (Aug. 26, 2015); First General Counsel's Report, Matter Under Review 6510, at 16-17 (Mar. 8, 2013).
[39] 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(a), (b).
[40] Letter from Matthew J. Gehringer to William W. Taylor, III, Oct. 24, 2017 (Exh. 1).
[41] Federal Election Commission, *DNC Services Corp./Dem. Nat'l Committee, 2015-2016 Reports*, https://www.fec.gov/data/committee/C00010603/?tab=filings&cycle=2016#reports.

Firm's work, for which, the Firm was relying on the support of Fusion GPS. The Committees paid for legal services that the Firm used Fusion GPS to help conduct. Given that the Commission has specified that "legal services" "legal consulting" and "compliance consulting" are correct descriptions of purpose for the vast range of services provided by attorneys, the Committees' purpose descriptions were correct.[42] The Committees acted consistently with FEC guidance by disclosing the activity at issue in this Complaint as "Legal Services" and "Legal and Compliance Consulting." As the Commission has never indicated that a committee must disclose the specific type of legal services provided, the Committees fully complied with their reporting obligations.[43]

IV. Count III of the Complaint Is Unfounded and Presents No Legal Violation Within the FEC's Jurisdiction

The Complaint claims that the Firm and Marc Elias violated the Act by aiding and abetting the DNC's and HFA's alleged reporting violations of 52 U.S.C. §§ 30104(b)(5)(A), (b)(6)(B)(v). This claim is wholly without merit. First, neither HFA nor the DNC violated the Act's reporting requirements as discussed in detail above. The DNC and HFA appropriately reported both the recipients and purposes of all of the payments discussed in the Complaint as required by law. There can clearly be no "aiding and abetting" a violation of law when no violation of the law takes place. Regarding the Firm and Mr. Elias, there is also no specific factual allegation of any particular conduct that could support a finding of "reason to believe" by the Commission.[44] **More fundamentally, however, there simply is no cognizable claim for "aiding and abetting" a violation of the Act within the jurisdiction of the FEC**. The FEC does not have plenary law enforcement authority. The Commission's powers are limited to enforcing FECA and the FEC's regulations,[45] and there is nothing in FECA or the FEC's regulations that establishes "aiding and abetting" as a separate violation of the law.

Not surprisingly, the Commission has previously dismissed similar allegations for this precise reason, stating "no liability exists for aiding and abetting the violations at issue here."[46] The Act does not include a catch-all provision specifying that any effort to aid or abet a violation of the Act is prohibited;[47] in fact, in 2005, Congress directly rejected the Commission's proposal to amend

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[42] Federal Election Commission, *Purposes of disbursements*, https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/; *Statement of Policy: "Purpose of Disbursement" Entries for Filings With the Commission*, 72 Fed. Reg. 887 (Jan. 9, 2007).

[43] *See* Statement of Reasons of Commissioners Petersen, Hunter & Goodman, Matter Under Review 6698, at 5 (Dec. 5, 2016).

[44] First General Counsel's Report, Matter Under Review 5304 (Jan. 21, 2004).

[45] *See* 52 U.S.C. § 30106(b).

[46] First General Counsel's Report, Matter Under Review 5712, at 3 (Jan. 31, 2007); *see also id.* at 13 n.10 (noting that FEC "has unsuccessfully sought amendment to the Act to make it a violation for anyone to aid and abet another party in violating the Act").

[47] *Cf.* 18 U.S.C. § 2 (specifying that whoever aids or abets a commission of a violation is punishable as a principal).

the law to allow the FEC to enforce the Act against those who have aided or abetted "another party in violating the Act."[48] The Complaint asks the FEC to take action on an alleged violation that is not recognized in the Act but the FEC flatly has no ability to do so.

V. Fusion GPS Was Retained as a Research Vendor in the Ordinary Course of Business and Respondents Did Not Engage in Any of the Proscribed Forms of Foreign National Conduct Described in Counts IV-VII

The Firm retained Fusion GPS as a commercial research vendor as part of providing legal services to HFA and the DNC, and as public reports have confirmed, Fusion GPS sub-contracted only a small portion of its work to Orbis and Christopher Steele. Fusion GPS, and in turn, Orbis and Christopher Steele, were paid the fair market value in the ordinary course of business for their research services. Part of their research involved collecting information regarding Donald Trump's extensive entanglements outside of the United States, and therefore, some of the sources of information were also necessarily outside of the United States. While Christopher Steele is British and not a U.S. Citizen, he was never engaged with anyone at the Democratic National Committee nor at Hillary for America in committee decision-making or in any other way (indeed, no Democratic National Committee or Hillary for America staff were aware that he was working as a sub-contractor for Fusion GPS until that fact was made public in the press well after the 2016 election). There is nothing about this fact pattern that is out of the ordinary or remarkable and there is nothing about this fact pattern that amounts to a violation of the Act. Beyond these facts, the Complaint offers nothing more than conjecture and claims made up out of whole cloth, and accordingly, it must be dismissed.

As part of its attempt to manufacture some prohibited political conduct by a foreign national, the Complaint first alleges that Christopher Steele's research abroad somehow amounted to Steele soliciting contributions or donations from foreign nationals in violation of the Act (Count IV of the Complaint). While this allegation solely concerns claims about Christopher Steele and cannot sustain any action by the FEC against Respondents (the Complaint in fact only names Steele in this Count),[49] the Complaint also separately alleges that Mr. Elias and Hillary for America substantially assisted in the solicitation of donations from foreign nationals (Count V of the Complaint). There is no merit to these allegations.

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[48] Federal Election Commission, *Legislative Recommendations -- 2005*, https://transition.fec.gov/law/legislative_recommendations_2005.shtml.

[49] Similarly, Count VI of the Complaint is also leveled solely at Christopher Steele and cannot support any FEC enforcement action against Respondents. There, the Complaint claims that some activity allegedly conducted by Steele in his personal capacity, and not on behalf of the Democratic National Committee, Hillary for America, the Firm, or Mr. Elias, amounted to a "donation" or "expenditure." Even as imagined in the Complaint, this Count has nothing to do with Respondents and therefore, must be dismissed with respect to the Respondents.

The Commission has directly held that it is legal and wholly appropriate for political committees to pay to collect information from foreign sources as part of a research operation and to work with foreign nationals to engage in such efforts. In Advisory Opinion 2007-22 (Hurysz), the FEC considered a request from a federal candidate who wanted to learn more about how Canadians conduct their campaigns.[50] In order to understand how third-party candidates were able to be successful in Canada, the campaign asked the Commission if it would be permissible to use campaign funds to travel to Canada, obtain information from Canadians, consult with Canadians, and pay Canadian citizens working on campaign staff.[51] The Commission held unanimously that all of these activities would be in compliance with the Act, stating, "authorized committee may use campaign funds to obtain certain information from Canadians, to pay for travel to Canada to obtain such information . . . and to pay the salaries of Canadian citizens working for your campaign."[52] There is no material difference between the *Hurysz* advisory opinion and the allegations in the Complaint.

Notably, the only thing that the Commission said could be impermissible in the *Hurysz* opinion is if the campaign were to receive tangible assets from foreign nationals without paying for them. There are no facts to suggest that this may have occurred here. As the Complaint spells out itself in great detail, the Democratic National Committee and Hillary for America paid significant sums to the Firm for all of the research conducted by Fusion GPS and subcontracted to Christopher Steele. There is no allegation in the Complaint that Respondents received anything from Fusion GPS or Christopher Steele for which they did not pay full fair market value. Just like when political committees are receiving work product from corporations (which, like foreign nationals, are prohibited from making contributions to campaigns and party committees), if they pay the fair market value for commercial services offered in the ordinary course of business, there is no violation of the Act.[53]

The Complaint attempts to twist engaging a foreign national as a commercial sub-vendor and collecting information from foreign sources, activity that the FEC has long held is perfectly appropriate and compliant with the Act, into somehow substantially assisting with prohibited foreign national solicitations. There is no merit to this charge. Respondents paid for any information collected on their behalf that they received and thus acted in full compliance with the law.

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[50] *See generally* FEC Adv. Op. 2007-22 (Hurysz) at 2.
[51] *Id.* at 3-4.
[52] *Id.*
[53] 11 C.F.R. §§ 100.52(d)(1)-(2), 116.1(c), 114.2(f)(1) (providing that corporation does not facilitate contributions if it provides services in the ordinary course of business as a commercial vendor at the usual and normal charge); *see, e.g.*, FEC Adv. Op. 2008-10 (VoterVoter); FEC Adv. Op. 1988-17 (Election Concepts).

Finally, the Complaint alleges that the Democratic National Committee or Hillary for America may have impermissibly engaged Christopher Steele in their decision-making regarding Federal election activities in violation of 11 C.F.R. § 110.20(i). This is incorrect. As a matter of law, the FEC previously held in the *Hurysz* opinion that working with a foreign national to collect information from foreign sources, including other foreign nationals, in itself, does not violate the Act.[54] Indeed, there is a long history of precedent from the Commission confirming the myriad ways that it is permissible for foreign nationals to engage with U.S. political campaigns and party committees. For instance, the prohibition does not extend to delivering speeches, soliciting funds from eligible donors, or attending and participating in meetings regarding political strategy.[55] Nor does it prohibit foreign nationals from serving as volunteers or paid campaign staff.[56] The regulation does not cover authorization by prominent foreign artists to use their likeness in fundraising materials,[57] or the activities of commercial vendors who are acting in the ordinary course of their business and do not have "a decision-making role" for the committee.[58] The Commission has found that the restriction does not encompass the provision of intellectual property through the volunteer activities of a foreign national.[59] Instead, the prohibition encompasses activity like foreign national involvement in the management of a political committee and its decisions regarding receipts and disbursements.[60] There is nothing beyond naked speculation in the Complaint even to suggest that any activity that would be prohibited by the Commission's regulations occurred here. Indeed, it is impossible that Christopher Steele was engaged in the Democratic National Committee's or Hillary for America's decision-making in violation of § 110.20(i) because, as stated above, no staff of either entity was even aware that Steele was working as a subcontractor for Fusion GPS during the 2016 election cycle. As the Complaint does not set forth any facts indicating that the role of Fusion GPS exceeded the conduct that the Commission has repeatedly found to comply with § 110.20(i), Count VII fails as a matter of law and must be dismissed.

Counts IV to VII of the Complaint are not supported by any facts or evidence that would allow the Commission to find reason to believe that the alleged violations occurred. As discussed above, a complaint must set forth sufficient specific facts that could substantiate that a legal violation

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[54] *See* FEC Adv. Op. 2007-22.
[55] FEC Adv. Op. 2004-26 (Weller).
[56] *See* FEC Adv. Op. 2014-20 (Make Your Laws PAC); FEC Adv. Op. 2007-22 (Hurysz); First General Counsel's Report, Matter Under Review 6959 (Mar. 2, 2016).
[57] *See* First General Counsel's Report, Matter Under Review 6015 (Jan. 26, 2009).
[58] *See* First General Counsel's Report, Matter Under Review 5998 (Sept. 8, 2008).
[59] *See* FEC Adv. Op. 2014-10 (Make Your Laws PAC) ("fact that the requester may obtain rights to intellectual property resulting from the foreign nationals' volunteer services does not change the result").
[60] *See* Explanation & Justification, Regulations on Contribution Limits and Prohibitions, 67 Fed. Reg. 69946 (Nov. 19, 2002).

occurred for further review to be warranted.[61] Not a single fact or piece of evidence is provided in the Complaint that directly or indirectly supports the Complaint's allegations. The Complaint does not provide any facts showing that: (1) Respondents solicited donations or contributions from foreign nationals, (2) Respondents provided substantial assistance in the solicitation of foreign national contributions, or (3) Respondents engaged foreign nationals in their decision-making process in violation of the Commission's regulations. Absent such a showing, the Commission must dismiss the allegations for failing to "meet the threshold for finding reason to believe" any violation of the foreign national restrictions occurred.[62]

CONCLUSION

For the foregoing reasons, Respondents respectfully request the Commission promptly find no reason to believe any violation occurred, dismiss the matter and close the file. We appreciate the Commission's consideration of this response.

Very truly yours,

Marc E. Elias
Graham M. Wilson
David J. Lazarus
Counsel to Respondents

[61] *See* Statement of Reasons, Matter Under Review 4960 (Dec. 21, 2000) (a complaint that fails to provide "a sufficiently specific allegation [] so as to warrant a focused investigation that can prove or disprove the charge" must be dismissed)
[62] First General Counsel's Report, Matter Under Review 5304 (Jan. 21, 2004).

Exhibit 1

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October 24, 2017

VIA EMAIL

William W. Taylor, III
Zuckerman Spaeder LLP
1800 M Street, NW
Suite 1000
Washington, DC 20036

RE: FUSION GPS

Dear Mr. Taylor:

I write on behalf of Perkins Coie LLP as its General Counsel. We understand that your client, Fusion GPS, has received a number of requests for information regarding the identity of clients who engaged Fusion GPS to conduct research during the 2016 Presidential campaign. We further are aware that Fusion GPS is currently engaged in litigation in the United States District Court for the District of Columbia in an effort to prevent the compelled disclosure of its bank records which would reveal confidential client information.

We recognize the important principle of client confidentiality, and we appreciate your efforts to fulfill your obligation to maintain client confidentiality. In the circumstances, however, we believe it is appropriate to release Fusion GPS from this obligation as it relates to the identity of Perkins Coie. Further, given the interest in this issue, we believe it would be appropriate for all parties who hired Fusion GPS in connection with the 2016 presidential campaign to release Fusion GPS from this obligation as well. Finally, now that the appropriate client representatives have been informed of the specifics of our engagement with Fusion GPS, and with their consent, Perkins Coie therefore authorizes you to disclose the following:

> -- Fusion GPS approached Perkins Coie in early March of 2016 and, aware that Perkins Coie represented the Democratic National Committee ("DNC") and HFACC, Inc. ("Hillary for America") with respect to the 2016 elections, expressed interest in an engagement with the Firm in connection with the 2016 presidential election to continue research regarding then-Presidential candidate Donald Trump, research that Fusion GPS had conducted for one or more other clients during the Republican primary contest.

-- To assist in its representation of the DNC and Hillary for America, Perkins Coie engaged Fusion GPS in April of 2016, to perform a variety of research services during the 2016 election cycle. By its terms, the engagement concluded prior to the November 2016 Presidential election.

Nothing in this consent to the disclosure above authorizes Fusion GPS to disclose or waive any privilege with respect to communications or other information otherwise protected by this Firm's or its clients' attorney-client privilege and work product protections, nor does this authorization constitute a waiver of any applicable privilege of this Firm or its clients.

Very truly yours,

Matthew J. Gehringer
General Counsel
Perkins Coie LLP

MJG:jmg