



**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

1 **MEMORANDUM**

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3 **TO:** The Commission

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5 **FROM:** Lisa J. Stevenson  
6 Acting General Counsel

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8 **BY:** Charles Kitcher *CK*  
9 Acting Associate General Counsel for Enforcement

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11 Mark Allen *MA*  
12 Assistant General Counsel

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14 Anne B. Robinson *ABR*  
15 Attorney

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17 **SUBJECT:** MURs 7291 and 7449 (DNC, *et al.*) – Request to Reconsider Reason to Believe  
18 Finding and Circulation of Discovery Documents

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19 On July 23, 2019, the Commission found reason to believe that DNC Services Corp./  
20 Democratic National Committee and William Q. Derrough in his official capacity as treasurer  
21 (“DNC”) and Hillary for America, Inc. and Elizabeth Jones in her official capacity as treasurer  
22 (“HFA”) (collectively, “Respondents”) violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v) and  
23 11 C.F.R. § 104.3(b)(3)(i) and (b)(4)(i) by misreporting the purpose of funds paid to Fusion GPS  
24 through Perkins Coie LLP.<sup>1</sup> The Commission also approved the use of compulsory process.<sup>2</sup>  
25 We notified Respondents of the Commission’s findings and provided them with their respective  
26 Factual and Legal Analyses.<sup>3</sup>

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28 On October 23, 2019, Respondents submitted a joint response to the Commission’s  
29 reason to believe finding.<sup>4</sup> This response generally rearticulates arguments that Respondents

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<sup>1</sup> Certification, MURs 7291 and 7449 (DNC, *et al.*) (July 26, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> Letter to Marc E. Elias, Counsel for HFA, from Chair Ellen L. Weintraub, FEC (Aug. 9, 2019); Letter to Marc E. Elias and Graham M. Wilson, Counsel for DNC, from Chair Ellen L. Weintraub, FEC (Aug. 9, 2019).

<sup>4</sup> Letter to Anne Robinson, FEC, from Marc E. Elias and Graham M. Wilson, Counsel for Respondents (Oct. 23, 2019) (“RTB Response”). The RTB Response was timely received because the Office of General Counsel

1 previously submitted to the Commission prior to its reason to believe findings.<sup>5</sup> Respondents  
2 assert that the Commission’s reason to believe finding “is based on misplaced assumptions and  
3 an overly narrow view of what constitutes ‘legal services’ in the context of a modern presidential  
4 campaign.”<sup>6</sup> Respondents contend that “the Commission should reconsider its finding and  
5 conclude that the Committees properly reported the purpose of their disbursements to [Perkins  
6 Coie LLP].”<sup>7</sup> Respondents also “believe there is a strong likelihood that a reconstituted  
7 Commission would not agree that there is reason to believe the Committees violated the Act or  
8 the Commission Regulations by misreporting the purpose of these expenditures based on a  
9 corrected analysis,” noting that “[e]ven if it wished to proceed, the Commission is unable to  
10 make any further recommendations at this time.”<sup>8</sup>

11  
12 Neither the Act nor Commission regulations provide a procedure by which respondents  
13 can submit a request for reconsideration, and Respondents cite no precedent for their request.  
14 When respondents have made such requests in similar situations, the Office of General Counsel  
15 has sent a letter to respondents stating that no such procedure exists in the Act or Commission  
16 regulations.<sup>9</sup> Accordingly, in keeping with the Commission’s practice, we sent a letter to  
17 Respondents informing them that the Act and Commission regulations contain no provision for  
18 respondents to request that the Commission reconsider a reason to believe finding.<sup>10</sup> Our letter  
19 also renewed our request for a complete response to our informal discovery requests and  
20 additional tolling of the statute of limitations.<sup>11</sup>

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22 In a letter dated February 4, 2020, Respondents stated that they “believe[d] it is  
23 inappropriate to proceed with an investigation” given the Commission’s lack of quorum and

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provided Respondents with a 45-day extension in exchange for 45 days of tolling of the statute of limitations.  
Tolling Agreement, DNC (Aug. 26, 2019); Tolling Agreement, HFA (Aug. 26, 2019).

<sup>5</sup> Compare RTB Response at 2 (stating that “research conducted by Fusion GPS was for the purpose of supporting [Perkins Coie’s] representation of” HFA and the DNC and that the Respondents did not contract with or make any payments to Fusion GPS), *with* MUR 7291 HFA Resp. at 2 (same), *and* MUR 7291 DNC Resp. at 2 (same).

<sup>6</sup> RTB Response at 2.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> See, e.g., Letter to James E. Tyrrell III, Counsel for Lee Zeldin and Zeldin for Senate, from Elena Paoli, FEC, MUR 6985 (Zeldin for Senate) (Aug. 15, 2017) (stating that neither the Act nor Commission regulations contain a provision for the Commission to consider a Request to Rescind Reason to Believe Finding and Dismiss); Letter to James Bopp, Jr. and Barry A. Bostrom, Counsel for National Right to Life PAC, from Roy Q. Luckett, FEC, MUR 6133 (National Right to Life PAC) (May 21, 2009) (stating that the Commission concluded that a Motion to Dismiss with Admonishment presented an inadequate basis for taking no further action).

<sup>10</sup> Letter to Marc E. Elias, Counsel for HFA, from Anne B. Robinson, FEC (Dec. 6, 2019); Letter to Marc E. Elias and Graham M. Wilson, Counsel for DNC, from Anne B. Robinson, FEC (Dec. 6, 2019).

<sup>11</sup> Letter to Marc E. Elias, Counsel for HFA, from Anne B. Robinson, FEC (Dec. 6, 2019); Letter to Marc E. Elias and Graham M. Wilson, Counsel for DNC, from Anne B. Robinson, FEC (Dec. 6, 2019).

1 refused to provide additional tolling.<sup>12</sup> We responded with a letter reiterating our requests that  
2 they fully respond to the discovery requests sent on August 9, 2019, and further that they agree  
3 to the additional tolling.<sup>13</sup> We also sent informal discovery requests to Fusion GPS on December  
4 30, 2019.<sup>14</sup> Fusion GPS declined to respond to our requests, suggesting that we direct the  
5 requests to counsel for Respondents.<sup>15</sup>

6  
7 We recommend using compulsory process at this time given the resistance of  
8 Respondents and Fusion GPS to provide the information and documents we requested and the  
9 statute of limitations for this matter, which will begin to run in April 2021. Accordingly, we  
10 request that the Commission approve the attached subpoenas.

11 Attachments:

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14 1. October 23, 2019, Letter to OGC from Counsel for Respondents;
- 15 2. Order to Submit Written Answers and Subpoena to Produce Documents directed  
16 to DNC Services Corp./ Democratic National Committee and William Q.  
17 Derrough in his official capacity as treasurer;
- 18 3. Order to Submit Written Answers and Subpoena to Produce Documents directed  
19 to Hillary for America, Inc. and Elizabeth Jones in her official capacity as  
20 treasurer; and
- 21 4. Order to Submit Written Answers and Subpoena to Produce Documents directed  
22 to Fusion GPS.

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<sup>12</sup> Letter to Anne Robinson, FEC, from Marc E. Elias, Counsel for HFA and DNC (Feb. 4, 2020).

<sup>13</sup> Letter to Marc E. Elias and Graham M. Wilson, Counsel for HFA and DNC, from Anne B. Robinson, FEC (Mar. 25, 2020).

<sup>14</sup> Letter to Joshua A. Levy, Esq. and Rachel M. Clattenburg, Esq., Counsel for Fusion GPS, from Anne B. Robinson, FEC (Dec. 30, 2019).

<sup>15</sup> Letter to Anne B. Robinson, FEC, from Joshua A. Levy, Esq. and Rachel M. Clattenburg, Esq., Counsel for Fusion GPS (Feb. 28, 2020).