



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**VIA ELECTRONIC MAIL**

November 19, 2021

Graham Wilson  
Elias Law Group LLP  
10 G Street, NE  
Suite 600  
Washington, DC 20002  
[gwilson@elias.law](mailto:gwilson@elias.law)

RE: MURs 7291 and 7449  
DNC Services Corporation/Democratic National  
Committee and Virginia McGregor in her official  
capacity as treasurer

Dear Mr. Wilson:

Based on complaints filed with the Federal Election Commission on October 25, 2017 and August 2, 2018, the Commission, on July 23, 2019, found that there is reason to believe that your client, the DNC Services Corporation/Democratic National Committee and Virginia McGregor in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i) of the Federal Election Campaign Act of 1971, as amended (the "Act"), and instituted an investigation of this matter.

After considering all the information available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file a brief stating your position on the issues and replying to the General Counsel's Brief.<sup>1</sup> The General Counsel's Brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, including because of the upcoming holidays, you may submit a written request for an extension of time in exchange for a

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<sup>1</sup> You may submit the brief electronically to [cela@fec.gov](mailto:cela@fec.gov), or to the staff attorney assigned to the matter as applicable. Enforcement-related materials submitted only by mail will be deemed received when actually received by OGC staff, subject to delays due to the intermittent processing of mail. See <https://www.fec.gov/resources/cms-content/documents/status-of-fec-operations.pdf> (April 15, 2021).

tolling agreement. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of General Counsel ordinarily will not give extensions beyond 20 days. The Office of General Counsel will not give extensions absent an agreement to toll the applicable statute of limitations.

You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34,986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64,919 (Nov. 19, 2007); Amendment of Agency Procedures for Probable Cause Hearings, 74 Fed. Reg. 55,443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. Where necessary, the Commission reserves the right to request from a respondent an agreement tolling any upcoming deadline, including any statutory deadline or other deadline found in 11 CFR part 111. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. at 64,920. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than 30, but not more than 90, days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Richard L. Weiss, the attorney assigned to this matter, at (202) 694-1021 or [rweiss@fec.gov](mailto:rweiss@fec.gov).

Sincerely,

Lisa J. Stevenson /by CK

Lisa J. Stevenson  
Acting General Counsel

Enclosure:  
General Counsel's Brief

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
DNC Services Corp./Democratic National	)	
Committee and Virginia McGregor in her	)	MURs 7291 and 7449
official capacity as treasurer	)	
	)	
	)	

**GENERAL COUNSEL’S BRIEF**

**I. STATEMENT OF THE CASE**

These matters arose from complaints filed with the Federal Election Commission (the “Commission”) alleging that the DNC Services Corporation/Democratic National Committee and Virginia McGregor in her official capacity as treasurer (the “DNC”) failed to file accurate disclosure reports when it mischaracterized the payee and purpose of certain disbursements disclosed as made to Perkins Coie LLP (“Perkins Coie”) for legal services, when in fact the payments were passed through to the research firm Fusion GPS (“Fusion”) for the purpose of opposition research and should have been disclosed as such, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Based on the available information, on July 23, 2019, the Commission found reason to believe that the DNC violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i).<sup>1</sup>

The Commission commenced an investigation concerning the DNC’s disclosures of payments to Perkins Coie for Fusion’s work and the amounts that the DNC paid for Fusion’s work. The investigation revealed that the total amount that the DNC spent on Fusion’s opposition research but reported as “legal and compliance consulting” was \$777,907.97. The investigation further establishes the Commission’s finding at the reason to believe stage that the DNC’s reporting

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<sup>1</sup> Certification (“Cert.”) ¶ 2 (July 26, 2019), MURs 7291 & 7449.

of disbursements paid to Fusion were inadequate and in violation of the Act. Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that the DNC violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i) by failing to report the proper purpose of the funds paid to Perkins Coie for opposition research performed by Fusion.

## II. FACTS

The DNC is the national committee of the Democratic Party.<sup>2</sup> Fusion is a research consulting firm headquartered in Washington, DC.<sup>3</sup> Glenn Simpson is the majority owner of Fusion and has testified under oath regarding the research conducted by Fusion for Clinton and the DNC.<sup>4</sup> Christopher Steele is a British national who worked as a subcontractor to Fusion through his investigative research firm, Orbis Business Intelligence.<sup>5</sup> Perkins Coie is a law firm that served as General Counsel for the DNC during the 2016 election cycle.<sup>6</sup>

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<sup>2</sup> Amended Statement of Organization, DNC (Jan. 29, 2021).

<sup>3</sup> Fusion GPS Website, <http://www.fusiongps.com/> (last visited Nov. 19, 2021).

<sup>4</sup> See U.S. House of Representatives Permanent Select Committee on Intelligence, Executive Session, Interview of Glenn Simpson, 5-6 (Nov. 14, 2017), <http://docs.house.gov/meetings/IG/IG00/20180118/106796/HMTG-115-IG00-20180118-SD002.pdf> (“Simpson House Interview”) (noting that Simpson testified under oath); U.S. Senate Judiciary Committee, Interview of Glenn Simpson, 9-10, 14 (Aug. 22, 2017), [https://www.feinstein.senate.gov/public/\\_cache/files/3/9/3974a291-ddbe-4525-9ed1-22bab43c05ae/934A3562824CACA7BB4D915E97709D2F.simpson-transcript-redacted.pdf](https://www.feinstein.senate.gov/public/_cache/files/3/9/3974a291-ddbe-4525-9ed1-22bab43c05ae/934A3562824CACA7BB4D915E97709D2F.simpson-transcript-redacted.pdf) (“Simpson Senate Interview”) (providing that Simpson did not testify under oath but that he understood that making a false statement to Congress was a federal crime). Fusion is the trade name of Bean LLC, which is a Delaware corporation registered in the District of Columbia. See Simpson Senate Interview at 14-15; Simpson House Interview at 6; Delaware Dep’t of State Div. of Corps., *General Information Name Search*, <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (enter Entity Name: Bean LLC or File No.: 4854128); D.C. Dep’t of Consumer and Regulatory Affairs, *My D.C. Business Center Quick Search*, <https://mybusiness.dc.gov/#/quicksearch> (enter Business Name: Bean or File No.: L53032).

<sup>5</sup> MUR 7449 Compl. at 2-3, 7-8 (Aug. 2, 2018) (citing Jane Mayer, *Christopher Steele, The Man Behind the Trump Dossier*, THE NEW YORKER (Mar. 12, 2018), <https://www.newyorker.com/magazine/2018/03/12/christopher-steele-the-man-behind-the-trump-dossier> (“New Yorker Article”)). According to the *New Yorker* Article, Steele co-founded Orbis, which is located in Mayfair, London, UK, in 2008.

<sup>6</sup> Factual & Legal Analysis at 2, MURs 7291 and 7449.

Fusion approached Perkins Coie in March 2016 and Perkins Coie agreed to pay for the continuation of research on then-candidate Donald J. Trump that Fusion had previously been conducting on behalf of a Republican donor.<sup>7</sup> Fusion reportedly stated that it was paid \$1.02 million by Perkins Coie for fees and expenses related to the research on Trump.<sup>8</sup>

Simpson, when asked in his congressional testimony whether he was aware, when Fusion was retained by Perkins Coie, that Perkins Coie was working on behalf of the DNC, testified that “nobody gave me a document or informed me specifically of that” but also that he did not think Perkins Coie was engaging Fusion for itself; Simpson further testified that “I have been in Washington for several decades, and I spent a lot of time on Capitol Hill and it was well-known to me that Perkins Coie represented the DNC.”<sup>9</sup>

The DNC reported making a \$66,500 payment to Perkins Coie on August 16, 2016, for “Research Consulting,” which the DNC acknowledges was the first DNC payment for what was characterized as Perkins Coie’s “legal consulting supported by the research efforts of Fusion.”<sup>10</sup> The DNC, for the most part, reported on its FEC disclosure reports that the purpose of its Perkins

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<sup>7</sup> *Id.*, Ex. 1; MUR 7449 DNC Resp., Ex. 1; MUR 7291 Compl. ¶ 5 (citing Adam Entous, Devlin Barrett, and Rosalind Henderman, *Clinton Campaign, DNC Paid for Research that Led to Russia Dossier*, WASH. POST (Oct. 24, 2017), [https://www.washingtonpost.com/world/national-security/clinton-campaign-dnc-paid-for-research-that-led-to-russia-dossier/2017/10/24/226fabf0-b8e4-11e7-a908-a3470754bbb9\\_story.html?utm\\_term=.e2c61bfdabee](https://www.washingtonpost.com/world/national-security/clinton-campaign-dnc-paid-for-research-that-led-to-russia-dossier/2017/10/24/226fabf0-b8e4-11e7-a908-a3470754bbb9_story.html?utm_term=.e2c61bfdabee) (“Post Article”)). Fusion had previously been paid by The Washington Free Beacon, which stopped paying in April or May 2016, once Trump appeared to secure the Republican nomination for President. Simpson House Interview at 11-12; *see also* Simpson Senate Interview at 139-40 (testifying that the “dossier” published online by BuzzFeed in January 2017, which was comprised of sixteen pre-election memoranda and one post-election memorandum, represents the “entire universe” of memoranda Steele and Orbis created for Fusion).

<sup>8</sup> MUR 7449 Compl. at 5 (citing Mark Hosenball, *Ex-British Spy Paid \$168,000 for Trump Dossier, U.S. Firm Discloses*, REUTERS (Nov. 1, 2017), <https://www.reuters.com/article/us-usa-trump-russia-dossier/ex-british-spy-paid-168000-for-trump-dossier-u-s-firm-discloses-idUSKBN1D15XH> (“Reuters Article”)) (citing a public statement by Fusion)).

<sup>9</sup> Simpson House Interview at 19-21 (explaining further that “I knew it was the DNC that we were working for” because “I was generally aware that Perkins Coie represented the DNC”).

<sup>10</sup> MUR 7291 DNC Resp. at 2 n.2, 8 (also stating that the August payment was “for legal services that had been subcontracted to Fusion”); MUR 7291 Compl. ¶ 9.

Coie payments was “Legal and Compliance Consulting.” In addition, other DNC payments to the law firm listed “Postage & Shipping,” “Travel,” “Data Services Subscription,” and “Printing & Copying.”<sup>11</sup>

On July 23, 2019, when the Commission found reason to believe that the DNC violated the Act, “by failing to properly disclose the purpose of certain disbursements” it concluded that there is “at least reason to believe” that the DNC “did not properly disclose the purpose of the disbursements to Perkins Coie, for what appears to have been opposition research done by Fusion.”<sup>12</sup>

During the subsequent investigation, the DNC provided responses to the Commission’s Subpoenas and Orders,<sup>13</sup> and included invoices, account statements, copies of checks, and wire transfers.<sup>14</sup> The investigation confirmed that in April 2016, Perkins Coie engaged Fusion to perform “a variety of research and consulting services.”<sup>15</sup> The total amount that the DNC spent on Fusion’s opposition research but reported as “legal and compliance consulting” was \$777,907.97.<sup>16</sup> The DNC provided a chart of payments that it made to Perkins Coie, which

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<sup>11</sup> Factual & Legal Analysis at 5, MURs 7291 & 7449.

<sup>12</sup> *Id.* at 8.

<sup>13</sup> On August 9, 2019, the DNC was notified of the Commission’s findings, provided with the Factual and Legal Analysis, and served with informal discovery. Letter to Marc E. Elias and Graham M. Wilson, Counsel for DNC, from Chair Ellen L. Weintraub, FEC (Aug. 9, 2019). On October 23, 2019, the DNC submitted a response to the Commission’s reason to believe finding requesting the Commission reconsider its findings. Letter to Anne Robinson, FEC, from Marc E. Elias and Graham M. Wilson, Counsel for the DNC (Oct. 23, 2019). On February 4, 2020, the DNC notified OGC that it was not going to respond to the discovery requests considering the lack of quorum. Letter to Anne Robinson, FEC, from Marc E. Elias, Counsel for the DNC (Feb. 4, 2020). When the Commission regained a quorum, the Commission issued a subpoena to the DNC on February 12, 2021. Cert. (Feb. 10, 2021), MURs 7291 & 7449.

<sup>14</sup> Respondent objected to most of the discovery requests, both asserting attorney-client and attorney work privileges and objecting to the requests on breadth and scope grounds. *See* DNC Resp. to Order to Submit Written Answers and Subpoena to Produce Documents at 4 (June 3, 2021).

<sup>15</sup> DNC Resp. to Order to Submit Written Answers and Subpoena to Produce Documents at 4.

<sup>16</sup> The total amount the DNC paid to Perkins Coie for Fusion’s opposition research was \$844,407.97. *See* DNC Response to Discovery Requests at 6-7 (Apr. 13, 2021). The DNC paid a somewhat higher amount to Perkins

1 included funds paid to Fusion.<sup>17</sup> Additionally, the DNC provided the underlying invoices from  
 2 Perkins Coie for each of the payments.<sup>18</sup> Fusion invoices sent to Perkins Coie for the services  
 3 rendered on behalf of the DNC list a monthly retainer fee plus additional fees labeled as “Russia  
 4 Research” or “Russian language researcher.”<sup>19</sup> Copies of checks and wire transfers reflecting  
 5 payments Fusion made to its subvendors, Nellie Ohr,<sup>20</sup> Graham Stack,<sup>21</sup> Edward Austin

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Coie in connection with Fusion, \$889,407.97, a figure including a \$5,000 per month fee paid to Perkins Coie, but not passed on to Fusion. *See* DNC Documents 1-28 attached to the DNC Response to Discovery Requests. The DNC disclosed \$66,500 of those funds paid to Perkins Coie on August 16, 2016, as “research consulting.” DNC Amended 2016 September Monthly Report at 4241 (June 1, 2017); *see also* MUR 7291 DNC Resp. to Compl. at 2 n.2, 8 (stating that the August payment was “for legal services that had been subcontracted to Fusion”); MUR 7291 Compl. ¶ 9. *See generally* DNC 2016 Disclosure Reports. The DNC paid Perkins Coie \$92,399.74 on July 20, 2016 for \$5,000 in “services” and \$87,399.74 in “professional services -other” for the Fusion research and reported it on its disclosure report filed on August 20, 2016. The DNC paid Perkins Coie \$346,563.90 on September 20, 2016 for \$5,000 in “services” and \$341,563.90 in “professional services -other” for the Fusion research and reported it on its disclosure report filed on October 20, 2016. The DNC paid Perkins Coie \$135,479.88 on October 14, 2016 for \$5,000 in “services” and \$130,479.88 in “professional services -other” for the Fusion research and reported it on its disclosure report filed on October 27, 2016. The DNC paid Perkins Coie \$174,795.45 on October 31, 2016 for \$5,000 in “services” and \$169,795.45 in “professional services -other” for the Fusion research and reported it on its disclosure report filed on December 8, 2016. The DNC paid Perkins Coie \$35,000 on November 30, 2016 for \$5,000 in “services” and \$30,000 in “professional services -other” for the Fusion research and reported it on its disclosure report filed on January 31, 2017. The DNC paid Perkins Coie \$63,669 on December 20, 2016 for \$5,000 in “services” and \$58,669 in “professional services -other” for the Fusion research and reported it on its disclosure report filed on January 31, 2017.

<sup>17</sup> *See id.*; DNC Response to Discovery Requests at 6-7.

<sup>18</sup> *See* DNC Response Documents to Discovery Requests at DNC-FEC-001-DNC-FEC-0028.

<sup>19</sup> Fusion Invoices at LFM000004, LFM000006, LFM000008, LFM000010.

<sup>20</sup> *Id.* at LFM000011 to LFM000015. Nellie Ohr was a contractor for Fusion and reportedly worked on research and analysis of Donald Trump as well as open-source research on Russian oligarchs. *See* Jerry Dunleavy, *Hundreds of Pages of Emails Show Nellie Ohr Researched Trump-Russia Connections*, WASHINGTON EXAMINER (Aug. 25, 2019), <https://www.washingtonexaminer.com/news/hundreds-of-pages-of-emails-show-nellie-ohr-researched-trump-russia-connections>; Jeremy Herb, *Fusion GPS Contractor Nellie Ohr Doesn't Say Much At House Interview*, CNN (Oct. 19, 2018), <https://www.cnn.com/2018/10/19/politics/nellie-ohr-fusion-gps-congress-gps>.

<sup>21</sup> Fusion Invoices at LFM000024, LFM000028, LFM000032, LFM000036. Stack was a contractor for Fusion who reportedly worked on opposition research relating to Trump and Russia. *See* Graham Stack, *Graham Stack: Everything You Know About Paul Manafort Is Wrong*, KYIV POST (Sept. 17, 2018), <https://www.kyivpost.com/article/opinion/op-ed/graham-stack-everything-you-know-about-paul-manafort-is-wrong.html>.

Limited,<sup>22</sup> and Orbis Business Intelligence Ltd.,<sup>23</sup> as part of the services rendered to Perkins Coie were obtained during the investigation. These subvendors reportedly contributed to Fusion's research regarding Donald Trump and Russia.<sup>24</sup> Comparing the invoices from Perkins Coie with those of Fusion make clear that Perkins Coie billed the DNC for 100% of its portion of the services rendered by Fusion to Perkins Coie, because the amounts and dates of the invoices match exactly. Thus, in an example transaction Fusion billed Perkins Coie for \$58,669 on December 1, 2016, and thereafter Perkins Coie billed the DNC \$58,669 on December 14, 2016.<sup>25</sup>

The invoices provided during the investigation delineate fees for "services" and fees for "professional services — other."<sup>26</sup> The only services billed as "services" under a header entitled "for services through [date]" are the \$5,000 retainer fee to Perkins Coie.<sup>27</sup> The entire amounts billed by Fusion and subsequently billed to the DNC are billed as "professional services-other" under a header entitled "disbursements."<sup>28</sup> For example, the following images show how the invoices distinguished between the types of services rendered.<sup>29</sup>

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<sup>22</sup> Fusion Invoices at LFM000020, LFM000028. Edward Baumgartner reportedly has a degree in Russian language and runs Edward Austin Limited, a research consulting firm with a focus on Russia and Ukraine and was hired by Fusion to meet with Natalia Veselnitskaya for the purpose of opposition research. *See* Natasha Bertrand, *Meet The Russia Specialist Who Worked On 2 Of Fusion GPS' Most Controversial Projects*, BUSINESS INSIDER (Jan. 14, 2018), <https://www.businessinsider.com/ed-baumgartner-fusion-gps-christopher-steele-russia-projects-2018-1>.

<sup>23</sup> Fusion Invoices at LFM000032, LFM000036, LFM000040. Orbis Business Intelligence Ltd. is the investigative research firm co-founded by Michael Steele. *See* Factual & Legal Analysis at 2, MURs 7291 and 7449.

<sup>24</sup> *See supra* nn. 20-23.

<sup>25</sup> *See* Fusion Invoices at LFM000002; DNC Response Documents to Discovery Requests at DNC-FEC-017.

<sup>26</sup> *See* DNC Response Documents to Discovery Requests at DNC-FEC-001-DNC-FEC-0028.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at DNC-FEC-0017-0018.



MURs 7291 and 7449 (DNC)  
 General Counsel's Brief  
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Democratic National Committee  
 430 South Capitol Street, S.E.  
 Washington, DC 20003

ACCOUNT #	DUE DATE
024216.0016	January 13, 2017

Matter Number / Name 024216.0016 / Research 2016

TOTAL FOR SERVICES:	TOTAL FOR DISBURSEMENTS AND OTHER SERVICES:	TOTAL FOR LATE CHARGES:	<b>TOTAL DUE THIS INVOICE:</b>
\$0.00	\$58,669.00		<b>\$58,669.00</b>



PERKINScoie

INVOICE #: 5577572  
 Democratic National Committee  
 024216.0016 / Research 2016

**FOR DISBURSEMENTS AND OTHER SERVICES THROUGH 12/13/16**

DESCRIPTION	AMOUNT
Fusion GPS - Fusion GPS - Professional services - other - 12/2016	\$58,669.00

### III. LEGAL ANALYSIS

The Act and Commission regulations require political committees to report the name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year, or per election cycle for authorized committees, as well as the date, amount, and purpose of such payments.<sup>30</sup>

<sup>30</sup> 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (all political committees).

Commission regulations define “purpose” as a “brief statement or description of why the disbursement was made.”<sup>31</sup> “The ‘purpose of disbursement’ entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear.”<sup>32</sup> The Commission has explained that the description of purpose should be sufficient to allow “a person not associated with the committee [to] easily discern why the disbursement was made when reading the name of the recipient and the purpose.”<sup>33</sup> Examples of sufficient statements of purpose include, but are not limited to, dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs.<sup>34</sup> In addition to the non-exhaustive list of examples included in the regulation, the Commission has provided guidance that a description of purpose such as “Consultant-Legal” is sufficient for a disbursement to a consultant; the sufficiency of the description is read in context with the name of the payee.<sup>35</sup> Additional guidance set forth on the Commission’s website includes “Legal / Legal Fees / Legal Services” as a sufficient description of purpose.<sup>36</sup>

During the 2016 election cycle, the DNC disclosed more than \$6.4 million in payments issued to Perkins Coie for the purpose of “Legal and Compliance Consulting.”<sup>37</sup> In addition to

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<sup>31</sup> 11 C.F.R. § 104.3(b)(3)(i)(A), (B); *id.* § 104.3(b)(4)(i)(A).

<sup>32</sup> *See* Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007) (“Purpose Statement of Policy”) (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (4)(i)(A)).

<sup>33</sup> Purpose Statement of Policy, 72 Fed. Reg. at 888.

<sup>34</sup> 11 C.F.R. § 104.3(b)(3)(i)(B); *id.* § 104.3(b)(4)(i)(A).

<sup>35</sup> Purpose Statement of Policy, 72 Fed. Reg. at 888; *see also* FEC Campaign Guide for Congressional Candidates at 103 (June 2014) (the description of purpose must be sufficiently specific such that it makes clear the reason for the disbursement when considered in conjunction with the payee’s identity).

<sup>36</sup> FEC, Purposes of Disbursement (last updated July 13, 2017), <https://www.fec.gov/help-candidates-and-committees/purposes-disbursement>; *cf.* Purpose Statement of Policy, 72 Fed. Reg. at 888 (indicating that additional guidance will be posted at the URL in this footnote).

<sup>37</sup> *See generally* DNC 2016 Disclosure Reports. The DNC paid Perkins Coie \$6,726,407.25 between January 1, 2015, and December 31, 2016, of which \$6,466,711.46 was for “Legal and Compliance Consulting.” *See* MUR 7291 Compl. ¶ 9; *see generally* DNC 2015-16 Disclosure Reports.

1 these DNC legal expenses, the record indicates that the DNC also reported one disbursement of  
2 \$66,500 to Perkins Coie, for “legal consulting supported by the research efforts of Fusion,” with  
3 the reported purpose of “Research Consulting.”<sup>38</sup> The DNC indicated in its response that this  
4 payment was “the first time it made a payment” for such Fusion-supported services.<sup>39</sup>

5 The DNC maintains that the purpose was correctly reported for the payments at issue as  
6 “legal services,” on the basis that Fusion was hired in connection with unspecified legal services  
7 allegedly provided by Perkins Coie.<sup>40</sup> However, a person reading the Committees’ disclosure  
8 reports could not have discerned “why the disbursement was made,” that is, that the Committees  
9 were disbursing funds for anything other than the legal services, travel, or assorted fees that were  
10 identified by reading the name of the recipient (*i.e.*, Perkins Coie) together with the reported  
11 purpose (*i.e.*, legal services or legal or compliance consulting).<sup>41</sup> Because the DNC’s initial  
12 payment to Perkins Coie for services supported by Fusion disclosed the purpose of “Research  
13 Consulting,” it is clear that the DNC was aware that “research” was the appropriate purpose  
14 description for reporting purposes of this and later disbursements to Perkins Coie for its work  
15 associated with Fusion.<sup>42</sup> The DNC argues that all subsequent payments made to Perkins Coie  
16 “for all of its legal services” disclosed a purpose of “Legal and Compliance Consulting,” when,  
17 in fact, subsequent payments disclosed a variety of purposes including, but not limited to,

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<sup>38</sup> MUR 7291 DNC Resp. at 2 n.2; 8; MUR 7449 DNC Resp. at 8.

<sup>39</sup> MUR 7291 DNC Resp. at 8; MUR 7449 DNC Resp. at 8.

<sup>40</sup> MUR 7291 DNC Resp. at 2-3, 6-7; MUR 7449 DNC Resp. at 3-4, 7-8.

<sup>41</sup> 11 C.F.R. § 104.3(b)(3)(i)(A); *see* Purpose Statement of Policy, 72 Fed. Reg. at 888.

<sup>42</sup> MUR 7291 DNC Resp. at 8; MUR 7449 DNC Resp. at 8. Further, Advisory Opinion 1983-25 (Mondale for President), which addresses disclosure of vendor payments to subvendors, provides that a committee would be required to report an adequate description of the purpose of its payments to its vendors. AO 1983-25 at 2. The committee in AO 1983-25 stated that it would disclose a specific description of purpose for each payment made to the vendor, such as media consulting fees, media photocopy expenses, or media buys, which the Commission noted when it determined that the committee would not have to disclose vendor payments to subvendors. *Id.*

“Postage & Shipping,” “Travel,” “Data Services Subscription,” and “Printing & Copying.”<sup>43</sup> In prior matters in which respondents disclosed inadequate or incorrect purposes that did not allow a person to easily discern why the disbursements were made when reading the payee and purpose together, the Commission has held the respondents accountable, conciliating after finding reason to believe that they violated the Act.<sup>44</sup>

Furthermore, the invoices provided during the investigation reveal that Perkins Coie itself distinguished the services provided by Fusion as “professional services — other” under the “disbursements” category rather than the “services” category further supporting the Commission’s finding that the true purpose of these disbursements appears to have been something other than legal services, namely opposition research. The use of an inaccurate or misleading purpose impedes the ability of a person reading the relevant disclosure report to easily discern why the disbursement was made.<sup>45</sup> Thus, the United States Court of Appeals for the Eighth Circuit rejected an argument that identifying a purpose of “audio/visual expenses” for payments that were actually compensation for an endorsement did not cause a committee’s

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<sup>43</sup> Compare MUR 7291 DNC Resp. at 2 n.2 with, e.g., DNC Services Corp./Dem. Nat’l Committee 2016 October Quarterly Report at 4,463-71 (Oct. 20, 2016) (disclosing purposes of “Legal and Compliance Consulting,” “Travel,” “Data Services Subscription,” “Postage & Shipping,” “Catering, Food & Beverage,” and “Printing & Copying”); DNC Services Corp./Dem. Nat’l Committee 2016 Post-General Report at 15,294-96 (Dec. 8, 2016) (disclosing purposes of “Legal and Compliance Consulting,” “Travel,” “Data Services Subscription,” “Postage & Shipping,” and “Catering, Food & Beverage”). The DNC characterizes the payments for purposes other than “Legal and Compliance Consulting” and “Research Consulting” as payments for “expenses auxiliary to its legal services.” MUR 7291 DNC Resp. at 2 n.2.

<sup>44</sup> See, e.g., Conciliation Agreement at ¶ IV.5 (Oct 22, 2009) MUR 6204 (conciliating, inter alia, inadequate reporting of purpose where committee sometimes reported generic purposes such as professional fees and fundraising consultant, which did not allow a person to easily discern why the disbursements were made when reading the payee and purpose together); Conciliation Agreement at ¶ IV.21 (May 18, 2009) MUR 6134 (Cranley for Congress) (conciliating, inter alia, inadequate reporting of purpose) because disbursements lacked required information including, but not limited to, missing or inadequate purposes, for which a person could not easily discern why the disbursements were made when reading the payee and purpose together).

<sup>45</sup> Purpose Statement of Policy, 72 Fed. Reg. at 888.

disclosure reports to be false.<sup>46</sup> Here, the documentary evidence obtained during the investigation reinforces the Commission's determination at the reason to believe stage that the DNC "did not properly disclose the purpose of the disbursements to Perkins Coie, for what appears to have been opposition research done by Fusion."<sup>47</sup> The invoices reflect that Fusion was providing opposition research services related to Trump and Russia, continuing work that had been previously performed and funded by a Republican donor, and there is no evidence that Fusion provided services other than this opposition research or associating it with particular legal services. Further, the accounting information provided by the DNC during the investigation establishes the extent of the Committees' reporting violations.

The Commission's precedent, the factual record, and the evidence from the investigation described above establishes that the DNC did not properly disclose the purpose of the disbursements to Perkins Coie, for what should have been disclosed as opposition research done by Fusion. Accordingly, the investigation confirms that the DNC violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i) by failing to properly disclose the correct purpose. In seeking relief that requires the DNC to amend all of their reports to accurately describe the purpose of the payments made to Fusion, the Commission will further the Act's disclosure purpose by allowing persons not associated with the committee to easily discern why the disbursements were made when reading the name of the recipient and the purpose.<sup>48</sup>

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<sup>46</sup> See *United States v. Jesse Benton, John Tate, and Dimitrios Kesari*, 890 F.3d 697 (8th Cir. May 11, 2018), *cert. denied*, 2019 WL 1231756 (Benton), 2019 WL 1231758 (Tate), 2019 WL 1231759 (Kesari) (Mar. 18, 2019) (affirming the convictions of three former Ron Paul 2012 campaign officials for, *inter alia*, violating the Act by causing false campaign finance reports to be filed with the Commission).

<sup>47</sup> Factual & Legal Analysis at 8.

<sup>48</sup> 11 C.F.R. § 104.3(b)(3)(i)(A), (B); *id.* § 104.3(b)(4)(i)(A); see also Purpose Statement of Policy, 72 Fed. Reg. at 888. The Commission's authority to seek equitable relief such as the correction of inaccurate reporting can be distinguished from the five-year statute of limitations applicable to pursuing certain relief such as civil penalties.

**IV. CONCLUSION**

For the foregoing reasons, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that the DNC violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i) by failing to properly disclose the correct purpose.

November 19, 2021

Date

Lisa J. Stevenson /by CK

Lisa J. Stevenson  
 Acting General Counsel

Charles Kitcher

Charles Kitcher  
 Associate General Counsel for Enforcement

Mark Allen /by RW

Mark Allen  
 Assistant General Counsel

Richard Weiss

Richard L. Weiss  
 Attorney

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*See FEC v. Craig for U.S. Senate*, 816 F.3d 829, 847 (D.C. Cir. 2016) (upholding award of equitable relief in suit brought by FEC); *FEC v. Christian Coalition*, 965 F. Supp. 66, 71 (D.D.C. 1997); *accord FEC v. Nat'l Republican Senatorial Comm.*, 877 F. Supp. 15, 17, 20-21 (D.D.C. 1995) (permitting the Commission to seek equitable relief for claim of violation occurring nearly a decade prior to suit).