FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 7304
DATE COMPLAINT FILED: December 15, 2017
DATE OF NOTIFICATIONS: December 21, 2017
DATE LAST RESPONSE RECEIVED September 4, 2018
DATE ACTIVATED: May 3, 2018

EARLIEST SOL: September 10, 2020
LATEST SOL: December 31, 2021
ELECTION CYCLE: 2016

COMPLAINANT: Committee to Defend the President

RESPONDENTS:
Hillary Victory Fund and Elizabeth Jones in her official capacity as treasurer
Hillary Rodham Clinton
Hillary for America and Elizabeth Jones in her official capacity as treasurer
DNC Services Corporation/Democratic National Committee and William Q. Derrough in his official capacity as treasurer
Alaska Democratic Party and Carolyn Covington in her official capacity as treasurer
Democratic Party of Arkansas and Dawne Vandiver in her official capacity as treasurer
Colorado Democratic Party and Rita Simas in her official capacity as treasurer
Democratic State Committee (Delaware) and Helene Keeley in her official capacity as treasurer
Democratic Executive Committee of Florida and Francesca Menes in her official capacity as treasurer
Georgia Federal Elections Committee and Kip Carr in his official capacity as treasurer
Idaho State Democratic Party and Leroy Hayes in his official capacity as treasurer
Indiana Democratic Congressional Victory Committee and Henry Fernandez in his official capacity as treasurer
Iowa Democratic Party and Ken Sagar in his official capacity as treasurer
Kansas Democratic Party and Bill Hutton in his official capacity as treasurer
Kentucky State Democratic Central Executive Committee and M. Melinda Karns in her official capacity as treasurer
Democratic State Central Committee of LA and Sean Bruno in his official capacity as treasurer

Maine Democratic Party and Betty Johnson in her official capacity as treasurer

Massachusetts Democratic State Committee and Paul G. Yorkis in his official capacity as treasurer

Michigan Democratic State Central Committee and Sandy O'Brien in her official capacity as treasurer

Minnesota Democratic-Farmer-Labor Party and Tyler Moroles in his official capacity as treasurer

Mississippi Democratic Party and Ryan Brown in his official capacity as treasurer

Missouri Democratic State Committee and Emily Waggoner in her official capacity as acting treasurer

Montana Democratic Party and Sandi Luckey in her official capacity as treasurer

Nevada State Democratic Party and Jan Churchill in her official capacity as treasurer

New Hampshire Democratic Party and Brian Rapp in his official capacity as treasurer

New Jersey Democratic State Committee and Kelly Stewart Maer in her official capacity as treasurer

Democratic Party of New Mexico and Robert Lara in his official capacity as treasurer

North Carolina Democratic Party – Federal and Anna Tilghamn in her official capacity as treasurer

Ohio Democratic Party and Fran Alberty in her official capacity as treasurer

Oklahoma Democratic Party and Rachael Hunsucker in her official capacity as treasurer

Democratic Party of Oregon and Eddy Morales in his official capacity as treasurer

Pennsylvania Democratic Party and Alexander Reber in his official capacity as treasurer

Rhode Island Democratic State Committee and Jeffrey Padwa in his official capacity as treasurer

Democratic Party of South Carolina and Kathryn Hensley in her official capacity as treasurer

South Dakota Democratic Party and Bill Nibbelink in his official capacity as treasurer

Tennessee Democratic Party and Geeta McMillan in her official capacity as treasurer

Texas Democratic Party and Gilberto Hinojosa in his official capacity as treasurer

Utah State Democratic Committee and Peter Corroon in his official capacity as treasurer

Democratic Party of Virginia and Barbara Klear in her official capacity as treasurer

WV State Democratic Executive Committee and Jerry Brookover in his official capacity as treasurer
Democratic Party of Wisconsin and Randy A. Udell in his official capacity as treasurer
WY Democratic State Central Committee and Chris Russell in his official capacity as treasurer

MUR 7331
DATE COMPLAINT FILED: February 26, 2018
DATE OF NOTIFICATIONS: March 5, 2018
DATE RESPONSE RECEIVED: June 1, 2018
DATE ACTIVATED: June 1, 2018

EARLIEST SOL: September 10, 2020
LATEST SOL: December 31, 2021
ELECTION CYCLE: 2016

COMPLAINANT: Americans for the Trump Agenda

RESPONDENTS: Hillary Rodham Clinton
Hillary Victory Fund and Elizabeth Jones in her official capacity as treasurer
Hillary for America and Elizabeth Jones in her official capacity as treasurer
DNC Services Corporation/DNC and William Q. Derrough in his official capacity as treasurer

RAD REFERRAL 17L-36
DATE OF REFERRAL: September 19, 2017
DATE OF NOTIFICATION: September 21, 2017
DATE RESPONSE RECEIVED: October 20, 2017
DATE ACTIVATED: July 12, 2018

EXPIRATION OF SOL: September 20, 2021
ELECTION CYCLE: 2016

SOURCE: Internally Generated

RESPONDENT: Texas Democratic Party and Gilberto Hinojosa in his official capacity as treasurer

RAD REFERRAL 17L-46
DATE OF REFERRAL: November 28, 2017
DATE OF NOTIFICATION: November 30, 2017
DATE RESPONSE RECEIVED: December 15, 2017
DATE ACTIVATED: July 12, 2018

EARLIEST SOL: August 20, 2021
LATEST SOL: August 20, 2021

ELECTION CYCLE: 2016

SOURCE: Internally Generated

RESPONDENT: Democratic Party of South Carolina and Kathryn Hensley in her official capacity as treasurer

RAD REFERRAL 17L-48R
DATE OF REFERRAL: May 9, 2018
DATE OF NOTIFICATION: June 8, 2018
DATE RESPONSE RECEIVED: July 31, 2018
DATE ACTIVATED: July 12, 2018

EXPIRATION OF SOL: August 1, 2021
ELECTION CYCLE: 2016

SOURCE: Internally Generated

RESPONDENT: Mississippi Democratic Party and Ryan Brown in his official capacity as treasurer

RAD REFERRAL 18L-19
DATE OF REFERRAL: May 16, 2018
DATE OF NOTIFICATION: May 17, 2018
DATE RESPONSE RECEIVED: June 27, 2018
DATE ACTIVATED: July 12, 2018

EXPIRATION OF SOL: September 20, 2021
ELECTION CYCLE: 2016

SOURCE: Internally Generated

RESPONDENT: Massachusetts Democratic State Committee and Paul G. Yorkis in his official capacity as treasurer

RAD REFERRAL 18L-25
DATE OF REFERRAL: July 2, 2018
DATE OF NOTIFICATION: July 3, 2018
DATE RESPONSE RECEIVED: August 23, 2018
DATE OF ACTIVATION: July 12, 2018

EXPIRATION OF SOL: October 16, 2021
ELECTION CYCLE: 2016

SOURCE: Internally Generated

RESPONDENT: Nevada State Democratic Party and Jan Churchill in her official capacity as treasurer

AUDIT REFERRAL 18-01R
DATE OF REFERRAL: January 23, 2018
DATE OF NOTIFICATION: January 29, 2018
DATE RESPONSE RECEIVED: March 19, 2018
DATE ACTIVATED: May 24, 2018

EXPIRATION OF SOL: October 20, 2021
ELECTION CYCLES: 2016

SOURCE: Internally Generated

RESPONDENT: Utah State Democratic Committee and Peter Corroon in his official capacity as treasurer

RELEVANT STATUTES:
52 U.S.C. § 30104
52 U.S.C. § 30116
52 U.S.C. § 30122
11 C.F.R. § 102.17

11 C.F.R. § 104.3(a), (b)
11 C.F.R. § 109.20
11 C.F.R. § 110.4

	11 C.F.R. § 110.6
	11 C.F.R. § 109.32
INTERNAL REPORTS CHECKED:	Disclosure Reports Reports Analysis Division Referral Materials
FEDERAL AGENCIES CHECKED:	None

I. INTRODUCTION

These matters relate to joint fundraising conducted through the Hillary Victory Fund ("HVF"), which was comprised of Hillary Clinton's principal campaign committee, Hillary for America ("HFA"), the DNC Services Corporation/Democratic National Committee ("DNC"), and thirty-eight state party committees ("the SPCs").[1] The main allegation of the Complaints is that HVF was a "sham" through which millions of dollars in excessive contributions were funneled through the SPCs to the DNC in violation of earmarking and contributions in the name of another provisions, and the DNC then contributed those funds to HFA in excess of federal limits.[2] Respondents argue that every individual transaction arising out of their joint fundraising activity was legal, thus, there can be no violation.[3]

We conclude that the available information, including the pattern of transfers of funds raised by HVF, provides reason to believe that the DNC accepted excessive contributions. Further, there is reason to believe that HVF, the DNC and the SPCs inaccurately disclosed receipts and disbursements and that the DNC made excessive contributions to HFA in the form of coordinated expenditures. Accordingly, we recommend that the Commission find reason to believe that:

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1 Compl. at 7-10, MUR 7304 (amended July 31, 2018); Compl. at 1-2, MUR 7331 (Feb. 26, 2018); RR 18L-25 (Nev. State Democratic Party) (July 2, 2018); RR 18L-19 (Mass. Democratic State Comm.) (May 16, 2018); RR 17L-48R (Miss. Democratic Party) (May 9, 2018); RR 17L-46 (Democratic Party of S.C.) (Nov. 28, 2017); RR 17L-36 (Tex. Democratic Party) (Sept. 19, 2017) AR 18-01R (Utah State Democratic Comm.) (July 13, 2017).

2 *See* Compl. at 7-10, 74, ¶ 137, MUR 7304; Compl. at 1-2, MUR 7331. Unless otherwise designated, all references and citations to the "Complaint" refer to the Complaint in MUR 7304.

3 *See* HVF, *et al.* Resp. at 2-5, MUR 7304 (Feb. 20, 2018) (hereinafter "HVF Resp." on behalf of HVF, HFA, Hillary Clinton, DNC, Nev. State Democratic Party, Democratic Party of Va., and Mo. Democratic State Comm.); N.J. Democratic State Comm. Resp. at 1, MUR 7304 (May 3, 2018) (joining HVF Response in substance); Alaska Democratic Party, *et al.* Resp. at 1-2, 5, MUR 7304 (Feb. 21, 2018) (hereinafter "SPCs Resp." on behalf of the remaining 34 SPCs); *see also* MUR 7331 Resp. at 1-2 (June 1, 2018).

1. HVF, HFA, the DNC, and the SPCs violated the joint fundraising regulations at 11 C.F.R. § 102.17(c)(1) and (2);

2. The DNC accepted excessive contributions in violation of 52 U.S.C. § 30116(f);

3. HVF, the DNC, and the SPCs violated the reporting requirements at 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b);

4. The DNC made excessive in-kind contributions to HFA in violation of 52 U.S.C. § 30116(a) and 11 C.F.R. §§ 109.20(a) and 109.32; and

5. HFA accepted excessive in-kind contributions from the DNC in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 109.20(a) and 109.32.

We also recommend that the Commission take no action at this time on the earmarking and contributions in the name of another allegations.

II. BACKGROUND

A. The Creation of HVF

HFA was the principal campaign committee for Hillary Clinton, the Democratic Party nominee for President for the 2016 general election. In August 2015, HFA and the DNC entered into a Memorandum of Understanding ("MOU") regarding the creation and operation of a joint fundraising committee, which ultimately became HVF.[5] On September 10, 2015, HFA and the DNC entered into a written joint fundraising agreement forming HVF to act as their fundraising representative.[6] Within a week of HVF's registration, thirty-two SPCs had signed the joint fundraising agreement, and ultimately participation grew to thirty-eight SPCs over the course of the election cycle.[7]

Under the agreement, contributions to HVF were allocated as follows: the first $2,700 from an individual or $5,000 from a multicandidate committee ("PAC") would be designated for HFA and the primary election. The second $2,700 (individual) or $5,000 (PAC) would be

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5 *See* HVF Resp. at 3 (asserting that the MOU "provided that, in exchange for raising funds for the party through HVF, the DNC would cooperate with HFA on its preparation for the general election, such as on data, technology, research, and communications, which would benefit the party and its candidates as a whole"); *see also* Compl. ¶ 113 (quoting Donna Brazile, *Inside Hillary Clinton's Secret Takeover of the DNC*, POLITICO MAGAZINE, Nov. 2, 2017, https://www.politico.com/magazine/story/2017/11/02/clinton-brazile-hacks-2016-215774 ("Brazile Article") (referring to the MOU as a fundraising agreement)).

6 *See* HVF Resp. at 3; HVF's Statement of Organization (Sept. 10, 2015) (listing two participating committees: HFA and DNC).

7 Not all thirty-eight SPCs participated in the joint fundraising concurrently at all times. The Respondents assert that the joint fundraising agreement was amended whenever an SPC joined or left the fundraising arrangement, though the HVF Response attaches only the initial agreement, HVF Resp. at 3 & n.6, Ex. A (Joint Fundraising Agreement), and the SPC Response attaches no agreement. HVF amended its Statement of Organization three times to add and remove participating entities. *See* HVF's Amended Statement of Organization (Sept. 16, 2015) (adding 32 of the SPCs in addition to a party committee from Puerto Rico which is not a Respondent); HVF's Amended Statement of Organization (Nov. 2, 2015) (removing the Puerto Rico committee); HVF's Amended Statement of Organization (July 1, 2016) (adding the remaining six SPCs from Delaware, Iowa, Kansas, New Jersey, New Mexico, and South Dakota).

designated for HFA and the general election. If the contribution was made after the primary, up to $2,700 (individual) or $5,000 (PAC) would be designated for the general election.[8] The next $33,400 (individual) or $15,000 (PAC) would be allocated to the DNC. Any additional amounts received from an individual or PAC would be split equally among the participating SPCs up to $10,000 (individual) or $5,000 (PAC). The written agreement and contribution form state that this allocation formula could change if a contributor designated his or her contribution for a particular participant.[9] In addition, a contribution form supplied by HVF states that participating committees would determine how such contributions would be used in connection with a federal election, and the contributions "[would] not be earmarked for any particular candidate."[10]

By definition, any individual contribution over $38,800 before the primaries and $36,100 for the general election would exceed the combined contribution limits for HFA and the DNC and result in some money being allocated to the SPCs. Around 1,500 individuals contributed over $38,800 to HVF.[11] In total, HVF reported transferring over $112 million to the SPCs from

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8 *See* HVF Resp., Ex. B (HVF Contribution Form). The allocation formula in the original agreement between only HFA and the DNC did not account for general election contributions. *See* HVF Resp., Ex. A (Joint Fundraising Agreement) (allocation formula attached as an exhibit to the agreement). Respondents did not provide the amended joint fundraising agreements that included the SPCs, however, they did provide a contribution form that lists all thirty-eight of the SPCs as participating committees and describes the allocation formula.

9 *See* HVF Resp., Ex. A (Joint Fundraising Agreement); HVF Resp., Ex. B (HVF Contribution Form).

10 HVF Resp., Ex. B (HVF Contribution Form).

11 For simplicity, the calculations in this report rely on the higher $38,800 figure.

donors who had reached their limits for contributions to HFA and the DNC.[12] The crux of the Complaint relates to that $112 million.

B. Complaint and Referrals

The Complaint in MUR 7304[13] alleges that "virtually every single disbursement from HVF to a state party resulted in an immediate transfer of the same amount of funds from the state party to the DNC."[14] According to the Complaint, over $80 million dollars in HVF transfers were "funneled" through the SPCs to the DNC in this manner.[15] The Complaint identifies 427 transactions between October 1, 2015, and November 8, 2016, that followed a pattern of near-simultaneous transfers in and out of the SPCs.[16]

As an example, the Complaint states that on November 2, 2015, HVF reported transferring a total of $505,000 to seventeen of the SPCs and that those SPCs reported receiving transfers "in the identical amounts of funds from HVF on the very same day."[17] Each of those SPCs reported "contributing the same amount of money they received from HVF to the DNC on

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12 *See* HVF's Amended 2016 Year-End Report of Receipts & Disbursements (Sept. 6, 2017); HVF's Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements (Aug. 30, 2017); HVF's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements (Aug. 31, 2017); HVF's Amended 2016 October Quarterly Report of Receipts & Disbursements (Aug. 31, 2017); HVF's Amended 2016 July Quarterly Report of Receipts & Disbursements (Nov. 15, 2017); HVF's Amended 2016 April Quarterly Report of Receipts & Disbursements (Oct. 3, 2016); HVF's Amended 2015 Year-End Report of Receipts & Disbursements (Aug. 30, 2017); HVF's 2015 October Quarterly Report of Receipts & Disbursements (Oct. 10, 2015).

13 The Complaint in MUR 7331 raises the same legal theory as the Complaint in MUR 7304, namely that HVF funds were routed through the SPCS to the DNC and to HFA. For purposes of this report, we refer solely to the Complaint in MUR 7304 because it includes detailed allegations regarding the Respondents' joint fundraising activity, and the MUR 7331 Complaint contains no information not already presented in MUR 7304. *See supra* note 2.

14 Compl. ¶ 52.

15 *Id.* ¶¶ 50-52.

16 *Id.* ¶ 54, Ex. 1.

17 *Id.* ¶ 57a-b.

the very same day (or occasionally the next day)."[18] The DNC generally reported receiving the funds on the same day.[19]

Further, a review of the SPCs' disclosure reports shows that fourteen of the SPCs[20] transferred the equivalent of 99% or more of their HVF allocations to the DNC.[21] And four of the SPCs described the purpose of the transfers to the DNC on their disclosure reports in a way that suggests they understood they should immediately transfer their HVF-allocated funds directly to the DNC:

- "Hillary Victory Fund,"[22]
- "Transfer from HVF,"[23]
- "Hillary Victory Fund Transfer Out,"[24] and

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18 *Id.* ¶ 57c.

19 *Id.* ¶ 57d.

20 These SPCs are: (1) Democratic State Committee (Del.), (2) Kan. Democratic Party, (3) Ky. State Democratic Cent. Exec. Comm., (4) Democratic State Cent. Comm. of LA, (5) Miss. Democratic Party, (6) Mo. Democratic State Comm., (7) N.J. State Democratic Comm., (8) Democratic Party of Or., (9) R.I. Democratic State Comm., (10) S.D. Democratic Party, (11) Tex. Democratic Party, (12) Utah State Democratic Comm., (13) WV State Democratic Exec. Comm., and (14) Democratic Party of Wis.

21 The SPCs in battleground states were excepted from the general pattern of transfers because they kept a large percentage of the funds they received from HVF. *See* Brazile Article, *supra* note 5 ("Money in the battleground states usually stayed in that state, but all the other states funneled that money directly to the DNC which quickly transferred the money to Brooklyn [HFA headquarters]."). Only one of the fourteen SPCs that transferred 99% or more of its HVF funds was in a battleground state (Democratic Party of Wis.); of the five SPCs that kept more than half of their HVF funds, all were battleground states (Democratic Exec. Comm. of Fla., Iowa Democratic Party, N.C. Democratic Party-Fed., Ohio Democratic Party, and Pa. Democratic Party).

22 *See, e.g.*, Idaho State Democratic Party's Amended 2016 August Monthly Report of Receipts & Disbursements at 233 (Apr. 9, 2017).

23 *See, e.g.*, Democratic State Cent. Comm. of LA's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 702 (May 13, 2017).

24 *See, e.g.*, Mass. Democratic State Comm.'s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 405 (Dec. 10, 2017).

- "Final Transfer to DNC for Hillary Victory Fund."[25]

The Complaint alleges that the timing, uniformity, regularity, and size of these transactions indicates one of two possible explanations. One explanation is that the SPCs "had an understanding or agreement [that] they would automatically funnel funds they received through HVF to the DNC."[26] Under this scenario, the Complaint alleges that (1) all of the Respondents violated the earmarking provisions because the contributions to HVF were earmarked to be transferred through the SPCs to the DNC and then to HFA;[27] (2) the DNC accepted contributions in the name of another because contributions to HVF were not contributions to the participating SPCs but rather contributions to the DNC;[28] and (3) the DNC accepted excessive contributions.[29]

The second possible explanation is that "the alleged transfers of HVF's funds to state parties never actually occurred, and all of the funds at issue were actually transferred directly from HVF to the DNC, rendering all FEC reports concerning these alleged transactions fraudulent."[30] In support, the Complaint cites to a *Politico* article that states:

> While state party officials were made aware that Clinton's campaign would control the movement of the funds between participating committees, one operative who has relationships with multiple state parties said that some of their officials have complained that they weren't notified of the transfers into and out of their accounts until

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[25] *See* Democratic Party of N.M's Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 489 (Mar. 20, 2017).

[26] Compl. ¶ 53.

[27] *Id.* ¶¶ 123-30.

[28] *Id.* ¶¶ 131-38.

[29] *Id.* ¶¶ 139-44.

[30] *Id.* ¶¶ 56; *see id.* ¶¶ 151, 153.

> after the fact. That's despite their stipulations in the banking documents that their affirmative consent was required before such transfers could be made from their accounts. But the operative said that the state party officials are reluctant to complain to the DNC about the arrangement out of fear of financial retribution.[31]

Even if the funds were transferred into the SPCs' accounts, the Complaint asserts that they would be "shell transactions" if HVF or HFA retained control over the transferred funds.[32]

The Complaint alleges that, as a consequence, many of the SPCs failed to report distributions received from HVF or transfers made to the DNC, though HVF reported making the disbursements and the DNC reported receiving transfers from the SPCs.[33] For example, the Complaint notes that HVF reported transferring $900,000 to the Kansas Democratic Party on October 6, 2016, but the Kansas Democratic Party did not report receiving any funds from HVF on that date.[34] Further, the DNC reported receiving $900,000 from the Kansas Democratic Party on October 6, 2016, but the Kansas Democratic Party did not report making this transfer to the DNC.[35] As another example, the Complaint notes that HVF reported transferring $1,530,000 to the Nevada State Democratic Party on November 3, 2016, but the Nevada State Democratic Party did not report receiving this transfer until about fourteen months later and after the Complaint was filed.[36] And the DNC reported receiving $1,530,000 from the Nevada State

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31 Kenneth Vogel & Isaac Arnsdorf, *Clinton Fundraising Leaves Little for State Parties*, POLITICO, May 2, 2016, https://www.politico.com/story/2016/04/clinton-fundraising-leaves-little-for-state-parties-222670.

32 Compl. ¶¶ 56, 153.

33 *Id.* at 10; *see also id.* ¶ 162.

34 *Id.* ¶ 175.

35 *Id.* ¶ 176.

36 *Id.* ¶ 190.

Democratic Party on November 3, 2016, but the Nevada State Democratic Party failed to disclose making the transfer in its original report.[37] In total, the Complaint alleges forty-nine reporting errors by fourteen of the thirty-eight SPCs involving over $5 million in receipts and over $4.5 million in disbursements.[38] The Complaint also alleges that the errors involved transfers from the SPCs to the DNC that the DNC and the SPCs did not report consistently.[39]

Separately, the Commission's Reports Analysis Division ("RAD") referred of the SPCs to OGC for potential enforcement action, chiefly because they misreported their joint fundraising receipts from HVF and transfers to the DNC.[40] Specifically, RAD referred the following SPCs for failing to report certain transactions on their original reports as described below:[41]

- The Texas Democratic Party failed to disclose an $800,000 receipt from HVF and an $800,000 transfer to the DNC;

- The Democratic Party of South Carolina failed to disclose receipts totaling $1,050,000 from HVF and $1,050,000 in transfers to the DNC;

- The Mississippi Democratic Party failed to disclose a $200,000 receipt from HVF and a $200,000 transfer to the DNC;

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[37] *Id.* ¶ 191.

[38] *Id.* ¶¶ 161-93.

[39] *See, e.g., id.* ¶¶ 57c-d, 60, 62, 65, 173-74.

[40] *See* RR 17L-36 (Tex. Democratic Party); RR 17L-46 (Democratic Party of S.C.); RR 18L-19 (Mass. Democratic State Comm.); RR 17L-48R (Miss. Democratic Party); (RR 18L-25 (Nev. State Democratic Party); AR 18-01R (Utah State Democratic Comm.). In addition to these referrals, we transferred RR 17L-10 (Democratic Party of N.M.) to the Alternative Dispute Resolution Office ("ADRO") on July 18, 2017, which involved similar misreporting arising from HVF activity. The parties later settled. *See* Negotiated Settlement, ADR 832/RR 17L-10 (Democratic Party of N.M.) (Dec. 13, 2017).

[41] *See* Attachment 1 to this Report (summarizing the referrals and the SPCs' responses).

- The Massachusetts Democratic State Committee failed to disclose the receipt of $253,386.53 from HVF;

- The Nevada State Democratic Party failed to disclose $1,653,400 in receipts from HVF and $1,653,400 in transfers to the DNC;

- The Utah State Democratic Committee failed to disclose a $150,000 receipt from HVF and a $150,000 transfer to the DNC.

In addition to the above allegations, the Complaint further alleges that the DNC used the funds transferred from the SPCs to make coordinated expenditures with HFA in excess of the $22,816,531.38 in coordinated party expenditures reported by the DNC.[45] According to the Complaint, the DNC "gave direction, oversight, and control of its funds, including funds that

[45] *See* Compl. ¶¶ 102-09.

originated with HVF, to HFA and Clinton."[46] Public statements by then-DNC Chair Donna Brazile indicate that Clinton and HFA exercised control over certain parts of the DNC's operations.[47] According to Brazile, the MOU between HFA and the DNC "specified that in exchange for raising money and investing in the DNC, Hillary would control the party's finances, strategy, and all the money raised."[48] The MOU also reportedly gave HFA significant influence over DNC staffing decisions and party communications.[49]

Respondents deny all of the allegations regarding earmarking, contributions in the name of another, and excessive contributions. Rather, Respondents contend that they engaged in a series of independent, lawful transactions, and that "separate, legally permissible transactions" cannot be combined into an independent violation.[50] They further argue that the reporting violations were inadvertent and are better handled through RAD or the Alternative Dispute Resolution Office.

III. LEGAL ANALYSIS

A. There is Reason to Believe Respondents Violated the Joint Fundraising Regulations and the Act's Contribution Limits and Reporting Requirements

The Act and Commission regulations permit candidates and political committees to engage in joint fundraising activities by establishing a separate political committee to act as their

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[46] *See id.* ¶¶ 102, 110-14.

[47] *See* Brazile Article, *supra* note 5.

[48] *Id.*; *see also* Scott Detrow, *Clinton Campaign Had Additional Signed Agreement with DNC in 2015*, NPR, Nov. 3, 2017, https://www npr.org/2017/11/03/561976645/clinton-campaign-had-additional-signed-agreement-with-dnc-in-2015 (reproducing the MOU).

[49] *See* Brazile Article, *supra* note 5.

[50] HVF Resp. at 5; *see* SPCs Resp. at 5.

joint fundraising representative.[51] Participants must enter into a written agreement that identifies this representative and states the formula for the allocation of fundraising proceeds and expenses.[52] Commission regulations also require that the representative establish a separate depository account to be used solely for the receipt and disbursement of joint fundraising proceeds and deposit those proceeds in this account within ten days of receipt.[53]

All solicitations in connection with a joint fundraising effort must include a notice that identifies all participating committees, describes the allocation formula, informs contributors that they may choose to designate their contributions for a particular committee, and states that the allocation formula may change if a contributor makes a contribution that is excessive relative to any participant.[54] A contributor may make a contribution to the joint fundraising committee that "represents the total amount that the contributor could contribute to all of the participants under the applicable [contribution] limits."[55] For the 2015-2016 election cycle, individuals were permitted to contribute no more than $2,700 per election to a federal candidate committee, $10,000 per calendar year to a state political party committee, and $33,400 per calendar year to a

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[51] *See* 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

[52] 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

[53] *Id.* § 102.17(c)(3)(i)-(ii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i).

[54] *Id.* § 102.17(c)(2)(i).

[55] *Id.* § 102.17(c)(5).

national political party committee.[56] In total, an individual could contribute up to $772,200 to HVF over the election cycle, which represents the combined limits for each participant.[57]

Candidates and political committees are prohibited from knowingly accepting contributions in excess of these limits.[58] In the context of joint fundraising, the representative is responsible for screening all contributions to ensure they comply with the Act's source prohibitions and amount limitations, collecting contributions, paying fundraising costs, and distributing net proceeds to each participant.[59] If application of the joint fundraising committee's allocation formula results in a violation of the contribution limits, the joint fundraising committee may reallocate the excess funds to the other participant committees.[60]

In *McCutcheon v. FEC*, a challenge to the aggregate contribution limits for individuals, several dissenting Justices expressed concern that, in the absence of the aggregate limits, donors, candidates, and political parties could use the joint fundraising mechanism and intraparty transfer rules to circumvent federal contribution limits.[61] Although the Court found these arguments insufficient to justify upholding the aggregate limits, the plurality stated "[a] joint fundraising committee is simply a mechanism for individual committees to raise funds collectively, not to

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[56] *See* 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b)(1), (c)(1), (c)(5); Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-5,752 (Feb. 3, 2015).

[57] $5,400 to HFA for the primary and general elections; $66,800 to the DNC over the two years; $320,000 for the 32 SPCs in 2015 and $380,000 for the 38 SPCs in 2016.

[58] 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

[59] 11 C.F.R. § 102.17(b)(1), (c)(4)(i).

[60] *Id.* § 102.17(c)(6)(i). However, designated contributions may not be reallocated without the written permission of the contributor. *Id.* § 102.17(c)(6)(ii).

[61] *See* 134 S. Ct. 1434, 1465-1479 (2014) (Breyer, J., dissenting, joined by Ginsburg, J., Sotomayor, J., and Kagan, J.); *id.* at 1442 (finding the "aggregate" limit on contributors at 52 U.S.C. § 30116(a)(3) unconstitutional, while leaving in place the "base" limits on contributors at 52 U.S.C. § 30116(a)(1)).

circumvent base limits or earmarking rules."[62] The Court has recognized that the government has an interest in preventing circumvention of the contribution limits because "circumvention is a valid theory of corruption."[63]

A joint fundraising representative must report all funds received in the reporting period they are received and all disbursements in the reporting period they are made.[64] Similarly, the date a contribution is received by the joint fundraising representative is the date that the participating political committee must report as the date the contribution was received, even if it is disbursed by the joint fundraising representative at a later date and even though the participating political committee is only required to report the proceeds once the funds have been received from the fundraising representative.[65] After the joint fundraising representative distributes the net proceeds, the participating committee must report its share received as a transfer-in from the fundraising representative and also file a memo entry on Schedule A itemizing its share of gross receipts as contributions from original contributors as required by 11 C.F.R. § 104.3(a).[66]

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[62] *Id.* at 1455 (citing 11 C.F.R. § 102.17(c)(5)).

[63] *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001); *see id.* n.18 (noting that the evidence supported "the long-recognized rationale of combating circumvention of contribution limits designed to combat the corrupting influence of large contributions from individuals to candidates").

[64] 11 C.F.R. § 102.17(c)(8)(i)-(ii). The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104. *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the name of each person who makes a contribution over $200, the total amount of receipts and disbursements, including transfers from affiliated committees and between political party committees, and appropriate itemizations, where required. *See* 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b).

[65] *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(A).

[66] *See id.* § 102.17(c)(8)(i)(B).

1. Respondents Used HVF to Direct Excessive Contributions to the DNC

The facts of this case appear to present the scenario that troubled numerous Justices in *McCutcheon*: a pre-arranged plan to circumvent the contribution limits via joint fundraising. Rather than participating in HVF to raise funds for themselves, the available information supports the conclusion that the SPCs primarily participated as a mechanism to pass additional contributions to the DNC, including contributions that exceeded the DNC's individual contributor limits.

First, over the course of the 2016 election cycle, the SPCs collectively transferred nearly 80% of their HVF receipts to the DNC,[67] and some transferred as much as 99% of their HVF receipts to the DNC.[68] Included in the transfers from the SPCs was more than $80 million from over 1,500 individual contributors who had already reached their limits for direct contributions to the DNC.[69]

Second, a significant amount of the SPCs' transfers to the DNC occurred nearly contemporaneously with HVF's distribution of the funds to the SPCs.[70] Disclosure reports reveal over 400 instances where HVF disbursed funds to the SPCs, and within a day or two the

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67 The SPCs reported HVF receipts totaling $104,220,860.21 and disbursements to the DNC totaling $84,517,558.86 ($84,517,558.86 ÷ $104,220,860.21 × 100 = 81.1%). HVF reported transferring a total of $112,361,370.81 to the SPCs, and the DNC reported receiving $88,234,400 from the SPCs ($88,234,400 ÷ $112,361,370.81 × 100 = 78.6%).

68 *See supra* note 20. For example, the Rhode Island Democratic State Committee reported total receipts of $3,486,712.56 and reported transfers from HVF in the amount of $3,024,100, making HVF funds nearly 91% of its federal receipts for the 2016 election cycle. The Rhode Island Democratic State Committee reported transferring $3,002,980 to the DNC, which is the equivalent of 99.3% of its HVF allocated funds.

69 *See supra* note 67; Compl. ¶¶ 50-52.

70 *See* Compl., Ex. 1.

SPCs transferred the same amounts to the DNC.[71] That SPCs across the country would independently decide each time they received a transfer from HVF to transfer their HVF proceeds to the DNC within a day or two strains credibility. Rather, the immediate transfers indicate that the SPCs served as vehicles to route excessive contributions to the DNC.[72]

Third, the SPCs began passing significant amounts of their allocated share of HVF contributions to the DNC under the purported authority of the intraparty transfer rules as soon as they began receiving disbursements from HVF. For instance, HVF first disbursed funds to the SPCs on October 1, 2015, transferring $228,000 to twelve of them.[73] Each received a transfer in the amount of $24,000 on October 1 or 2,[74] and within a day of receipt, each of them transferred

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71 *See id.*

72 It appears that five SPCs from the battleground states retained the equivalent of more than half of their HVF funds, a pattern that appears to be an exception to the more prevalent pattern of immediate transfers. *See supra* note 21.

73 *See* HVF's Amended 2015 Year-End Report of Receipts & Disbursements at 1,373, 1376-77, 1,380, 1,383, 1,386, 1,390, 1,392-95 (Aug. 30, 2017) (disclosing $24,000 transfers on October 1, 2015 to (1) Miss. Democratic Party, (2) Mo. Democratic State Comm., (3) N.H. Democratic Party, (4) Pa. Democratic Party, (5) R.I. Democratic State Comm., (6) Democratic Exec. Comm. of Fla., (7) Me. Democratic Party, (8) Democratic Party of Va., (9) Mass. Democratic State Comm., (10) WV State Democratic Exec. Comm., (11) WY Democratic State Cent. Comm., and (12) Mich. Democratic State Cent. Comm.).

74 *See* Miss. Democratic Party's Amended 2015 November Monthly Report of Receipts & Disbursements at 12, 16 (Feb. 16, 2018); Mo. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 13, 21 (Nov. 19, 2015); N.H. Democratic Party's Amended 2015 Year-End Report of Receipts & Disbursements at 112, 281 (Mar. 17, 2016); Pa. Democratic Party's 2015 November Monthly Report of Receipts & Disbursements at 12, 25 (Nov. 20, 2015); R.I. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 12, 15 (Nov. 19, 2015); Democratic Exec. Comm. of Fla.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 104, 121 (Oct. 22, 2017); Me. Democratic Party's 2015 November Monthly Report of Receipts & Disbursements at 18, 25 (Nov. 20, 2015); Democratic Party of Va.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 14, 18 (Feb. 12, 2016); Mass. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 93, 100 (Nov. 20, 2015); WV State Democratic Exec. Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 27, 43 (Nov. 20, 2015); WY Democratic State Cent. Comm.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 24, 28 (May 9, 2016); Mich. Democratic State Cent. Comm.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 42, 61 (May 12, 2016).

the same amount to the DNC for a total of $228,000.[75] This suggests that there was a predetermined plan for the SPCs to transfer the funds right to the DNC even before they started receiving them.

Fourth, the reporting of some of the transactions connected to the joint fundraising activity supports the conclusion that the funds ultimately given to the DNC were never intended to stay in the accounts of the SPCs. At least fourteen of the SPCs failed to report either the receipt of their allocated shares from HVF or the corresponding transfers out to the DNC, even though both HVF and the DNC reported their side of the same transactions.[76] One SPC argued that its failure to report multiple transactions totaling over a million dollars was an "oversight" even though the transactions were among the largest flowing through its accounts.[77] And there is information in the record to indicate that some of the SPCs may not have reported the receipt in and transfers out because they were not even aware of them. The *Politico* article reported that some SPC officials "complained that they weren't notified of the transfers into and out of their accounts."[78]

Further, four of the SPCs reported these transactions in a way that suggests that they understood that these funds were always intended for the DNC, not them. These SPCs described

[75] *See supra* note 74; DNC's Amended 2015 November Monthly Report of Receipts & Disbursements at 5,583-87 (Jan. 11, 2016).

[76] *See* Compl. ¶¶ 161-193; Attachment 1 (summarizing the referrals and the SPCs' responses).

[77] *See* Resp. at 2, RR 17L-46 (Democratic Party of S.C.); RR 17L-46 at 1 (Democratic Party of S.C.).

[78] Kenneth Vogel & Isaac Arnsdorf, *Clinton Fundraising Leaves Little for State Parties*, POLITICO, May 2, 2016, https://www.politico.com/story/2016/04/clinton-fundraising-leaves-little-for-state-parties-222670.

the purpose of their transfers to the DNC as "Hillary Victory Fund,"[79] "Transfer from HVF,"[80] "Hillary Victory Fund Transfer Out,"[81] and "Final Transfer to DNC for Hillary Victory Fund."[82]

These facts, taken together, support the conclusion that the SPCs largely participated in HVF as a means to pass their contributions through to the DNC. As noted above, included in the transfers from the SPCs to the DNC was more than $80 million from more than 1,500 individual contributors who had already reached their limits for direct contributions to the DNC. Thus, the DNC accepted excessive contributions from these individuals as a result of the transfers.

Respondents maintain that they engaged in a series of independent, lawful transactions, and that "separate, legally permissible transactions" cannot be combined into a violation.[83] The Commission, however, is not required to evaluate each transaction separately and in a vacuum, and one court has expressly cautioned against doing so when interpreting the Act.[84] While the existence of intraparty transfer rules "reflects a judgment that party committee units are to be

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79 *See, e.g.*, Idaho State Democratic Party's Amended 2016 August Monthly Report of Receipts & Disbursements at 233 (Apr. 9, 2017).

80 *See, e.g.*, Democratic State Cent. Comm. of LA's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 702 (May 13, 2017).

81 *See, e.g.*, Mass. Democratic State Comm.'s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 405 (Dec. 10, 2017).

82 *See* Democratic Party of N.M.'s Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 489 (Mar. 20, 2017).

83 HVF Resp. at 5; *see* SPCs Resp. at 5.

84 *See FEC v. Furgatch*, 807 F.2d 857, 862 (9th Cir. 1987) (cautioning that courts should be careful to ensure that the Act's "purposes are fully carried out, that they are not cleverly circumvented, or thwarted by a rigid construction of the terms of the Act"); *cf. Colo. Republican Fed. Campaign Comm.*, 533 U.S. at 462, 464 n.28 (explaining that circumvention is a "systemic" problem, that is "very hard to trace").

relatively free to fund each other's efforts,"[85] such efforts to use these rules to evade the limits under the Act are impermissible.[86] To apply the intraparty transfer provisions as urged by Respondents would effectively nullify the individual contribution limitations for a national party committee. The Commission should construe statutes and regulations to harmonize and give effect to all of their provisions.[87]

The SPCs also specifically note that they received their allocations from HVF, controlled how such funds were spent, and were permitted to make unlimited transfers of their federal funds to the DNC.[88] The facts, however, indicate that the SPCs' assertion that they controlled how the funds were spent is not credible. Rather, the facts, fairly construed, show that the funds transferred to the SPCs pursuant to the allocation formula were intended at the outset for the DNC. Thus, it appears that the allocation formula was a pretext to redirect funds through the SPCs to the DNC that could not have been directly contributed to the DNC because the funds

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[85] Statement of Reasons, Comm'rs. Aikens, Thomas, Elliott, McDonald, & McGarry at 4, MUR 4215 (Democratic Nat'l Comm.) (Mar. 26, 1998); *see also* 52 U.S.C. § 30116(a)(4); 11 C.F.R. § 110.3(c)(1); Explanation & Justification, Transfer of Funds; Collecting Agents; Joint Fundraising, 48 Fed. Reg. 26,296, 26,298 (June 7, 1983) (explaining that where all of the participants to a joint fundraising activity are party committees of the same political party, they do not have to follow the allocation and notice requirements since the committees could decide, after the fundraising was over, to transfer any amount of funds among themselves).

[86] *See* First Gen. Counsel's Rpt. at 24-34, Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (May 21, 1991) (rejecting the argument that the unlimited transfer provision allowed a national party committee to transfer funds to a state party committee that used the funds to support a federal candidate in excess of the coordinated party expenditure limits); Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (Aug. 2, 1994) (ratifying earlier reason-to-believe findings); *see also* 52 U.S.C. § 30125(a); 11 C.F.R. § 102.6(a)(1)(iv).

[87] *See United States v. Citgo Petroleum Corp.*, 801 F.3d 477, 485 (5th Cir. 2015) ("Regulations, like statutes, must be 'construed so that effect is given to all [their] provisions, so that no part will be inoperative or superfluous, void or insignificant.'" (alteration in original) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009))); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (explaining that, when interpreting statutory language, we must look to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole"); *accord CREW v. FEC*, 316 F. Supp. 3d 349, 394-95 (D.D.C. 2018) (holding that the Commission's regulation does not implement the Act in a manner "so that effect is given to all its provisions" (quoting *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018))).

[88] SPCs Resp. at 2; *see* HVF Resp. at 4, 11-13.

were from individual contributors who had already reached their limits for contributions to the DNC.

In sum, we conclude that Respondents, through their series of joint fundraising transactions, used HVF as a means to circumvent the DNC's contribution limits by using the SPCs to direct additional funds to the DNC in excess of the individual contributor's limits. Accordingly, we recommend that the Commission find reason to believe that HVF, HFA, the DNC, and the thirty-eight SPCs each violated 11 C.F.R. § 102.17(c)(1) and (2), by soliciting and raising funds under a false joint fundraising agreement, and the DNC violated 52 U.S.C. § 30116(f) by accepting excessive contributions.

At this time, we have no information that any donor contributed to HVF with knowledge that their contributions to the SPCs would be routed to the DNC. As such, we make no recommendation at this time that any donor knowingly made an excessive contribution.[89] Similarly, there is no information that Hillary Clinton, in her individual capacity, violated the Act with regard to the joint fundraising, and therefore we recommend that the Commission take no action at this time as to her.

2. Respondents Failed to Properly Report Receipts and Disbursements from the Joint Fundraising Committee

Having concluded that the SPCs were not legitimate participants in the joint fundraising committee because they were largely used as a mere pass through for contributions to the DNC, it necessarily follows that Respondents' reports did not accurately reflect the real disposition of funds raised through HVF.

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[89] *See* First Gen. Counsel's Rpt. at 9-10, MUR 5430 (Buchanan for President) (not making any recommendation as to contributors who made excessive contributions because of the possibility that they relied on the committee's assurances that their contributions were legal).

Because most of the proceeds allocated by HVF to the SPCs were in reality contributions to the DNC, HVF improperly reported the disbursements of these funds as transfers to the SPCs, rather than transfers to the DNC, and the SPCs improperly reported these funds as transfers from HVF and contributions from the individual donors. Similarly, the DNC also improperly reported the funds it received through the SPCs as transfers from the SPCs rather than as transfers from HVF and contributions from the individual donors to HVF.[90] Thus, it appears that HVF, the SPCs, and the DNC violated the reporting obligations of the Act. Accordingly, we recommend that the Commission find reason to believe that HVF, the SPCs, and the DNC violated 52 U.S.C. § 30104(a) and (b), and 11 C.F.R. § 104.3(a) and (b).

Separately, each SPCs that is the subject of the referrals from RAD also violated reporting requirements in connection with reporting specific transfers from HVF and to the DNC. the Texas Democratic Party, the Democratic Party of South Carolina, the Mississippi Democratic Party, , the Nevada State Democratic Party, and the Utah State Democratic Committee failed to initially report receipts from HVF and transfers to the DNC in reports filed with the Commission.[91] The Massachusetts Democratic State Committee failed to initially report a receipt from HVF,

We recommend that the Commission open MURs for each of the RAD referrals, merge them with MUR 7304, and find reason to believe that the Texas Democratic Party, the Mississippi

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90 HVF could not have transferred these funds directly to the DNC, nor could the DNC accept these funds as contributions.

91 *See* Attachment 1 at 1-3, 5-6, 8 (summarizing referrals).

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Democratic Party, , the Nevada State Democratic Party, the Utah State Democratic Committee, the Democratic Party of South Carolina, the Massachusetts Democratic State Committee, violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b).

B. There is Reason to Believe that the DNC Made and HFA Accepted Excessive Contributions in the Form of Coordinated Expenditures

The Complaint alleges that because the DNC allowed HFA to exercise direction, oversight, and control over the DNC's funds, including those funds the DNC received through HVF, all expenditures made by the DNC in connection with the presidential election should count as contributions to, and coordinated expenditures on behalf of, HFA, resulting in the DNC exceeding the federal limits on those contributions.[93]

The Act prohibits any person from making, and any candidate or committee from accepting or receiving, excessive or prohibited contributions.[94] The term "contribution" includes anything of value made for the purpose of influencing a federal election.[95] Further, any expenditure made by a person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate," or the candidate's authorized political committee is considered an in-kind contribution to that candidate.[96] These "coordinated" expenditures are treated as

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[93] *See* Compl. ¶¶ 102-116, 154-60.

[94] 52 U.S.C. § 30116(a), (f).

[95] *Id.* § 30101(8)(A)(i).

[96] *See id.* § 30116(a)(7)(B)(i); 11 C.F.R. §§ 109.20-.21, 109.37.

contributions to the candidate and must be reported as expenditures made by the candidate's authorized committee.[97]

Notwithstanding the general limits on contributions to candidates, the national committee of a political party may make coordinated party expenditures in connection with the presidential general election, subject to the limits established by the Act and Commission regulations.[98] Coordinated party expenditures include disbursements for communications that are coordinated with the candidate.[99] For the 2016 general election, national party committees were limited to making $23,821,100 in coordinated party expenditures with presidential candidates,[100] and the DNC made coordinated expenditures of $23,371,432,[101] leaving a balance of $449,668.

While the Complaint does not identify any specific communications that the DNC coordinated with HFA or specific expenditures not already reported that should count toward the DNC's party coordinated expenditures, the MOU and statements by then-DNC Chair Donna Brazile provide a reasonable basis to conclude that the DNC may have coordinated with HFA to make additional expenditures. The MOU reportedly provided that HFA would have joint authority over DNC decisions involving "staffing, budget, expenditures, and general election

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97 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(b).

98 52 U.S.C. § 30116(d); 11 C.F.R. §§ 109.30, 109.32.

99 *See* 11 C.F.R. § 109.30; 11 C.F.R. § 109.37 (defining a party coordinated communication as a communication that (a) is 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)).

100 *See* Price Index Adjustments for Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 81 Fed. Reg. 7,101, 7,103 (Feb. 10, 2016).

101 DNC's 2017 April Monthly Report of Receipts & Disbursements at 3034 (Apr. 20, 2017).

related communications, data, technology, analytics, and research."[102] Brazile also stated that she "couldn't write a press release without passing it by" HFA.[103] Taken together, the MOU and Brazile's statements indicate that the DNC was acting "in cooperation, consultation, or concert, with, or at the request or suggestion of" HFA by allowing HFA authority over its expenditures for communications, staffing, and other operational expenses.

While the amount of expenditures that the DNC coordinated with HFA is not known at this time, the extent of HFA's role supports a reasonable inference that the amount likely exceeds $449,668. Accordingly, we recommend that the Commission find reason to believe that the DNC made excessive in-kind contributions to HFA in violation of 52 U.S.C. § 30116(a) and 11 C.F.R. §§ 109.20(a) and 109.32, and HFA accepted excessive in-kind contributions from the DNC in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 109.20(a) and 109.32.

We do not have enough information at this time to make a recommendation as to the Complaint's broader allegation that HFA effectively controlled the DNC, thus resulting in excessive contributions to HFA. An investigation into the expenditures the DNC coordinated with HFA may yield additional information as to the relationship between HFA and the DNC necessary to allow us to determine the extent of HFA's purported control over the DNC's operations and the joint fundraising proceeds.

C. The Commission Should Take No Action as to the Earmarking and Contribution in The Name of Another Allegations

Finally, the Complaint alleges that the transfers from the HVF to the DNC via the SPCs show that HVF donors directly or indirectly earmarked their contributions to the DNC, and the

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[102] Scott Detrow, *Clinton Campaign Had Additional Signed Agreement with DNC in 2015*, NPR, Nov. 3, 2017, https://www.npr.org/2017/11/03/561976645/clinton-campaign-had-additional-signed-agreement-with-dnc-in-2015.

[103] Brazile Article, *supra* note 5.

DNC knowingly accepted contributions in the name of another by reporting that it received contributions from the SPCs rather than the actual source of the funds, the individual contributors.[104] The Respondents, however, contend that both of these claims fail because there is no evidence that any HVF donor earmarked his or her contribution to HVF for the DNC.[105]

The Act and Commission regulations prohibit persons from using intermediaries to circumvent the contribution limits.[106] This prohibition includes making a contribution in the name of another, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.[107] For purposes of the Act, "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate."[108] Commission regulations define the term "earmarked" as "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee."[109] The intermediary must report the original source and the intended recipient of an earmarked contribution to both

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[104] *See* Compl. ¶¶ 123-38.

[105] *See* HVF Resp. at 5-11; SPCs Resp. at 2-4.

[106] *See* 52 U.S.C. §§ 30116(a)(8), 30122; 11 C.F.R. §§ 110.4, 110.6.

[107] 52 U.S.C. § 30122.

[108] *Id.* § 30116(a)(8).

[109] 11 C.F.R. § 110.6(b)(1).

the Commission and the intended recipient.[110] Commission regulations also, however, clarify that a fundraising representative conducting joint fundraising activities pursuant to 11 C.F.R. § 102.17 is not a conduit or intermediary.[111]

In the past, the Commission has found that contributions were earmarked where there was "clear documented evidence" of a designation or instruction by the donor to the recipient committee.[112] The Commission has rejected earmarking allegations where the complaints provided no information beyond alleged similarities in contribution amounts and timing, and where credible information suggested that the similar contributions were not earmarked.[113] More recently, however, a plurality of the Supreme Court observed in *McCutcheon* that the Commission's earmarking regulations "define earmarking broadly"[114] and apply to "implicit agreements" as well as explicit ones.[115] The plurality noted that if many state parties "would

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[110] 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c)(1).

[111] 11 C.F.R. § 110.6(a)(2)(i)(B).

[112] Factual & Legal Analysis at 6, MUR 5732 (Matt Brown for U.S. Senate, *et al.*) (citing MURs 4831/5274 (Nixon Campaign Fund, *et al.*) (finding earmarking where there was documentation in the form of checks with memo lines that stated "Nixon" among other written designations)).

[113] *See* Factual & Legal Analysis at 6-7, MUR 6985 (Lee Zeldin, *et al.*) (finding no reason to believe where alleged reciprocal contributions were not closely linked in timing and amount, respondents denied the allegations, and there was no information indicating that any of the contributions were earmarked or encumbered by "express or implied instructions to the recipient committees"); Factual & Legal Analysis at 5-7, 5 n.4, MUR 5732 (Matt Brown for U.S. Senate, *et al.*); First Gen. Counsel's Rpt. at 7-8, MUR 7246 (Buddy Carter for Congress, *et al.*); *see also* MUR 5520 (Billy Tauzin Congressional Committee, *et al.*); MUR 5445 (Geoffry Davis for Congress); MUR 5125 (Paul Perry for Congress, *et al.*).

[114] *McCutcheon*, 134 S. Ct. at 1447.

[115] *Id.* at 1459 ("Many of the [circumvention] scenarios that the Government and the dissent hypothesize involve at least implicit agreements to circumvent the base limits—agreements that are already prohibited by the earmarking rules.").

willingly participate in a scheme to funnel money to another State's candidates," an agreement to act as intermediaries for the contributors would trigger the earmarking provision.[116]

Respondents point to an earmarking disclaimer that states contributions "will not be earmarked for any particular candidate" in the sample HVF contribution form as support for their argument that donors could not earmark their contributions to a particular HVF participant simply by contributing.[117] A disclaimer alone, however, does not immunize HVF donors and participants from an earmarking violation. The Commission has previously determined that a "written disclaimer of earmarking cannot negate the presence of circumstances which constitute earmarking or a scheme to make contributions in the name of another."[118]

As discussed below, we lack enough information at this time to adequately assess these claims.[119] The record is void of information necessary to determine whether HVF contributors earmarked their contributions to the DNC for the benefit of Hillary Clinton or HFA. The Complaint makes general allegations without identifying any particular contributions to HVF that were purportedly earmarked or any explicit indicia of earmarking regarding these contributions.[120] Despite our conclusion that HVF was used to funnel excessive contributions to the DNC through the SPCs, we have no information that the donors knew about this plan.

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116 *Id.* at 1455 (citing the earmarking regulation codified at 11 C.F.R. § 110.6(b)(1)).

117 *See* HVF Resp. at 11, Ex. B (HVF Contribution Form).

118 Factual & Legal Analysis at 36 n.18, MUR 4633 (Triad Mgmt. Servs., *et al.*).

119 Respondents also argue that donors lacked "actual knowledge" of how the SPCs would use their contributions and therefore cannot be in violation of 11 C.F.R. § 110.1(h). *See* HVF Resp. at 8, 11; SPCs Resp. at 3-4. We agree that there is no information in the Complaint that indicates that HVF donors had actual knowledge of how the SPCs would use their contributions.

120 *See* Compl. at 8 & ¶¶ 116, 123-30. Even under the Supreme Court's broader interpretation of the earmarking regulations, there is no information that HVF donors "telegraphed" their intent to support a particular candidate. *See McCutcheon*, 134 S. Ct. at 1455.

However, evidence of donor knowledge may be discovered in the course of our proposed investigation of the Respondents' joint fundraising activities. Accordingly, we recommend that the Commission take no action at this time on the alleged violations of 52 U.S.C. § 30116(a)(8) and 52 U.S.C. § 30122.

IV. PROPOSED INVESTIGATION

The investigation would seek information regarding the formation and operation of the joint fundraising committee as well as the extent of coordination between the DNC and HFA. We plan to request information about the relationship between HFA, DNC, and the SPCs in connection with the joint fundraising, the movement of funds between HVF, the SPCs, and the DNC, and whether the SPCs independently consented to or authorized the movement of such funds. This information is material in determining each participant's knowledge of and agreement to efforts to circumvent the contribution limits, allowing us to evaluate the extent of any violations and, if so, the liability of each participant. We also plan to request information regarding the extent to which the DNC coordinated expenditures with HFA. Specifically, we will seek information regarding the implementation of the MOU between the DNC and HFA, including information on HFA's role in approving communications, staffing, operations, and expenditures of the DNC. We recommend that the Commission authorize the use of compulsory process, if necessary.

V. RECOMMENDATIONS

1. Open a MUR for RR 17L-36 and merge it with MUR 7304;
2. Open a MUR for RR 17L-46 and merge it with MUR 7304;
3. Open a MUR for RR 17L-48R and merge it with MUR 7304;
4. Open a MUR for RR 18L-19 and merge it with MUR 7304;
5.
6. Open a MUR for RR 18L-25 and merge it with MUR 7304;
7.
8. Open a MUR for AR 18-01R and merge it with MUR 7304;
9.
10. Find reason to believe that Hillary Victory Fund and Elizabeth Jones in her official capacity as treasurer, Hillary for America and Elizabeth Jones in her official capacity as treasurer, DNC Services Corporation/DNC and William Q. Derrough in his official capacity as treasurer, and the thirty-eight SPCs violated 11 C.F.R. § 102.17(c)(1) and (2);
11. Find reason to believe that DNC Services Corporation/DNC and William Q. Derrough in his official capacity as treasurer violated 52 U.S.C. § 30116(f);
12. Find reason to believe that Hillary Victory Fund and Elizabeth Jones in her official capacity as treasurer, DNC Services Corporation/DNC and William Q. Derrough in his official capacity as treasurer, and the thirty-eight SPCs violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b);
13. Find reason to believe the Texas Democratic Party, the Mississippi Democratic Party, , the Nevada State Democratic Party, the Utah State Democratic Committee, the Democratic Party of South Carolina, the Massachusetts Democratic State Committee, violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b);
14. Find reason to believe that DNC Services Corporation/DNC and William Q. Derrough in his official capacity as treasurer violated 52 U.S.C. § 30116(a) and 11 C.F.R. §§ 109.20(a) and 109.32; and
15. Find reason to believe that Hillary for America and Elizabeth Jones in her official violated 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 109.20(a) and 109.32.

16. Take no action at this time with regard to the alleged violations of 52 U.S.C. §§ 30116(a)(8) and 30122 and 11 C.F.R. §§ 110.4 and 110.6 against all Respondents.

17. Approve the attached Factual and Legal Analyses; and

18. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

9/28/18
Date

Kathleen M. Guith

Kathleen M. Guith
Associate General Counsel for Enforcement

Stephen Gura

Stephen Gura
Deputy Associate General Counsel for Enforcement

Lynn Tran

Lynn Y. Tran
Assistant General Counsel

Jonathan A. Peterson

Jonathan Peterson
Attorney

Attachments:

1. Summary of Related Referrals
2. Factual and Legal Analysis – HVF, HFA, DNC, and Clinton
3.
4.
5. Factual and Legal Analysis – Tex. Democratic Party (also template for SPCs from S.C., Miss., Mass., Utah)
6.
7.

Matter	State Party Respondent	Summary of Referral	Committee Response	Notes
RR 18L-25	Nevada State Democratic Party	RAD referred the Nevada State Democratic Party for its failure to disclose $1,656,364.14 in additional receipts and $1,656,750.83 in additional disbursements on its original 2016 30-Day Post-General Report. Specifically, the Committee amended its 2016 30-Day Post-General Report to disclose transfers totaling $1,653,400 from HVF and transfers totaling the same amount to the DNC.[131]	The Response in MUR 7304 disputes the allegation in the Complaint that the Committee failed to report transfers received from HVF and transfers made to the DNC. Specifically, the Committee notes that on February 5, 2018, it filed an amended 2016 30-Day Post-General Report, which disclosed all incoming transfers from HVF, and all outgoing transfers to the DNC.[132] In response to the referral, the Committee contends that the contributions comprising the initial joint fundraising transfers were on the Committee's reports as memo entries, which identified the donors who had given to the Committee. Further, the Committee notes that the transfers were disclosed on reports filed by the Commission and the DNC. Lastly, it contends that it acted in good faith in correcting the omission as soon as it became aware of it.[133]	The Complaint in MUR 7304 includes these transfers as potential reporting violations.

131 RR 18L-25 (Nev. State Democratic Party).

132 *See* HVF Resp. at 16-17.

133 Resp. at 1-2, RR 18L-25 (Nev. State Democratic Party).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Hillary Victory Fund and MURs 7304, 7331
Elizabeth Jones in her official capacity as treasurer
Hillary for America and
Elizabeth Jones in her official capacity as treasurer
DNC Services Corporation/Democratic National Committee and
William Q. Derrough in his official capacity as treasurer

I. INTRODUCTION

These matters were generated by Complaints filed with the Federal Election Commission (the "Commission"). *See* 52 U.S.C. § 30109(a)(1). They relate to joint fundraising activity conducted through the Hillary Victory Fund ("HVF"), which was comprised of Hillary Clinton's principal campaign committee, Hillary for America ("HFA"), the DNC Services Corporation/Democratic National Committee ("DNC"), and thirty-eight state party committees ("the SPCs").[1] The main allegation of the Complaints is that HVF was a "sham" through which millions of dollars in excessive contributions were funneled through the SPCs to the DNC in violation of earmarking and contributions in the name of another provisions, and the DNC then contributed those funds to HFA in excess of federal limits.[2] Respondents argue that every individual transaction arising out of their joint fundraising activity was legal, thus, there can be no violation.[3]

Accordingly, based on the available information, including the pattern of transfers of funds raised by HVF, the Commission finds reason to believe that:

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[1] Compl. at 7-10, MUR 7304 (amended July 31, 2018); Compl. at 1-2, MUR 7331 (Feb. 26, 2018).

[2] *See* Compl. at 7-10, 74, ¶ 137, MUR 7304; Compl. at 1-2, MUR 7331. Unless otherwise designated, all references and citations to the "Complaint" refer to the Complaint in MUR 7304.

[3] *See* HVF, *et al.* Resp. at 2-5, MUR 7304 (Feb. 20, 2018); *see also* MUR 7331 Resp. at 1-2 (June 1, 2018).

1. HVF, HFA, and the DNC violated the joint fundraising regulations at 11 C.F.R. § 102.17(c)(1) and (2);

2. The DNC accepted excessive contributions in violation of 52 U.S.C. § 30116(f);

3. HVF and the DNC violated the reporting requirements at 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b);

4. The DNC made excessive in-kind contributions to HFA in violation of 52 U.S.C. § 30116(a) and 11 C.F.R. §§ 109.20(a) and 109.32; and

5. HFA accepted excessive in-kind contributions from the DNC in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 109.20(a) and 109.32.

II. FACTUAL BACKGROUND

A. The Creation of HVF

HFA was the principal campaign committee for Hillary Clinton, the Democratic Party nominee for President for the 2016 general election. In August 2015, HFA and the DNC entered into a Memorandum of Understanding ("MOU") regarding the creation and operation of a joint fundraising committee, which ultimately became HVF.[4] On September 10, 2015, HFA and the DNC entered a written joint fundraising agreement forming HVF to act as their fundraising representative.[5] Within a week of HVF's registration, thirty-two SPCs had signed the joint

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[4] *See* HVF Resp. at 3 (asserting that the MOU "provided that, in exchange for raising funds for the party through HVF, the DNC would cooperate with HFA on its preparation for the general election, such as on data, technology, research, and communications, which would benefit the party and its candidates as a whole"); *see also* Compl. ¶ 113 (quoting Donna Brazile, *Inside Hillary Clinton's Secret Takeover of the DNC*, POLITICO MAGAZINE, Nov. 2, 2017, https://www.politico.com/magazine/story/2017/11/02/clinton-brazile-hacks-2016-215774 ("Brazile Article") (referring to the MOU as a fundraising agreement)).

[5] *See* HVF Resp. at 3; HVF's Statement of Organization (Sept. 10, 2015) (listing two participating committees: HFA and DNC).

fundraising agreement, and ultimately participation grew to thirty-eight SPCs over the course of the election cycle.[6]

Under the agreement, contributions to HVF were allocated as follows: the first $2,700 from an individual or $5,000 from a multicandidate committee ("PAC") would be designated for HFA and the primary election. The second $2,700 (individual) or $5,000 (PAC) would be designated for HFA and the general election. If the contribution was made after the primary, up to $2,700 (individual) or $5,000 (PAC) would be designated for the general election.[7] The next $33,400 (individual) or $15,000 (PAC) would be allocated to the DNC. Any additional amounts received from an individual or PAC would be split equally among the participating SPCs up to $10,000 (individual) or $5,000 (PAC). The written agreement and contribution form state that this allocation formula could change if a contributor designated his or her contribution for a particular participant.[8] In addition, a contribution form supplied by HVF states that participating committees would determine how such contributions would be used in connection with a federal election, and the contributions "[would] not be earmarked for any particular candidate."[9]

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[6] Not all thirty-eight SPCs participated in the joint fundraising concurrently at all times. The Respondents assert that the joint fundraising agreement was amended whenever an SPC joined or left the fundraising arrangement, though the HVF Response attaches only the initial agreement, HVF Resp. at 3 & n.6, Ex. A (Joint Fundraising Agreement), and the SPC Response attaches no agreement. HVF amended its Statement of Organization three times to add and remove participating entities. *See* HVF's Amended Statement of Organization (Sept. 16, 2015) (adding 32 of the SPCs in addition to a party committee from Puerto Rico which is not a Respondent); HVF's Amended Statement of Organization (Nov. 2, 2015) (removing the Puerto Rico committee); HVF's Amended Statement of Organization (July 1, 2016) (adding the remaining six SPCs from Delaware, Iowa, Kansas, New Jersey, New Mexico, and South Dakota).

[7] *See* HVF Resp., Ex. B (HVF Contribution Form). The allocation formula in the original agreement between only HFA and the DNC did not account for general election contributions. *See* HVF Resp., Ex. A (Joint Fundraising Agreement) (allocation formula attached as an exhibit to the agreement). Respondents did not provide the amended joint fundraising agreements that included the SPCs, however, they did provide a contribution form that lists all thirty-eight of the SPCs as participating committees and describes the allocation formula.

[8] *See* HVF Resp., Ex. A (Joint Fundraising Agreement); HVF Resp., Ex. B (HVF Contribution Form).

[9] HVF Resp., Ex. B (HVF Contribution Form).

By definition, any individual contribution over $38,800 before the primaries and $36,100 for the general election would exceed the combined contribution limits for HFA and the DNC and result in some money being allocated to the SPCs. Around 1,500 individuals contributed over $38,800 to HVF.[10] In total, HVF reported transferring over $112 million to the SPCs from donors who had reached their limits for contributions to HFA and the DNC.[11] The crux of the Complaint relates to that $112 million.

B. The Complaint

The Complaint in MUR 7304[12] alleges that "virtually every single disbursement from HVF to a state party resulted in an immediate transfer of the same amount of funds from the state party to the DNC."[13] According to the Complaint, over $80 million dollars in HVF transfers were "funneled" through the SPCs to the DNC in this manner.[14] The Complaint identifies 427 transactions between October 1, 2015, and November 8, 2016, that followed a pattern of near-simultaneous transfers in and out of the SPCs.[15]

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[10] For simplicity, the calculations in this report rely on the higher $38,800 figure.

[11] *See* HVF's Amended 2016 Year-End Report of Receipts & Disbursements (Sept. 6, 2017); HVF's 2016 Amended 30-Day Post-General Election Report of Receipts & Disbursements (Aug. 30, 2017); HVF's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements (Aug. 31, 2017); HVF's Amended 2016 October Quarterly Report of Receipts & Disbursements (Aug. 31, 2017); HVF's Amended 2016 July Quarterly Report of Receipts & Disbursements (Nov. 15, 2017); HVF's Amended 2016 April Quarterly Report of Receipts & Disbursements (Oct. 3, 2016); HVF's Amended 2015 Year-End Report of Receipts & Disbursements (Aug. 30, 2017); HVF's 2015 October Quarterly Report of Receipts & Disbursements (Oct. 10, 2015).

[12] The Complaint in MUR 7331 raises the same legal theory as the Complaint in MUR 7304, namely that HVF funds were routed through the SPCS to the DNC and to HFA. For purposes of this report, we refer solely to the Complaint in MUR 7304 because it includes detailed allegations regarding the Respondents' joint fundraising activity, and the MUR 7331 Complaint contains no information not already presented in MUR 7304. *See supra* note 2.

[13] Compl. ¶ 52.

[14] *Id.* ¶¶ 50-52.

[15] *Id.*, Ex. 1.

As an example, the Complaint states that on November 2, 2015, HVF reported transferring a total of $505,000 to seventeen of the SPCs and that those SPCs reported receiving transfers "in the identical amounts of funds from HVF on the very same day."[16] Each of those SPCs reported "contributing the same amount of money they received from HVF to the DNC on the very same day (or occasionally the next day)."[17] The DNC generally reported receiving the funds on the same day.[18]

Further, a review of the SPCs' disclosure reports shows that fourteen of the SPCs[19] transferred the equivalent of 99% or more of their HVF allocations to the DNC.[20] And four of the SPCs described the purpose of the transfers to the DNC on their disclosure reports in a way that suggests they understood they should immediately transfer their HVF-allocated funds directly to the DNC:

- "Hillary Victory Fund,"[21]

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16 *Id.* ¶ 57a-b.

17 *Id.* ¶ 57c.

18 *Id.* ¶ 57d.

19 These SPCs are: (1) Democratic State Committee (Del.), (2) Kan. Democratic Party, (3) Ky. State Democratic Cent. Exec. Comm., (4) Democratic State Cent. Comm. of LA, (5) Miss. Democratic Party, (6) Mo. Democratic State Comm., (7) N.J. State Democratic Comm., (8) Democratic Party of Or., (9) R.I. Democratic State Comm., (10) S.D. Democratic Party, (11) Tex. Democratic Party, (12) Utah State Democratic Comm., (13) WV State Democratic Exec. Comm., and (14) Democratic Party of Wis.

20 The SPCs in battleground states were excepted from the general pattern of transfers because they kept a large percentage of the funds they received from HVF. *See* Brazile Article, *supra* note 4 ("Money in the battleground states usually stayed in that state, but all the other states funneled that money directly to the DNC which quickly transferred the money to Brooklyn [HFA headquarters]."). Only one of the fourteen SPCs that transferred 99% or more of its HVF funds was in a battleground state (Democratic Party of Wis.); of the five SPCs that kept more than half of their HVF funds, all were battleground states (Democratic Exec. Comm. of Fla., Iowa Democratic Party, N.C. Democratic Party-Fed., Ohio Democratic Party, and Pa. Democratic Party).

21 *See, e.g.*, Idaho State Democratic Party's Amended 2016 August Monthly Report of Receipts & Disbursements at 233 (Apr. 9, 2017).

- "Transfer from HVF,"[22]
- "Hillary Victory Fund Transfer Out,"[23] and
- "Final Transfer to DNC for Hillary Victory Fund."[24]

The Complaint alleges that the timing, uniformity, regularity, and size of these transactions indicates one of two possible explanations. One explanation is that the SPCs "had an understanding or agreement [that] they would automatically funnel funds they received through HVF to the DNC."[25] Under this scenario, the Complaint alleges that (1) all of the Respondents violated the earmarking provisions because the contributions to HVF were earmarked to be transferred through the SPCs to the DNC and then to HFA;[26] (2) the DNC accepted contributions in the name of another because contributions to HVF were not contributions to the participating SPCs but rather contributions to the DNC;[27] and (3) the DNC accepted excessive contributions.[28]

The second possible explanation is that "the alleged transfers of HVF's funds to state parties never actually occurred, and all of the funds at issue were actually transferred directly

[22] *See, e.g.*, Democratic State Cent. Comm. of LA's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 702 (May 13, 2017).

[23] *See*, *e.g.*, Mass. Democratic State Comm.'s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 405 (Dec. 10, 2017).

[24] *See* Democratic Party of N.M's Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 489 (Mar. 20, 2017).

[25] Compl. ¶ 53.

[26] *Id.* ¶¶ 123-30.

[27] *Id.* ¶¶ 131-38.

[28] *Id.* ¶¶ 139-44.

from HVF to the DNC, rendering all FEC reports concerning these alleged transactions fraudulent."[29] In support, the Complaint cites to a *Politico* article that states:

> While state party officials were made aware that Clinton's campaign would control the movement of the funds between participating committees, one operative who has relationships with multiple state parties said that some of their officials have complained that they weren't notified of the transfers into and out of their accounts until after the fact. That's despite their stipulations in the banking documents that their affirmative consent was required before such transfers could be made from their accounts. But the operative said that the state party officials are reluctant to complain to the DNC about the arrangement out of fear of financial retribution.[30]

Even if the funds were transferred into the SPCs' accounts, the Complaint asserts that they would be "shell transactions" if HVF or HFA retained control over the transferred funds.[31]

The Complaint alleges that, as a consequence, many of the SPCs failed to report distributions received from HVF or transfers made to the DNC, though HVF reported making the disbursements and the DNC reported receiving transfers from the SPCs.[32] For example, the Complaint notes that HVF reported transferring $900,000 to the Kansas Democratic Party on October 6, 2016, but the Kansas Democratic Party did not report receiving any funds from HVF on that date.[33] Further, the DNC reported receiving $900,000 from the Kansas Democratic Party on October 6, 2016, but the Kansas Democratic Party did not report making this transfer to the DNC.[34] As another example, the Complaint notes that HVF reported transferring $1,530,000 to

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[29] *Id.* ¶¶ 56; *see id.* ¶¶ 151, 153.

[30] Kenneth Vogel & Isaac Arnsdorf, *Clinton Fundraising Leaves Little for State Parties*, POLITICO, May 2, 2016, https://www.politico.com/story/2016/04/clinton-fundraising-leaves-little-for-state-parties-222670.

[31] Compl. ¶¶ 56, 153.

[32] *Id.* at 10; *see also id.* ¶ 162.

[33] *Id.* ¶ 175.

[34] *Id.* ¶ 176.

the Nevada State Democratic Party on November 3, 2016, but the Nevada State Democratic Party did not report receiving this transfer until about fourteen months later and after the Complaint was filed.[35] And the DNC reported receiving $1,530,000 from the Nevada State Democratic Party on November 3, 2016, but the Nevada State Democratic Party failed to disclose making the transfer in its original report.[36] In total, the Complaint alleges forty-nine reporting errors by fourteen of the thirty-eight SPCs involving over $5 million in receipts and over $4.5 million in disbursements.[37] The Complaint also alleges that the errors involved transfers from the SPCs to the DNC that the DNC and the SPCs did not report consistently.[38]

In addition, the Complaint further alleges that the DNC used the funds transferred from the SPCs to make coordinated expenditures with HFA in excess of the $22,816,531.38 in coordinated party expenditures reported by the DNC.[39] According to the Complaint, the DNC "gave direction, oversight, and control of its funds, including funds that originated with HVF, to HFA and Clinton."[40] Public statements by then-DNC Chair Donna Brazile indicate that Clinton and HFA exercised control over certain parts of the DNC's operations.[41] According to Brazile, the MOU between HFA and the DNC "specified that in exchange for raising money and investing in the DNC, Hillary would control the party's finances, strategy, and all the money

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35 *Id.* ¶ 190.

36 *Id.* ¶ 191.

37 *Id.* ¶¶ 161-93.

38 *See*, *e.g.*, *id.* ¶¶ 57c-d, 60, 62, 65, 173-74.

39 *See* Compl. ¶¶ 102-09.

40 *See id.* ¶¶ 102, 110-14.

41 *See* Brazile Article, *supra* note 4.

raised."[42] The MOU also reportedly gave HFA significant influence over DNC staffing decisions and party communications.[43]

Respondents deny all of the allegations regarding earmarking, contributions in the name of another, and excessive contributions. Rather, Respondents contend that they engaged in a series of independent, lawful transactions, and that "separate, legally permissible transactions" cannot be combined into an independent violation.[44]

II. LEGAL ANALYSIS

A. There is Reason to Believe Respondents Violated the Joint Fundraising Regulations and the Act's Contribution Limits and Reporting Requirements

The Act and Commission regulations permit candidates and political committees to engage in joint fundraising activities by establishing a separate political committee to act as their joint fundraising representative.[45] Participants must enter into a written agreement that identifies this representative and states the formula for the allocation of fundraising proceeds and expenses.[46] Commission regulations also require that the representative establish a separate depository account to be used solely for the receipt and disbursement of joint fundraising proceeds and deposit those proceeds in this account within ten days of receipt.[47]

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[42] *Id.*; *see also* Scott Detrow, *Clinton Campaign Had Additional Signed Agreement with DNC in 2015*, NPR, Nov. 3, 2017, https://www npr.org/2017/11/03/561976645/clinton-campaign-had-additional-signed-agreement-with-dnc-in-2015 (reproducing the MOU).

[43] *See* Brazile Article, *supra* note 4.

[44] HVF Resp. at 5.

[45] *See* 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

[46] 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

[47] *Id.* § 102.17(c)(3)(i)-(ii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i).

All solicitations in connection with a joint fundraising effort must include a notice that identifies all participating committees, describes the allocation formula, informs contributors that they may choose to designate their contributions for a particular committee, and states that the allocation formula may change if a contributor makes a contribution that is excessive relative to any participant.[48] A contributor may make a contribution to the joint fundraising committee that "represents the total amount that the contributor could contribute to all of the participants under the applicable [contribution] limits."[49] For the 2015-2016 election cycle, individuals were permitted to contribute no more than $2,700 per election to a federal candidate committee, $10,000 per calendar year to a state political party committee, and $33,400 per calendar year to a national political party committee.[50] In total, an individual could contribute up to $772,200 to HVF over the election cycle, which represents the combined limits for each participant.[51]

Candidates and political committees are prohibited from knowingly accepting contributions in excess of these limits.[52] In the context of joint fundraising, the representative is responsible for screening all contributions to ensure they comply with the Act's source prohibitions and amount limitations, collecting contributions, paying fundraising costs, and distributing net proceeds to each participant.[53] If application of the joint fundraising committee's

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48 *Id.* § 102.17(c)(2)(i).

49 *Id.* § 102.17(c)(5).

50 *See* 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b)(1), (c)(1), (c)(5); Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-5,752 (Feb. 3, 2015).

51 $5,400 to HFA for the primary and general elections; $66,800 to the DNC over the two years; $320,000 for the 32 SPCs in 2015 and $380,000 for the 38 SPCs in 2016.

52 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

53 11 C.F.R. § 102.17(b)(1), (c)(4)(i).

allocation formula results in a violation of the contribution limits, the joint fundraising committee may reallocate the excess funds to the other participant committees.[54]

In *McCutcheon v. FEC*, a challenge to the aggregate contribution limits for individuals, several dissenting Justices expressed concern that, in the absence of the aggregate limits, donors, candidates, and political parties could use the joint fundraising mechanism and intraparty transfer rules to circumvent federal contribution limits.[55] Although the Court found these arguments insufficient to justify upholding the aggregate limits, the plurality stated "[a] joint fundraising committee is simply a mechanism for individual committees to raise funds collectively, not to circumvent base limits or earmarking rules."[56] The Court has recognized that the government has an interest in preventing circumvention of the contribution limits because "circumvention is a valid theory of corruption."[57]

A joint fundraising representative must report all funds received in the reporting period they are received and all disbursements in the reporting period they are made.[58] Similarly, the date a contribution is received by the joint fundraising representative is the date that the

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[54] *Id.* § 102.17(c)(6)(i). However, designated contributions may not be reallocated without the written permission of the contributor. *Id.* § 102.17(c)(6)(ii).

[55] *See* 134 S. Ct. 1434, 1465-1479 (2014) (Breyer, J., dissenting, joined by Ginsburg, J., Sotomayor, J., and Kagan, J.); *id.* at 1442 (finding the "aggregate" limit on contributors at 52 U.S.C. § 30116(a)(3) unconstitutional, while leaving in place the "base" limits on contributors at 52 U.S.C. § 30116(a)(1)).

[56] *Id.* at 1455 (citing 11 C.F.R. § 102.17(c)(5)).

[57] *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001); *see id.* n.18 (noting that the evidence supported "the long-recognized rationale of combating circumvention of contribution limits designed to combat the corrupting influence of large contributions from individuals to candidates").

[58] 11 C.F.R. § 102.17(c)(8)(i)-(ii). The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104. *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the name of each person who makes a contribution over $200, the total amount of receipts and disbursements, including transfers from affiliated committees and between political party committees, and appropriate itemizations, where required. *See* 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b).

participating political committee must report as the date the contribution was received, even if it is disbursed by the joint fundraising representative at a later date and even though the participating political committee is only required to report the proceeds once the funds have been received from the fundraising representative.[59] After the joint fundraising representative distributes the net proceeds, the participating committee must report its share received as a transfer-in from the fundraising representative and also file a memo entry on Schedule A itemizing its share of gross receipts as contributions from original contributors as required by 11 C.F.R. § 104.3(a).[60]

1. Respondents Used HVF to Direct Excessive Contributions to the DNC

The facts of this case appear to present the scenario that troubled numerous Justices in *McCutcheon*: a pre-arranged plan to circumvent the contribution limits via joint fundraising. Rather than participating in HVF to raise funds for themselves, the available information supports the conclusion that the SPCs primarily participated as a mechanism to pass additional contributions to the DNC, including contributions that exceeded the DNC's individual contributor limits.

First, over the course of the 2016 election cycle, the SPCs collectively transferred nearly 80% of their HVF receipts to the DNC,[61] and some transferred as much as 99% of their HVF

[59] *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(A).

[60] *See id.* § 102.17(c)(8)(i)(B).

[61] The SPCs reported HVF receipts totaling \$104,220,860.21 and disbursements to the DNC totaling \$84,517,558.86 (\$84,517,558.86 ÷ \$104,220,860.21 × 100 = 81.1%). HVF reported transferring a total of \$112,361,370.81 to the SPCs, and the DNC reported receiving \$88,234,400 from the SPCs (\$88,234,400 ÷ \$112,361,370.81 × 100 = 78.6%).

receipts to the DNC.[62] Included in the transfers from the SPCs was more than $80 million from over 1,500 individual contributors who had already reached their limits for direct contributions to the DNC.[63]

Second, a significant amount of the SPCs' transfers to the DNC occurred nearly contemporaneously with HVF's distribution of the funds to the SPCs.[64] Disclosure reports reveal over 400 instances where HVF disbursed funds to the SPCs, and within a day or two the SPCs transferred the same amounts to the DNC.[65] That SPCs across the country would independently decide each time they received a transfer from HVF to transfer their HVF proceeds to the DNC within a day or two strains credibility. Rather, the immediate transfers indicate that the SPCs served as vehicles to route excessive contributions to the DNC.[66]

Third, the SPCs began passing significant amounts of their allocated share of HVF contributions to the DNC under the purported authority of the intraparty transfer rules as soon as they began receiving disbursements from HVF. For instance, HVF first disbursed funds to the SPCs on October 1, 2015, transferring $228,000 to twelve of them.[67] Each received a transfer in

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62 *See supra* note 19. For example, the Rhode Island Democratic State Committee reported total receipts of $3,486,712.56 and reported transfers from HVF in the amount of $3,024,100, making HVF funds nearly 91% of its federal receipts for the 2016 election cycle. The Rhode Island Democratic State Committee reported transferring $3,002,980 to the DNC, which is the equivalent of 99.3% of its HVF allocated funds.

63 *See supra* note 61; Compl. ¶¶ 50-52.

64 *See* Compl., Ex. 1.

65 *See id.*

66 It appears that five SPCs from the battleground states retained the equivalent of more than half of their HVF funds, a pattern that appears to be an exception to the more prevalent pattern of immediate transfers. *See supra* note 20.

67 *See* HVF's Amended 2015 Year-End Report of Receipts & Disbursements at 1,373, 1376-77, 1,380, 1,383, 1,386, 1,390, 1,392-95 (Aug. 30, 2017) (disclosing $24,000 transfers on October 1, 2015 to (1) Miss. Democratic Party, (2) Mo. Democratic State Comm., (3) N.H. Democratic Party, (4) Pa. Democratic Party, (5) R.I. Democratic State Comm., (6) Democratic Exec. Comm. of Fla., (7) Me. Democratic Party, (8) Democratic Party of Va., (9) Mass. Democratic State Comm., (10) WV State Democratic Exec. Comm., (11) WY Democratic State Cent. Comm., and (12) Mich. Democratic State Cent. Comm.).

the amount of $24,000 on October 1 or 2,[68] and within a day of receipt, each of them transferred the same amount to the DNC for a total of $228,000.[69] This suggests that there was a predetermined plan for the SPCs to transfer the funds right to the DNC even before they started receiving them.

Fourth, the reporting of some of the transactions connected to the joint fundraising activity supports the conclusion that the funds ultimately given to the DNC were never intended to stay in the accounts of the SPCs. At least fourteen of the SPCs failed to report either the receipt of their allocated shares from HVF or the corresponding transfers out to the DNC, even though both HVF and the DNC reported their side of the same transactions.[70] And there is information in the record to indicate that some of the SPCs may not have reported the receipt in and transfers out because they were not even aware of them. The *Politico* article reported that

[68] *See* Miss. Democratic Party's Amended 2015 November Monthly Report of Receipts & Disbursements at 12, 16 (Feb. 16, 2018); Mo. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 13, 21 (Nov. 19, 2015); N.H. Democratic Party's Amended 2015 Year-End Report of Receipts & Disbursements at 112, 281 (Mar. 17, 2016); Pa. Democratic Party's 2015 November Monthly Report of Receipts & Disbursements at 12, 25 (Nov. 20, 2015); R.I. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 12, 15 (Nov. 19, 2015); Democratic Exec. Comm. of Fla.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 104, 121 (Oct. 22, 2017); Me. Democratic Party's 2015 November Monthly Report of Receipts & Disbursements at 18, 25 (Nov. 20, 2015); Democratic Party of Va.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 14, 18 (Feb. 12, 2016); Mass. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 93, 100 (Nov. 20, 2015); WV State Democratic Exec. Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 27, 43 (Nov. 20, 2015); WY Democratic State Cent. Comm.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 24, 28 (May 9, 2016); Mich. Democratic State Cent. Comm.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 42, 61 (May 12, 2016).

[69] *See supra* note 67; DNC's Amended 2015 November Monthly Report of Receipts & Disbursements at 5,583-87 (Jan. 11, 2016).

[70] *See* Compl. ¶¶ 161-193.

some SPC officials "complained that they weren't notified of the transfers into and out of their accounts."[71]

Further, four of the SPCs reported these transactions in a way that suggests that they understood that these funds were always intended for the DNC, not them. These SPCs described the purpose of their transfers to the DNC as "Hillary Victory Fund,"[72] "Transfer from HVF,"[73] "Hillary Victory Fund Transfer Out,"[74] and "Final Transfer to DNC for Hillary Victory Fund."[75]

These facts, taken together, support the conclusion that the SPCs largely participated in HVF as a means to pass their contributions through to the DNC. As noted above, included in the transfers from the SPCs to the DNC was more than $80 million from more than 1,500 individual contributors who had already reached their limits for direct contributions to the DNC. Thus, the DNC accepted excessive contributions from these individuals as a result of the transfers.

Respondents maintain that they engaged in a series of independent, lawful transactions, and that "separate, legally permissible transactions" cannot be combined into a violation.[76] The Commission, however, is not required to evaluate each transaction separately and in a vacuum,

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[71] Kenneth Vogel & Isaac Arnsdorf, *Clinton fundraising leaves little for state parties*, POLITICO, May 2, 2016, https://www.politico.com/story/2016/04/clinton-fundraising-leaves-little-for-state-parties-222670.

[72] *See, e.g.*, Idaho State Democratic Party's Amended 2016 August Monthly Report of Receipts & Disbursements at 233 (April 9, 2017).

[73] *See, e.g.*, Democratic State Cent. Comm. of LA's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 702 (May 13, 2017).

[74] *See, e.g.*, Mass. Democratic State Comm.'s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 405 (Dec. 10, 2017).

[75] *See* Democratic Party of N.M.'s Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 489 (Mar. 20, 2017).

[76] HVF Resp. at 5.

and one court has expressly cautioned against doing so when interpreting the Act.[77] While the existence of intraparty transfer rules "reflects a judgment that party committee units are to be relatively free to fund each other's efforts,"[78] such efforts to use these rules to evade the limits under the Act are impermissible.[79] To apply the intraparty transfer provisions as urged by Respondents would effectively nullify the individual contribution limitations for a national party committee. The Commission should construe statutes and regulations to harmonize and give effect to all of their provisions.[80]

The SPCs also specifically note that they received their allocations from HVF, controlled how such funds were spent, and were permitted to make unlimited transfers of their federal funds to the DNC.[81] The facts, however, indicate that the SPCs' assertion that they controlled how the

[77] *See FEC v. Furgatch*, 807 F.2d 857, 862 (9th Cir. 1987) (cautioning that courts should be careful to ensure that the Act's "purposes are fully carried out, that they are not cleverly circumvented, or thwarted by a rigid construction of the terms of the Act"); *cf. Colo. Republican Fed. Campaign Comm.*, 533 U.S. at 462, 464 n.28 (explaining that circumvention is a "systemic" problem, that is "very hard to trace").

[78] Statement of Reasons, Comm'rs. Aikens, Thomas, Elliott, McDonald, & McGarry at 4, MUR 4215 (Democratic Nat'l Comm.) (Mar. 26, 1998); *see also* 52 U.S.C. § 30116(a)(4); 11 C.F.R. § 110.3(c)(1); Explanation & Justification, Transfer of Funds; Collecting Agents; Joint Fundraising, 48 Fed. Reg. 26,296, 26,298 (June 7, 1983) (explaining that where all of the participants to a joint fundraising activity are party committees of the same political party, they do not have to follow the allocation and notice requirements since the committees could decide, after the fundraising was over, to transfer any amount of funds among themselves).

[79] *See* First Gen. Counsel's Rpt. at 24-34, Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (May 21, 1991) (rejecting the argument that the unlimited transfer provision allowed a national party committee to transfer funds to a state party committee that used the funds to support a federal candidate in excess of the coordinated party expenditure limits); Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (Aug. 2, 1994) (ratifying earlier reason-to-believe findings); *see also* 52 U.S.C. § 30125(a); 11 C.F.R. § 102.6(a)(1)(iv).

[80] *See United States v. Citgo Petroleum Corp.*, 801 F.3d 477, 485 (5th Cir. 2015) ("Regulations, like statutes, must be 'construed so that effect is given to all [their] provisions, so that no part will be inoperative or superfluous, void or insignificant.'" (alteration in original) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009))); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (explaining that, when interpreting statutory language, we must look to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole"); *accord CREW v. FEC*, 316 F. Supp. 3d 349, 394-95 (D.D.C. 2018) (holding that the Commission's regulation does not implement the Act in a manner "so that effect is given to all its provisions" (quoting *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018))).

[81] *See* HVF Resp. at 4, 11-13.

funds were spent is not credible. Rather, the facts, fairly construed, show that the funds transferred to the SPCs pursuant to the allocation formula were intended at the outset for the DNC. Thus, it appears that the allocation formula was a pretext to redirect funds through the SPCs to the DNC that could not have been directly contributed to the DNC because the funds were from individual contributors who had already reached their limits for contributions to the DNC.

In sum, we conclude that Respondents, through their series of joint fundraising transactions, used HVF as a means to circumvent the DNC's contribution limits by using the SPCs to direct additional funds to the DNC in excess of the individual contributor's limits. Accordingly, the Commission finds reason to believe that HVF, HFA, and the DNC each violated 11 C.F.R. § 102.17(c)(1) and (2), by soliciting and raising funds under a false joint fundraising agreement, and the DNC violated 52 U.S.C. § 30116(f) by accepting excessive contributions.

2. Respondents Failed to Properly Report Receipts and Disbursements from the Joint Fundraising Committee

Having concluded that the SPCs were not legitimate participants in the joint fundraising committee because they were largely used as a mere pass through for contributions to the DNC, it necessarily follows that Respondents' reports did not accurately reflect the real disposition of funds raised through HVF.

Because most of the proceeds allocated by HVF to the SPCs were in reality contributions to the DNC, HVF improperly reported the disbursements of these funds as transfers to the SPCs, rather than transfers to the DNC. Similarly, the DNC also improperly reported the funds it received through the SPCs as transfers from the SPCs rather than as transfers from HVF and contributions from the individual donors to HVF.[82] Thus, it appears that HVF and the DNC violated the reporting obligations of the Act. Accordingly, the Commission finds reason to believe that HVF and the DNC violated 52 U.S.C. § 30104(a) and (b), and 11 C.F.R. § 104.3(a) and (b).

B. There is Reason to Believe that the DNC Made and HFA Accepted Excessive Contributions in the Form of Coordinated Expenditures

The Complaint alleges that because the DNC allowed HFA to exercise direction, oversight, and control over the DNC's funds, including those funds the DNC received through HVF, all expenditures made by the DNC in connection with the presidential election should count as contributions to, and coordinated expenditures on behalf of, HFA, resulting in the DNC exceeding the federal limits on those contributions.[83]

The Act prohibits any person from making, and any candidate or committee from accepting or receiving, excessive or prohibited contributions.[84] The term "contribution" includes anything of value made for the purpose of influencing a federal election.[85] Further, any expenditure made by a person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate," or the candidate's authorized political committee is considered an in-kind contribution to that candidate.[86] These "coordinated" expenditures are treated as

[82] HVF could not have transferred these funds directly to the DNC, nor could the DNC accept these funds as contributions.

[83] *See* Compl. ¶¶ 102-116, 154-60.

[84] 52 U.S.C. § 30116(a), (f).

[85] *Id.* § 30101(8)(A)(i).

[86] *See id.* § 30116(a)(7)(B)(i); 11 C.F.R. §§ 109.20-.21, 109.37.

contributions to the candidate and must be reported as expenditures made by the candidate's authorized committee.[87]

Notwithstanding the general limits on contributions to candidates, the national committee of a political party may make coordinated party expenditures in connection with the presidential general election, subject to the limits established by the Act and Commission regulations.[88] Coordinated party expenditures include disbursements for communications that are coordinated with the candidate.[89] For the 2016 general election, national party committees were limited to making $23,821,100 in coordinated party expenditures with presidential candidates,[90] and the DNC made coordinated expenditures of $23,371,432,[91] leaving a balance of $449,668.

While the Complaint does not identify any specific communications that the DNC coordinated with HFA or specific expenditures not already reported that should count toward the DNC's party coordinated expenditures, the MOU and statements by then-DNC Chair Donna Brazile provide a reasonable basis to conclude that the DNC may have coordinated with HFA to make additional expenditures. The MOU reportedly provided that HFA would have joint authority over DNC decisions involving "staffing, budget, expenditures, and general election related communications, data, technology, analytics, and research."[92] Brazile also stated that she

[87] 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(b).

[88] 52 U.S.C. § 30116(d); 11 C.F.R. §§ 109.30, 109.32.

[89] *See* 11 C.F.R. § 109.30; 11 C.F.R. § 109.37 (defining a party coordinated communication as a communication that (a) is 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)).

[90] *See* Price Index Adjustments for Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 81 Fed. Reg. 7,101, 7,103 (Feb. 10, 2016).

[91] DNC's 2017 April Monthly Report of Receipts & Disbursements at 3034 (Apr. 20, 2017).

[92] Scott Detrow, *Clinton Campaign Had Additional Signed Agreement with DNC in 2015*, NPR, Nov. 3, 2017, https://www.npr.org/2017/11/03/561976645/clinton-campaign-had-additional-signed-agreement-with-dnc-in-2015.

"couldn't write a press release without passing it by" HFA.[93] Taken together, the MOU and Brazile's statements indicate that the DNC was acting "in cooperation, consultation, or concert, with, or at the request or suggestion of" HFA by allowing HFA authority over its expenditures for communications, staffing, and other operational expenses.

While the amount of expenditures that the DNC coordinated with HFA is not known at this time, the extent of HFA's role supports a reasonable inference that the amount likely exceeds $449,668. Accordingly, the Commission finds reason to believe that the DNC made excessive in-kind contributions to HFA in violation of 52 U.S.C. § 30116(a) and 11 C.F.R. §§ 109.20(a) and 109.32, and HFA accepted excessive in-kind contributions from the DNC in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 109.20(a) and 109.32.

[93] Brazile Article, *supra* note 4.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:	Alaska Democratic Party and Carolyn Covington in her official capacity as treasurer Democratic Party of Arkansas and Dawne Vandiver in her official capacity as treasurer Colorado Democratic Party and Rita Simas in her official capacity as treasurer Democratic State Committee (Delaware) and Helene Keeley in her official capacity as treasurer Democratic Executive Committee of Florida and Francesca Menes in her official capacity as treasurer Georgia Federal Elections Committee and Kip Carr in his official capacity as treasurer Indiana Democratic Congressional Victory Committee and Henry Fernandez in his official capacity as treasurer Iowa Democratic Party and Ken Sagar in his official capacity as treasurer Kentucky State Democratic Central Executive Committee and M. Melinda Karns in her official capacity as treasurer Democratic State Central Committee of LA and Sean Bruno in his official capacity as treasurer Maine Democratic Party and Betty Johnson in her official capacity as treasurer Michigan Democratic State Central Committee and Sandy O'Brien in her official capacity as treasurer Minnesota Democratic-Farmer-Labor Party and Tyler Moroles in his official capacity as treasurer Montana Democratic Party and Sandi Luckey in her official capacity as treasurer New Hampshire Democratic Party and Brian Rapp in his official capacity as treasurer Democratic Party of New Mexico and Robert Lara in his official capacity treasurer North Carolina Democratic Party – Federal and Anna Tilghamn in her official capacity as treasurer Ohio Democratic Party and Fran Alberty in her official capacity as treasurer Oklahoma Democratic Party and Rachael Hunsucker in her official capacity as treasurer Democratic Party of Oregon and Eddy Morales in his official capacity as treasurer Pennsylvania Democratic Party and Alexander Reber in his official capacity as treasurer Rhode Island Democratic State Committee and	MUR 7304

Jeffrey Padwa in his official capacity as treasurer
South Dakota Democratic Party and
Bill Nibbelink in his official capacity as treasurer
Tennessee Democratic Party and
Geeta McMillan in her official capacity as treasurer
WV State Democratic Executive Committee and
Jerry Brookover in his official capacity as treasurer
Democratic Party of Wisconsin and
Randy A. Udell in his official capacity as treasurer
WY Democratic State Central Committee and
Chris Russell in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission"), *see* 52 U.S.C. § 30109(a)(1), and concerns joint fundraising conducted through the Hillary Victory Fund ("HVF"), which was comprised of Hillary Clinton's principal campaign committee, Hillary for America ("HFA"), the DNC Services Corporation/Democratic National Committee ("DNC"), and thirty-eight state party committees ("the SPCs").[1] The main allegation in the Complaint is that HVF was a "sham" through which millions of dollars in excessive contributions were funneled through the SPCs to the DNC in violation of the Act and Commission regulations.[2] The SPCs argue that every individual transaction arising out of their joint fundraising activity was legal, thus, there can be no violation.[3]

Based on the available information, the Commission finds reason to believe that the SPCs violated the joint fundraising regulations at 11 C.F.R. § 102.17(c)(1) and (2) and the reporting requirements at 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b).

1 Compl. at 7-10, MUR 7304 (amended July 31, 2018).

2 *See* Compl. at 7-10, 74, ¶ 137.

3 *See* Alaska Democratic Party, *et al.* Resp. at 1-2, 5, MUR 7304 (Feb. 21, 2018) (hereinafter "SPCs Resp." on behalf of 34 SPCs).

II. FACTUAL BACKGROUND

A. The Creation of HVF

HFA was the principal campaign committee for Hillary Clinton, the Democratic Party nominee for President for the 2016 general election. The Commission possesses information that in August 2015, HFA and the DNC entered into a Memorandum of Understanding ("MOU") regarding the creation and operation of a joint fundraising committee,[4] which ultimately became HVF. On September 10, 2015, HFA and the DNC entered into a written joint fundraising agreement forming HVF to act as their fundraising representative.[5] Within a week of HVF's registration, thirty-two SPCs had signed the joint fundraising agreement, and ultimately participation grew to thirty-eight SPCs over the course of the election cycle.[6]

Information available to the Commission reveals that contributions to HVF were allocated as follows: the first $2,700 from an individual or $5,000 from a multicandidate committee ("PAC") would be designated for HFA and the primary election. The second $2,700 (individual) or $5,000 (PAC) would be designated for HFA and the general election. If the contribution was made after the primary, up to $2,700 (individual) or $5,000 (PAC) would be designated for the general election.[7] The next $33,400 (individual) or $15,000 (PAC) would be

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[4] *See* Compl.¶ 113 (quoting Donna Brazile, *Inside Hillary Clinton's Secret Takeover of the DNC*, POLITICO MAGAZINE, Nov. 2, 2017, https://www.politico.com/magazine/story/2017/11/02/clinton-brazile-hacks-2016-215774 ("Brazile Article") (referring to the MOU as a fundraising agreement)).

[5] *See* HVF's Statement of Organization (Sept. 10, 2015) (listing two participating committees: HFA and DNC).

[6] Not all thirty-eight SPCs participated in the joint fundraising concurrently at all times. HVF amended its Statement of Organization three times to add and remove participating entities. *See* HVF's Amended Statement of Organization (Sept. 16, 2015) (adding 32 of the SPCs in addition to a party committee from Puerto Rico which is not a Respondent); HVF's Amended Statement of Organization (Nov. 2, 2015) (removing the Puerto Rico committee); HVF's Amended Statement of Organization (July 1, 2016) (adding the remaining six SPCs from Delaware, Iowa, Kansas, New Jersey, New Mexico, and South Dakota).

[7] The SPCs did not submit any joint fundraising agreements that included them as participants in HVF.

allocated to the DNC. Any additional amounts received from an individual or PAC would be split equally among the participating SPCs up to $10,000 (individual) or $5,000 (PAC). The Commission possesses information that the allocation formula was subject to change if a contributor designated his or her contribution for a particular participant. In addition, there is information that contributors were notified that their contributions would be used in connection with a federal election and would not be earmarked for any particular candidate.

By definition, any individual contribution over $38,800 before the primaries and $36,100 for the general election would exceed the combined contribution limits for HFA and the DNC and result in some money being allocated to the SPCs. Around 1,500 individuals contributed over $38,800 to HVF.[8] In total, HVF reported transferring over $112 million to the SPCs from donors who had reached their limits for contributions to HFA and the DNC.[9] The crux of the Complaint relates to that $112 million.

B. The Complaint

The Complaint alleges that "virtually every single disbursement from HVF to a state party resulted in an immediate transfer of the same amount of funds from the state party to the DNC."[10] According to the Complaint, over $80 million dollars in HVF transfers were "funneled" through the SPCs to the DNC in this manner.[11] The Complaint identifies 427

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[8] For simplicity, the calculations in this report rely on the higher $38,800 figure.

[9] *See* HVF's Amended 2016 Year-End Report of Receipts & Disbursements (Sept. 6, 2017); HVF's Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements (Aug. 30, 2017); HVF's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements (Aug. 31, 2017); HVF's Amended 2016 October Quarterly Report of Receipts & Disbursements (Aug. 31, 2017); HVF's Amended 2016 July Quarterly Report of Receipts & Disbursements (Nov. 15, 2017); HVF's Amended 2016 April Quarterly Report of Receipts & Disbursements (Oct. 3, 2016); HVF's Amended 2015 Year-End Report of Receipts & Disbursements (Aug. 30, 2017); HVF's 2015 October Quarterly Report of Receipts & Disbursements (Oct. 10, 2015).

[10] Compl. ¶ 52.

[11] *Id.* ¶¶ 50-52.

transactions between October 1, 2015, and November 8, 2016, that followed a pattern of near-simultaneous transfers in and out of the SPCs.[12]

As an example, the Complaint states that on November 2, 2015, HVF reported transferring a total of $505,000 to seventeen of the SPCs and that those SPCs reported receiving transfers "in the identical amounts of funds from HVF on the very same day."[13] Each of those SPCs reported "contributing the same amount of money they received from HVF to the DNC on the very same day (or occasionally the next day)."[14] The DNC generally reported receiving the funds on the same day.[15]

Further, a review of the SPCs' disclosure reports shows that fourteen of the SPCs[16] transferred the equivalent of 99% or more of their HVF allocations to the DNC.[17] And four of the SPCs described the purpose of the transfers to the DNC on their disclosure reports in a way that suggests they understood they should immediately transfer their HVF-allocated funds directly to the DNC:

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12 *Id.*, Ex. 1.

13 *Id.* ¶ 57a-b.

14 *Id.* ¶ 57c.

15 *Id.* ¶ 57d.

16 These SPCs are: (1) Democratic State Committee (Del.), (2) Kan. Democratic Party, (3) Ky. State Democratic Cent. Exec. Comm., (4) Democratic State Cent. Comm. of LA, (5) Miss. Democratic Party, (6) Mo. Democratic State Comm., (7) N.J. State Democratic Comm., (8) Democratic Party of Or., (9) R.I. Democratic State Comm., (10) S.D. Democratic Party, (11) Tex. Democratic Party, (12) Utah State Democratic Comm., (13) WV State Democratic Exec. Comm., and (14) Democratic Party of Wis.

17 The SPCs in battleground states were excepted from the general pattern of transfers because they kept a large percentage of the funds they received from HVF. *See* Brazile Article, *supra* note 4 ("Money in the battleground states usually stayed in that state, but all the other states funneled that money directly to the DNC which quickly transferred the money to Brooklyn [HFA headquarters]."). Only one of the fourteen SPCs that transferred 99% or more of its HVF funds was in a battleground state (Democratic Party of Wis.); of the five SPCs that kept more than half of their HVF funds, all were battleground states (Democratic Exec. Comm. of Fla., Iowa Democratic Party, N.C. Democratic Party-Fed., Ohio Democratic Party, and Pa. Democratic Party).

- "Hillary Victory Fund,"[18]
- "Transfer from HVF,"[19]
- "Hillary Victory Fund Transfer Out,"[20] and
- "Final Transfer to DNC for Hillary Victory Fund."[21]

The Complaint alleges that the timing, uniformity, regularity, and size of these transactions indicates one of two possible explanations. One explanation is that the SPCs "had an understanding or agreement [that] they would automatically funnel funds they received through HVF to the DNC."[22] Under this scenario, the Complaint alleges that (1) all of the Respondents violated the earmarking provisions because the contributions to HVF were earmarked to be transferred through the SPCs to the DNC and then to HFA;[23] (2) the DNC accepted contributions in the name of another because contributions to HVF were not contributions to the participating SPCs but rather contributions to the DNC;[24] and (3) the DNC accepted excessive contributions.[25]

The second possible explanation is that "the alleged transfers of HVF's funds to state parties never actually occurred, and all of the funds at issue were actually transferred directly

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18 *See, e.g.*, Idaho State Democratic Party's Amended 2016 August Monthly Report of Receipts & Disbursements at 233 (Apr. 9, 2017).

19 *See, e.g.*, Democratic State Cent. Comm. of LA's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 702 (May 13, 2017).

20 *See, e.g.*, Mass. Democratic State Comm.'s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 405 (Dec. 10, 2017).

21 *See* Democratic Party of N.M's Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 489 (Mar. 20, 2017).

22 Compl. ¶ 53.

23 *Id.* ¶¶ 123-30.

24 *Id.* ¶¶ 131-38.

25 *Id.* ¶¶ 139-44.

from HVF to the DNC, rendering all FEC reports concerning these alleged transactions fraudulent."[26] In support, the Complaint cites to a *Politico* article that states:

> While state party officials were made aware that Clinton's campaign would control the movement of the funds between participating committees, one operative who has relationships with multiple state parties said that some of their officials have complained that they weren't notified of the transfers into and out of their accounts until after the fact. That's despite their stipulations in the banking documents that their affirmative consent was required before such transfers could be made from their accounts. But the operative said that the state party officials are reluctant to complain to the DNC about the arrangement out of fear of financial retribution.[27]

Even if the funds were transferred into the SPCs' accounts, the Complaint asserts that they would be "shell transactions" if HVF or HFA retained control over the transferred funds.[28]

The Complaint alleges that, as a consequence, many of the SPCs failed to report distributions received from HVF or transfers made to the DNC, though HVF reported making the disbursements and the DNC reported receiving transfers from the SPCs.[29] For example, the Complaint notes that HVF reported transferring $900,000 to the Kansas Democratic Party on October 6, 2016, but the Kansas Democratic Party did not report receiving any funds from HVF on that date.[30] Further, the DNC reported receiving $900,000 from the Kansas Democratic Party on October 6, 2016, but the Kansas Democratic Party did not report making this transfer to the DNC.[31] As another example, the Complaint notes that HVF reported transferring $1,530,000 to

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26 *Id.* ¶¶ 56; *see id.* ¶¶ 151, 153.

27 Kenneth Vogel & Isaac Arnsdorf, *Clinton Fundraising Leaves Little for State Parties*, POLITICO, May 2, 2016, https://www.politico.com/story/2016/04/clinton-fundraising-leaves-little-for-state-parties-222670.

28 Compl. ¶¶ 56, 153.

29 *Id.* at 10; *see also id.* ¶ 162.

30 *Id.* ¶ 175.

31 *Id.* ¶ 176.

the Nevada State Democratic Party on November 3, 2016, but the Nevada State Democratic Party did not report receiving this transfer until about fourteen months later and after the Complaint was filed.[32] And the DNC reported receiving $1,530,000 from the Nevada State Democratic Party on November 3, 2016, but the Nevada State Democratic Party failed to disclose making the transfer in its original report.[33] In total, the Complaint alleges forty-nine reporting errors by fourteen of the thirty-eight SPCs involving over $5 million in receipts and over $4.5 million in disbursements.[34] The Complaint also alleges that the errors involved transfers from the SPCs to the DNC that the DNC and the SPCs did not report consistently.[35]

The SPCs deny the allegations and argue that their joint fundraising transactions were permissible under the Act and Commission regulations.[36] In addition, they argue that the reporting inaccuracies were simply process errors and not an indication that they lacked control of funds transferred from HVF.[37]

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32 *Id.* ¶ 190.

33 *Id.* ¶ 191.

34 *Id.* ¶¶ 161-93.

35 *See, e.g.*, *id.* ¶¶ 57c-d, 60, 62, 65, 173-74. In addition, the Complaint further alleges that the DNC used the funds transferred from the SPCs to make coordinated expenditures with HFA in excess of the $22,816,531.38 in coordinated party expenditures reported by the DNC. *See* Compl. ¶¶ 102-09.

36 SPCs Resp. at 2-5.

37 *Id.*

III. LEGAL ANALYSIS

The Act and Commission regulations permit candidates and political committees to engage in joint fundraising activities by establishing a separate political committee to act as their joint fundraising representative.[38] Participants must enter into a written agreement that identifies this representative and states the formula for the allocation of fundraising proceeds and expenses.[39] Commission regulations also require that the representative establish a separate depository account to be used solely for the receipt and disbursement of joint fundraising proceeds and deposit those proceeds in this account within ten days of receipt.[40]

All solicitations in connection with a joint fundraising effort must include a notice that identifies all participating committees, describes the allocation formula, informs contributors that they may choose to designate their contributions for a particular committee, and states that the allocation formula may change if a contributor makes a contribution that is excessive relative to any participant.[41] A contributor may make a contribution to the joint fundraising committee that "represents the total amount that the contributor could contribute to all of the participants under the applicable [contribution] limits."[42] For the 2015-2016 election cycle, individuals were permitted to contribute no more than $2,700 per election to a federal candidate committee, $10,000 per calendar year to a state political party committee, and $33,400 per calendar year to a

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[38] *See* 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

[39] 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

[40] *Id.* § 102.17(c)(3)(i)-(ii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i).

[41] *Id.* § 102.17(c)(2)(i).

[42] *Id.* § 102.17(c)(5).

national political party committee.[43] In total, an individual could contribute up to $772,200 to HVF over the election cycle, which represents the combined limits for each participant.[44]

Candidates and political committees are prohibited from knowingly accepting contributions in excess of these limits.[45] In the context of joint fundraising, the representative is responsible for screening all contributions to ensure they comply with the Act's source prohibitions and amount limitations, collecting contributions, paying fundraising costs, and distributing net proceeds to each participant.[46] If application of the joint fundraising committee's allocation formula results in a violation of the contribution limits, the joint fundraising committee may reallocate the excess funds to the other participant committees.[47]

In *McCutcheon v. FEC*, a challenge to the aggregate contribution limits for individuals, several dissenting Justices expressed concern that, in the absence of the aggregate limits, donors, candidates, and political parties could use the joint fundraising mechanism and intraparty transfer rules to circumvent federal contribution limits.[48] Although the Court found these arguments insufficient to justify upholding the aggregate limits, the plurality stated "[a] joint fundraising committee is simply a mechanism for individual committees to raise funds collectively, not to

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43 *See* 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b)(1), (c)(1), (c)(5); Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-5,752 (Feb. 3, 2015).

44 $5,400 to HFA for the primary and general elections; $66,800 to the DNC over the two years; $320,000 for the 32 SPCs in 2015 and $380,000 for the 38 SPCs in 2016.

45 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

46 11 C.F.R. § 102.17(b)(1), (c)(4)(i).

47 *Id.* § 102.17(c)(6)(i). However, designated contributions may not be reallocated without the written permission of the contributor. *Id.* § 102.17(c)(6)(ii).

48 *See* 134 S. Ct. 1434, 1465-1479 (2014) (Breyer, J., dissenting, joined by Ginsburg, J., Sotomayor, J., and Kagan, J.); *id.* at 1442 (finding the "aggregate" limit on contributors at 52 U.S.C. § 30116(a)(3) unconstitutional, while leaving in place the "base" limits on contributors at 52 U.S.C. § 30116(a)(1)).

circumvent base limits or earmarking rules."[49] The Court has recognized that the government has an interest in preventing circumvention of the contribution limits because "circumvention is a valid theory of corruption."[50]

A joint fundraising representative must report all funds received in the reporting period they are received and all disbursements in the reporting period they are made.[51] Similarly, the date a contribution is received by the joint fundraising representative is the date that the participating political committee must report as the date the contribution was received, even if it is disbursed by the joint fundraising representative at a later date and even though the participating political committee is only required to report the proceeds once the funds have been received from the fundraising representative.[52] After the joint fundraising representative distributes the net proceeds, the participating committee must report its share received as a transfer-in from the fundraising representative and also file a memo entry on Schedule A itemizing its share of gross receipts as contributions from original contributors as required by 11 C.F.R. § 104.3(a).[53]

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[49] *Id.* at 1455 (citing 11 C.F.R. § 102.17(c)(5)).

[50] *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001); *see id.* n.18 (noting that the evidence supported "the long-recognized rationale of combating circumvention of contribution limits designed to combat the corrupting influence of large contributions from individuals to candidates").

[51] 11 C.F.R. § 102.17(c)(8)(i)-(ii). The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104. *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the name of each person who makes a contribution over $200, the total amount of receipts and disbursements, including transfers from affiliated committees and between political party committees, and appropriate itemizations, where required. *See* 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b).

[52] *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(A).

[53] *See id.* § 102.17(c)(8)(i)(B).

A. Respondents Violated the Joint Fundraising Regulations

The facts of this case appear to present the scenario that troubled numerous Justices in *McCutcheon*: a pre-arranged plan to circumvent the contribution limits via joint fundraising. Rather than participating in HVF to raise funds for themselves, the available information supports the conclusion that the SPCs primarily participated as a mechanism to pass additional contributions to the DNC, including contributions that exceeded the DNC's individual contributor limits.

First, over the course of the 2016 election cycle, the SPCs collectively transferred nearly 80% of their HVF receipts to the DNC,[54] and some transferred as much as 99% of their HVF receipts to the DNC.[55] Included in the transfers from the SPCs was more than $80 million from over 1,500 individual contributors who had already reached their limits for direct contributions to the DNC.[56]

Second, a significant amount of the SPCs' transfers to the DNC occurred nearly contemporaneously with HVF's distribution of the funds to the SPCs.[57] Disclosure reports reveal over 400 instances where HVF disbursed funds to the SPCs, and within a day or two the SPCs transferred the same amounts to the DNC.[58] That SPCs across the country would

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[54] The SPCs reported HVF receipts totaling $104,220,860.21 and disbursements to the DNC totaling $84,517,558.86 ($84,517,558.86 ÷ $104,220,860.21 × 100 = 81.1%). HVF reported transferring a total of $112,361,370.81 to the SPCs, and the DNC reported receiving $88,234,400 from the SPCs ($88,234,400 ÷ $112,361,370.81 × 100 = 78.6%).

[55] *See supra* note 16. For example, the Rhode Island Democratic State Committee reported total receipts of $3,486,712.56 and reported transfers from HVF in the amount of $3,024,100, making HVF funds nearly 91% of its federal receipts for the 2016 election cycle. The Rhode Island Democratic State Committee reported transferring $3,002,980 to the DNC, which is the equivalent of 99.3% of its HVF allocated funds.

[56] *See supra* note 54; Compl. ¶¶ 50-52.

[57] *See* Compl., Ex. 1.

[58] *See id.*

independently decide each time they received a transfer from HVF to transfer their HVF proceeds to the DNC within a day or two strains credibility. Rather, the immediate transfers indicate that the SPCs served as vehicles to route excessive contributions to the DNC.[59]

Third, the SPCs began passing significant amounts of their allocated share of HVF contributions to the DNC under the purported authority of the intraparty transfer rules as soon as they began receiving disbursements from HVF. For instance, HVF first disbursed funds to the SPCs on October 1, 2015, transferring $228,000 to twelve of them.[60] Each received a transfer in the amount of $24,000 on October 1 or 2,[61] and within a day of receipt, each of them transferred the same amount to the DNC for a total of $228,000.[62] This suggests that there was a

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59 It appears that five SPCs from the battleground states retained the equivalent of more than half of their HVF funds, a pattern that appears to be an exception to the more prevalent pattern of immediate transfers. *See supra* note 17.

60 *See* HVF's Amended 2015 Year-End Report of Receipts & Disbursements at 1,373, 1376-77, 1,380, 1,383, 1,386, 1,390, 1,392-95 (Aug. 30, 2017) (disclosing $24,000 transfers on October 1, 2015 to (1) Miss. Democratic Party, (2) Mo. Democratic State Comm., (3) N.H. Democratic Party, (4) Pa. Democratic Party, (5) R.I. Democratic State Comm., (6) Democratic Exec. Comm. of Fla., (7) Me. Democratic Party, (8) Democratic Party of Va., (9) Mass. Democratic State Comm., (10) WV State Democratic Exec. Comm., (11) WY Democratic State Cent. Comm., and (12) Mich. Democratic State Cent. Comm.).

61 *See* Miss. Democratic Party's Amended 2015 November Monthly Report of Receipts & Disbursements at 12, 16 (Feb. 16, 2018); Mo. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 13, 21 (Nov. 19, 2015); N.H. Democratic Party's Amended 2015 Year-End Report of Receipts & Disbursements at 112, 281 (Mar. 17, 2016); Pa. Democratic Party's 2015 November Monthly Report of Receipts & Disbursements at 12, 25 (Nov. 20, 2015); R.I. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 12, 15 (Nov. 19, 2015); Democratic Exec. Comm. of Fla.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 104, 121 (Oct. 22, 2017); Me. Democratic Party's 2015 November Monthly Report of Receipts & Disbursements at 18, 25 (Nov. 20, 2015); Democratic Party of Va.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 14, 18 (Feb. 12, 2016); Mass. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 93, 100 (Nov. 20, 2015); WV State Democratic Exec. Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 27, 43 (Nov. 20, 2015); WY Democratic State Cent. Comm.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 24, 28 (May 9, 2016); Mich. Democratic State Cent. Comm.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 42, 61 (May 12, 2016).

62 *See supra* note 61; DNC's Amended 2015 November Monthly Report of Receipts & Disbursements at 5,583-87 (Jan. 11, 2016).

predetermined plan for the SPCs to transfer the funds right to the DNC even before they started receiving them.

Fourth, the reporting of some of the transactions connected to the joint fundraising activity supports the conclusion that the funds ultimately given to the DNC were never intended to stay in the accounts of the SPCs. At least fourteen of the SPCs failed to report either the receipt of their allocated shares from HVF or the corresponding transfers out to the DNC, even though both HVF and the DNC reported their side of the same transactions.[63] One SPC argued that its failure to report multiple transactions totaling over a million dollars was an "oversight" even though the transactions were among the largest flowing through its accounts. And there is information in the record to indicate that some of the SPCs may not have reported the receipt in and transfers out because they were not even aware of them. The *Politico* article reported that some SPC officials "complained that they weren't notified of the transfers into and out of their accounts."[64]

Further, four of the SPCs reported these transactions in a way that suggests that they understood that that these funds were always intended for the DNC, not them. These SPCs described the purpose of their transfers to the DNC as "Hillary Victory Fund,"[65] "Transfer from

[63] *See* Compl. ¶¶ 161-193.

[64] Kenneth Vogel & Isaac Arnsdorf, *Clinton Fundraising Leaves Little for State Parties*, POLITICO, May 2, 2016, https://www.politico.com/story/2016/04/clinton-fundraising-leaves-little-for-state-parties-222670.

[65] *See, e.g.*, Idaho State Democratic Party's Amended 2016 August Monthly Report of Receipts & Disbursements at 233 (April 9, 2017).

HVF,"[66] "Hillary Victory Fund Transfer Out,"[67] and "Final Transfer to DNC for Hillary Victory Fund."[68]

These facts, taken together, support the conclusion that the SPCs largely participated in HVF as a means to pass their contributions through to the DNC. As noted above, included in the transfers from the SPCs to the DNC was more than $80 million from more than 1,500 individual contributors who had already reached their limits for direct contributions to the DNC.

The SPCs maintain that each transaction was legal.[69] The Commission, however, is not required to evaluate each transaction separately and in a vacuum, and one court has expressly cautioned against doing so when interpreting the Act.[70] While the existence of intraparty transfer rules "reflects a judgment that party committee units are to be relatively free to fund each other's

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66 *See, e.g.*, Democratic State Cent. Comm. of LA's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 702 (May 13, 2017).

67 *See, e.g.*, Mass. Democratic State Comm.'s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 405 (Dec. 10, 2017).

68 *See* Democratic Party of N.M.'s Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 489 (Mar. 20, 2017).

69 *See* SPCs Resp. at 2.

70 *See FEC v. Furgatch*, 807 F.2d 857, 862 (9th Cir. 1987) (cautioning that courts should be careful to ensure that the Act's "purposes are fully carried out, that they are not cleverly circumvented, or thwarted by a rigid construction of the terms of the Act"); *cf. Colo. Republican Fed. Campaign Comm.*, 533 U.S. at 462, 464 n.28 (explaining that circumvention is a "systemic" problem, that is "very hard to trace").

efforts,"[71] such efforts to use these rules to evade the limits under the Act are impermissible.[72] To apply the intraparty transfer provisions as urged by Respondents would effectively nullify the individual contribution limitations for a national party committee. The Commission should construe statutes and regulations to harmonize and give effect to all of their provisions.[73]

The SPCs also specifically note that they received their allocations from HVF, controlled how such funds were spent, and were permitted to make unlimited transfers of their federal funds to the DNC.[74] The facts, however, indicate that the SPCs' assertion that they controlled how the funds were spent is not credible. Rather, the facts, fairly construed, show that the funds transferred to the SPCs pursuant to the allocation formula were intended at the outset for the DNC. Thus, it appears that the allocation formula was a pretext to redirect funds through the SPCs to the DNC that could not have been directly contributed to the DNC because the funds

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[71] Statement of Reasons, Comm'rs. Aikens, Thomas, Elliott, McDonald, & McGarry at 4, MUR 4215 (Democratic Nat'l Comm.) (Mar. 26, 1998); *see also* 52 U.S.C. § 30116(a)(4); 11 C.F.R. § 110.3(c)(1); Explanation & Justification, Transfer of Funds; Collecting Agents; Joint Fundraising, 48 Fed. Reg. 26,296, 26,298 (June 7, 1983) (explaining that where all of the participants to a joint fundraising activity are party committees of the same political party, they do not have to follow the allocation and notice requirements since the committees could decide, after the fundraising was over, to transfer any amount of funds among themselves).

[72] *See* First Gen. Counsel's Rpt. at 24-34, Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (May 21, 1991) (rejecting the argument that the unlimited transfer provision allowed a national party committee to transfer funds to a state party committee that used the funds to support a federal candidate in excess of the coordinated party expenditure limits); Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (Aug. 2, 1994) (ratifying earlier reason-to-believe findings); *see also* 52 U.S.C. § 30125(a); 11 C.F.R. § 102.6(a)(1)(iv).

[73] *See United States v. Citgo Petroleum Corp.*, 801 F.3d 477, 485 (5th Cir. 2015) ("Regulations, like statutes, must be 'construed so that effect is given to all [their] provisions, so that no part will be inoperative or superfluous, void or insignificant.'" (alteration in original) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009))); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (explaining that, when interpreting statutory language, we must look to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole"); *accord CREW v. FEC*, 316 F. Supp. 3d 349, 394-95 (D.D.C. 2018) (holding that the Commission's regulation does not implement the Act in a manner "so that effect is given to all its provisions" (quoting *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018))).

[74] SPCs Resp. at 2.

were from individual contributors who had already reached their limits for contributions to the DNC.

In sum, we conclude that Respondents, through their series of joint fundraising transactions, used HVF as a means to circumvent the DNC's contribution limits by using the SPCs to direct additional funds to the DNC in excess of the individual contributor's limits. Accordingly, the Commission finds reason to believe that the SPCs violated 11 C.F.R. § 102.17(c)(1) and (2), by soliciting and raising funds under a false joint fundraising agreement.

B. Respondents Failed to Properly Report Receipts and Disbursements from the Joint Fundraising Committee

Having concluded that the SPCs were not legitimate participants in the joint fundraising committee because they were largely used as a mere pass through for contributions to the DNC, it necessarily follows that their reports did not accurately reflect the real disposition of funds raised through HVF.

Because most of the proceeds allocated by HVF to the SPCs were in reality contributions to the DNC, the SPCs improperly reported these funds as transfers from HVF and to the DNC and contributions from the individual donors. Accordingly, the Commission finds reason to believe that the SPCs violated 52 U.S.C. § 30104(a) and (b), and 11 C.F.R. § 104.3(a) and (b).