

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL’S REPORT**

**MUR: 7726**

DATE COMPLAINT FILED: Apr. 8, 2020

DATE OF NOTIFICATIONS: Apr. 13, 2020

LAST RESPONSE RECEIVED: July 7, 2020

DATE ACTIVATED: July 17, 2020

EXPIRATION OF SOL: May 13, 2020 – ongoing

ELECTION CYCLES: 2016, 2018, 2020

**COMPLAINANTS:**

The Patriots Foundation

Craig Robinson

**RESPONDENTS:**

David Brock

American Bridge 21st Century Foundation

AB PAC and Rodell Mollineau in his official  
capacity as treasurer

Media Matters for America

Correct the Record and Elizabeth Cohen in her  
official capacity as treasurerHillary for America and Elizabeth Jones in her  
official capacity as treasurer

Unknown Respondents

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)(3)(A), (b)(6)(B)(i)

52 U.S.C. § 30116(a)(2)(A), (f)

52 U.S.C. § 30118(a)

11 C.F.R. § 100.26

11 C.F.R. § 104.3(a), (b)

11 C.F.R. § 110.2(b)

11 C.F.R. § 110.9

11 C.F.R. § 114.2

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint makes various allegations that a network of four political committees and organizations allegedly established or controlled by political operative David Brock as well as Hillary for America and Elizabeth Jones in her official capacity as treasurer (“HFA”), the

1 authorized committee of 2016 presidential candidate Hillary R. Clinton, violated the Federal  
2 Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The network of  
3 organizations allegedly established or controlled by Brock are Media Matters for America  
4 (“MMA”), AB PAC and Rodell Mollineau in his official capacity as treasurer (“AB PAC”),  
5 American Bridge 21st Century Foundation (“AB Foundation”), and Correct the Record and  
6 Elizabeth Cohen in her official capacity as treasurer (“CTR”). Respondents submitted a joint  
7 Response denying the allegations.

8 First, the Complaint alleges that, during the 2016 election, MMA made impermissible in-  
9 kind corporate contributions to HFA in the form of “media services” provided without charge.  
10 The Response argues that the alleged activities did not amount to an in-kind contribution because  
11 they were conducted to directly support free internet communications and, thus, exempt from the  
12 definition of “public communication.” The only alleged instance of coordination between MMA  
13 and HFA before the Commission relates to an article that MMA published on its website,  
14 apparently covered by the internet exemption. Therefore, we recommend that the Commission  
15 find no reason to believe that MMA made, and HFA knowingly accepted or received and failed  
16 to report, in-kind corporate contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A), 30118(a)  
17 and 11 C.F.R. §§ 104.3(a), 114.2.

18 Second, the Complaint alleges that, during the 2016 election, MMA made in-kind  
19 contributions to AB PAC and CTR in the form of “uncompensated services,” which the recipient  
20 committees failed to report. The Complaint asserts that it is “reasonable to infer” that MMA  
21 provided unspecified services to AB PAC and CTR based on their shared physical address and  
22 goal of helping to elect Clinton. The Response argues that the Complaint fails to adequately  
23 allege any violation of the Act. Because the allegations are vague, speculative, and unsupported

1 by the available information, we recommend that the Commission dismiss the allegations that  
2 AB PAC and CTR failed to report in-kind contributions from MMA in violation of 52 U.S.C.  
3 § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a).

4 Third, given an arrangement whereby AB PAC and AB Foundation share certain  
5 administrative expenses based on “management and budgeted” estimates, the Complaint alleges  
6 that AB PAC’s reporting of the payments arising out of its cost-sharing arrangement with AB  
7 Foundation are inaccurate. The Response argues that the Complaint has provided no evidence  
8 that the estimates yielded incorrect reporting. Because there is no indication from the available  
9 information to suggest any discrepancies between the estimates and actual costs, we recommend  
10 that the Commission dismiss the allegation that AB PAC violated 52 U.S.C. § 30104(b)(3)(A)  
11 and 11 C.F.R. § 104.3(b) by submitting inaccurate disclosure reports.

12 Fourth, the Complaint alleges that, during the 2016 election, David Brock and CTR  
13 “systematically coordinated” with the Clinton campaign, resulting in CTR making unreported,  
14 excessive in-kind contributions to HFA. The Response argues that the Complaint provides no  
15 evidence that CTR made any expenditures in support of Clinton beyond those incurred in  
16 connection with exempted internet communications. However, the available information  
17 contains multiple examples of expenditures by CTR that appear to have been coordinated with  
18 HFA for activities not covered by the internet exemption, such as expenditures for travel,  
19 fundraising, and polling. Therefore, we recommend that the Commission find reason to believe  
20 that CTR made, and HFA knowingly accepted and failed to report, excessive in-kind  
21 contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A), 30116(a)(2)(A) and 11 C.F.R.  
22 §§ 104.3(b), 110.2(b). We further recommend that the Commission take no action at this time as  
23 to the alleged violations by David Brock.

1 Fifth, the Complaint alleges that AB PAC's independent expenditures during the 2016  
2 election opposing Donald J. Trump, Clinton's general election opponent, should have been  
3 reported as in-kind contributions to HFA because AB PAC "did not operate independently" of  
4 CTR which, pursuant to the above allegation, "openly coordinated" with HFA. The Response  
5 argues that the Complaint fails to point to any specific AB PAC communication that satisfies the  
6 Commission's coordinated communication test at 11 C.F.R. § 109.21. The available  
7 information, including the alleged association between CTR and HFA, is insufficient to infer that  
8 AB PAC, by extension, coordinated with HFA. Therefore, we recommend that the Commission  
9 dismiss the allegation that AB PAC made, and HFA knowingly accepted, unreported, excessive  
10 in-kind contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A), (b)(6)(B)(i), 30116(a)(2)(A),  
11 (f) and 11 C.F.R. §§ 104.3(a), (b), 110.2(b), 110.9.

12 Sixth, the Complaint alleges that AB PAC made prohibited in-kind contributions to a  
13 variety of unidentified Democratic candidate campaigns in the form of free research services.  
14 The Complaint points to descriptions of AB PAC's research program and its general usefulness  
15 to political campaigns. The Response argues that the Complaint provides no evidence that AB  
16 PAC actually provided its research to a campaign committee without charge. Given the lack of  
17 specific information tending to substantiate the allegation, we recommend that the Commission  
18 dismiss the allegation that AB PAC made and failed to report excessive in-kind contributions to  
19 unidentified campaign committees in violation of 52 U.S.C. §§ 30104(b)(3)(A), (b)(6)(B)(i),  
20 30116(a)(2)(A), (f) and 11 C.F.R. §§ 104.3(a), (b), 110.2(b), 110.9.

## II. FACTUAL AND LEGAL ANALYSIS

Hillary R. Clinton was a candidate for president in 2016, and HFA was her authorized committee.<sup>1</sup> David Brock is reportedly a Democratic political operative.<sup>2</sup> He was involved in the creation or operation of the entities described below.<sup>3</sup>

MMA is a 501(c)(3) organization that was incorporated in 2003; Brock served on its inaugural Board of Directors.<sup>4</sup> MMA's stated purpose is "ensuring accuracy, fairness, and a balance of diverse views in the media through research, public education, and advocacy."<sup>5</sup>

AB PAC is an independent expenditure-only political committee ("IEOPC") that registered with the Commission in 2010.<sup>6</sup> Brock served as its initial treasurer.<sup>7</sup> AB PAC describes itself as "the largest research, video tracking, and rapid response organization in Democratic politics."<sup>8</sup>

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<sup>1</sup> FEC Form 2, Hillary Rodham Clinton Original 2015 Statement of Candidacy (Apr. 13, 2015); FEC Form 1, HFA Original Statement of Org. (Apr. 13, 2015).

<sup>2</sup> Evan Halper, *David Brock, a Clinton Enemy from the 90s, Is Now Integral to Hillary's Run*, L.A. TIMES (July 7, 2015), <https://www.latimes.com/nation/la-na-clinton-david-brock-20150707-story.html> (cited in Compl. at 4 n.11 (Apr. 1, 2020)).

<sup>3</sup> Each of the four entities, MMA, AB PAC, AB Foundation, and CTR, reportedly share the same address. TigerClaws, *David Brock's Media Matters Allegedly Hid Income from IRS for Years*, FREE REPUBLIC (Mar. 14, 2017), <https://www.freerepublic.com/focus/news/3534632/posts?page=23> (cited in Compl. at 11 n.34).

<sup>4</sup> Compl., Ex. 2 (MMA, Articles of Incorporation (Aug. 14, 2003)).

<sup>5</sup> *Id.*

<sup>6</sup> FEC Form 1, AB PAC Original Statement of Org. (Nov. 23, 2010).

<sup>7</sup> *Id.* Rodell Mollineau, AB PAC's current treasurer, assumed that position in 2012. FEC Form 1, AB PAC Amended Statement of Org. (Apr. 12, 2012). AB PAC formerly operated as American Bridge and American Bridge 21st Century. FEC Form 1, AB PAC Original Statement of Org. (Nov. 23, 2010); FEC Form 1, AB PAC Amended Statement of Org. (Feb. 24, 2011).

<sup>8</sup> About Us, AM. BRIDGE 21ST CENTURY, <https://americanbridgepac.org/about-us/> (last visited Nov. 12, 2020).

AB Foundation is a 501(c)(4) organization that was incorporated in 2011; Brock served on its inaugural Board of Directors.<sup>9</sup> AB Foundation's stated purpose is to "advocate and research progressive solutions to America's public policy concerns, and to educate the American people and nation's leaders on progressive ideas."<sup>10</sup>

CTR is a multicandidate hybrid political committee that registered with the Commission on June 5, 2015.<sup>11</sup> It reportedly was founded by Brock and was active primarily during the 2016 election cycle.<sup>12</sup> CTR was previously a project of AB PAC during the lead-up to the presidential primaries, but subsequently split off from AB PAC, its parent group.<sup>13</sup> CTR's stated purpose was to "work in support of Hillary Clinton's candidacy for President, aggressively responding to false attacks and misstatements."<sup>14</sup>

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<sup>9</sup> Compl., Ex. 7 at 11 (AB Foundation, Articles of Incorporation (Mar. 1, 2011)).

<sup>10</sup> *Id.*

<sup>11</sup> FEC Form 1, CTR Original Statement of Org. (June 5, 2015).

<sup>12</sup> See Matea Gold, *How a Super PAC Plans to Coordinate Directly with Hillary Clinton's Campaign*, WASH. POST (May 12, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/05/12/how-a-super-pac-plans-to-coordinate-directly-with-hillary-clintons-campaign/> (cited in Compl. at 6 n.25, 13 n.41). CTR filed a termination report with the Commission on December 4, 2019, but, as of the date of this Report, remains an active political committee. FEC Form 3X, CTR Termination Report (Dec. 4, 2019).

As a hybrid PAC, CTR maintains a non-contribution account, to and from which it can deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and other political committees. FEC Form 1, CTR Original Statement of Org. (June 5, 2015). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. See Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011).

<sup>13</sup> See Gold, *supra* note 12.

<sup>14</sup> *Id.*

**A. The Commission Should Find No Reason to Believe that MMA Made, and HFA Accepted and Failed to Report, In-Kind Corporate Contributions**

**1. Facts**

The Complaint asserts that, during the 2016 election, MMA provided “media services to the Clinton campaign without charge.”<sup>15</sup> In support, the Complaint first cites to a December 19, 2016, news article published by *New Republic* that summarizes interviews with former MMA staff who reportedly described how, in the lead-up to Clinton’s announcement of her candidacy in April 2015, MMA’s “priority shifted . . . towards running defense for Clinton.”<sup>16</sup>

The Complaint next cites to a hacked July 25, 2015, memorandum from unidentified senior HFA staff to Clinton that generally noted a strategy of “[w]ork[ing] with [MMA] to highlight examples of when the press won’t cover the same issues with Republicans.”<sup>17</sup> The Complaint also cites to a hacked HFA email from Press Secretary Nick Merrill to another HFA staffer, dated January 5, 2016, which states that “[MMA] is ready to push back on a Vanity Fair article about [Clinton campaign vice chair] Huma Abedin . . . . We have [MMA], CTR, and core surrogates lined up . . . .”<sup>18</sup> Finally, the Complaint points to a January 6, 2016, article that MMA published on its website attacking the claims about Abedin in the *Vanity Fair* article.<sup>19</sup>

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<sup>15</sup> Compl. at 3.

<sup>16</sup> Clio Chang & Alex Shephard, *What Happens to Media Matters in a Post-Hillary World?*, NEW REPUBLIC (Dec. 19, 2016), <https://newrepublic.com/article/139385/happens-media-matters-post-hillary-world> (cited in Compl. at 3 n.5).

<sup>17</sup> Compl., Ex. 5 (Memorandum from HFA Senior Staff to Hillary Rodham Clinton (July 25, 2015)).

<sup>18</sup> Alex Pfeiffer, *Clinton Campaign Planned to Work with Media Matters, Leaks Reveal*, DAILY CALLER (Nov. 4, 2016), <https://dailycaller.com/2016/11/04/clinton-campaign-worked-with-media-matters-leaks-reveal/> (cited in Compl. at 3 n.7, 12 n.37) (discussing and linking to internal campaign email obtained by WikiLeaks).

<sup>19</sup> Brennan Suen, *Vanity Fair’s Huma Abedin Hit Piece By the Numbers*, MMA (Jan. 6, 2016), <https://www.mediamatters.org/hillary-clinton/vanity-fairs-huma-abedin-hit-piece-numbers>.

The Complaint asserts that the January 6, 2016, post on MMA's website "confirm[s]" that MMA coordinated with HFA.<sup>20</sup> HFA reported no disbursements to MMA or the receipt of any in-kind contributions from MMA during the 2016 election cycle.

Based on this information, the Complaint alleges that MMA made, and HFA knowingly accepted or received and failed to report, prohibited in-kind corporate contributions.<sup>21</sup> In their joint Response, MMA and HFA argue that, to the extent that MMA coordinated with HFA in connection with the January 6, 2016, article posted on MMA's website, there was no in-kind contribution "because these activities were all conducted to directly support free internet communications."<sup>22</sup>

## 2. Legal Analysis

The Act defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."<sup>23</sup> Commission regulations provide that the phrase "anything of value includes all in-kind contributions."<sup>24</sup> In-kind contributions include coordinated communications, subject to a three-part test codified at 11 C.F.R. § 109.21; coordinated expenditures, defined at 11 C.F.R. § 109.20(a); and the provision of "goods or services," defined at 11 C.F.R. § 100.52(d).

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<sup>20</sup> Compl. at 4.

<sup>21</sup> *Id.* at 11-12.

<sup>22</sup> Resp. at 3 (July 7, 2020); *see id.* at 4 ("There is no evidence that [MMA] highlighted the press hypocrisy of interest to HFA by any means other than through free internet communications.").

<sup>23</sup> 52 U.S.C. § 30101(8)(A)(i); *see also id.* § 30101(9)(A)(i) (defining "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office").

<sup>24</sup> 11 C.F.R. § 100.52(d).



Under the Commission's coordinated communication regulation, the communication at issue must: (1) be paid for by a third party; (2) satisfy a "content" standard; and (3) satisfy a "conduct" standard.<sup>25</sup> All three prongs are required for a communication to be considered a coordinated communication and treated as an in-kind contribution.<sup>26</sup> Separately, an expenditure (for something other than a communication) is considered to be a coordinated expenditure and treated as an in-kind contribution if it is "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee."<sup>27</sup> Finally, the provision of "goods or services without charge or at a charge that is less than the usual and normal charge" constitutes an in-kind contribution.<sup>28</sup> Examples of goods or services include "[s]ecurities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists."<sup>29</sup>

The Act prohibits corporations from making contributions to a candidate or authorized committee and similarly provides that no person shall knowingly accept a prohibited corporate

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<sup>25</sup> *Id.* § 109.21. Content standards include: (1) electioneering communications; (2) a public communication that disseminates, distributes, or republishes campaign materials; (3) a public communication containing express advocacy; (4) a public communication that, in relevant part, refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated 90 days or fewer before a primary, general, or special election, and is directed to voters in the jurisdiction of the clearly identified candidate; and (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c).

Conduct standards include: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; and (5) former employee or independent contractor. *Id.* § 109.21(d)(1)-(5). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *Id.* § 109.21(d)(6).

<sup>26</sup> *Id.* § 109.21(a).

<sup>27</sup> *Id.* § 109.20(a); *see* 52 U.S.C. § 30116(a)(7)(B)(i); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (clarifying that section 109.20(b) applies to "expenditures that are not made for communications"); Advisory Op. 2011-14 at 4 ("AO 2011-14") (Utah Bankers Ass'n).

<sup>28</sup> 11 C.F.R. § 100.52(d)(1).

<sup>29</sup> *Id.*

contribution.<sup>30</sup> Political committees are required to report the identifying information of each person who makes an aggregate contribution in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee), together with the date and amount of any such contribution.<sup>31</sup>

At the outset, certain documents cited by the Complaint in support of the allegations, principally including an internal HFA strategy memo and an internal HFA email, are the products of a state-sponsored hack-and-release operation designed to interfere with the 2016 election, raising the question of whether the Commission should consider illegally obtained evidence.<sup>32</sup> However, even when considering these documents, the record before the Commission lacks a sufficient factual basis to justify a finding of reason to believe.

As explained below, the Complaint points to an article MMA published on its website on January 6, 2016, that was allegedly the product of coordination between HFA and MMA. The article, however, appears to be exempt from the definition of “coordinated communication”

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<sup>30</sup> 52 U.S.C. § 30118(a); *see also* 11 C.F.R. § 114.2.

<sup>31</sup> 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.3(a).

<sup>32</sup> The case law indicates that federal agencies may consider stolen documents in administrative proceedings, as long as the agency was not involved in the underlying criminal act. *See, e.g., Nat'l Labor Relations Bd. v. S. Bay Daily Breeze*, 415 F.2d 360, 364 (9th Cir. 1969); *Knoll Associates, Inc. v. Fed. Trade Comm'n*, 397 F.2d 530, 533 (7th Cir. 1968). The facts presented in those matters, however, do not involve state-sponsored efforts that the U.S. Intelligence Community and Department of Justice deemed an attack on the American democratic process. *See* NATIONAL INTELLIGENCE COUNCIL, INTELLIGENCE COMMUNITY ASSESSMENT 2017-01D, ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS at ii (Jan. 6, 2017); ROBERT S. MUELLER, III, SPECIAL COUNSEL, U.S. DEP'T OF JUSTICE, SPECIAL COUNSEL'S REPORT, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 3, 13 (Mar. 2019). The Commission has observed that foreign cyberattacks “present unique challenges to both criminal prosecution and civil enforcement,” and “fulfilling its ‘obligation to preserve the basic conception of a political community’ under section 30121 cannot hinge solely on prosecution of foreign violators abroad,” but instead “requires that countermeasures be taken within the United States.” Advisory Op. 2018-12 at 8 (DDC) (quoting *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011), *aff'd* 565 U.S. 1104 (2012)); *compare* First Gen. Counsel's Rpt. at 16-17, 27-28, MUR 7153 (Hillary for America, *et al.*) (recommending, given the provenance of hacked emails derived from the same state-sponsored hack-and-release operation, which formed the sole basis for certain allegations stated in the Complaint, that the Commission dismiss the violations at issue as a matter of prosecutorial discretion).

1 because the “content prong” of the three-part “coordinated communication” test is not satisfied.  
2 The content standards all require an “electioneering communication” or a “public  
3 communication,” neither of which applies to the MMA web posting.<sup>33</sup>

4 An electioneering communication is “any broadcast, cable, or satellite communication”  
5 that refers to a “clearly identified candidate for Federal office,” is publicly distributed within a  
6 certain time before an election, and meets certain requirements regarding the audience.<sup>34</sup> The  
7 article was published on the internet, not broadcast, cable, or satellite, and therefore was not an  
8 electioneering communication.

9 A public communication is “a communication by means of any broadcast, cable, or  
10 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or  
11 telephone bank to the general public, or any other form of general public political advertising.”<sup>35</sup>  
12 Commission regulations provide that public communications “shall not include communications  
13 over the Internet, except for communications placed for a fee on another person’s Web site,” a  
14 provision referred to as the “internet exemption.”<sup>36</sup> The internet exemption appears to apply to  
15 the article because it was published on MMA’s own website and there is no indication that MMA  
16 also placed it for a fee on another person’s website.

17 The article is the only discrete instance of alleged coordination identified by the  
18 Complaint. In addition, the available information does not otherwise suggest or indicate that  
19 MMA made any coordinated expenditure on behalf of HFA, or that MMA provided HFA with

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<sup>33</sup> See *supra* note 25; AO 2011-14 at 5.

<sup>34</sup> 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 109.29 (same).

<sup>35</sup> 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).

<sup>36</sup> 11 C.F.R. § 100.26.

any goods or services without proper charge. The reported statement from MMA staffers in an April 2015 news article about “running defense” for Clinton, even if suggestive, does not itself indicate that MMA coordinated with HFA because such a “defense” could have been conducted without any coordination. The July 2015 internal HFA memo vaguely refers to HFA “working with MMA,” but similarly does not identify any particular activities of coordination. Finally, the January 2016 internal HFA email written the day before MMA posted the article on its website states that HFA had “lined up” MMA to act as a “surrogate,” and referred to the same topic as the article: the defense of Huma Abedin from attacks made against her in a *Vanity Fair* article.<sup>37</sup> However, even if it is assumed that MMA coordinated with HFA in connection with this topic, there is no basis to infer that such coordination extended beyond the article on MMA’s website which, as discussed above, appears to be covered by the internet exemption.

Therefore, we recommend that the Commission find no reason to believe MMA made, and HFA knowingly accepted or received and failed to report, in-kind corporate contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A), 30118(a) and 11 C.F.R. §§ 104.3(a), 114.2.

**B. The Commission Should Dismiss the Allegation that AB PAC and CTR Failed to Report In-Kind Contributions They Received from MMA**

The Complaint alleges that MMA made in-kind contributions to AB PAC and CTR in the form of “similar uncompensated services” — apparently referencing the “media services” that MMA allegedly provided to HFA in connection with the above allegation — which AB PAC and CTR received and failed to report. The Complaint does not specify a timeframe, but states that this occurred “at least during the 2016 election.”<sup>38</sup> It also does not describe the alleged

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<sup>37</sup> Pfeiffer, *supra* note 18; Suen, *supra* note 19.

<sup>38</sup> Compl. at 12.

1 uncompensated services or identify specific facts or sources that otherwise support the  
 2 allegations. Instead, the Complaint asserts that it is “reasonable to infer” that MMA provided  
 3 services to AB PAC and CTR “given [MMA’s] coordination with the Clinton campaign, its  
 4 steadfast focus on undertaking activities designed to help get Hillary Clinton elected, and its  
 5 shared office and goals with AB PAC and CTR.”<sup>39</sup> In response, AB PAC and CTR argue that  
 6 the allegations are “baseless” and that “mere speculation that a violation may have occurred,  
 7 without facts to support the allegation, is not sufficient.”<sup>40</sup>

8       The allegation in the Complaint is vague, speculative, and unsupported by the available  
 9 information. Even if MMA “shared offices and goals” with AB PAC and CTR, which is not  
 10 disputed, those facts alone do not establish that MMA provided services to those entities, let  
 11 alone services that each of the groups failed to report. In sum, because the Complaint lacks  
 12 sufficient information to support these allegations, and we are unaware of other information that  
 13 supports them, there is insufficient indication that the alleged provision of uncompensated and  
 14 unreported services occurred.<sup>41</sup> Therefore, we recommend that the Commission dismiss the  
 15 allegation that AB PAC and CTR failed to report in-kind contributions from MMA in violation  
 16 of 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a).

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<sup>39</sup> *Id.* at 11-12. While the available information indicates that MMA shared an address with AB PAC and CTR, TigerClaws, *supra* note 3, we have been unable to determine whether these entities shared a single suite at that address.

<sup>40</sup> Resp. at 4.

<sup>41</sup> Statement of Reasons, Comm’rs Mason, Sandstrom, Smith, & Thomas at 1, MUR 4960 (Clinton for U.S. Exploratory Committee) (“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”).

**C. The Commission Should Dismiss the Allegation that AB PAC Filed Incorrect Disclosure Reports with the Commission Due to Its Estimated Cost-Sharing Arrangement with AB Foundation**

**1. Facts**

AB PAC and AB Foundation share administrative expenses including for staff, office space, and overhead, and AB Foundation reimburses AB PAC for its share of these expenses pursuant to a cost-sharing agreement.<sup>42</sup> Regarding employee salaries, AB PAC disburses salaries of staff common to AB PAC and AB Foundation either on a prospective basis or retroactively reimburses funds to AB PAC for work done on its behalf in accordance with the “common paymaster” provisions of the Internal Revenue Code.<sup>43</sup>

According to AB Foundation’s available annual financial statements from 2015 through 2018, prepared and signed by an independent auditor, AB Foundation and AB PAC do not have a “formal agreement relating to the allocation of expenses.”<sup>44</sup> AB Foundation’s 2015 financial statement indicated that AB PAC and AB Foundation allocated expenses “based on management

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<sup>42</sup> See, e.g., Compl., Ex. 8 at 9 (AB Foundation, Financial Statements for the Year Ended December 31, 2015 (June 6, 2018)). In its application for tax-exempt status in 2013, AB Foundation informed the Internal Revenue Service that it would share “resources, facilities, and employees” with AB PAC pursuant to a “cost-sharing agreement.” Compl., Ex. 7 at 6 (AB Foundation, Application for Tax-Exempt Status (May 21, 2013)).

<sup>43</sup> See Factual & Legal Analysis at 5, MUR 7284 (American Bridge 21st Century) [hereinafter MUR 7284 F&LA]. Under the common paymaster provisions in the Internal Revenue Code, two or more “related” entities, like AB PAC and AB Foundation, may employ the same individuals at the same time and pay these individuals through only one of the entities (the “common paymaster”), which is considered, for federal tax purposes, to be a single employer. 26 U.S.C. §§ 3121(s), 3306(p); Treas. Reg. §§ 31.3121(s)-1, 31.3306(p)-1. By using a common paymaster arrangement, related entities pay, in total, no more social security taxes than the organizations would pay were they a single entity, and each may deduct only its own part of the wages. *Id.*; *Common Paymaster*, IRS.GOV, <https://www.irs.gov/government-entities/common-paymaster> (last visited Nov. 12, 2020). The common paymaster is responsible for filing information and tax returns, issuing W-2 forms, and issuing the paychecks to the employee, while the other entity transfers its share of the employee expenses to the common paymaster. *Id.*

<sup>44</sup> Compl., Ex. 8 at 9 (AB Foundation, Financial Statements for the Year Ended December 31, 2015 (June 6, 2018)); Compl., Ex. 9 at 10 (AB Foundation, Financial Statements for the Year Ended December 31, 2016 (Sept. 18, 2018)); Compl., Ex. 10 at 10 (AB Foundation, Financial Statements for the Year Ended December 31, 2017 (June 7, 2019)); Compl., Ex. 11 at 10 (AB Foundation, Financial Statements for the Year Ended December 31, 2018 (June 7, 2019)).

and budgeted estimates,” and the available financial statements for the subsequent years do not indicate the method by which the allocations were made.<sup>45</sup> In the Response, AB PAC and AB Foundation appear to acknowledge the use of estimates to allocate their shared costs, but do not provide any specific information.<sup>46</sup>

During the period from 2011 to 2020, AB PAC reported 128 receipts from AB Foundation that totaled approximately \$24.3 million.<sup>47</sup> AB PAC reported the receipts on line 15 of its FEC disclosure reports (as “offsets to operating expenditures”), most with the reported purpose of “Overhead & Staff Expenses” and some for “Overhead Expenses.”<sup>48</sup> AB PAC also reported debts and obligations owed to AB Foundation for “Overhead & Staff Expenses” or “Overhead Expenses” in 2011, 2013, and 2014.<sup>49</sup> Based on a review of AB Foundation’s available financial statements, it appears that in 2015, AB Foundation reimbursed AB PAC for expenses based on an initial calculation of its allocation and later reported a debt owed by AB PAC which reflected a reconciliation of the initial allocation.<sup>50</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> See Resp. at 5 (“The Complaint provides no evidence that the budget estimates used by AB PAC and AB Foundation actually yielded incorrect reporting by AB PAC on its FEC reports.”).

<sup>47</sup> See *AB PAC 2011-2020 Receipts*, FEC.GOV, [https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00492140&contributor\\_name=Foundation&two\\_year\\_transaction\\_period=2012&two\\_year\\_transaction\\_period=2014&two\\_year\\_transaction\\_period=2016&two\\_year\\_transaction\\_period=2018&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00492140&contributor_name=Foundation&two_year_transaction_period=2012&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020) (last visited Nov. 12, 2020).

<sup>48</sup> See, e.g., FEC Form 3X, AB PAC Amended 2015 Mid-Year Report, Sched. A at 25 (Aug. 31, 2016), (itemizing \$250,481.89 receipt from AB Foundation as “Overhead & Staff Expenses”).

<sup>49</sup> See, e.g., FEC Form 3X, AB PAC Amended 2011 Mid-Year Report, Sched. D at 75 (May 24, 2012) (reporting outstanding debt of \$24,154.29 to AB Foundation); FEC Form 3X, AB PAC 2013 Year-End Report, Sched. D at 538 (Jan. 31, 2014) (reporting outstanding debt of \$136,665.66 to AB Foundation); FEC Form 3X, AB PAC Amended 2014 April Quarterly Report, Sched. D. at 380 (July 31, 2015) (reporting outstanding debt of \$371,938.22 to AB Foundation).

<sup>50</sup> Compl., Ex. 8 at 9 (AB Foundation, Financial Statements for the Year Ended December 31, 2015 (June 6, 2018)). It does not appear that AB PAC reported this debt to the Commission, and this reporting discrepancy is one aspect of matter, MUR 7284. In their Response in that matter, AB PAC and AB Foundation stated

The Complaint alleges that “[t]o the extent that AB Foundation’s reimbursements to AB PAC are based on estimates and not actual costs, the amounts are not accurate.”<sup>51</sup> Specifically, if AB Foundation’s actual shared costs are lower than those allocated, AB Foundation made unreported in-kind contributions to AB PAC. If AB Foundation’s actual shared costs are higher, AB PAC subsidized AB Foundation’s costs without properly reporting those disbursements.<sup>52</sup> The Response contends that the Complaint “provides no evidence that the estimates used by AB PAC and AB Foundation actually yielded incorrect reporting by AB PAC on its FEC reports.”<sup>53</sup>

## 2. Legal Analysis

Political committees are required to report the identifying information of each person who makes an aggregate contribution in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee), together with the date and amount of any such contribution.<sup>54</sup> Further, political committees are required to report their disbursements,<sup>55</sup> as well as their outstanding debts and obligations.<sup>56</sup>

The Commission has provided guidance to different types of political committees about the variety of methods available to share or allocate costs — such as use of advances or

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that “the two organizations engage in ongoing accounting and reconciliation” of their shared expenses. Joint Resp. of AB PAC, AB Foundation & CTR at 4 (Nov. 28, 2017), MUR 7284 (American Bridge 21st Century, *et al.*).

<sup>51</sup> Compl. at 13. The Complaint does not suggest, or allege facts to support, that AB Foundation is a connected organization of AB PAC, or, conversely, that AB PAC should be considered a separate segregated fund (“SSF”) of AB Foundation. *See* 52 U.S.C. § 30118(b)(2)(C) (exempting from definition of “contribution” those payments by connected organization for SSF’s administrative costs); 11 C.F.R. § 114.1(a)(2)(iii) (same).

<sup>52</sup> Compl. at 13.

<sup>53</sup> Resp. at 5.

<sup>54</sup> 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.13(a).

<sup>55</sup> 52 U.S.C. § 30104(b)(4)(H)(i).

<sup>56</sup> *Id.* § 30104(b)(8).



reimbursements for the expenses of staff shared with other entities — and the various methods available for reporting such costs, including through reporting reimbursements for shared costs as offsets to operating expenditures.<sup>57</sup>

The cost-sharing agreement between AB Foundation and AB PAC was previously the subject of MUR 7284 (American Bridge 21st Century, *et al.*). The complaint in that matter alleged that AB PAC's "utilization of the common paymaster arrangement [with AB Foundation] may have violated the reporting requirements" of the Act.<sup>58</sup> The Commission concluded that the arrangement under which AB PAC paid shared employees' salaries; received reimbursements from AB Foundation for its share of employee costs; reported salary payments as disbursements on its reports; and reported the reimbursements from AB Foundation as offsets to operating expenditures "is generally permissible and does not, in itself, give rise to unspecified reporting violations."<sup>59</sup> However, the Commission explained that "[i]naccurate reporting of, or failure to report, transactions made pursuant to a common paymaster arrangement would be a violation . . . for the reason that committees must accurately report their activity."<sup>60</sup>

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<sup>57</sup> See, e.g., Advisory Op. 1995-22 (DCCC) at 3 (approving of a particular method of reporting shared employee costs in which one entity reimburses another, while also noting that the approved method "is not the only permissible method" and noting that, "normally," committees would report such reimbursements as "offsets to operating expenditures" like refunds); Advisory Op. 1980-38 (Allen) at 2 ("AO 1980-38") (concluding that political committee may receive reimbursement payments from non-committee for shared costs, which should be reported as offsets to operating expenditures); Advisory Op. 1978-67 (Anderson) (superseded in part by AO 1980-38 on other grounds) (concluding that Act and Commission regulations do not prohibit shared use of facilities so long as costs are allocated appropriately and committee reports its own expenditures); see also 11 C.F.R. § 106.1 (setting out allocation rules); Advisory Op. 1988-24 (Dellums) (approving joint operations account pursuant to joint fundraising agreement between federal- and non-federal committees sharing operational costs, including common staff).

<sup>58</sup> Compl. at 11, MUR 7284 (American Bridge 21st Century, *et al.*) (Oct. 9, 2017). More specifically, the Complaint alleged that AB PAC: (1) misreported receipts from AB Foundation as reimbursements for overhead and staff expenses when they were actually contributions; and (2) failed to properly reports specific transactions, including debts to AB Foundation. *Id.* at 11-13.

<sup>59</sup> MUR 7284 F&LA at 9-10.

<sup>60</sup> *Id.* at 10.

1           The instant Complaint alleges, more specifically, that to the extent AB PAC and AB  
2   Foundation allocated shared expenses using estimates and not actual amounts, it follows that AB  
3   PAC's reporting of the allocated costs must be inaccurate.<sup>61</sup> The Commission's Factual and  
4   Legal Analysis in MUR 7284 did not directly address the use of estimates to allocate shared  
5   expenses, but it stated that "there is no basis for concluding that AB Foundation reimbursed AB  
6   PAC in excess of its own portion of the shared employees' costs such that the payments  
7   represent AB Foundation's contributions to AB PAC."<sup>62</sup>

8           The instant Complaint provides no information calling into question the accuracy of the  
9   estimates upon which AB PAC and AB Foundation relied when allocating their costs, and we are  
10   aware of no such information. In MUR 7284, AB PAC represented to the Commission that the  
11   two entities engage in "ongoing accounting and reconciliation," and AB Foundation's financial  
12   statements show at least one instance where an initial allocation was determined to be incorrect  
13   and subsequently reconciled.<sup>63</sup> Moreover, it is unclear whether AB PAC and AB Foundation  
14   continued to use "estimates" beyond 2015 — the only year for which AB Foundation represented  
15   in its available financial statements that allocations were determined based on estimates.  
16   Although there is a lack of information regarding how AB PAC and AB Foundation may have  
17   used estimates to determine cost allocations, the general notion of using approximations to  
18   allocate administrative costs such as overhead, staff time, and office space does not appear to be  
19   unreasonable. The Complaint has provided no evidence, and we are aware of none, to

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<sup>61</sup> Compl. at 13.

<sup>62</sup> MUR 7284 F&LA at 10, 12.

<sup>63</sup> AB Foundation, AB PAC & CTR Joint Resp. at 4, MUR 7284 (American Bridge 21st Century, *et al.*); Compl., Ex. 8 at 9 (AB Foundation, Financial Statements for the Year Ended December 31, 2015 (June 6, 2018)) ("As of December 31, 2015, American Bridge owed the Foundation \$293,187. This amount represented an overpayment by the Foundation to American Bridge during the year ended December 31, 2015.").

reasonably infer that AB PAC and AB Foundation failed to base their allocations on good-faith estimates and in accordance with generally accepted accounting principles.<sup>64</sup> In the absence of Commission regulations governing how such allocations should be made, there is no reasonable basis to warrant an investigation as to whether the estimates here were sufficiently accurate.

Therefore, we recommend the Commission dismiss the allegation that AB PAC violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(b) by submitting inaccurate disclosure reports to the Commission. Further, because the allegation, if true, would not constitute a violation of the Act by AB Foundation, which does not have reporting obligations, we recommend the Commission dismiss the allegation that AB Foundation violated the Act.

**D. The Commission Should Find Reason to Believe that CTR Made, and HFA Knowingly Accepted and Failed to Report, Excessive In-Kind Contributions, and Take No Action at This Time with Respect to David Brock**

1. Facts

On April 13, 2015, Clinton filed a Statement of Candidacy with the Commission for the 2016 presidential election, designating HFA as her principal campaign committee.<sup>65</sup> Less than a month later, on May 12, 2015, CTR announced that it was splitting off from AB PAC and, on June 5, 2015, CTR registered with the Commission.<sup>66</sup> In its press release announcing its establishment as a separate committee, CTR President Brad Woodhouse stated that CTR would

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<sup>64</sup> See *supra* notes 44-45 and accompanying text (explaining that AB Foundation's financial statements, including the 2015 financial statement which referenced the estimates based on "management and budgeted estimates" were prepared and signed by a professional accounting firm).

<sup>65</sup> FEC Form 2, Hillary Rodham Clinton Original 2015 Statement of Candidacy (Apr. 13, 2015); FEC Form 1, HFA Original Statement of Org. (Apr. 13, 2015).

<sup>66</sup> Press Release, Correct the Record, Correct the Record Launches as New Pro-Clinton SuperPAC (May 12, 2015) [hereinafter CTR Press Release], <http://correctrecord.org/correct-the-record-launches-as-new-pro-clinton-superpac/> [<https://web.archive.org/web/20150908044706/http://correctrecord.org/correct-the-record-launches-as-new-pro-clinton-superpac/>]; FEC Form 1, CTR Original Statement of Org. (June 5, 2015).

“work in support of Hillary Clinton’s candidacy for President.”<sup>67</sup> CTR stated in the same press release that it would “not be engaged in paid media and thus will be allowed to coordinate with campaigns and Party Committees.”<sup>68</sup> In another statement to the press several days later, a CTR spokesperson further explained that “FEC rules permit some activity — in particular activity on an organization’s website, in email, and on social media — to be legally coordinated with candidates and political parties.”<sup>69</sup>

Over the course of the 2016 election cycle, CTR raised \$9.63 million and spent \$9.61 million, none of which was reported as independent expenditures.<sup>70</sup> Although it reported disbursements for some communication-specific purposes, the bulk of CTR’s reported disbursements were for purposes that were not communication-specific.<sup>71</sup> CTR’s and HFA’s disclosure reports identify only two transactions between them, both near the time that CTR split from AB PAC.<sup>72</sup>

CTR and its officers’ public statements illustrate how CTR coordinated with HFA while conducting its activities and that it existed exclusively for the purpose of electing Clinton. For

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<sup>67</sup> CTR Press Release.

<sup>68</sup> *Id.* (quoting CTR President Brad Woodhouse).

<sup>69</sup> Gold, *supra* note 12.

<sup>70</sup> See *Correct the Record 2015-2016 Raising*, FEC.GOV, <https://www.fec.gov/data/committee/C00578997/?cycle=2016&tab=raising> (last visited Nov. 12, 2020); *Correct the Record 2015-2016 Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00578997/?cycle=2016&tab=spending> (last visited Nov. 12, 2020).

<sup>71</sup> See *Correct the Record 2015-2016 Disbursements*, FEC.GOV, [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2016&data\\_type=processed&committee\\_id=C00578997&min\\_date=01%2F01%2F2015&max\\_date=12%2F31%2F2016](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016) (last visited Nov. 12, 2020). These include disbursements for payroll, salary, travel, lodging, meals, rent, fundraising consulting, computers, digital software, domain services, email services, equipment, event tickets, hardware, insurance, office supplies, parking, and shipping.

<sup>72</sup> On May 27, 2015, HFA disbursed \$275,615 to CTR for “research, non-contribution account.” FEC Form 3P, HFA Amended 2015 July Quarterly Report, Sched. B-P at 13,869 (Sept. 3, 2015). On July 17, 2015, HFA disbursed \$6,346 to CTR for “research services.” FEC Form 3P, HFA Amended 2015 October Quarterly Report, Sched. B-P at 16,745 (July 5, 2016).

example, Brock, CTR's founder, explained in a December 2016 podcast interview that CTR maintained a "coordinated status" with HFA."<sup>73</sup> Brock noted how he would speak with senior HFA officials, such as Campaign Manager Robbie Mook and Campaign Chairman John Podesta on issues pertaining to the election,<sup>74</sup> and described CTR as "a surrogate arm" of the Clinton campaign.<sup>75</sup>

The Complaint alleges that CTR "systematically coordinated its activities with the Clinton campaign" and provided HFA with, *inter alia*, "travel, fundraising, general consulting, staff salary, and overhead" for which it was not reimbursed.<sup>76</sup> The Complaint asserts that such expenses "are not related to exempt communications."<sup>77</sup> In their joint Response, CTR and HFA concede that "[if] CTR made expenditures unrelated to its communications activities in support of . . . Clinton's candidacy, such expenditures would be in-kind contributions to HFA," but argue that "the Complaint provides no evidence that any such expenditures were made."<sup>78</sup>

The same allegations were previously addressed in MURs 6940, 7097, 7146, 7160, 7193 (Correct the Record, *et al.*), to which the instant Complaint generally cites as the sole support for

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<sup>73</sup> *David Brock: Clinton Campaign Allowed Her Image "To Be Destroyed," POLITICO'S OFF MESSAGE* PODCAST at 31:50 (Dec. 12, 2016) [hereinafter Politico Podcast], <https://podcasts.apple.com/us/podcast/david-brock-clinton-campaign-allowed-her-image-to-be/id987591126?i=1000378857971>.

<sup>74</sup> *Id.* at 27:30, 32:10.

<sup>75</sup> *Id.* at 28:20.

<sup>76</sup> Compl. at 13-14.

<sup>77</sup> *Id.* at 14.

<sup>78</sup> Resp. at 5.

the allegations here.<sup>79</sup> In the previous matter, the Commission failed to garner sufficient votes to approve this Office's recommendation to find reason to believe and voted to close the file.<sup>80</sup>

## 2. Legal Analysis

The Act prohibits any person from making, and any candidate or committee from knowingly accepting, an excessive contribution.<sup>81</sup> Multicandidate committees, such as CTR, may contribute to a candidate and his or her authorized committee up to \$5,000 per election.<sup>82</sup> Committee treasurers are required to disclose the identification of each political committee that makes a contribution to the reporting committee during the reporting period, along with the date and amount of any such contribution.<sup>83</sup> If a committee makes a contribution, it shall disclose the name and address of the recipient.<sup>84</sup>

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<sup>79</sup> See Compl. at 14 & n.43.

<sup>80</sup> See First Gen. Counsel's Rpt. at 7-25, MURs 6940, 7097, 7146, 7160, 7193 (Correct the Record, *et al.*); Amended Certification ¶¶ 1(a), 5, MURs 6940, 7097, 7146, 7160, 7193 (Correct the Record, *et al.*) (June 13, 2019).

The complainants filed a civil action against the Commission challenging the Commission's resolution of the matter. Amended Compl., *Campaign Legal Center v. FEC*, No. 1:19-cv-02336-JEB, 2019 WL 8161677 (D.D.C. Oct. 29, 2019); see 52 U.S.C. § 30109(a)(8). CTR and HFA intervened after the Commission failed to garner sufficient votes to defend the suit, and subsequently moved to dismiss the Complaint, arguing both that the plaintiff lacked standing and had failed to state a claim upon which relief could be granted. *Campaign Legal Center v. FEC*, 334 F.R.D. 1, 1 (D.D.C. Nov. 15, 2019) (granting motion to intervene, noting that "[t]he Commission, however, could not garner the four votes needed to defend its dismissal in this Court. And now the respondents to CLC's administrative complaint — Correct the Record, a political-action committee, and Hillary for America — have moved to intervene as defendants here. The result, then, is that Intervenor would effectively take the defaulting FEC's place in this suit"); Amended Mot. to Dismiss, *Campaign Legal Center v. FEC*, No. 1:19-cv-02336-JEB, 2020 WL 1074649 (D.D.C. Feb. 4, 2020). The court denied the motion, holding that: (1) the plaintiff had standing; and (2) the plaintiff adequately stated claims under both the Act and the Administrative Procedure Act that the Commission's dismissal of the matter was "contrary to law." *Campaign Legal Center v. FEC* at \*9, \*10-15, No. 1:19-cv-02336-JEB, 2020 WL 2996592 (D.D.C. June 4, 2020).

<sup>81</sup> 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

<sup>82</sup> 52 U.S.C. § 30116(a)(2).

<sup>83</sup> *Id.* § 30104(b)(3)(B); 11 C.F.R. § 104.3(a).

<sup>84</sup> 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).

As discussed above, Commission regulations provide a three-part test, consisting of a payment prong, content prong, and conduct prong, all of which must be satisfied for a given communication to be coordinated and thus treated as an-kind contribution.<sup>85</sup> Relevant here, under the content prong, the definition of “public communication” “shall not include communications over the Internet, except for communications placed for a fee on another person’s Web site,” referred to as the “internet exemption.”<sup>86</sup> An expenditure — for something other than a communication — is considered to be coordinated and thus treated as an in-kind contribution if the expenditure is “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.”<sup>87</sup>

The available information shows that CTR systematically coordinated with HFA on its activities. From its first week of existence as a separate entity, as evidenced by the press release announcing its establishment, CTR has consistently stated that the entirety of its work would be made for the purpose of benefiting Clinton and in coordination with her campaign.<sup>88</sup> Brock publicly explained the “coordinated status” of CTR and described CTR as “a surrogate arm” of HFA.<sup>89</sup> Contrary to CTR’s argument and in contrast to the situation discussed above concerning MMA’s article, the available information supports the conclusion that much of CTR’s

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<sup>85</sup> 11 C.F.R. § 109.21.

<sup>86</sup> *See id.* §§ 109.21(c), 100.26.

<sup>87</sup> *Id.* § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (clarifying that section 109.20(b) applies to “expenditures that are not made for communications”); AO 2011-14 at 4.

<sup>88</sup> CTR Press Release.

<sup>89</sup> Politico Podcast at 27:30, 32:10.

1 approximately \$9 million in disbursements for activity during the 2016 election cycle cannot  
2 fairly be described as for “communications,” public or otherwise, unless that term covers almost  
3 every conceivable political activity. Analyzing CTR’s payments under the “coordinated  
4 expenditure” provision for activities, rather than purely under the “coordinated communication”  
5 provision, is consistent with prior matters. In MUR 5564 (Tony Knowles for U.S. Senate, *et al.*),  
6 for instance, a committee made various expenditures relating to a voter canvassing effort.<sup>90</sup> The  
7 Commission analyzed costs for non-communicative items (*e.g.*, salaries for canvassers) under the  
8 coordinated expenditure framework, and analyzed costs for communications (*e.g.*, telephone  
9 calls) under the coordinated communications framework.<sup>91</sup>

10 Following that approach here, CTR’s costs for non-communicative items “far less  
11 directly connected to a specific unpaid internet communication,” such as “computer equipment,  
12 office space, software, video equipment, and salaries for those who conducted internet activity  
13 (posting on social media and emailing journalists), as well as . . . polling” should be analyzed as  
14 coordinated expenditures and thus not subject to the internet exemption.<sup>92</sup> The bulk of CTR’s  
15 reported disbursements are for purposes that are not communication-specific, including payroll,  
16 salary, travel, lodging, meals, rent, fundraising consulting, computers, equipment, event tickets,  
17 hardware, insurance, office supplies, parking, and shipping in addition to payments for explicitly

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<sup>90</sup> F&LA at 10-12, MUR 5564 (Tony Knowles for U.S. Senate). After an investigation in MUR 5564, the Commission failed to garner four votes to enter into pre-probable cause conciliation with Respondents. *See* Certification, MUR 5564 (Nov. 29, 2007).

<sup>91</sup> F&LA at 12, MUR 5564 (Tony Knowles for U.S. Senate); *see also* 11 C.F.R. § 109.37 (describing party coordinated communications).

<sup>92</sup> *Campaign Legal Center v. FEC* at \*4, No. 1:19-cv-02336-JEB, 2020 WL 2996592 (D.D.C. June 4, 2020) (removing internal punctuation).



mixed purposes such as “video consulting and travel” and “communication consulting and travel.”<sup>93</sup>

At its core, CTR existed for only one purpose — to elect Clinton — and it sought to accomplish its purpose via openly and systematically coordinating its efforts with HFA, as evidenced by the available public statements from CTR leadership. If accepted, CTR and HFA would have their purported lack of “public communications” swallow the Act’s longstanding prohibition on coordinated expenditures. This position does not withstand scrutiny. The scale of the close coordination between CTR and HFA suggests that most of CTR’s entire range of activity during the 2016 election cycle represents coordinated expenditures and thus in-kind contributions to HFA.

Therefore, we recommend that the Commission find reason to believe that CTR made, and HFA knowingly received or accepted, unreported excessive in-kind contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A), (b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(a), (b), 110.2(b). Further, we recommend that the Commission take no action at this time with respect to David Brock, pending the results of the Commission’s investigation into CTR’s alleged excessive in-kind contributions to HFA.

**E. The Commission Should Dismiss the Allegation that AB PAC Made, and HFA Knowingly Accepted, Unreported Excessive In-Kind Contributions**

**1. Facts**

The Complaint alleges that independent expenditures reported by AB PAC during the 2016 election opposing Clinton’s general election opponent, Donald J. Trump, were actually

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<sup>93</sup> *Correct the Record 2015-2016 Disbursements*, FEC.GOV, [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2016&data\\_type=processed&committee\\_id=C00578997&min\\_date=01%2F01%2F2015&max\\_date=12%2F31%2F2016](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016) (last visited Nov. 12, 2020).

coordinated with the Clinton campaign and, therefore, should have been reported as in-kind contributions from AB PAC to HFA.<sup>94</sup>

In support of the allegations, the Complaint submits a transitive theory of coordination based on the relationship between AB PAC and CTR, and that between CTR and HFA. The Complaint states that “AB PAC did not operate independently from CTR, which openly coordinated with Clinton’s campaign,” and thus “AB PAC’s pro-Clinton advertising could not have been independent [from HFA].”<sup>95</sup> The Complaint points specifically to overlapping staff between AB PAC and CTR, namely, seven individuals who received simultaneous salary payments from both groups between April and November 2016, including Brock.<sup>96</sup>

In response, AB PAC and HFA argue that the Complaint fails to identify any specific communication that satisfies the coordinated communication test at 11 C.F.R. § 109.21, and provides no evidence indicating that HFA had any material involvement in decisions concerning any AB PAC communications or that any of the overlapping AB PAC and CTR staff had substantial discussions with HFA relating to its plans, projects, activities, or needs.<sup>97</sup>

## 2. Legal Analysis

An “independent expenditure” is an expenditure “for a communication expressly advocating the election or defeat of a clearly identified candidate” that is not coordinated with

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<sup>94</sup> Compl. at 14. During the 2016 election cycle, AB PAC made \$143,187.17 in independent expenditures, none of which supported Clinton, but \$142,837.17 of which opposed her opponent, Donald Trump. *See American Bridge 21st Century 2015-2016 Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00492140/?cycle=2016&tab=spending> (last visited Nov. 12, 2020).

<sup>95</sup> Compl. at 14.

<sup>96</sup> *Id.*

<sup>97</sup> Resp. at 6.

the candidate or the candidate's committee.<sup>98</sup> As discussed above, an expenditure made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or a candidate's authorized committee is treated as an in-kind contribution to that candidate.<sup>99</sup> With respect to communications specifically, under the Commission's coordinated communications regulation, the communication at issue must: (1) be paid for by a third party; (2) satisfy a "content" standard; and (3) satisfy a "conduct" standard.<sup>100</sup> All three prongs are required to be considered a coordinated communication and treated as an in-kind contribution.<sup>101</sup>

The available information does not provide a reasonable basis to infer that AB PAC coordinated with HFA regarding its advertising that opposed Trump. As a threshold matter, the Complaint does not point to any specific communications purportedly coordinated with HFA, which is ordinarily required to conduct a coordinated communication analysis under the three-part test at 11 C.F.R. § 109.21. Further, the available information is insufficient to indicate that, as a general matter, AB PAC interacted with HFA such that it would be reasonable to infer that AB PAC coordinated some or all of its political advertising with HFA.

The allegation in the Complaint is premised on AB PAC's relationship with CTR, *i.e.*, their overlapping staff, and CTR's relationship with HFA, which allegedly involved systematic coordination.<sup>102</sup> However, it does not necessarily follow, based exclusively on such associations, that AB PAC also coordinated with HFA, or that such coordination related to advertising

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<sup>98</sup> 11 C.F.R. § 100.16(a); 52 U.S.C. § 30101(17).

<sup>99</sup> 52 U.S.C. § 30116(a)(7)(B); *see also* 11 C.F.R. § 109.20.

<sup>100</sup> 11 C.F.R. § 109.21.

<sup>101</sup> *Id.* § 109.21(a).

<sup>102</sup> *See supra* Part II.D.2 (recommending that the Commission find reason to believe that CTR made, and HFA knowingly accepted and failed to report, excessive in-kind contributions).

opposing Clinton's opponent. Stated otherwise, even if CTR staffers, who also worked for or were associated with AB PAC, engaged in coordinated activities with HFA, there is no indication that they did so in their capacities as AB PAC staffers.<sup>103</sup> In contrast to AB PAC, CTR publicly described its arrangement to coordinate with HFA, which it contended was permissible.<sup>104</sup> CTR's admitted activities do not appear to involve AB PAC.<sup>105</sup> Thus, without more, the allegation that AB PAC impermissibly coordinated with HFA is insufficiently unsupported by the available information.<sup>106</sup>

Therefore, we recommend that the Commission dismiss the allegation that AB PAC made, and HFA knowingly accepted, excessive in-kind contributions, which both committees failed to report in violation of 52 U.S.C. §§ 30104(b)(3)(A), (b)(6)(B)(i), 30116(a)(2)(A), (f) and 11 C.F.R. §§ 104.3(a), (b), 110.2(b), 110.9.

**F. The Commission Should Dismiss the Allegation that AB PAC Made, and Unknown Committees Knowingly Accepted, Unreported and Excessive In-Kind Contributions**

**1. Facts**

The Complaint asserts that AB PAC "provided free research services to [a variety of Democratic] campaign committees so that the campaigns themselves would not have to pay for

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<sup>103</sup> See, e.g., Advisory Op. 2005-02 at 10 (Corzine II) (explaining that an individual can act in multiple capacities during the same time period, and that whether an individual is operating on behalf of a person or an entity is a fact-based determination based on the conduct of both the individual and the person or entity on whose behalf he allegedly acts).

<sup>104</sup> *Supra* Part II.D.1.

<sup>105</sup> See *id.*

<sup>106</sup> Statement of Reasons, Comm'rs Mason, Sandstrom, Smith, & Thomas at 1, MUR 4960 (Clinton for U.S. Exploratory Committee) ("The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].").

1 their own research.”<sup>107</sup> The Complaint cites primarily to a 2012 news article that describes AB  
 2 PAC as “the opposition research hub of the Democratic fundraising apparatus” and states that  
 3 representatives “from the group are in communication daily with the top Democratic independent  
 4 expenditure committees: Priorities USA, Majority PAC and House Majority PAC.”<sup>108</sup> The news  
 5 article quotes Chris Harris, AB PAC’s Communications Director, as stating: “Our research helps  
 6 to inform their polling; their polling helps us decide where we want to do our media hits . . . .  
 7 Our existence means that they don’t have to put trackers out there and they don’t have to do  
 8 research.”<sup>109</sup> The Complaint also cites to a 2014 news article that contains a quote from AB  
 9 PAC President Brad Woodhouse stating, “there’s no organization that does the level of tracking  
 10 and research that we do.”<sup>110</sup>

11 Based entirely on information from the news articles, the Complaint alleges that AB PAC  
 12 made unreported and excessive contributions to unidentified “campaign committees” in the form  
 13 of “free research services.”<sup>111</sup> In response, AB PAC argues “the Complaint provides no  
 14 evidence that AB PAC ever provided research services to a campaign committee for free, let  
 15 alone any evidence of *which* campaign committee might have received such services.”<sup>112</sup>

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<sup>107</sup> Compl. at 14-15.

<sup>108</sup> *Id.* at 15 (quoting Janie Lorber, *American Bridge 21st Century Super PAC Is Hub of Left*, ROLL CALL (Feb. 10, 2012), <https://www.rollcall.com/2012/02/10/american-bridge-21st-century-super-pac-is-hub-of-left/>).

<sup>109</sup> Lorber, *supra* note 108.

<sup>110</sup> Compl. at 15.

<sup>111</sup> *Id.* at 15 n.45 (quoting Michelle Goldberg, *How David Brock Built an Empire to Put Hillary in the White House*, THE NATION (Nov. 25, 2014), <https://www.thenation.com/article/archive/how-david-brock-built-empire-put-hillary-white-house/>).

<sup>112</sup> Resp. at 6 (emphasis in original).

## 2. Legal Analysis

Under the Act and Commission regulations, the provision of goods or services “without charge or at a charge that is less than the usual and normal charge for such goods or services” is an in-kind contribution.<sup>113</sup> “Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”<sup>114</sup> The Commission has concluded that the provision of certain information, including a contact list, research, and descriptions and analysis of poll results, may constitute in-kind contributions.<sup>115</sup>

At the outset, while the Complaint alleges that AB PAC provided uncompensated research services to “a variety of Democratic campaign committees,” the cited news articles in fact reference interactions between AB PAC and certain IEOPCs, with no mention of campaign committees.<sup>116</sup> However, even considering the allegations in terms of uncompensated research services provided to IEOPCs, there is still insufficient information to support a finding of reason to believe as to the provision of uncompensated research services to unidentified IEOPCs. Although one of the news articles claims that AB PAC was “in communication daily” with IEOPCs and includes a quote from AB PAC’s Communications Director suggesting that AB PAC may have provided research — “Our research helps to inform their polling . . . they don’t have to do research” — neither of these statements indicate that AB PAC provided research

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<sup>113</sup> 11 C.F.R. § 100.52(d).

<sup>114</sup> *Id.*

<sup>115</sup> See F&LA at 7-8, MUR 7271 (DNC) (research services); F&LA at 13-20, MUR 6414 (Carnahan) (research services); Advisory Op. 1990-12 at 2 (Strub) (description and analysis of poll results); First Gen. Counsel’s Rpt. at 8-10, MUR 5409 (Norquist, *et al.*) (dispositive Commission opinion) (list of activists); Certification, MUR 5409 ¶ 2 (Norquist, *et al.*) (Oct. 20, 2004).

<sup>116</sup> Goldberg, *supra* note 111; Lorber, *supra* note 108.

services to the recipient IEOPCs without compensation.<sup>117</sup> In sum, this allegation is speculative and not supported by the available information.<sup>118</sup>

Therefore, we recommend that the Commission dismiss the allegation that AB PAC made unreported and excessive in-kind contributions to unidentified committees in violation of 52 U.S.C. §§ 30104(b)(3)(A), (b)(6)(B)(i), 30116(a)(2)(A), (f) and 11 C.F.R. §§ 104.3(a), (b), 110.2(b), 110.9.

### III. INVESTIGATION

The proposed investigation regarding the allegation that CTR made, and HFA accepted and failed to report, excessive contributions would focus on assessing the extent of CTR's contributions to HFA. We plan to conduct a targeted review of CTR's expenditures on behalf of HFA and its associated financial records. Because the statute of limitations has already begun to run on parts of the alleged violation, we will likely proceed directly to subpoenas, as pursuing informal discovery first could increase the risk of allowing additional violations to expire.

### IV. RECOMMENDATIONS

1. Find no reason to believe that Media Matters for America violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2 by making in-kind corporate contributions to Hillary for America and Elizabeth Jones in her official capacity as treasurer;
2. Find no reason to believe that Hillary for America and Elizabeth Jones in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(3)(A), 30118(a) and 11 C.F.R. §§ 104.3(a), 114.2 by knowingly accepting or receiving and failing to report in-kind corporate contributions from Media Matters for America;
3. Dismiss the allegation that AB PAC and Rodell Mollineau in his official capacity as treasurer and Correct the Record and Elizabeth Cohen in her official capacity

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<sup>117</sup> Lorber, *supra* note 108.

<sup>118</sup> Statement of Reasons at 1, Comm'rs Mason, Sandstrom, Smith & Thomas, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Comm., *et al.*).

- as treasurer violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a) by failing to report in-kind contributions from Media Matters for America;
4. Dismiss the allegation that that AB PAC and Rodell Mollineau in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(b) by submitting inaccurate disclosure reports;
5. Dismiss the allegation that American Bridge 21st Century Foundation violated the Federal Election Campaign Act of 1971, as amended;
6. Find reason to believe that Correct the Record and Elizabeth Cohen in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(a), 110.2(b) by making and failing to report excessive in-kind contributions to Hillary for America and Elizabeth Jones in her official capacity as treasurer;
7. Find reason to believe that Hillary for America and Elizabeth Jones in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(3)(A), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b) by knowingly accepting and failing to report excessive in-kind contributions from Correct the Record and Elizabeth Cohen in her official capacity as treasurer;
8. Take no action at this time as to the allegation that David Brock violated the Federal Election Campaign Act of 1971, as amended;
9. Dismiss the allegation that AB PAC and Rodell Mollineau in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b) by making and failing to report excessive in-kind contributions to Hillary for America and Elizabeth Jones in her official capacity as treasurer and unknown committees;
10. Dismiss the allegation that Hillary for America and Elizabeth Jones in her official capacity as treasurer and unknown committees violated 52 U.S.C. §§ 30104(b)(3)(A), 30116(f) and 11 C.F.R. §§ 104.3(a), 110.9 by knowingly accepting and failing to report excessive in-kind contributions from AB PAC and Rodell Mollineau in his official capacity as treasurer;
11. Authorize the use of compulsory process;
12. Approve the attached Factual and Legal Analyses;
13. Approve the appropriate letters; and



- 1           14.     Close the file as to American Bridge 21st Century Foundation, Media Matters for  
2                   America, AB PAC and Rodell Mollineau in his official capacity as treasurer, and  
3                   unknown respondents.

4   Lisa J. Stevenson  
5   Acting General Counsel  
6

7   November 17, 2020  
8   \_\_\_\_\_  
9   Date

*Charles Kitcher*  
  \_\_\_\_\_  
10                                       Charles Kitcher  
11                                       Acting Associate General Counsel  
12                                       for Enforcement

13                                       *Claudio Pavia*  
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18                                       *Justine A. di Giovanni*  
19                                       \_\_\_\_\_  
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**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** AB PAC and Rodell Mollineau in his official  
capacity as treasurer

**MUR:** 7726**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Craig Robinson and the Patriots Foundation. The Complaint makes various allegations that AB PAC and Rodell Mollineau in his official capacity as treasurer (“AB PAC”) violated the Federal Campaign Act of 1971, as amended (the “Act”), and Commission regulations through its activities as part of a network of political committees and organizations allegedly established or controlled by political operative David Brock, as well as through its interactions with Hillary for America (“HFA”), the authorized committee of 2016 presidential candidate Hillary R. Clinton. The network of organizations allegedly established or controlled by Brock includes Media Matters for America (“MMA”), American Bridge 21st Century Foundation (“AB Foundation”), and Correct the Record and Elizabeth Cohen in her official capacity as treasurer (“CTR”).

First, the Complaint alleges that, during the 2016 election, MMA made in-kind contributions to AB PAC in the form of “uncompensated services,” which AB PAC failed to report. The Complaint asserts that it is “reasonable to infer” that MMA provided unspecified services to AB PAC based on their shared physical address and goal of helping to elect Clinton. The Response argues that the Complaint fails to adequately allege any violation of the Act. Because the allegation is vague, speculative, and unsupported by the available information, the Commission dismisses the allegation that AB PAC failed to report in-kind contributions from MMA in violation of 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a).

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1           Second, given an arrangement whereby AB PAC and AB Foundation share certain  
2 administrative expenses based on “management and budgeted” estimates, the Complaint alleges  
3 that AB PAC’s reporting of the payments arising out of its cost-sharing arrangement with AB  
4 Foundation are inaccurate. The Response argues that the Complaint has provided no evidence  
5 that the estimates yielded incorrect reporting. Because there is no indication from the available  
6 information to suggest any discrepancies between the estimates and actual costs, the Commission  
7 dismisses the allegation that AB PAC violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R.  
8 § 104.3(b) by submitting inaccurate disclosure reports.

9           Third, the Complaint alleges that AB PAC’s independent expenditures during the 2016  
10 election opposing Donald J. Trump, Clinton’s general election opponent, should have been  
11 reported as in-kind contributions to HFA because AB PAC “did not operate independently” of  
12 CTR which “openly coordinated” with HFA. The Response argues that the Complaint fails to  
13 point to any specific AB PAC communication that satisfies the Commission’s coordinated  
14 communication test at 11 C.F.R. § 109.21. The available information, including the alleged  
15 association between CTR and HFA, is insufficient to infer that AB PAC, by extension,  
16 coordinated with HFA. Therefore, the Commission dismisses the allegation that AB PAC made  
17 unreported, excessive in-kind contributions in violation of 52 U.S.C. §§ 30104(b)(6)(B)(i),  
18 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b).

19           Fourth, the Complaint alleges that AB PAC made prohibited in-kind contributions to a  
20 variety of unidentified Democratic candidate campaigns in the form of free research services.  
21 The Complaint points to descriptions of AB PAC’s research program and its general usefulness  
22 to political campaigns. The Response argues that the Complaint provides no evidence that AB  
23 PAC actually provided its research to a campaign committee without charge. Given the lack of

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specific information tending to substantiate the allegation, the Commission dismisses the allegation that AB PAC made and failed to report excessive in-kind contributions to unidentified campaign committees in violation of 52 U.S.C. §§ 30104(b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b).

## II. FACTUAL AND LEGAL ANALYSIS

Hillary R. Clinton was a candidate for president in 2016, and HFA was her authorized committee.<sup>1</sup> David Brock is reportedly a Democratic political operative.<sup>2</sup> He was involved in the creation or operation of the entities described below.<sup>3</sup>

MMA is a 501(c)(3) organization that was incorporated in 2003; Brock served on its inaugural Board of Directors.<sup>4</sup> MMA's stated purpose is "ensuring accuracy, fairness, and a balance of diverse views in the media through research, public education, and advocacy."<sup>5</sup>

AB PAC is an independent expenditure-only political committee ("IEOPC") that registered with the Commission in 2010.<sup>6</sup> Brock served as its initial treasurer.<sup>7</sup> AB PAC

<sup>1</sup> FEC Form 2, Hillary Rodham Clinton Original 2015 Statement of Candidacy (Apr. 13, 2015); FEC Form 1, HFA Original Statement of Org. (Apr. 13, 2015).

<sup>2</sup> Evan Halper, *David Brock, a Clinton Enemy from the 90s, Is Now Integral to Hillary's Run*, L.A. TIMES (July 7, 2015), <https://www.latimes.com/nation/la-na-clinton-david-brock-20150707-story.html> (cited in Compl. at 4 n.11 (Apr. 1, 2020)).

<sup>3</sup> Each of the four entities, MMA, AB PAC, AB Foundation, and CTR, reportedly share the same address. TigerClaws, *David Brock's Media Matters Allegedly Hid Income from IRS for Years*, FREE REPUBLIC (Mar. 14, 2017), <https://www.freerepublic.com/focus/news/3534632/posts?page=23> (cited in Compl. at 11 n.34).

<sup>4</sup> Compl., Ex. 2 (MMA, Articles of Incorporation (Aug. 14, 2003)).

<sup>5</sup> *Id.*

<sup>6</sup> FEC Form 1, AB PAC Original Statement of Org. (Nov. 23, 2010).

<sup>7</sup> *Id.* Rodell Mollineau, AB PAC's current treasurer, assumed that position in 2012. FEC Form 1, AB PAC Amended Statement of Org. (Apr. 12, 2012). AB PAC formerly operated as American Bridge and American Bridge 21st Century. FEC Form 1, AB PAC Original Statement of Org. (Nov. 23, 2010); FEC Form 1, AB PAC Amended Statement of Org. (Feb. 24, 2011).

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describes itself as “the largest research, video tracking, and rapid response organization in Democratic politics.”<sup>8</sup>

AB Foundation is a 501(c)(4) organization that was incorporated in 2011; Brock served on its inaugural Board of Directors.<sup>9</sup> AB Foundation’s stated purpose is to “advocate and research progressive solutions to America’s public policy concerns, and to educate the American people and nation’s leaders on progressive ideas.”<sup>10</sup>

CTR is a multicandidate hybrid political committee that registered with the Commission on June 5, 2015.<sup>11</sup> It reportedly was founded by Brock and was active primarily during the 2016 election cycle.<sup>12</sup> CTR was previously a project of AB PAC during the lead-up to the presidential primaries, but subsequently split off from AB PAC, its parent group.<sup>13</sup> CTR’s stated purpose

<sup>8</sup> About Us, AM. BRIDGE 21ST CENTURY, <https://americanbridgepac.org/about-us/> (last visited Nov. 12, 2020).

<sup>9</sup> Compl., Ex. 7 at 11 (AB Foundation, Articles of Incorporation (Mar. 1, 2011)).

<sup>10</sup> *Id.*

<sup>11</sup> FEC Form 1, CTR Original Statement of Org. (June 5, 2015).

<sup>12</sup> See Matea Gold, *How a Super PAC Plans to Coordinate Directly with Hillary Clinton’s Campaign*, WASH. POST (May 12, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/05/12/how-a-super-pac-plans-to-coordinate-directly-with-hillary-clintons-campaign/> (cited in Compl. at 6 n.25, 13 n.41). CTR filed a termination report with the Commission on December 4, 2019, but, as of the date of this Report, remains an active political committee. FEC Form 3X, CTR Termination Report (Dec. 4, 2019).

As a hybrid PAC, CTR maintains a non-contribution account, to and from which it can deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and other political committees. FEC Form 1, CTR Original Statement of Org. (June 5, 2015). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. See Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011).

<sup>13</sup> See Gold, *supra* note 12.

1 was to “work in support of Hillary Clinton’s candidacy for President, aggressively responding to  
2 false attacks and misstatements.”<sup>14</sup>

3           **A.       The Commission Dismisses the Allegation that AB PAC Failed to Report In-**  
4           **Kind Contributions Received from MMA**

5           The Complaint alleges that MMA made in-kind contributions to AB PAC in the form of  
6 “similar uncompensated services” which AB PAC received and failed to report. The Complaint  
7 does not specify a timeframe, but states that this occurred “at least during the 2016 election.”<sup>15</sup>  
8 It also does not describe the alleged uncompensated services or identify specific facts or sources  
9 that otherwise support the allegations. Instead, the Complaint asserts that it is “reasonable to  
10 infer” that MMA provided services to AB PAC “given [MMA’s] coordination with the Clinton  
11 campaign, its steadfast focus on undertaking activities designed to help get Hillary Clinton  
12 elected, and its shared office and goals with AB PAC.”<sup>16</sup> In response, AB PAC argues that the  
13 allegations are “baseless” and that “mere speculation that a violation may have occurred, without  
14 facts to support the allegation, is not sufficient.”<sup>17</sup>

15           The allegation in the Complaint is vague, speculative, and unsupported by the available  
16 information. Even if MMA “shared offices and goals” with AB PAC, which is not disputed,  
17 those facts alone do not establish that MMA provided services to AB PAC, let alone services that  
18 AB PAC failed to report. In sum, because the Complaint lacks sufficient information to support  
19 the allegation, and the Commission is unaware of other information that supports it, there is

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<sup>14</sup>       *Id.*

<sup>15</sup>       Compl. at 12.

<sup>16</sup>       *Id.* at 11-12. While the available information indicates that MMA shared an address with AB PAC and CTR, TigerClaws, *supra* note 3, the Commission been unable to determine whether these entities shared a single suite at that address.

<sup>17</sup>       Resp. at 4.

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insufficient indication that the alleged provision of uncompensated and unreported services occurred.<sup>18</sup> Therefore, the Commission dismisses the allegation that AB PAC failed to report in-kind contributions from MMA in violation of 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a).

**B. The Commission Dismisses the Allegation that AB PAC Filed Incorrect Disclosure Reports with the Commission Due to Its Estimated Cost-Sharing Arrangement with AB Foundation**

1. Facts

AB PAC and AB Foundation share administrative expenses including for staff, office space, and overhead, and AB Foundation reimburses AB PAC for its share of these expenses pursuant to a cost-sharing agreement.<sup>19</sup> Regarding employee salaries, AB PAC disburses salaries of staff common to AB PAC and AB Foundation either on a prospective basis or retroactively reimburses funds to AB PAC for work done on its behalf in accordance with the “common paymaster” provisions of the Internal Revenue Code.<sup>20</sup>

<sup>18</sup> Statement of Reasons, Comm’rs Mason, Sandstrom, Smith, & Thomas at 1, MUR 4960 (Clinton for U.S. Exploratory Committee) (“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”).

<sup>19</sup> See, e.g., Compl., Ex. 8 at 9 (AB Foundation, Financial Statements for the Year Ended December 31, 2015 (June 6, 2018)). In its application for tax-exempt status in 2013, AB Foundation informed the Internal Revenue Service that it would share “resources, facilities, and employees” with AB PAC pursuant to a “cost-sharing agreement.” Compl., Ex. 7 at 6 (AB Foundation, Application for Tax-Exempt Status (May 21, 2013)).

<sup>20</sup> See Factual & Legal Analysis at 5, MUR 7284 (American Bridge 21st Century) [hereinafter MUR 7284 F&LA]. Under the common paymaster provisions in the Internal Revenue Code, two or more “related” entities, like AB PAC and AB Foundation, may employ the same individuals at the same time and pay these individuals through only one of the entities (the “common paymaster”), which is considered, for federal tax purposes, to be a single employer. 26 U.S.C. §§ 3121(s), 3306(p); Treas. Reg. §§ 31.3121(s)-1, 31.3306(p)-1. By using a common paymaster arrangement, related entities pay, in total, no more social security taxes than the organizations would pay were they a single entity, and each may deduct only its own part of the wages. *Id.*; *Common Paymaster*, IRS.GOV, <https://www.irs.gov/government-entities/common-paymaster> (last visited Nov. 12, 2020). The common paymaster is responsible for filing information and tax returns, issuing W-2 forms, and issuing the paychecks to the employee, while the other entity transfers its share of the employee expenses to the common paymaster. *Id.*

According to AB Foundation’s available annual financial statements from 2015 through 2018, prepared and signed by an independent auditor, AB Foundation and AB PAC do not have a “formal agreement relating to the allocation of expenses.”<sup>21</sup> AB Foundation’s 2015 financial statement indicated that AB PAC and AB Foundation allocated expenses “based on management and budgeted estimates,” and the available financial statements for the subsequent years do not indicate the method by which the allocations were made.<sup>22</sup> In its Response, AB PAC appears to acknowledge the use of estimates to allocate their shared costs, but do not provide any specific information.<sup>23</sup>

During the period from 2011 to 2020, AB PAC reported 128 receipts from AB Foundation that totaled approximately \$24.3 million.<sup>24</sup> AB PAC reported the receipts on line 15 of its FEC disclosure reports (as “offsets to operating expenditures”), most with the reported purpose of “Overhead & Staff Expenses” and some for “Overhead Expenses.”<sup>25</sup> AB PAC also reported debts and obligations owed to AB Foundation for “Overhead & Staff Expenses” or

<sup>21</sup> Compl., Ex. 8 at 9 (AB Foundation, Financial Statements for the Year Ended December 31, 2015 (June 6, 2018)); Compl., Ex. 9 at 10 (AB Foundation, Financial Statements for the Year Ended December 31, 2016 (Sept. 18, 2018)); Compl., Ex. 10 at 10 (AB Foundation, Financial Statements for the Year Ended December 31, 2017 (June 7, 2019)); Compl., Ex. 11 at 10 (AB Foundation, Financial Statements for the Year Ended December 31, 2018 (June 7, 2019)).

<sup>22</sup> *Id.*

<sup>23</sup> *See* Resp. at 5 (“The Complaint provides no evidence that the budget estimates used by AB PAC and AB Foundation actually yielded incorrect reporting by AB PAC on its FEC reports.”).

<sup>24</sup> *See* AB PAC 2011-2020 Receipts, FEC.GOV, [https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00492140&contributor\\_name=Foundation&two\\_year\\_transaction\\_period=2012&two\\_year\\_transaction\\_period=2014&two\\_year\\_transaction\\_period=2016&two\\_year\\_transaction\\_period=2018&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00492140&contributor_name=Foundation&two_year_transaction_period=2012&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020) (last visited Nov. 12, 2020).

<sup>25</sup> *See, e.g.*, FEC Form 3X, AB PAC Amended 2015 Mid-Year Report, Sched. A at 25 (Aug. 31, 2016), (itemizing \$250,481.89 receipt from AB Foundation as “Overhead & Staff Expenses”).



“Overhead Expenses” in 2011, 2013, and 2014.<sup>26</sup> Based on a review of AB Foundation’s available financial statements, it appears that in 2015, AB Foundation reimbursed AB PAC for expenses based on an initial calculation of its allocation and later reported a debt owed by AB PAC which reflected a reconciliation of the initial allocation.<sup>27</sup>

The Complaint alleges that “[t]o the extent that AB Foundation’s reimbursements to AB PAC are based on estimates and not actual costs, the amounts are not accurate.”<sup>28</sup> Specifically, if AB Foundation’s actual shared costs are lower than those allocated, AB Foundation made unreported in-kind contributions to AB PAC. If AB Foundation’s actual shared costs are higher, AB PAC subsidized AB Foundation’s costs without properly reporting those disbursements.<sup>29</sup> The Response contends that the Complaint “provides no evidence that the estimates used by AB PAC and AB Foundation actually yielded incorrect reporting by AB PAC on its FEC reports.”<sup>30</sup>

## 2. Legal Analysis

Political committees are required to report the identifying information of each person who makes an aggregate contribution in excess of \$200 within the calendar year (or election

<sup>26</sup> See, e.g., FEC Form 3X, AB PAC Amended 2011 Mid-Year Report, Sched. D at 75 (May 24, 2012) (reporting outstanding debt of \$24,154.29 to AB Foundation); FEC Form 3X, AB PAC 2013 Year-End Report, Sched. D at 538 (Jan. 31, 2014) (reporting outstanding debt of \$136,665.66 to AB Foundation); FEC Form 3X, AB PAC Amended 2014 April Quarterly Report, Sched. D. at 380 (July 31, 2015) (reporting outstanding debt of \$371,938.22 to AB Foundation).

<sup>27</sup> Compl., Ex. 8 at 9 (AB Foundation, Financial Statements for the Year Ended December 31, 2015 (June 6, 2018)). It does not appear that AB PAC reported this debt to the Commission. In its Response to the Complaint in MUR 7284, AB PAC stated that AB PAC and AB Foundation “engage in ongoing accounting and reconciliation” of their shared expenses. Resp. at 4 (Nov. 28, 2017), MUR 7284 (American Bridge 21st Century, *et al.*).

<sup>28</sup> Compl. at 13. The Complaint does not suggest, or allege facts to support, that AB Foundation is a connected organization of AB PAC, or, conversely, that AB PAC should be considered a separate segregated fund (“SSF”) of AB Foundation. See 52 U.S.C. § 30118(b)(2)(C) (exempting from definition of “contribution” those payments by connected organization for SSF’s administrative costs); 11 C.F.R. § 114.1(a)(2)(iii) (same).

<sup>29</sup> Compl. at 13.

<sup>30</sup> Resp. at 5.

1 cycle, in the case of an authorized committee), together with the date and amount of any such  
2 contribution.<sup>31</sup> Further, political committees are required to report their disbursements,<sup>32</sup> as well  
3 as their outstanding debts and obligations.<sup>33</sup>

4 The Commission has provided guidance to different types of political committees about  
5 the variety of methods available to share or allocate costs — such as use of advances or  
6 reimbursements for the expenses of staff shared with other entities — and the various methods  
7 available for reporting such costs, including through reporting reimbursements for shared costs  
8 as offsets to operating expenditures.<sup>34</sup>

9 The cost-sharing agreement between AB Foundation and AB PAC was previously the  
10 subject of MUR 7284 (*American Bridge 21st Century, et al.*). The complaint in that matter  
11 alleged that AB PAC’s “utilization of the common paymaster arrangement [with AB Foundation]  
12 may have violated the reporting requirements” of the Act.<sup>35</sup> The Commission concluded that the  
13 arrangement under which AB PAC paid shared employees’ salaries; received reimbursements

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<sup>31</sup> 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.13(a).

<sup>32</sup> 52 U.S.C. § 30104(b)(4)(H)(i).

<sup>33</sup> *Id.* § 30104(b)(8).

<sup>34</sup> *See, e.g.*, Advisory Op. 1995-22 (DCCC) at 3 (approving of a particular method of reporting shared employee costs in which one entity reimburses another, while also noting that the approved method “is not the only permissible method” and noting that, “normally,” committees would report such reimbursements as “offsets to operating expenditures” like refunds); Advisory Op. 1980-38 (Allen) at 2 (“AO 1980-38”) (concluding that political committee may receive reimbursement payments from non-committee for shared costs, which should be reported as offsets to operating expenditures); Advisory Op. 1978-67 (Anderson) (superseded in part by AO 1980-38 on other grounds) (concluding that Act and Commission regulations do not prohibit shared use of facilities so long as costs are allocated appropriately and committee reports its own expenditures); *see also* 11 C.F.R. § 106.1 (setting out allocation rules); Advisory Op. 1988-24 (Dellums) (approving joint operations account pursuant to joint fundraising agreement between federal- and non-federal committees sharing operational costs, including common staff).

<sup>35</sup> Compl. at 11, MUR 7284 (*American Bridge 21st Century, et al.*) (Oct. 9, 2017). More specifically, the Complaint alleged that AB PAC: (1) misreported receipts from AB Foundation as reimbursements for overhead and staff expenses when they were actually contributions; and (2) failed to properly report specific transactions, including debts to AB Foundation. *Id.* at 11-13.

1 from AB Foundation for its share of employee costs; reported salary payments as disbursements  
2 on its reports; and reported the reimbursements from AB Foundation as offsets to operating  
3 expenditures “is generally permissible and does not, in itself, give rise to unspecified reporting  
4 violations.”<sup>36</sup> However, the Commission explained that “[i]naccurate reporting of, or failure to  
5 report, transactions made pursuant to a common paymaster arrangement would be a violation . . .  
6 for the reason that committees must accurately report their activity.”<sup>37</sup>

7 The instant Complaint alleges, more specifically, that to the extent AB PAC and AB  
8 Foundation allocated shared expenses using estimates and not actual amounts, it follows that AB  
9 PAC’s reporting of the allocated costs must be inaccurate.<sup>38</sup> The Commission’s Factual and  
10 Legal Analysis in MUR 7284 did not directly address the use of estimates to allocate shared  
11 expenses, but it stated that “there is no basis for concluding that AB Foundation reimbursed AB  
12 PAC in excess of its own portion of the shared employees’ costs such that the payments  
13 represent AB Foundation’s contributions to AB PAC.”<sup>39</sup>

14 The instant Complaint provides no information calling into question the accuracy of the  
15 estimates upon which AB PAC and AB Foundation relied when allocating their costs, and the  
16 Commission is aware of no such information. In MUR 7284, AB PAC represented to the  
17 Commission that the two entities engage in “ongoing accounting and reconciliation,” and AB  
18 Foundation’s financial statements show at least one instance where an initial allocation was

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<sup>36</sup> MUR 7284 F&LA at 9-10.

<sup>37</sup> *Id.* at 10.

<sup>38</sup> Compl. at 13.

<sup>39</sup> MUR 7284 F&LA at 10, 12.

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1 determined to be incorrect and subsequently reconciled.<sup>40</sup> Moreover, it is unclear whether AB  
2 PAC and AB Foundation continued to use “estimates” beyond 2015 — the only year for which  
3 AB Foundation represented in its available financial statements that allocations were determined  
4 based on estimates. Although there is a lack of information regarding how AB PAC and AB  
5 Foundation may have used estimates to determine cost allocations, the general notion of using  
6 approximations to allocate administrative costs such as overhead, staff time, and office space  
7 does not appear to be unreasonable. The Complaint has provided no evidence, and the  
8 Commission is aware of none, to reasonably infer that AB PAC and AB Foundation failed to  
9 base their allocations on good-faith estimates and in accordance with generally accepted  
10 accounting principles.<sup>41</sup> In the absence of Commission regulations governing how such  
11 allocations should be made, there is no reasonable basis to warrant an investigation as to whether  
12 the estimates here were sufficiently accurate.

13 Therefore, the Commission dismisses the allegation that AB PAC violated 52 U.S.C.  
14 § 30104(b)(3)(A) and 11 C.F.R. § 104.3(b) by submitting inaccurate disclosure reports to the  
15 Commission.

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<sup>40</sup> Resp. at 4, MUR 7284 (American Bridge 21st Century, *et al.*); Compl., Ex. 8 at 9 (AB Foundation, Financial Statements for the Year Ended December 31, 2015 (June 6, 2018)) (“As of December 31, 2015, American Bridge owed the Foundation \$293,187. This amount represented an overpayment by the Foundation to American Bridge during the year ended December 31, 2015.”).

<sup>41</sup> *See supra* notes 21-22 and accompanying text (explaining that AB Foundation’s financial statements, including the 2015 financial statement which referenced the estimates based on “management and budgeted estimates” were prepared and signed by a professional accounting firm).

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**C. The Commission Dismisses the Allegation that AB PAC Made Unreported Excessive In-Kind Contributions**

**1. Facts**

The Complaint alleges that independent expenditures reported by AB PAC during the 2016 election opposing Clinton’s general election opponent, Donald J. Trump, were actually coordinated with the Clinton campaign and, therefore, should have been reported as in-kind contributions from AB PAC to HFA.<sup>42</sup>

In support of the allegations, the Complaint submits a transitive theory of coordination based on the relationship between AB PAC and CTR, and that between CTR and HFA. The Complaint states that “AB PAC did not operate independently from CTR, which openly coordinated with Clinton’s campaign,” and thus “AB PAC’s pro-Clinton advertising could not have been independent [from HFA].”<sup>43</sup> The Complaint points specifically to overlapping staff between AB PAC and CTR, namely, seven individuals who received simultaneous salary payments from both groups between April and November 2016, including Brock.<sup>44</sup>

In response, AB PAC argues that the Complaint fails to identify any specific communication that satisfies the coordinated communication test at 11 C.F.R. § 109.21, and provides no evidence indicating that HFA had any material involvement in decisions concerning

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<sup>42</sup> Compl. at 14. During the 2016 election cycle, AB PAC made \$143,187.17 in independent expenditures, none of which supported Clinton, but \$142,837.17 of which opposed her opponent, Donald Trump. *See American Bridge 21st Century 2015-2016 Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00492140/?cycle=2016&tab=spending> (last visited Nov. 12, 2020).

<sup>43</sup> Compl. at 14.

<sup>44</sup> *Id.*

any AB PAC communications or that any of the overlapping AB PAC and CTR staff had substantial discussions with HFA relating to its plans, projects, activities, or needs.<sup>45</sup>

## 2. Legal Analysis

An “independent expenditure” is an expenditure “for a communication expressly advocating the election or defeat of a clearly identified candidate” that is not coordinated with the candidate or the candidate’s committee.<sup>46</sup> As discussed above, an expenditure made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or a candidate’s authorized committee is treated as an in-kind contribution to that candidate.<sup>47</sup> With respect to communications specifically, under the Commission’s coordinated communications regulation, the communication at issue must: (1) be paid for by a third party; (2) satisfy a “content” standard; and (3) satisfy a “conduct” standard.<sup>48</sup> All three prongs are required to be considered a coordinated communication and treated as an in-kind contribution under Commission regulations.<sup>49</sup>

The available information does not provide a reasonable basis to infer that AB PAC coordinated with HFA regarding its advertising that opposed Trump. As a threshold matter, the Complaint does not point to any specific communications purportedly coordinated with HFA, which is ordinarily required to conduct a coordinated communication analysis under the three-part test at 11 C.F.R. § 109.21. Further, the available information is insufficient to indicate that,

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<sup>45</sup> Resp. at 6.

<sup>46</sup> 11 C.F.R. § 100.16(a); 52 U.S.C. § 30101(17).

<sup>47</sup> 52 U.S.C. § 30116(a)(7)(B); *see also* 11 C.F.R. § 109.20.

<sup>48</sup> 11 C.F.R. § 109.21.

<sup>49</sup> *Id.* § 109.21(a).

as a general matter, AB PAC interacted with HFA such that it would be reasonable to infer that AB PAC coordinated some or all of its political advertising with HFA.

The allegation in the Complaint is premised on AB PAC's relationship with CTR, *i.e.*, their overlapping staff, and CTR's relationship with HFA, which allegedly involved systematic coordination. However, it does not necessarily follow, based exclusively on such associations, that AB PAC also coordinated with HFA, or that such coordination related to advertising opposing Clinton's opponent. Stated otherwise, even if CTR staffers, who also worked for or were associated with AB PAC, engaged in coordinated activities with HFA, there is no indication that they did so in their capacities as AB PAC staffers.<sup>50</sup> Thus, without more, the allegation that AB PAC impermissibly coordinated with HFA is insufficiently unsupported by the available information.<sup>51</sup>

Therefore, the Commission dismisses the allegation that AB PAC made excessive in-kind contributions, which it failed to report in violation of 52 U.S.C. §§ 30104(b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b).

#### **D. The Commission Dismisses the Allegation that AB PAC Made Unreported and Excessive In-Kind Contributions**

##### **1. Facts**

The Complaint asserts that AB PAC "provided free research services to [a variety of Democratic] campaign committees so that the campaigns themselves would not have to pay for

<sup>50</sup> See, e.g., Advisory Op. 2005-02 at 10 (Corzine II) (explaining that an individual can act in multiple capacities during the same time period, and that whether an individual is operating on behalf of a person or an entity is a fact-based determination based on the conduct of both the individual and the person or entity on whose behalf he allegedly acts).

<sup>51</sup> Statement of Reasons, Comm'rs Mason, Sandstrom, Smith, & Thomas at 1, MUR 4960 (Clinton for U.S. Exploratory Committee) ("The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].").

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1 their own research.”<sup>52</sup> The Complaint cites primarily to a 2012 news article that describes AB  
2 PAC as “the opposition research hub of the Democratic fundraising apparatus” and states that  
3 representatives “from the group are in communication daily with the top Democratic independent  
4 expenditure committees: Priorities USA, Majority PAC and House Majority PAC.”<sup>53</sup> The news  
5 article quotes Chris Harris, AB PAC’s Communications Director, as stating: “Our research helps  
6 to inform their polling; their polling helps us decide where we want to do our media hits . . . .  
7 Our existence means that they don’t have to put trackers out there and they don’t have to do  
8 research.”<sup>54</sup> The Complaint also cites to a 2014 news article that contains a quote from AB PAC  
9 President Brad Woodhouse stating, “there’s no organization that does the level of tracking and  
10 research that we do.”<sup>55</sup>

11 Based entirely on information from the news articles, the Complaint alleges that AB PAC  
12 made unreported and excessive contributions to unidentified “campaign committees” in the form  
13 of “free research services.”<sup>56</sup> In response, AB PAC argues “the Complaint provides no evidence  
14 that AB PAC ever provided research services to a campaign committee for free, let alone any  
15 evidence of *which* campaign committee might have received such services.”<sup>57</sup>

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<sup>52</sup> Compl. at 14-15.

<sup>53</sup> *Id.* at 15 (quoting Janie Lorber, *American Bridge 21st Century Super PAC Is Hub of Left*, ROLL CALL (Feb. 10, 2012), <https://www.rollcall.com/2012/02/10/american-bridge-21st-century-super-pac-is-hub-of-left/>).

<sup>54</sup> Lorber, *supra* note 53.

<sup>55</sup> Compl. at 15.

<sup>56</sup> *Id.* at 15 n.45 (quoting Michelle Goldberg, *How David Brock Built an Empire to Put Hillary in the White House*, THE NATION (Nov. 25, 2014), <https://www.thenation.com/article/archive/how-david-brock-built-empire-put-hillary-white-house/>).

<sup>57</sup> Resp. at 6 (emphasis in original).



2. Legal Analysis

Under the Act and Commission regulations, the provision of goods or services “without charge or at a charge that is less than the usual and normal charge for such goods or services” is an in-kind contribution.<sup>58</sup> “Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”<sup>59</sup> The Commission has concluded that the provision of certain information, including a contact list, research, and descriptions and analysis of poll results, may constitute in-kind contributions.<sup>60</sup>

At the outset, while the Complaint alleges that AB PAC provided uncompensated research services to “a variety of Democratic campaign committees,” the cited news articles in fact reference interactions between AB PAC and certain IEOPCs, with no mention of campaign committees.<sup>61</sup> However, even considering the allegations in terms of uncompensated research services provided to IEOPCs, there is still insufficient information to support a finding of reason to believe as to the provision of uncompensated research services to unidentified IEOPCs. Although one of the news articles claims that AB PAC was “in communication daily” with IEOPCs and includes a quote from AB PAC’s Communications Director suggesting that AB PAC may have provided research — “Our research helps to inform their polling . . . they don’t have to do research” — neither of these statements indicate that AB PAC provided research

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<sup>58</sup> 11 C.F.R. § 100.52(d).

<sup>59</sup> *Id.*

<sup>60</sup> See F&LA at 13-20, MUR 6414 (Carnahan) (research services); Advisory Op. 1990-12 at 2 (Strub) (description and analysis of poll results); First Gen. Counsel’s Rpt. at 8-10, MUR 5409 (Norquist, *et al.*) (dispositive Commission opinion) (list of activists); Certification, MUR 5409 ¶ 2 (Norquist, *et al.*) (Oct. 20, 2004).

<sup>61</sup> Goldberg, *supra* note 56; Lorber, *supra* note 53.

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services to the recipient IEOPCs without compensation.<sup>62</sup> In sum, this allegation is speculative and not supported by the available information.<sup>63</sup>

Therefore, the Commission dismisses the allegation that AB PAC made unreported and excessive in-kind contributions to unidentified committees in violation of 52 U.S.C. §§ 30104(b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b).

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<sup>62</sup> Lorber, *supra* note 53.

<sup>63</sup> Statement of Reasons at 1, Comm’rs Mason, Sandstrom, Smith & Thomas, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Comm., *et al.*).

ELW edits 1.23.21

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Media Matters for America **MUR: 7726**  
Correct the Record and Elizabeth Cohen in her official  
capacity as treasurer  
Hillary for America and Elizabeth Jones in her official  
capacity as treasurer

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Craig Robinson and the Patriots Foundation. The Complaint makes various allegations that a network of political committees and organizations allegedly established or controlled by political operative David Brock as well as Hillary for America and Elizabeth Jones in her official capacity as treasurer (“HFA”), the authorized committee of 2016 presidential candidate Hillary R. Clinton, violated the Federal Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The network of organizations allegedly established or controlled by Brock include Media Matters for America (“MMA”), and Correct the Record and Elizabeth Cohen in her official capacity as treasurer (“CTR”). Respondents submitted a joint Response denying the allegations.

First, the Complaint alleges that, during the 2016 election, MMA made impermissible in-kind corporate contributions to HFA in the form of “media services” provided without charge. The Response argues that the alleged activities did not amount to an in-kind contribution because they were conducted to directly support free internet communications and, thus, exempt from the definition of “public communication.” The only alleged instance of coordination between MMA and HFA before the Commission relates to an article that MMA published on its website, apparently covered by the internet exemption. Therefore, the Commission finds no reason to

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1 believe that MMA made, and HFA knowingly accepted or received and failed to report, in-kind  
2 corporate contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A), 30118(a) and 11 C.F.R.  
3 §§ 104.3(a), 114.2.

4 Second, the Complaint alleges that, during the 2016 election, MMA made in-kind  
5 contributions to CTR in the form of “uncompensated services,” which CTR failed to report. The  
6 Complaint asserts that it is “reasonable to infer” that MMA provided unspecified services to  
7 CTR based on their shared physical address and goal of helping to elect Clinton. The Response  
8 argues that the Complaint fails to adequately allege any violation of the Act. Because the  
9 allegations are vague, speculative, and unsupported by the available information, the  
10 Commission dismisses the allegations that CTR failed to report in-kind contributions from MMA  
11 in violation of 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a).

12 Third, the Complaint alleges that, during the 2016 election, CTR “systematically  
13 coordinated” with the Clinton campaign, resulting in CTR making unreported, excessive in-kind  
14 contributions to HFA. The Response argues that the Complaint provides no evidence that CTR  
15 made any expenditures in support of Clinton beyond those incurred in connection with exempted  
16 internet communications. However, the available information contains multiple examples of  
17 expenditures by CTR that appear to have been coordinated with HFA for activities not covered  
18 by the internet exemption, such as expenditures for travel, fundraising, and polling. Therefore,  
19 the Commission finds reason to believe that CTR made, and HFA knowingly accepted and failed  
20 to report, excessive in-kind contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A),  
21 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b).

22 Fourth, the Complaint alleges that HFA should have reported independent expenditures  
23 made by AB PAC and Rodell Mollineau in his official capacity as treasurer (“AB PAC”),

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another entity allegedly formed or controlled by Brock, as in-kind contributions. The Complaint argues that the independent expenditures, which opposed Donald J. Trump, Clinton's general election opponent, were in-kind contributions to HFA because AB PAC "did not operate independently" of CTR which, pursuant to the above allegation, "openly coordinated" with HFA. The Response argues that the Complaint fails to point to any specific AB PAC communication that satisfies the Commission's coordinated communication test at 11 C.F.R. § 109.21. The available information, including the alleged association between CTR and HFA, is insufficient to infer that HFA, by extension, coordinated with AB PAC. Therefore, the Commission dismisses the allegation that HFA knowingly accepted unreported, excessive in-kind contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A), 30116(f) and 11 C.F.R. §§ 104.3(a), 110.9.

## II. FACTUAL AND LEGAL ANALYSIS

Hillary R. Clinton was a candidate for president in 2016, and HFA was her authorized committee.<sup>1</sup> David Brock is reportedly a Democratic political operative.<sup>2</sup> He was involved in the creation or operation of the entities described below.<sup>3</sup>

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<sup>1</sup> FEC Form 2, Hillary Rodham Clinton Original 2015 Statement of Candidacy (Apr. 13, 2015); FEC Form 1, HFA Original Statement of Org. (Apr. 13, 2015).

<sup>2</sup> Evan Halper, *David Brock, a Clinton Enemy from the 90s, Is Now Integral to Hillary's Run*, L.A. TIMES (July 7, 2015), <https://www.latimes.com/nation/la-na-clinton-david-brock-20150707-story.html> (cited in Compl. at 4 n.11 (Apr. 1, 2020)).

<sup>3</sup> Each of the entities, MMA, AB PAC, and CTR, reportedly share the same address. TigerClaws, *David Brock's Media Matters Allegedly Hid Income from IRS for Years*, FREE REPUBLIC (Mar. 14, 2017), <https://www.freerepublic.com/focus/news/3534632/posts?page=23> (cited in Compl. at 11 n.34).

1 MMA is a 501(c)(3) organization that was incorporated in 2003; Brock served on its  
2 inaugural Board of Directors.<sup>4</sup> MMA's stated purpose is "ensuring accuracy, fairness, and a  
3 balance of diverse views in the media through research, public education, and advocacy."<sup>5</sup>

4 CTR is a multicandidate hybrid political committee that registered with the Commission  
5 on June 5, 2015.<sup>6</sup> It reportedly was founded by Brock and was active primarily during the 2016  
6 election cycle.<sup>7</sup> CTR was previously a project of AB PAC during the lead-up to the presidential  
7 primaries, but subsequently split off from AB PAC, its parent group.<sup>8</sup> CTR's stated purpose was  
8 to "work in support of Hillary Clinton's candidacy for President, aggressively responding to false  
9 attacks and misstatements."<sup>9</sup>

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<sup>4</sup> Compl., Ex. 2 (MMA, Articles of Incorporation (Aug. 14, 2003)).

<sup>5</sup> *Id.*

<sup>6</sup> FEC Form 1, CTR Original Statement of Org. (June 5, 2015).

<sup>7</sup> See Matea Gold, *How a Super PAC Plans to Coordinate Directly with Hillary Clinton's Campaign*, WASH. POST (May 12, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/05/12/how-a-super-pac-plans-to-coordinate-directly-with-hillary-clintons-campaign/> (cited in Compl. at 6 n.25, 13 n.41). CTR filed a termination report with the Commission on December 4, 2019, but remains an active political committee. FEC Form 3X, CTR Termination Report (Dec. 4, 2019).

As a hybrid PAC, CTR maintains a non-contribution account, to and from which it can deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and other political committees. FEC Form 1, CTR Original Statement of Org. (June 5, 2015). The Commission issued guidance on the formation and operation of hybrid political committees following its agreement to a stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), in which a non-connected committee sought to solicit and accept unlimited contributions in a separate bank account to make independent expenditures. See Press Release, FEC Statement on *Carey v. FEC*, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011).

<sup>8</sup> See Gold, *supra* note 7.

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

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**A. The Commission Finds No Reason to Believe that MMA Made, and HFA Accepted and Failed to Report, In-Kind Corporate Contributions**

**1. Facts**

The Complaint asserts that, during the 2016 election, MMA provided “media services to the Clinton campaign without charge.”<sup>10</sup> In support, the Complaint first cites to a December 19, 2016, news article published by *New Republic* that summarizes interviews with former MMA staff who reportedly described how, in the lead-up to Clinton’s announcement of her candidacy in April 2015, MMA’s “priority shifted . . . towards running defense for Clinton.”<sup>11</sup>

The Complaint next cites to a hacked July 25, 2015, memorandum from unidentified senior HFA staff to Clinton that generally noted a strategy of “[w]ork[ing] with [MMA] to highlight examples of when the press won’t cover the same issues with Republicans.”<sup>12</sup> The Complaint also cites to a hacked HFA email from Press Secretary Nick Merrill to another HFA staffer, dated January 5, 2016, which states that “[MMA] is ready to push back on a Vanity Fair article about [Clinton campaign vice chair] Huma Abedin . . . . We have [MMA], CTR, and core surrogates lined up . . . .”<sup>13</sup> Finally, the Complaint points to a January 6, 2016, article that MMA published on its website attacking the claims about Abedin in the *Vanity Fair* article.<sup>14</sup>

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<sup>10</sup> Compl. at 3.

<sup>11</sup> Clio Chang & Alex Shephard, *What Happens to Media Matters in a Post-Hillary World?*, NEW REPUBLIC (Dec. 19, 2016), <https://newrepublic.com/article/139385/happens-media-matters-post-hillary-world> (cited in Compl. at 3 n.5).

<sup>12</sup> Compl., Ex. 5 (Memorandum from HFA Senior Staff to Hillary Rodham Clinton (July 25, 2015)).

<sup>13</sup> Alex Pfeiffer, *Clinton Campaign Planned to Work with Media Matters, Leaks Reveal*, DAILY CALLER (Nov. 4, 2016), <https://dailycaller.com/2016/11/04/clinton-campaign-worked-with-media-matters-leaks-reveal/> (cited in Compl. at 3 n.7, 12 n.37) (discussing and linking to internal campaign email obtained by WikiLeaks).

<sup>14</sup> Brennan Suen, *Vanity Fair’s Huma Abedin Hit Piece By the Numbers*, MMA (Jan. 6, 2016), <https://www.mediamatters.org/hillary-clinton/vanity-fairs-huma-abedin-hit-piece-numbers>.

The Complaint asserts that the January 6, 2016, post on MMA’s website “confirm[s]” that MMA coordinated with HFA.<sup>15</sup> HFA reported no disbursements to MMA or the receipt of any in-kind contributions from MMA during the 2016 election cycle.

Based on this information, the Complaint alleges that MMA made, and HFA knowingly accepted or received and failed to report, prohibited in-kind corporate contributions.<sup>16</sup> In their joint Response, MMA and HFA argue that, to the extent that MMA coordinated with HFA in connection with the January 6, 2016, article posted on MMA’s website, there was no in-kind contribution “because these activities were all conducted to directly support free internet communications.”<sup>17</sup>

## 2. Legal Analysis

The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”<sup>18</sup> Commission regulations provide that the phrase “anything of value includes all in-kind contributions.”<sup>19</sup> In-kind contributions include coordinated communications, subject to a three-part test codified at 11 C.F.R. § 109.21; coordinated expenditures, defined at 11 C.F.R. § 109.20(a); and the provision of “goods or services,” defined at 11 C.F.R. § 100.52(d).

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<sup>15</sup> Compl. at 4.

<sup>16</sup> *Id.* at 11-12.

<sup>17</sup> Resp. at 3 (July 7, 2020); *see id.* at 4 (“There is no evidence that [MMA] highlighted the press hypocrisy of interest to HFA by any means other than through free internet communications.”).

<sup>18</sup> 52 U.S.C. § 30101(8)(A)(i); *see also id.* § 30101(9)(A)(i) (defining “expenditure” as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office”).

<sup>19</sup> 11 C.F.R. § 100.52(d).



Under the Commission’s coordinated communication regulation, the communication at issue must: (1) be paid for by a third party; (2) satisfy a “content” standard; and (3) satisfy a “conduct” standard.<sup>20</sup> All three prongs are required for a communication to be considered a coordinated communication and treated as an in-kind contribution under this regulation.<sup>21</sup> Separately, an expenditure (for something other than a communication) is considered to be a coordinated expenditure and treated as an in-kind contribution if it is “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.”<sup>22</sup> Finally, the provision of “goods or services without charge or at a charge that is less than the usual and normal charge” constitutes an in-kind contribution.<sup>23</sup> Examples of goods or services include “[s]ecurities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”<sup>24</sup>

The Act prohibits corporations from making contributions to a candidate or authorized committee and similarly provides that no person shall knowingly accept a prohibited corporate

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<sup>20</sup> *Id.* § 109.21. Content standards include: (1) electioneering communications; (2) a public communication that disseminates, distributes, or republishes campaign materials; (3) a public communication containing express advocacy; (4) a public communication that, in relevant part, refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated 90 days or fewer before a primary, general, or special election, and is directed to voters in the jurisdiction of the clearly identified candidate; and (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c).

Conduct standards include: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; and (5) former employee or independent contractor. *Id.* § 109.21(d)(1)-(5). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *Id.* § 109.21(d)(6).

<sup>21</sup> *Id.* § 109.21(a).

<sup>22</sup> *Id.* § 109.20(a); see 52 U.S.C. § 30116(a)(7)(B)(i); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (clarifying that section 109.20(b) applies to “expenditures that are not made for communications”); Advisory Op. 2011-14 at 4 (“AO 2011-14”) (Utah Bankers Ass’n).

<sup>23</sup> 11 C.F.R. § 100.52(d)(1).

<sup>24</sup> *Id.*

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1 contribution.<sup>25</sup> Political committees are required to report the identifying information of each  
2 person who makes an aggregate contribution in excess of \$200 within the calendar year (or  
3 election cycle, in the case of an authorized committee), together with the date and amount of any  
4 such contribution.<sup>26</sup>

5 At the outset, certain documents cited by the Complaint in support of the allegations,  
6 principally including an internal HFA strategy memo and an internal HFA email, are the  
7 products of a state-sponsored hack-and-release operation designed to interfere with the 2016  
8 election. The Commission declines to consider this information.<sup>27</sup>

9 As explained below, the Complaint points to an article MMA published on its website on  
10 January 6, 2016, that was allegedly the product of coordination between HFA and MMA. The  
11 article, however, appears not to fall under the definition of “coordinated communication” in  
12 Commission regulations because the “content prong” of the three-part “coordinated  
13 communication” test is not satisfied. The content standards all require an “electioneering

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<sup>25</sup> 52 U.S.C. § 30118(a); *see also* 11 C.F.R. § 114.2.

<sup>26</sup> 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.3(a).

<sup>27</sup> The case law indicates that federal agencies may consider stolen documents in administrative proceedings, as long as the agency was not involved in the underlying criminal act. *See, e.g., Nat'l Labor Relations Bd. v. S. Bay Daily Breeze*, 415 F.2d 360, 364 (9th Cir. 1969); *Knoll Associates, Inc. v. Fed. Trade Comm'n*, 397 F.2d 530, 533 (7th Cir. 1968). The facts presented in those matters, however, do not involve state-sponsored efforts that the U.S. Intelligence Community and Department of Justice deemed an attack on the American democratic process. *See* NATIONAL INTELLIGENCE COUNCIL, INTELLIGENCE COMMUNITY ASSESSMENT 2017-01D, ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS at ii (Jan. 6, 2017); ROBERT S. MUELLER, III, SPECIAL COUNSEL, U.S. DEP'T OF JUSTICE, SPECIAL COUNSEL'S REPORT, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 3, 13 (Mar. 2019). The Commission has observed that foreign cyberattacks “present unique challenges to both criminal prosecution and civil enforcement,” and “fulfilling its ‘obligation to preserve the basic conception of a political community’ under section 30121 cannot hinge solely on prosecution of foreign violators abroad,” but instead “requires that countermeasures be taken within the United States.” Advisory Op. 2018-12 at 8 (DDC) (quoting *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011), *aff'd* 565 U.S. 1104 (2012)).

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communication” or a “public communication,” neither of which applies to the MMA web posting.<sup>28</sup>

An electioneering communication is “any broadcast, cable, or satellite communication” that refers to a “clearly identified candidate for Federal office,” is publicly distributed within a certain time before an election, and meets certain requirements regarding the audience.<sup>29</sup> The article was published on the internet, not broadcast, cable, or satellite, and therefore was not an electioneering communication.

A public communication is “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.”<sup>30</sup> Commission regulations provide that public communications “shall not include communications over the Internet, except for communications placed for a fee on another person’s Web site,” a provision referred to as the “internet exemption.”<sup>31</sup> The internet exemption appears to apply to the article because it was published on MMA’s own website and there is no indication that MMA also placed it for a fee on another person’s website.

The article is the only discrete instance of alleged coordination identified by the Complaint. In addition, the available information does not otherwise suggest or indicate that MMA made any coordinated expenditure on behalf of HFA, or that MMA provided HFA with any goods or services without proper charge. The reported statement from MMA staffers in an

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<sup>28</sup> See *supra* note 20; AO 2011-14 at 5.

<sup>29</sup> 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 109.29 (same).

<sup>30</sup> 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).

<sup>31</sup> 11 C.F.R. § 100.26.

1 April 2015 news article about “running defense” for Clinton, even if suggestive, does not itself  
2 indicate that MMA coordinated with HFA because such a “defense” could have been conducted  
3 without any coordination.

4 Therefore, the Commission finds no reason to believe MMA made, and HFA knowingly  
5 accepted or received and failed to report, in-kind corporate contributions in violation of 52  
6 U.S.C. §§ 30104(b)(3)(A), 30118(a) and 11 C.F.R. §§ 104.3(a), 114.2.

7 **B. The Commission Dismisses the Allegation that CTR Failed to Report In-**  
8 **Kind Contributions Received from MMA**

9 The Complaint alleges that MMA made in-kind contributions to CTR in the form of  
10 “similar uncompensated services” — apparently referencing the “media services” that MMA  
11 allegedly provided to HFA in connection with the above allegation — which CTR received and  
12 failed to report. The Complaint does not specify a timeframe, but states that this occurred “at  
13 least during the 2016 election.”<sup>32</sup> It also does not describe the alleged uncompensated services  
14 or identify specific facts or sources that otherwise support the allegations. Instead, the  
15 Complaint asserts that it is “reasonable to infer” that MMA provided services to CTR “given  
16 [MMA’s] coordination with the Clinton campaign, its steadfast focus on undertaking activities  
17 designed to help get Hillary Clinton elected, and its shared office and goals with . . . CTR.”<sup>33</sup> In  
18 response, CTR argues that the allegation is “baseless” and that “mere speculation that a violation  
19 may have occurred, without facts to support the allegation, is not sufficient.”<sup>34</sup>

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<sup>32</sup> Compl. at 12.

<sup>33</sup> *Id.* at 11-12. While the available information indicates that MMA shared an address with CTR, TigerClaws, *supra* note 3, the Commission been unable to determine whether these entities shared a single suite at that address.

<sup>34</sup> Resp. at 4.

The allegation in the Complaint is vague, speculative, and unsupported by the available information. Even if MMA “shared offices and goals” with CTR, which is not disputed, those facts alone do not establish that MMA provided services to CTR, let alone services that CTR failed to report. In sum, because the Complaint lacks sufficient information to support the allegation, and the Commission is unaware of other information that supports it, there is insufficient indication that the alleged provision of uncompensated and unreported services occurred.<sup>35</sup> Therefore, the Commission dismisses the allegation that CTR failed to report in-kind contributions from MMA in violation of 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a).

**C. The Commission Finds Reason to Believe that CTR Made, and HFA Knowingly Accepted and Failed to Report, Excessive In-Kind Contributions**

**1. Facts**

On April 13, 2015, Clinton filed a Statement of Candidacy with the Commission for the 2016 presidential election, designating HFA as her principal campaign committee.<sup>36</sup> Less than a month later, on May 12, 2015, CTR announced that it was splitting off from AB PAC and, on June 5, 2015, CTR registered with the Commission.<sup>37</sup> In its press release announcing its establishment as a separate committee, CTR President Brad Woodhouse stated that CTR would “work in support of Hillary Clinton’s candidacy for President.”<sup>38</sup> CTR stated in the same press

<sup>35</sup> Statement of Reasons, Comm’rs Mason, Sandstrom, Smith, & Thomas at 1, MUR 4960 (Clinton for U.S. Exploratory Committee) (“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”).

<sup>36</sup> FEC Form 2, Hillary Rodham Clinton Original 2015 Statement of Candidacy (Apr. 13, 2015); FEC Form 1, HFA Original Statement of Org. (Apr. 13, 2015).

<sup>37</sup> Press Release, Correct the Record, Correct the Record Launches as New Pro-Clinton SuperPAC (May 12, 2015) [hereinafter CTR Press Release], <http://correctrecord.org/correct-the-record-launches-as-new-pro-clinton-superpac/> [<https://web.archive.org/web/20150908044706/http://correctrecord.org/correct-the-record-launches-as-new-pro-clinton-superpac/>]; FEC Form 1, CTR Original Statement of Org. (June 5, 2015).

<sup>38</sup> CTR Press Release.

1 release that it would “not be engaged in paid media and thus will be allowed to coordinate with  
2 campaigns and Party Committees.”<sup>39</sup> In another statement to the press several days later, a CTR  
3 spokesperson further explained that “FEC rules permit some activity — in particular activity on  
4 an organization’s website, in email, and on social media — to be legally coordinated with  
5 candidates and political parties.”<sup>40</sup>

6 Over the course of the 2016 election cycle, CTR raised \$9.63 million and spent \$9.61  
7 million, none of which was reported as independent expenditures.<sup>41</sup> Although it reported  
8 disbursements for some communication-specific purposes, the bulk of CTR’s reported  
9 disbursements were for purposes that were not communication-specific.<sup>42</sup> CTR’s and HFA’s  
10 disclosure reports identify only two transactions between them, both near the time that CTR split  
11 from AB PAC.<sup>43</sup>

12 CTR and its officers’ public statements illustrate how CTR coordinated with HFA while  
13 conducting its activities and that it existed exclusively for the purpose of electing Clinton. For  
14 example, Brock, CTR’s founder, explained in a December 2016 podcast interview that CTR

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<sup>39</sup> *Id.* (quoting CTR President Brad Woodhouse).

<sup>40</sup> Gold, *supra* note 7.

<sup>41</sup> See *Correct the Record 2015-2016 Raising*, FEC.GOV, <https://www.fec.gov/data/committee/C00578997/?cycle=2016&tab=raising> (last visited Nov. 12, 2020); *Correct the Record 2015-2016 Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00578997/?cycle=2016&tab=spending> (last visited Nov. 12, 2020).

<sup>42</sup> See *Correct the Record 2015-2016 Disbursements*, FEC.GOV, [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2016&data\\_type=processed&committee\\_id=C00578997&min\\_date=01%2F01%2F2015&max\\_date=12%2F31%2F2016](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016) (last visited Nov. 12, 2020). These include disbursements for payroll, salary, travel, lodging, meals, rent, fundraising consulting, computers, digital software, domain services, email services, equipment, event tickets, hardware, insurance, office supplies, parking, and shipping.

<sup>43</sup> On May 27, 2015, HFA disbursed \$275,615 to CTR for “research, non-contribution account.” FEC Form 3P, HFA Amended 2015 July Quarterly Report, Sched. B-P at 13,869 (Sept. 3, 2015). On July 17, 2015, HFA disbursed \$6,346 to CTR for “research services.” FEC Form 3P, HFA Amended 2015 October Quarterly Report, Sched. B-P at 16,745 (July 5, 2016).

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maintained a “coordinated status” with HFA.”<sup>44</sup> Brock noted how he would speak with senior HFA officials, such as Campaign Manager Robbie Mook and Campaign Chairman John Podesta on issues pertaining to the election,<sup>45</sup> and described CTR as “a surrogate arm” of the Clinton campaign.<sup>46</sup>

The Complaint alleges that CTR “systematically coordinated its activities with the Clinton campaign” and provided HFA with, *inter alia*, “travel, fundraising, general consulting, staff salary, and overhead” for which it was not reimbursed.<sup>47</sup> The Complaint asserts that such expenses “are not related to exempt communications.”<sup>48</sup> In their joint Response, CTR and HFA concede that “[if] CTR made expenditures unrelated to its communications activities in support of . . . Clinton’s candidacy, such expenditures would be in-kind contributions to HFA,” but argue that “the Complaint provides no evidence that any such expenditures were made.”<sup>49</sup>

The same allegations were previously addressed in MURs 6940, 7097, 7146, 7160, 7193 (Correct the Record, *et al.*), to which the instant Complaint generally cites as the sole support for

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<sup>44</sup> *David Brock: Clinton Campaign Allowed Her Image “To Be Destroyed,”* POLITICO’S OFF MESSAGE PODCAST at 31:50 (Dec. 12, 2016) [hereinafter Politico Podcast], <https://podcasts.apple.com/us/podcast/david-brock-clinton-campaign-allowed-her-image-to-be/id987591126?i=1000378857971>.

<sup>45</sup> *Id.* at 27:30, 32:10.

<sup>46</sup> *Id.* at 28:20.

<sup>47</sup> Compl. at 13-14.

<sup>48</sup> *Id.* at 14.

<sup>49</sup> Resp. at 5.



the allegations here.<sup>50</sup> In the previous matter, the Commission failed to garner sufficient votes to approve this Office’s recommendation to find reason to believe and voted to close the file.<sup>51</sup>

## 2. Legal Analysis

The Act prohibits any person from making, and any candidate or committee from knowingly accepting, an excessive contribution.<sup>52</sup> Multicandidate committees, such as CTR, may contribute to a candidate and his or her authorized committee up to \$5,000 per election.<sup>53</sup> Committee treasurers are required to disclose the identification of each political committee that makes a contribution to the reporting committee during the reporting period, along with the date and amount of any such contribution.<sup>54</sup> If a committee makes a contribution, it shall disclose the name and address of the recipient.<sup>55</sup>

<sup>50</sup> See Compl. at 14 & n.43.

<sup>51</sup> See First Gen. Counsel’s Rpt. at 7-25, MURs 6940, 7097, 7146, 7160, 7193 (Correct the Record, *et al.*); Amended Certification ¶¶ 1(a), 5, MURs 6940, 7097, 7146, 7160, 7193 (Correct the Record, *et al.*) (June 13, 2019).

The complainants filed a civil action against the Commission challenging the Commission’s resolution of the matter. Amended Compl., *Campaign Legal Center v. FEC*, No. 1:19-cv-02336-JEB, 2019 WL 8161677 (D.D.C. Oct. 29, 2019); see 52 U.S.C. § 30109(a)(8). CTR and HFA intervened after the Commission failed to garner sufficient votes to defend the suit, and subsequently moved to dismiss the Complaint, arguing both that the plaintiff lacked standing and had failed to state a claim upon which relief could be granted. *Campaign Legal Center v. FEC*, 334 F.R.D. 1, 1 (D.D.C. Nov. 15, 2019) (granting motion to intervene, noting that “[t]he Commission, however, could not garner the four votes needed to defend its dismissal in this Court. And now the respondents to CLC’s administrative complaint — Correct the Record, a political-action committee, and Hillary for America — have moved to intervene as defendants here. The result, then, is that Intervenor would effectively take the defaulting FEC’s place in this suit”); Amended Mot. to Dismiss, *Campaign Legal Center v. FEC*, No. 1:19-cv-02336-JEB, 2020 WL 1074649 (D.D.C. Feb. 4, 2020). The court denied the motion, holding that: (1) the plaintiff had standing; and (2) the plaintiff adequately stated claims under both the Act and the Administrative Procedure Act that the Commission’s dismissal of the matter was “contrary to law.” *Campaign Legal Center v. FEC* at \*9, \*10-15, No. 1:19-cv-02336-JEB, 2020 WL 2996592 (D.D.C. June 4, 2020).

<sup>52</sup> 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

<sup>53</sup> 52 U.S.C. § 30116(a)(2).

<sup>54</sup> *Id.* § 30104(b)(3)(B); 11 C.F.R. § 104.3(a).

<sup>55</sup> 52 U.S.C. § 30104(b)(6)(B)(i); 11 C.F.R. § 104.3(b).



As discussed above, Commission regulations provide a three-part test, consisting of a payment prong, content prong, and conduct prong, all of which must be satisfied for a given communication to be coordinated and thus treated as an-kind contribution.<sup>56</sup> Relevant here, under the content prong, the definition of “public communication” “shall not include communications over the Internet, except for communications placed for a fee on another person’s Web site,” referred to as the “internet exemption.”<sup>57</sup> An expenditure — for something other than a communication — is considered to be coordinated and thus treated as an in-kind contribution if the expenditure is “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.”<sup>58</sup>

The available information shows that CTR systematically coordinated with HFA on its activities. From its first week of existence as a separate entity, as evidenced by the press release announcing its establishment, CTR has consistently stated that the entirety of its work would be made for the purpose of benefiting Clinton and in coordination with her campaign.<sup>59</sup> Brock publicly explained the “coordinated status” of CTR and described CTR as “a surrogate arm” of HFA.<sup>60</sup> Contrary to CTR’s argument and in contrast to the situation discussed above concerning MMA’s article, the available information supports the conclusion that much of CTR’s

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<sup>56</sup> 11 C.F.R. § 109.21.

<sup>57</sup> *See id.* §§ 109.21(c), 100.26.

<sup>58</sup> *Id.* § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (clarifying that section 109.20(b) applies to “expenditures that are not made for communications”); AO 2011-14 at 4.

<sup>59</sup> CTR Press Release.

<sup>60</sup> Politico Podcast at 27:30, 32:10.

1 approximately \$9 million in disbursements for activity during the 2016 election cycle cannot  
2 fairly be described as for “communications,” public or otherwise, unless that term covers almost  
3 every conceivable political activity. Analyzing CTR’s payments under the “coordinated  
4 expenditure” provision for activities, rather than purely under the “coordinated communication”  
5 provision, is consistent with prior matters. In MUR 5564 (Tony Knowles for U.S. Senate, *et al.*),  
6 for instance, a committee made various expenditures relating to a voter canvassing effort.<sup>61</sup> The  
7 Commission analyzed costs for non-communicative items (*e.g.*, salaries for canvassers) under the  
8 coordinated expenditure framework, and analyzed costs for communications (*e.g.*, telephone  
9 calls) under the coordinated communications framework.<sup>62</sup>

10 Following that approach here, CTR’s costs for non-communicative items “far less  
11 directly connected to a specific unpaid internet communication,” such as “computer equipment,  
12 office space, software, video equipment, and salaries for those who conducted internet activity  
13 (posting on social media and emailing journalists), as well as . . . polling” should be analyzed as  
14 coordinated expenditures and thus not subject to the internet exemption.<sup>63</sup> The bulk of CTR’s  
15 reported disbursements are for purposes that are not communication-specific, including payroll,  
16 salary, travel, lodging, meals, rent, fundraising consulting, computers, equipment, event tickets,  
17 hardware, insurance, office supplies, parking, and shipping in addition to payments for explicitly

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<sup>61</sup> F&LA at 10-12, MUR 5564 (Tony Knowles for U.S. Senate). After an investigation in MUR 5564, the Commission failed to garner four votes to enter into pre-probable cause conciliation with Respondents. *See* Certification, MUR 5564 (Nov. 29, 2007).

<sup>62</sup> F&LA at 12, MUR 5564 (Tony Knowles for U.S. Senate); *see also* 11 C.F.R. § 109.37 (describing party coordinated communications).

<sup>63</sup> *Campaign Legal Center v. FEC* at \*4, No. 1:19-cv-02336-JEB, 2020 WL 2996592 (D.D.C. June 4, 2020) (removing internal punctuation).

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1 mixed purposes such as “video consulting and travel” and “communication consulting and  
2 travel.”<sup>64</sup>

3 At its core, CTR existed for only one purpose — to elect Clinton — and it sought to  
4 accomplish its purpose via openly and systematically coordinating its efforts with HFA, as  
5 evidenced by the available public statements from CTR leadership. If accepted, CTR and HFA  
6 would have their purported lack of “public communications” swallow the Act’s longstanding  
7 prohibition on coordinated expenditures. This position does not withstand scrutiny. The scale of  
8 the close coordination between CTR and HFA suggests that most of CTR’s entire range of  
9 activity during the 2016 election cycle represents coordinated expenditures and thus in-kind  
10 contributions to HFA.

11 Therefore, the Commission finds reason to believe that CTR made, and HFA knowingly  
12 received or accepted, unreported excessive in-kind contributions in violation of 52 U.S.C.  
13 §§ 30104(b)(3)(A), (b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(a), (b), 110.2(b).

14 **D. The Commission Dismisses the Allegation that HFA Knowingly Accepted**  
15 **Unreported Excessive In-Kind Contributions**

16 1. Facts

17 AB PAC is an independent expenditure-only political committee (“IEOPC”) that  
18 registered with the Commission in 2010.<sup>65</sup> Brock served as its initial treasurer.<sup>66</sup> AB PAC

<sup>64</sup> *Correct the Record 2015-2016 Disbursements*, FEC.GOV, [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2016&data\\_type=processed&committee\\_id=C00578997&min\\_date=01%2F01%2F2015&max\\_date=12%2F31%2F2016](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00578997&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016) (last visited Nov. 12, 2020).

<sup>65</sup> FEC Form 1, AB PAC Original Statement of Org. (Nov. 23, 2010).

<sup>66</sup> *Id.* Rodell Mollineau, AB PAC’s current treasurer, assumed that position in 2012. FEC Form 1, AB PAC Amended Statement of Org. (Apr. 12, 2012). AB PAC formerly operated as American Bridge and American Bridge 21st Century. FEC Form 1, AB PAC Original Statement of Org. (Nov. 23, 2010); FEC Form 1, AB PAC Amended Statement of Org. (Feb. 24, 2011).

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describes itself as “the largest research, video tracking, and rapid response organization in Democratic politics.”<sup>67</sup>

The Complaint alleges that independent expenditures reported by AB PAC during the 2016 election opposing Clinton’s general election opponent, Donald J. Trump, were actually coordinated with the Clinton campaign and, therefore, should have been reported as in-kind contributions from AB PAC to HFA.<sup>68</sup>

In support of the allegations, the Complaint submits a transitive theory of coordination based on the relationship between AB PAC and CTR, and that between CTR and HFA. The Complaint states that “AB PAC did not operate independently from CTR, which openly coordinated with Clinton’s campaign,” and thus “AB PAC’s pro-Clinton advertising could not have been independent [from HFA].”<sup>69</sup> The Complaint points specifically to overlapping staff between AB PAC and CTR, namely, seven individuals who received simultaneous salary payments from both groups between April and November 2016, including Brock.<sup>70</sup>

In response, HFA argues that the Complaint fails to identify any specific communication that satisfies the coordinated communication test at 11 C.F.R. § 109.21, and provides no evidence indicating that HFA had any material involvement in decisions concerning any AB

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<sup>67</sup> About Us, AM. BRIDGE 21ST CENTURY, <https://americanbridgepac.org/about-us/> (last visited Nov. 12, 2020).

<sup>68</sup> Compl. at 14. During the 2016 election cycle, AB PAC made \$143,187.17 in independent expenditures, none of which supported Clinton, but \$142,837.17 of which opposed her opponent, Donald Trump. *See American Bridge 21st Century 2015-2016 Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00492140/?cycle=2016&tab=spending> (last visited Nov. 12, 2020).

<sup>69</sup> Compl. at 14.

<sup>70</sup> *Id.*

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PAC communications or that any of the overlapping AB PAC and CTR staff had substantial discussions with HFA relating to its plans, projects, activities, or needs.<sup>71</sup>

## 2. Legal Analysis

An “independent expenditure” is an expenditure “for a communication expressly advocating the election or defeat of a clearly identified candidate” that is not coordinated with the candidate or the candidate’s committee.<sup>72</sup> As discussed above, an expenditure made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or a candidate’s authorized committee is treated as an in-kind contribution to that candidate.<sup>73</sup> With respect to communications specifically, under the Commission’s coordinated communications regulation, the communication at issue must: (1) be paid for by a third party; (2) satisfy a “content” standard; and (3) satisfy a “conduct” standard.<sup>74</sup> All three prongs are required to be considered a coordinated communication and treated as an in-kind contribution under this regulation.<sup>75</sup>

The available information does not provide a reasonable basis to infer that HFA coordinated with AB PAC regarding AB PAC’s advertising that opposed Trump. As a threshold matter, the Complaint does not point to any specific AB PAC communications purportedly coordinated with HFA, which is ordinarily required to conduct a coordinated communication analysis under the three-part test at 11 C.F.R. § 109.21. Further, the available information is

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<sup>71</sup> Resp. at 6.

<sup>72</sup> 11 C.F.R. § 100.16(a); 52 U.S.C. § 30101(17).

<sup>73</sup> 52 U.S.C. § 30116(a)(7)(B); *see also* 11 C.F.R. § 109.20.

<sup>74</sup> 11 C.F.R. § 109.21.

<sup>75</sup> *Id.* § 109.21(a).

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insufficient to indicate that, as a general matter, HFA interacted with AB PAC such that it would be reasonable to infer that HFA coordinated with AB PAC on some or all of its political advertising.

The allegation in the Complaint is premised on AB PAC's relationship with CTR, *i.e.*, their overlapping staff, and CTR's relationship with HFA, which allegedly involved systematic coordination.<sup>76</sup> However, it does not necessarily follow, based exclusively on such associations, that AB PAC also coordinated with HFA, or that such coordination related to advertising opposing Clinton's opponent. Stated otherwise, even if CTR staffers, who also worked for or were associated with AB PAC, engaged in coordinated activities with HFA, there is no indication that they did so in their capacities as AB PAC staffers.<sup>77</sup> In contrast to AB PAC, CTR publicly described its arrangement to coordinate with HFA, which it contended was permissible.<sup>78</sup> CTR's admitted activities do not appear to involve AB PAC.<sup>79</sup> Thus, without more, the allegation that AB PAC impermissibly coordinated with HFA is insufficiently unsupported by the available information.<sup>80</sup>

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<sup>76</sup> See *supra* Part II.C.2 (recommending that the Commission find reason to believe that CTR made, and HFA knowingly accepted and failed to report, excessive in-kind contributions).

<sup>77</sup> See, e.g., Advisory Op. 2005-02 at 10 (Corzine II) (explaining that an individual can act in multiple capacities during the same time period, and that whether an individual is operating on behalf of a person or an entity is a fact-based determination based on the conduct of both the individual and the person or entity on whose behalf he allegedly acts).

<sup>78</sup> *Supra* Part II.C.1.

<sup>79</sup> See *id.*

<sup>80</sup> Statement of Reasons, Comm'rs Mason, Sandstrom, Smith, & Thomas at 1, MUR 4960 (Clinton for U.S. Exploratory Committee) ("The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].").

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1           Therefore, the Commission dismisses the allegation that HFA knowingly accepted  
2   excessive in-kind contributions, which both committees failed to report in violation of 52 U.S.C.  
3   §§ 30104(b)(3)(A), 30116 (f) and 11 C.F.R. §§ 104.3(a), 110.9.