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1 Federal Election Campaign Act of 1971, as amended (the “Act”). Specifically, the Complaint  
2 alleges that the Committee reported payments to Baseline Research, a political consulting  
3 company owned by respondent William Winkler, that were, in actuality, intended for Jersey  
4 Conservative and Sussex County Watchdog to publish blog posts supporting Pallotta and  
5 opposing John McCann, Pallotta’s primary opponent and the Complainant in this matter. The  
6 Complaint alleges that Pallotta’s campaign manager, Kelly Ann Hart, facilitated or was  
7 otherwise involved in the transactions and that Winkler actually controlled the blogs. The  
8 Complaint also makes the converse allegation that the two websites, not the Committee, made  
9 payments to publish the articles, resulting in in-kind contributions from the publishers to the  
10 Committee. The Complaint further alleges that Jersey Conservative and Sussex County  
11 Watchdog made an in-kind contribution when they shared an email list with the Committee  
12 without charge. Finally, the Complaint makes a separate claim unrelated to the blogs, alleging  
13 that ads supporting Pallotta that appeared on The Trump Revolution Facebook page lacked  
14 proper disclaimers and may have been paid for by a campaign supporter in violation of the Act.

15 The Committee denies that its payments to Baseline Research were related to content  
16 posted on Jersey Conservative and Sussex County Watchdog or that the Committee otherwise  
17 coordinated with either of the websites.<sup>1</sup> The Committee does not specifically address the  
18 allegations regarding the shared email list. As to the allegation concerning the Facebook ads, the  
19 Respondents state that the Committee paid for the ads in question but that any disclaimer  
20 omissions resulted from a vendor error.<sup>2</sup>

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<sup>1</sup> Respondents Winkler, Jersey Conservative and Sussex Watchdog did not submit responses. Hart did not respond separately, but she submitted an affidavit as part of the Committee response.

<sup>2</sup> Committee Resp. at 3-4 (Oct. 6, 2020); Intellz Resp. at 2-4; The Trump Revolution Resp. at 1 (Oct. 14, 2020) [hereinafter Regal Blue Media Response]. The Trump Revolution, notified as a Respondent in this matter, is a Facebook page operated and owned by Regal Blue Media.

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1        As explained below, the factual record does not provide a reasonable basis to infer that  
2        the Committee's reported payments to Baseline Research were related to any content posted on  
3        Sussex County Watchdog or Jersey Conservative. Moreover, it appears that the blog posts are  
4        covered by the internet exemption. Further, the allegation regarding the shared email list is  
5        vague, speculative, and unsupported by the available information. Finally, we recommend the  
6        Commission dismiss the alleged violations arising from the Facebook ads.<sup>3</sup>

7        Therefore, we recommend that the Commission: (1) dismiss the allegation that the  
8        Committee violated 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b) by inaccurately reporting  
9        disbursements to Sussex County Watchdog and Jersey Conservative as payments to Baseline  
10      Research; (2) dismiss the allegation that Baseline Research violated the Act because the  
11      Complaint does not appear to allege a cognizable violation against it; (3) dismiss the allegation  
12      that Jersey Conservative and Sussex County Watchdog made, and the Committee knowingly  
13      accepted, prohibited or excessive in-kind contributions, in violation of 52 U.S.C. §§ 30116(a),  
14      (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2, by coordinating blog posts; (4) dismiss  
15      the allegations that Kelly Ann Hart and William Winkler made or knowingly accepted prohibited  
16      or excessive in-kind contributions in violation of 52 U.S.C. §§ 30116(a), (f), 30118(a) and  
17      11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2 by coordinating blog posts; (5) dismiss the allegation that  
18      Jersey Conservative and Sussex County Watchdog made, and the Committee knowingly  
19      accepted, prohibited or excessive in-kind contributions in violation of 52 U.S.C. §§ 30116(a), (f),

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<sup>3</sup>        Frank Pallotta, Dora Louise Collier, and William Collier were named in the caption of the Complaint but were not individually notified as respondents in this matter. As to Pallotta, the candidate, the body of the Complaint does not make allegations specifically as to him, but rather as to his campaign committee, which was notified and filed a response. Regarding Dora Louise Collier and William Collier, they are owners of Blue Regal Media (operator of the Trump Revolution Facebook page), which filed a response submitted by Mr. Collier addressing the allegations against them.

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1 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2 by sharing an email list without charge;

2 (6) dismiss, as a matter of prosecutorial discretion, the allegation that the Committee violated

3 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b) by failing to include adequate disclaimers on the

4 Facebook ads; and (7) find no reason to believe that The Trump Revolution and Intellz, Inc.,<sup>4</sup>

5 violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b) because the duty to include adequate

6 disclaimers does not apply to them.

7 **II. FACTUAL BACKGROUND**

8 On May 13, 2019, Frank Pallotta filed his Statement of Candidacy for New Jersey's 5th

9 Congressional District.<sup>5</sup> Pallotta for Congress is his principal campaign committee with

10 Amberle Gilroy serving as treasurer.<sup>6</sup> Pallotta won the Republican primary election on July 7,

11 2020, and lost the general election on November 3, 2020.<sup>7</sup> John J. McCann, the Complainant,

12 was one of Pallotta's opponents in the primary election.<sup>8</sup> Jersey Conservative and Sussex

13 County Watchdog are anonymous blogs that cover New Jersey politics.<sup>9</sup> According to its

14 website, Jersey Conservative is "run and maintained by a group of volunteers, some of whom

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<sup>4</sup> Intellz was a digital advertising vendor that worked with the Trump Revolution Facebook page. The Complaint refers to Intellz as a limited liability company, "LLC." However, in its response, Intellz identifies itself as a corporation, "Inc." Intellz Resp. at 1 (Dec. 19, 2020).

<sup>5</sup> Frank Pallotta, Statement of Candidacy (May 13, 2019).

<sup>6</sup> Pallotta for Congress, Amended Statement of Org. (Aug. 6, 2020).

<sup>7</sup> 2020 Official Primary Results, U.S. House of Representatives Fifth Congressional District, N.J. SEC'Y OF STATE (<https://www.state.nj.us/state/elections/assets/pdf/election-results/2020/2020-official-primary-results-us-house-amended-0826.pdf>) (July 7, 2020); 2020 Official General Election Results: U.S. House of Representatives Fifth Congressional District, N.J. SEC'Y OF STATE, (<https://www.state.nj.us/state/elections/assets/pdf/election-results/2020/2020-official-general-results-us-house.pdf>) (Nov. 3, 2020).

<sup>8</sup> Compl. at 2 (Sept. 1, 2020).

<sup>9</sup> *Id.* at 3; Committee Resp. at 2; *see id.*, Attach. (Affidavit of Kelly Ann Hart ¶ 9 (Sept. 29, 2020) [hereinafter Hart Affidavit]).

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1 have their own websites.”<sup>10</sup> The Sussex County Watchdog website states that: “[i]t is committed  
 2 to citizen journalism with a local, independent-minded perspective.”<sup>11</sup> It is unclear, given the  
 3 available information, whether the websites are corporate entities; neither filed a response and  
 4 their websites, which are anonymous by design, do not provide any specific information about  
 5 their ownership or operation.

6 The Complaint alleges that the Committee secretly routed payments to Sussex County  
 7 Watchdog and Jersey Conservative to pay for articles posted on those websites supporting  
 8 Pallotta and opposing McCann.<sup>12</sup> The Complaint also argues, relatedly but conversely, that the  
 9 two websites paid to publish the articles on behalf of the Committee, resulting in in-kind  
 10 contributions.<sup>13</sup>

11 To support these allegations, the Complainant states that he “personally witnessed”  
 12 Pallotta Campaign Manager Kelly Ann Hart at a January 7, 2020, Bergen County Republican  
 13 Organization meeting “type and create a letter” that was anonymously posted that same day as an  
 14 article on Sussex County Watchdog.<sup>14</sup> Six days later, on January 13, 2020, the Committee made  
 15 a \$2,500 payment for “Research” to Baseline Research, a political consulting company owned by  
 16 William Winkler, who “is believed and alleged” to operate Sussex County Watchdog and Jersey

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<sup>10</sup> About Us – Jersey Conservative, <https://www.jerseyconservative.org/about-us> (last visited Feb. 19, 2021).

<sup>11</sup> Home – Sussex County Watchdog, <https://www.sussexcountywatchdog.com/home> (last visited Feb. 19, 2021).

<sup>12</sup> Compl. at 4 (alleging that the Committee may have “paid for . . . exposure on the well-known blogs”).

<sup>13</sup> *Id.* at 7-9 (alleging that the communications were “paid for by a third party,” *i.e.*, Sussex County Watchdog and Jersey Conservative, and arguing that the three prongs of the coordinated communication test are satisfied).

<sup>14</sup> *Id.* at 2-3; *Should a Bergen County Party Boss Choose Sussex County’s Congressman?*, SussexCountyWatchdog.com (Jan. 7, 2020) (the post has no author listed).

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1      Conservative.<sup>15</sup> The Complaint alleges that Winkler operates the blogs based upon information  
 2      gleaned from various sources, yet none of the cited information states that Winkler operates the  
 3      specific blogs, only that he is a blogger.<sup>16</sup>

4              The Complaint asserts that the true purpose of the \$2,500 payment to Baseline Research  
 5      was for Sussex County Watchdog to post the article allegedly written by Hart.<sup>17</sup> Sussex County  
 6      Watchdog and Jersey Conservative published at least three additional articles supporting Pallotta  
 7      and opposing McCann during the primary, and the Committee made an additional \$7,200  
 8      payment to Baseline Research on April 20, 2020, which the Complaint alleges was for the  
 9      purpose of publishing the additional articles.<sup>18</sup> Separately, the Complaint makes allegations that  
 10     the two websites, that made payments to publish the articles in the form of web hosting and  
 11     email fees, made in-kind contributions to the Committee.<sup>19</sup>

12              In its Response, the Committee asserts that its payments to Baseline Research were  
 13     unrelated to the articles posted on those websites and instead were for “Messaging / Strategy.”<sup>20</sup>

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<sup>15</sup>      Compl. at 3; Pallotta for Congress 2020 April Quarterly Rpt. at 12 (Apr. 15, 2020).

<sup>16</sup>      Compl. at 12-13 (citing Anonymous, *Will legislator be sued for trying to silence blog?* JERSEYCONSERVATIVE.ORG (Dec. 15, 2016); Anonymous, *How the Herald Almost Started the WatchDog*, SUSSEXCOUNTYWATCHDOG.COM (Apr. 18, 2017); Paul Mulshine, *Tea-Partiers Need to Wake Up and Smell the Coffee*, NJ.COM, Apr. 14, 2011 (updated Jan. 18, 2019), [https://www.nj.com/njv\\_paul\\_mulshine/2011/04/post\\_94.html](https://www.nj.com/njv_paul_mulshine/2011/04/post_94.html).

<sup>17</sup>      See Compl. at 4.

<sup>18</sup>      *Id.* at 4, 8; e.g., *Memo to John McCann: Don't be a Commie*, SUSSEXCOUNTYWATCHDOG.COM (Mar. 8, 2020); *Did BCRO Violate FEC Rules?*, JERSEYCONSERVATIVE.ORG (June 26, 2020); *Why is McCann Paying for Jack Zisa to LIE to Republicans?*, JERSEY CONSERVATIVE.ORG (June 27, 2020). Each of the posts had either no author or were attributed to “Rubashov.” Pallotta for Congress 12-Day Pre-Election Rpt. at 20 (June 25, 2020) (disclosing \$7,200 disbursement to Baseline Research on April 20, 2020, for “research”). Subsequent to the primary election, the Committee made two additional payments to Baseline in October and December, totaling \$5,000. Pallotta for Congress Amended 12-Day Pre-Election Rpt. at 8, 28 (Feb. 26, 2021).

<sup>19</sup>      Compl. at 7-8.

<sup>20</sup>      Committee Resp. at 2-3 (“Mr. Winkler [of Baseline Research] was hired to provide strategic consulting, not to blog.”) (Oct. 6, 2020); *see also* Hart Aff. ¶ 13 (attesting that the reported payments to Baseline Research were for “messaging and strategic consulting”).

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1 It asserts that the Complaint has failed to provide sufficient evidence that Hart or Winkler wrote  
 2 any of the blog posts on Sussex County Watchdog or Jersey Conservative.<sup>21</sup> And it specifically  
 3 challenges the Complainant's claim that he personally witnessed Hart writing a blog post with an  
 4 affidavit from Hart, attesting that, "I did not write any articles . . . for the Blogs referenced in the  
 5 complaint."<sup>22</sup> Finally, the Committee argues that even if Hart or other Committee staff had  
 6 written blog posts on their own, it would fall within the individual uncompensated internet  
 7 exemption.<sup>23</sup>

8 In addition, the Complaint states that Sussex County Watchdog and Jersey Conservative  
 9 use an email list to "blast" their posts to readers and that, "[b]ased on information and belief, the  
 10 email list between Pallotta for Congress and the blogs are shared."<sup>24</sup> The Complaint, however,  
 11 does not cite to any specific information.<sup>25</sup> In its Response, the Committee does not address this  
 12 allegation.

13 The final allegation relates to six Pallotta ads that appeared on the Trump Revolution  
 14 Facebook page, and cost \$2,695.<sup>26</sup> The Complaint asserts that the ads were paid for by the  
 15 Trump Revolution Facebook page owner Dora Louise Collier in coordination with the

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<sup>21</sup> Committee Resp. at 4.

<sup>22</sup> Hart Aff. ¶ 9.

<sup>23</sup> Committee Resp. at 2-4 (citing 11 C.F.R. § 100.155).

<sup>24</sup> Compl. at 5.

<sup>25</sup> *See id.* ("Based on information and belief, the email list between Pallotta for Congress and the blogs are shared.").

<sup>26</sup> Compl. at 5; *The Trump Revolution*, Facebook Ad Library, FACEBOOK ([https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=388475271497575&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=388475271497575&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped)) [hereinafter, "The Trump Revolution Facebook Ad Library"]; *Pallotta for Congress*, Facebook Ad Library, FACEBOOK ([https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&q=pallotta%20for%20congress&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=pallotta%20for%20congress&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped)) [hereinafter, "Pallotta for Congress Facebook Ad Library"]].

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1 Committee and constitute impermissible contributions.<sup>27</sup> Five of the ads contained a disclaimer  
 2 generated by Facebook, stating that they were paid for by Collier (two of which also contained a  
 3 disclaimer within the text of the ad stating that they were paid for by the Committee).<sup>28</sup> Only  
 4 one ad contained a single disclaimer stating that it was paid for by the Committee.<sup>29</sup>

5           In Response, the Committee acknowledges that it paid Intellz to place digital  
 6 advertisements, including the Facebook ads at issue in the Complaint.<sup>30</sup> Separately, Intellz and  
 7 Regal Blue Media (operator of The Trump Revolution Facebook page) confirmed in their  
 8 response that the Committee retained Intellz and that Intellz, in turn, subcontracted the  
 9 assignment to Regal Blue Media, owned by William Collier and Dora Louise Collier.<sup>31</sup> They  
 10 assert that because the Committee's Facebook account was at the time awaiting verification,  
 11 Regal Blue Media purchased the ads in question using the Ms. Collier's Facebook account and  
 12 manually entered disclaimers stating that the ads were paid for by the Committee.<sup>32</sup> However,  
 13 according to Intellz and Regal Blue Media, Facebook automatically appended disclaimers stating  
 14 "Paid for by Dora Louise Collier," which led to ads containing dual disclaimers.<sup>33</sup>

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<sup>27</sup> Compl. at 10-12.

<sup>28</sup> The Trump Revolution Facebook Ad Library (ads with the identification numbers of 616377048948088; 504656297146472; and 2470597446489117 contained disclaimers that they were paid for by Collier; ads with the identified numbers of 807803029630704 and 519844875604275 contained dual disclaimers).

<sup>29</sup> Pallotta for Congress Facebook Ad Library (ad with identification number 638185140305037).

<sup>30</sup> Compl. at 3-4; *see* Hart Aff. ¶ 13; *see also* Pallotta for Congress, April 2020 Quarterly Rpt. at 45 (Apr. 15, 2020) (March 10, 2020, disbursement to Intellz, Inc. for "media consulting.")

<sup>31</sup> Regal Blue Media Resp. at 1.

<sup>32</sup> *Id.*; Intellz Resp. at 3-4; *see also* Blue Regal Media Resp. at 1 (acknowledging that, for at least one of the ads, Regal Blue Media failed to manually enter a disclaimer stating that it was paid for by the Committee, which it contends was "due to inadvertent human error").

<sup>33</sup> Regal Blue Media Resp. at 1; Intellz Resp. at 3.

1    **III.    LEGAL ANALYSIS**2            **A.    The Commission Should Dismiss the Allegation that the Committee**  
3            **Inaccurately Reported Disbursements to Jersey Conservative and Sussex**  
4            **County Watchdog as Payments to Baseline Research**

5            The Act and Commission's regulations require political committees to report the name  
6            and address of each person to whom they make disbursements aggregating more than \$200 per  
7            calendar year, or per election cycle for authorized committees, as well as the date, amount, and  
8            purpose of such payments.<sup>34</sup> The Act and Commission's regulations "are silent with respect to  
9            any definition or description of the person to whom an expenditure is made. Moreover, they do  
10          not address the concepts of ultimate payees, vendors, agents, contractors, or subcontractors in  
11          this context."<sup>35</sup> However, the Commission has determined that reporting the immediate recipient  
12          of a disbursement will not satisfy the Act's reporting requirements when the facts indicate that  
13          the recipient is "merely a conduit for the intended recipient of the funds."<sup>36</sup>

14          The Complaint alleges that the Committee made payments to Baseline Research that  
15          were, in actuality, intended for Sussex County Watchdog and Jersey Conservative to publish  
16          blog posts favorable to Pallotta.<sup>37</sup> This would have resulted in the Committee inaccurately  
17          reporting the payee on those disbursements by impermissibly using Baseline Research as a  
18          conduit for the intended recipients. However, there is no information to reasonably suggest that  
19          the Committee's reported payments to Baseline Research were intended to pay for the articles  
20          published on Sussex County Watchdog and Jersey Conservative.

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<sup>34</sup>          52 U.S.C. § 30104(b)(6); 11 C.F.R. § 104.3(b).

<sup>35</sup>          Advisory Op. 1983-25 (Mondale) at 2.

<sup>36</sup>          Factual & Legal Analysis at 9, MUR 6724 (Bachmann for President, *et al.*).

<sup>37</sup>          Compl. at 3-4.

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1        The Complaint points to the temporal proximity between one of the articles and one of  
 2        the Committee's payments to Baseline Research (six days),<sup>38</sup> but this alone is not sufficient to  
 3        imply a relationship between the two, especially in light of the Committee's denial and Hart's  
 4        denial in her sworn affidavit.<sup>39</sup> The Complaint provides a vague explanation for why Winkler,  
 5        owner of Baseline Research, might also operate the two anonymous blogs, Sussex County  
 6        Watchdog and Jersey Conservative.<sup>40</sup> Even assuming, *arguendo*, that the Complaint's surmise is  
 7        correct, this would not mean that the reported payments to Winkler's consulting company were  
 8        not legitimate. The Committee maintains that the payments were for "Messaging / Strategy" and  
 9        Hart similarly attested in her sworn affidavit that the payments were for "messaging and strategic  
 10       consulting."<sup>41</sup> Next, the Complainant avers that he "personally witnessed" Hart, the Pallotta  
 11       Campaign Manager, write a letter anonymously published as an article on Sussex County  
 12       Watchdog.<sup>42</sup> In her affidavit, Hart denies writing content for either website.<sup>43</sup> Yet, even if Hart  
 13       did write the article, this would not imply that the Committee's payments to Baseline Research  
 14       were intended for Sussex County Watchdog to publish the article.<sup>44</sup>

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<sup>38</sup>        There was a seven-day gap between the January 7, 2020, blog post and the Committee's \$2,500 to Baseline Research on January 13, 2020. However, there were much longer gaps between the next payment on April 20, 2020 in the amount of \$7,200 and additional posts published in March and June.

<sup>39</sup>        Compl. at 2-4; Committee Resp. at 2-4; Hart Aff. at ¶13; *cf.* Factual & Legal Analysis at 2, 4, MUR 7091 (Friends of Patrick Murphy, *et al.*) (finding no reason to believe with respect to conduit contribution allegations based primarily on relationships between the named contributors and the timing of when the contributions were made); Factual & Legal Analysis at 5-7, MUR 6246 (Brennan, *et al.*) (finding no reason to believe with regard to the allegations of reimbursed contributions, given "the lack of specific information" and the sworn denials from the respondents and representations of counsel following an internal investigation.)

<sup>40</sup>        *Supra* note 16 and accompanying text.

<sup>41</sup>        Committee Resp. at 2-3; Hart Aff. ¶ 9.

<sup>42</sup>        Compl. at 2-3.

<sup>43</sup>        Hart Aff. at ¶ 8.

<sup>44</sup>        We note that, under 11 C.F.R. §§ 100.94, 100.155, uncompensated individual internet activity, either when the individual is "acting independently or in coordination with any candidate, authorized committee, or political

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1        In short, given the available information, there is no basis to infer that the Committee  
 2        used Baseline Research as a conduit for payments directed to Sussex County Watchdog or Jersey  
 3        Conservative to publish articles favorable to the Committee. Therefore, we recommend that the  
 4        Commission dismiss the allegation that the Committee violated 52 U.S.C. § 30104(b)(6) and  
 5        11 C.F.R. § 104.3(b) by inaccurately reporting disbursements to Sussex County Watchdog and  
 6        Jersey Conservative as payments to Baseline Research. We further recommend that the  
 7        Commission dismiss the allegation that Baseline Research violated the Act because the  
 8        Complaint does not appear to allege any cognizable violations of the Act.<sup>45</sup>

9            **B. The Commission Should Dismiss the Allegations that Jersey Conservative**  
 10        **and Sussex County Watchdog Made, and the Committee Knowingly**  
 11        **Accepted, Excessive or Prohibited In-Kind Contributions by Coordinating**  
 12        **Blog Posts**

13        The Act prohibits corporations from making contributions to federal candidates, and  
 14        likewise bars candidates, political committees (other than independent expenditure-only political  
 15        committees and committees with hybrid accounts), and other persons, from knowingly accepting  
 16        or receiving corporate contributions.<sup>46</sup> The Act prohibits any person from making contributions  
 17        to any candidate and the candidate's authorized political committee with respect to any election

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party committee" shall not be treated as a contribution or expenditure; moreover, the term "internet activities" includes "blogging" and "any other form of communication distributed over the Internet."

<sup>45</sup> The Complaint alleges that the Committee inaccurately reported payments to Baseline Research that were, in actuality, made to Sussex County Watchdog and Jersey Conservative, but does not point to any conduct on the part of Baseline Research itself or any provisions of the Act relevant to a person who allegedly serves as a conduit to hide payments to the true recipients of disbursements from a political committee.

<sup>46</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

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1 for Federal office that, in the aggregate, exceeds \$2,800.<sup>47</sup> Likewise, the Act prohibits any  
 2 candidate or committee from knowingly accepting an excessive contribution.<sup>48</sup>

3           A communication that is coordinated with a candidate or their authorized committee is  
 4 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting  
 5 requirements of the Act.<sup>49</sup> The Commission's regulations provide that a communication is  
 6 coordinated if it is: (1) paid for, in whole or in part, by a person other than the candidate or  
 7 authorized committee;<sup>50</sup> (2) satisfies a content standard in 11 C.F.R. § 109.21(c);<sup>51</sup> and  
 8 (3) satisfies a conduct standard in 11 C.F.R. § 109.21(d).<sup>52</sup> All three prongs must be satisfied  
 9 for a communication to be considered coordinated.<sup>53</sup>

10           The blog posts at issue here appear to be exempt from the definition of "coordinated  
 11 communication" because the content prong of the three-part coordinated communication test is

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<sup>47</sup>       52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b); *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 84 Fed. Reg. 2,504, 2,505 (Feb. 7, 2019) (adjusting certain limitations for the 2019-2020 election cycle).

<sup>48</sup>       52 U.S.C. § 30116(f), 11 C.F.R. § 110.9.

<sup>49</sup>       52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

<sup>50</sup>       11 C.F.R. § 109.21(a)(1).

<sup>51</sup>       *Id.* § 109.21(c)(1)-(5). The content standards include: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29(a); (2) a public communication that disseminates, distributes, or republishes campaign materials; (3) a public communication containing express advocacy; or (4) a public communication that, in relevant part, refers to a clearly identified House or Senate candidate, is publicly distributed or disseminated 90 days or fewer before a primary or general 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).

<sup>52</sup>       *Id.* § 109.21(d)(1)-(6). The six types of conduct between the payor and the candidate's committee, whether or not there is formal agreement, or collaboration, which can satisfy the conduct prong, include: (1) a request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) dissemination, distribution, or republication of campaign material. *Id.* § 109.21(d).

<sup>53</sup>       *Id.* § 109.21(a); *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (Explanation and Justification) ("Coordinated and Independent Expenditures E&J").

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1 not satisfied.<sup>54</sup> The content standards all require, at a minimum, that there be an “electioneering  
2 communication” or a “public communication,” neither of which applies to the blog posts. An  
3 electioneering communication is “any broadcast, cable, or satellite communication” that refers to  
4 a “clearly identified candidate for Federal office,” is publicly distributed within a certain time  
5 before an election, and meets certain requirements regarding the audience.<sup>55</sup> The blog posts  
6 were published on the internet, not broadcast, cable, or satellite, and therefore were not  
7 electioneering communications.

8 A public communication is “a communication by means of any broadcast, cable, or  
9 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or  
10 telephone bank to the general public, or any other form of general public political advertising.”<sup>56</sup>  
11 Commission regulations provide that public communications “shall not include communications  
12 over the Internet, except for communications placed for a fee on another person’s Web site,” a  
13 provision referred to as the “internet exemption.”<sup>57</sup> The internet exemption applies to the blog  
14 posts because they were published on Sussex County Watchdog’s and Jersey Conservative’s own  
15 websites and there is no indication that the Sussex County Watchdog or Jersey Conservative also  
16 placed them for a fee on another person’s website.

17 Further, to the extent that Sussex County Watchdog and Jersey Conservative sent the  
18 articles to recipients as part of email “blasts” for which the Complaint alleges “there are likely

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<sup>54</sup> 11 C.F.R. § 109.21(c); Advisory Op. 2011-14 (Utah Bankers Ass’n) at 5.

<sup>55</sup> 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 109.29 (same).

<sup>56</sup> 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).

<sup>57</sup> 11 C.F.R. § 100.26.

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1 fees associated,”<sup>58</sup> this too fails the content prong. “Electronic mail” is specifically exempted  
 2 from the definition of electioneering communication and does not fall within the meaning of  
 3 public communication, which, as noted above, does not include internet communications except  
 4 those placed for a fee on another person’s website.<sup>59</sup> Finally, the Complaint alleges that Hart,  
 5 the Campaign Manager, and Winkler, a campaign consultant and the alleged operator of Sussex  
 6 County Watchdog and Jersey Conservative, participated in the alleged coordination but does not  
 7 specifically allege that either person paid for the blogs posts.<sup>60</sup>

8 Accordingly, we recommend that the Commission dismiss the allegation that Jersey  
 9 Conservative and Sussex County Watchdog made, and the Committee knowingly accepted,  
 10 prohibited or excessive in-kind contributions, in violation of 52 U.S.C. §§ 30116(a), (f),  
 11 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2, by coordinating blog posts.<sup>61</sup> We further  
 12 recommend that the Commission dismiss the allegations that Kelly Ann Hart and William  
 13 Winkler made or knowingly accepted prohibited or excessive in-kind contributions in violation  
 14 of 52 U.S.C. §§ 30116(a), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2, by  
 15 coordinating blog posts.

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<sup>58</sup> Compl. at 7.

<sup>59</sup> 11 C.F.R. § 100.29(c)(1); *see id.* § 100.26.

<sup>60</sup> *See* Compl. at 7-9.

<sup>61</sup> As stated above, based on the available information, it is unclear whether the websites are corporate entities to which the prohibition on corporate contributions to candidate committees would apply, 52 U.S.C. § 30118(a), or whether the individual contribution limitation would apply, 52 U.S.C. § 30116(a).

1                   **C. The Commission Should Dismiss the Allegations that Jersey Conservative**  
 2                   **and Sussex County Watchdog Made, and the Committee Knowingly**  
 3                   **Accepted, Excessive or Prohibited In-Kind Contributions by Sharing an**  
 4                   **Email List Without Charge**

5                   A contribution is “a gift, subscription, loan (except for a loan made in accordance with  
 6                   11 C.F.R § 100.82 and 100.83) advance, or deposit of money or anything of value made by any  
 7                   person for the purpose of influencing a federal election.<sup>62</sup> “Anything of value” includes all in-  
 8                   kind contributions.<sup>63</sup> Unless specifically exempted, the provision of goods or services without  
 9                   charge or at a charge that is less than the usual and normal charge is a contribution.<sup>64</sup> Examples  
 10                  of such goods or services include membership lists and mailing lists.<sup>65</sup>

11                  According to the Complaint, “the email list between Pallotta for Congress and the blogs  
 12                  are shared.”<sup>66</sup> The Complaint does not point to any specific information in support of this  
 13                  allegation. The Complaint does not cite to a particular email or set of emails sent by any of the  
 14                  entities or suggest there was an overlap in the members of the email list used by the Committee  
 15                  and the two blogs. In sum, the allegation is speculative and not supported by the available  
 16                  information.<sup>67</sup>

17                  Therefore, we recommend that the Commission dismiss the allegation that Jersey  
 18                  Conservative and Sussex County Watchdog made, and the Committee knowingly accepted,

<sup>62</sup>                  52 U.S.C. § 30101(8)(a); 11 C.F.R. § 100.52(a).

<sup>63</sup>                  11 C.F.R. § 100.52(d)(1).

<sup>64</sup>                  *Id.*

<sup>65</sup>                  *Id.*

<sup>66</sup>                  Compl. at 8.

<sup>67</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.*) (stating that the Commission may find reason to believe if a complaint “sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act],” and that “[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true.”) (citing 11 C.F.R. § 111.4(d)(2)).

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1 prohibited or excessive in-kind contributions, in violation of 52 U.S.C. §§ 30116(a), (f),  
 2 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2 by sharing an email list without charge.

3                   **D. The Commission Should Dismiss, as a Matter of Prosecutorial Discretion, the**  
 4                   **Allegation That the Committee Failed to Include Adequate Disclaimers on**  
 5                   **the Facebook Ads**

6                   The Act and Commission's regulations require that whenever a political committee  
 7 makes a disbursement for a "public communication," such communication must include a  
 8 disclaimer.<sup>68</sup> The term "public communication" is defined as a communication by means of any  
 9 broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility,  
 10 mass mailing, or telephone bank to the general public, or any other form of general public  
 11 political advertising.<sup>69</sup> Further, "[t]he term general public political advertising shall not include  
 12 communications over the Internet, except for communications placed for a fee on another  
 13 person's Web site."<sup>70</sup> If a communication that requires a disclaimer is paid for and authorized by  
 14 a candidate, authorized committee of a candidate, or an agent thereof, the disclaimer must clearly  
 15 state that the communication has been paid for by the authorized committee.<sup>71</sup>

16                   The Committee, through its vendor Intellz and subvendor Regal Blue Media, purchased  
 17 six Facebook ads totaling \$2,695. Because the ads were general public political advertising  
 18 placed for a fee on another person's website, they required adequate disclaimers. Only one ad

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<sup>68</sup>               52 U.S.C. § 30120(a)(1); 11 C.F.R. §§ 100.26, 110.11(a)-(b).

<sup>69</sup>               11 C.F.R. § 100.26.

<sup>70</sup>               *Id.* Accordingly, the Commission has explained that internet communications placed on another person's website for a fee constitute "general public political advertising," and are "public communications." Explanation and Justification for the Regulations on Internet Communications ("Internet Communications E&J), 71 Fed. Reg. 18,589, 18,593 (Apr. 12, 2006).

<sup>71</sup>               52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1).

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1 contained an adequate disclaimer stating that it was paid for by the Committee.<sup>72</sup> The remaining  
 2 five ads, totaling \$2,296, erroneously stated that they were paid for by Dora Louise Collier or  
 3 contained contradictory disclaimers (stating in one place that it was paid for by the Committee  
 4 and in another place that it was paid for by Dora Louise Collier).<sup>73</sup> Though four of these ads did  
 5 contain a disclaimer for the Committee, the contradictory disclaimer stating that Ms. Collier paid  
 6 for the ad negates the requirement that a disclaimer “must *clearly* state” that it was paid for by  
 7 authorized political committee.<sup>74</sup> The Committee did not provide any explanation for the  
 8 problems with the disclaimer.<sup>75</sup> Intellz and Regal Blue Media contend that the disclaimer issues  
 9 were the result of inadvertent oversight, whereby a disclaimer for the Committee was manually  
 10 entered into the text of the ad, but Facebook automatically appended Ms. Collier’s name on a  
 11 separate disclaimer because Regal Blue Media used an account with her name to purchase the  
 12 ads (she is a co-owner of Regal Blue Media).<sup>76</sup>

13 Given the low amount in violation and the admissions by the vendor and subvendor that  
 14 the problems were caused by their oversight,<sup>77</sup> we recommend that the Commission exercise its

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<sup>72</sup> Pallotta for Congress Facebook Ad Library (ad identification number 638185140305037).

<sup>73</sup> The Trump Revolution Facebook Ad Library (ads with the identification numbers 616377048948088; 504656297146472; and 2470597446489117 contained disclaimers that they were paid for by Collier; ads with the identified numbers 807803029630704 and 519844875604275 contained dual disclaimers).

<sup>74</sup> 11 C.F.R. § 110.11(b)(1) (emphasis added).

<sup>75</sup> Committee Resp. at 4-5.

<sup>76</sup> Regal Blue Media Resp. at 1; Intellz Resp. at 2-3.

<sup>77</sup> The Commission has not pursued disclaimer violations that result from confirmed inadvertent vendor error. *See, e.g.*, Factual & Legal Analysis at 5-6, MUR 6125 (McClintock for Congress) (dismissing disclaimer violation and sending cautionary letter where omission of an appropriate disclaimer at the end of some of the committee’s phone bank recordings was possibly due to vendor error during transmission of the message); Factual & Legal Analysis at 8, MUR 5991 (U.S. Term Limits) (dismissing disclaimer violation where committee did not authorize vendor to add caption containing express advocacy to its YouTube video, which may have resulted in having to include a disclaimer, and the vendor took prompt remedial action); Factual & Legal Analysis at 4-5, MUR 5775R (Deborah Pryce for Congress) (dismissing disclaimer violation where television ad contained requisite written

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1 prosecutorial discretion pursuant to *Heckler v. Chaney*,<sup>78</sup> and dismiss the allegation that the  
 2 Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b) by failing to include the  
 3 appropriate disclaimers on the Facebook ads. We further recommend that the Commission find  
 4 no reason to believe that The Trump Revolution and Intellz, Inc., violated 52 U.S.C. § 30120(a)  
 5 and 11 C.F.R. § 110.11(b) because the duty to include adequate disclaimers does not apply to  
 6 them.<sup>79</sup>

7 **IV. RECOMMENDATIONS**

8 1. Dismiss the allegation that the Committee violated 52 U.S.C. § 30104(b)(6) and  
 9 11 C.F.R. § 104.3(b) by inaccurately reporting disbursements to  
 10 JerseyConservative.org and SussexCountyWatchdog.com as payments to Baseline  
 11 Research;

12 2. Dismiss the allegation that Baseline Research violated the Act;

13 3. Dismiss the allegation that JerseyConservative.org and  
 14 SussexCountyWatchdog.com made, and the Committee knowingly accepted,  
 15 prohibited or excessive in-kind contributions, in violation of 52 U.S.C.  
 16 §§ 30116(a), (f), 30118(a) and 11 C.F.R. §§ 110.1, 110.9, 114.2, by coordinating  
 17 the blog posts;

18 4. Dismiss the allegations that Kelly Ann Hart and William Winkler made or  
 19 knowingly accepted prohibited or excessive in-kind contributions in violation of  
 20 52 U.S.C. §§ 30116(a), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2  
 21 by coordinating blog posts;

22 5. Dismiss the allegation that JerseyConservative.org and  
 23 SussexCountyWatchdog.com made, and the Committee knowingly accepted,  
 24 prohibited or excessive in-kind contributions, in violation of 52 U.S.C.  
 25 §§ 30116(a), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2, by sharing  
 26 an email list without charge;

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disclaimers but lacked the candidate's oral "stand by your ad" statement due to vendor mistakenly cutting off the first few seconds of ad).

<sup>78</sup> 470 U.S. 821 (1985).

<sup>79</sup> The disclaimer requirement extends to the person making or financing the communication, not to other persons acting as their agents in purchasing or disseminating the communication. *See* 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); Factual & Legal Analysis at 9, MUR 5158 (Brady Campaign to Prevent Gun Violence) ("[C]ommittees, not vendors, are responsible for ensuring that proper disclaimers appear on communications.") (citing MUR 4759 (Maloof); MUR 4741 (Mary Bono Committee); MUR 3682 (Fox for Congress Committee)).

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6. Dismiss as a matter of prosecutorial discretion the allegation that the Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b) by failing to include appropriate disclaimers on the Facebook ads;
7. Find no reason to believe that The Trump Revolution and Intellz, Inc. violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b);
8. Approve the attached Factual and Legal Analysis;
9. Approve the appropriate letters; and
10. Close the file.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel for Enforcement

April 7, 2021

Date

Peter G. Blumberg  
Peter G. Blumberg  
Acting Deputy Associate General Counsel  
for Enforcement

Claudio J. Pavia  
Acting Assistant General Counsel

Christine C Gallagher

Christine