

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7854**

6 DATE COMPLAINT FILED: Oct. 30, 2020
7 DATE SUPPLEMENT FILED: Nov. 2, 2020
8 DATE OF NOTIFICATIONS: Nov. 9, 2020
9 DATE OF LAST RESPONSE: Feb. 11, 2021
10 DATE ACTIVATED: Mar. 16, 2021

11
12 EXPIRATION OF SOL: Sept. 1 – Nov. 3, 2025
13 ELECTION CYCLE: 2020

14
15 **COMPLAINANT:**

Jay Stone

16
17 **RESPONDENTS:**

18 Center for Tech and Civic Life
19 Tiana Epps-Johnson
20 Whitney May
21 Center for Election Innovation and Research
22 David Becker
23 Priscilla Chan
24 Mark Zuckerberg

25 **MUR 7946**

26 DATE COMPLAINT FILED: Dec. 1, 2021
27 DATE SUPPLEMENT FILED: Jan. 3, 2022
28 DATES OF NOTIFICATIONS: Dec. 8, 2021
29 Jan. 5, 2022
30 DATE OF LAST RESPONSE: Feb. 22, 2022
31 DATE ACTIVATED: Mar. 29, 2022

32
33 EXPIRATION OF SOL: Sept. 1 – Nov. 3, 2025
34 ELECTION CYCLE: 2020

35
36 **COMPLAINANT:**

Barbara Palmer

37
38 **RESPONDENTS:**

39 Center for Tech and Civic Life
40 Tiana Epps-Johnson
41 U.S. Election Assistance Commission
42 Mona Harrington
43 Paul Repak
44 Priscilla Chan
45 Mark Zuckerberg

46 **RELEVANT STATUTES:**

52 U.S.C. § 30102

1 52 U.S.C. § 30103
2 52 U.S.C. § 30104
3 52 U.S.C. § 30116(a)(1)(A)
4 52 U.S.C. § 30118(a)
5 52 U.S.C. § 30119(a)(1)
6 52 U.S.C. § 30122

7
8 **INTERNAL REPORTS CHECKED:** None
9
10 **FEDERAL AGENCIES CHECKED:** None

11 **I. INTRODUCTION**

12 The Complaints in these matters collectively allege that grants distributed during the
13 2020 election by two 501(c)(3) non-profit corporations, the Center for Tech and Civic Life
14 (“CTCL”) and the Center for Election Innovation and Research (“CEIR”), gave rise to multiple
15 violations of the Federal Election Campaign Act of 1971, as amended (the “Act”). The
16 Complaints assert that the grants, which were made to state and local election administrators
17 ostensibly for the purpose of assisting with the administration of elections during the COVID-19
18 pandemic, were, in fact, made for the purpose of increasing the turnout of Democratic voters,
19 and therefore constituted contributions to various Democratic candidates or committees. As a
20 result, the Complaints suggest that CTCL and CEIR made prohibited corporate contributions,
21 and that CTCL additionally violated the Act’s prohibitions on contributions by federal
22 contractors or in the name of another, as further described below, and that it failed to register and
23 report as a political committee.

24 The Complaints additionally allege that either philanthropists Dr. Priscilla Chan and
25 Mark Zuckerberg, or the U.S. Election Assistance Commission (“EAC”), were the ultimate
26 sources of the funds granted by CTCL and CEIR, and that Chan, Zuckerberg, and the EAC
27 accordingly made excessive contributions or violated the Act’s prohibition on contributions in
28 the name of another. Finally, the Complaints name as Respondents several individual employees

1 of CTCL, CEIR, and the EAC, although it is unclear how they are alleged to have violated the
2 Act.

3 The EAC responds that it did not make contributions to any candidates or committees
4 and, in any case, is not a “person” capable of making contributions under the Act. The other
5 Respondents argue that the grants were awarded by CTCL and CEIR for the stated purpose of
6 aiding election administrators during the pandemic and were awarded to jurisdictions across the
7 country on a nonpartisan basis, including to state and locality recipients that historically vote for
8 Republican candidates. They assert, therefore, that the grants did not constitute contributions,
9 and that the Complaints’ allegations to the contrary are baseless.

10 As discussed below, the available information does not provide a reasonable basis to
11 conclude that Respondents funded or awarded grants for the purpose of influencing a federal
12 election. Moreover, there is no indication that Respondents coordinated with any candidate or
13 committee. Accordingly, we recommend that the Commission: (1) dismiss the allegation that
14 CEIR made prohibited corporate contributions in violation of 52 U.S.C. § 30118(a); (2) dismiss
15 the allegations that CTCL made prohibited corporate contributions in violation of
16 52 U.S.C. § 30118(a), knowingly permitted its name to be used to effect a contribution in the
17 name of another in violation of 52 U.S.C. § 30122, made contributions while it was a federal
18 contractor in violation of 52 U.S.C. § 30119(a)(1), and failed to organize, register, and report as a
19 political committee in violation of 52 U.S.C. §§ 30102, 30103, and 30104; (3) dismiss the
20 allegations that Chan and Zuckerberg made excessive contributions in violation of 52 U.S.C.
21 § 30116(a)(1)(A) or contributions in the name of another in violation of 52 U.S.C. § 30122; and
22 (4) dismiss the allegations that CTCL’s Executive Director Tiana Epps-Johnson and Director of

1 Government Services Whitney May and CEIR's Executive Director David Becker violated
2 52 U.S.C. § 30118(a) by consenting to prohibited corporate contributions.

3 As to the EAC, it appears it is not a "person" capable of making contributions under the
4 Act, and we therefore recommend that the Commission find no reason to believe that the EAC
5 made excessive contributions or contributions in the name of another in violation of 52 U.S.C.
6 §§ 30116(a)(1)(A) and 30122. As to the EAC's former Executive Director, Mona Harrington,
7 and its Finance Director, Paul Repak, the relevant Complaint does not appear to allege any
8 cognizable violations against them, and we therefore recommend that the Commission find no
9 reason to believe that they violated the Act.

10 **II. FACTUAL BACKGROUND**

11 CTCL is a 501(c)(3) non-profit corporation, whose stated purpose is to "promote civic
12 engagement by modernizing election administration and engagement between local governments
13 and the people they serve."¹ Tiana Epps-Johnson is CTCL's Executive Director, and Whitney
14 May is its Director of Government Services.² CEIR, also a 501(c)(3) non-profit corporation,
15 states that it "works nationally in a non-partisan manner to foster the overarching goals of
16 building voter trust and confidence, improving the efficiency of elections administration,
17 increasing voter participation and engagement, and educating voters about the election process."³
18 David Becker is CEIR's Executive Director.⁴ The U.S. Election Assistance Commission is an
19 independent, bipartisan federal commission established by Congress through the Help America

¹ CTCL, Epps-Johnson, and May Resp. at 2, MUR 7854 (Jan. 15, 2021) ("CTCL *et al.* Resp."); CTCL and Epps-Johnson Resp. at 2, MUR 7946 (Feb. 22, 2022).

² CTCL *et al.* Resp. at 2, MUR 7854; CTCL and Epps-Johnson Resp. at 2, MUR 7946.

³ CEIR and Becker Resp. at 2-3, MUR 7854 (Jan. 19, 2021).

⁴ *Id.* at 1.

1 Vote Act of 2002 (“HAVA”).⁵ Mona Harrington was formerly the executive director of the
2 EAC, and Paul Repak is its finance director.⁶ Dr. Priscilla Chan and Mark Zuckerberg are
3 philanthropists, and Zuckerberg is also the founder and CEO of Meta (formerly Facebook), a
4 social media company.⁷

5 In 2020, CTCL and CEIR started grant programs “to help state and local governments
6 address the unprecedented challenges to election administration posed by the ongoing global
7 [COVID-19] pandemic.”⁸ In the fall of that year, Chan and Zuckerberg donated as much as
8 \$350 million to CTCL and \$69.5 million to CEIR, and it appears that the organizations
9 distributed most of those funds in grants.⁹ CTCL states that it awarded grants to more than 2,500
10 state and local governments covering 47 states and the District of Columbia, and that the grants
11 assisted those jurisdictions with expenses such as buying personal protective equipment,
12 recruiting election workers, voter education and outreach, and purchasing absentee voting

⁵ EAC, Harrington, and Repak Resp. at 2, MUR 7946 (Feb. 2, 2022) (“EAC *et al.* Resp.”).

⁶ *Id.* at 1; EAC, *U.S. Election Assistance Commission Announces Departure of Executive Director Mona Harrington* (Jan. 21, 2022), <https://www.eac.gov/news/2022/01/21/us-election-assistance-commission-announces-departure-executive-director-mona>.

⁷ Meta, *Our Leadership*, <https://about.facebook.com/company-info/> (last visited June 27, 2022); *see* Chan and Zuckerberg Resp. at 2, MUR 7854 (Feb. 11, 2021); Chan and Zuckerberg Resp. at 2-3, MUR 7946 (Feb. 22, 2022).

⁸ CTCL *et al.* Resp. at 2, MUR 7854; *accord* CTCL and Epps-Johnson Resp. at 2, MUR 7946; CEIR and Becker Resp. at 3-4, MUR 7854.

⁹ Chan and Zuckerberg Resp. at 2, MUR 7854; Chan and Zuckerberg Resp. at 3, MUR 7946. Specifically, Chan and Zuckerberg state that they made four commitments of “up to \$250 million to CTCL and \$50 million to CEIR in September 2020, and up to another \$100 million to CTCL and \$19.5 million to CEIR in October 2020.” Chan and Zuckerberg Resp. at 2, MUR 7854. CTCL has reported making grants of “approximately \$350 million,” while CEIR has reported granting \$64.3 million in total. CTCL, COVID-19 Response Grants, <https://www.techandciviclelife.org/our-work/election-officials/grants/> (last visited June 27, 2022); CEIR, CEIR 2020 Voter Education Grant Program, <https://electioninnovation.org/research/ceir-2020-voter-education-grant-program/> (last visited June 27, 2022).

1 supplies.¹⁰ CEIR asserts that it contacted and encouraged all 50 states and the District of
2 Columbia to apply for its grants, that 24 states applied, and that it awarded grants to all
3 applicants (except for one state that withdrew).¹¹ CEIR states that it made funds available to
4 states to spend on communications for issues such as voter registration, deadlines, mail voting,
5 early voting, polling place locations and hours, and vote counting updates.¹²

6 **A. MUR 7854 Complaint and Responses**

7 The Complaint in MUR 7854 concerns both the CTCL and CEIR grant programs, their
8 named employees — Epps-Johnson, May, and Becker — and the role of Chan and Zuckerberg in
9 funding CTCL and CEIR's grants.¹³

10 Specifically, the MUR 7854 Complaint alleges that the true purpose of the CTCL and
11 CEIR grant programs was to “increase Democratic votes for Joe Biden” and that the focus on
12 COVID-19 was a “ruse.”¹⁴ It points to a number of circumstantial factors to support its
13 contention that the motivation behind the grants was to influence the outcome of the 2020
14 election. First, the MUR 7854 Complaint asserts that CTCL and CEIR awarded grants primarily
15 to recipients in Democratic-leaning jurisdictions. For instance, it points to a round of CTCL
16 grants totaling \$30.66 million, which it contends were given out through a non-competitive

¹⁰ CTCL *et al.* Resp. at 3, MUR 7854; CTCL, COVID-19 Response Grants, <https://www.techandcivicliflife.org/our-work/election-officials/grants/> (last visited June 27, 2022) (discussing expenses covered by grants); *see also* CTCL *et al.* Resp., Ex. A, MUR 7854 (listing jurisdictions that received grants).

¹¹ CEIR and Becker Resp. at 4-5, MUR 7854. CEIR states that it awarded grants to the District of Columbia and the following states: Arizona, Connecticut, Florida, Georgia, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, and Washington. *Id.* at 5 n.2. CEIR contends that Louisiana withdrew from the grant program “citing potential issues regarding the state’s authorization to receive such grants under state law.” *Id.*

¹² *Id.* at 4.

¹³ *See generally* Compl., MUR 7854 (Oct. 30, 2020).

¹⁴ *Id.* at 4.

1 process to “Democratic strongholds” in Wisconsin, Pennsylvania, Michigan, Iowa, Georgia, and
2 South Carolina,¹⁵ and it asserts that all but one of the 25 largest grant recipients as of November
3 2, 2020, were jurisdictions that favored Democrat Hillary Clinton in the 2016 presidential race.¹⁶
4 The MUR 7854 Complaint also contends that the only jurisdiction favoring Republican Donald
5 Trump received the smallest CTCL grant.¹⁷ When the Complaint was filed, CEIR had not yet
6 announced grant recipients, but the Complaint surmises that it too was deploying funds to
7 increase voter turnout in Democratic states.¹⁸

8 Second, the MUR 7854 Complaint argues that if the grants had been intended to aid
9 election administrators during a pandemic, they would have been awarded based on prevalence
10 of COVID-19.¹⁹ For example, the Complaint suggests that CTCL’s first grant should have gone
11 to New York City based on its high rate of COVID cases and deaths.²⁰ Third, the Complaint
12 asserts that leadership at both organizations — CTCL’s Executive Director Tiana Epps-Johnson,
13 CTCL’s Director of Government Services Whitney May, and CEIR’s Executive Director David
14 Becker²¹ — have partisan objectives, as allegedly evidenced by their social media posts and

¹⁵ *Id.* at 6-12. For example, the Complaint claims that CTCL made grants to five Wisconsin cities in which the Democratic vote ranged from 58% to 85% and the Republican vote from 14% to 42%. *Id.* at 7. The source and time period of this data are unclear. The initial round of \$30.66 million in grants appears to have pre-dated Chan and Zuckerberg’s donation to CTCL. *See id.* at 24. CTCL indicates generally that it “made a limited number of grants in the weeks preceding its open call for grant applications and before its online application was fully operational,” including some funds awarded in Wisconsin “in early July [2020],” but it does not give specific dates on which it awarded each of its grants. CTCL *et al.* Resp. at 3, MUR 7854.

¹⁶ Supp. Compl. at 2-3, MUR 7854 (Nov. 2, 2020). The Supplemental Complaint notes that the 25 largest recipients were identified based on available public reporting and could change over time. *Id.* at 3.

¹⁷ *See id.* at 7-9.

¹⁸ Compl. at 33, MUR 7854.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Id.* at 3; CEIR and Becker Resp. at 3, MUR 7854; CTCL *et al.* Resp. at 2, MUR 7854.

1 Epps-Johnson's history of involvement with Democratic-leaning organizations.²² The MUR
2 7854 Complaint also argues that Epps-Johnson has "strong Democratic ties," including serving
3 as an Obama Foundation fellow, and asserts without explanation that former President Barack
4 Obama and First Lady Michelle Obama "provided contacts and funding" for CTCL's initial
5 \$30.66 million in grants.²³

6 Fourth, the MUR 7854 Complaint argues that both organizations purport to be
7 distributing money due to a public health emergency but do not employ medical experts or have
8 public health experience.²⁴ Fifth, it contends that neither organization had the expertise needed
9 to distribute tens or hundreds of millions of dollars in the few months they had to do so before
10 the 2020 election.²⁵ Sixth, it argues that the grants were used for purposes that were not
11 obviously related to COVID-19, such as helping voters obtain identification.²⁶ Finally, the
12 Complaint suggests that Chan and Zuckerberg's donations to CTCL and CEIR must have been
13 driven by political preferences, based on the Complaint's position that CTCL and CEIR were not

²² Compl. at 13-21, MUR 7854 (describing social media activity of Epps-Johnson and May); *id.* at 30-33 (describing Becker's social media activity); *id.* at 21-23 (arguing that President Barack Obama "recruited, trained, connected and funded CTCL's Executive Director Epps-Johnson").

²³ *Id.* at 21-22.

²⁴ *Id.* at 25-26, 29.

²⁵ *Id.* at 29-30 (asserting that CEIR had no prior experience distributing voting grants and only six employees); *id.* at 36 (contending that CTCL had only two months of experience distributing grants when it received the Chan-Zuckerberg award).

²⁶ *Id.* at 27-28, 33. The Complaint also suggests that CTCL and CEIR may be in violation of HAVA, which it asserts granted funds for certain costs related to voting during the pandemic. *Id.* at 27-28. It is unclear from the Complaint why funds granted by private organizations could be thought subject to regulation by HAVA, but in any case, this allegation falls outside of the Commission's jurisdiction.

1 otherwise qualified to distribute the grants, and its assertion that Facebook “has been accused of
2 having employees and policies that favor Democrats.”²⁷

3 In response, CTCL states that it did not consider partisan factors when awarding the
4 grants and that many of the recipients had electorates that historically vote Republican and were
5 expected to do so in 2020.²⁸ Moreover, CTCL asserts that its grant application was open to “any
6 U.S. election office responsible for administering election activities,” all such applicants received
7 a grant of at least \$5,000, and that when CTCL awarded more than that amount it was due to
8 nonpartisan factors, such as excessive voting wait times, lack of poll workers, and unexpected
9 capital needs, such as “space for safe, distanced voting.”²⁹ Finally, CTCL contends that even if
10 it had awarded grants on a partisan basis, there still would be no violation of the Act because the
11 funds do not qualify as contributions — the money was not given to Biden for President directly
12 or in-kind, and the MUR 7854 Complaint alleges no facts suggesting coordination.³⁰

13 CEIR similarly contends that it did not consider partisan factors when awarding grants
14 and that it based its determinations on factors such as how much election laws had changed since
15 the last election or due to the pandemic, financial need “in light of the stresses placed on the
16 system due to the pandemic,” “the potential for a poorly administered election in the state to
17 further erode voter confidence in U.S. elections,” and the size of the applicant’s voting age
18 population.³¹ CEIR argues that it is irrelevant whether it has medical staff or prior grant-making

²⁷ *Id.* at 35-40.

²⁸ CTCL *et al.* Resp. at 2-3, 5-6, MUR 7854; *see also id.*, Ex. B (example grant application). CTCL also provides a list of the jurisdictions that received the COVID-19 grants. *Id.*, Ex. A.

²⁹ *Id.* at 5-6.

³⁰ *Id.* at 4.

³¹ CEIR and Becker Resp. at 4-5, MUR 7854.

1 experience (which it asserts it has).³² Finally, CEIR contends that every applicant (aside from
2 one state that withdrew from consideration) were awarded grants at the levels they requested.³³

3 Epps-Johnson and May state that the MUR 7854 Complaint is “entirely unclear” on how
4 their actions allegedly violated the Act.³⁴ They state that they expressed their personal views on
5 social media, and that volunteer internet activity is exempt from the Act.³⁵ Becker similarly
6 contends that his personal social media posts have no bearing on CEIR’s grant programs and that
7 the Complaint has offered no basis to make such a connection.³⁶

8 Chan and Zuckerberg state that they made donations to CTCL and CEIR through a
9 501(c)(3) donor-advised fund in reaction to the unprecedented difficulties the pandemic posed
10 for election administration.³⁷ They represent that they selected CTCL and CEIR “[a]fter
11 extensive research” because they are nonpartisan charities with “extensive experience working
12 directly with state and local jurisdictions on election administration.”³⁸ Chan and Zuckerberg
13 contend that they did not rely on partisan considerations, did not consult with any presidential
14 campaigns, and believe that CTCL and CEIR used nonpartisan processes to select the ultimate
15 grant recipients.³⁹

³² *Id.* at 2.

³³ *Id.* at 5.

³⁴ CTCL *et al.* Resp. at 4, MUR 7854.

³⁵ *Id.*

³⁶ CEIR and Becker Resp. at 2, MUR 7854.

³⁷ Chan and Zuckerberg Resp. at 2, MUR 7854.

³⁸ *Id.* at 4.

³⁹ *Id.*

1 **B. MUR 7946 Complaint and Responses**

2 The Complaint in MUR 7946 concerns the CTCL grants, one CTCL employee, Epps-
3 Johnson, and two purported sources of funding for those grants — either Chan and Zuckerberg
4 or the EAC, presumably with the aid of its named employees, Harrington and Repak.⁴⁰

5 Like the MUR 7854 Complaint, the Complaint in MUR 7946 alleges that the CTCL
6 grants were political contributions “designed with the intent to tilt the 2020 federal elections
7 toward” Democratic candidates.⁴¹ It points to the distribution of the grants, asserting that they
8 were targeted at “urban cities . . . to turn out the progressive vote.”⁴² The MUR 7946 Complaint
9 and a Supplemental Complaint in the same matter also attach various documents that purport to
10 show partisan intent. For example, they provide a December 14, 2020, report by the Amistad
11 Project contending that in the electorally important states of Michigan, Wisconsin, and
12 Pennsylvania there is a “pattern of greater funding [of CTCL grants] to jurisdictions where
13 candidate Hillary Clinton won [in 2016] versus grant-receiving jurisdictions where candidate
14 Donald Trump won.”⁴³ The report also contends that funds provided by CTCL were used in
15 Wisconsin to fund mobile precincts and satellite polling places on college campuses, which
16 increased access for voters of “a specific age and demographic.”⁴⁴

⁴⁰ See generally Compl., MUR 7946 (Dec. 1, 2021); Supp. Compl., MUR 7946 (Jan. 3, 2022).

⁴¹ Compl. ¶ 6, MUR 7946.

⁴² *Id.* ¶ 46.

⁴³ *Id.*, Ex. 2 at 10 (attaching J.R. Carlson, *The Legitimacy and Effect of Private Funding in Federal and State Electoral Processes*, Amistad Journey (Dec. 14, 2020)).

⁴⁴ *Id.*, Ex. 2 at 14.

1 Additionally, the Supplemental Complaint in MUR 7946 points to analyses of CTCL's
2 2020 tax return performed by the Capital Research Center.⁴⁵ One such analysis alleges that, for
3 example, CTCL gave grants to 10 of the 13 counties Biden won in Pennsylvania during the 2020
4 presidential election, but it made grants to only 12 of the 54 counties won by Trump, and that the
5 funding to those 12 counties constituted only 7% of the total amount CTCL awarded in the
6 state.⁴⁶ Finally, the MUR 7946 Complaint supports its assertion that the CTCL grants were
7 partisan by alleging that Epps-Johnson has a partisan background and lacks expertise in election
8 administration, and that CTCL is funded by "progressive groups" and itself is a political
9 committee that has failed to register with the Commission.⁴⁷

10 The MUR 7946 Complaint appears to allege two routes by which CTCL's grant program
11 was funded. First, it suggests that there was an effort to "funnel funds from a wealthy individual
12 and their related and/or controlled entities, through a federal contractor," an allegation that likely
13 refers to Zuckerberg and Chan donating to CTCL, which the Complaint asserts was a federal
14 contractor during the 2020 election.⁴⁸ The Complaint also suggests that Zuckerberg had partisan
15 motives in donating to CTCL, in part because Facebook suspended the account of President
16 Donald Trump in January 2021.⁴⁹

17 Second, the MUR 7946 Complaint suggests that the EAC violated the Act by funding
18 CTCL's grants, arguing that CTCL failed to disclose \$400 million it received from the EAC on

⁴⁵ Supp. Compl., Ex. 4 (attaching Parker Thayer and Hayden Ludwig, *UPDATED: Shining a Light on Zuck Bucks in the 2020 Battleground States*, Capital Research Center (Dec. 31, 2021)).

⁴⁶ *Id.*, Ex. 4 at 2.

⁴⁷ Compl. ¶¶ 35-39 (discussing Epps-Johnson's work history with the Obama Foundation and the New Organizing Institute); Supp. Compl. at 2, MUR 7946.

⁴⁸ Compl. ¶¶ 8, 15, MUR 7946.

⁴⁹ *See id.* ¶¶ 59-60.

1 its 2020 tax return and that “taxpayer funds” were effectively “funnel[ed] . . . to assist with the
2 2020 election cycle campaigns of specific candidates and/or political parties.”⁵⁰ The Complaint
3 does not provide any specific information to indicate that the EAC funded CTCL’s grants, and
4 this allegation appears to be based, at least in part, on the fact that CTCL was contracted to
5 develop cybersecurity courses for the EAC during the 2020 election cycle.⁵¹ Although the
6 Complaint names as Respondents two EAC employees, Harrington and Repak, it does not
7 specify how they may have been involved in the alleged activities by the EAC or CTCL.⁵²

8 In response to the MUR 7946 Complaint, CTCL and Epps-Johnson assert that CTCL
9 made the COVID-19 grants “in furtherance of its charitable and educational purposes,” and that
10 the grants were distributed “on a nonpartisan, non-discriminatory basis.”⁵³ They represent that
11 “[n]o state or local election administration office that applied for a grant consistent with the
12 Grant Program received less funding than it requested” and that CTCL ultimately made grants in
13 49 states and the District of Columbia.⁵⁴ CTCL and Epps-Johnson also assert that a review of
14 CTCL’s grants by a former FEC Commissioner, Michael Toner, concluded that in 2020 more
15 CTCL grants were made to jurisdictions that voted for Trump than were made to jurisdictions
16 that voted for Biden,⁵⁵ although the same review reportedly found that overall more funds were

⁵⁰ See *id.* ¶¶ 7, 24; Supp. Compl. at 1, MUR 7946. It is unclear where the \$400 million figure comes from, but it appears similar to the amount that Chan and Zuckerberg granted to CTCL. *Supra* note 9 and accompanying text.

⁵¹ See Compl. ¶¶ 15, 52-53, MUR 7946.

⁵² See *id.* at 1; ¶¶ 27-28 (generally describing Harrington and Repak’s roles at the EAC).

⁵³ CTCL and Epps-Johnson Resp. at 2-3, MUR 7946.

⁵⁴ *Id.* at 3.

⁵⁵ *Id.* at 3 and n.12 (citing press report discussing review by the Wiley Rein law firm that had been conducted at the request of Chan and Zuckerberg).

1 awarded to Democratic-leaning jurisdictions.⁵⁶ Additionally, CTCL and Epps-Johnson assert
2 that, while CTCL was a federal contractor, it did not engage in a “byzantine scheme to funnel
3 ‘contributions’ from the EAC or Mr. Zuckerberg to any candidate, political committee, or
4 political party.”⁵⁷ Finally, they assert that, as to Epps-Johnson, the Complaint makes a
5 “conclusory statement that she ‘aided and abetted’ CTCL in violating the Act” but offers no
6 information to support that allegation.⁵⁸

7 Chan and Zuckerberg assert that their donations were “made on a nonpartisan basis to
8 help CTCL assist states and localities in their successful administration of the [2020] election.”⁵⁹
9 They contend that they selected CTCL because it is a Section 501(c)(3) nonpartisan charity with
10 “extensive experience working directly with state and local jurisdictions on election
11 administration.”⁶⁰ Further, Chan and Zuckerberg argue that the available data on CTCL’s grants
12 does not suggest that the money was concentrated in areas where it would help turnout of
13 Democratic voters.⁶¹ For example, they contend that analysis shows that Trump won more than
14 60% of the jurisdictions that received CTCL grants.⁶² As to the violations alleged in the

⁵⁶ David M. Drucker, *Zuckerberg-Funded Elections Group Awarded More Grants to GOP Counties*, WASHINGTON EXAMINER (Dec. 15, 2021), https://www.washingtonexaminer.com/news/campaigns/zuckerberg-funded-elections-group-awarded-more-grants-to-gop-counties?utm_source=msn&utm_medium=referral&utm_campaign=msn_feed (cited by CTCL and Epps-Johnson Resp. at 3 n.12, MUR 7946).

⁵⁷ CTCL and Epps-Johnson Resp. at 3, MUR 7946. The EAC provided a copy of a May 8, 2020, Miscellaneous Obligation Request, which shows that EAC agreed to pay CTCL \$345,000 for “Election cybersecurity training: 3 course series for election offices.” EAC *et al.* Resp. at 2 and Ex. A. The EAC also states that it agreed to extend CTCL’s course offerings for six months and provides an additional Miscellaneous Obligation Request, which shows an additional charge of \$30,000. *Id.* at 2 and Ex. B.

⁵⁸ CTCL and Epps-Johnson Resp. at 5, MUR 7946.

⁵⁹ Chan and Zuckerberg Resp. at 2, MUR 7946.

⁶⁰ *Id.* at 3.

⁶¹ *Id.* at 3-4.

⁶² *Id.* at 3.

1 Complaint, they argue that the Complaint offers no specific facts showing that any contributions
2 were made, much less that contributions were funded or reimbursed by Chan and Zuckerberg.⁶³

3 Finally, the EAC, Harrington, and Repak also assert that there is no basis for the
4 Complaint's allegations.⁶⁴ They confirm that CTCL became an EAC contractor in 2020 for the
5 purpose of developing cybersecurity training, and that the EAC received a significant allocation
6 of funds from Congress to assist states with holding elections during the COVID-19 pandemic.⁶⁵
7 However, they argue that the Complaint presents no information suggesting that the EAC made
8 contributions in the 2020 election both because the EAC is not a "person" within the meaning of
9 the Act and therefore is not capable of making contributions, and because no information
10 suggests that the EAC gave funds to any candidate, committee, or party, or had any involvement
11 in making coordinated expenditures.⁶⁶ Repak also submitted an individual Response in this
12 matter, which argues that the Complaint should be dismissed because it does not allege that he
13 personally undertook any actions that would violate the Act.⁶⁷

14 **III. LEGAL ANALYSIS**

15 Under the Act, a "contribution" includes any "gift, subscription, loan, advance, or deposit
16 of money or anything of value made by any person for the purpose of influencing any election
17 for Federal office."⁶⁸ The term "anything of value" includes all in-kind contributions, such as
18 "the provision of any goods or services without charge or at a charge that is less than the usual

⁶³ *Id.* at 5.

⁶⁴ *See* EAC *et al.* Resp. at 1.

⁶⁵ *Id.* at 2-3.

⁶⁶ *Id.* at 4-6.

⁶⁷ Repak Resp. at 1 (Feb. 8, 2022).

⁶⁸ 52 U.S.C. § 30101(8); *accord* 11 C.F.R. § 100.52(a).

1 and normal charge.”⁶⁹ In-kind contributions include “coordinated expenditures,” that is,
2 expenditures “made by any person in cooperation, consultation, or concert, with, or at the request
3 or suggestion of, a candidate, his [or her] authorized political committees, or their agents.”⁷⁰
4 They also include coordinated communications, as determined by a three-part test set out in the
5 Commission’s regulations.⁷¹ The Act limits the amount an individual may contribute to an
6 authorized committee per election, and the applicable limit for 2020 was \$2,800.⁷² The Act
7 defines an expenditure as “any purchase, payment, distribution, loan, advance, deposit, or gift of
8 money or anything of value, made by any person for the purpose of influencing any election for
9 Federal office.”⁷³

10 The Act and Commission regulations define a political committee as “any committee,
11 club, association, or other group of persons which receives contributions aggregating in excess of
12 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
13 during a calendar year.”⁷⁴ In *Buckley v. Valeo*, the Supreme Court held that defining political
14 committee status “only in terms of [the] amount of annual ‘contributions’ and ‘expenditures’”
15 might be overbroad, reaching “groups engaged purely in issue discussion.”⁷⁵ To cure that
16 infirmity, the Court concluded that the term “political committee” “need only encompass

⁶⁹ 11 C.F.R. § 100.52(d)(1) (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

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

⁷¹ A communication is coordinated and thus treated as an in-kind contribution when it is: (1) paid for by a third-party; (2) satisfies one of five content standards; and (3) satisfies one of five conduct standards. 11 C.F.R. § 109.21(a), (b).

⁷² 52 U.S.C. § 30116(a)(1)(A); FEC, *Contribution Limits for 2019-2020*, <https://www.fec.gov/updates/contribution-limits-2019-2020/> (stating limitations for 2020 cycle).

⁷³ 52 U.S.C. § 30101(9).

⁷⁴ *Id.* § 30101(4)(A); 11 C.F.R. § 100.5.

⁷⁵ 424 U.S. 1 (1976) (per curiam).

1 organizations that are under the control of a candidate or the major purpose of which is the
2 nomination or election of a candidate.”⁷⁶ Political committees must comply with certain
3 organizational and reporting requirements set forth in the Act. For example, they must register
4 with the Commission, file periodic reports for disclosure to the public, and appoint a treasurer
5 who maintains their records.⁷⁷

6 The Act prohibits any person from making a contribution in the name of another person
7 or knowingly allowing his or her name to be used to make such a contribution.⁷⁸ The Act and
8 the Commission’s regulations also prohibit contributions during certain time periods by any
9 person who enters into a contract with the United States or its departments or agencies for
10 “furnishing any material, supplies, or equipment,” if payment on such contract “is to be made in
11 whole or in part from funds appropriated by Congress.”⁷⁹ The prohibition covers contributions
12 to any political party, political committee, federal candidate, or “any person for any political
13 purpose or use.”⁸⁰

14 Finally, the Act prohibits corporations from making contributions to federal candidates,
15 and likewise bars candidates, political committees (other than independent expenditure-only
16 political committees and committees with hybrid accounts), and other persons, from knowingly

⁷⁶ *Id.* Under the statute thus construed, an organization that is not controlled by a candidate must register as a political committee only if (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election of federal candidates.

⁷⁷ 52 U.S.C. §§ 30102, 30103, 30104.

⁷⁸ *Id.* § 30122.

⁷⁹ *Id.* § 30119(a)(1); 11 C.F.R. § 115.2(a). Such contributions are barred for the period between (1) the earlier of commencement of negotiations or when requests for proposal are sent out, and (2) the later of the completion of performance on or termination of negotiations for the contract.” 11 C.F.R. § 115.1(b).

⁸⁰ 11 C.F.R. § 115.2(a).

1 accepting or receiving corporate contributions.⁸¹ The Act also provides that “any officer or any
2 director of any corporation” shall not “consent to any [prohibited] contribution or expenditure by
3 the corporation.”⁸²

4 **A. The Commission Should Dismiss the Allegations that CTCL and CEIR Made**
5 **Prohibited Contributions and that CTCL Failed to Organize, Register, and**
6 **Report as a Political Committee**

7 The Complaints allege that the CTCL and CEIR grants, which were ostensibly made to
8 help state and local governments address the challenges of administering an election during the
9 pandemic, were, in actuality, intended to increase votes for Biden or Democratic candidates
10 generally and, therefore, should be treated as in-kind contributions,⁸³ which as corporations they
11 were prohibited from making. The MUR 7946 Complaint additionally appears to allege that
12 CTCL’s grants were prohibited federal contractor contributions, that CTCL knowingly permitted
13 its name to be used to effect a contribution in the name of another (either from Zuckerberg and
14 Chan or the EAC), and that CTCL’s grants constituted expenditures in excess of the threshold to
15 register as a political committee.⁸⁴

16 These allegations turn on the question of whether CTCL and CEIR’s grants were made
17 for the purpose of influencing a federal election, as without that determination the grants would
18 not qualify as contributions or expenditures. The available information, however, does not

⁸¹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d); 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). For purposes of the corporate contribution ban, the Act defines contribution in section 30118 to include the general definition set out above, as well as “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section.” 52 U.S.C. § 30118(b)(2).

⁸² 52 U.S.C. § 30118(a).

⁸³ Compl. at 3-4, 9, 33, MUR 7854; Compl. ¶¶ 5-6, MUR 7946.

⁸⁴ See Compl. ¶¶ 5, 9-10, MUR 7946; Supp. Compl. at 2, MUR 7946.

1 reasonably suggest that the funds were granted with that purpose. CTCL and CEIR identify a
2 number of nonpartisan factors that they claim to have considered in distributing funds: voting
3 wait times, lack of poll workers, unexpected capital needs, degree of recent changes in election
4 laws, pandemic-related financial needs, the potential for a poorly administrated election to
5 impact voter confidence in U.S. elections, and the size of the voting age population.⁸⁵ Further,
6 they indicate that the grants were widely available — CTCL accepted applications from any U.S.
7 election office responsible for election administration and all such applicants received grants,
8 and CEIR sought applications from all states and the District of Columbia, and awarded grants to
9 all applicants.⁸⁶ None of the available information indicates that these assertions are untrue.
10 Additionally, CTCL and CEIR appear to have had relevant experience working with election
11 administrators prior to making the grants in question,⁸⁷ and the MUR 7854 Complaint's
12 arguments about their lack of medical expertise and the expenses for which they made grants
13 available amount largely to a difference of opinion over how the programs should have been
14 designed and administered.⁸⁸

15 The Commission has previously stated that the requisite electoral purpose is not
16 established simply by showing that a potential contribution benefitted the relevant campaign.⁸⁹

⁸⁵ *Supra* notes 28-29, 31 and accompanying text.

⁸⁶ *Supra* notes 11, 29 and accompanying text.

⁸⁷ CTCL *et al.* Resp. at 2, MUR 7854 (asserting that CTCL “routinely conducts in-person and on-line trainings for election officials” and that May “is a former county election administrator and has extensive experience working with election administrators around the country”); CEIR and Becker Resp. at 2-3, MUR 7854 (asserting that “CEIR has worked extensively with Secretaries of State and other election officials, regardless of party affiliation, in states throughout the country” to, among other tasks, “establish best practices for voter list maintenance; secure their election technology against interference and to ensure that voters understand the voting process, have confidence that the systems are secure and that their votes will be counted accurately”).

⁸⁸ *See* Compl. at 25-29, 33, MUR 7854.

⁸⁹ Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*).

1 Here, it is not clear the Complaints have shown even that much. Although the Complaints
2 contend that the grants were directed at Democratic strongholds, CTCL and CEIR provide
3 information showing that their grants were also awarded to jurisdictions that have historically
4 voted for Republican candidates.⁹⁰ For example, CTCL states that all 77 counties in Oklahoma
5 voted for Donald Trump in 2016, and that 42 of those counties sought and received grants from
6 CTCL in 2020.⁹¹ CTCL also asserts that a review found that more of its grants were awarded to
7 jurisdictions that voted for Trump than to jurisdictions that voted for Biden in 2020.⁹² CEIR
8 provides a list of the states to which it awarded grants, including a number that voted for Trump
9 in 2020, such as Florida, Iowa, and Missouri.⁹³ Thus, to the extent the grants turned out
10 additional voters for Biden, they likely also did so for his opponent, Trump. Additionally, the
11 MUR 7946 Complaint alleges that CTCL focused its grants on urban areas “to turn out the
12 progressive vote,” but even if urban areas received more funding than non-urban areas that is not
13 necessarily suggestive of a purpose to influence the election because it could also be explained
14 by those jurisdictions requesting (and therefore receiving) more funding due to larger voter
15 populations.⁹⁴

16 In an analogous situation, the Commission has advised that a university does not make a
17 contribution by providing grants to cover students' travel and subsistence expenses while they
18 are unpaid campaign interns because, although the students are providing services that might

⁹⁰ CTCL *et al.* Resp. at 5-6, MUR 7854; CEIR and Becker Resp. at 5 n.2.

⁹¹ CTCL *et al.* Resp. at 5, MUR 7854.

⁹² CTCL and Epps Johnson Resp. at 3, MUR 7946. *But see supra* note 56 and accompanying text (discussing finding that, as a group, Democratic-leaning jurisdictions received a larger amount from CTCL than Republican-leaning jurisdictions).

⁹³ CEIR and Becker Resp. at 5 n.2; National Archives, *2020 Electoral College Results*, <https://www.archives.gov/electoral-college/2020> (last visited June 27, 2022).

⁹⁴ Compl. ¶ 46, MUR 7946.

1 otherwise constitute a contribution, the grant is provided “for *bona fide* educational objectives
2 and not for the provision of personal services to federal campaigns.”⁹⁵ Here, the grants were not
3 directly used to fund campaign work, and even if they had the indirect effect of getting more
4 Biden voters than Trump voters to the polls (or similar differences with respect to down-ballot
5 candidates) CTCL and CEIR’s salutary objective appears to have been to aid nonpartisan
6 election administrators in carrying out the mechanics of voting during the COVID-19 pandemic.
7 This is reflected in the purposes for which the grants were awarded, that the grants were broadly
8 available to Democratic- and Republican-leaning jurisdictions, and the fact that they were
9 apparently awarded to all who applied.⁹⁶

10 Even if the available information did suggest that CTCL and CEIR made grants with the
11 purpose of influencing a federal election, there does not appear to be a basis to treat the grants as
12 in-kind contributions to particular candidates. To the extent that the Complaints suggest the
13 grants were coordinated expenditures, which require the payor to operate in cooperation,
14 consultation or in concert, with, or at the request or suggestion of, the candidate or his or her
15 authorized committees, there is no information to suggest any communications took place
16 between Respondents and Biden, Biden for President, or other Democratic candidates or
17 campaigns.⁹⁷ The MUR 7854 Complaint attempts to link CTCL to Biden, in particular, through
18 Epps-Johnson’s previous work for the Obama Foundation, but it provides no support for its

⁹⁵ Advisory Opinion 2015-14 at 3-4 (Hillary for America II).

⁹⁶ *Supra* pages 5-6, 9-10, 13-14, and 19.

⁹⁷ *See* CTCL *et al.* Resp at 4, MUR 7854 (denying that there was coordination).

1 assertion that the Obamas were involved with CTCL's grants or that, even if they were, this
2 would indicate coordination with the Biden campaign.⁹⁸

3 To the extent the Complaints suggests that the grants were used to fund coordinated
4 communications that, too, appears implausible. CEIR and CTCL grants could be used for
5 communications to voters, but even if the communications could be attributed to the granting
6 organizations, instead of the election administrators who sent them, these communications were
7 seemingly about the process of voting and vote counting and therefore unlikely to contain the
8 type of content needed to satisfy the second prong of the Commission's coordinated
9 communications test.⁹⁹ Although the MUR 7854 Complaint alleges that CTCL and CEIR
10 intended the grants to benefit Biden, it does not allege any facts suggesting they funded
11 communications containing express advocacy or that they were in contact with Biden or Biden
12 for President in any way. Indeed, neither the Complaints nor the Responses identify any specific
13 communications that may have been coordinated and, as discussed above, because there is no
14 basis to infer coordination, the third prong of the Commission's coordinated communications test
15 would also not be satisfied.¹⁰⁰

16 Accordingly, because the available information does not indicate that the CTCL and
17 CEIR grants were made for the purpose of influencing a federal election, and they therefore are

⁹⁸ See Compl. at 21-23, MUR 7854.

⁹⁹ CEIR and Becker Resp. at 4, MUR 7854; CTCL, COVID-19 Response Grants, <https://www.techandciviclelife.org/our-work/election-officials/grants/> (last visited June 27, 2022) (discussing expenses covered by grants). Under the content prong, a coordinated communication must meet one of five standards. It must be an electioneering communication; a public communication that makes specific uses of campaign materials; a public communication containing express advocacy; a public communication containing certain references to candidates or political parties; or a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c).

¹⁰⁰ The conduct prong is satisfied by one of five types of interactions between the payor and the candidate or campaign regarding the communication: a request or suggestion, material involvement, substantial discussion, use of a common vendor, or involvement of a former employee or independent contractor. *See id.* § 109.21(d)(1)-(5); *see*

1 neither contributions, nor expenditures under the Act, we recommend that the Commission
2 dismiss the allegations that: (1) CTCL and CEIR made prohibited corporate contributions in
3 violation of 52 U.S.C. § 30118(a); (2) CTCL knowingly permitted its name to be used to effect a
4 contribution in the name of another in violation of 52 U.S.C. § 30122; (3) CTCL made
5 prohibited federal contractor contributions in violation of 52 U.S.C. § 30119(a)(1); and
6 (4) CTCL failed to organize, register, and report as a political committee in violation of
7 52 U.S.C. §§ 30102, 30103, and 30104.¹⁰¹

8 **B. The Commission Should Dismiss the Allegations that Epps-Johnson, May,**
9 **and Becker Consented to Prohibited Corporate Contributions**

10 The Complaints do not clearly explain how Epps-Johnson, May, and Becker allegedly
11 violated the Act, but they could be read to allege that Epps-Johnson, May, and Becker are
12 officers and directors at CTCL and CEIR within the meaning of 52 U.S.C. § 30118(a) and
13 therefore were prohibited from consenting to prohibited corporate contributions.¹⁰² As already
14 discussed, however, there is no available information to indicate that CTCL or CEIR made such
15 prohibited contributions. Therefore, we recommend that the Commission dismiss the allegations
16 that Epps-Johnson, May, and Becker violated 52 U.S.C. § 30118(a).

also id. § 109.21(e) (stating that an agreement or formal collaboration “is not required for a communication to be a coordinated communication”). Some of the grants at issue in MUR 7854 may also be expressly exempted from the definition of a contribution. Under the Commission’s regulations, corporations may make voter registration and get-out-the-vote communications to the general public without making a contribution, as long as the communications do not expressly advocate the election or defeat of a clearly identified candidate or candidates of a clearly identified political party, and the preparation and distribution of the communications is not coordinated with any candidates or political party. 11 C.F.R. § 114.4(c)(2).

¹⁰¹ Because the available information does not indicate that CTCL’s grants should be considered expenditures under the Act there is no need to consider whether CTCL had as its major purpose the nomination or election of federal candidates. The Supplemental Complaint in MUR 7946 also alleges that CTCL may have filed inaccurate forms with the Internal Revenue Service, including mistakenly identifying itself as a 501(c)(3) tax-exempt organization and failing to report some \$400 million in funds allegedly received from the EAC. Supp. Compl. at 1-2, MUR 7946. These allegations, however, do not appear to fall within the Commission’s jurisdiction.

¹⁰² 52 U.S.C. § 30118(a).

1 **C. The Commission Should Dismiss the Allegations that Chan and Zuckerberg**
 2 **Made Excessive Contributions or Contributions in the Name of Another**

3 If Chan and Zuckerberg's donations to CTCL and CEIR were in-kind contributions to
 4 Biden or other Democratic candidates, they would have exceeded the individual limit of \$2,800
 5 per election applicable during the 2020 cycle.¹⁰³ As an initial matter, Chan and Zuckerberg state
 6 that the money was given through a donor-advised fund, so it is not clear that the funds came
 7 from them individually, rather than from an entity that might have been prohibited from making
 8 any contributions at all.¹⁰⁴ However, assuming they made the donations individually, the nexus
 9 between the donations and any purpose to influence the 2020 election appears to be more
 10 attenuated than that of CTCL and CEIR. Chan and Zuckerberg deny engaging in coordination
 11 and represent that CTCL and CEIR chose how to distribute the funds.¹⁰⁵ The Complaints'
 12 assertions of their allegedly partisan motives appear to rest on speculation as to why Chan and
 13 Zuckerberg selected CTCL and CEIR, and what the political leanings of Zuckerberg or some
 14 Facebook employees may be, but in light of the facts showing the grants were widely awarded
 15 across jurisdictions the available information does not suggest a partisan motive actually

¹⁰³ Compl. at 4, MUR 7854.

¹⁰⁴ Chan and Zuckerberg Resp. at 2, MUR 7854; *Donor-Advised Fund*, IRS.GOV, <https://www.irs.gov/charities-non-profits/charitable-organizations/donor-advised-funds> (last visited June 27, 2022) (explaining that donor-advised funds are generally funded by individuals but maintained and operated by 501(c)(3) organizations, which have legal control over the funds). Public reporting identifies Chan and Zuckerberg's fund as being managed by the Silicon Valley Community Foundation, a 501(c)(3) nonprofit corporation. Maria Di Mento, *Mark Zuckerberg and Priscilla Chan Donate \$300 Million for Voting Security (Gifts Roundup)*, THE CHRONICLE OF PHILANTHROPY (Sept. 8, 2020), <https://www.philanthropy.com/article/mark-zuckerberg-and-priscilla-chan-donate-300-million-for-voting-security-gifts-roundup>; Silicon Valley Community Fund 2018 IRS Form 990 at 1, https://projects.propublica.org/nonprofits/display_990/205205488/01_2020_prefixes_20-20%2F205205488_201812_990_2020011717045348 (identifying Silicon Valley Community Foundation as a 501(c)(3) corporation). The Foundation represents that its donor-advised funds are not separate organizations but rather "funds under SVCF's public charity status," suggesting that the Foundation may be the entity that made the grant payments to CTCL and CEIR. Silicon Valley Community Fund, *Comparing Charitable Options*, https://www.siliconvalleycf.org/sites/default/files/documents/development-forms/SVCF_ComparingCharitableOptions_web.pdf.

¹⁰⁵ Chan and Zuckerberg Resp. at 1, 4, MUR 7854; Chan and Zuckerberg Resp. at 3, 6, MUR 7946.

1 existed.¹⁰⁶ Accordingly, the Commission should dismiss the allegation that Chan and
 2 Zuckerberg made excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A) or
 3 contributions in the name of another in violation of 52 U.S.C. § 30122.

4 **D. The Commission Should Find No Reason to Believe that the EAC,**
 5 **Harrington, and Repak Violated the Act**

6 The MUR 7946 Complaint appears to suggest that the EAC provided funding for CTCL's
 7 grants, and that therefore the EAC may have also violated the Act's prohibitions on excessive
 8 contributions or contributions in the name of another.¹⁰⁷ However, both provisions of the Act
 9 describe the regulated contributor as a "person," and the Act defines person to exclude "the
 10 Federal Government or any authority of the Federal Government."¹⁰⁸ Thus, it does not appear
 11 that the EAC could have made the purported contributions under either provision.

12 The MUR 7946 Complaint also specifically names two EAC employees, Mona
 13 Harrington and Paul Repak, as Respondents.¹⁰⁹ However, it does not allege a cognizable
 14 violation against them.

15 Accordingly, the Commission should find no reason to believe that the EAC made
 16 excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A) or contributions in the name

¹⁰⁶ Compl. at 35-37, 40, MUR 7854; Compl. ¶¶ 59-60, MUR 7946; Statement of Reasons, Comm'rs. Mason, Sandstrom, Smith & Thomas at 3, MUR 4960 (Hillary Rodham Clinton for Senate) ("[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.").

¹⁰⁷ Compl. ¶ 7, MUR 7946 (asserting a "scheme of *quid pro quo* to funnel funds from the United States taxpayers to assist with the 2020 election cycle campaigns of specific candidates and/or political parties"); Supp. Compl. at 1 (Jan. 3, 2022) (arguing that CTCL failed to report \$400 million in funds it received from the EAC). This allegation is somewhat unclear because the Complaint also asserts that funds from Zuckerberg were "funneled through a federal agency," presumably the EAC, and it is unclear how to square that with the assertion that taxpayer funds were given to CTCL. *Id.* ¶ 64.

¹⁰⁸ 52 U.S.C. § 30101(11) (defining person); 52 U.S.C. § 30122 (providing that "[n]o person shall make a contribution in the name of another person"); 52 U.S.C. § 30116(a)(1)(A) (providing that "no person shall make contributions" exceeding the limits of the Act).

¹⁰⁹ Compl. at 1, MUR 7946.

1 of another in violation of 52 U.S.C. § 30122, and further find no reason to believe that
 2 Harrington and Repak violated the Act.¹¹⁰

3 **IV. RECOMMENDATIONS**

- 4 1. Dismiss the allegation that the Center for Election Innovation and Research made
 5 prohibited corporate contributions in violation of 52 U.S.C. § 30118(a);
- 6 2. Dismiss the allegation that the Center for Tech and Civic Life made prohibited
 7 corporate contributions in violation of 52 U.S.C. § 30118(a);
- 8 3. Dismiss the allegation that the Center for Tech and Civic Life knowingly
 9 permitted its name to be used to effect a contribution in the name of another in
 10 violation of 52 U.S.C. § 30122;
- 11 4. Dismiss the allegation that the Center for Tech and Civic Life made contributions
 12 while it was a federal contractor in violation of 52 U.S.C. § 30119(a)(1);
- 13 5. Dismiss the allegation that the Center for Tech and Civic Life failed to organize,
 14 register, and report as a political committee in violation of 52 U.S.C. §§ 30102,
 15 30103, and 30104;
- 16 6. Dismiss the allegations that Priscilla Chan and Mark Zuckerberg made excessive
 17 contributions in violation of 52 U.S.C. § 30116(a)(1)(A);
- 18 7. Dismiss the allegations that Priscilla Chan and Mark Zuckerberg made
 19 contributions in the name of another in violation of 52 U.S.C. § 30122;
- 20 8. Dismiss the allegations that Tiana Epps-Johnson, Whitney May, and David
 21 Becker consented to prohibited corporation contributions in violation of 52 U.S.C.
 22 § 30118(a);
- 23 9. Find no reason to believe that the United States Election Assistance Commission
 24 made excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A);
- 25 10. Find no reason to believe that the United States Election Assistance Commission
 26 made contributions in the name of another in violation of 52 U.S.C. § 30122;
- 27 11. Find no reason to believe that Mona Harrington and Paul Repak violated the Act;

¹¹⁰ The MUR 7946 Complaint also appears to allege that the EAC has acted outside the scope of its authority, such as by producing a report on “Cyber Crisis Management for Elections Officials,” which is “replete with examples of EAC attempts to take control of issues beyond both its statutory duties and personnel capabilities.” Compl. ¶¶ 4, 21-22, 54-57, MUR 7946. This allegation, however, does not appear to fall within the Commission’s jurisdiction.

- 1 12. Approve the attached Factual and Legal Analysis;
- 2 13. Approve the appropriate letters; and
- 3 14. Close the file.


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