



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

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RE: MURs 7854, 7946
Priscilla Chan & Mark Zuckerberg

Dear Ms. Gordon and Mr. Svoboda:

On November 9, 2020, the Federal Election Commission notified your clients, Priscilla Chan and Mark Zuckerberg, of a complaint alleging that they had violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On December 8, 2021, and January 6, 2022, the Commission notified your clients of an additional complaint and supplemental complaint alleging that they had violated certain sections of the Act. On July 26, 2022, the Commission considered the complaints and found no reason to believe that Priscilla Chan and Mark Zuckerberg made excessive contributions and contributions in the name of another in violation of 52 U.S.C. §§ 30116(a)(1)(A), 30122. Accordingly, the Commission closed the files in these matters. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

Documents related to the cases will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). If you have any questions, please contact Laura Conley, the attorney assigned to these matters, at (202) 694-1475 or lconley@fec.gov.

Sincerely,

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Center for Tech and Civic Life MURs 7854, 7946
Tiana Epps-Johnson
Whitney May
Center for Election Innovation and Research
David Becker
Priscilla Chan
Mark Zuckerberg

I. INTRODUCTION

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

The Complaints additionally allege that philanthropists Dr. Priscilla Chan and Mark Zuckerberg were the ultimate sources of the funds granted by CTCL and CEIR, and that Chan and Zuckerberg accordingly made excessive contributions or violated the Act’s prohibition on contributions in the name of another. Finally, the Complaints name as Respondents several

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

3 The Respondents argue that the grants were awarded by CTCL and CEIR for the stated
4 purpose of aiding election administrators during the pandemic and were awarded to jurisdictions
5 across the country on a nonpartisan basis, including to state and locality recipients that
6 historically vote for Republican candidates. They assert, therefore, that the grants did not
7 constitute contributions, and that the Complaints' allegations to the contrary are baseless.

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

1 II. FACTUAL BACKGROUND

2 CTCL is a 501(c)(3) non-profit corporation, whose stated purpose is to “promote civic
3 engagement by modernizing election administration and engagement between local governments
4 and the people they serve.”¹ Tiana Epps-Johnson is CTCL’s Executive Director, and Whitney
5 May is its Director of Government Services.² CEIR, also a 501(c)(3) non-profit corporation,
6 states that it “works nationally in a non-partisan manner to foster the overarching goals of
7 building voter trust and confidence, improving the efficiency of elections administration,
8 increasing voter participation and engagement, and educating voters about the election process.”³
9 David Becker is CEIR’s Executive Director.⁴ Dr. Priscilla Chan and Mark Zuckerberg are
10 philanthropists, and Zuckerberg is also the founder and CEO of Meta (formerly Facebook), a
11 social media company.⁵

12 In 2020, CTCL and CEIR started grant programs “to help state and local governments
13 address the unprecedented challenges to election administration posed by the ongoing global
14 [COVID-19] pandemic.”⁶ In the fall of that year, Chan and Zuckerberg donated as much as
15 \$350 million to CTCL and \$69.5 million to CEIR, and it appears that the organizations
16 distributed most of those funds in grants.⁷ CTCL states that it awarded grants to more than 2,500

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.

⁵ *See* Chan and Zuckerberg Resp. at 2, MUR 7854 (Feb. 11, 2021); Chan and Zuckerberg Resp. at 2-3, MUR 7946 (Feb. 22, 2022).

⁶ 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.

⁷ 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

1 state and local governments covering 47 states and the District of Columbia, and that the grants
2 assisted those jurisdictions with expenses such as buying personal protective equipment,
3 recruiting election workers, voter education and outreach, and purchasing absentee voting
4 supplies.⁸ CEIR asserts that it contacted and encouraged all 50 states and the District of
5 Columbia to apply for its grants, that 24 states applied, and that it awarded grants to all
6 applicants (except for one state that withdrew).⁹ CEIR states that it made funds available to
7 states to spend on communications for issues such as voter registration, deadlines, mail voting,
8 early voting, polling place locations and hours, and vote counting updates.¹⁰

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

10 The Complaint in MUR 7854 concerns both the CTCL and CEIR grant programs, their
11 named employees — Epps-Johnson, May, and Becker — and the role of Chan and Zuckerberg in
12 funding CTCL and CEIR’s grants.¹¹

13 Specifically, the MUR 7854 Complaint alleges that the true purpose of the CTCL and
14 CEIR grant programs was to “increase Democratic votes for Joe Biden” and that the focus on

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.techandcivicliflife.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).

⁸ 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).

⁹ 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.*

¹⁰ *Id.* at 4.

¹¹ *See generally* Compl., MUR 7854 (Oct. 30, 2020).

1 COVID-19 was a “ruse.”¹² It points to a number of circumstantial factors to support its
2 contention that the motivation behind the grants was to influence the outcome of the 2020
3 election. First, the MUR 7854 Complaint asserts that CTCL and CEIR awarded grants primarily
4 to recipients in Democratic-leaning jurisdictions. For instance, it points to a round of CTCL
5 grants totaling \$30.66 million, which it contends were given out through a non-competitive
6 process to “Democratic strongholds” in Wisconsin, Pennsylvania, Michigan, Iowa, Georgia, and
7 South Carolina,¹³ and it asserts that all but one of the 25 largest grant recipients as of November
8 2, 2020, were jurisdictions that favored Democrat Hillary Clinton in the 2016 presidential race.¹⁴
9 The MUR 7854 Complaint also contends that the only jurisdiction favoring Republican Donald
10 Trump received the smallest CTCL grant.¹⁵ When the Complaint was filed, CEIR had not yet
11 announced grant recipients, but the Complaint surmises that it too was deploying funds to
12 increase voter turnout in Democratic states.¹⁶

13 Second, the MUR 7854 Complaint argues that if the grants had been intended to aid
14 election administrators during a pandemic, they would have been awarded based on prevalence
15 of COVID-19.¹⁷ For example, the Complaint suggests that CTCL’s first grant should have gone

¹² *Id.* at 4.

¹³ *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.

¹⁴ 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.

¹⁵ *See id.* at 7-9.

¹⁶ Compl. at 33, MUR 7854.

¹⁷ *Id.* at 8.

1 to New York City based on its high rate of COVID cases and deaths.¹⁸ Third, the Complaint
2 asserts that leadership at both organizations — CTCL’s Executive Director Tiana Epps-Johnson,
3 CTCL’s Director of Government Services Whitney May, and CEIR’s Executive Director David
4 Becker¹⁹ — have partisan objectives, as allegedly evidenced by their social media posts and
5 Epps-Johnson’s history of involvement with Democratic-leaning organizations.²⁰ The MUR
6 7854 Complaint also argues that Epps-Johnson has “strong Democratic ties,” including serving
7 as an Obama Foundation fellow, and asserts without explanation that former President Barack
8 Obama and First Lady Michelle Obama “provided contacts and funding” for CTCL’s initial
9 \$30.66 million in grants.²¹

10 Fourth, the MUR 7854 Complaint argues that both organizations purport to be
11 distributing money due to a public health emergency but do not employ medical experts or have
12 public health experience.²² Fifth, it contends that neither organization had the expertise needed
13 to distribute tens or hundreds of millions of dollars in the few months they had to do so before
14 the 2020 election.²³ Sixth, it argues that the grants were used for purposes that were not
15 obviously related to COVID-19, such as helping voters obtain identification.²⁴ Finally, the
16 Complaint suggests that Chan and Zuckerberg’s donations to CTCL and CEIR must have been

¹⁸ *Id.*

¹⁹ *Id.* at 3; CEIR and Becker Resp. at 3, MUR 7854; CTCL *et al.* Resp. at 2, MUR 7854.

²⁰ 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”).

²¹ *Id.* at 21-22.

²² *Id.* at 25-26, 29.

²³ *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).

²⁴ *Id.* at 27-28, 33.

1 driven by political preferences, based on the Complaint’s position that CTCL and CEIR were not
2 otherwise qualified to distribute the grants, and its assertion that Facebook “has been accused of
3 having employees and policies that favor Democrats.”²⁵

4 In response, CTCL states that it did not consider partisan factors when awarding the
5 grants and that many of the recipients had electorates that historically vote Republican and were
6 expected to do so in 2020.²⁶ Moreover, CTCL asserts that its grant application was open to “any
7 U.S. election office responsible for administering election activities,” all such applicants received
8 a grant of at least \$5,000, and that when CTCL awarded more than that amount it was due to
9 nonpartisan factors, such as excessive voting wait times, lack of poll workers, and unexpected
10 capital needs, such as “space for safe, distanced voting.”²⁷ Finally, CTCL contends that even if
11 it had awarded grants on a partisan basis, there still would be no violation of the Act because the
12 funds do not qualify as contributions — the money was not given to Biden for President directly
13 or in-kind, and the MUR 7854 Complaint alleges no facts suggesting coordination.²⁸

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

²⁵ *Id.* at 35-40.

²⁶ 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.

²⁷ *Id.* at 5-6.

²⁸ *Id.* at 4.

1 population.²⁹ CEIR argues that it is irrelevant whether it has medical staff or prior grant-making
2 experience (which it asserts it has).³⁰ Finally, CEIR contends that every applicant (aside from
3 one state that withdrew from consideration) were awarded grants at the levels they requested.³¹

4 Epps-Johnson and May state that the MUR 7854 Complaint is “entirely unclear” on how
5 their actions allegedly violated the Act.³² They state that they expressed their personal views on
6 social media, and that volunteer internet activity is exempt from the Act.³³ Becker similarly
7 contends that his personal social media posts have no bearing on CEIR’s grant programs and that
8 the Complaint has offered no basis to make such a connection.³⁴

9 Chan and Zuckerberg state that they made donations to CTCL and CEIR through a
10 501(c)(3) donor-advised fund in reaction to the difficulties the pandemic posed for election
11 administration.³⁵ They represent that they selected CTCL and CEIR “[a]fter extensive research”
12 because they are nonpartisan charities with “extensive experience working directly with state and
13 local jurisdictions on election administration.”³⁶ Chan and Zuckerberg contend that they did not

²⁹ CEIR and Becker Resp. at 4-5, MUR 7854.

³⁰ *Id.* at 2.

³¹ *Id.* at 5.

³² CTCL *et al.* Resp. at 4, MUR 7854.

³³ *Id.*

³⁴ CEIR and Becker Resp. at 2, MUR 7854.

³⁵ Chan and Zuckerberg Resp. at 2, MUR 7854.

³⁶ *Id.* at 4.

1 rely on partisan considerations, did not consult with any presidential campaigns, and believe that
2 CTCL and CEIR used nonpartisan processes to select the ultimate grant recipients.³⁷

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

4 The Complaint in MUR 7946 concerns the CTCL grants, one CTCL employee, Epps-
5 Johnson, and the purported source of funding for those grants, Chan and Zuckerberg.³⁸

6 Like the MUR 7854 Complaint, the Complaint in MUR 7946 alleges that the CTCL
7 grants were political contributions “designed with the intent to tilt the 2020 federal elections
8 toward” Democratic candidates.³⁹ It points to the distribution of the grants, asserting that they
9 were targeted at “urban cities . . . to turn out the progressive vote.”⁴⁰ The MUR 7946 Complaint
10 and a Supplemental Complaint in the same matter also attach various documents that purport to
11 show partisan intent.⁴¹

12 Additionally, the Supplemental Complaint in MUR 7946 points to analyses of CTCL’s
13 2020 tax return performed by the Capital Research Center.⁴² One such analysis alleges that
14 CTCL gave grants to 10 of the 13 counties Biden won in Pennsylvania during the 2020
15 presidential election, but it made grants to only 12 of the 54 counties won by Trump, and that the
16 funding to those 12 counties constituted only 7% of the total amount CTCL awarded in the
17 state.⁴³ Finally, the MUR 7946 Complaint supports its assertion that the CTCL grants were

³⁷ *Id.*

³⁸ *See generally* Compl., MUR 7946 (Dec. 1, 2021); Supp. Compl., MUR 7946 (Jan. 3, 2022).

³⁹ Compl. ¶ 6, MUR 7946.

⁴⁰ *Id.* ¶ 46.

⁴¹ *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)).

⁴² 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)).

⁴³ *Id.*, Ex. 4 at 2.

1 partisan by alleging that Epps-Johnson has a partisan background and lacks expertise in election
2 administration, and that CTCL is funded by “progressive groups” and itself is a political
3 committee that has failed to register with the Commission.⁴⁴

4 The MUR 7946 Complaint suggests that there was an effort to “funnel funds from a
5 wealthy individual and their related and/or controlled entities, through a federal contractor,” an
6 allegation that likely refers to Zuckerberg and Chan donating to CTCL, which the Complaint
7 asserts was a federal contractor during the 2020 election.⁴⁵ The Complaint also suggests that
8 Zuckerberg had partisan motives in donating to CTCL, in part because Facebook suspended the
9 account of President Donald Trump in January 2021.⁴⁶

10 In response to the MUR 7946 Complaint, CTCL and Epps-Johnson assert that CTCL
11 made the COVID-19 grants “in furtherance of its charitable and educational purposes,” and that
12 the grants were distributed “on a nonpartisan, non-discriminatory basis.”⁴⁷ They represent that
13 “[n]o state or local election administration office that applied for a grant consistent with the
14 Grant Program received less funding than it requested” and that CTCL ultimately made grants in
15 49 states and the District of Columbia.⁴⁸ CTCL and Epps-Johnson also assert that an
16 independent review of CTCL’s grants concluded that in 2020 more CTCL grants were made to
17 jurisdictions that voted for Trump than were made to jurisdictions that voted for Biden.⁴⁹

⁴⁴ Compl. ¶¶ 35-39 (discussing Epps-Johnson’s work history with the Obama Foundation and the New Organizing Institute); Supp. Compl. at 2, MUR 7946.

⁴⁵ Compl. ¶¶ 8, 15, MUR 7946.

⁴⁶ *See id.* ¶¶ 59-60.

⁴⁷ CTCL and Epps-Johnson Resp. at 2-3, MUR 7946.

⁴⁸ *Id.* at 3.

⁴⁹ *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 Additionally, CTCL and Epps-Johnson assert that, while CTCL was a federal contractor, it did
2 not engage in a “byzantine scheme to funnel ‘contributions’ from . . . Mr. Zuckerberg to any
3 candidate, political committee, or political party.”⁵⁰ Finally, they assert that, as to Epps-Johnson,
4 the Complaint makes a “conclusory statement that she ‘aided and abetted’ CTCL in violating the
5 Act” but offers no information to support that allegation.⁵¹

6 Chan and Zuckerberg assert that their donations were “made on a nonpartisan basis to
7 help CTCL assist states and localities in their successful administration of the [2020] election.”⁵²
8 They contend that they selected CTCL because it is a Section 501(c)(3) nonpartisan charity with
9 “extensive experience working directly with state and local jurisdictions on election
10 administration.”⁵³ Further, Chan and Zuckerberg argue that the available data on CTCL’s grants
11 does not suggest that the money was concentrated in areas where it would help turnout of
12 Democratic voters.⁵⁴ For example, they contend that analysis shows that Trump won more than
13 60% of the jurisdictions that received CTCL grants.⁵⁵ As to the violations alleged in the
14 Complaint, they argue that the Complaint offers no specific facts showing that any contributions
15 were made, much less that contributions were funded or reimbursed by Chan and Zuckerberg.⁵⁶

16 III. LEGAL ANALYSIS

17 Under the Act, a “contribution” includes any “gift, subscription, loan, advance, or deposit
18 of money or anything of value made by any person for the purpose of influencing any election

⁵⁰ CTCL and Epps-Johnson Resp. at 3, MUR 7946.

⁵¹ *Id.* at 5.

⁵² Chan and Zuckerberg Resp. at 2, MUR 7946.

⁵³ *Id.* at 3.

⁵⁴ *Id.* at 3-4.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.* at 5.

1 for Federal office.”⁵⁷ The term “anything of value” includes all in-kind contributions, such as
2 “the provision of any goods or services without charge or at a charge that is less than the usual
3 and normal charge.”⁵⁸ In-kind contributions include “coordinated expenditures,” that is,
4 expenditures “made by any person in cooperation, consultation, or concert, with, or at the request
5 or suggestion of, a candidate, his [or her] authorized political committees, or their agents.”⁵⁹
6 They also include coordinated communications, as determined by a three-part test set out in the
7 Commission’s regulations.⁶⁰ The Act limits the amount an individual may contribute to an
8 authorized committee per election, and the applicable limit for 2020 was \$2,800.⁶¹ The Act
9 defines an expenditure as “any purchase, payment, distribution, loan, advance, deposit, or gift of
10 money or anything of value, made by any person for the purpose of influencing any election for
11 Federal office.”⁶²

12 The Act and Commission regulations define a political committee as “any committee,
13 club, association, or other group of persons which receives contributions aggregating in excess of
14 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
15 during a calendar year.”⁶³ In *Buckley v. Valeo*, the Supreme Court held that defining political
16 committee status “only in terms of [the] amount of annual ‘contributions’ and ‘expenditures’”

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

⁵⁸ 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).

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

⁶⁰ 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).

⁶¹ 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).

⁶² 52 U.S.C. § 30101(9).

⁶³ *Id.* § 30101(4)(A); 11 C.F.R. § 100.5.

1 might be overbroad, reaching “groups engaged purely in issue discussion.”⁶⁴ To cure that
2 infirmity, the Court concluded that the term “political committee” “need only encompass
3 organizations that are under the control of a candidate or the major purpose of which is the
4 nomination or election of a candidate.”⁶⁵ Political committees must comply with certain
5 organizational and reporting requirements set forth in the Act. ⁶⁶

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.⁶⁷ 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.”⁶⁸ The prohibition covers contributions
12 to any political party, political committee, federal candidate, or “any person for any political
13 purpose or use.”⁶⁹

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

⁶⁴ 424 U.S. 1 (1976) (*per curiam*).

⁶⁵ *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.

⁶⁶ 52 U.S.C. §§ 30102, 30103, 30104.

⁶⁷ *Id.* § 30122.

⁶⁸ *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).

⁶⁹ 11 C.F.R. § 115.2(a).

1 receiving corporate contributions.⁷⁰ The Act also provides that “any officer or any director of
 2 any corporation” shall not “consent to any [prohibited] contribution or expenditure by the
 3 corporation.”⁷¹

4 **A. The Commission Finds No Reason to Believe that CTCL and CEIR Made**
 5 **Prohibited Contributions or that CTCL Failed to Organize, Register, and**
 6 **Report as a Political Committee**

7 The Complaints allege that the CTCL and CEIR grants were, in actuality, intended to
 8 increase votes for Biden or Democratic candidates generally and, therefore, should be treated as
 9 prohibited in-kind corporate contributions.⁷² The MUR 7946 Complaint additionally appears to
 10 allege that CTCL’s grants were prohibited federal contractor contributions, that CTCL
 11 knowingly permitted its name to be used to effect a contribution in the name of another (from
 12 Zuckerberg and Chan), and that CTCL’s grants constituted expenditures in excess of the
 13 threshold to register as a political committee.⁷³

14 These allegations turn on the question of whether CTCL’s and CEIR’s grants were made
 15 for the purpose of influencing a federal election, as without that determination the grants would
 16 not qualify as contributions or expenditures. The available information, however, does not
 17 suggest that the funds were granted with that purpose. CTCL and CEIR identify a number of
 18 nonpartisan factors that they claim to have considered in distributing funds: voting wait times,

⁷⁰ 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).

⁷¹ 52 U.S.C. § 30118(a).

⁷² Compl. at 3-4, 9, 33, MUR 7854; Compl. ¶¶ 5-6, MUR 7946.

⁷³ See Compl. ¶¶ 5, 9-10, MUR 7946; Supp. Compl. at 2, MUR 7946.

1 lack of poll workers, unexpected capital needs, degree of recent changes in election laws,
2 pandemic-related financial needs, the potential for a poorly administrated election to impact
3 voter confidence in U.S. elections, and the size of the voting age population.⁷⁴ Further, they
4 indicate that the grants were widely available — CTCL accepted applications from any U.S.
5 election office responsible for election administration and all such applicants received grants,
6 and CEIR sought applications from all states and the District of Columbia, and awarded grants to
7 all applicants.⁷⁵ None of the available information indicates that these assertions are untrue.
8 Additionally, CTCL and CEIR appear to have had relevant experience working with election
9 administrators prior to making the grants in question.⁷⁶

10 The Commission has previously stated that the requisite electoral purpose is not
11 established simply by showing that a potential contribution benefitted the relevant campaign.⁷⁷
12 Although the Complaints contend that the grants were directed at Democratic strongholds, CTCL
13 and CEIR provide information showing that their grants were also awarded to jurisdictions that
14 have historically voted for Republican candidates.⁷⁸ For example, CTCL states that all 77
15 counties in Oklahoma voted for Donald Trump in 2016, and that 42 of those counties sought and
16 received grants from CTCL in 2020.⁷⁹ CTCL also asserts that a review found that more of its

⁷⁴ *Supra* notes 26-27, 29 and accompanying text.

⁷⁵ *Supra* notes 9, 27 and accompanying text.

⁷⁶ 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”).

⁷⁷ Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*).

⁷⁸ CTCL *et al.* Resp. at 5-6, MUR 7854; CEIR and Becker Resp. at 5 n.2.

⁷⁹ CTCL *et al.* Resp. at 5, MUR 7854.

1 grants were awarded to jurisdictions that voted for Trump than to jurisdictions that voted for
2 Biden in 2020.⁸⁰ CEIR provides a list of the states to which it awarded grants, including a
3 number that voted for Trump in 2020, such as Florida, Iowa, and Missouri.⁸¹ Thus, to the extent
4 the grants turned out additional voters for Biden, they likely also did so for his opponent, Trump.
5 Additionally, the MUR 7946 Complaint alleges that CTCL focused its grants on urban areas “to
6 turn out the progressive vote,” but even if urban areas received more funding than non-urban
7 areas that alone is not suggestive of a purpose to influence the election.⁸²

8 In an analogous situation, the Commission has advised that a university does not make a
9 contribution by providing grants to cover students’ travel and subsistence expenses while they
10 are unpaid campaign interns because, although the students are providing services that might
11 otherwise constitute a contribution, the grant is provided “for *bona fide* educational objectives
12 and not for the provision of personal services to federal campaigns.”⁸³ Here, the grants were not
13 directly used to fund campaign work, and CTCL and CEIR’s objective appears to have been to
14 aid nonpartisan election administrators in carrying out the mechanics of voting during the
15 COVID-19 pandemic. This is reflected in the purposes for which the grants were awarded, that

⁸⁰ CTCL and Epps Johnson Resp. at 3, MUR 7946.

⁸¹ 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).

⁸² Compl. ¶ 46, MUR 7946.

⁸³ Advisory Opinion 2015-14 at 3-4 (Hillary for America II).

1 the grants were broadly available to Democratic- and Republican-leaning jurisdictions, and the
2 fact that they were apparently awarded to all who applied.⁸⁴

3 Even if the available information did suggest that CTCL and CEIR made grants with the
4 purpose of influencing a federal election, there does not appear to be a basis to treat the grants as
5 in-kind contributions to particular candidates. To the extent that the Complaints suggest the
6 grants were coordinated expenditures, which require the payor to operate in cooperation,
7 consultation or in concert, with, or at the request or suggestion of, the candidate or his or her
8 authorized committees, there is no information to suggest any communications took place
9 between Respondents and Biden, Biden for President, or other Democratic candidates or
10 campaigns.⁸⁵ The MUR 7854 Complaint attempts to link CTCL to Biden, in particular, through
11 Epps-Johnson's previous work for the Obama Foundation, but it provides no support for its
12 assertion that the Obamas were involved with CTCL's grants or that, even if they were, this
13 would indicate coordination with the Biden campaign.⁸⁶

14 To the extent the Complaints suggest that the grants were used to fund coordinated
15 communications that, too, appears implausible. Although the MUR 7854 Complaint alleges that
16 CTCL and CEIR intended the grants to benefit Biden, it does not allege any facts suggesting they
17 funded communications containing express advocacy or that they were in contact with Biden or
18 Biden for President in any way. Indeed, neither the Complaints nor the Responses identify any
19 specific communications that may have been coordinated and, as discussed above, because there

⁸⁴ *Supra* pages 3-4, 7-8, 10-11, and 14-15.

⁸⁵ *See* CTCL *et al.* Resp at 4, MUR 7854 (denying that there was coordination).

⁸⁶ *See* Compl. at 21-23, MUR 7854.

1 is no basis to infer coordination, the Commission’s coordinated communications test would also
2 not be satisfied.⁸⁷

3 Accordingly, because the available information does not indicate that the CTCL and
4 CEIR grants were made for the purpose of influencing a federal election, and they therefore are
5 neither contributions, nor expenditures under the Act, the Commission finds no reason to believe
6 that: (1) CTCL and CEIR made prohibited corporate contributions in violation of 52 U.S.C.
7 § 30118(a); (2) CTCL knowingly permitted its name to be used to effect a contribution in the
8 name of another in violation of 52 U.S.C. § 30122; (3) CTCL made prohibited federal contractor
9 contributions in violation of 52 U.S.C. § 30119(a)(1); or (4) CTCL failed to organize, register,
10 and report as a political committee in violation of 52 U.S.C. §§ 30102, 30103, and 30104.⁸⁸

11 **B. The Commission Finds No Reason to Believe that Epps-Johnson, May, and**
12 **Becker Consented to Prohibited Corporate Contributions**

13 The Complaints do not clearly explain how Epps-Johnson, May, and Becker allegedly
14 violated the Act, but they could be read to allege that Epps-Johnson, May, and Becker are
15 officers and directors at CTCL and CEIR within the meaning of 52 U.S.C. § 30118(a) and
16 therefore were prohibited from consenting to prohibited corporate contributions.⁸⁹ As already
17 discussed, however, there is no available information to indicate that CTCL or CEIR made such
18 prohibited contributions or that these individuals consented to prohibited contributions.

⁸⁷ The conduct prong is satisfied by one of five types of interactions between the payor and the candidate or campaign regarding the communication. *See* 11 C.F.R. § 109.21(d)(1)-(5); *see also id.* § 109.21(e) (stating that an agreement or formal collaboration “is not required for a communication to be a coordinated communication”).

⁸⁸ 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.

⁸⁹ 52 U.S.C. § 30118(a).

1 Therefore, the Commission finds no reason to believe that Epps-Johnson, May, and Becker
2 violated 52 U.S.C. § 30118(a).

3 **C. The Commission Finds No Reason to Believe that Chan and Zuckerberg**
4 **Made Excessive Contributions or Contributions in the Name of Another**

5 If Chan and Zuckerberg's donations to CTCL and CEIR were in-kind contributions to
6 Biden or other Democratic candidates, they would have exceeded the individual limit of \$2,800
7 per election applicable during the 2020 cycle.⁹⁰ As an initial matter, Chan and Zuckerberg state
8 that the money was given through a donor-advised fund, so it is not clear that the funds came
9 from them individually, rather than from an entity that might have been prohibited from making
10 any contributions at all.⁹¹ However, even assuming they made the donations individually, the
11 nexus between the donations and any purpose to influence the 2020 election is speculative at
12 best. Chan and Zuckerberg deny engaging in coordination and represent that CTCL and CEIR
13 chose how to distribute the funds.⁹² The Complaints' assertions of their allegedly partisan
14 motives appear to rest on speculation as to why Chan and Zuckerberg selected CTCL and CEIR,
15 and what the political leanings of Zuckerberg or some Facebook employees may be, but in light
16 of the facts showing the grants were widely awarded across jurisdictions the available

⁹⁰ Compl. at 4, MUR 7854.

⁹¹ 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).

⁹² Chan and Zuckerberg Resp. at 1, 4, MUR 7854; Chan and Zuckerberg Resp. at 3, 6, MUR 7946.

1 information does not suggest a partisan motive actually existed.⁹³ Accordingly, the Commission
2 finds no reason to believe that Chan and Zuckerberg made excessive contributions in violation of
3 52 U.S.C. § 30116(a)(1)(A) or contributions in the name of another in violation of 52 U.S.C.
4 § 30122.

⁹³ 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.”).