

NOT YET SCHEDULED FOR ORAL ARGUMENT

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No. 23-5216

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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BARBARA W. PALMER,

*Plaintiff-Appellant,*

v.

FEDERAL ELECTION COMMISSION,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the District of Columbia  
Case No. 1:22-cv-02876-CRC

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**APPEALANT BARBARA W. PALMER'S RESPONSE TO FEDERAL  
ELECTION COMMISSION'S MOTION FOR SUMMARY AFFIRMANCE**

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## I. INTRODUCTION

COMES NOW, Appellant, Barbara W. Palmer (“Appellant/Palmer”), and files this her Response to Appellee’s Motion for Summary Affirmance. As discussed below, Appellee, Federal Election Commission (“FEC”), is not entitled to summary affirmance.

Appellee agency has referenced an incorrect line of cases regarding the issue of the petitioning party’s standing to bring a case in the lower court. (Doc. #2026662, page 12, citing *Lujan v. Defenders of Wildlife*, 506 U.S. 555 (1992)). Palmer had standing to seek judicial review of the FEC agency decision in the lower court. *FEC v. Adkins*, 524 U.S. 11 (1998); 52 U.S.C. §30109(8)(a).

This Court reviews a district court dismissal of a complaint for lack of subject matter jurisdiction *de novo*. See *Cierco v. Mnuchin*, 857 F.3d 407, 414 (D.C. Cir. 2017). Allegations in a complaint are “taken as true for purposes of a motion to dismiss.” *Hughes v. Rowe*, 449 U.S. 5, 10 (1980) (per curiam).

As explained below, Appellee has not made a complete record public. Appellee failed to produce for the lower court a complete record of the internal agency proceedings, and therefore, there was no record produced for the lower court to be able to reach the merits of Palmer’s claims. There is, therefore, no record for this Court to review the merits of Appellee’s arguments. That record is necessary for this Court’s review. (Doc. # 2026662, page 11 – 12, citing *Taxpayers*

*Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297-298 (D.C. Cir. 1987). Appellee cannot obtain a summary affirmance from this Court, and this Court should deny Appellee's motion.

The original complaint ("MUR 7946"), filed with the FEC, was not intended to place Appellant Palmer in an adverse position to a rule making federal agency. *See, Exhibit "A" – Original Complaint Before the Federal Election Commission.* The purpose of filing the original FEC complaint was to request investigation of potential violations of federal election law that involved substantial amounts of money and a federal contractor. Those cash payments were made by a not-for-profit organization, such organizations do not necessarily disclose their donors and do not register with the FEC as a political committee. As explained below, the use of this type of organization has been on the rise since the enactment of McCain-Feingold and the Supreme Court's holding in *Citizens United*. *Citizens United v. FEC*, 558 U.S. 310 (2010)(Limiting independent *expenditures* (emphasis added) on political campaigns by groups such as corporations, labor unions, or other collective entities violates the First Amendment because limitations constitute a prior restraint on speech). The FEC appears to have agreed, at least in the beginning, that there was a potential issue involving the use of soft or dark money to make campaign/candidate contributions during the 2020 federal election cycle.

The FEC assigned the complaint a matter-under-review number (“MUR 7946”) and sent requests for response to the respondents listed on Appellant’s complaint.

Prior to filing MUR 7946, Appellant reviewed FEC Matters-Under-Review filings and FEC opinions related to the use of cash donations that have come to be called “Zuck Bucks”. Appellant reviewed the current state of the laws and court rulings that give the FEC authority to review such donations. Appellant’s FEC complaint was directed primarily at a contractual agreement between a federal agency, United States Elections Assistance Commission (“EAC”), and that agency’s delegation of its statutorily defined functions to a not-for-profit organization that was also a primary beneficiary of the donations of “Zuck Bucks”. The total of grants using EAC funds and Zuck Bucks is estimated to have exceeded \$700 million.,

As discussed below, the FEC made findings in its final decision. *Exhibit “B”*. The FEC did not provide any of the supporting documents for its decision to Appellant in September, 2022. Documents that now appear on the FEC website, except the final decision, were not available during the review for filing with the lower court. The lower court found that Appellant lacked Article III standing, dismissed the case, and never reached the merits.

## II. AGENCY PROCEEDINGS RELATED TO MUR #7946, THE FEC ORIGINAL COMPLAINT.

The FEC used its agency process as outlined in its Motion. (Document #2026662. Page 2-5; *The FEC and FECA's Administrative Enforcement Process and FECA's Limits on Contributions*). The FEC findings can be found in its decision. Palmer filed a lawsuit in the D.C. federal courts, requesting judicial review of the FEC decision. During review of FEC process, procedure, and related cases in preparation for the district court case, Appellant found multiple writings by current and former FEC Commissioners, discussing issues related to FEC procedures and problems with politicalization and effectiveness of the agency and its rule making function.<sup>1,2</sup>

The most recent problems discussed how the FEC would hold complaints past the 120-day investigation period, thereby delaying any ability of the a complainant to seek federal court judicial review of an FEC decision. Most matters became moot, often due to the years of time involved and insolvency of the

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<sup>1</sup> Weintraub, Ellen L. Commissioner FEC, FEC Memorandum September 16, 2016 (requesting the Commissioners to undertake rulemaking regarding election interference; FEC Memorandum, May 17, 2018, (discussing foreign interference in federal elections. [https://www.fec.gov/resources/cms-content/documents/2018-05\\_ELW\\_Rulemaking\\_Proposal\\_to\\_Combat\\_Foreign\\_Election\\_Influence.pdf](https://www.fec.gov/resources/cms-content/documents/2018-05_ELW_Rulemaking_Proposal_to_Combat_Foreign_Election_Influence.pdf)).

<sup>2</sup> Potter, Trevor, Former FEC Commissioner (1991-1995). ALR Symposium FEC speech April 3 2017, <https://campaignlegal.org/sites/default/files/Trevor%20Potter%20ALR%20Symposium%20FEC%20speech%20Apr.%203%202017.pdf>.



acting organization. See, *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 993 F.3d 880 (D.C. Cir. [2021](#)) on remand, *Citizens for Responsibility & Ethics In Wash. v. Fed. Election Comm'n*, 22-cv-3281 (CRC), (D.D.C. Sep. 20, 2023)(“Despite the authority to review a nonenforcement decision to determine whether it is “contrary to law,” [courts] have held that a Commission decision based even in part on “prosecutorial discretion” are not reviewable. *Citizens for Responsibility & Ethics in Washington v. FEC* (“Commission on Hope”), [892 F.3d 434](#) (D.C. Cir. [2018](#)); see also *Heckler v. Chaney*, [470 U.S. 821](#) (1985)”). The new FEC “process” appears to include allegations in their court pleadings indicating that a party is barred from standing because FEC doesn’t have to “get the bad guys”, even if the petitioner is seeking judicial review. Indication of the use of prosecutorial discretion by the FEC should not bar Appellant from obtaining a judicial review. That excuse is not reasonable under the facts of this particular case.

On its website, the FEC maintains information related to MUR’s. Each MUR number has a page which summarizes the status of activities related to that specific matter number. *Exhibit “D” Summary of MUR #7946*. The summary for MUR #7946 shows the steps taken in MUR 7946, Palmer’s original FEC complaint. The documents were not available until at least 30 days after the case

was closed. The FEC overlooked several small, but important points, in its motion for summary affirmance. Here are the problems.

**A. FEC’S FIRST GENERAL COUNSEL REPORT AND OTHER INTERNAL DOCUMENTS WERE NOT PRODUCED PRIOR TO THE LOWER COURT’S GRANTING OF SUMMARY JUDGMENT.**

FEC’s First General Counsel Report contains a review of the contract between the Center for Tech and Civic Life (“CTCL”) and the United States Elections Assistance Commission (“EAC”). The CTCL Response also explains the federal contract. Neither of these documents were sent to Appellant or provided to the trial court. Some of the findings in that original GC report were not included in the final report issued. FEC filed a Motion to Defer Transmission of the Administrative Record. (Document #20266692 p. 15, Trial [Docket #7](#)). As a law enforcement agency, the FEC is entitled to keep its records private until the matter under review is closed. Since the closing of the MUR, however, the FEC has failed to release any internal documents related to the reasoning of the Commissioner, particularly related to the “improvident” letter sent to the EAC. The Commission directed the Office of General Counsel to send an improvident letter to the Election Assistance Commission, Mona Harrington, and Paul Repak. No copy of that letter has been released to Appellant. See, Summary - Exhibit’C” – Disposition. Had the trial court not summarily dismissed Palmer’s lawsuit,

Palmer would have been entitled to discovery of this letter and all documents related to the FEC's investigations of the matter.

**B. THE FEC COMBINED APPELLANT MUR 7946 WITH AN UNRELATED MUR IN ITS DECISION POTENTIALLY CAUSING CONFUSION AS TO ISSUES IN ITS DECISION AND ON PETITION FOR REVIEW.**

In its final decision, FEC combined MUR 7946 with a second complaint.

That second complaint included organizations and individuals that were not discussed in MUR 7946. The Summary of MUR 7946 and the final decision make it appear that Appellant complained about respondents that were not in MUR 7946. This causes confusion for briefing and court review.

**III. BRIEF BACKGROUND ON USE OF NON-GOVERNMENT ORGANIZATIONS ("NGOs") IN ELECTION RELATED ACTIVITIES.**

The FEC did make a finding in MUR 7949 that the NGO in question, Center for Tech and Civic Life ("CTCL") was not a political committee. Various types of national NGOs are now used to supply significant amounts of funds for financing election related activities.

The FEC was created in 1974 for the purposes of administering and enforcing the federal campaign finance laws and is reputed to be a "toothless tiger" amongst some critics. By virtue of its structure, critics contend, the Commission is inherently conflicted in terms of the vigor with which it can reasonably be expected to enforce the terms of the FECA against politicians, their parties, and

their affiliates. The FEC comprises six politicized members, three from each party, and a deadlocked vote kills an enforcement action by FEC staff.

In 2002, Congress passed McCain-Feingold, which restricted the amount of money federal candidates could raise from donors. 52 U.S.C. § 30116. The Supreme Court had already held that such provisions, imposing ceilings on “political contributions”, do not violate First Amendment speech and association rights, but are sorted by substantial governmental interest in limiting corruption and its appearance. *Buckley v. Valeo*, 424 U.S. 1 (1976). It should be mentioned that, since the passage of this federal act, a number of states have passed similar laws restricting statewide candidate contributions. The policies behind these campaign finance laws were often the product of non-profit groups such as Common Cause, an organization that today files complaints with the FEC and seeks judicial review as it deems necessary.

Since that time, the effect of the limitations on campaign contributions takes message control out of the hands of candidates and handed it to outsiders. Campaign donations in meaningful quantities could only be accomplished through “the independent sector” — a collection of nonprofit organizations that stepped into the role once occupied by political parties. In time the seeds sown grew into a garden of think tanks, political 527’s, 501(c)(3) charitable organizations, 501(c)(1) “social welfare” organizations, new media outlets, progressive and conservative

watchdog groups and assorted activist organizations that would play a key role in the political transformation of the United States elections system beginning in 2004 to on into the present. Many of those same organizations that organized under not-for-profit status to promote election activities under the heading of education or social welfare, now file the complaints with the FEC against campaigns and candidates that are in opposition to the NGO's issues and goals.

The cost of participation in federal elections through the independent sector is high. Nonprofits, both political or not, are subject to tax, corporate and accounting rules and require constant guidance from lawyers and accountants. These various organizations could be best described as a "political venture capital fund", and that analogy fits them well.

Here, generally, is the NGO new business model to promote NGO political activism. After evaluating the various strengths and weaknesses of nonprofits, and considering broad objectives, the Board votes and the staff produces a list of funding recommendations to be circulated to the donors. At that point, donors make direct contributions to the newly selected members of the nonprofits network, labeled as grants. The network of nonprofits now has more capacity to have an effect on the political landscape, while removing from public view the donors that fund them.

NGO business models hide the donors. To eliminate direct communications between donors and campaigns/candidates, NGOs, like political action committees, use a system of communications known as “Redboxing”. Redboxing is an illegal practice in which campaigns publish messaging and signal to supportive super PACs what material they should use in their ads. A campaign provides messaging on its website and uses widely understood signals (like a literal red box) and specific phrasing (like “voters need to know...”) to direct super PACs to use the campaign’s approved messaging in their ads. Redboxing also commonly involves posting footage and photos of the candidate, as well as strategy tips about the race. A NGO organization supporting the candidate could then use the messaging and material supplied by the campaign in its ads. Redboxing has become more egregious over time, and the signals have become more sophisticated. Today, Redboxing may include specific words instructing a supporting organization how to disseminate ads to maximize impact: “voters need to see” signals a message should be delivered via TV ads, “read” is asking for direct mail, and “see on the go” is a request for digital ads. This type of coordination facilitates a corrupt "pay-to-play" political culture, where organization donors and operatives can trade dollars for favors and access and fundamentally undermines voters’ confidence that the political system will respond to their concerns and protect their interests.

#### IV. ARGUMENT

##### A. APPELLEE DOES NOT MEET THE STANDARD FOR SUMMARY AFFIRMANCE.

When the original FEC complaint was filed, just over two years ago, this seemed to be a simple statutory path to follow. File a complaint with the agency, wait 120 days (or maybe more), get an agency opinion. If the FEC misapplied the law to the facts, seek judicial review, a fairly common practice in federal administrative law. Research into the contract between EAC and the CTCL showed that there were two streams of cash flow. Each cash flow originated from a different source and at least one cashflow came through an NGO to election administration offices. The cash was given in grants by the organization, CTCL, and used by both state and local election offices to defray their supposed increase in operating costs of the 2020 elections. According to the respondent this was due to increase costs caused by the COVID pandemic. In 2021, allegations were being made that large amounts of the grants were used at the state and local levels to cover costs that were incurred because of various forms of the unauthorized changing election laws or side stepping state election laws and safeguards.

FEC states in its Motion that there is “no benefit” to further review. In support of its reliance on a standard of “no benefit”, the FEC has cited the case of *Taxpayers Watchdog, Inc. v. Stanley*, [819 F.2d 294, 297-298 \(D.C. Cir. 1987\)](#). In

*Taxpayer*, the party clearly had standing before both the federal district court and the appeals court, and the court reached the merits of the case.

In looking at the elements of a standard of “no benefit”, *Taxpayer* states as follows:

“A party seeking summary disposition bears the heavy burden of establishing that the merits of his case are so clear that expedited action is justified. *See Walker v. Washington*, [627 F.2d 541, 545](#) (D.C. Cir.), *cert. denied*, [449 U.S. 994](#), [101 S.Ct. 532](#), [66 L.Ed.2d 292](#) (1980). To summarily affirm an order of the district court, this court must conclude that no benefit will be gained from further briefing and argument of the issues presented. *Sills v. Bureau of Prisons*, [761 F.2d 792, 793-94](#) (D.C. Cir. 1985). In addition, this court is now obligated to view the record and the inferences to be drawn therefrom "in the light most favorable to [taxpayers]." *United States v. Diebold, Inc.*, [369 U.S. 654, 655](#), [82 S.Ct. 993, 994](#), [8 L.Ed.2d 176](#) (1962).”

The agency in this case refused to transmit its records to the federal district court. Just take the FEC’s word for it, all that was necessary to “properly investigate” MUR 7946 was done. (Order, *Palmer v. FEC*, 22-2876, D.D.C. August 29, 2023 – dismissed Appellant’s lower court complaint and denied the *FEC’s Motion to Defer the Transmission of the Administrative Record* as moot.) The district court did not receive or review the FEC internal records as to the agency procedures used or investigations done. Dismissal at the district court level was based on the court’s opinion that Palmer lacked standing. With no record, discovery, or briefings at the trial court level, the FEC is not entitled to a



summary affirmance on appeal. This case should be remanded to the trial court for further proceedings.

**B. APPELLANT HAD STANDING TO FILE A LAWSUIT FOR REVIEW OF THE FEC DECISION IN THE LOWER COURT.**

Conflict over control (executive, Congressional, or agency) of federal agencies has existed in the bureaucratic system since the first federal agencies sprang into being. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935) (“The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted ...”).

Like notices from other federal agencies, the Internal Revenue Service or the Social Security Administration, Appellant in this case was given notification by the FEC that there was an availability for judicial review of its decision. In the FEC cover letter dated August 8, 2022, the FEC clearly states that Appellant had a right of review by a court of law. See Exhibit “B” p. 1 (“The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek *judicial review* [emphasis added] of the Commission’s dismissal of this action, See 52 U.S.C. § 30109(a)(8)). An annotated version of Federal Election Laws and Regulations, reviewed by Appellant prior to filing with the trial court, contains several pages of information about practice and procedure under this code section. LexisNexis,

*Federal Election Laws and Regulations*, 2020-2021 Edition, 52 U.S.C. §30109 – Enforcement, page 936 *et. seq.*

**1. The *Lujan* case had nothing to do with the FEC or its statutory procedure for enforcement and is not applicable in this case.**

Arguing that Appellant has no injury sufficient to sustain Article III standing, the FEC in this case has referenced a line of cases that originate with the Supreme Court's holding in *Lujan*. *Lujan v. Defenders of Wildlife*, 506 U.S. 555 (1992). This line of reasoning has several flaws in its application to this case.<sup>3</sup>

Defenders of Wildlife sued Secretary of the Interior, Manuel Lujan, Jr. under the citizen-suit provision of the Endangered Species Act, citing projects funded by the U.S. government that threatened endangered species -- elephants overseas. The project complained of was rehabilitation of the Aswan High Dam on the Nile by Egypt's Master Water Plan, and the endangered species were: 1) crocodiles in Egypt; 2) elephants and leopards in Sri Lanka. The Supreme Court stated that the evidence was questionable if agency funded projects even threatened listed species.

*Lujan* clearly presented a generalized complaint. An adherent to the *Lujan* model might be comfortable resting on faith that the Executive branch will

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<sup>3</sup> A problem with applying *Lujan* throughout all agencies was recognized at the time the original opinion was issued. See, Cass R. Sunstein, What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III, 91 MICH. L. Rev. 163, 165 (1992) (citing *Lujan* as prompting "invalidation of an explicit congressional grant of standing to 'citizens'").

consistently choose to follow the law for fear of political reprisal. If, as in *Lujan*, John Q. Public is frustrated with the federal government's budget failures, and that frustration is insufficiently concrete to trigger the jurisdiction of an Article III court, he need only cast his votes in protest. This case, however, is about the constitutionally protected right of U.S. citizens to cast those votes. And to have those votes properly count.

Congress sets the parameters for Executive enforcement action by passing the laws to be enforced, the Constitution does not expressly enable or preclude the legislation of private citizens' access to the courts to bring about enforcement activity. U.S. Const. art. 1 §8, cl 18; See also, *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 323-26 (1819)(examining Congress's role in determining what is "necessary and proper"). *Lujan* did not involve constitutional issues of due process or the fundamental right to vote.

By relying on *Lujan* and its progeny, the FEC has selectively disavowed federal courts' jurisdiction to hear challenges to its pre-investigation dismissals of administrative complaints, effectively seeking immunity from such judicial review. Disclosure, however, educates voters and prevents circumvention of other aspects of the federal election laws. See, *FEC v. Beaumont*, 539 U.S. 146, 155 (2003)(discussing regulation of corporate electoral involvement and use of organizations as conduits for circumvention of contribution limits), *Buckley*, 424

U.S. at 67-68(stating that disclosure requirements are an essential means of gathering data necessary to detect contribution limit violations and the evils of campaign corruption).

The political solution to underenforcement using executive oversight or more and better legislation is insufficient at this point in time. Lujan should not be used to arbitrarily dismiss cases seeking judicial review of an FEC decision merely because those cases are unwanted by the FEC.

**2. The trial court erred in dismissing for lack of standing. Appellant had standing to request judicial review of an FEC decision.**

The Supreme Court has found that voters alleging that an organization was a “political committee” had standing to seek judicial review in federal court under the citizen suit provisions of federal election law. *FEC v. Adkins*, 524 U.S. 11 (1998). In *Adkins* the Supreme Court addressed the question of whether individual voters' challenges to the FEC's refusal to take enforcement action against someone else presented a case or controversy within the meaning of Article III. *Id.* In finding standing, the Court drew three conclusions: 1) Congress can create a statutory "right" that the populace can enforce in court by sheer operation of the statute; 2) it lifted the ban on Article III courts' adjudication of grievances that are widely shared so long as the harm itself is not "abstract." (like possible trips to see

elephants in Sri Lanka); 3) it reduced the causation and redressability requirements.

Akins arose from the Commission's determination that the American Israel Public Affairs Committee ("AIPAC") is not a "political committee" as defined by the FECA and its refusal to require AIPAC to make disclosures required under the Act. A group of voters that opposed AIPAC's views filed a complaint with the FEC alleging that AIPAC was a political committee that failed to comply with the FECA's disclosure requirements. It asked the FEC to force AIPAC to release information required of political committees. The fact that AIPAC was not a party to the case, but could conceivably take actions to frustrate redressability, did not even factor into the court's analysis.

As the Supreme Court explained in Akins, "the FECA seeks to remedy any actual or perceived corruption of the political process in several important ways." *Adkins*, 524 U.S. at 14. As explained in the FEC's Motion in this case, the Federal Election Campaign Act ("FECA") prohibits corporations from making contributions in connection with elections to any political office, including primary elections. It imposes limits on the amounts individuals and entities qualifying as "political committees" can contribute in coordination with a candidate for federal political office. Political committees must register with the Commission, appoint a treasurer, maintain information regarding contributors, track disbursements, and

file periodic reports setting forth this and other information in detail. *Akins*, 524 U.S. at 15-16. The FEC investigated the communications in this case and concluded that AIPAC's communications did count as "expenditures" for purposes of the FECA's definition of "political committee," but nonetheless exempted AIPAC from its requirements and dismissed the voters' complaint. *Id.* at 17-18,29. The district court and the D.C. Circuit reached the merits, finding that the FEC misinterpreted the statute's definition of "political committee." *See Akins v. FEC*, 101 F.3d 731,744 (D.C. Cir. 1996) (en banc) (finding that the FEC's decision to dismiss appellant's complaint was "based on its mistaken interpretation of § 431(4)(A)"), rev 'd on other grounds, 524 U.S. 11 (1998).

The FECA's citizen-suit provision was added as an amendment to the original bill and is described in the legislative history as "the one provision . . . that will enable the public to get a better look at the investigative process to be used against suspected violators of the law. *S. Rep. No. 92-229, at 110 (1971)*. In the floor debate over the 1979 amendments, one member explained:

“The Commission is entrusted with the responsibility of passing on complaints. The citizen-suit provision provides that an order dismissing a complaint is reviewable in court solely to assure that the Commission’s action is not based on an error of law. And to assure that the Commission does not shirk its responsibility to decide, that section also provides that a total failure to address a complaint with 120 days is a basis for a court action.”

Sen. Pell goes on to say that:

“These two bases for judicial intervention are not intended to work a transfer of prosecutorial discretion from the Commission to the court. This, for example, if the Commission considers a case and is evenly divided as to whether to proceed, that division which under the act precludes Commission action on the merits is not subject to review any more than a similar prosecutorial decision by a U.S. attorney.”

125 Cong. Rec. 36,744, 36,754 (1979) (statement of Sen Pell).

The legislative history suggests that the provision was at its inception, and has since been, uncontroversial in Congress. The 1976 amendments allowed "any person," including a member or employee of the FEC, to file a verified (versus anonymous) administrative complaint. *H.R. Rep. No. 94-1057, at 50 (1976)*.

It could be speculated that, because this statutory provision does not contain a carve out for a “tie vote”, that the recent problems of FEC significantly delayed responses in multiple complaints filed by government watchdog groups and “tie vote” dismissals are being used to frustrate enforcement actions within the agency, just as the Commissioners memorandums and comments cited above suggest. Now, FEC has turned to the use of “prosecutorial discretion”, as the constant flow of delay cases has turned sour. *See, C.R.E.W v. FEC, (New Models), 993 F.3d 880 (D.C. Cir. 2021)*(example of a valid reason to exercise agency discretion as subject of complaint was out of business, but long delay in FEC response). Appellant is open to further briefing of any issue(s) or group of cases that this Court deems necessary to reach a final decision.

## V. CONCLUSION

The FEC made a finding that the CTCL was not a “political committee” Exhibit “B”, page 14, Line 4. The FEC also sent an “improvident” letter to the Election Assistance Commission without disclosure of either the letter or the basis and reasoning for it. Exhibit “C”, page 1. Disposition. The FEC combined MUR’s with different respondents and issues and then wholly failed to address the “straw man” argument asserted by Appellant. The FEC failed to investigate the contractual communications between CTCL, the EAC, and any third party that CTCL may have hired to perform services on a federal contract. The *Lujan* case was decided in 1992: before internet, before social media, before artificial intelligence, before significant changes in the speed of mass communications.

The growing problem, caused by vast increases in federal campaign spending, the increased use of technology, the increased inflow and influence of dark money, and the political infighting within the Commissioners of the FEC makes it even more imperative that the Court exercise the power given to it by Congress and review decisions of the FEC for compliance with the law.



Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-  
VOLUME LIMIT, TYPESFACE  
REQUIREMENTS, AND TYPE-STYLE  
REQUIREMENTS**

I hereby certify that, on this the 3rd day of January, 2024, that:

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A)

because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e) , this document is less than 20 pages and contains 4,648 words.

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/s/ *Barbara W. Palmer*  
Barbara W. Palmer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of January 2024, a copy of the foregoing Notice of Appearance, was delivered to case registered parties by the CM/ECF court system.

*/s/ Barbara W. Palmer*  
Barbara W. Palmer

NOT YET SCHEDULED FOR ORAL ARGUMENT

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No. 23-5216

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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BARBARA W. PALMER,

*Plaintiff-Appellant,*

v.

FEDERAL ELECTION COMMISSION,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the District of Columbia  
Case No. 1:22-cv-02876-CRC

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**ADDENDUM TO APPELLANT'S RESPONSE  
TO FEC MOTION FOR SUMMARY AFFIRMANCE**

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**ADDENDUM CONTENTS**

- Exhibit "A" - Original FEC Complaint Filed November 1, 2021
- Exhibit "B" - Federal Election Commission Final Decision with Cover Letter  
Filed August 8, 2022
- Exhibit "C" - Federal Election Commission First General Counsel's Report
- Exhibit "D" - Copy of Summary Page for MUR #7946 as of December 2023  
on FEC website.

# EXHIBIT “A”

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of:

CENTER FOR TECH AND CIVIC LIFE

233 N Michigan Ave  
Chicago, IL 60601,

TIANA EPPS-JOHNSON

Individually and in her capacity as Executive Director of  
Center for Tech and Civic Life  
233 N Michigan Ave  
Chicago, IL 60601

and

UNITED STATES ELECTIONS ASSISTANCE COMMISSION,  
MONA HARRINGTON, individually and in her capacity as Executive Director & PAUL  
REPAK, Individually and in his capacity as Financial Director  
United States Elections Assistance Commission  
1335 East-West Highway, Suite 4300  
Silver Spring, Md 20910

**COMPLAINT****Introduction:**

1. This complaint is filed under [52 U.S.C. § 30109\(a\)\(1\)](#) of the Federal Election Campaign Act of 1971 (“FECA”), as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA).<sup>1</sup>
2. Complainant is over the age of 18, eligible to vote in United States federal elections, and registered as a voter in the State of Texas. Complainant is representative of all

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<sup>1</sup> The FEC has exclusive jurisdiction over this original complaint. *Friends of Phil Gramm v. Americans for Phil Gramm in '84*, [587 F.Supp. 769](#) (E.D. Va. 1984); *FEC v. Franklin*, [718 F. Supp. 1272](#) (E.D. Va), *aff'd in part, vacated in part*, [903 F. 2d 3](#) (4<sup>th</sup> Cir. 1989)

United States citizens, regardless of political party affiliation, that seek to protect their most basic right to have meaningful participation in electing their political leaders.

3. Complainant is seeking a complete and thorough investigation, by the Federal Elections Commission, for all transactions, made during the 2020 election campaign cycle, between the United States Elections Assistance Commission (“EAC”) and its vendor, the Center for Tech and Civic Life (“CTCL”) and related parties, as described above and herein.
4. Complainant is also requesting that the Federal Election Commission review the actions of the United States Elections Assistance Commission for *ultra vires* acts outside of that agency’s authority under its enabling statute, or refer such complaint as is necessary under the circumstances.
5. The complaint is based on information and belief that the Center for Tech and Civic Life (“CTCL”), aided and abetted by the other Respondents above, has violated various provisions the FECA, BCRA, and Federal Election Commission regulations as codified under the United States Code of Federal Regulations (C.F.R.) by making illegal and prohibited contributions to political candidates and campaigns. [52 U.S.C. § 30119](#); [52 U.S.C. § 30122](#).
6. These political contributions were significant in amount, both direct and indirect, made during the 2020 election campaign cycle. and appear to be designed with the intent to tilt the 2020 federal elections toward one political party and its candidate(s) for U.S. President and various federal offices across multiple States.



7. Review of publicly available information appears to show a scheme of *quid pro quo* to funnel funds from the United States taxpayers to assist with 2020 election cycle campaigns of specific candidates and/or political parties.
8. Further, review of publicly available information appears to show a scheme of *quid pro quo* to funnel funds from a wealthy individual and their related and/or controlled entities, through a federal contractor, to assist with 2020 election cycle campaigns of specific candidates and political parties and avoid specific limitations set by federal law.
9. Federal law prohibits any federal contractor, who is entered into any contract with the United States or any department or agency thereof, for the rendition of services, to make, either directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee, or candidate for Federal office or to any person for any political purpose or use. 52 U.S.C. § 30119, 11 C.F.R. §115.2.
10. It is believed that the failure of the United States government, through its agencies, to properly review information and follow appropriate contracting rules has caused a single, financially powerful individual to contribute excessive amounts of political contributions in his personal name or the name of his controlled entities. 52 U.S.C. § 30122. Such actions interfere with the federal government's ability and authority to combat corruption and compromise the democratic process by allowing a federal agency to favor some participants in that process over others.
11. The EAC's failures to properly implement, review and monitor its own contracting processes and expenditures would also cause issues with campaign finance reporting

of any individual candidate or entity required to report receipts and expenditures under federal law.

12. The above violations, coupled with decisions made by the EAC to unilaterally expand its authority beyond its enabling statutes, has damaged the 2020 federal election cycle beyond any repair, and violated the Constitutionally protected rights of all voters in the 2020 federal election cycle.
13. The FEC should immediately open an investigation into this matter, and pursue any and all remedies, both civil and criminal, against all individuals that actively and materially participated in this scheme to defraud the American citizens, damage the Republic, damage the democratic process, and pervert the national voting process in multiple federal elections.
14. Under the laws governing federal campaign financing, the above stated statutory prohibitions includes information and leads, the fruits of paid research, or similar investigatory activity, to a political committee, as these activities are considered an “in-kind” contribution. As federal political campaigns are restricted from accepting these prohibited funds, any federal political campaign, including, but not limited to the 2020 presidential campaign, is subject to scrutiny. Investigation is, therefore, requested into these matters. 52 U.S.C. § 30109 (a)(2); *see also* 11 C.F.R. § 111.4(a).

### **FACTS**

15. At all times relevant, Respondent CTCL was employed as a federal contractor with the U.S. Elections Assistance Commission (“EAC”).

### United States Elections Assistance Commission

16. The United States Congress passed the Voting Assistance and Election Administration Act, commonly known as the Help America Vote Act (“HAVA”) in 2002. HAVA is a statutory system that addressed allegations of fraud in the 2000 election that effectively changed major elements of the administrative process for federal elections by invoking Congress’s constitutional authority to set rules for congressional elections.
17. When the United States Congress passed the HAVA, one of the intentions of Congress in enacting these statutes was to promote the fundamental right to vote. One example of this was improving access for handicapped and elderly individuals to registration facilities and polling places for Federal elections. ([52 U.S.C. § 20101](#), et seq.). Another purpose was to establish a program to eliminate the punch card system that had caused significant problems and added additional costs to the federal elections in the 2000 election cycle. [52 U.S.C. § 20902](#).
18. As a part of HAVA, Congress established the United States Election Assistance Commission (“EAC”). [52 U.S.C. 20921](#).<sup>2</sup>
19. EAC is a non-rulemaking body, with membership appointed by the President of the United States with advice and consent of the U.S. Senate. [52 U.S.C. § 20923](#). This places this agency under the auspices and control of the executive branch of the federal government.
20. The duties of the EAC are mostly limited to serving as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal Elections. [52 U.S.C. § 20922](#).

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<sup>2</sup> See also, Tokaji, [The Paperless Case: Electronic Voting and Democratic Values](#), 73 Fordham L. Rev. 1711, March 2005.

21. One of the agency's duties is related to the testing, certification, decertification, and recertification of voting system hardware and software. 52 U.S.C. § 20922(2). This testing, if done through EAC, is performed in conjunction with and with recommendation by the National Institute of Standards and Technology. 52 U.S.C. § 20971(a)(1). There is also an option for the State to provide for the testing by "laboratories accredited by the Commission ("EAC") under this section. 52 U.S.C. § 20971(a)(2).
22. There is no provision in the statute for EAC to form a private-public partnership ("PPP") and mandate testing, set up mandatory cybersecurity procedures for the state's election officials, or recommend specific machines.
23. The primary duty of the EAC has been the providing of information and training on the management of the payment and grants under 52 U.S.C. § 21001, *et. seq.* These payments of U.S. taxpayer funds were appropriated by the U.S. Congress for payment to the individual States, 52 U.S.C. § 21001(a), for election assistance and are restricted in use to only those activities as stated under the statutes. 52 U.S.C. § 21001(b)(use for improvement of voting system standards).
24. There is no mention of any EAC funding that would be available for local election officials, such as county or city.
25. Further, all States receiving these U.S. funds are required to certify that no federal appropriated funds will be paid for influencing or attempting to influence United States officers or employees.  
  
<https://www.eac.gov/sites/default/files/paymentgrants/2020HAVAElectionSecurityAwardPacket.pdf>.

26. All 50 States have received at least a portion of these funds since HAVA enacted and funded. Having received these HAVA funds, the States are obligated to comply with EAC rules and regulations.
27. Mona Harrington is the Acting Executive Director at the U.S. Elections Assistance Commission. According to the EAC website:

“Mona assumed the Acting Executive Director role at the Election Assistance Commission in October of 2019. During this time she strategically reorganized the agency and directed a significant hiring initiative to recruit talent and fill numerous key personnel positions.

In addition, she directed the distribution of over \$425 million in security grant funds and \$400 million in CARES Act funds to the states. Mona assembled a new cyber-team to assist EAC stakeholders leading up to the 2020 election.” <https://www.eac.gov/about/staff-directory/mona-harrington>

28. Paul Repak is the Financial Director for the U.S. Elections Assistance Commission. According to the EAC website, Mr. Repak served as the Finance Supervisor for the Office of the Under Secretary at the U.S. Department of Transportation (DOT) for 10 years. He is responsible to oversee all financial activities of the EAC.
- <https://www.eac.gov/about/staff-directory/paul-repak>.

### **Center for Tech and Civic Life (“CTCL”)**

29. The CTCL is a non-profit organization providing federal election grants to local governments. *Exhibit “1”*.<sup>3</sup>

30. The CTCL was founded in 2012 by Tiana Epps-Johnson, Donny Bridges, and Whitney May. *Id.*

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<sup>3</sup> Exhibit “1” – Original Complaint, Cause No. 20-CV-02049, Minnesota Voters Alliance et. al. v. City of Minneapolis, U.S. Dist. Court Minnesota. For reference see, Exhibit “2” – The Legitimacy and Effect of Private Funding in Federal and State Electoral Processes.. (Complaints about CTCL began as early as Sept. 2020).

31. At all times relevant, Respondent Epp-Johnson was employed as the Executive Director, President of CTCL.

32. The CTCL headquarters is in Chicago, Illinois. *Id.*

33. The CTCL states that they are “a team of civic technologists, trainers, researchers, election administration and data experts working to foster a more informed and engaged democracy and helping to modernize elections.”

34. CTCL’s mission on its website includes training public election officials in communication and technology and to inform and mobilize voters.

<https://www.techandcivicle.org/>.

35. CTCL’s founders – Epps-Johnson, Bridges, and May – all previously worked at the New Organizing Institute (NOI), a center dedicated to training progressive groups and Democratic campaigns in digital campaigning strategies. *Id.*

36. Ms. Epps-Johnson was selected to join the inaugural cohorts of Obama Foundation Fellows (2018) and earned an MSc in Politics and Communications from the London School of Economics and a BA in Political Science from Stanford. It would appear that Ms. Epps-Johnson is not an expert in election administration, computer science or cyber security. *Exhibit 3 - CTCL webpage for Executive Director;*

<https://www.techandcivicle.org/team/tiana-epps-johnson/>.

37. NOI’s executive director, Ethan Roeder, led the data departments for the Obama presidential campaigns of 2008 and 2012. *Exhibit “1”*.

38. Funders of CTCL include progressive groups such as the Skoll Foundation, the Democracy Fund, the John S. and James L. Knight Foundation, and the Rockefeller Brothers Foundation. *Exhibit “2”*, : Attachment A: Flowchart: The

Relationship of Foundations and Non-Profit Organizations Involved in US Electoral Policy.

39. CTCL is also associated with Rock the Vote, who despite their non-partisan claims, has regularly featured progressive policies in its efforts to mobilize young people in elections. *Id.*
40. Along with Rock the Vote and The Skoll Foundation, CTCL also lists Facebook as a partner in their efforts. *Exhibit "2"*.
41. The CTCL has acknowledged the Complaint of the Amistad Project.  
<https://www.techandciviclifef.org/amistad-statement/>. *Exhibit "3", CTC: Statement on the Amistad Project.*
42. Further, CTCL maintains an active communications department providing information over a diverse number of topics. <https://www.techandciviclifef.org/news-and-events/>.
43. CTCL has previously acknowledged sending funds to local government entities, as well as States.
44. On September 1, Mark Zuckerberg and Priscilla Chan announced their \$300 million investments to promote "safe and reliable voting in states and localities". See, *Exhibit "1"*.
45. Of the \$300 million, \$250 million is going toward CTCL and private federal election grants to counties and cities. *Id.*
46. CTCL, as a progressive organization, targets urban cities for its private federal election grants to turn out the progressive vote in the urban cities. *Exhibit 2.*

### The Strawman Scheme

47. During the 2020 federal election cycle, EAC performed the same normal duties it had performed since its inception, but added additional duties to its plans.
48. These EAC activities included disbursing and administering \$425 million in funding to the States for election administration enhancements. *Exhibit 4 - EAC 2020 Annual Report*, p. 17, Line 1, *et. seq.*
49. It appears from the EAC Annual Report, that U.S. funds approved by HAVA, through the CARES act, were never funded, although somehow, the EAC had funds to disburse and administer in the amount of \$400 million dollars for emergency CARES Act funding. *Id. page 17 at paragraph "a"*.
50. It also appears that EAC administered and disbursed an additional \$425 million in new HAVA security grants funding to the states for election administration enhancement. *Id. at paragraph "b"*.
51. The EAC has proudly stated that this Herculean task of reviewing and processing these brand-new security grants was done "within 45 days and with less than one full-time grants staff member". *Id. See also, Exhibit 4 – List of Personnel - EAC, .*
52. The EAC's FY2020 Annual Report also shows that the EAC engaged the Center for Tech and Civic Life ("CTCL") to provide three tailored cybersecurity courses. *EAC Annual Report. at p. 17, "d"*.
53. This freshly formed public-private partnership was conspicuously advertised to the public at-large on the main page of the EAC's website throughout the federal election cycle in words and through a combined logo showing both the United State agency and the CTCL center's logos. See below.





54. The EAC also moved beyond its authorized duties and produced a document entitled “Cyber Crisis Management for Elections Officials”. *Exhibit 5*.
55. This particular EAC report is replete with examples of EAC attempts to take control of issues beyond both its statutory duties and personnel capabilities. Among the problems reported:
- A) a non-governmental resource reference to a company called Shadow, Inc. *Id.* p. 36; <https://twitter.com/ShadowIncHQ/status/1224773797380837377>. (Shadow Inc. is an independent, for-profit technology company that contracted with the Iowa Democratic Party to build a caucus reporting mobile app. Which was optional for local officials to use. The goal of the app was to ensure accuracy in a complex reporting system);
  - B) a step-by-step guide for Cybersecurity Crisis Management. *Id.* p. 28;
  - C) instruction to set up a War Room that defines a “goal to maintain real-time coordination across key stakeholders and facets of the security apparatus charged with ensuring the integrity of the electoral process in case a crisis unfolds.” *Id.* p. 21. Election stakeholders are defined as election workers, not the voting citizens. *Id.* p. 11;
  - D) an extensive list of steps for state and local elected election officials to take to achieve a hardening of the election infrastructure *Id.* p. 18 -19;
  - E) and, a listing of ways to control media communications to what could arguably be called an attempt to spin information to the general public. *Id.*

56. This EAC report, issued July 3, 2020, was prepared by an external consultant. *EAC Annual Report at. p. 3.*

57. Taking the EAC's attempt at transparency as a whole, a reasonable person could surmise that the "external consultant" referenced was CTLC.

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58. In order for the FEC to perform an evaluation as to the severity of the problem described above, in the unlikely event that simply the amount of the cash involved is not enough, Zuckerberg's involvement in the 2020 election cycle should be noted.

59. Mark Zuckerberg's involvement in the 2020 federal, Presidential and other, campaign(s) goes further that just enormous amounts of cash contributions.

60. In a visible demonstration of his absolute power, Mark Zuckerberg took down the Facebook account of the President of the United States on January 7, 2021. This move deprived the then sitting President of the United States of "his most influential broadcasting tools, curtailing his ability to command attention and drive the news cycle from his mobile phone at a moment's notice." Byers, Dylan, *How Facebook and Twitter decided to take down Trump's Accounts*, NBC News, January 14, 2021. <https://www.nbcnews.com/tech/tech-news/how-facebook-twitter-decided-take-down-trump-s-accounts-n1254317>.

61. The Facebook suspension of President Trump's account has been extended until 2023. Culliford, Elizabeth, *Facebook suspends Trumps until 2023, shifts rules for world leaders*, Reuters, June 5, 2021. <https://www.reuters.com/world/us/facebook-suspends-former-us-president-trumps-account-two-years-2021-06-04/>

62. Discovery in the afore mentioned civil litigation against CTCL has revealed unprecedented intervention in 2020 election with donations that have come to be known as “Zuck Bucks”. Kline, Phil, *Zuck’s Bucks were ILLEGAL*.  
<https://thenationalpulse.com/analysis/kline-zucks-bucks-were-illegal/>
63. Using a federal government contractor as a straw man, it appears that “Zuck Bucks” were funneled, in vast amounts of cash, for the benefit of specific campaigns and candidates. This would constitute a serious violation of federal campaign law.
64. FEC investigation and subpoena powers are necessary to ensure that Respondents were, and are currently, in compliance with federal law. The use of Zuck Bucks, funneled through a federal agency, would affect the reporting requirements of campaigns and political action committees, and these funds may not be properly reflected in the receipts and required reporting.
- .

### ANALYSIS & LAW

65. There should be no question that the public needs to have confidence in government and its decision making, which would include steps to ensure “that public officials and contractors adhere to the highest ethical standards and avoid transactions and circumstances that may compromise or appear to compromise the independence of” government and its agencies.<sup>4</sup> An essential part of instilling public confidence, at all

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<sup>4</sup> **The Congressional Favor Factory: Legalized Pay-To-Pay, A Study of Federal Grants, Campaign Cash, Investments, Employment, Power & Influence**, OpenTheBooks.com, American Transparency, October, 2019; [https://www.openthebooks.com/assets/1/6/The\\_Congressional\\_Favor\\_Factory\\_Report\\_FINAL2.pdf](https://www.openthebooks.com/assets/1/6/The_Congressional_Favor_Factory_Report_FINAL2.pdf) (Ethics Poll reports that 96% surveyed agree that it is unethical for Members of Congress to solicit campaign donations from Federal contractors based in their districts).

- levels of government, requires that the selection of contractors is based on merit.<sup>5</sup> and that the processes for those selections are properly monitored and audited.
66. In striking down various provisions of the Bipartisan Campaign Reform Act of 2002 over the past decade, Supreme Court jurisprudence has weighed the First Amendment right of free speech, and the possible chilling of free political speech, against the interests of the Government to regulate political campaign financing. *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)(The Government may not prohibit independent and indirect corporate expenditures on political speech); *McCutcheon v. Federal Election Commission*, 572 U.S. 185 (2014)(Aggregate limits have the effect of restricting how many candidates or committees the donor may support).
67. The post-McCutcheon age of politics has seen the rapid raise in the use of new forms of technology, moving campaign advertising away from print and film media and into the realm of digital streaming videos, text messages, e-mails, and the “posts” and “tweets” of social media. Arguably, these prior Court holdings have set up a system that favors the ultra-rich and their candidates, particularly in a state or national election campaign. *See, McCutcheon* at the Dissenting Opinion, Justice Breyer, with whom Justice Ginsburg, Justice Sotomayor, and Justice Kagan joined, for Examples

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<sup>5</sup> See, **Executive Order No. 2011-4**; Office of the Mayor, City of Chicago, May 16, 2014. <https://www.chicago.gov/content/dam/city/depts/dps/RulesRegulations/ExecutiveOrder20114.pdf>, and Caron, Erin, Rahm Took Campaign Cash From Companies Doing Business with Chicago: Report, November 14, 2014, <https://www.nbcchicago.com/news/politics/rahm-took-campaign-cash-from-companies-doing-business-with-chicago/61814/> ("The management of municipal pensions should be totally transparent and free of political influence," Arthur Levitt, ex-Securities and Exchange Commission chairman, told the outlet. "The acceptance of contributions by city officials from advisers managing city funds, in my book, smells like bribery.").

of issues related to the invalidation of the aggregate rule, particularly Example Three, Proliferating Political Action Committees (PACs).

68. The new “McCutcheonesque” U.S. Presidential candidate is very unlikely to be someone who ran for city council, the state legislature, or even Congress. This sets up a real life situation, where an individual billionaire has the means and opportunity to control the outcomes of nation-wide U.S. Presidential elections.
69. In today’s media age, the importance of preserving the statutory checkpoints that prevent corruption become even more critical. The fact scenario in this case, *albeit* a potentially illegal one, presents a solution of what to do when there simply are not enough candidates, PAC’s or super PAC’s for you to make a sizable donation to the Presidential candidate of your choice. Simply bypass the federal campaign finance rules hiding behind a partisan not-for-profit.
70. Federal campaign finance laws prohibit contributions by government contractors. 52 U.S.C. § 30119, 11 C.F.R. §115.2. The statute reads as follows:
- “(a) **PROHIBITION:** It shall be unlawful for any person—
- (1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.”

71. This prohibition restricts federal contractors from making any contribution “to any political party, committee, or candidate for public office. The central restriction is thus a prohibition on contributions to candidates, but directly related to that bar on candidate contributions are the prohibitions on contributing to political parties and to committee related to candidates. This prohibition acts as a guard to prevent contributors from dodging the ban on candidate contributions by giving to groups that could coordinate with the candidate. *Wagner v. Federal Election Commission*, 901 F. Supp. 2d 101(D.D.C. 2012).
72. A ban on political contributions satisfies the First Amendment only if it is “closely drawn to match a sufficiently important interest. *See, Citizens United v. FEC*, 558 U.S. 210 (2010)(The Government may not prohibit independent and indirect corporate expenditures on political speech).
73. In *Wagner*, the Government offered two important interests to justify this restriction. Although *Wagner* involved individual employees, the principles are the same here, and the reasoning is applicable as well.
74. The first of the two important interests is a Government interest in ensuring that federal employment does “not depend on political performance,” that vendors “enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof,” and that vendors are “free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors

rather than to act out their own beliefs.” *Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO*, 413 U.S. 548, 564 – 66 (1973).

75. Considering the close associations between CTCL officers and staff to partisan politics, the amount of funds handled (received and distributed), the possibility that the source of the funds has been misrepresented, and nature of the new and highly technical functions performed in this case, there should be no question that this interest alone is sufficient to overcome any constitutional objections to this statute. *See, Federal Election Commission MURs 7812, 7821, 7825, 7827, 7868, and 7869* – Shielding Facebook’s complained of conduct under the Federal election Campaign Act’s media exemption and the Press Clause of the First Amendment to the federal Constitution.
76. The second interest is to avoid *quid pro quo* corruption or the appearance thereof. *Buckley v. Valeo*, 424 U.S. 1, 25-26 (1976). There is no doubt that, as it pertains to this election cycle, there is serious nation-wide concern over the existence of quid pro quo corruption.<sup>6</sup> This is so, despite the insistence of EAC staff, in its annual report, that there was no issue. This is not limited to a small hand full of individuals on the losing side.<sup>7</sup>

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<sup>6</sup> Hemingway, Mollie, *Rigged: How the Media, Big Tech and the Democrats Seized Our Elections*, Regency Publishing (2021).

<sup>7</sup> Agiesta, J., CNN Poll: *Most Americans Feel Democracy is Under Attack in the US*. CNN Politics, (Sep. 15, 2021)(93% of all Americans feel that democracy in the US is at least being tested with 56% indicating that democracy is under attack. <https://www.cnn.com/2021/09/15/politics/cnn-poll-most-americans-democracy-under-attack/index.html>

77. Federal campaign finance laws prohibit contributions in the name of another person.

52 U.S.C. § 30122. The statute reads as follows:

“No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.”

78. The statute prohibits the use of a straw donor to make contributions. A straw donor contribution is an indirect contribution from A, through B, to the campaign. It occurs when A solicits B to transmit funds to a campaign in B's name, subject to A's promise to advance or reimburse the funds to B. Although employing different methods, false name and straw donor schemes both facilitate attempts by an individual (or campaign) to thwart disclosure requirements, as well as contribution limits. *U.S. v. O'Donnell*, 608 F.3d 546 (9<sup>th</sup> Cir. 2010), cert. denied, 563 U.S. 929 (2011). *See also, United States v. Boender*, 649 F.3d 650 (7<sup>th</sup> Cir 2011)(A specific quid pro quo of money is sufficient, but not necessary, to violate 18 U.S.C. §666(a)(1)(B), the parallel provision criminalizing the solicitation and acceptance of bribes and rewards).
79. The use of various forms of media, including independently produced films and videos, email, text message and social media platforms have become a major tool for use in all types of political campaigns for last several federal campaign cycles. As a result, money can flow, in vast amounts, through newly discovered streams. It is incumbent upon the FEC to carefully monitor campaign receipts and expenses, and carefully review the campaign financing reports, particularly where hundreds of millions of dollars have transferred through both a non-profit and a U.S. agency.



**PRAYER FOR RELIEF**

80. The Center for Tech and Civic Life is a partisan actor, run by partisan Democrats, which has used its corporate resources, gained through employment as a federal vendor, to provide active support for partisan campaign financing in violation of federal law. It is, therefore, respectfully requested that the Commission:

1. Conduct an immediate and full investigation into Center for Tech and Civic Life's activities and contributions under the powers invested in it by the United States Congress; 52 U.S.C. 30107 (a)(9). This investigation should include, but not limited to:
  - a) Review of specific forms of the contracts for compliance with federal law;
  - b) Trace the sources, uses and beneficiaries of all funds connected to the United States Elections Assistance Commission, starting with the appointment of its executive director in 2019, and focusing on receipts and distributions during the year 2020.
  - c) Review of the complete bidding process, including, but not limited to expressions of interest and requests for qualifications, requests for proposals and unsolicited proposals;
  - d) Review of evaluation and grant criteria including, but not limited to, specific factors, generic best value for money tests, and subjective, as well as objective, criteria.
  - e) Amount and dates of all payments of U.S. taxpayer dollars to CTCL or its sub-contractors or assigns, including, but not limited to FireEye consultants and other cybersecurity advisors.

- f) Review of risk factors.
  - g) The criteria used to select a partisan, inexperienced not-for-profit group as versus a for-profit cybersecurity expert.<sup>8 9 10 11</sup>
2. Investigate all Respondents for violations of 52 U.S.C. §30119; 11 C.F.R. §114.2(b); and 52 U.S.C. § 30122, and such violations of federal law as may come to light during this FEC investigation.
  3. Seek injunctions, disgorgement, damages, and/or civil and criminal penalties as required by federal law for the benefit of the citizens of the United States of America.
  4. Review the actions of the United States Elections Assistance Commission, through its employee Respondents, and take appropriate actions related to the FEC's findings.
  5. Take any actions necessary for violations of federal requirements for coordinated communications under 52 U.S.C. § 30104.

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<sup>8</sup> See, Eichensehr, Kristen, Public-Private Cybersecurity, Texas Law Review Vol 95:467, (2017)(Discussing how private cybersecurity systems differ from traditional privatization because private actors, not the government, decide what functions they should perform, and, may, therefore, operate outside of the traditionally restrained private contractor in the areas of accountability, transparency, and due process or fairness, as well as security and privacy.

<sup>9</sup> See also, Christensen, Kristoffer, et. al., Public-Private Partnership on Cyber Security: A Practice of Loyalty, International Affairs 93:6(2017) p. 1435-1452. (Discussing the concepts of PPP and shared risks, purpose and loyalty.

<sup>10</sup> See, Denny, William, **Private Sector Actions in Light of the Cybersecurity Executive Order**; ABA Business Law Section, Internet Law & Cyber-Security; Sept. 13, 2021; <https://businesslawtoday.org/2021/09/private-sector-actions-in-light-of-the-cybersecurity-executive-order/>.

<sup>11</sup> Brooks, Chuck, Public Private Partnerships and The Cybersecurity Challenge of Protecting Critical infrastructure, Forbes, May 6, 2019. (Discuss the national security issues related to federal PPP's); <https://www.forbes.com/sites/cognitiveworld/2019/05/06/public-private-partnerships-and-the-cybersecurity-challenge-of-protecting-critical-infrastructure/amp/>

Respectfully submitted,

By: \_\_\_\_\_  
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texasbc@swbell.net  
Law Offices of Barbara W. Palmer  
P.O. Box 1386  
Princeton, TX 75407  
(214) 734-1861

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of November 2021.

\_\_\_\_\_  
Notary Public, In and For the State of Texas.

# EXHIBIT “B”



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**VIA EMAIL AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

August 8, 2022

Barbara W. Palmer, Esq.  
P.O. Box 1386  
Princeton, TX 75407  
[Bpalmer.txag@gmail.com](mailto:Bpalmer.txag@gmail.com)

RE: MUR 7946 (Center for Tech and  
Civic Life, *et al.*)

Dear Ms. Palmer:

The Federal Election Commission has considered the allegations contained in your complaint dated November 1, 2021, and your supplemental complaint dated January 3, 2022, along with allegations against the same respondents in a complaint filed in MUR 7854. The Commission found no reason to believe that (1) the Center for Tech and Civic Life made prohibited corporate contributions in violation of [52 U.S.C. § 30118\(a\)](#), knowingly permitted its name to be used to effect a contribution in the name of another in violation of [52 U.S.C. § 30122](#), made contributions while it was a federal contractor in violation of [52 U.S.C. § 30119\(a\)\(1\)](#), and failed to organize, register, and report as a political committee in violation of [52 U.S.C. §§ 30102, 30103, and 30104](#); (2) Tiana Epps-Johnson consented to prohibited corporate contributions in violation of [52 U.S.C. § 30118\(a\)](#); and (3) 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, on July 26, 2022, the Commission closed the file in this matter.<sup>1</sup> The Factual and Legal Analysis, which explains the Commission's findings, is enclosed.

Documents related to the case 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). The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* [52 U.S.C. § 30109\(a\)\(8\)](#).

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<sup>1</sup> The complaint you submitted also purported to name as respondents the United States Election Assistance Commission ("EAC") and two of its then-employees, Mona Harrington, and Paul Repak. The Commission determined that the EAC, Harrington, and Repak were not proper respondents under the Federal Election Campaign Act of 1971, as amended, and therefore made no findings related to them.

MUR 7946 (Center for Tech and Civic Life, *et al.*)

Letter to Ms. Palmer

Page 2

If you have any questions, please contact Laura Conley, the attorney assigned to this matter, at (202) 694-1475 or [lconley@fec.gov](mailto: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.”<sup>1</sup> Tiana Epps-Johnson is CTCL’s Executive Director, and Whitney  
5 May is its Director of Government Services.<sup>2</sup> 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.”<sup>3</sup>  
9 David Becker is CEIR’s Executive Director.<sup>4</sup> 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.<sup>5</sup>

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.”<sup>6</sup> 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.<sup>7</sup> CTCL states that it awarded grants to more than 2,500

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<sup>1</sup> 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).

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

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

<sup>4</sup> *Id.* at 1.

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

<sup>6</sup> 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.

<sup>7</sup> 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.<sup>8</sup> 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).<sup>9</sup> 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.<sup>10</sup>

#### 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.<sup>11</sup>

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

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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).

<sup>8</sup> 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).

<sup>9</sup> 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.*

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *See generally* Compl., MUR 7854 (Oct. 30, 2020).

1 COVID-19 was a “ruse.”<sup>12</sup> 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,<sup>13</sup> 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.<sup>14</sup>  
9 The MUR 7854 Complaint also contends that the only jurisdiction favoring Republican Donald  
10 Trump received the smallest CTCL grant.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> For example, the Complaint suggests that CTCL’s first grant should have gone

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> *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.

<sup>14</sup> 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.

<sup>15</sup> *See id.* at 7-9.

<sup>16</sup> Compl. at 33, MUR 7854.

<sup>17</sup> *Id.* at 8.

1 to New York City based on its high rate of COVID cases and deaths.<sup>18</sup> 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 Becker<sup>19</sup> — have partisan objectives, as allegedly evidenced by their social media posts and  
5 Epps-Johnson’s history of involvement with Democratic-leaning organizations.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> Finally, the  
16 Complaint suggests that Chan and Zuckerberg’s donations to CTCL and CEIR must have been

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<sup>18</sup> *Id.*

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

<sup>20</sup> 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”).

<sup>21</sup> *Id.* at 21-22.

<sup>22</sup> *Id.* at 25-26, 29.

<sup>23</sup> *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).

<sup>24</sup> *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.”<sup>25</sup>

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.<sup>26</sup> 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.”<sup>27</sup> 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.<sup>28</sup>

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

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<sup>25</sup> *Id.* at 35-40.

<sup>26</sup> 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.

<sup>27</sup> *Id.* at 5-6.

<sup>28</sup> *Id.* at 4.

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

4 Epps-Johnson and May state that the MUR 7854 Complaint is “entirely unclear” on how  
5 their actions allegedly violated the Act.<sup>32</sup> They state that they expressed their personal views on  
6 social media, and that volunteer internet activity is exempt from the Act.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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.”<sup>36</sup> Chan and Zuckerberg contend that they did not

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<sup>29</sup> CEIR and Becker Resp. at 4-5, MUR 7854.

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> CTCL *et al.* Resp. at 4, MUR 7854.

<sup>33</sup> *Id.*

<sup>34</sup> CEIR and Becker Resp. at 2, MUR 7854.

<sup>35</sup> Chan and Zuckerberg Resp. at 2, MUR 7854.

<sup>36</sup> *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.<sup>37</sup>

### 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.<sup>38</sup>

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.<sup>39</sup> It points to the distribution of the grants, asserting that they  
9 were targeted at “urban cities . . . to turn out the progressive vote.”<sup>40</sup> The MUR 7946 Complaint  
10 and a Supplemental Complaint in the same matter also attach various documents that purport to  
11 show partisan intent.<sup>41</sup>

12 Additionally, the Supplemental Complaint in MUR 7946 points to analyses of CTCL’s  
13 2020 tax return performed by the Capital Research Center.<sup>42</sup> 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.<sup>43</sup> Finally, the MUR 7946 Complaint supports its assertion that the CTCL grants were

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

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

<sup>39</sup> Compl. ¶ 6, MUR 7946.

<sup>40</sup> *Id.* ¶ 46.

<sup>41</sup> *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)).

<sup>42</sup> 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)).

<sup>43</sup> *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.<sup>44</sup>

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.<sup>45</sup> 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.<sup>46</sup>

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.”<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

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

<sup>45</sup> Compl. ¶¶ 8, 15, MUR 7946.

<sup>46</sup> *See id.* ¶¶ 59-60.

<sup>47</sup> CTCL and Epps-Johnson Resp. at 2-3, MUR 7946.

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *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.”<sup>50</sup> 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.<sup>51</sup>

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.”<sup>52</sup>  
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.”<sup>53</sup> 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.<sup>54</sup> For example, they contend that analysis shows that Trump won more than  
13 60% of the jurisdictions that received CTCL grants.<sup>55</sup> 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.<sup>56</sup>

### 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

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<sup>50</sup> CTCL and Epps-Johnson Resp. at 3, MUR 7946.

<sup>51</sup> *Id.* at 5.

<sup>52</sup> Chan and Zuckerberg Resp. at 2, MUR 7946.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> *Id.* at 3-4.

<sup>55</sup> *Id.* at 3.

<sup>56</sup> *Id.* at 5.

1 for Federal office.”<sup>57</sup> 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.”<sup>58</sup> 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.”<sup>59</sup>  
6 They also include coordinated communications, as determined by a three-part test set out in the  
7 Commission’s regulations.<sup>60</sup> 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.<sup>61</sup> 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.”<sup>62</sup>

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.”<sup>63</sup> 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’”

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<sup>57</sup> 52 U.S.C. § 30101(8); accord 11 C.F.R. § 100.52(a).

<sup>58</sup> 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).

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

<sup>60</sup> 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).

<sup>61</sup> 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).

<sup>62</sup> 52 U.S.C. § 30101(9).

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

1 might be overbroad, reaching “groups engaged purely in issue discussion.”<sup>64</sup> 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.”<sup>65</sup> Political committees must comply with certain  
5 organizational and reporting requirements set forth in the Act. <sup>66</sup>

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

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

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<sup>64</sup> [424 U.S. 1](#) (1976) (per curiam).

<sup>65</sup> *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.

<sup>66</sup> [52 U.S.C. §§ 30102, 30103, 30104](#).

<sup>67</sup> *Id.* § 30122.

<sup>68</sup> *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\(b\)](#).

<sup>69</sup> [11 C.F.R. § 115.2\(a\)](#).

1 receiving corporate contributions.<sup>70</sup> 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.”<sup>71</sup>

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.<sup>72</sup> 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.<sup>73</sup>

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,

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<sup>70</sup> 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).

<sup>71</sup> 52 U.S.C. § 30118(a).

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

<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup>

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.<sup>77</sup>  
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.<sup>78</sup> 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.<sup>79</sup> CTCL also asserts that a review found that more of its

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<sup>74</sup> *Supra* notes 26-27, 29 and accompanying text.

<sup>75</sup> *Supra* notes 9, 27 and accompanying text.

<sup>76</sup> 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”).

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

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

<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup>

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.”<sup>83</sup> 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

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<sup>80</sup> CTCL and Epps Johnson Resp. at 3, MUR 7946.

<sup>81</sup> 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).

<sup>82</sup> Compl. ¶ 46, MUR 7946.

<sup>83</sup> 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.<sup>84</sup>

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.<sup>85</sup> 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.<sup>86</sup>

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

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

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

<sup>86</sup> *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.<sup>87</sup>

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.<sup>88</sup>

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.<sup>89</sup> 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.

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<sup>87</sup> 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”).

<sup>88</sup> 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.

<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup> 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

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<sup>90</sup> Compl. at 4, MUR 7854.

<sup>91</sup> 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](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).

<sup>92</sup> 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.<sup>93</sup> 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.

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<sup>93</sup> 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.”).

# EXHIBIT “C”

**FEDERAL ELECTION COMMISSION****FIRST GENERAL COUNSEL'S REPORT****MUR 7854**

DATE COMPLAINT FILED: Oct. 30, 2020

DATE SUPPLEMENT FILED: Nov. 2, 2020

DATE OF NOTIFICATIONS: Nov. 9, 2020

DATE OF LAST RESPONSE: Feb. 11, 2021

DATE ACTIVATED: Mar. 16, 2021

EXPIRATION OF SOL: Sept. 1 – Nov. 3, 2025

ELECTION CYCLE: 2020

**COMPLAINANT:**

Jay Stone

**RESPONDENTS:**

Center for Tech and Civic Life

Tiana Epps-Johnson

Whitney May

Center for Election Innovation and Research

David Becker

Priscilla Chan

Mark Zuckerberg

**MUR 7946**

DATE COMPLAINT FILED: Dec. 1, 2021

DATE SUPPLEMENT FILED: Jan. 3, 2022

DATES OF NOTIFICATIONS: Dec. 8, 2021

Jan. 5, 2022

DATE OF LAST RESPONSE: Feb. 22, 2022

DATE ACTIVATED: Mar. 29, 2022

EXPIRATION OF SOL: Sept. 1 – Nov. 3, 2025

ELECTION CYCLE: 2020

**COMPLAINANT:**

Barbara Palmer

**RESPONDENTS:**

Center for Tech and Civic Life

Tiana Epps-Johnson

U.S. Election Assistance Commission

Mona Harrington

Paul Repak

Priscilla Chan

Mark Zuckerberg

**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."<sup>1</sup> Tiana Epps-Johnson is CTCL's Executive Director, and Whitney  
14 May is its Director of Government Services.<sup>2</sup> 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."<sup>3</sup>  
18 David Becker is CEIR's Executive Director.<sup>4</sup> The U.S. Election Assistance Commission is an  
19 independent, bipartisan federal commission established by Congress through the Help America

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<sup>1</sup> 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).

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

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

<sup>4</sup> *Id.* at 1.

MURs 7854, 7946 (Center for Tech and Civic Life, *et al.*)

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1 Vote Act of 2002 (“HAVA”).<sup>5</sup> Mona Harrington was formerly the executive director of the  
2 EAC, and Paul Repak is its finance director.<sup>6</sup> 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.<sup>7</sup>

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.”<sup>8</sup> 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.<sup>9</sup> 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

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

<sup>6</sup> *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>.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 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.<sup>10</sup> 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).<sup>11</sup> 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.<sup>12</sup>

#### 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.<sup>13</sup>

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.”<sup>14</sup> 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

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<sup>10</sup> 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).

<sup>11</sup> 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.*

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *See generally* Compl., MUR 7854 (Oct. 30, 2020).

<sup>14</sup> *Id.* at 4.

1 process to “Democratic strongholds” in Wisconsin, Pennsylvania, Michigan, Iowa, Georgia, and  
2 South Carolina,<sup>15</sup> 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.<sup>16</sup>  
4 The MUR 7854 Complaint also contends that the only jurisdiction favoring Republican Donald  
5 Trump received the smallest CTCL grant.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> 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 Becker<sup>21</sup> — have partisan objectives, as allegedly evidenced by their social media posts and

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<sup>15</sup> *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.

<sup>16</sup> 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.

<sup>17</sup> *See id.* at 7-9.

<sup>18</sup> Compl. at 33, MUR 7854.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.*

<sup>21</sup> *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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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

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<sup>22</sup> 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").

<sup>23</sup> *Id.* at 21-22.

<sup>24</sup> *Id.* at 25-26, 29.

<sup>25</sup> *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).

<sup>26</sup> *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.”<sup>27</sup>

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.<sup>28</sup> 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.”<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup> CEIR argues that it is irrelevant whether it has medical staff or prior grant-making

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<sup>27</sup> *Id.* at 35-40.

<sup>28</sup> 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.

<sup>29</sup> *Id.* at 5-6.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> CEIR and Becker Resp. at 4-5, MUR 7854.

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

3 Epps-Johnson and May state that the MUR 7854 Complaint is “entirely unclear” on how  
4 their actions allegedly violated the Act.<sup>34</sup> They state that they expressed their personal views on  
5 social media, and that volunteer internet activity is exempt from the Act.<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup> 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.”<sup>38</sup> 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.<sup>39</sup>

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<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.* at 5.

<sup>34</sup> CTCL *et al.* Resp. at 4, MUR 7854.

<sup>35</sup> *Id.*

<sup>36</sup> CEIR and Becker Resp. at 2, MUR 7854.

<sup>37</sup> Chan and Zuckerberg Resp. at 2, MUR 7854.

<sup>38</sup> *Id.* at 4.

<sup>39</sup> *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.<sup>40</sup>

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.<sup>41</sup> It points to the distribution of the grants, asserting that they  
8 were targeted at “urban cities . . . to turn out the progressive vote.”<sup>42</sup> 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.”<sup>43</sup> 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.”<sup>44</sup>

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

<sup>41</sup> Compl. ¶ 6, MUR 7946.

<sup>42</sup> *Id.* ¶ 46.

<sup>43</sup> *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)).

<sup>44</sup> *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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup>

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

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<sup>45</sup> 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)).

<sup>46</sup> *Id.*, Ex. 4 at 2.

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

<sup>48</sup> Compl. ¶¶ 8, 15, MUR 7946.

<sup>49</sup> *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.”<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

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.”<sup>53</sup> 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.<sup>54</sup> 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,<sup>55</sup> although the same review reportedly found that overall more funds were

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<sup>50</sup> 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.

<sup>51</sup> See Compl. ¶¶ 15, 52-53, MUR 7946.

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

<sup>53</sup> CTCL and Epps-Johnson Resp. at 2-3, MUR 7946.

<sup>54</sup> *Id.* at 3.

<sup>55</sup> *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).



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1 awarded to Democratic-leaning jurisdictions.<sup>56</sup> 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.”<sup>57</sup> 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.<sup>58</sup>

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.”<sup>59</sup>  
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.”<sup>60</sup> 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.<sup>61</sup> For example, they contend that analysis shows that Trump won more than  
14 60% of the jurisdictions that received CTCL grants.<sup>62</sup> As to the violations alleged in the

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<sup>56</sup> 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](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).

<sup>57</sup> 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.

<sup>58</sup> CTCL and Epps-Johnson Resp. at 5, MUR 7946.

<sup>59</sup> Chan and Zuckerberg Resp. at 2, MUR 7946.

<sup>60</sup> *Id.* at 3.

<sup>61</sup> *Id.* at 3-4.

<sup>62</sup> *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.<sup>63</sup>

3 Finally, the EAC, Harrington, and Repak also assert that there is no basis for the  
4 Complaint's allegations.<sup>64</sup> 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.<sup>65</sup>  
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.<sup>66</sup> 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.<sup>67</sup>

### 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."<sup>68</sup> 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

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<sup>63</sup> *Id.* at 5.

<sup>64</sup> *See* EAC *et al.* Resp. at 1.

<sup>65</sup> *Id.* at 2-3.

<sup>66</sup> *Id.* at 4-6.

<sup>67</sup> Repak Resp. at 1 (Feb. 8, 2022).

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

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1 and normal charge.”<sup>69</sup> 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.”<sup>70</sup>  
4 They also include coordinated communications, as determined by a three-part test set out in the  
5 Commission’s regulations.<sup>71</sup> 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.<sup>72</sup> 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.”<sup>73</sup>

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.”<sup>74</sup> 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.”<sup>75</sup> To cure that  
16 infirmity, the Court concluded that the term “political committee” “need only encompass

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<sup>69</sup> 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).

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

<sup>71</sup> 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).

<sup>72</sup> 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).

<sup>73</sup> 52 U.S.C. § 30101(9).

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

<sup>75</sup> 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.”<sup>76</sup> 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.<sup>77</sup>

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.<sup>78</sup> 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.”<sup>79</sup> The prohibition covers contributions  
12 to any political party, political committee, federal candidate, or “any person for any political  
13 purpose or use.”<sup>80</sup>

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

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<sup>76</sup> *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.

<sup>77</sup> 52 U.S.C. §§ 30102, 30103, 30104.

<sup>78</sup> *Id.* § 30122.

<sup>79</sup> *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).

<sup>80</sup> 11 C.F.R. § 115.2(a).

1 accepting or receiving corporate contributions.<sup>81</sup> 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.”<sup>82</sup>

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,<sup>83</sup> 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.<sup>84</sup>

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

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<sup>81</sup> 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).

<sup>82</sup> 52 U.S.C. § 30118(a).

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

<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup> 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,<sup>87</sup> 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.<sup>88</sup>

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.<sup>89</sup>

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<sup>85</sup> *Supra* notes 28-29, 31 and accompanying text.

<sup>86</sup> *Supra* notes 11, 29 and accompanying text.

<sup>87</sup> 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”).

<sup>88</sup> *See* Compl. at 25-29, 33, MUR 7854.

<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup>

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

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

<sup>91</sup> CTCL *et al.* Resp. at 5, MUR 7854.

<sup>92</sup> 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).

<sup>93</sup> 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).

<sup>94</sup> 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.”<sup>95</sup> 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.<sup>96</sup>

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.<sup>97</sup> 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

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

<sup>96</sup> *Supra* pages 5-6, 9-10, 13-14, and 19.

<sup>97</sup> *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.<sup>98</sup>

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.<sup>99</sup> 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.<sup>100</sup>

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

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<sup>98</sup> See Compl. at 21-23, MUR 7854.

<sup>99</sup> 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).

<sup>100</sup> 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*

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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.<sup>101</sup>

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.<sup>102</sup> 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).

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*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).

<sup>101</sup> 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.

<sup>102</sup> 52 U.S.C. § 30118(a).

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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.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup> 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

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<sup>103</sup> Compl. at 4, MUR 7854.

<sup>104</sup> 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](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](https://www.siliconvalleycf.org/sites/default/files/documents/development-forms/SVCF_ComparingCharitableOptions_web.pdf).

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

1 existed.<sup>106</sup> 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.<sup>107</sup> 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."<sup>108</sup> 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.<sup>109</sup> 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

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<sup>106</sup> 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.").

<sup>107</sup> 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.

<sup>108</sup> 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).

<sup>109</sup> 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.<sup>110</sup>

#### 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;

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<sup>110</sup> 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.

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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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Lisa J. Stevenson  
Acting General Counsel

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Charles Kitcher  
Associate General Counsel for Enforcement

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06/27/22



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Date

Claudio J. Pavia  
Deputy Associate General Counsel for Enforcement

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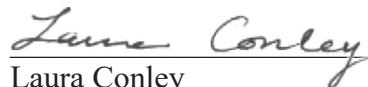
Ana J. Peña-Wallace  
Assistant General Counsel

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Laura Conley  
Attorney

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Attachment:

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1. Factual and Legal Analysis

# EXHIBIT “D”

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## MUR #7946

CENTER FOR TECH AND CIVIC LIFE, ET AL.

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### Summary

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**RESPONDENTS:** Center for Tech and Civic Life (CTCL); Chan, Priscilla; Epps-Johnson, Tiana; Harrington, Mona; Repak, Paul W.; U.S. Election Assistance Commission; Zuckerberg, Mark

**COMPLAINANT:** Palmer, Barbara

**SUBJECT:** Contributions-Prohibited; Contributions-In the name of another; Contributions-Excessive; Contributions-Corporations; Other; Reporting

**DISPOSITION:** The Commission decided by a vote of 6-0 to: Direct the Office of General Counsel to send an improvident letter to the Election Assistance Commission, Mona Harrington, and Paul Repak. The Commission decided by vote of 6-0 to: a. Find no reason to believe that the Center for Election Innovation and Research made prohibited corporate contributions in violation of [52 U.S.C. § 30118\(a\)](#). b. Find no reason to believe that the Center for Tech and Civic Life made prohibited corporate contributions in violation of [52 U.S.C. § 30118\(a\)](#). c. Find no reason to believe that the Center for Tech and Civic Life knowingly permitted its name to be used to effect a contribution in the name of another in violation of [52 U.S.C. § 30122](#). d. Find no reason to believe that the Center Tech and Civic Life made contributions while it was a federal contractor in violation of [52 U.S.C. § 30119\(a\)\(1\)](#). e. Find no reason to believe that the Center for Tech and Civic Life failed to organize, register, and report as a political committee in violation of [52 U.S.C. §§ 30102, 30103, and 30104](#). f. Find no reason to believe that



Priscilla Chan and Mark Zuckerberg made excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A). g. Find no reason to believe that Priscilla Chan and Mark Zuckerberg made contributions in the name of another in violation of 52 U.S.C. § 30122. h. Find no reason to believe that Tiana Epps-Johnson, Whitney May, and David Becker consented to prohibited corporate contributions in violation of 52 U.S.C. § 30118(a). i. Approve the Factual and Legal Analysis, as recommended in the First General Counsel’s Report dated June 27, 2022, subject to the edits as last circulated by Commissioner Cooksey’s Office on July 21, 2022 at 5:37 p.m. . . . REDACTED . . . j. Approve the appropriate letters. k. Close the file.

## Disposition

Disposition	Penalty	Respondent	Citation
No RTB		Chan, Priscilla	52 U.S.C. <u>§30116(a)(1)(A)</u> 52 U.S.C. <u>§30122</u>
		Harrington, Mona	
		Repak, Paul W.	
		Zuckerberg, Mark	52 U.S.C. <u>§30116(a)(1)(A)</u> 52 U.S.C. <u>§30122</u>
		Center for Tech and Civic Life (CTCL)	52 U.S.C. <u>§30102</u> 52 U.S.C. <u>§30103</u> 52 U.S.C. <u>§30104</u> 52 U.S.C. <u>§30118(a)</u> 52 U.S.C. <u>§30119(a)(1)</u> 52 U.S.C. <u>§30122</u>
		Epps-Johnson, Tiana	52 U.S.C. <u>§30118(a)</u>
		U.S. Election Assistance Commission	

## Documents

Type	Date	Document
Complaint, Responses, Designation of Counsel and Extensions of Time	02/22/2022	<a href="#">Response from Mark Zuckerberg and Dr. Priscilla Chan 1 MB</a>
	02/22/2022	<a href="#">Response from Center for Tech and Civic Life and Tiana Epps-Johnson 893 KB</a>
	02/07/2022	<a href="#">Designation of Counsel from U.S. Election Assistance Commission, Mona Harrington, and Paul Repak 9 MB</a>
	02/02/2022	<a href="#">Response from U.S. Election Assistance Commission, Mona Harrington, and Paul Repak 2 MB</a>
	02/01/2022	<a href="#">Response from Paul Repak 656 KB</a>
	01/20/2022	<a href="#">Grant of Extension of Time to Priscilla Chan and Mark Zuckerberg 761 KB</a>
	01/19/2022	<a href="#">Designation of Counsel and Request for Extension of Time from Priscilla Chan and Mark Zuckerberg 1 MB</a>
	01/14/2022	<a href="#">Grant of Extension of Time to U.S. Election Assistance Commission, Mona Harrington, and Paul Repak 747 KB</a>
	01/14/2022	<a href="#">Designation of Counsel and Request for Extension of Time from U.S. Election Assistance Commission, Mona Harrington, and Paul Repak 920 KB</a>
	01/13/2022	<a href="#">Grant of Extension of Time to Center for Tech and Civic Life and Tianna Epps-Johnson 761 KB</a>
01/12/2022	<a href="#">Request for Extension of Time from Center for Tech and Civic Life and</a>	

Type	Date	Document
		<a href="#">Tianna Epps-Johnson 808 KB</a>
	01/06/2022	<a href="#">Notification of Addendum to Complaint to Priscilla Chan and Mark Zuckerberg 767 KB</a>
	01/06/2022	<a href="#">Notification of Addendum to Complaint to Center for Tech and Civic Life and Tiana Epps-Johnson 767 KB</a>
	01/05/2022	<a href="#">Notification of Addendum to Complaint to Paul Repak 677 KB</a>
	01/05/2022	<a href="#">Notification of Addendum to Complaint to Mona Harrington 677 KB</a>
	12/08/2021	<a href="#">Notification of Complaint to Priscilla Chan 760 KB</a>
	12/08/2021	<a href="#">Notification of Complaint to Mark Zuckerberg 760 KB</a>
	12/08/2021	<a href="#">Notification of Complaint to Tiana Epps-Johnson 760 KB</a>
	12/08/2021	<a href="#">Notification of Complaint to Center for Tech and Civic Life 760 KB</a>
	11/08/2021	<a href="#">Complaint 10 MB</a>
	01/05/2021	<a href="#">Notification of Complaint to U.S. Election Assistance Commission 718 KB</a>
	01/03/2021	<a href="#">Addendum to Complaint 2 MB</a>
General Counsel Reports, Briefs, Notifications and Responses	08/08/2022	<a href="#">Notification with Factual and Legal Analysis to Priscilla Chan and Mark Zuckerberg 913 KB</a>

Type	Date	Document
	08/08/2022	<a href="#">Notification with Factual and Legal Analysis to Center for Tech and Civic Life, Tiana Epps-Johnson, and Whitney May 871 KB</a>
	08/08/2022	<a href="#">Notification with Factual and Legal Analysis to Barbara W. Palmer 872 KB</a>
	06/27/2022	<a href="#">First General Counsel's Report 1 MB</a>
Certifications	07/26/2022	<a href="#">Center for Tech and Civic Life; Tiana Epps-Johnson; Whitney May; Center for Election Innovation and Research; David Becker; Priscilla Chan; Mark Zuckerberg; U.S. Election Assistance Commission; Mona Harrington; Paul Repak 724 KB</a>

## Participants

Relationship	Name
Primary respondent	Center for Tech and Civic Life (CTCL)
Previous respondent	Chan, Priscilla
	Epps-Johnson, Tiana
	Harrington, Mona
	Repak, Paul W.
	U.S. Election Assistance Commission
	Zuckerberg, Mark
Complainant	Palmer, Barbara
Respondent's counsel	Joiner, Amanda

**Relationship**

**Name**

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Perkins Coie LLP - Washington, DC

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Trister Ross Schadler & Gold LLC

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