

BEFORE THE FEDERAL ELECTION COMMISSION

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CATHERINE HINCKLEY KELLEY
1411 K Street, NW, Suite 1400
Washington, DC 20005
(202) 736-2200

v.

MUR No. _____

MAKE AMERICA NUMBER 1
Jacquelyn James, Treasurer
2 Roosevelt Ave
Port Jefferson Station, NY 11776

DONALD J. TRUMP FOR PRESIDENT, INC.
Timothy Jost, Treasurer
725 Fifth Avenue
New York, NY 10022

REBUILDING AMERICA NOW
Ryan Call, Treasurer
P.O. Box 26141
Alexandria, VA 22313

COMPLAINT

I. INTRODUCTION

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Make America Number 1 (ID: C00575373) and Rebuilding America Now (ID: C00618876) have made, and the Donald J. Trump for President, Inc. campaign committee (ID: C00580100) has accepted, in-kind contributions in excess of federal contribution limits, failed to report those contributions, and used funds raised from

impermissible sources, in violation of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*

2. Specifically, based on published reports, complainants have reason to believe that Make America Number 1 has made in-kind contributions to Donald J. Trump for President, Inc. in the form of compensation for personal services rendered to the campaign, 52 U.S.C. § 30101(8)(A)(ii), and “coordinated communications,” 11 CFR § 109.21, and that Rebuilding America Now has made in-kind contributions to Donald J. Trump for President, Inc. in the form of “coordinated communications,” *id.*, and republished campaign materials, *id.* § 109.23. These in-kind contributions are in violation of FECA’s \$2,700 limit on contributions by non-multicandidate political committees to a candidate committee, 52 U.S.C. § 30116(a)(1); FECA’s prohibition on contributions to a candidate committee using corporate funds, 52 U.S.C. § 30118(a) and (b)(2); FECA’s requirement that political committees report and disclose all contributions made to candidates, 52 U.S.C. § 30104(b); and both committees’ sworn statements to the Commission that they would not make contributions to a candidate committee.
3. Additionally, based on published reports, complainants have reason to believe that Donald J. Trump for President, Inc. has accepted in-kind contributions from Make America Number 1 in excess of FECA’s \$2,700 limit on contributions by a non-multicandidate political committee to a candidate committee, 52 U.S.C. § 30116(a)(1); in violation of FECA’s prohibition on contributions to a candidate committee using corporate funds, 52 U.S.C. § 30118(a) and (b)(2); and FECA’s requirement that candidates report and disclose all contributions received from political committees, 52 U.S.C. § 30104(b).

4. By Make America Number 1 and Rebuilding America Now failing to report their in-kind contributions to Donald J. Trump for President, Inc., and by Donald J. Trump for President, Inc. failing to report in-kind contributions received from Make America Number 1, respondents misled the public and complainant Kelley about the true sources of Donald J. Trump for President, Inc.'s support, depriving the public and complainant Kelley of the facts necessary to properly evaluate candidates for federal office and to cast an informed vote.
5. Federal law prohibits an individual from contributing more than \$2,700 to Trump's campaign. A contributor violates those limits by contributing six- or seven-figure checks to Make America Number 1 or Rebuilding America, whose expenditures are coordinated with the campaign; as the U.S. Supreme Court has noted, "Coordinated expenditures of money . . . are tailor-made to undermine contribution limits,"¹ and "often will be as useful to the candidate as cash."²
6. Despite federal law requiring independence between campaign committees and super PACs, these coordination schemes have allowed a handful of wealthy Trump supporters to undermine FECA's contribution limits to spend millions on potentially corrupting coordinated expenditures supporting Donald J. Trump for President, Inc. The super PAC Make America Number 1 is inextricably intertwined with the Trump campaign. Evidence of such coordination includes:
 - Despite the so-called "120 day rule" limiting a campaign staffer's work for a super PAC within 120 days of leaving the campaign, at the behest of Trump's

¹ Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431, 464 (2001).

² McConnell v. Fed. Election Comm'n, 540 U.S. 93, 221-22 (2003).

then-campaign manager two high-level Trump staffers formed and led the Trump super PAC, Rebuilding America Now, fewer than 50 days after first *joining* the campaign, presenting additional opportunities to undermine the laws limiting the amount that an individual can contribute to a candidate's campaign.

- The individuals who formed, fund and lead Make America Number 1 were responsible for Trump hiring as campaign manager Kellyanne Conway, previous president of the super PAC; hiring Stephen K. Bannon as campaign CEO, whose projects have long been funded by the individuals who formed, fund and lead Make America Number 1; and Make America Number 1 appears to have covered the salaries for both Conway and Bannon as they work for the Trump campaign.
- At the request of Make America Number 1's founders and funders, the Trump campaign has begun contracting with a data firm owned by Make America Number 1's founders and funders and whose board includes Bannon, running afoul of the "common vendor" rule designed to preserve the independence of campaigns and political committees.

7. "If the Commission, upon receiving a complaint ... has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] ... [t]he Commission shall make an investigation of such alleged violation" 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

II. FACTS

a. REBUILDING AMERICA NOW

8. On March 29, 2016, the Trump campaign issued a press release stating:

Today Donald J. Trump announced that Paul J. Manafort will serve as his campaign's Convention Manager. Mr. Manafort is volunteering his considerable

insight and expertise because of his belief that Mr. Trump is the right person for these difficult times.³

9. On April 20, 2016, *Politico* reported that:

Donald Trump's new chief campaign strategist, Paul Manafort, is bringing on some close associates for key spots on Trump's presidential campaign, including ... Laurance Gay, who worked with Manafort on an effort to obtain a federal grant that one congressman called a "very smelly, sleazy business."⁴

Additionally, *Politico* noted:

It's not immediately evident whether Gay, who is based in Connecticut, has worked on a presidential campaign in recent decades. But he has been on the ground in California and has met with Trump's state director Tim Clark, according to the operative who works with the Trump campaign. The operative said that Gay has had discussions about the campaign's plans to spend heavily in the run-up to California's primary on June 7—the last day of voting—which in all likelihood will determine whether Trump reaches the 1,237-delegate threshold necessary to secure the GOP nomination before the convention.⁵

10. On April 25, 2016, the Trump campaign issued a press release stating:

Today, Donald J. Trump announced that he has hired Ken McKay as Senior Adviser to support the delegate operations team. Ken has formidable grassroots operations experience and is ideally positioned to further bolster the Trump campaign's field efforts.

Mr. Trump stated, "Ken has a proven track record in winning state political races. He will support our delegate operations team and bolster our ground game efforts. He brings tremendous experience to the job, and I know he is up to the task of working with my team."

On his announcement, Mr. McKay commented, "I am very honored to have the opportunity to work with Mr. Trump and such a resilient campaign. There is no

³ Press Release, Donald J. Trump for President, Inc., Donald J. Trump Announces Campaign Convention Manager Paul Manafort (Mar. 29, 2016), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-announces-campaign-convention-manager-paul-j.-manafort>.

⁴ Kenneth P. Vogel and Isaac Arnsdorf, *Trump Campaign Brings in Lobbyists for Key Posts*, POLITICO (Apr. 20, 2016), <http://www.politico.com/story/2016/04/trump-turns-over-his-campaign-to-lobbyists-222242#ixzz4HdEKQrGv>.

⁵ *Id.*

question that he is the presumptive nominee, and will unify our party to take back the White House in November.”⁶

11. On June 2, 2016, *CNN* reported that:

A close associate of Donald Trump, Tom Barrack, told *CNN*’s Erin Burnett on Thursday that a new pro-Trump super PAC has secured \$32 million in financial commitments ... Barrack said the principal operatives behind the group are Ken McKay and Laurie Gay.

McKay, the former campaign manager to New Jersey Gov. Chris Christie, is currently a senior adviser to Trump’s campaign and would be required by election law to “cool off” from the campaign before aiding an outside group. Gay is an ally of Paul Manafort, Trump’s chief strategist and one power center in Trump’s cadre of aides.⁷

12. That same day, June 2, 2016, Rebuilding America Now filed its Statement of Organization with the Commission, which included a statement that “This committee intends to make independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.”⁸
13. According to Rebuilding America Now’s first Quarterly Report, filed with the Commission on July 15, the committee paid Laurance W. Gay and Kenneth E. McKay

⁶ Press Release, Donald J. Trump for President, Inc., Donald J. Trump for President Announces Expansion of Campaign Delegate Team (Apr. 25, 2016), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-announces-expansion-of-campaign-delegate-team>

⁷ Theodore Schleifer, *First on CNN: Trump Ally Forms Super PAC With \$32M in Commitments*, *CNN* (Jun. 2, 2016), <http://www.cnn.com/2016/06/02/politics/tom-barrack-donald-trump-super-pac/>.

⁸ Rebuilding America Now Statement of Organization, FEC Form 1 (filed June 2, 2016) at 5, available at <http://docquery.fec.gov/pdf/186/201607169020674186/201607169020674186.pdf#navpanes=0>.

\$25,000 each on June 8, and an additional \$35,000 each on June 15.⁹ The purpose of the disbursements were described as “political strategy consulting;” the memo line for each payment stated “political consulting services rendered.”¹⁰ Rebuilding America Now did not report any payments during this period to any other persons for “political strategy consulting,” “political consulting,” “strategy consulting,” or related activities.¹¹ However, during this same period, Rebuilding America Now reported \$1,431,503 in independent expenditures for the month of June opposing Donald Trump’s opponent Hillary Clinton.¹²

14. Rebuilding America Now’s July Quarterly Report also reflected \$2,160,450 in receipts from just four sources, including a \$100,000 contribution from Murray Energy Corporation and a \$50,000 contribution from Southeast QSR, LLC.¹³
15. A Rebuilding America Now factsheet describes McKay’s title as “Political Director” and Gay’s title as “Managing Director.”¹⁴
16. On July 18, CNN reported that Rebuilding America Now “is preparing an advertising barrage” and that “a 60-second, positive ad featuring Trump’s own words, ‘America Soaring,’ begins [July 19] nationally on cable. And next week, that ad and still-to-be-determined negative spots against Clinton land in battleground states, their first swing-state advertising of the cycle.”¹⁵ Subsequently, Rebuilding America Now filed 24/48 Hour Reports of Independent Expenditures with the Commission reporting that it spent

⁹ Rebuilding America Now 2016 July 15 Quarterly Report, FEC Form 3X (filed June 15, 2016) at 8-9, *available at* <http://docquery.fec.gov/pdf/186/201607169020674186/201607169020674186.pdf#navpanes=0>.

¹⁰ *Id.*

¹¹ *See* Rebuilding America Now 2016 July 15 Quarterly Report.

¹² *Id.*

¹³ *Id.* at 6-7.

¹⁴ Factsheet, Rebuilding America Now, “About Rebuilding America Now,” POLITICO, <http://www.politico.com/f/?id=00000156-2eff-db8a-a57f-6efff89c0001>.

¹⁵ Schleifer, *supra* note 7.

\$30,000 to disseminate “digital advertising” supporting Donald Trump on July 19;¹⁶ spent \$1,666,666 to disseminate “national cable and broadcast advertising” supporting Trump and \$44,000 to disseminate “national digital advertising” supporting Trump on July 25;¹⁷ and spent an additional \$123,920 for “media placement” supporting Trump on August 18.¹⁸

17. The minute long “America Soaring” ad

(<https://www.youtube.com/watch?v=NMNZTcGSHLg>) ends with the official Trump-Pence logo featured prominently onscreen for its final eight seconds (starting at the :53 second mark); the ad also repeats the Trump campaign slogan “Make America Great Again” (at the :49 second mark) and features the words “#VoteTrump” in the bottom right-hand corner. Additionally, the top half of the front page of Rebuilding America Now’s website (<https://rebuildingamericanow.com/>) features the “America Soaring” ad playing in a cycle, behind the words “Vote #NeverHillary” and the Rebuilding America Now logo. As the ad concludes, the official Trump-Pence logo appears to fade into the Rebuilding America Now logo.

18. On July 19, the *Connecticut Mirror* reported that Trump campaign manager Paul Manafort arrived at the Connecticut Delegates Breakfast at the Republican National Convention “with Laurance ‘Laurie’ Gay, the Connecticut friend and former lobbying

¹⁶ Rebuilding America Now 24/48 Hour Report of Independent Expenditures, Schedule E (filed July 21, 2016), <http://docquery.fec.gov/pdf/274/201607219021930274/201607219021930274.pdf#navpanes=0>.

¹⁷ Rebuilding America Now 24/48 Hour Report of Independent Expenditures, Schedule E (filed July 27, 2016), <http://docquery.fec.gov/pdf/639/201607279021956639/201607279021956639.pdf#navpanes=0>.

¹⁸ Rebuilding America Now 24/48 Hour Report of Independent Expenditures, Schedule E (filed Aug. 17, 2016), <http://docquery.fec.gov/pdf/333/201608179022463333/201608179022463333.pdf#navpanes=0>.

partner protecting Trump's flank with Rebuilding America Now, a Super PAC that launched last month with claims of \$32 million in fundraising commitments."¹⁹ Gay, in his capacity as Rebuilding America Now Managing Director, discussed Manafort's role in the campaign: "Paul came in just at the right time. The delegate process was new to Mr. Trump, I think new to the staff that he had at the time. And Paul's been doing it for almost 40 years."²⁰

19. On July 20, 2016, *Politico* reported that the Trump campaign "is now openly encouraging donors to give to a super PAC that has raised \$5 million in recent days," describing a Rebuilding America Now fundraising meeting "that offered an overt endorsement from Trump's vice-presidential nominee Indiana Gov. Mike Pence."²¹

"Supporting Rebuild America Now is one of the best ways to stop Hillary Clinton and help elect Donald Trump our next president!" read the quote attributed to Pence on the slide, which was obtained by POLITICO. Pence's director of operations Marty Obst also attended the meeting and, according to two attendees, he said the campaign was considering attending future fundraising events for the super PAC.

Reinforcing the message that the Trump campaign wants donors to give to Rebuilding America, Trump's top strategist Paul Manafort called into the meeting to discuss the campaign and make clear that the PAC was the only one he is addressing, according to three attendees.²²

The front page of Rebuilding America Now's website

(<http://www.rebuildingamericanow.com>) also features Pence's headshot next to the same

¹⁹ Mark Pazniokas, *Manafort Downplays Melania Controversy With Counterattack*, CONN. MIRROR, Jul. 19, 2016, <http://ctmirror.org/2016/07/19/manafort-downplays-melania-controversy-with-counterattack/>.

²⁰ *Id.*

²¹ Alex Isenstadt and Kenneth P. Vogel, *Trump Blesses Major Super PAC Effort*, POLITICO (Jul. 20, 2016), <http://www.politico.com/story/2016/07/trump-super-pac-donors-225892#ixzz4KkGQ03Il>.

²² *Id.*

quote encouraging financial support for the super PAC as “one of the best ways to stop Hillary Clinton and help elect Donald Trump our next president.”

20. On July 21, 2016, the *Washington Post* reported that “Trump and his running mate have both expressed willingness to headline fundraisers for Rebuilding America Now, according to Ken McKay, the group’s chief strategist. . . . ‘We’ve made great progress,’ McKay said in an interview Thursday. ‘I do think we have a nod from the campaign, to the extent that is legally permissible.’”²³

21. On July 22, 2016, the *Associated Press* reported:

[Laurance] Gay is a longtime friend of Paul Manafort, Trump’s campaign chairman, and said he and [Tom] Barrack started the super PAC at Manafort’s behest. And Trump’s campaign has made it clear to donors that they like what Rebuilding America Now is doing; Manafort called into the group’s Wednesday meeting, and new vice presidential candidate Mike Pence has circulated a statement praising it.²⁴

22. On August 16, 2016, Maplight.org/NBCnews.com reported that:

The Trump campaign announced in April it had hired Ken McKay as a senior adviser, saying he would “support our delegate operations team and bolster our ground game efforts.” McKay left the Trump campaign in early June to join Rebuilding America Now. When the move was announced, a number of media outlets, including CNN and the Wall Street Journal, reported that McKay would have to go through a 120-day “cooling off” period before working with the super PAC, under federal elections rules.

That didn’t happen. Rebuilding America Now began paying McKay for “political strategy consulting” only days after it was reported that he was leaving the Trump campaign, according to the group’s filing with the Federal Election Commission (FEC). The super PAC paid McKay \$60,000 in June. As Rebuilding America Now’s political director, McKay has frequently discussed his group’s messaging and advertising strategy with the media.

²³ Matea Gold, *Trump Reverses His Opposition to Super PACs and Is Now Willing to Headline Events for a Big Money Group*, WASH. POST, Jul. 21, 2016, <https://www.washingtonpost.com/news/post-politics/wp/2016/07/21/trump-reverses-his-opposition-to-super-pacs-and-is-now-willing-to-headline-events-for-a-big-money-group/>.

²⁴ *Pro-Trump Super PAC Raises Millions at the Cleveland Convention*, ASSOCIATED PRESS, Jul. 22, 2016, <http://fortune.com/2016/07/22/trump-super-pacs-cleveland-gop-convention/>.

When MapLight asked Rebuilding America Now on Monday why McKay did not wait before starting to work with the super PAC, the group's spokesperson, Melissa Stone, responded that McKay was a volunteer for the Trump campaign.

"Ken McKay volunteered to help pre-convention operations for a few weeks, but he was never paid by the Trump campaign. Rebuilding America Now works to ensure compliance within all respects of the law," Stone said, before asserting that Hillary Clinton's campaign is "peddling falsehoods to reporters" about her group.²⁵

23. On September 2, *Reuters* reported that:

Republican presidential nominee Donald Trump has run an unusually cheap campaign in part by not paying at least 10 top staffers, consultants and advisers, some of whom are no longer with the campaign, according to a review of federal campaign finance filings.

Those who have so far not been paid, the filings show, include recently departed campaign manager Paul Manafort, California state director Tim Clark, communications director Michael Caputo and a pair of senior aides who left the campaign in June to immediately go to work for a Trump Super PAC.²⁶

Additionally, the article noted:

The Trump campaign said the Reuters reporting was "sloppy at best" but declined to elaborate.

One of the 10 who were unpaid, Michael Caputo, told a Buffalo radio station in June after he resigned from the campaign, that he was not volunteering. Rather, he said he just had not gotten paid. Caputo confirmed to Reuters on Thursday that the Trump campaign has still not paid his invoices.

In another instance, two high-level former Trump campaign advisers, former Chris Christie campaign manager Ken McKay and Manafort lobbying associate Laurance Gay, departed the Trump campaign in June and went to work for the Trump-backed Super PAC, Rebuilding America Now. In June, the Super PAC paid each of them \$60,000, the filings show.

²⁵ Andrew Perez, *Pro-Trump Super PAC Tests Federal Election Rules*, MAPLIGHT.ORG/NBCNEWS.COM (Aug. 16, 2016), http://www.nbcnews.com/news/us-news/pro-trump-super-pac-hire-tests-federal-election-rules-n632061?cid=sm_twitter_feed_politics.

²⁶ Michelle Conlin and Grant Smith, *One Secret of Trump's Low-Cost Campaign: Free Labor*, REUTERS, Sep. 2, 2016, <http://www.reuters.com/article/us-usa-election-trump-staff-idUSKCN1181CV>.

Federal campaign law stipulates that people working for campaigns, who may possess strategic knowledge of a campaign or work as a campaign's agents, must wait for 120 days before going to work for a Super PAC, a political spending group that can accept unlimited sums of money from wealthy donors so long as it does not coordinate with a campaign.

Through a spokesperson, McKay and Gay said they were volunteering for Trump and did not possess strategic information so the rule did not apply to them.”²⁷

24. On September 15, 2016, the *Wall Street Journal* reported that “Donald Trump Jr. is scheduled to be a special guest at a fundraiser in New York City on Monday for Rebuilding America Now, a spokesman confirmed.”²⁸
25. According to the Trump campaign's official website, the campaign's employees, independent contractors, and volunteers must sign a 2,271 word non-disparagement, non-disclosure and non-compete agreement, available at

<https://talk.donaldjtrump.com/User/NonDisclosureAgreement>. The agreement states:

Those promises and agreements are part of what the Company is receiving in exchange for agreeing to engage you ... to perform all or a portion of the subject services, and the Company is relying on your fulfillment of these promises and agreements.

....

This agreement will survive the expiration, cancellation or termination of any employment or independent contractor relationship that you may have with the Company or with any individual, entity, partnership, trust or organization that the Company has engaged.

26. As of August 25, 2016, Rebuilding America Now had reported spending \$13,392,865 on independent expenditures supporting Trump or opposing Clinton.²⁹

²⁷ *Id.*

²⁸ Rebecca Ballhaus, *Trump Sons Headline Fundraisers for Different Super PACs, Stoking Donor Confusion*, WALL ST. J., Sept. 15, 2016, <http://blogs.wsj.com/washwire/2016/09/15/trump-sons-headline-fundraisers-for-different-super-pacs-stoking-donor-confusion/?mod=ST1>.

²⁹ Rebuilding America Now 24/48 Hour Report of Independent Expenditures, Schedule E (filed Aug. 25, 2016), <http://docquery.fec.gov/pdf/585/201608259023751585/201608259023751585.pdf#navpanes=0>.

b. MAKE AMERICA NUMBER 1

27. On June 21, 2016, *Bloomberg* reported that “Robert Mercer, the GOP mega-donor and co-founder of Renaissance Technologies hedge fund who once backed Texas Senator Ted Cruz, is launching a super-PAC . . . [that] will informally be dubbed the ‘Defeat Crooked Hillary PAC.’”

Mercer’s new anti-Hillary vehicle is actually a refurbished version of Keep the Promise PAC, a pro-Cruz super-PAC that Mercer and his daughter Rebekah poured \$13.5 million into during the primaries. Kellyanne Conway, the Republican pollster who is president of Keep the Promise PAC, may leave to join the Trump campaign.

David Bossie, president of the conservative advocacy group Citizens United, will take over as the head of Defeat Crooked Hillary. “This is an opportunity to really refocus the presidential debate around Hillary Clinton and her character, and the whole culture of corruption that’s surrounded the Clintons for decades,” says Bossie.

Conway said that she recruited Bossie for his role at the super-PAC, but hasn’t decided what she’ll be doing next.

"Very few people have studied Hillary Clinton longer or stronger than Dave Bossie, and I support him in this role as I decide where I can be most helpful in defeating Hillary Clinton," she said.³⁰

Additionally, *Bloomberg* noted:

“This will be one of the super-PACs that Trump will make clear he supports,” says a source involved in the effort. On Wednesday, Trump will give a speech at Trump Soho which a Trump campaign source says will be focused on attacking Clinton; at the same time, Defeat Crooked Hillary will release its first ad, which Bossie says will begin airing in battleground states next week .

....

With Trump signaling his eagerness to attack Clinton, Bossie believes a well-funded super-PAC could amplify those charges and further damage the

³⁰ Joshua Green & Zachary Mider, New Super-PAC Launches for Donors Who Won’t Back Trump But Loathe Clinton, BLOOMBERG (June 21, 2016), <http://www.bloomberg.com/politics/articles/2016-06-22/new-super-pac-launches-for-donors-who-won-t-back-trump-but-loathe-clinton>.

presumptive Democratic nominee, whose lofty unfavorability rating is exceeded only by Trump's. "It reinforces the dishonesty and distrust that we see in her polling numbers," says Bossie.³¹

28. On June 22, 2016, the political committee formerly known as Keep America's Promise 1 filed an amended Statement of Organization with the Commission changing its name to "Make America Number 1."³² The website listed on its filing, www.makeamericanumber1.com, automatically redirects to

www.defeatcrookedhillary.com. The "strategy" page of that website states:

We will run an aggressive campaign against [Hillary Rodham Clinton] in the swing states that will be highly influential in determining the next President of the United States. We will create strategic, targeted messaging delivered to voters with prosecutorial precision. We will educate them on why electing HRC would be a disaster for America. (<https://www.defeatcrookedhillary.com/strategy>)

29. On July 1, 2016, the Trump campaign announced in a press release that it had hired Kellyanne Conway as Senior Political Advisor.³³
30. On August 5, 2016, the *National Review* reported that the Trump campaign had begun contracting with a data firm owned by Make America Number 1 founder/funder Robert Mercer called Cambridge Analytica, and that "[a]ccording to a Trump aide, the company has approximately ten data scientists embedded with Giles-Parscale, the San Antonio-

³¹ *Id.*

³² Rebuilding America Now Statement of Organization (amended), FEC Form 1 (filed June 22, 2016), <http://docquery.fec.gov/pdf/183/201606229020090183/201606229020090183.pdf#navpanes=0>.

³³ Press Release, Donald J. Trump for President, Inc., Donald J. Trump Announces Key Appointments (July 1, 2016), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-announces-key-appointments>; see also Sean Sullivan, *Trump Hires Ex-Cruz Super PAC Strategist Kellyanne Conway*, WASH. POST, July 1, 2016, <https://www.washingtonpost.com/news/post-politics/wp/2016/07/01/trump-hires-ex-cruz-super-pac-strategist-kellyanne-conway/>.

based firm behind Trump's website and his broader digital operation, to which the campaign paid \$1.6 million in June alone."³⁴

It's rare for data-targeting firms or political consultants more broadly to work for more than one presidential campaign over the course of an election season. But . . . Cambridge Analytica's allegiances have followed those of its owners. It's a development that reveals how closely tied money and politics are even for a candidate that has denounced the influence of wealthy donors. In fact, the vast majority of the candidates for which Cambridge Analytica has worked are also those to whom Mercer, one of the most generous donors in Republican politics, has donated.³⁵

31. On August 17, 2016, the *Wall Street Journal* reported that Conway had been promoted to campaign manager, and that the Trump campaign had also hired Breitbart News CEO Stephen K. Bannon as campaign CEO.³⁶
32. According to corporate filings with the California Secretary of State, Bannon's "Bannon Strategic Advisors, Inc." occupies the same address, and the same suite, as Cambridge Analytica, at 8383 Wilshire Boulevard, Suite 1000, in Beverly Hills, California. Breitbart News Network, LLC and Breitbart Holdings, Inc. are located at that same address and same suite.
33. On August 18, 2016, the *New York Times* reported that the staff changes demonstrated the growing influence of Make America Number 1 chair Rebekah Mercer and founder/funder Robert Mercer over the Trump campaign:

Mr. Trump's new campaign manager, Kellyanne Conway, is a veteran Republican pollster who previously oversaw a super PAC financed by the Mercers. Mr. Bannon

³⁴ Eliana Johnson, *Trump Campaign Turns to 'Psychographic' Data Firm Used by Cruz*, NAT'L REV., Aug. 5, 2016, <http://www.nationalreview.com/article/438739/trump-campaigns-data-firm-partner-cambridge-analytica-worked-cruz>.

³⁵ *Id.*

³⁶ Monica Langley, *Donald Trump Overhauls Campaign, Adds GOP Pollster Kellyanne Conway and Breitbart's Stephen Bannon*, WALL ST. J., Aug. 17, 2016, <http://www.wsj.com/articles/donald-trump-overhauls-campaign-team-1471424401>.

oversaw Breitbart, an outlet that has often amplified Mr. Trump's message and attacked his perceived enemies. Mr. Mercer reportedly invested \$10 million in Breitbart several years ago, and most likely still has a stake: A company sharing an address with Renaissance Technologies, the hedge fund Mr. Mercer helps lead, remains an investor in Breitbart, according to corporate documents filed in Delaware.

Mr. Trump is also relying on Cambridge Analytica, a voter data firm backed by Mr. Mercer, whose staff members are working with Mr. Trump's vendors to identify potential Trump supporters in the electorate, particularly among infrequent voters. A Mercer-backed super PAC supporting Mr. Trump is now being shepherded by David Bossie, a conservative activist whose own projects have been funded in part by the Mercers' family foundation, according to tax documents.

Mr. Bannon has worked particularly closely with the family in recent years.

"I think they have complete confidence, and rightly so, in Steve Bannon's decisions and what he brings to the table politically," Mr. Bossie said. "He has been smart and successful in running these different political operations. And those things have come to the Mercers' attention."³⁷

The *Times* additionally noted that the Mercers had "install[ed] Ms. Conway to oversee" the earlier iteration of Make America Number 1 and "maintained close control over the groups' purse strings."³⁸

34. On August 18, 2016, *Ad Age* reported, "GOP insiders interviewed for this story affirm recent reports that Cambridge now has staff embedded with Donald Trump's campaign. Cambridge Analytica won't comment on it."³⁹ *Ad Age* also reported:

Cambridge's voter data innovations are built from a traditional five-factor model for gauging personality traits. The company uses ongoing nationwide survey data to evaluate voters in specific regions according to the OCEAN or CANOE factors of openness, conscientiousness, extroversion, agreeableness and neuroticism. The ultimate political application of the modeling system is to craft specific ad

³⁷ Nicholas Confessore, *How One Family's Deep Pockets Helped Reshape Donald Trump's Campaign*, N.Y. TIMES, Aug. 18, 2016, http://www.nytimes.com/2016/08/19/us/politics/robert-mercero-donald-trump-donor.html?_r=0.

³⁸ *Id.*

³⁹ Kate Kaye, *In D.C., Cambridge Analytics Not Exactly the Toast of the Town*, AD AGE (Aug. 18, 2016), <http://adage.com/article/campaign-trail/cambridge-analytica-toast/305439/>.

messages tailored to voter segments based on how they fall on the five-factor spectrum.⁴⁰

35. On September 7, 2016, the *Wall Street Journal* reported:

Rebekah Mercer, daughter of hedge-fund manager and Republican mega-donor Robert Mercer, is taking the reins of one of the top super PACs backing Donald Trump, further solidifying her family's influence in the Trump campaign.

The group, called Make America Number 1, was previously run by David Bossie, who also heads a conservative group called Citizens United. Mr. Bossie last week quit the super PAC to join the Trump campaign as deputy campaign manager.

....

She and her father, the co-chief executive of the hedge fund Renaissance Technologies, have in recent months become among the most powerful donors in Mr. Trump's orbit.

The weekend before Mr. Trump's campaign shake-up last month, the Mercers met privately with the candidate at an East Hampton, N.Y., fundraiser, where they recommended he elevate Breitbart News chairman Stephen Bannon and Republican pollster Kellyanne Conway. He did so days later.

The Mercers have longstanding ties to both Mr. Bannon and Ms. Conway, who previously ran the Mercer-funded super PAC when it was a pro-Cruz vehicle. Mr. Mercer has also funded two organizations founded by Mr. Bannon, and Ms. Mercer is listed as a board member for one of Mr. Bannon's organizations in 2014 tax filings. Ms. Mercer and Mr. Bannon also together produced "Clinton Cash," a documentary criticizing the overlaps between Democrat Hillary Clinton's tenure as secretary of state and her family's charitable foundation.

Both the Trump campaign and Make America Number 1 have contracted Cambridge Analytica, a data analytics firm owned in part by Mr. Mercer that offers "psychographic" analysis related to the personalities and values of voters. Mr. Trump paid the firm \$100,000 in July, according to Federal Election Commission filings.⁴¹

36. On September 13, the *Washington Post* reported that Make America Number 1:

[R]eissued an ad Tuesday bemoaning the "Clinton fatigue" that has gripped the nation, part of a television and digital blitz set to roll out over the coming weeks

⁴⁰

Id.

⁴¹

Rebecca Ballhaus, *Rebekah Mercer Takes Helm of Pro-Trump PAC, Extending Family's Influence in Campaign*, WALL ST. J., Sept. 7, 2016, <http://blogs.wsj.com/washwire/2016/09/07/rebekah-mercero-takes-helm-of-pro-trump-pac-extending-familys-influence-in-campaign/>.

....

The spot first debuted last year in the primaries, when the super PAC — then called Keep the Promise 1 — was supporting Sen. Ted Cruz (R-Tex.). At the time, it was run by Kellyanne Conway, who is now Trump's campaign manager.⁴²

The *Post* additionally noted, “The super PAC is spending six figures to target undecided voters in nine swing states through Facebook, YouTube and Google. The medical-themed ad is landing just two days after a bout with pneumonia forced Clinton to temporarily leave the campaign trail.”

37. On September 14, the *Washington Post* reported:

[Rebekah] Mercer exemplifies a new breed of activist donors that has risen since the Supreme Court kicked off a flood of big money into elections in 2010. As one of the most influential figures in Trump’s orbit, she threatens to undercut the candidate’s insistence that he is free from the influence of elite contributors. And her access shows how donors can easily move between a campaign and a super PAC that is supposed to operate independently.⁴³

The *Post* also noted:

After the 2012 elections, Robert Mercer invested in Cambridge Analytica, a data-analytics firm, driven in part by an assessment that the right was lacking sophisticated technology capabilities, associates said. Rebekah Mercer has urged the organizations that her family funds to hire the company, according to people familiar with her advocacy.

Cambridge was a major vendor to Cruz’s presidential campaign, which paid it \$5.8 million before he dropped out in May, campaign finance records show. Trump, who has expressed skepticism about the value of data analytics, brought Cambridge aboard in July, paying it \$100,000.

Cambridge shares a Beverly Hills, Calif., address with other Mercer investments. The company’s Wilshire Avenue office suite is also the home of Breitbart News and a movie production company called Glittering Steel, which helped finance the

⁴² Matea Gold, *Anti-Clinton Super PAC Kicks Off Ad Blitz With Relunched ‘Clinton Fatigue’ Spot*, WASH. POST, Sept. 13, 2016, https://www.washingtonpost.com/news/post-politics/wp/2016/09/13/anti-clinton-super-pac-kicks-off-ad-blitz-with-new-clinton-fatigue-spot/?postshare=3821473791222063&tid=ss_tw.

⁴³ Matea Gold, *The Rise of GOP Mega Donor Rebekah Mercer*, WASH. POST, Sept. 14, 2016, https://www.washingtonpost.com/politics/the-rise-of-gop-mega-donor-rebekah-mercere/2016/09/13/85ae3c32-79bf-11e6-beac-57a4a412e93a_story.html.

films “Torchbearer,” starring “Duck Dynasty” star Phil Robertson, and “Clinton Cash,” a documentary based on the book by Peter Schweizer.⁴⁴

Additionally, the *Post* noted:

In May, shortly after the senator from Texas dropped out of the race, Trump’s daughter Ivanka and her husband, Jared Kushner, invited Mercer and Conway to lunch at Trump Tower.

Over sandwiches and salads in a conference room, Ivanka and Rebekah bonded over parenting young children and being the daughters of hard-charging, successful fathers, according to people familiar with their conversation.

Rebekah’s sister Jenji and her mother were already fans of the real estate developer, according to a friend. And now Rebekah was on board: The family would help Trump.

By late June, the Mercer super PAC had been relaunched as an anti-Clinton vehicle called Defeat Crooked Hillary PAC.

Last month, Rebekah Mercer was among those who privately urged Trump to retool his campaign leadership. At a fundraiser in the Hamptons, she and Trump discussed the merits of hiring Bannon. Within days, the candidate had tapped Bannon as chief executive, pushing aside then-campaign chairman Paul Manafort. Trump also named Conway campaign manager. A few weeks later, Bossie, who has been close to the billionaire for years, was hired as deputy campaign manager.⁴⁵

One source told the *Post* “he believes Rebekah and her associates have had an influence on Trump, who has been a relatively more disciplined candidate in the past month. ‘What better job can you do, if you can turn him into a winner?’”⁴⁶

38. On September 20, the *Associated Press* reported:

A firm headed by Trump's campaign manager, Kellyanne Conway, received almost \$250,000 from a super PAC in late August, the same month the company also was paid \$128,000 by the Trump campaign, new documents show. The payment from Make America Number 1 to Conway's The Polling Company was

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

made Aug. 23, more than a month after Conway joined Trump's team and almost a week after Trump named her his campaign manager.⁴⁷

39. On September 23, 2016, *Politico* reported that:

Donald Trump's team has created a detailed analysis of Hillary Clinton's debate style — including her body language and verbal tics — with the goal of helping the GOP nominee exploit weaknesses during Monday's debate," using a "psychological profile . . . assembled with assistance from a political data firm called Cambridge Analytica that specializes in 'psychographic' modeling of voters and donors, and that Trump's top advisers have been pleased with the results.

....

The Trump team's psychological analysis of Clinton — and Cambridge Analytica's involvement in it — also is testament to the growing clout in Trump's orbit of the father-daughter duo of Bob and Bekah Mercer. The Mercer family, which has given \$2 million to a pro-Trump super PAC that Bekah Mercer runs, largely owns Cambridge Analytica, and encouraged the Trump campaign to incorporate the company's services into its operations.

....

[C]ampaign sources say the company is providing a broad array of services to the campaign, both out of the campaign's roughly 60-person data, digital and technology operation in San Antonio and, to a lesser extent, in the campaign's Manhattan headquarters.

Additionally, sources familiar with the company said that its board includes Trump campaign chief executive Steve Bannon, whose addition to the campaign was encouraged by Bekah Mercer.

Campaign sources say Bannon is participating in the debate preparation sessions, as is campaign manager Kellyanne Conway, another Mercer ally whose hiring Bekah Mercer encouraged.⁴⁸

40. On September 28, *Politico* reported that "Donald Trump on Wednesday launched a coordinated attack casting Hillary Clinton as a corrupt pawn of major donors and special

⁴⁷ Chad Day and Julie Bykowicz, *Report: Outside Groups Spending Big to Help Trump, Clinton*, ASSOCIATED PRESS, Sept. 20, 2016, <http://www.kansas.com/news/business/article103008002.html#storylink=cpy>.

⁴⁸ Kenneth P. Vogel, Ben Schreckinger, Alex Isenstadt, & Darren Samuelsohn, *Trump Team Builds "Psychological Profile" of Clinton for Debate*, POLITICO (Sept. 23, 2016), <http://www.politico.com/story/2016/09/trump-builds-clinton-profile-debate-228578>.

interests.”⁴⁹ Trump announced the theme in a September 28 speech in Council Bluffs, Iowa, *Breitbart* reported, telling the crowd “Hillary Clinton is an insider fighting for her donors and her insiders.”⁵⁰ *Breitbart* also noted:

From there, he launched his new campaign theme: “Everything you need to know about Hillary Clinton can be understood with this simple phrase: Follow The Money.”

....

“In her campaign for President, Hillary Clinton has received \$100 million dollars in contributions from Wall Street and the hedge funds,” Trump continued in his Council Bluffs speech.⁵¹

41. The next day, on September 29, Make America Number 1 released four videos echoing Trump’s new “Follow the Money” theme. Make America Number 1’s “Out of Touch” video, for example, quotes Obama in 2008 saying “Clinton has taken more money from lobbyists than any other candidate, Democratic or Republican. Taken more money from drug company lobbyists and insurance company lobbyists. . .”⁵² *Politico* reported on September 29 that “Make America Number 1—an anti-Hillary Clinton outfit that is calling itself ‘Crooked Hillary PAC’—has produced four new videos, showing Barack and Michelle Obama sharply criticizing Hillary Clinton during the 2008 campaign. They say they’re spending six figures on the online ad buy...One video has then Sen. Obama

⁴⁹ Ben Schreckinger & Kenneth P. Vogel, *Trump Launches ‘Follow the Money’ Attack*, POLITICO (Sept. 28, 2016), <http://www.politico.com/story/2016/09/trump-iowa-money-228873>.

⁵⁰ Matthew Boyle, *Donald Trump Zones In On Populist Contrast With Hillary Clinton Post-Debate: ‘Follow the Money,’* BREITBART (Sept. 28, 2016), <http://www.breitbart.com/big-government/2016/09/28/donald-trump-zones-populist-contrast-hillary-clinton-post-debate-follow-money/>.

⁵¹ *Id.*

⁵² See Defeat Crooked Hillary, *Out of Touch*, YOUTUBE (Sept. 29, 2016), <https://www.youtube.com/watch?v=iTrGDTarDVo&feature=youtu.be>.

saying Clinton is too close to the ways of Washington, another has him tying Clinton to lobbyists and a third has Obama saying Clinton and McCain share talking points.”⁵³

42. On October 4, *Politico* reported that “Donald Trump’s campaign manager Kellyanne Conway will emerge from the 2016 campaign as a winner . . . thanks to her unique relationships with a succession of overlapping committees and mega-donors.”⁵⁴

Conway’s firm, The Polling Company, had been paid \$247,000 by Make America

Number 1 on August 23, months after she had joined the Trump campaign:

Conway explained that it was Bossie's decision to hire the firm. "I do not know the details — states, methodology, survey instruments, results — because I cannot know them." On Friday, she said the firm “performed survey research and messaging work for this PAC in late June and early July.” But late Sunday night, she indicated that the work was restricted to "surveys in late June." Whatever the past work, she said “no further work is planned.”

....

But Republicans with knowledge of the firm question whether it had enough seasoned pollsters or strategists to handle two major presidential race accounts without overlap. The firm’s website lists only five staffers in addition to Conway.

....

A GOP strategist who is familiar with Conway’s relationship with the Mercers said that Bekah Mercer, who runs the family’s political operation and has become an influential figure in Trump’s orbit, “leans heavily on Kellyanne Conway. She is the Mercers’ sounding board on their decision-making.”

....

The GOP strategist who is familiar with Conway’s relationship with the Mercers said her firm’s work for the super PAC is a liability for Trump, even if it’s done in a way that adheres to the coordination ban. “The optics on that are terrible, when Trump says he hates super PACs and his campaign manager’s firm is getting paid by one,” said the strategist.⁵⁵

⁵³ Anna Palmer, Jake Sherman, & Daniel Lippman, *September 29 Playbook*, POLITICO (Sept. 29, 2016), <http://www.politico.com/tipsheets/playbook/2016/09/trump-dont-say-i-lost-the-debate-exclusive-new-anti-hillary-videos-ryans-tough-spot-early-voting-seems-to-favor-hillary-bday-gwen-ifill-216573>.

⁵⁴ Kenneth P. Vogel & Jake Sherman, *Trump’s Campaign Manager Cashes In*, POLITICO (Oct. 3, 2016), <http://www.politico.com/story/2016/10/trumps-campaign-manager-kellyanne-conway-229027>.

⁵⁵ *Id.*

SUMMARY OF THE LAW

I. CONTRIBUTION LIMITS AND RESTRICTIONS

43. Federal law limits to \$2,700 the amount of a contribution that a presidential candidate or her authorized campaign committee may accept from an individual donor. 52 U.S.C. § 30116(a)(1). FECA also prohibits a corporation or labor union from making a contribution to a federal candidate. 52 U.S.C. § 30118(a).
44. Generally, contributions from a person to political committees other than candidate and party committees may not exceed, in the aggregate, \$5,000 per calendar year, 52 U.S.C. § 30116(a)(1)(C), and candidates cannot accept contributions from a non-multicandidate political committee in excess of \$2,700, § 30116(a)(1).
45. However, the Commission in Advisory Opinion 2010-11 (Commonsense Ten) interpreted and applied court decisions in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Citizens United v. FEC*, 558 U.S. 310 (2010), and opined that a committee that “intends to make only independent expenditures” and that “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is permitted to solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees. AO 2010-11 at 2-3. Conversely, a committee that accepts contributions in excess of the limits from individuals and other political committees, or any contributions from corporations or labor organizations, is prohibited from contributing to candidates.
46. “Contribution” is defined as (1) “any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office,” 52 U.S.C. 30101(8)(A)(i), and (2) “the payment . . . of compensation for the personal services of

another person which are rendered to a political committee without charge for any purpose,” 52 U.S.C. § 30101(8)(A)(ii).

47. FECA makes clear that any expenditure made in coordination with a candidate is a “contribution” to such candidate. FECA states: “[E]xpenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents shall be considered to be a contribution to such candidate.” 52 U.S.C. § 30116(a)(7)(B)(i)(emphasis added). This statutory coordination provision is implemented by the nearly-identical regulation defining “coordination” to mean “in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.” 11 C.F.R. § 109.20(a).⁵⁶

a. “COORDINATED COMMUNICATIONS” ARE CONTRIBUTIONS

48. In enacting the Bipartisan Campaign Reform Act, Congress mandated that the Commission promulgate “new regulations on coordinated communications” to address, among other things, “payments for communications directed or made by persons who previously served as an employee of a candidate,” and “payments for the use of a common vendor,” and that such regulations “shall not require agreement or formal collaboration to establish coordination.”⁵⁷ Those “coordinated communications” regulations are at 11 C.F.R. § 109.21.

⁵⁶ Similarly, the Commission regulation defining “independent expenditure” makes clear that an expenditure is not “independent” if it is “made in cooperation, consultation, or concert, with, or at the request or suggestion of,” a candidate, authorized committee, or a political party committee. 11 C.F.R. § 100.16.

⁵⁷ See Public Law 107–155, sec. 214(c)(2) (March 27, 2002); see also note to 52 U.S.C. § 30116(a)(7).

49. Under the regulations, a communication is coordinated with a candidate and/or that candidate's authorized committee, and is thus a contribution to that candidate's committee, when the communication (1) is paid for, in whole or in part, by a person other than the candidate or committee; (2) satisfies at least one of the "content standards" in the regulation; and (3) satisfies at least one of the "conduct standards" in the regulation. *Id.* § 109.21(a).
50. The second prong, the "content standard," is met if the communication "expressly advocates . . . the election or defeat of a clearly identified candidate for Federal office." *Id.* § 109.21(c)(3).
51. The activities that satisfy the third prong, the "conduct standard," are described at 11 C.F.R. § 109.21(d). Pursuant to congressional directive, those include provisions pertaining to a political committee using (1) a "common vendor" as a campaign committee to develop communications, *id.* § 109.21(d)(4), and (2) a "former employee" of a campaign developing communications for a political committee, *id.* § 109.21(d)(5).

1. COORDINATED COMMUNICATIONS "CONDUCT" STANDARD:
"COMMON VENDOR"

52. The "conduct standard" of the regulation is satisfied if the political committee paying for the communication (a) uses a commercial vendor⁵⁸ to create, produce, or distribute the communication⁵⁹ that (b) during the previous 120 days also provided certain services to the candidate identified in the regulation,⁶⁰ such as development of media strategy and

⁵⁸ The regulation cross-references the definition of "commercial vendor" at 11 C.F.R. § 116.1(c), which includes "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services." *Id.*

⁵⁹ 11 C.F.R. § 109.21(d)(4)(i).

⁶⁰ *Id.* § 109.21(d)(4)(ii).

selection of advertising slots; selection of audiences; polling; content development; voter identification; or otherwise providing political or media advice,⁶¹ and (c) the vendor uses or conveys to the political committee information about the candidates’ “plans, projects, activities or needs” (or information used previously by the commercial vendor in providing services to the candidate) and “that information is material to the creation, production, or distribution of the communication.”⁶² 11 C.F.R. § 109.21(d)(4).⁶³

53. The Commission has consistently found reason to believe that FECA has been violated if the first two parts of the common vendor test are satisfied. In MUR 5546, for example, the Commission held that, “[b]ecause the first two parts of the common vendor test are met, there is reason to investigate whether the use or exchange of information occurred as described in 11 C.F.R. § 109.21(D)(4)(iii).” MUR 5546 (Progress for America Voter Fund), Notification with Factual and Legal Analysis at 9 (Jul. 5, 2005);⁶⁴ *see also* MUR 5502 (Martinez for Senate), Notification with Factual and Legal Analysis at 8 (May 18, 2005).⁶⁵ Additionally, in MURs 5403 and 5406, the Commission found reason to believe that the political committee America Coming Together had engaged in coordinated communications pursuant to the § 109.21(d)(4) shared vendor “conduct standard” by

⁶¹ *Id.* § 109.21(d)(4)(ii)(A-I).

⁶² *Id.* § 109.21(d)(4)(iii).

⁶³ These requirements are not satisfied if the material information was obtained from a publicly available source, 11 C.F.R. § 109.21(d)(5)(ii), or if the committee establishes and implements a firewall in a written policy that prohibits the flow of information about the candidate’s campaign plans, projects, activities or needs to those responsible for the creation, production, or distribution of the communications, pursuant to 11 C.F.R. § 109.21(h). However, in promulgating the rules, the Commission emphasized that “the mere existence of a confidentiality agreement or ethical screen should provide a *de facto* bar to the enforcement of the limits on coordinated communication imposed by Congress. Without some mechanism to ensure enforcement, these private arrangements are unlikely to prevent the circumvention of the rules.” 68 Fed. Reg. 421, 435 (Jan. 3, 2003).

⁶⁴ Available at <http://eqs.fec.gov/eqsdocsMUR/00005ABC.pdf>.

⁶⁵ Available at <http://eqs.fec.gov/eqsdocsMUR/000057D4.pdf>.

contracting with the commercial vendor Dewey Square Group to run a phone bank operation supporting John Kerry's presidential campaign, since that vendor had previously provided voter identification services to the Kerry campaign committee. *Id.*, Notification with Factual and Legal Analysis to America Coming Together at 9-13 (Oct. 20, 2004).⁶⁶ The fact that the vendor provided services to both the campaign and the political committee was sufficient to find reason to believe that FECA had been violated; the Commission then investigated whether the vendor used or conveyed to the political committee information about the candidates' plans, projects, activities or needs. *Id.* at 12.

2. COORDINATED COMMUNICATIONS "CONDUCT" STANDARD:
"FORMER EMPLOYEE"

54. The "conduct standard" of the regulation is also satisfied if both (a) a "former employee" of the candidate or the candidate's campaign committee becomes employed by the committee paying for the communication within 120 days of leaving the campaign, *id.* § 109.21(d)(5)(i), and (b) that person uses or conveys "[i]nformation about the campaign plans, projects, activities, or needs of the clearly identified candidate" or otherwise applies information previously used "in providing services to the candidate" and "that information is material to the creation, production, or distribution of the communication," *id.* § 109.21(d)(5)(ii).⁶⁷

⁶⁶ Available at <http://eqs.fec.gov/eqsdocsMUR/0000615D.pdf>.

⁶⁷ These requirements are not satisfied if the material information was obtained from a publicly available source, 11 C.F.R. § 109.21(d)(5)(ii), or if the committee establishes and implements a firewall in a written policy that prohibits the flow of information about the candidate's campaign plans, projects, activities or needs to those responsible for the creation, production, or distribution of the communications, pursuant to 11 C.F.R. § 109.21(h).

55. Commission regulations do not define “employee,” yet the Commission has previously applied general rules of agency law when interpreting similar statutes and regulations.⁶⁸ Additionally, Commission regulations elsewhere cross-reference the Internal Revenue Code’s definition of “employee” at 26 C.F.R. § 31.3401(c)-1,⁶⁹ which generally tracks common law agency principles.⁷⁰ According to the Restatement (Third) of Agency, as a general matter, a hired party is the employee of the hiring party when the hiring party controls (or has the right to control) the manner and means of the hired party’s performance of work. The fact that work is performed gratuitously does not mean that the hired party is not an employee. Restatement (Third) of Agency § 7.07(3).⁷¹

⁶⁸ See MUR 4919 (East Bay Democratic Committee), General Counsel’s Report #11 at 17-18 (Noting that “[g]eneral rules of agency law ‘apply to a federal statute when those traditional rules are consistent with the statute’s purpose and Congress has not indicated otherwise.’” *Gunderson v. ADM Investor Services, Inc.*, 2001 WL 624834, *19 (N.D. Iowa),” and applying definitions from the Restatement (Second) of Agency to define “agent”); see also MUR 5646 (Cohen for New Hampshire) at 8-9 (applying definitions from Restatement (Second) of Agency to determine when a principal is liable for the acts of its agents, and citing *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739-40 (1989) (applying common law agency principles where federal statute does not define scope of employment)).

⁶⁹ See 11 C.F.R. § 100.134(d)(2)(iv); *id.* § 100.134(d)(3); *id.* § 114.1(c)(2)(iv); *id.* § 114.1(c)(3).

⁷⁰ “[T]he relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done.” 26 C.F.R. § 31.3401(c)-1 (b).

⁷¹ In promulgating 11 C.F.R. § 109.21(d)(5), the Commission declined to extend the provision to certain volunteers such as “fundraising partners,” because Congress specifically used the word “employee” in BCRA, which the Commission noted was a “significant indication of Congressional intent that the regulations be limited to individuals who were in some way employed by the candidate’s campaign.” *Coordinated and Independent Expenditures*, Final Rules & Explanation & Justification, 68 Fed. Reg. 439. (Jan. 3, 2003). Of course, in order to effect Congressional intent, the term “employee” must be interpreted pursuant to common law

56. The Commission has found reason to believe that the § 109.21(d)(5) “conduct” standard was satisfied (and thus FECA was violated) when the “former employee” had been in a position with the campaign to possess “inside information.” For example, in MURs 5403 and 5406, the Commission found reason to believe that the political committee America Coming Together had made coordinated communications by contracting communications and research services with a firm led by presidential candidate John Kerry’s former campaign manager. *Id.*, Notification with Factual and Legal Analysis to America Coming Together at 9-13 (Oct. 20, 2004).⁷² Although the Commission did not have specific evidence that the former campaign manager had used or conveyed information about the Kerry campaign’s plans, projects, activities or needs to America Coming Together, the Commission concluded there was a “basis to investigate” whether he had done so, given that as Kerry’s campaign manager, “he possessed inside information about that campaign.” *Id.* at 11.

b. “REPUBLICATION OF CAMPAIGN MATERIALS” IS A CONTRIBUTION

57. Additionally, the Act and Commission regulations provide that the “dissemination, distribution, or republication, in whole or in part,” of any “written, graphic, or other form of campaign materials” prepared by a candidate’s committee, is a contribution by the person republishing the campaign materials for the purposes of the Act’s limitations and his or her reporting responsibilities, regardless of whether such republication is a “coordinated communication.” 11 C.F.R. § 109.23.⁷³

agency principles, which looks to the nature of the relationship between the hiring party and the hired party, rather than whether the hired party was compensated.

⁷² Available at <http://eqs.fec.gov/eqsdocsMUR/0000615D.pdf>.

58. The Commission explained this rule as follows:

[W]hether or not the dissemination, distribution, or republication qualifies as a coordinated communication under 11 CFR 109.21, paragraph (a) of section 109.23 . . . requires the person financing such dissemination, distribution, or republication always to treat that financing, for the purposes of that person's contribution limits and reporting requirements, as an in-kind contribution made to the candidate who initially prepared the campaign material.

Coordinated and Independent Expenditures, Final Rules & Explanation & Justification, 68 Fed. Reg. 421, 442 (Jan. 3, 2003).

59. The Commission went on to explain that a commenter in the rulemaking proceeding had proposed an exception from the rule “to cover republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues or voting records.” *Id.* The Commission, however, “decline[d] to promulgate a ‘public domain’ exception because such an exception could ‘swallow the rule,’ given that virtually all campaign material that could be republished could be considered to be ‘in the public domain.’” *Id.*

60. The traditional form of republication involves the reprinting and dissemination of a candidate's campaign materials such as logos—“in other words, materials that copy and convey a campaign's message.” MUR 5996 (EFR/Tim Bee for Congress), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn (dissenting). The Commission has also concluded that “campaign materials” include any material belonging to or emanating from a campaign. For

⁷³ §109.23(b) provides five exceptions to the general rule treating the financing of republication of campaign materials as a contribution by the republisher: (1) republication by the candidate who prepared the material; (2) republication of material by an opponent of the candidate who prepared the material; (3) press exemption; (4) a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views; and (5) republication by a party committee as a coordinated expenditure.

example, the Commission has found that a political committee republished campaign materials by downloading photographs from a candidate's website and including those photos in communications advocating the election of that candidate. MUR 5743 (Betty Sutton); MUR 6840 (All Citizens for Mississippi, *et al.*).

c. "COMPENSATION FOR PERSONAL SERVICES" IS A CONTRIBUTION

61. FECA also makes clear that compensation paid to a person to render services to a campaign is an in-kind contribution. The statutory phrase "compensation for personal services . . . without charge for any purpose," 52 U.S.C. 30101(8)(A)(ii), has been defined by the Commission to include "[t]he payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose." 11 C.F.R. § 100.54.⁷⁴
62. The Commission has applied the "compensation for personal services" provision in a variety of contexts. In MUR 5366, which resulted in a conciliation agreement, the Commission concluded that a law firm had made impermissible in-kind contributions to a presidential campaign by paying law firm staff as they helped a presidential campaign committee plan fundraising events and collect contributions. MUR 5366 (Tab Turner/Edwards for President); *see also* Fourth General Counsel's Report at 20-21. In Advisory Opinion 2006-22 (Jenkins & Oilchrist), the Commission advised that a law firm that paid its employees as they helped prepare an amicus brief for a candidate (without charging the candidate) in a ballot eligibility case would be making a contribution under

⁷⁴ Certain legal and account services are exempted from this definition of "contribution," as are uncompensated volunteer services. Additionally, 11 C.F.R. § 100.94 exempts "uncompensated internet activity" from the definition of "contribution," yet in promulgating this regulation the Commission emphasized that the new exceptions only apply to uncompensated internet activity; as discussed in more detail below, if a person is compensated, the exception does not apply and their activity can be construed as a contribution or expenditure. 71 Fed. Reg. 18603-05.

§ 100.54. *Id.* at 4-5; *see also* MUR 6127 (Obama for America, 2010), First General Counsel’s Report at 21 (citing Advisory Opinion 2006-22). Similarly, the Commission has stated that if an employer paid its workers to help renovate a candidate’s campaign headquarters, those payments would be considered contributions by the employer. Advisory Opinion 1982-04 (Apodaca) at 2-3. The Commission also advised that if an employer paid its employees while they served on the council of a PAC, those payments would be treated as a contribution to the PAC. Advisory Opinion 2011-14 (Utah Bankers Association).

II. REPORTING / DISCLOSURE REQUIREMENTS

63. FECA requires each treasurer of a political committee to file reports of receipts and disbursements with the Commission. 52 U.S.C. § 30104(a)(1).
64. A payment for a “coordinated communication” is treated as an in-kind contribution to the candidate with whom it was coordinated, and must be reported as a contribution to that candidate by the political committee that made the payment. 11 C.F.R. § 109.21(b).⁷⁵
65. A payment for the dissemination, distribution, or republication of candidate campaign materials is treated as a contribution to the candidate who prepared the materials, and must be reported as a contribution to that candidate by the political committee that made the payment. *Id.* § 109.23.⁷⁶

⁷⁵ Contributions in the form of “coordinated communications” resulting from conduct described in 11 C.F.R. § 109.21(d)(4) (“common vendor”) and (d)(5) (“former employee”) need not be reported as received by the campaign committee with which the communication is “coordinated,” absent other conduct. *Id.* § 109.21(b)(2).

⁷⁶ The candidate who prepared the campaign material does not receive a contribution from the campaign committee that republishes the material, and need not report it as an expenditure. *Id.* § 109.23(a).

66. Compensation paid to a person to render services to a campaign is a contribution to the campaign, and must be reported as a contribution to that candidate by the political committee that made the payment. *Id.* § 100.54. The campaign committee receiving such a contribution must also report it as a contribution received.
67. A political committee must count all contributions towards its contribution limits with respect to that candidate under 11 C.F.R. § 110.1 (persons other than political committees) or 11 C.F.R. § 110.2 (multicandidate political committees).
68. For any political committee other than a candidate-authorized committee, reports of receipts and disbursements must include the total amount of contributions made to other political committees, 52 U.S.C. § 30104(b)(4)(H)(i), as well as the name and address of each political committee that has received a contribution from the reporting committee during the reporting period, together with the date and amount of such contribution, 52 U.S.C. § 30104(b)(6)(B)(i).
69. For a candidate-authorized committee, such reports must include the total amount of all contributions received from other political committees, 52 U.S.C. § 30104(b)(2)(D), as well as the identification of each political committee that makes a contribution to the reporting candidate-authorized committee during the reporting period, together with the date and amount of such contribution, 52 U.S.C. § 30104(b)(3)(B).

CAUSES OF ACTION

MAKE AMERICA NUMBER 1 HAS ILLEGALLY MADE CONTRIBUTIONS TO DONALD J. TRUMP FOR PRESIDENT, INC. IN THE FORM OF COORDINATED EXPENDITURES

70. FECA makes clear that any expenditure made in “cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees,

or their agents shall be considered to be a contribution to such candidate.” 52 U.S.C. 30116(a)(7)(B)(i)(emphasis added); *see also* 11 C.F.R. § 109.20(a).⁷⁷

71. These definitions comport with the U.S. Supreme Court’s decision in *Buckley v. Valeo*, which interpreted FECA’s contribution limits to include not only contributions made directly to a candidate’s campaign committee, but also “all expenditures placed in cooperation with or with the consent of a candidate, his agents or an authorized committee of the candidate.”⁷⁸ *Buckley*’s broad understanding of what constitutes “coordination” was echoed in subsequent U.S. Supreme Court decisions.⁷⁹
72. Accordingly, a political committee’s expenditures that are not “truly” independent of a candidate or his campaign committee, or that are placed in cooperation, consultation, or concert with the candidate, shall be treated as contributions to that candidate.
73. Because Make America Number 1 is not “truly independent” from the Trump campaign, there is reason to believe that many of its expenditures are coordinated with the campaign, and accordingly should be treated as in-kind contributions to Donald J. Trump for President, Inc. For example, the former president of Make America Number 1, Kellyanne Conway, is now Trump’s campaign manager, and was appointed to that role at

⁷⁷ Similarly, the Commission regulation defining “independent expenditure” makes clear that an expenditure is not “independent” if it is “made in cooperation, consultation, or concert, with, or at the request or suggestion of,” a candidate, authorized committee, or a political party committee. 11 C.F.R. § 100.16.

⁷⁸ 424 U.S. 1, 46–47 n.53 (1976) (emphasis added); *see also id.* at 78.

⁷⁹ *See Colo. Republican Fed. Campaign Comm. v. Fed. Election Comm’n*, 518 U.S. 604, 614 (1996) (“*Colorado I*”) (defining an expenditure as coordinated when made “pursuant to any general or particular understanding with a candidate”); *Fed. Election Comm’n v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 443 (2001) (“*Colorado II*”) (recognizing that there is a “functional, not a formal” definition of contribution, which includes expenditures made in coordination with a candidate); *McConnell v. Fed. Election Comm.*, 540 U.S. 93, 221 (2003) (holding the relevant “dividing line” is “between expenditures that are coordinated—and therefore may be regulated as indirect contributions—and expenditures that *truly* are independent” (emphasis added)).

the behest of the current chair of Make America Number 1, Rebekah Mercer,⁸⁰ who reportedly “leans heavily” on Conway and relies on Conway as a “sounding board” for her decision-making.⁸¹ Shortly after Conway joined the Trump campaign, Make America Number 1 began running an ad attacking Trump’s opponent that was produced while Conway was still the group’s president.⁸² David Bossie succeeded Conway as Make America Number 1 president, and is now Trump’s deputy campaign manager. The Trump campaign’s CEO, Stephen K. Bannon, also was reportedly hired at the behest of the current chair of Make America Number 1. Bannon is also on the board of political data firm Cambridge Analytica, which is owned by Make America Number 1’s top funder; the Trump campaign began contracting with Cambridge Analytica at the behest of Rebekah and Robert Mercer, who founded, fund, and lead Make America Number 1 (and as described in Count II, the fact that the campaign and political committee are using a shared vendor provides reason to believe that Make America Number 1 is making coordinated communications). The timing and content of Make America Number 1’s communications suggest a coordinated strategy,⁸³ and published reports indicate that Trump and Make America Number 1 officials are meeting and conferring about strategy

⁸⁰ Ballhaus, *supra* note 41.

⁸¹ Vogel & Sherman, *supra* note 55.

⁸² Gold, *supra* note 42.

⁸³ See ¶¶40-41; *see also* Green & Mider, *supra* note 30 (“On Wednesday, Trump will give a speech at Trump Soho which a Trump campaign source says will be focused on attacking Clinton; at the same time, Defeat Crooked Hillary will release its first ad, which Bossie says will begin airing in battleground states next weekWith Trump signaling his eagerness to attack Clinton, Bossie believes a well-funded super-PAC could amplify those charges and further damage the presumptive Democratic nominee, whose lofty unfavorability rating is exceeded only by Trump’s. ‘It reinforces the dishonesty and distrust that we see in her polling numbers,’ says Bossie.”)

on a regular basis.⁸⁴ Therefore, there is reason to believe that Make America Number 1's expenditures are coordinated with Donald J. Trump for President, Inc.

74. According to published reports, Make America Number 1 chair Rebekah Mercer is “one of the most influential figures in Trump’s orbit,” and her level of influence “threatens to undercut the candidate’s insistence that he is free from the influence of elite contributors.”⁸⁵ As the *Washington Post* reported, “her access shows how donors can easily move between a campaign and a super PAC that is supposed to operate independently.”⁸⁶

75. Other published reports also demonstrate the influence of the Mercers, who founded, lead, and fund Make America Number 1. For example, the *Wall Street Journal* noted:

The weekend before Mr. Trump’s campaign shake-up last month, the Mercers met privately with the candidate at an East Hampton, N.Y., fundraiser, where they recommended he elevate Breitbart News chairman Stephen Bannon and Republican pollster Kellyanne Conway. He did so days later.⁸⁷

76. *Politico* also described another example of “the growing clout in Trump’s orbit of the father-daughter duo of Bob and Bekah Mercer. The Mercer family, which has given \$2 million to a pro-Trump super PAC that Bekah Mercer runs [Make America Number

⁸⁴ See, e.g., Gold, *supra* note 43 (“Last month, Rebekah Mercer was among those who privately urged Trump to retool his campaign leadership. At a fundraiser in the Hamptons, she and Trump discussed the merits of hiring Bannon. Within days, the candidate had tapped Bannon as chief executive...”); see also Vogel, Schreckinger, Isenstadt, & Samuelsohn, *supra* note 49 (“a Republican strategist who is close to the campaign said the Mercers are ‘attempting to bring order to the campaign and debate prep’”).

⁸⁵ Gold, *supra* note 43.

⁸⁶ *Id.*

⁸⁷ Ballhaus, *supra* note 41.

1], largely owns Cambridge Analytica, and encouraged the Trump campaign to incorporate the company's services into its operations.”⁸⁸

77. Given that the Mercers have *de facto* control over the campaign and *de jure* control over the political committee, it is clear that Make America Number 1's expenditures are not independent. The family that founded, leads, and funds the political committee continues to exert influence and control over the candidate, such that Make America Number 1 and the Trump campaign are effectively joint venturers.⁸⁹ Accordingly, there is reason to believe that Make America Number 1 has made, and Donald J. Trump for President, Inc. has accepted, in-kind contributions in the form of coordinated expenditures, in violation of the committee's sworn statements to the Commission that it would not make contributions to a candidate committee from its non-contribution account,⁹⁰ in excess of FECA's \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), and in violation of FECA's reporting requirements, 52 U.S.C. §§ 30104(b)(4)(H)(i) and 30104(b)(3)(B)(i).
78. This close overall relationship between the political committee and the campaign provides reason to believe that Make America Number 1 has made in-kind contributions to Donald J. Trump for President, Inc. in the form of coordinated expenditures. While specific examples of Make America Number 1's in-kind contributions to Donald J. Trump for President, Inc. are described in Counts I and II, there is reason to believe that

⁸⁸ Vogel, Schreckinger, Isenstadt, & Samuelsohn, *supra* note 49.

⁸⁹ The conduct here goes beyond “some consultations or coordination.” Fed. Election Comm'n v. Christian Coal., 52 F. Supp. 2d 45 (D.D.C. 1999). Based on published reports, Make America Number 1 and Donald J. Trump for President, Inc. are undeniably “partners” and “joint venturers” in the overall effort. *Id.* at 92.

an investigation of respondents will reveal the full extent of Make America Number 1's expenditures coordinated with Donald J. Trump for President, Inc., thereby resulting in additional illegal in-kind contributions.

COUNT I:
MAKE AMERICA NUMBER 1 HAS ILLEGALLY MADE IN-KIND CONTRIBUTIONS TO DONALD J. TRUMP FOR PRESIDENT, INC. IN THE FORM OF COMPENSATION TO KELLYANNE CONWAY AND STEPHEN K. BANNON FOR PERSONAL SERVICES RENDERED TO DONALD J. TRUMP FOR PRESIDENT, INC.

79. FECA makes clear that compensation paid to a person to render services to a campaign is an in-kind contribution to the campaign. The statutory phrase “compensation for personal services...without charge for any purpose,” 52 U.S.C. § 30101(8)(A)(ii), has been defined by the Commission to include “[t]he payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose.” 11 C.F.R. § 100.54.⁹¹ The value of such a contribution is calculated based on the amount of compensation paid to the person who provided the services. *See* Advisory Opinion 2006-22 (Jenkins & Oilchrist) First General Counsel’s Report at 5; *see also* MUR 5366 (Tab Turner/Edwards for President) Fourth General Counsel’s Report at 22.

- *Kellyanne Conway*

80. On July 1, 2016, Donald J. Trump for President, Inc. hired Kellyanne Conway as Senior Political Advisor, and appointed her campaign manager on August 17.

⁹¹ Certain legal and account services are exempted from this definition of “contribution,” as are uncompensated volunteer services.

81. Make America Number 1’s reports filed with the Commission reflect a payment of \$246,987.16 to Conway’s firm, The Polling Company/WomanTrend,⁹² on August 23, 2016—seven weeks after she joined the Trump campaign— for “Survey Research.”
82. On August 30, 2016, the Trump campaign reported its first disbursement to Conway’s firm, paying The Polling Company \$128,496 for “polling.” Donald J. Trump for President, Inc.’s reports for the months of July and August do not report any payments directly to Conway.
83. Accordingly, during the first two months that Conway has been with the Trump campaign in a leadership role, her small, privately-held firm has been paid \$246,987.16 by Make America Number 1, nearly twice as much as the Trump campaign paid the firm during that same period.
84. The payments from Make America Number 1 to Conway’s firm—during the period that Conway provided services to the Trump campaign—are more than coincidental. According to published reports, the chair of Make America Number 1, Rebekah Mercer, “leans heavily on Kellyanne Conway. She is the Mercers’ sounding board on their decision-making.”⁹³ Mercer had initially “install[ed] Ms. Conway to oversee” the earlier iteration of Make America Number 1 and also “maintained close control over the groups’ purse strings.”⁹⁴ Mercer is now reportedly in charge of Make America Number 1’s day to day operations.⁹⁵ Mercer and her father are Make America Number 1’s primary funders.⁹⁶

⁹² Conway founded the firm and is currently its president; *see About*, POLLING COMPANY, INC., <http://www.pollingcompany.com/about> (last visited Oct. 5, 2016).

⁹³ Vogel & Sherman, *supra* note 55.

⁹⁴ Confessore, *supra* note 37.

⁹⁵ Ballhaus, *supra* note 41.

⁹⁶ *Id.*

Additionally, according to published reports, the Mercers recommended that Trump hire Conway as campaign manager, and the candidate obeyed.⁹⁷

85. In sum, Rebekah Mercer recommended Trump hire Conway, then used the political committee she controls to pay \$246,987.16 to Conway's firm during the period that Conway provided services to the Trump campaign.

- *Stephen K. Bannon*

86. On August 17, Stephen K. Bannon was hired by Donald J. Trump for President Inc. as the campaign's CEO. However, Donald J. Trump for President, Inc.'s September Monthly report, reflecting disbursements for the month of August, does not reflect any payments to Bannon.
87. According to corporate filings with the California Secretary of State, Bannon's "Bannon Strategic Advisors, Inc." is located at 8383 Wilshire Boulevard, Suite 1000, in Beverly Hills, California. During the month of August, Make America Number 1 reported \$15,000 in disbursements for "video production" to Glittering Steel LLC at 8383 Wilshire Boulevard, Suite 1000, in Beverly Hills, California.⁹⁸
88. "Cambridge Analytica" is registered with the California Secretary of State at that same address, 8383 Wilshire Boulevard, Suite 1000, in Beverly Hills, California. Robert Mercer owns Cambridge Analytica. According to published reports, Bannon is on Cambridge Analytica's board.⁹⁹

⁹⁷ *Id.*

⁹⁸ Make America Number 1 Report of Receipts and Disbursements, FEC Form 3X (reporting period 08/01/16 to 08/31/16), <http://docquery.fec.gov/pdf/915/201609209032015915/201609209032015915.pdf#navpanes=0>.

⁹⁹ Vogel, Schreckinger, Isenstadt, & Samuelsohn, *supra* note 49; *see also* Hadas Gold, Katie Glueck, & Kenneth P. Vogel, *The Daily Cruz*, POLITICO (July 10, 2015), <http://www.politico.com/story/2015/07/ted-cruzs-secret-weapon-breitbartcom-119935>.

89. During the month of August, Make America Number 1 reported an estimated \$411,763 in disbursements to Cambridge Analytica for “campaign management consulting services” and “pre-paid media.”¹⁰⁰ During the same period, Donald J. Trump for President, Inc. also reported \$250,000 in disbursements to Cambridge Analytica for “data management.”
90. In sum, the Mercers recommended Trump hire Bannon, were in a position to know that the Trump campaign was not paying Bannon, and then used the political committee they fund and control to disburse \$426,763 to companies associated with the same address as Bannon’s consulting firm, during the same period that Bannon provided services to the Trump campaign.
91. Therefore, based on published reports, there is reason to believe that Make America Number 1 has made unreported and excessive in-kind contributions to Donald J. Trump for President, Inc. in the form of compensation for the personal services of Conway and Bannon rendered to Donald J. Trump for President, Inc., in violation of the committee’s sworn statements to the Commission that it would not make contributions to a candidate committee, in excess of FECA’s \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), and in violation of FECA’s reporting requirements, 52 U.S.C. §§ 30104(b)(4)(H)(i) and 30104(b)(3)(B)(i).

COUNT II:
MAKE AMERICA NUMBER 1 HAS ILLEGALLY MADE IN-KIND CONTRIBUTIONS TO DONALD J. TRUMP FOR PRESIDENT, INC. IN THE FORM OF COORDINATED COMMUNICATIONS BY USING A “COMMON VENDOR”

¹⁰⁰ Make America Number 1 Report of Receipts and Disbursements, September Monthly FEC Form 3X (reporting period 08/01/16 to 08/31/16), <http://docquery.fec.gov/pdf/915/201609209032015915/201609209032015915.pdf#navpanes=0>. Make America Number 1’s previous reports reflecting payments to Cambridge Analytica listed its address as 8383 Wilshire Blvd.; however, the committee’s September Monthly report, for the first time, listed Cambridge Analytica at an address in Alexandria, Virginia.

92. A political committee makes a “coordinated communication” when the communication (1) is paid for, in whole or in part, by a person other than the candidate or committee; (2) satisfies at least one of the “content standards” in the regulation, for example by “expressly advocat[ing] . . . the election or defeat of a clearly identified candidate for Federal office;” and (3) satisfies at least one of the “conduct standards” in the regulation. 11 CFR § 109.21(a). A payment for a “coordinated communication” is treated as an in-kind contribution to the candidate with whom it was coordinated, and must be reported as a contribution to that candidate. 11 C.F.R. § 109.21(b).
93. The “conduct standard” of the regulation is satisfied if the political committee paying for the communication (a) uses a commercial vendor¹⁰¹ to create, produce, or distribute the communication¹⁰² that (b) during the previous 120 days also provided certain services to the candidate identified in the regulation,¹⁰³ such as development of media strategy and selection of advertising slots; selection of audiences; polling; content development; voter identification; or otherwise providing political or media advice,¹⁰⁴ and (c) the vendor uses or conveys to the political committee information about the candidates’ “plans, projects, activities or needs” (or information used previously by the commercial vendor in providing services to the candidate) and “that information is material to the creation, production, or distribution of the communication.”¹⁰⁵ 11 C.F.R. § 109.21(d)(4).¹⁰⁶

¹⁰¹ The regulation cross-references the definition of “commercial vendor” at 11 C.F.R. § 116.1(c), which includes “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services.” *Id.*

¹⁰² 11 C.F.R. § 109.21(d)(4)(i).

¹⁰³ *Id.* § 109.21(d)(4)(ii).

¹⁰⁴ *Id.* § 109.21(d)(4)(ii)(A-I).

¹⁰⁵ *Id.* § 109.21(d)(4)(iii).

94. Based on its filings with the Commission and published reports, there is reason to believe that Make America Number 1 has made in-kind contributions to Donald J. Trump for President, Inc. in the form of coordinated communications by using the common vendors Cambridge Analytica and The Polling Company.
- *Cambridge Analytica*
95. The Trump campaign reported its first payment to Cambridge Analytica on July 29, 2016. Make America Number 1's communications since July 29, 2016 satisfy the "payment" prong at 11 C.F.R. § 109.21(a)(1), because since that date the committee has reported paying for \$234,437 in independent expenditures opposing Donald J. Trump's presidential opponent, Hillary Clinton, and an additional \$110,000 in pre-paid media, presumably for communications opposing Clinton.
96. Make America Number 1's communications since July 29 satisfy the "content" prong at 11 C.F.R. § 109.21(a)(2), since the communications expressly advocate for the defeat of Clinton, *id.* § 109.21(c)(3), and accordingly, have been reported as independent expenditures.
97. Make America Number 1's communications since July 29 additionally satisfy the "conduct" prong at 11 C.F.R. § 109.21(a)(3), since the political committee (a) contracted

¹⁰⁶ These requirements are not satisfied if the material information was obtained from a publicly available source, 11 C.F.R. § 109.21(d)(5)(ii), or if the committee establishes and implements a firewall in a written policy that prohibits the flow of information about the candidate's campaign plans, projects, activities or needs to those responsible for the creation, production, or distribution of the communications, pursuant to 11 C.F.R. § 109.21(h). However, in promulgating the rules, the Commission emphasized that "the mere existence of a confidentiality agreement or ethical screen should provide a *de facto* bar to the enforcement of the limits on coordinated communication imposed by Congress. Without some mechanism to ensure enforcement, these private arrangements are unlikely to prevent the circumvention of the rules." 68 Fed. Reg. 421, 435 (Jan. 3, 2003).

with Cambridge Analytica, a commercial vendor within the meaning of the regulation,¹⁰⁷ to create, produce, or distribute communications that attack Trump’s opponent, and (b) during that same period, Cambridge Analytica provided several of the regulation’s enumerated services to Donald J. Trump for President, Inc., such as voter identification and content development, and (c) therefore there is reason to believe the vendor used or conveyed to Make America Number 1 information about the Trump campaign’s “plans, projects, activities or needs,” and that such information was “material to the creation, production, or distribution of the communication,” *id.* § 109.21(d)(4).

98. Donald J. Trump for President, Inc. reported \$100,000 in disbursements to Cambridge Analytica for “data management services” on July 29, 2016, and an additional \$250,000 in disbursements to Cambridge Analytica, LLC on August 18, 2016 for “data management.” According to published reports, Cambridge also has staff embedded in the Trump campaign,¹⁰⁸ and in the firm that is running the Trump campaign’s digital operation.¹⁰⁹
99. In the weeks following Donald J. Trump for President, Inc. disclosing its first payment to Cambridge Analytica on July 29, Make America Number 1 has reported making a total of \$234,437 in independent expenditures opposing Trump’s opponent, Hillary Clinton.¹¹⁰

¹⁰⁷ Cambridge Analytica is engaged in the regular business of voter identification and content development and thus qualifies as a commercial vendor. 11 C.F.R. § 116.1.

¹⁰⁸ Kaye, *supra* note 39.

¹⁰⁹ Johnson, *supra* note 34.

¹¹⁰ Make America Number 1, 24/28 Hour Report of Independent Expenditures, FEC Form E, (reflecting communications disseminated August 6 and 8, 2016), <http://docquery.fec.gov/pdf/387/201608079022181387/201608079022181387.pdf#navpanes=0> ; *id.*, (reflecting communications disseminated August 9, 2016), <http://docquery.fec.gov/pdf/394/201609119030768394/201609119030768394.pdf#navpanes=0>; *id.*, (reflecting communications disseminated August 13, 2016), <http://docquery.fec.gov/pdf/851/201609159030826851/201609159030826851.pdf#navpanes=0>.

Cambridge Analytica was the vendor used for \$211,000 of those independent expenditures.¹¹¹ Make America Number 1 also reported \$301,763 in disbursements to Cambridge Analytica for “campaign management and consulting services” on August 11, and \$110,000 in disbursements for “pre-paid media” on August 26, presumably for communications attacking Trump’s opponent, Clinton. Additionally, three days before Donald J. Trump for President, Inc. reported its first payment to the vendor, Make America Number 1 reported paying \$256,157 to Cambridge Analytica, LLC on July 26, 2016 for independent expenditures opposing Hillary Clinton.¹¹²

100. According to published reports, Cambridge Analytica is “working with Mr. Trump’s vendors to identify potential Trump supporters in the electorate, particularly among infrequent voters.”¹¹³ According to *Ad Age*, “The ultimate political application of [Cambridge Analytica’s] modeling system is to craft specific ad messages tailored to voter segments based on how they fall on the five-factor spectrum.”¹¹⁴ In other words, the core set of services that Cambridge Analytica provides to campaigns and political committees is identifying voters and audiences, then developing ad content tailored to those voters and audiences. Therefore, Cambridge Analytica provided several of the enumerated services described at 11 C.F.R. § 109.21(d)(4)(ii) to both the campaign and the political committee.¹¹⁵

¹¹¹ *Id.*

¹¹² Make America Number 1, Report of Receipts and Disbursements, FEC Form 3X (reporting period 07/01/16 to 07/31/16), <http://docquery.fec.gov/pdf/678/201608209022650678/201608209022650678.pdf#navpanes=0>.

¹¹³ Confessore, *supra* note 37.

¹¹⁴ Johnson, *supra* note 34.

¹¹⁵ Those enumerated services include: (A) Development of media strategy, including the selection or purchasing of advertising slots; (B) Selection of audiences; (C) Polling; (D) Fundraising; (E) Developing the content of a public communication; (F) Producing a public

101. The Commission has consistently found reason to believe that FECA has been violated if the first two parts of the common vendor test are satisfied, as is the case here: Make America Number 1 (a) contracted with the commercial vendor Cambridge Analytica to create, produce, or distribute communications attacking Trump’s opponent, and (b) during that same period, Cambridge Analytica provided similar services to the Trump campaign. As the Commission has previously held, “[b]ecause the first two parts of the common vendor test are met, there is reason to investigate whether the use or exchange of information occurred as described in 11 C.F.R. § 109.21(D)(4)(iii).”¹¹⁶
102. However, there is additional evidence suggesting that Cambridge Analytica did in fact use or convey to Make America Number 1 information about the Trump campaign’s plans, projects, activities or needs. The Trump campaign’s CEO, Stephen K. Bannon, is reportedly on the board of Cambridge Analytica, which is owned by the Mercers, who fund and control Make America Number 1; as *National Review* noted, “It’s rare for data-targeting firms or political consultants more broadly to work for more than one presidential campaign over the course of an election season . . . [but] Cambridge Analytica’s allegiances have followed those of its owners.”¹¹⁷ The Trump campaign also reportedly began contracting with Cambridge Analytica at the request of the Mercers.¹¹⁸ Additionally, because Make America Number 1’s purpose is to “amplify” and “reinforce”

communication; (G) Identifying voters or developing voter lists, mailing lists, or donor lists; (H) Selecting personnel, contractors, or subcontractors; or (I) Consulting or otherwise providing political or media advice. 11 C.F.R. § 109.21(d)(4)(ii).

¹¹⁶ MUR 5546, Notification with Factual and Legal Analysis at 9; MUR 5502, Notification with Factual and Legal Analysis at 8.

¹¹⁷ Johnson, *supra* note 34.

¹¹⁸ Vogel, Schreckinger, Isenstadt, & Samuelsohn, *supra* note 49..

Trump’s attacks against his opponent,¹¹⁹ it would appear that both Donald J. Trump for President, Inc. and Make America Number 1 are targeting a similar set of voters, and therefore Cambridge Analytica’s work for both committees likely overlaps significantly. Therefore, Cambridge Analytica not only is in a position to share information about the Trump campaign’s plans, projects, activities or needs with Make America Number 1, but given its leadership, *likely has the motivation to do so*, and that information is certain to be material to the creation, production, or distribution of the political committee’s communications.

- *The Polling Company*

103. There may additionally be reason to believe that Make America Number 1 made coordinated expenditures by contracting with The Polling Company, which was also contracting with the Trump campaign.
104. Make America Number 1’s reports filed with the Commission reflect a payment of \$246,987.16 to The Polling Company for “Survey Research” on August 23, 2016. On August 30, 2016, Donald J. Trump for President, Inc. reported paying The Polling Company \$128,496 for “polling.” The president and CEO of The Polling Company, Kellyanne Conway, was formerly the president of Make America Number 1 and is now campaign manager for Donald J. Trump for President, Inc.; additionally, according to news reports, The Polling Company’s Director of Political Services, Brett Loyd, “spends considerable time” at the Trump campaign’s headquarters.¹²⁰ According to The Polling

¹¹⁹ Green & Mider, *supra* note 30.

¹²⁰ Vogel & Sherman, *supra* note 55.

Company's website,¹²¹ the firm consists only of Conway and Loyd, plus four research staffers; therefore, it appears unlikely that The Polling Company could handle two major presidential accounts without breaching a "firewall."

105. The Polling Company is a commercial vendor within the meaning of the regulation,¹²² and has provided polling services to Donald J. Trump for President, Inc., and therefore there is reason to believe the vendor used or conveyed to Make America Number 1 information about the Trump campaign's "plans, projects, activities or needs," and that such information was "material to the creation, production, or distribution" of Make America Number 1's communications, 11 C.F.R. § 109.21(d)(4).
106. Therefore, based on published reports filed with the Commission, there is reason to believe that Make America Number has made in-kind contributions to Donald J. Trump for President, Inc. in the form of in coordinated communications, in violation of the committee's sworn statements to the Commission that it would not make contributions to a candidate,¹²³ in excess of FECA's \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), and in violation of FECA's reporting requirements, 52 U.S.C. §§ 30104(b)(4)(H)(i) and 30104(b)(3)(B)(i).

COUNT III:
REBUILDING AMERICA NOW HAS ILLEGALLY MADE IN-KIND CONTRIBUTIONS TO
DONALD J. TRUMP FOR PRESIDENT, INC. IN THE FORM OF COORDINATED
COMMUNICATIONS THROUGH "FORMER EMPLOYEES"

¹²¹ See *About*, POLLING COMPANY, INC., <http://www.pollingcompany.com/about> (last visited Oct. 5, 2016).

¹²² The Polling Company is engaged in the regular business of providing goods and services to political committees and is thus a commercial vendor. 11 C.F.R. § 116.1(c).

¹²³ See Rebuilding America Now Statement of Organization, FEC Form 1 (filed June 2, 2016) at 5.

107. The “conduct standard” of the “coordinated communications” regulation is also satisfied if both (a) a “former employee” of the candidate or the candidate’s campaign committee becomes employed by the committee paying for the communication within 120 days of leaving the campaign, 11 C.F.R. § 109.21(d)(5)(i), and (b) that person uses or conveys “[i]nformation about the campaign plans, projects, activities, or needs of the clearly identified candidate” or otherwise applies information previously used “in providing services to the candidate” and “that information is material to the creation, production, or distribution of the communication, *id.* § 109.21(d)(5)(ii).
108. Based on its filings with the Commission and published reports, there is reason to believe Rebuilding America Now has made in-kind contributions to Donald J. Trump for President, Inc. in the form of coordinated communications.
109. Rebuilding America Now’s communications for the month of June satisfy the “payment” prong at 11 C.F.R. § 109.21(a)(1), since the committee has reported paying for \$1,431,503 in independent expenditures opposing Donald J. Trump’s presidential opponent, Hillary Clinton.¹²⁴
110. Rebuilding America Now’s communications for the month of June satisfy the “content” prong at 11 C.F.R. § 109.21(a)(2), since the communications expressly advocate for the defeat of Clinton, *id.* § 109.21(c)(3), and accordingly, have been reported as independent expenditures on Schedule E, FEC Form 3x.¹²⁵
111. Rebuilding America Now’s communications for the month of June additionally satisfy the “conduct” prong at 11 C.F.R. § 109.21(a)(3), since Ken McKay and Laurance Gay were employees of the Trump campaign within the 120 days prior to the development

¹²⁴ See Rebuilding America Now 2016 July 15 Quarterly Report.

¹²⁵ *Id.*

and airing of the communications, and there is reason to believe they conveyed information about the Trump campaign's plans, projects, activities, or needs that was material to the creation, production or distribution of the communications. *Id.* § 109.21(d)(5).

112. The Commission has previously found reason to believe that the § 109.21(d)(5) “conduct” standard was satisfied (and thus FECA was violated) when the “former employee” had been in a position with the campaign to possess “inside information about the campaign.”¹²⁶ According to news reports and campaign press releases, both Gay and McKay acquired “inside information” about the Trump campaign's plans, projects, activities, and needs in their capacity as Trump campaign employees. Gay's hire by the Trump campaign was announced on April 20, with news reports stating he had already “been on the ground in California” meeting with Trump's state director and “had discussions about the campaign's plans to spend heavily” in the state.¹²⁷ McKay's hire as a Trump campaign “Senior Advisor” was announced via press release on April 25, with the candidate stating that McKay would “support our delegate operations team and bolster our ground game efforts.”¹²⁸

¹²⁶ MUR 5403, Notification with Factual and Legal Analysis to America Coming Together at 9-13.

¹²⁷ Vogel & Arnsdorf, *supra* note 4.

¹²⁸ The press release announcing McKay's hire and the news reports discussing Gay's hire did not make any mention of either Trump employee working without compensation, whereas the press release announcing that Paul Manafort would serve as campaign manager stated expressly that he would be volunteering his services. *See supra* notes 1-4. The McKay press release, for example, says McKay was “hired” for a “job,” with the title “Senior Advisor.” Vogel & Arnsdorf, *supra* note 4. Even if McKay and Gay had worked for the Trump campaign without compensation, their conduct nonetheless satisfied the definition of “employee” for purposes of the “coordinated communications” regulation since their activities satisfied the common law definition of “employee” (and the definition at 26 C.F.R. § 31.3401(c)-1), since the Trump campaign had the right to control and direct McKay and Gay, not only as to the result to be

113. On June 2, news reports announced that McKay and Gay would be leading Rebuilding America Now,¹²⁹ and on June 5, the committee aired its first communications¹³⁰—fewer than 50 days after McKay and Gay were first hired by the Trump campaign. According to Rebuilding America Now’s July 15 quarterly report filed with the Commission, McKay and Gay were the only individuals paid for political consulting and strategy in June, during the same period that the committee spent \$1,431,503 on communications that satisfied the payment and content prongs at 11 C.F.R. § 109.21(a)(1-2).¹³¹
114. Given that McKay and Gay are the Political Director and Managing Director of the committee, and there have been no disclosed payments to any other individuals or entities that would suggest that McKay and Gay delegated the responsibility for creating, producing or distributing the committee’s communications, there is strong reason to believe that McKay and Gay applied their “inside information” about the Trump campaign’s plans, projects, activities, or needs when making decisions about Rebuilding America Now’s communications, and did so less than 120 days after leaving (in fact, less than 50 days after first being hired by) the Trump campaign.
115. Accordingly, the \$1,431,503 that the political committee spent on communications in the month of June constituted “coordinated communications,” and subsequent expenditures

accomplished by the work but also as to the details and means by which that result is accomplished. The fact that work is performed gratuitously does not mean that the hired party is not an employee. Restatement (Third) of Agency § 7.07(3). To conclude otherwise would lead to an absurd result: Trump’s former campaign manager, Paul Manafort, would be allowed to immediately join a super PAC and apply his knowledge of the campaign’s plans, projects, activities and needs to develop the PAC’s communications, simply because he claimed to work without pay. Such a result would be in direct contravention of Congress’ intent when enacting BCRA and directing the Commission to promulgate rules regulating former employees.

¹²⁹ Schleifer, *supra* note 7.

¹³⁰ See Rebuilding America Now 2016 July 15 Quarterly Report.

¹³¹ *Id.*

may also have constituted “coordinated communications,” which are treated as contributions under the Act. A significant portion of those contributions were likely derived from corporate sources, since nearly half of Rebuilding America Now’s receipts for the month of June were from corporations, including a \$100,000 contribution from Murray Energy Corporation and a \$50,000 contribution from Southeast QSR, LLC.¹³²

116. Therefore, based on published reports and Rebuilding America Now’s reports filed with the Commission, there is reason to believe that Rebuilding America Now has made in-kind contributions to Donald J. Trump for President, Inc. in the form of coordinated communications, in violation of the committee’s sworn statements to the Commission that it would not make contributions to a candidate,¹³³ in excess of FECA’s \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), in violation of FECA’s prohibition on contributions to a candidate using corporate funds, 52 U.S.C. § 30118(a) and (b)(2), and in violation of FECA’s reporting requirements, 52 U.S.C. §§ 30104(b)(4)(H)(i) and 30104(b)(3)(B)(i).

COUNT IV:

REBUILDING AMERICA NOW HAS ILLEGALLY MADE IN-KIND CONTRIBUTIONS TO DONALD J. TRUMP FOR PRESIDENT, INC. BY REPUBLISHING CAMPAIGN MATERIALS

117. Additionally, the Act and Commission regulations provide that, with limited exceptions not implicated here, a political committee that disseminates, distributes, or republishes, in whole or in part, any campaign materials prepared by a candidate’s campaign committee makes a contribution to the campaign, subject to the Act’s amount limits, source

¹³² See Rebuilding America Now 2016 July 15 Quarterly Report at 6-7.

¹³³ See Rebuilding America Now Statement of Organization, FEC Form 1 (filed June 2, 2016) at 5.

prohibitions, and disclosure requirements, regardless of whether such republication is a “coordinated communication.” 2 U.S.C. § 30116(a)(7)(B)(iii); 11 C.F.R. § 109.23.

118. Rebuilding America Now’s “America Soaring” ad prominently republishes the official Trump-Pence logo for a full eight seconds¹³⁴—thirteen percent of the runtime of the 60-second long ad—and additionally repeats the Trump campaign slogan, “Make America Great Again.” Rebuilding America Now’s website also republishes the official Trump-Pence logo as it cycles the “America Soaring” ad across the top half of its front page. Based on published reports and Rebuilding America Now’s reports filed with the Commission, it appears that the committee may have spent at least \$1,864,586 disseminating the “America Soaring” ad.¹³⁵
119. Therefore, there is reason to believe that Rebuilding America Now has made in-kind contributions to Donald J. Trump for President, Inc. in the form of republished campaign materials. Given that the republished campaign materials constituted 13 percent of the “America Soaring” ad, the value of those in-kind contributions can be calculated as at least thirteen percent of the estimated \$1,864,586 spent on disseminating the “America Soaring” ad, or \$242,396. The value of producing the ad and its placement on Rebuilding America Now’s website should also be taken into account in assessing the total value of the in-kind contributions, as well as any additional disbursements for disseminating the ad.
120. Therefore, based on published reports and Rebuilding America Now’s reports filed with the Commission, there is reason to believe that Rebuilding America Now has made in-

¹³⁴ Compare the Trump-Pence logo at the :53 mark in the “America Soaring” ad, <https://www.youtube.com/watch?v=NMNZTcGSHLg>, with the Trump-Pence logo on the official campaign website, <https://shop.donaldjtrump.com/product-p/dtc-tp rally-bl.htm>.

¹³⁵ See calculation described *supra* ¶16.

kind contributions to Donald J. Trump for President, Inc. of at least \$242,396, in violation of the committee's sworn statements to the Commission that it would not make contributions to a candidate,¹³⁶ in excess of FECA's \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), in violation of FECA's prohibition on contributions to a candidate using corporate funds, 52 U.S.C. § 30118(a) and (b)(2), and in violation of FECA's reporting requirements, 52 U.S.C. §§ 30104(b)(4)(H)(i) and 30104(b)(3)(B)(i).

**COUNT V:
DONALD J. TRUMP FOR PRESIDENT, INC. HAS FAILED TO REPORT CONTRIBUTIONS FROM
MAKE AMERICA NUMBER 1**

121. Federal law requires candidates to report and disclose contributions, including in-kind contributions, received from political committees. *See* 52 U.S.C. § 30104(b).
122. "Contribution" includes any expenditure made in "cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 52 U.S.C. 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20(a).
123. As described above, there is reason to believe that Make America Number 1's expenditures were coordinated with the Trump campaign and accordingly should be treated as in-kind contributions to Donald J. Trump for President, Inc. under 52 U.S.C. 30116(a)(7)(B)(i) and 11 C.F.R. § 109.20(a).
124. "Contribution" also includes paying "compensation for the personal services of another person which are rendered to a political committee without charge for any purpose," 52 U.S.C. § 30101(8)(A)(ii); *see also* 11 C.F.R. § 100.54. The value of such a contribution is

¹³⁶ *See* Rebuilding America Now Statement of Organization, FEC Form 1 (filed June 2, 2016) at 5.

calculated based on the salary or compensation paid to the person who provided the services to the campaign.

125. As described in Count I, there is reason to believe that Make America Number 1's payments to Trump campaign manager Kellyanne Conway's firm, and payments to organizations associated with Trump campaign CEO Stephen K. Bannon, amounted to compensation for the personal services of those senior Trump campaign staffers, which constitute contributions to Donald J. Trump for President, Inc. under 52 U.S.C. § 30101(8)(A)(ii) and 11 C.F.R. § 100.54.
126. Accordingly, based on published reports, there is reason to believe Donald J. Trump for President, Inc. received in-kind contributions from Make America Number 1 in the form of coordinated expenditures, and in the form of compensation for the personal services of Conway and Bannon, yet failed to report the receipt of those contributions, in violation of FECA's reporting requirements, 52 U.S.C. §§ 30104(b)(2)(D) and 30104(b)(3)(B).

**COUNT VI:
DONALD J. TRUMP FOR PRESIDENT, INC. HAS ACCEPTED IN-KIND CONTRIBUTIONS IN
EXCESS OF FEDERAL LIMITS**


127. Federal law limits to \$2,700 the size of a contribution that a presidential candidate or her authorized campaign committee can accept from a non-multicandidate political committee like Make America Number 1. 52 U.S.C § 30116(a)(1).
128. Based on published reports, there is reason to believe Donald J. Trump for President, Inc. received hundreds of thousands of dollars of in-kind contributions from Make America Number 1 in the form of coordinated expenditures and compensation for personal services in excess of FECA's \$2,700 limit, 52 U.S.C. § 30116(a)(1).

PRAYER FOR RELIEF

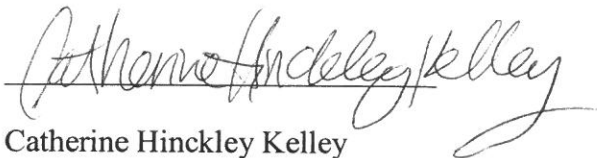
129. Wherefore, the Commission should find reason to believe that Make America Number 1, Rebuilding America Now, and Donald J. Trump for President, Inc. have violated 52 U.S.C. § 30101, *et seq.* and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should seek appropriate remedies and sanctions for any and all violations, including requiring respondents to file true and accurate reports reflecting all contributions, refund or disgorgement of excessive and prohibited contributions, appropriate civil penalties and such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

October 6, 2016

Respectfully submitted,



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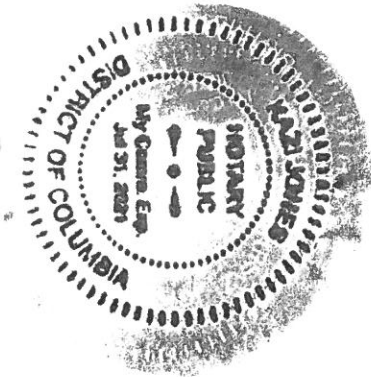
Counsel to the Campaign Legal Center

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center



A handwritten signature in dark ink, appearing to read "Lawrence M. Noble".

Lawrence M. Noble

Sworn to and subscribed before me this 5 day of October 2016.

A handwritten signature in dark ink, appearing to read "Kazi Jones".
Notary Public

DISTRICT OF COLUMBIA: SS
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 5 DAY OF October, 2016
A handwritten signature in dark ink, appearing to read "Kazi Jones".
NOTARY PUBLIC
My Commission Expires 7/31/2016

For Complainant Catherine Hinckley Kelley

A handwritten signature in dark ink, appearing to read "Catherine Hinckley Kelley".
Catherine Hinckley Kelley

Sworn to and subscribed before me this ____ day of October 2016.

A handwritten signature in dark ink, appearing to read "Kazi Jones".
Notary Public

DISTRICT OF COLUMBIA: SS
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 6 DAY OF October, 2016
A handwritten signature in dark ink, appearing to read "Kazi Jones".
NOTARY PUBLIC
My Commission Expires 7/31/2016