

BEFORE THE FEDERAL ELECTION COMMISSION

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v.

MUR No. _____

DEMOCRATIC NATIONAL COMMITTEE
William Q. Derrough, Treasurer
430 South Capitol Street SE
Washington, DC 20003

HILLARY FOR AMERICA
Jose H. Villareal, Treasurer
P.O. Box 5256
New York, NY 10185-5256

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that the Democratic National Committee (“DNC”) (C00010603) and Hillary Rodham Clinton’s presidential campaign committee Hillary for America (C00575795) have failed to file accurate reports, in violation of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*, and Commission regulations.
2. Specifically, the DNC and Hillary for America reported dozens of payments totaling millions of dollars to the law firm Perkins Coie with the purpose described as “Legal Services” or “Legal and Compliance Consulting,” when in reality, at least some of those payments were earmarked for the firm Fusion GPS, with the purpose of conducting opposition research on

Donald Trump. By failing to file accurate reports, the DNC and Hillary for America undermined the vital public information role that reporting is intended to serve.

3. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [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) (emphasis added).

FACTS

4. On October 24, 2016, the *Washington Post* reported that:

The Hillary Clinton campaign and the Democratic National Committee helped fund research that resulted in a now-famous dossier containing allegations about President Trump’s connections to Russia and possible coordination between his campaign and the Kremlin

Marc E. Elias, a lawyer representing the Clinton campaign and the DNC, retained Fusion GPS, a Washington firm, to conduct the research.¹
5. The Fusion GPS research was first funded by a Republican donor, but after that individual stopped paying, “Elias, acting on behalf of the Clinton campaign and the DNC, agreed to pay for the work to continue.”² Additionally, “[p]eople involved in the matter said that they would not disclose the dollar amounts paid to Fusion GPS but that the campaign and the DNC shared the cost.”³
6. Also on October 24, 2017, Elias’s law firm, Perkins Coie, confirmed these facts.⁴ A letter from Perkins Coie general counsel Matthew J. Gehringer acknowledged that “Fusion GPS

¹ Adam Entous, Devlin Barrett and Rosalind Henderman, *Clinton campaign, DNC paid for research that led to Russia dossier*, WASH. POST (Oct. 24, 2017), https://www.washingtonpost.com/world/national-security/clinton-campaign-dnc-paid-for-research-that-led-to-russia-dossier/2017/10/24/226fabf0-b8e4-11e7-a908-a3470754bbb9_story.html.

² *Id.*

³ *Id.*

⁴ Ken Vogel, *Clinton Campaign and Democratic Party Helped Pay for Russia Trump Dossier*, N.Y. TIMES (Oct. 24, 2017), <https://www.nytimes.com/2017/10/24/us/politics/clinton-dnc-russia-dossier.html>.

approached Perkins Coie in early March of 2016 . . . , aware that Perkins Coie represented” the DNC and Hillary for America.⁵ Perkins Coie, “represent[ing] . . . the DNC and Hillary for America,” then “engaged Fusion GPS in April of 2016, to perform a variety of research services during the 2016 election cycle.”⁶

7. The Clinton campaign and DNC payments to Fusion GPS to conduct research, however, were not disclosed on reports filed with the Commission:

The Clinton campaign paid Perkins Coie \$5.6 million in legal fees from June 2015 to December 2016, according to campaign finance records, and the DNC paid the firm \$3.6 million in “legal and compliance consulting” since November 2015 — though it’s impossible to tell from the filings how much of that work was for other legal matters and how much of it related to Fusion GPS.⁷

8. According to reports filed with the Commission, Clinton’s campaign committee reported 37 payments to Perkins Coie over the 2016 election cycle totaling \$5,631,421. The purpose for each disbursement was reported as “Legal Services.”
9. The DNC reported 345 payments to Perkins Coie over the 2016 election cycle totaling \$6,726,407 for a variety of purposes: \$6,466,711 for “Legal and Compliance Consulting,” \$99,925 for “Administrative Fees,” \$22,213 for “Travel,” \$49,136 for “Data Services Subscription,” among others. The DNC also reported one \$66,500 payment to Perkins Coie on August 16, 2016 for “research consulting.”⁸

SUMMARY OF THE LAW

⁵ Letter from Matthew J. Gehringer, General Counsel, Perkins Coie, to William W. Taylor, III, Zuckerman Spaeder LLP (Oct. 24, 2017) <https://www.documentcloud.org/documents/4116755-PerkinsCoie-Fusion-PrivelegeLetter-102417.html>.

⁶ *Id.*

⁷ *Entous et al., supra* n.1.

⁸ DNC Services Corp./Dem. Nat’l Committee, Amended September 2016 Monthly Report, FEC Form 3X (filed May 26, 2016) at 4241 <http://docquery.fec.gov/pdf/699/201706019055168699/201706019055168699.pdf>.

10. 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). Such reports must disclose the name and address of each person to whom an expenditure or disbursement in excess of \$200 is made, “together with the date, amount, and purpose” of the expenditure or disbursement. 52 U.S.C. § 30104(b)(5), (b)(6)(B)(v).
11. Commission regulations similarly require that political committees disclose the date, amount and purpose of expenditures and disbursements over \$200. 11 C.F.R. § 104.3(b)(3)(i) (political committees other than authorized committees); 11 C.F.R. § 104.3(b)(4)(i) (authorized committees). “Purpose” is defined as “a brief statement or description of why the disbursement was made.” *Id.* § 104.3(b)(3)(i)(A), (b)(4)(i)(A).
12. The Commission’s Statement of Policy states that “[t]he ‘purpose of disbursement’ entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear,” and that “[a]s a rule of thumb, filers should consider the following question: ‘Could a person not associated with the committee easily discern why the disbursement was made when reading the name of the recipient and the purpose?’” FEC, *Statement of Policy: “Purpose of Disbursement” Entries for Filings With the Commission*, 72 Fed. Reg. 887 (Jan. 9, 2007). The FEC has similarly advised candidates that “[t]he description must be sufficiently specific, when considered within the context of the payee’s identity, to make the reason for the disbursement clear.” FEC, *Campaign Guide for Congressional Candidates* (June 2014) at 103.
13. The Commission has published a non-exhaustive list of acceptable and unacceptable purpose descriptions online at <https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/>.

CAUSES OF ACTION

COUNT I:

HILLARY FOR AMERICA AND THE DNC FAILED TO ACCURATELY REPORT DISBURSEMENTS

A. Failure to Report Purpose of Disbursements

14. FECA and Commission regulations require that committees itemize each disbursement in excess of \$200, together with the “purpose” of the disbursement. 52 U.S.C. § 30104(b)(5), (b)(6)(B)(v); 11 C.F.R. § 104.3(b)(3)(i), (b)(4)(i). “Purpose” is defined as “a brief statement or description of why the disbursement was made,” 11 C.F.R. § 104.3(b)(3)(i)(A), (b)(4)(i)(A), which “must be sufficiently specific to make the purpose of the disbursement clear,” so that “a person not associated with the committee [could] easily discern why the disbursement was made when reading the name of the recipient and the purpose.” 72 Fed. Reg. 887 (Jan. 9, 2007).
15. During the 2016 election cycle, Hillary for America reported \$5,631,421 in payments to Perkins Coie with the purpose described as “Legal Services.” The DNC reported paying Perkins Coie \$6,466,711 for “Legal and Compliance Consulting.” However, the *Post* reported — and Perkins Coie itself largely confirmed — that Hillary for America and the DNC “shared the cost” of paying Fusion GPS through Perkins Coie to conduct opposition research on Donald Trump. Therefore, the purpose of at least some portion of the payments to Perkins Coie was not for legal services; instead, those payments were intended to fund opposition research.⁹

⁹ The DNC did report one \$66,500 payment to Perkins Coie on August 16, 2016 for “research consulting.” Even if that payment was earmarked for creation of the dossier, it was still an insufficient description of purpose: the DNC’s disbursement was not for “research consulting,” it was for actual research. It also concealed the true recipient of the disbursement. *See infra* ¶¶ 17-18.

16. This false reporting clearly failed the Commission’s requirements for disclosing the purpose of a disbursement. Describing payments as being for “legal services” or “legal and compliance consulting” when they are actually for opposition research is not “sufficiently specific to make the purpose of the disbursement clear,” and certainly would not allow “a person not associated with the committee [to] easily discern why the disbursement was made when reading the name of the recipient and the purpose.”¹⁰

B. Failure to Report Recipient of Disbursements

17. The Commission has not always required committees to report the identity of subcontractors whom itemized contractors hire, as long as the stated purpose of the payment to the contractor reflected the “actual purpose” of the subsequent payment to the subcontractor, and the contractor receiving the disbursement has an “arms-length” relationship with the committee making the disbursement. *See* Advisory Opinion 1983-25 (Mondale) at 3. That is not the case here. The stated purpose of the disbursements to Perkins Coie (“Legal Services” or “Legal and Compliance Consulting”) did not reflect the “actual purpose” of how the disbursement was intended to be used in hiring Fusion GPS as a subcontractor. Additionally, Hillary for America and the DNC did not have an arms-length relationship with Perkins Coie; the Chair of that firm’s political law practice, Marc Elias, was the Clinton campaign’s general counsel,¹¹ and according to the *Washington Post* was “acting on behalf of the Clinton

¹⁰ In fact, the report was so misleading that even *individuals associated with the committee* could not discern why the disbursement was made. *See* Ken Vogel, *Clinton Campaign and Democratic Party Helped Pay for Russia Trump Dossier*, N.Y. TIMES (Oct. 24, 2017), <https://www.nytimes.com/2017/10/24/us/politics/clinton-dnc-russia-dossier.html> (noting statement of Hillary for America’s spokesperson that he did not know campaign was paying Fusion GPS for research).

¹¹ Marc Elias, Partner, <https://www.perkinscoie.com/en/professionals/marc-e-elias.html> (last visited Oct. 25, 2017) (noting “Marc is currently general counsel to Hillary for America, the presidential campaign of Hillary Rodham Clinton”).

campaign and the DNC” when he contracted with Fusion GPS for opposition research.¹²

Although a committee may not be entirely aware of how a contractor with whom they have an arms-length relationship will hire subcontractors, and therefore might not be obligated to report those subcontracted payments, that is not the case here, where Elias had a formal role with, and was acting as an agent of, Hillary for America and the DNC in their dealings with Fusion GPS.

18. Therefore, there is reason to believe that Hillary for America and the DNC filed false reports by (a) failing to accurately report the “purpose” of disbursements, describing disbursements for “legal services” or “legal and compliance consulting” when the actual purpose was research, and (b) inaccurately reporting payments to Perkins Coie that were, in reality, earmarked for Fusion GPS, in violation of FECA’s reporting requirements at 52 U.S.C. § 30104(b)(5), (b)(6)(B)(v).

PRAYER FOR RELIEF

19. Wherefore, the Commission should find reason to believe that Hillary for America and the Democratic National Committee 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 determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

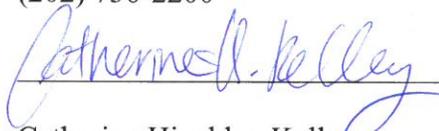
¹² *Entous et al., supra* n.1.

October 25, 2017

Respectfully submitted,



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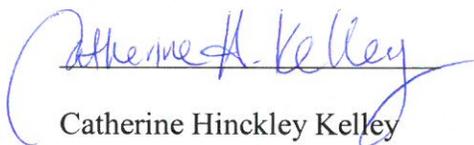
Counsel to the Campaign Legal Center

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 Catherine Hinckley Kelley


Catherine Hinckley Kelley

Sworn to and subscribed before me this 25 day of October 2017.



Notary Public



For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 25 day of October 2017.



Notary Public

