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Maine Democratic Party and Betty Johnson in her official capacity as treasurer  
Massachusetts Democratic State Committee and Paul G. Yorkis in his official capacity as treasurer  
Michigan Democratic State Central Committee and Sandy O'Brien in her official capacity as treasurer  
Minnesota Democratic-Farmer-Labor Party and Tyler Moroles in his official capacity as treasurer  
Mississippi Democratic Party and Ryan Brown in his official capacity as treasurer  
Missouri Democratic State Committee and Emily Waggoner in her official capacity as acting treasurer  
Montana Democratic Party and Sandi Luckey in her official capacity as treasurer  
Nevada State Democratic Party and Jan Churchill in her official capacity as treasurer  
New Hampshire Democratic Party and Brian Rapp in his official capacity as treasurer  
New Jersey Democratic State Committee and Kelly Stewart Maer in her official capacity as treasurer  
Democratic Party of New Mexico and Robert Lara in his official capacity as treasurer  
North Carolina Democratic Party --Federal and Anna Tilgham in her official capacity as treasurer  
Ohio Democratic Party and Fran Alberty in her official capacity as treasurer  
Oklahoma Democratic Party and Rachael Hunsucker in her official capacity as treasurer  
Democratic Party of Oregon and Eddy Morales in his official capacity as treasurer  
Pennsylvania Democratic Party and Alexander Reber in his official capacity as treasurer  
Rhode Island Democratic State Committee and Jeffrey Padwa in his official capacity as treasurer  
Democratic Party of South Carolina and Kathryn Hensley in her official capacity as treasurer  
South Dakota Democratic Party and Bill Nibbelink in his official capacity as treasurer  
Tennessee Democratic Party and Geeta McMillan in her official capacity as treasurer  
Texas Democratic Party and Gilberto Hinojosa in his official capacity as treasurer  
Utah State Democratic Committee and Peter Corroon in his official capacity as treasurer  
Democratic Party of Virginia and Barbara Klear in her official capacity as treasurer

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WV State Democratic Executive Committee and Jerry Brookover  
in his official capacity as treasurer  
Democratic Party of Wisconsin and Randy A. Udell in his official  
capacity as treasurer  
WY Democratic State Central Committee and Chris Russell in his  
official capacity as treasurer

**MUR 7331**  
DATE COMPLAINT FILED: February 26, 2018  
DATE OF NOTIFICATIONS: March 5, 2018  
DATE RESPONSE RECEIVED: June 1, 2018  
DATE ACTIVATED: June 1, 2018

EARLIEST SOL: September 10, 2020  
LATEST SOL: December 31, 2021  
ELECTION CYCLE: 2016

**COMPLAINANT:** Americans for the Trump Agenda  
**RESPONDENTS:** Hillary Rodham Clinton  
Hillary Victory Fund and Elizabeth Jones in her official capacity as  
treasurer  
Hillary for America and Elizabeth Jones in her official capacity as  
treasurer  
DNC Services Corporation/DNC and William Q. Derrough in his  
official capacity as treasurer

**RAD REFERRAL 17L-36**  
DATE OF REFERRAL: September 19, 2017  
DATE OF NOTIFICATION: September 21, 2017  
DATE RESPONSE RECEIVED: October 20, 2017  
DATE ACTIVATED: July 12, 2018

EXPIRATION OF SOL: September 20, 2021  
ELECTION CYCLE: 2016

**SOURCE:** Internally Generated  
**RESPONDENT:** Texas Democratic Party and Gilberto Hinojosa in his official  
capacity as treasurer

**RAD REFERRAL 17L-46**  
DATE OF REFERRAL: November 28, 2017  
DATE OF NOTIFICATION: November 30, 2017  
DATE RESPONSE RECEIVED: December 15, 2017  
DATE ACTIVATED: July 12, 2018

EARLIEST SOL: August 20, 2021  
LATEST SOL: August 20, 2021







1 **I. INTRODUCTION**

2 These matters relate to joint fundraising conducted through the Hillary Victory Fund  
3 (“HVF”), which was comprised of Hillary Clinton’s principal campaign committee, Hillary for  
4 America (“HFA”), the DNC Services Corporation/Democratic National Committee (“DNC”),  
5 and thirty-eight state party committees (“the SPCs”).<sup>1</sup> The main allegation of the Complaints is  
6 that HVF was a “sham” through which millions of dollars in excessive contributions were  
7 funneled through the SPCs to the DNC in violation of earmarking and contributions in the name  
8 of another provisions, and the DNC then contributed those funds to HFA in excess of federal  
9 limits.<sup>2</sup> Respondents argue that every individual transaction arising out of their joint fundraising  
10 activity was legal, thus, there can be no violation.<sup>3</sup>

11 We conclude that the available information, including the pattern of transfers of funds  
12 raised by HVF, provides reason to believe that the DNC accepted excessive contributions.  
13 Further, there is reason to believe that HVF, the DNC and the SPCs inaccurately disclosed  
14 receipts and disbursements and that the DNC made excessive contributions to HFA in the form  
15 of coordinated expenditures. Accordingly, we recommend that the Commission find reason to  
16 believe that:

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<sup>1</sup> Compl. at 7-10, MUR 7304 (amended July 31, 2018); Compl. at 1-2, MUR 7331 (Feb. 26, 2018);

RR 17L-46 (Democratic Party of S.C.) (Nov. 28, 2017); RR 17L-36 (Tex. Democratic Party) (Sept. 19, 2017)

<sup>2</sup> See Compl. at 7-10, 74, ¶ 137, MUR 7304; Compl. at 1-2, MUR 7331. Unless otherwise designated, all references and citations to the “Complaint” refer to the Complaint in MUR 7304.

<sup>3</sup> See HVF, *et al.* Resp. at 2-5, MUR 7304 (Feb. 20, 2018) (hereinafter “HVF Resp.” on behalf of HVF, HFA, Hillary Clinton, DNC, Nev. State Democratic Party, Democratic Party of Va., and Mo. Democratic State Comm.); N.J. Democratic State Comm. Resp. at 1, MUR 7304 (May 3, 2018) (joining HVF Response in substance); Alaska Democratic Party, *et al.* Resp. at 1-2, 5, MUR 7304 (Feb. 21, 2018) (hereinafter “SPCs Resp.” on behalf of the remaining 34 SPCs); see also MUR 7331 Resp. at 1-2 (June 1, 2018).





1 **II. BACKGROUND**

2 **A. The Creation of HVF**

3 HFA was the principal campaign committee for Hillary Clinton, the Democratic Party  
4 nominee for President for the 2016 general election. In August 2015, HFA and the DNC entered  
5 into a Memorandum of Understanding ("MOU") regarding the creation and operation of a joint  
6 fundraising committee, which ultimately became HVF.<sup>5</sup> On September 10, 2015, HFA and the  
7 DNC entered into a written joint fundraising agreement forming HVF to act as their fundraising  
8 representative.<sup>6</sup> Within a week of HVF's registration, thirty-two SPCs had signed the joint  
9 fundraising agreement, and ultimately participation grew to thirty-eight SPCs over the course of  
10 the election cycle.<sup>7</sup>

11 Under the agreement, contributions to HVF were allocated as follows: the first \$2,700  
12 from an individual or \$5,000 from a multicandidate committee ("PAC") would be designated for  
13 HFA and the primary election. The second \$2,700 (individual) or \$5,000 (PAC) would be

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<sup>5</sup> See HVF Resp. at 3 (asserting that the MOU "provided that, in exchange for raising funds for the party through HVF, the DNC would cooperate with HFA on its preparation for the general election, such as on data, technology, research, and communications, which would benefit the party and its candidates as a whole"); see also Compl. ¶ 113 (quoting Donna Brazile, *Inside Hillary Clinton's Secret Takeover of the DNC*, POLITICO MAGAZINE, Nov. 2, 2017, <https://www.politico.com/magazine/story/2017/11/02/clinton-brazile-hacks-2016-215774> ("Brazile Article") (referring to the MOU as a fundraising agreement)).

<sup>6</sup> See HVF Resp. at 3; HVF's Statement of Organization (Sept. 10, 2015) (listing two participating committees: HFA and DNC).

<sup>7</sup> Not all thirty-eight SPCs participated in the joint fundraising concurrently at all times. The Respondents assert that the joint fundraising agreement was amended whenever an SPC joined or left the fundraising arrangement, though the HVF Response attaches only the initial agreement, HVF Resp. at 3 & n.6, Ex. A (Joint Fundraising Agreement), and the SPC Response attaches no agreement. HVF amended its Statement of Organization three times to add and remove participating entities. See HVF's Amended Statement of Organization (Sept. 16, 2015) (adding 32 of the SPCs in addition to a party committee from Puerto Rico which is not a Respondent); HVF's Amended Statement of Organization (Nov. 2, 2015) (removing the Puerto Rico committee); HVF's Amended Statement of Organization (July 1, 2016) (adding the remaining six SPCs from Delaware, Iowa, Kansas, New Jersey, New Mexico, and South Dakota).

1 designated for HFA and the general election. If the contribution was made after the primary, up  
2 to \$2,700 (individual) or \$5,000 (PAC) would be designated for the general election.<sup>8</sup> The next  
3 \$33,400 (individual) or \$15,000 (PAC) would be allocated to the DNC. Any additional amounts  
4 received from an individual or PAC would be split equally among the participating SPCs up to  
5 \$10,000 (individual) or \$5,000 (PAC). The written agreement and contribution form state that  
6 this allocation formula could change if a contributor designated his or her contribution for a  
7 particular participant.<sup>9</sup> In addition, a contribution form supplied by HVF states that participating  
8 committees would determine how such contributions would be used in connection with a federal  
9 election, and the contributions “[would] not be earmarked for any particular candidate.”<sup>10</sup>

10 By definition, any individual contribution over \$38,800 before the primaries and \$36,100  
11 for the general election would exceed the combined contribution limits for HFA and the DNC  
12 and result in some money being allocated to the SPCs. Around 1,500 individuals contributed  
13 over \$38,800 to HVF.<sup>11</sup> In total, HVF reported transferring over \$112 million to the SPCs from

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<sup>8</sup> See HVF Resp., Ex. B (HVF Contribution Form). The allocation formula in the original agreement between only HFA and the DNC did not account for general election contributions. See HVF Resp., Ex. A (Joint Fundraising Agreement) (allocation formula attached as an exhibit to the agreement). Respondents did not provide the amended joint fundraising agreements that included the SPCs, however, they did provide a contribution form that lists all thirty-eight of the SPCs as participating committees and describes the allocation formula.

<sup>9</sup> See HVF Resp., Ex. A (Joint Fundraising Agreement); HVF Resp., Ex. B (HVF Contribution Form).

<sup>10</sup> HVF Resp., Ex. B (HVF Contribution Form).

<sup>11</sup> For simplicity, the calculations in this report rely on the higher \$38,800 figure.

1 donors who had reached their limits for contributions to HFA and the DNC.<sup>12</sup> The crux of the  
2 Complaint relates to that \$112 million.

3 **B. Complaint and Referrals**

4 The Complaint in MUR 7304<sup>13</sup> alleges that “virtually every single disbursement from  
5 HVF to a state party resulted in an immediate transfer of the same amount of funds from the state  
6 party to the DNC.”<sup>14</sup> According to the Complaint, over \$80 million dollars in HVF transfers  
7 were “funneled” through the SPCs to the DNC in this manner.<sup>15</sup> The Complaint identifies 427  
8 transactions between October 1, 2015, and November 8, 2016, that followed a pattern of near-  
9 simultaneous transfers in and out of the SPCs.<sup>16</sup>

10 As an example, the Complaint states that on November 2, 2015, HVF reported  
11 transferring a total of \$505,000 to seventeen of the SPCs and that those SPCs reported receiving  
12 transfers “in the identical amounts of funds from HVF on the very same day.”<sup>17</sup> Each of those  
13 SPCs reported “contributing the same amount of money they received from HVF to the DNC on

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<sup>12</sup> See HVF’s Amended 2016 Year-End Report of Receipts & Disbursements (Sept. 6, 2017); HVF’s Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements (Aug. 30, 2017); HVF’s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements (Aug. 31, 2017); HVF’s Amended 2016 October Quarterly Report of Receipts & Disbursements (Aug. 31, 2017); HVF’s Amended 2016 July Quarterly Report of Receipts & Disbursements (Nov. 15, 2017); HVF’s Amended 2016 April Quarterly Report of Receipts & Disbursements (Oct. 3, 2016); HVF’s Amended 2015 Year-End Report of Receipts & Disbursements (Aug. 30, 2017); HVF’s 2015 October Quarterly Report of Receipts & Disbursements (Oct. 10, 2015).

<sup>13</sup> The Complaint in MUR 7331 raises the same legal theory as the Complaint in MUR 7304, namely that HVF funds were routed through the SPCS to the DNC and to HFA. For purposes of this report, we refer solely to the Complaint in MUR 7304 because it includes detailed allegations regarding the Respondents’ joint fundraising activity, and the MUR 7331 Complaint contains no information not already presented in MUR 7304. *See supra* note 2.

<sup>14</sup> Compl. ¶ 52.

<sup>15</sup> *Id.* ¶¶ 50-52.

<sup>16</sup> *Id.* ¶ 54, Ex. 1.

<sup>17</sup> *Id.* ¶ 57a-b.

1 the very same day (or occasionally the next day)."<sup>18</sup> The DNC generally reported receiving the  
2 funds on the same day.<sup>19</sup>

3 Further, a review of the SPCs' disclosure reports shows that fourteen of the SPCs<sup>20</sup>  
4 transferred the equivalent of 99% or more of their HVF allocations to the DNC.<sup>21</sup> And four of  
5 the SPCs described the purpose of the transfers to the DNC on their disclosure reports in a way  
6 that suggests they understood they should immediately transfer their HVF-allocated funds  
7 directly to the DNC:

- 8 • "Hillary Victory Fund,"<sup>22</sup>
- 9 • "Transfer from HVF,"<sup>23</sup>
- 10 • "Hillary Victory Fund Transfer Out,"<sup>24</sup> and

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<sup>18</sup> *Id.* ¶ 57c.

<sup>19</sup> *Id.* ¶ 57d.

<sup>20</sup> These SPCs are: (1) Democratic State Committee (Del.), (2) Kan. Democratic Party, (3) Ky. State Democratic Cent. Exec. Comm., (4) Democratic State Cent. Comm. of LA, (5) Miss. Democratic Party, (6) Mo. Democratic State Comm., (7) N.J. State Democratic Comm., (8) Democratic Party of Or., (9) R.I. Democratic State Comm., (10) S.D. Democratic Party, (11) Tex. Democratic Party, (12) Utah State Democratic Comm., (13) WV State Democratic Exec. Comm., and (14) Democratic Party of Wis.

<sup>21</sup> The SPCs in battleground states were excepted from the general pattern of transfers because they kept a large percentage of the funds they received from HVF. *See* Brazile Article, *supra* note 5 ("Money in the battleground states usually stayed in that state, but all the other states funneled that money directly to the DNC which quickly transferred the money to Brooklyn [HFA headquarters]."). Only one of the fourteen SPCs that transferred 99% or more of its HVF funds was in a battleground state (Democratic Party of Wis.); of the five SPCs that kept more than half of their HVF funds, all were battleground states (Democratic Exec. Comm. of Fla., Iowa Democratic Party, N.C. Democratic Party-Fed., Ohio Democratic Party, and Pa. Democratic Party).

<sup>22</sup> *See, e.g.,* Idaho State Democratic Party's Amended 2016 August Monthly Report of Receipts & Disbursements at 233 (Apr. 9, 2017).

<sup>23</sup> *See, e.g.,* Democratic State Cent. Comm. of LA's Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 702 (May 13, 2017).

<sup>24</sup> *See, e.g.,* Mass. Democratic State Comm.'s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 405 (Dec. 10, 2017).

- "Final Transfer to DNC for Hillary Victory Fund."<sup>25</sup>

The Complaint alleges that the timing, uniformity, regularity, and size of these transactions indicates one of two possible explanations. One explanation is that the SPCs "had an understanding or agreement [that] they would automatically funnel funds they received through HVF to the DNC."<sup>26</sup> Under this scenario, the Complaint alleges that (1) all of the Respondents violated the earmarking provisions because the contributions to HVF were earmarked to be transferred through the SPCs to the DNC and then to HFA;<sup>27</sup> (2) the DNC accepted contributions in the name of another because contributions to HVF were not contributions to the participating SPCs but rather contributions to the DNC;<sup>28</sup> and (3) the DNC accepted excessive contributions.<sup>29</sup>

The second possible explanation is that "the alleged transfers of HVF's funds to state parties never actually occurred, and all of the funds at issue were actually transferred directly from HVF to the DNC, rendering all FEC reports concerning these alleged transactions fraudulent."<sup>30</sup> In support, the Complaint cites to a *Politico* article that states:

While state party officials were made aware that Clinton's campaign would control the movement of the funds between participating committees, one operative who has relationships with multiple state parties said that some of their officials have complained that they weren't notified of the transfers into and out of their accounts until

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<sup>25</sup> See Democratic Party of N.M.'s Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 489 (Mar. 20, 2017).

<sup>26</sup> Compl. ¶ 53.

<sup>27</sup> *Id.* ¶¶ 123-30.

<sup>28</sup> *Id.* ¶¶ 131-38.

<sup>29</sup> *Id.* ¶¶ 139-44.

<sup>30</sup> *Id.* ¶¶ 56; see *id.* ¶¶ 151, 153.

1 after the fact. That's despite their stipulations in the banking  
2 documents that their affirmative consent was required before such  
3 transfers could be made from their accounts: But the operative said  
4 that the state party officials are reluctant to complain to the DNC  
5 about the arrangement out of fear of financial retribution.<sup>31</sup>

6 Even if the funds were transferred into the SPCs' accounts, the Complaint asserts that they would  
7 be "shell transactions" if HVF or HFA retained control over the transferred funds.<sup>32</sup>

8 The Complaint alleges that, as a consequence, many of the SPCs failed to report  
9 distributions received from HVF or transfers made to the DNC, though HVF reported making the  
10 disbursements and the DNC reported receiving transfers from the SPCs.<sup>33</sup> For example, the  
11 Complaint notes that HVF reported transferring \$900,000 to the Kansas Democratic Party on  
12 October 6, 2016, but the Kansas Democratic Party did not report receiving any funds from HVF  
13 on that date.<sup>34</sup> Further, the DNC reported receiving \$900,000 from the Kansas Democratic Party  
14 on October 6, 2016, but the Kansas Democratic Party did not report making this transfer to the  
15 DNC.<sup>35</sup> As another example, the Complaint notes that HVF reported transferring \$1,530,000 to  
16 the Nevada State Democratic Party on November 3, 2016, but the Nevada State Democratic  
17 Party did not report receiving this transfer until about fourteen months later and after the  
18 Complaint was filed.<sup>36</sup> And the DNC reported receiving \$1,530,000 from the Nevada State

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<sup>31</sup> Kenneth Vogel & Isaac Arnsdorf, *Clinton Fundraising Leaves Little for State Parties*, POLITICO, May 2, 2016, <https://www.politico.com/story/2016/04/clinton-fundraising-leaves-little-for-state-parties-222670>.

<sup>32</sup> Compl. ¶¶ 56, 153.

<sup>33</sup> *Id.* at 10; *see also id.* ¶ 162.

<sup>34</sup> *Id.* ¶ 175.

<sup>35</sup> *Id.* ¶ 176.

<sup>36</sup> *Id.* ¶ 190.

1 Democratic Party on November 3, 2016, but the Nevada State Democratic Party failed to  
2 disclose making the transfer in its original report.<sup>37</sup> In total, the Complaint alleges forty-nine  
3 reporting errors by fourteen of the thirty-eight SPCs involving over \$5 million in receipts and  
4 over \$4.5 million in disbursements.<sup>38</sup> The Complaint also alleges that the errors involved  
5 transfers from the SPCs to the DNC that the DNC and the SPCs did not report consistently.<sup>39</sup>

6 Separately, the Commission's Reports Analysis Division ("RAD") referred of the  
7 SPCs to OGC for potential enforcement action, chiefly because they misreported their joint  
8 fundraising receipts from HVF and transfers to the DNC.<sup>40</sup> Specifically, RAD referred the  
9 following SPCs for failing to report certain transactions on their original reports as  
10 described below:<sup>41</sup>

- 11 • The Texas Democratic Party failed to disclose an \$800,000 receipt from HVF  
12 and an \$800,000 transfer to the DNC;
- 13
- 14 • The Democratic Party of South Carolina failed to disclose receipts totaling  
15 \$1,050,000 from HVF and \$1,050,000 in transfers to the DNC;
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<sup>37</sup> *Id.* ¶ 191.

<sup>38</sup> *Id.* ¶¶ 161-93.

<sup>39</sup> *See, e.g., id.* ¶¶ 57c-d, 60, 62, 65, 173-74.

<sup>40</sup> *See* RR 17L-36 (Tex. Democratic Party);

RR 17L-46 (Democratic Party of S.C.);

In addition to these referrals, we transferred RR 17L-10 (Democratic Party of N.M.) to the Alternative Dispute Resolution Office ("ADRO") on July 18, 2017, which involved similar misreporting arising from HVF activity. The parties later settled. *See* Negotiated Settlement, ADR 832/RR 17L-10 (Democratic Party of N.M.) (Dec. 13, 2017).

<sup>41</sup> *See* Attachment 1 to this Report (summarizing the referrals and the SPCs' responses).





1 originated with HVF, to HFA and Clinton.”<sup>46</sup> Public statements by then-DNC Chair Donna  
2 Brazile indicate that Clinton and HFA exercised control over certain parts of the DNC’s  
3 operations.<sup>47</sup> According to Brazile, the MOU between HFA and the DNC “specified that in  
4 exchange for raising money and investing in the DNC, Hillary would control the party’s  
5 finances, strategy, and all the money raised.”<sup>48</sup> The MOU also reportedly gave HFA significant  
6 influence over DNC staffing decisions and party communications.<sup>49</sup>

7 Respondents deny all of the allegations regarding earmarking, contributions in the name  
8 of another, and excessive contributions. Rather, Respondents contend that they engaged in a  
9 series of independent, lawful transactions, and that “separate, legally permissible transactions”  
10 cannot be combined into an independent violation.<sup>50</sup> They further argue that the reporting  
11 violations were inadvertent and are better handled through RAD or the Alternative Dispute  
12 Resolution Office.

### 13 III. LEGAL ANALYSIS

#### 14 A. There is Reason to Believe Respondents Violated the Joint Fundraising 15 Regulations and the Act’s Contribution Limits and Reporting Requirements

16 The Act and Commission regulations permit candidates and political committees to  
17 engage in joint fundraising activities by establishing a separate political committee to act as their  
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<sup>46</sup> See *id.* ¶¶ 102, 110-14.

<sup>47</sup> See Brazile Article, *supra* note 5.

<sup>48</sup> *Id.*; see also Scott Detrow, *Clinton Campaign Had Additional Signed Agreement with DNC in 2015*, NPR, Nov. 3, 2017, <https://www.npr.org/2017/11/03/561976645/clinton-campaign-had-additional-signed-agreement-with-dnc-in-2015> (reproducing the MOU).

<sup>49</sup> See Brazile Article, *supra* note 5.

<sup>50</sup> HVF Resp. at 5; see SPCs Resp. at 5.

1 joint fundraising representative.<sup>51</sup> Participants must enter into a written agreement that identifies  
2 this representative and states the formula for the allocation of fundraising proceeds and  
3 expenses.<sup>52</sup> Commission regulations also require that the representative establish a separate  
4 depository account to be used solely for the receipt and disbursement of joint fundraising  
5 proceeds and deposit those proceeds in this account within ten days of receipt.<sup>53</sup>

6 All solicitations in connection with a joint fundraising effort must include a notice that  
7 identifies all participating committees, describes the allocation formula, informs contributors that  
8 they may choose to designate their contributions for a particular committee, and states that the  
9 allocation formula may change if a contributor makes a contribution that is excessive relative to  
10 any participant.<sup>54</sup> A contributor may make a contribution to the joint fundraising committee that  
11 “represents the total amount that the contributor could contribute to all of the participants under  
12 the applicable [contribution] limits.”<sup>55</sup> For the 2015-2016 election cycle, individuals were  
13 permitted to contribute no more than \$2,700 per election to a federal candidate committee,  
14 \$10,000 per calendar year to a state political party committee, and \$33,400 per calendar year to a

<sup>51</sup> See 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

<sup>52</sup> 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

<sup>53</sup> *Id.* § 102.17(c)(3)(i)-(ii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i).

<sup>54</sup> *Id.* § 102.17(c)(2)(i).

<sup>55</sup> *Id.* § 102.17(c)(5).

1 national political party committee.<sup>56</sup> In total, an individual could contribute up to \$772,200 to  
2 HVF over the election cycle, which represents the combined limits for each participant.<sup>57</sup>

3 Candidates and political committees are prohibited from knowingly accepting  
4 contributions in excess of these limits.<sup>58</sup> In the context of joint fundraising, the representative is  
5 responsible for screening all contributions to ensure they comply with the Act's source  
6 prohibitions and amount limitations, collecting contributions, paying fundraising costs, and  
7 distributing net proceeds to each participant.<sup>59</sup> If application of the joint fundraising committee's  
8 allocation formula results in a violation of the contribution limits, the joint fundraising  
9 committee may reallocate the excess funds to the other participant committees.<sup>60</sup>

10 In *McCutcheon v. FEC*, a challenge to the aggregate contribution limits for individuals,  
11 several dissenting Justices expressed concern that, in the absence of the aggregate limits, donors,  
12 candidates, and political parties could use the joint fundraising mechanism and intraparty transfer  
13 rules to circumvent federal contribution limits.<sup>61</sup> Although the Court found these arguments  
14 insufficient to justify upholding the aggregate limits, the plurality stated “[a] joint fundraising  
15 committee is simply a mechanism for individual committees to raise funds collectively, not to

<sup>56</sup> See 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b)(1), (c)(1), (c)(5); Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-5,752 (Feb. 3, 2015).

<sup>57</sup> \$5,400 to HFA for the primary and general elections; \$66,800 to the DNC over the two years; \$320,000 for the 32 SPCs in 2015 and \$380,000 for the 38 SPCs in 2016.

<sup>58</sup> 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

<sup>59</sup> 11 C.F.R. § 102.17(b)(1), (c)(4)(i).

<sup>60</sup> *Id.* § 102.17(c)(6)(i). However, designated contributions may not be reallocated without the written permission of the contributor. *Id.* § 102.17(c)(6)(ii).

<sup>61</sup> See 134 S. Ct. 1434, 1465-1479 (2014) (Breyer, J., dissenting, joined by Ginsburg, J., Sotomayor, J., and Kagan, J.); *id.* at 1442 (finding the “aggregate” limit on contributors at 52 U.S.C. § 30116(a)(3) unconstitutional, while leaving in place the “base” limits on contributors at 52 U.S.C. § 30116(a)(1)).

1 circumvent base limits or earmarking rules.”<sup>62</sup> The Court has recognized that the government  
2 has an interest in preventing circumvention of the contribution limits because “circumvention is  
3 a valid theory of corruption.”<sup>63</sup>

4 A joint fundraising representative must report all funds received in the reporting period  
5 they are received and all disbursements in the reporting period they are made.<sup>64</sup> Similarly, the  
6 date a contribution is received by the joint fundraising representative is the date that the  
7 participating political committee must report as the date the contribution was received, even if it  
8 is disbursed by the joint fundraising representative at a later date and even though the  
9 participating political committee is only required to report the proceeds once the funds have been  
10 received from the fundraising representative.<sup>65</sup> After the joint fundraising representative  
11 distributes the net proceeds, the participating committee must report its share received as a  
12 transfer-in from the fundraising representative and also file a memo entry on Schedule A  
13 itemizing its share of gross receipts as contributions from original contributors as required by 11  
14 C.F.R. § 104.3(a).<sup>66</sup>

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<sup>62</sup> *Id.* at 1455 (citing 11 C.F.R. § 102.17(c)(5)).

<sup>63</sup> *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001); *see id.* n.18 (noting that the evidence supported “the long-recognized rationale of combating circumvention of contribution limits designed to combat the corrupting influence of large contributions from individuals to candidates”).

<sup>64</sup> 11 C.F.R. § 102.17(c)(8)(i)-(ii). The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104. *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the name of each person who makes a contribution over \$200, the total amount of receipts and disbursements, including transfers from affiliated committees and between political party committees, and appropriate itemizations, where required. *See* 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b).

<sup>65</sup> *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(A).

<sup>66</sup> *See id.* § 102.17(c)(8)(i)(B).

1                   1. Respondents Used HVF to Direct Excessive Contributions to the DNC

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3                   The facts of this case appear to present the scenario that troubled numerous Justices in  
4 *McCutcheon*: a pre-arranged plan to circumvent the contribution limits via joint fundraising.

5                   Rather than participating in HVF to raise funds for themselves, the available information  
6 supports the conclusion that the SPCs primarily participated as a mechanism to pass additional  
7 contributions to the DNC, including contributions that exceeded the DNC's individual  
8 contributor limits.

9                   *First*, over the course of the 2016 election cycle, the SPCs collectively transferred nearly  
10 80% of their HVF receipts to the DNC,<sup>67</sup> and some transferred as much as 99% of their HVF  
11 receipts to the DNC.<sup>68</sup> Included in the transfers from the SPCs was more than \$80 million from  
12 over 1,500 individual contributors who had already reached their limits for direct contributions to  
13 the DNC.<sup>69</sup>

14                   *Second*, a significant amount of the SPCs' transfers to the DNC occurred nearly  
15 contemporaneously with HVF's distribution of the funds to the SPCs.<sup>70</sup> Disclosure reports  
16 reveal over 400 instances where HVF disbursed funds to the SPCs, and within a day or two the

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<sup>67</sup> The SPCs reported HVF receipts totaling \$104,220,860.21 and disbursements to the DNC totaling \$84,517,558.86 ( $\$84,517,558.86 \div \$104,220,860.21 \times 100 = 81.1\%$ ). HVF reported transferring a total of \$112,361,370.81 to the SPCs, and the DNC reported receiving \$88,234,400 from the SPCs ( $\$88,234,400 \div \$112,361,370.81 \times 100 = 78.6\%$ ).

<sup>68</sup> See *supra* note 20. For example, the Rhode Island Democratic State Committee reported total receipts of \$3,486,712.56 and reported transfers from HVF in the amount of \$3,024,100, making HVF funds nearly 91% of its federal receipts for the 2016 election cycle. The Rhode Island Democratic State Committee reported transferring \$3,002,980 to the DNC, which is the equivalent of 99.3% of its HVF allocated funds.

<sup>69</sup> See *supra* note 67; Compl. ¶¶ 50-52.

<sup>70</sup> See Compl., Ex. 1.

1 SPCs transferred the same amounts to the DNC.<sup>71</sup> That SPCs across the country would  
2 independently decide each time they received a transfer from HVF to transfer their HVF  
3 proceeds to the DNC within a day or two strains credibility. Rather, the immediate transfers  
4 indicate that the SPCs served as vehicles to route excessive contributions to the DNC.<sup>72</sup>

5 *Third*, the SPCs began passing significant amounts of their allocated share of HVF  
6 contributions to the DNC under the purported authority of the intraparty transfer rules as soon as  
7 they began receiving disbursements from HVF. For instance, HVF first disbursed funds to the  
8 SPCs on October 1, 2015, transferring \$228,000 to twelve of them.<sup>73</sup> Each received a transfer in  
9 the amount of \$24,000 on October 1 or 2,<sup>74</sup> and within a day of receipt, each of them transferred

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<sup>71</sup> *See id.*

<sup>72</sup> It appears that five SPCs from the battleground states retained the equivalent of more than half of their HVF funds, a pattern that appears to be an exception to the more prevalent pattern of immediate transfers. *See supra* note 21.

<sup>73</sup> *See* HVF's Amended 2015 Year-End Report of Receipts & Disbursements at 1,373, 1376-77, 1,380, 1,383, 1,386, 1,390, 1,392-95 (Aug. 30, 2017) (disclosing \$24,000 transfers on October 1, 2015 to (1) Miss. Democratic Party, (2) Mo. Democratic State Comm., (3) N.H. Democratic Party, (4) Pa. Democratic Party, (5) R.I. Democratic State Comm., (6) Democratic Exec. Comm. of Fla., (7) Me. Democratic Party, (8) Democratic Party of Va., (9) Mass. Democratic State Comm., (10) WV State Democratic Exec. Comm., (11) WY Democratic State Cent. Comm., and (12) Mich. Democratic State Cent. Comm.).

<sup>74</sup> *See* Miss. Democratic Party's Amended 2015 November Monthly Report of Receipts & Disbursements at 12, 16 (Feb. 16, 2018); Mo. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 13, 21 (Nov. 19, 2015); N.H. Democratic Party's Amended 2015 Year-End Report of Receipts & Disbursements at 112, 281 (Mar. 17, 2016); Pa. Democratic Party's 2015 November Monthly Report of Receipts & Disbursements at 12, 25 (Nov. 20, 2015); R.I. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 12, 15 (Nov. 19, 2015); Democratic Exec. Comm. of Fla.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 104, 121 (Oct. 22, 2017); Me. Democratic Party's 2015 November Monthly Report of Receipts & Disbursements at 18, 25 (Nov. 20, 2015); Democratic Party of Va.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 14, 18 (Feb. 12, 2016); Mass. Democratic State Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 93, 100 (Nov. 20, 2015); WV State Democratic Exec. Comm.'s 2015 November Monthly Report of Receipts & Disbursements at 27, 43 (Nov. 20, 2015); WY Democratic State Cent. Comm.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 24, 28 (May 9, 2016); Mich. Democratic State Cent. Comm.'s Amended 2015 November Monthly Report of Receipts & Disbursements at 42, 61 (May 12, 2016).

1 the same amount to the DNC for a total of \$228,000.<sup>75</sup> This suggests that there was a  
2 predetermined plan for the SPCs to transfer the funds right to the DNC even before they started  
3 receiving them.

4 *Fourth*, the reporting of some of the transactions connected to the joint fundraising  
5 activity supports the conclusion that the funds ultimately given to the DNC were never intended  
6 to stay in the accounts of the SPCs. At least fourteen of the SPCs failed to report either the  
7 receipt of their allocated shares from HVF or the corresponding transfers out to the DNC, even  
8 though both HVF and the DNC reported their side of the same transactions.<sup>76</sup> One SPC argued  
9 that its failure to report multiple transactions totaling over a million dollars was an “oversight”  
10 even though the transactions were among the largest flowing through its accounts.<sup>77</sup> And there is  
11 information in the record to indicate that some of the SPCs may not have reported the receipt in  
12 and transfers out because they were not even aware of them. The *Politico* article reported that  
13 some SPC officials “complained that they weren’t notified of the transfers into and out of their  
14 accounts.”<sup>78</sup>

15 Further, four of the SPCs reported these transactions in a way that suggests that they  
16 understood that these funds were always intended for the DNC, not them. These SPCs described

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<sup>75</sup> See *supra* note 74; DNC’s Amended 2015 November Monthly Report of Receipts & Disbursements at 5,583-87 (Jan. 11, 2016).

<sup>76</sup> See Compl. ¶¶ 161-193; Attachment 1 (summarizing the referrals and the SPCs’ responses).

<sup>77</sup> See Resp. at 2, RR 17L-46 (Democratic Party of S.C.); RR 17L-46 at 1 (Democratic Party of S.C.).

<sup>78</sup> Kenneth Vogel & Isaac Arnsdorf, *Clinton Fundraising Leaves Little for State Parties*, POLITICO, May 2, 2016, <https://www.politico.com/story/2016/04/clinton-fundraising-leaves-little-for-state-parties-222670>.

1 the purpose of their transfers to the DNC as “Hillary Victory Fund,”<sup>79</sup> “Transfer from HVF,”<sup>80</sup>  
2 “Hillary Victory Fund Transfer Out,”<sup>81</sup> and “Final Transfer to DNC for Hillary Victory Fund.”<sup>82</sup>

3 These facts, taken together, support the conclusion that the SPCs largely participated in  
4 HVF as a means to pass their contributions through to the DNC. As noted above, included in the  
5 transfers from the SPCs to the DNC was more than \$80 million from more than 1,500 individual  
6 contributors who had already reached their limits for direct contributions to the DNC. Thus, the  
7 DNC accepted excessive contributions from these individuals as a result of the transfers.

8 Respondents maintain that they engaged in a series of independent, lawful transactions,  
9 and that “separate, legally permissible transactions” cannot be combined into a violation.<sup>83</sup> The  
10 Commission, however, is not required to evaluate each transaction separately and in a vacuum,  
11 and one court has expressly cautioned against doing so when interpreting the Act.<sup>84</sup> While the  
12 existence of intraparty transfer rules “reflects a judgment that party committee units are to be

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<sup>79</sup> See, e.g., Idaho State Democratic Party’s Amended 2016 August Monthly Report of Receipts & Disbursements at 233 (Apr. 9, 2017).

<sup>80</sup> See, e.g., Democratic State Cent. Comm. of LA’s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 702 (May 13, 2017).

<sup>81</sup> See, e.g., Mass. Democratic State Comm.’s Amended 2016 12-Day Pre-General Election Report of Receipts & Disbursements at 405 (Dec. 10, 2017).

<sup>82</sup> See Democratic Party of N.M.’s Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 489 (Mar. 20, 2017).

<sup>83</sup> HVF Resp. at 5; *see* SPCs Resp. at 5.

<sup>84</sup> See *FEC v. Furgatch*, 807 F.2d 857, 862 (9th Cir. 1987) (cautioning that courts should be careful to ensure that the Act’s “purposes are fully carried out, that they are not cleverly circumvented, or thwarted by a rigid construction of the terms of the Act”); *cf. Colo. Republican Fed. Campaign Comm.*, 533 U.S. at 462, 464 n.28 (explaining that circumvention is a “systemic” problem, that is “very hard to trace”).

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1 relatively free to fund each other's efforts,"<sup>85</sup> such efforts to use these rules to evade the limits  
2 under the Act are impermissible.<sup>86</sup> To apply the intraparty transfer provisions as urged by  
3 Respondents would effectively nullify the individual contribution limitations for a national party  
4 committee. The Commission should construe statutes and regulations to harmonize and give  
5 effect to all of their provisions.<sup>87</sup>

6 The SPCs also specifically note that they received their allocations from HVF, controlled  
7 how such funds were spent, and were permitted to make unlimited transfers of their federal funds  
8 to the DNC.<sup>88</sup> The facts, however, indicate that the SPCs' assertion that they controlled how the  
9 funds were spent is not credible. Rather, the facts, fairly construed, show that the funds  
10 transferred to the SPCs pursuant to the allocation formula were intended at the outset for the  
11 DNC. Thus, it appears that the allocation formula was a pretext to redirect funds through the  
12 SPCs to the DNC that could not have been directly contributed to the DNC because the funds

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<sup>85</sup> Statement of Reasons, Comm'rs. Aikens, Thomas, Elliott, McDonald, & McGarry at 4, MUR 4215 (Democratic Nat'l Comm.) (Mar. 26, 1998); *see also* 52 U.S.C. § 30116(a)(4); 11 C.F.R. § 110.3(c)(1); Explanation & Justification, Transfer of Funds; Collecting Agents; Joint Fundraising, 48 Fed. Reg. 26,296, 26,298 (June 7, 1983) (explaining that where all of the participants to a joint fundraising activity are party committees of the same political party, they do not have to follow the allocation and notice requirements since the committees could decide, after the fundraising was over, to transfer any amount of funds among themselves).

<sup>86</sup> *See* First Gen. Counsel's Rpt. at 24-34, Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (May 21, 1991) (rejecting the argument that the unlimited transfer provision allowed a national party committee to transfer funds to a state party committee that used the funds to support a federal candidate in excess of the coordinated party expenditure limits); Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (Aug. 2, 1994) (ratifying earlier reason-to-believe findings); *see also* 52 U.S.C. § 30125(a); 11 C.F.R. § 102.6(a)(1)(iv).

<sup>87</sup> *See United States v. Citgo Petroleum Corp.*, 801 F.3d 477, 485 (5th Cir. 2015) ("Regulations, like statutes, must be 'construed so that effect is given to all [their] provisions, so that no part will be inoperative or superfluous, void or insignificant.'" (alteration in original) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009))); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (explaining that, when interpreting statutory language, we must look to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole"); *accord CREW v. FEC*, 316 F. Supp. 3d 349, 394-95 (D.D.C. 2018) (holding that the Commission's regulation does not implement the Act in a manner "so that effect is given to all its provisions" (quoting *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018))).

<sup>88</sup> SPCs Resp. at 2; *see* HVF Resp. at 4, 11-13.

1 were from individual contributors who had already reached their limits for contributions to the  
2 DNC.

3 In sum, we conclude that Respondents, through their series of joint fundraising  
4 transactions, used HVF as a means to circumvent the DNC's contribution limits by using the  
5 SPCs to direct additional funds to the DNC in excess of the individual contributor's limits.  
6 Accordingly, we recommend that the Commission find reason to believe that HVF, HFA, the  
7 DNC, and the thirty-eight SPCs each violated 11 C.F.R. § 102.17(c)(1) and (2), by soliciting and  
8 raising funds under a false joint fundraising agreement, and the DNC violated 52 U.S.C.  
9 § 30116(f) by accepting excessive contributions.

10 At this time, we have no information that any donor contributed to HVF with knowledge  
11 that their contributions to the SPCs would be routed to the DNC. As such, we make no  
12 recommendation at this time that any donor knowingly made an excessive contribution.<sup>89</sup>  
13 Similarly, there is no information that Hillary Clinton, in her individual capacity, violated the  
14 Act with regard to the joint fundraising, and therefore we recommend that the Commission take  
15 no action at this time as to her.

16 2. Respondents Failed to Properly Report Receipts and Disbursements from the Joint  
17 Fundraising Committee

18  
19 Having concluded that the SPCs were not legitimate participants in the joint fundraising  
20 committee because they were largely used as a mere pass through for contributions to the DNC,  
21 it necessarily follows that Respondents' reports did not accurately reflect the real disposition of  
22 funds raised through HVF.

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<sup>89</sup> See First Gen. Counsel's Rpt. at 9-10, MUR 5430 (Buchanan for President) (not making any recommendation as to contributors who made excessive contributions because of the possibility that they relied on the committee's assurances that their contributions were legal).

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, the Democratic Party of South Carolina,

violated 52 U.S.C. § 30104(a)

and (b) and 11 C.F.R. § 104.3(a) and (b).

**B. There is Reason to Believe that the DNC Made and HFA Accepted Excessive Contributions in the Form of Coordinated Expenditures**

The Complaint alleges that because the DNC allowed HFA to exercise direction, oversight, and control over the DNC's funds, including those funds the DNC received through HVF, all expenditures made by the DNC in connection with the presidential election should count as contributions to, and coordinated expenditures on behalf of, HFA, resulting in the DNC exceeding the federal limits on those contributions.<sup>93</sup>

The Act prohibits any person from making, and any candidate or committee from accepting or receiving, excessive or prohibited contributions.<sup>94</sup> The term "contribution" includes anything of value made for the purpose of influencing a federal election.<sup>95</sup> Further, any expenditure made by a person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate," or the candidate's authorized political committee is considered an in-kind contribution to that candidate.<sup>96</sup> These "coordinated" expenditures are treated as

<sup>93</sup> See Compl. ¶¶ 102-116, 154-60.

<sup>94</sup> 52 U.S.C. § 30116(a), (f).

<sup>95</sup> *Id.* § 30101(8)(A)(i).

<sup>96</sup> See *id.* § 30116(a)(7)(B)(i); 11 C.F.R. §§ 109.20-.21, 109.37.

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1 contributions to the candidate and must be reported as expenditures made by the candidate's  
2 authorized committee.<sup>97</sup>

3 Notwithstanding the general limits on contributions to candidates, the national committee  
4 of a political party may make coordinated party expenditures in connection with the presidential  
5 general election, subject to the limits established by the Act and Commission regulations.<sup>98</sup>

6 Coordinated party expenditures include disbursements for communications that are coordinated  
7 with the candidate.<sup>99</sup> For the 2016 general election, national party committees were limited to  
8 making \$23,821,100 in coordinated party expenditures with presidential candidates,<sup>100</sup> and the  
9 DNC made coordinated expenditures of \$23,371,432,<sup>101</sup> leaving a balance of \$449,668.

10 While the Complaint does not identify any specific communications that the DNC  
11 coordinated with HFA or specific expenditures not already reported that should count toward the  
12 DNC's party coordinated expenditures, the MOU and statements by then-DNC Chair Donna  
13 Brazile provide a reasonable basis to conclude that the DNC may have coordinated with HFA to  
14 make additional expenditures. The MOU reportedly provided that HFA would have joint  
15 authority over DNC decisions involving "staffing, budget, expenditures, and general election

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<sup>97</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(b).

<sup>98</sup> 52 U.S.C. § 30116(d); 11 C.F.R. §§ 109.30, 109.32.

<sup>99</sup> See 11 C.F.R. § 109.30; 11 C.F.R. § 109.37 (defining a party coordinated communication as a communication that (a) is paid for by a political party committee or its agent; (b) satisfies at least one of three content standards; and (c) satisfies at least one of the conduct standards in 11 C.F.R. §§ 109.21(d)(1) through (d)(6)).

<sup>100</sup> See Price Index Adjustments for Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 81 Fed. Reg. 7,101, 7,103 (Feb. 10, 2016).

<sup>101</sup> DNC's 2017 April Monthly Report of Receipts & Disbursements at 3034 (Apr. 20, 2017).

1 related communications, data, technology, analytics, and research.”<sup>102</sup> Brazile also stated that  
2 she “couldn’t write a press release without passing it by” HFA.<sup>103</sup> Taken together, the MOU and  
3 Brazile’s statements indicate that the DNC was acting “in cooperation, consultation, or concert,  
4 with, or at the request or suggestion of” HFA by allowing HFA authority over its expenditures  
5 for communications, staffing, and other operational expenses.

6 While the amount of expenditures that the DNC coordinated with HFA is not known at  
7 this time, the extent of HFA’s role supports a reasonable inference that the amount likely exceeds  
8 \$449,668. Accordingly, we recommend that the Commission find reason to believe that the  
9 DNC made excessive in-kind contributions to HFA in violation of 52 U.S.C. § 30116(a) and 11  
10 C.F.R. §§ 109.20(a) and 109.32, and HFA accepted excessive in-kind contributions from the  
11 DNC in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 109.20(a) and 109.32.

12 We do not have enough information at this time to make a recommendation as to the  
13 Complaint’s broader allegation that HFA effectively controlled the DNC, thus resulting in  
14 excessive contributions to HFA. An investigation into the expenditures the DNC coordinated  
15 with HFA may yield additional information as to the relationship between HFA and the DNC  
16 necessary to allow us to determine the extent of HFA’s purported control over the DNC’s  
17 operations and the joint fundraising proceeds.

18 **C. The Commission Should Take No Action as to the Earmarking and**  
19 **Contribution in The Name of Another Allegations**

20 Finally, the Complaint alleges that the transfers from the HVF to the DNC via the SPCs  
21 show that HVF donors directly or indirectly earmarked their contributions to the DNC, and the

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<sup>102</sup> Scott Detrow, *Clinton Campaign Had Additional Signed Agreement with DNC in 2015*, NPR, Nov. 3, 2017, <https://www.npr.org/2017/11/03/561976645/clinton-campaign-had-additional-signed-agreement-with-dnc-in-2015>.

<sup>103</sup> Brazile Article, *supra* note 5.

1 DNC knowingly accepted contributions in the name of another by reporting that it received  
2 contributions from the SPCs rather than the actual source of the funds, the individual  
3 contributors.<sup>104</sup> The Respondents, however, contend that both of these claims fail because there  
4 is no evidence that any HVF donor earmarked his or her contribution to HVF for the DNC.<sup>105</sup>

5 The Act and Commission regulations prohibit persons from using intermediaries to  
6 circumvent the contribution limits.<sup>106</sup> This prohibition includes making a contribution in the  
7 name of another, knowingly permitting his or her name to be used to effect such a contribution,  
8 or knowingly accepting such a contribution.<sup>107</sup> For purposes of the Act, "all contributions made  
9 by a person, either directly or indirectly, on behalf of a particular candidate, including  
10 contributions which are in any way earmarked or otherwise directed through an intermediary or  
11 conduit to such candidate, shall be treated as contributions from such person to such  
12 candidate."<sup>108</sup> Commission regulations define the term "earmarked" as "a designation,  
13 instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which  
14 results in all or any part of a contribution or expenditure being made to, or expended on behalf  
15 of, a clearly identified candidate or a candidate's authorized committee."<sup>109</sup> The intermediary  
16 must report the original source and the intended recipient of an earmarked contribution to both

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<sup>104</sup> See Compl. ¶¶ 123-38.

<sup>105</sup> See HVF Resp. at 5-11; SPCs Resp. at 2-4.

<sup>106</sup> See 52 U.S.C. §§ 30116(a)(8), 30122; 11 C.F.R. §§ 110.4, 110.6.

<sup>107</sup> 52 U.S.C. § 30122.

<sup>108</sup> *Id.* § 30116(a)(8).

<sup>109</sup> 11 C.F.R. § 110.6(b)(1).

1 the Commission and the intended recipient.<sup>110</sup> Commission regulations also, however, clarify  
2 that a fundraising representative conducting joint fundraising activities pursuant to 11 C.F.R.  
3 § 102.17 is not a conduit or intermediary.<sup>111</sup>

4 In the past, the Commission has found that contributions were earmarked where there  
5 was “clear documented evidence” of a designation or instruction by the donor to the recipient  
6 committee.<sup>112</sup> The Commission has rejected earmarking allegations where the complaints  
7 provided no information beyond alleged similarities in contribution amounts and timing, and  
8 where credible information suggested that the similar contributions were not earmarked.<sup>113</sup> More  
9 recently, however, a plurality of the Supreme Court observed in *McCutcheon* that the  
10 Commission’s earmarking regulations “define earmarking broadly”<sup>114</sup> and apply to “implicit  
11 agreements” as well as explicit ones.<sup>115</sup> The plurality noted that if many state parties “would

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<sup>110</sup> 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c)(1).

<sup>111</sup> 11 C.F.R. § 110.6(a)(2)(i)(B).

<sup>112</sup> Factual & Legal Analysis at 6, MUR 5732 (Matt Brown for U.S. Senate, *et al.*) (citing MURs 4831/5274 (Nixon Campaign Fund, *et al.*) (finding earmarking where there was documentation in the form of checks with memo lines that stated “Nixon” among other written designations)).

<sup>113</sup> See Factual & Legal Analysis at 6-7, MUR 6985 (Lee Zeldin, *et al.*) (finding no reason to believe where alleged reciprocal contributions were not closely linked in timing and amount, respondents denied the allegations, and there was no information indicating that any of the contributions were earmarked or encumbered by “express or implied instructions to the recipient committees”); Factual & Legal Analysis at 5-7, 5 n.4, MUR 5732 (Matt Brown for U.S. Senate, *et al.*); First Gen. Counsel’s Rpt. at 7-8, MUR 7246 (Buddy Carter for Congress, *et al.*); see also MUR 5520 (Billy Tauzin Congressional Committee, *et al.*); MUR 5445 (Geoffrey Davis for Congress); MUR 5125 (Paul Perry for Congress, *et al.*).

<sup>114</sup> *McCutcheon*, 134 S. Ct. at 1447.

<sup>115</sup> *Id.* at 1459 (“Many of the [circumvention] scenarios that the Government and the dissent hypothesize involve at least implicit agreements to circumvent the base limits—agreements that are already prohibited by the earmarking rules.”).

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1 willingly participate in a scheme to funnel money to another State's candidates," an agreement to  
2 act as intermediaries for the contributors would trigger the earmarking provision.<sup>116</sup>

3 Respondents point to an earmarking disclaimer that states contributions "will not be  
4 earmarked for any particular candidate" in the sample HVF contribution form as support for their  
5 argument that donors could not earmark their contributions to a particular HVF participant  
6 simply by contributing.<sup>117</sup> A disclaimer alone, however, does not immunize HVF donors and  
7 participants from an earmarking violation. The Commission has previously determined that a  
8 "written disclaimer of earmarking cannot negate the presence of circumstances which constitute  
9 earmarking or a scheme to make contributions in the name of another."<sup>118</sup>

10 As discussed below, we lack enough information at this time to adequately assess these  
11 claims.<sup>119</sup> The record is void of information necessary to determine whether HVF contributors  
12 earmarked their contributions to the DNC for the benefit of Hillary Clinton or HFA. The  
13 Complaint makes general allegations without identifying any particular contributions to HVF  
14 that were purportedly earmarked or any explicit indicia of earmarking regarding these  
15 contributions.<sup>120</sup> Despite our conclusion that HVF was used to funnel excessive contributions to  
16 the DNC through the SPCs, we have no information that the donors knew about this plan.

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<sup>116</sup> *Id.* at 1455 (citing the earmarking regulation codified at 11 C.F.R. §.110.6(b)(1)).

<sup>117</sup> *See* HVF Resp. at 11, Ex. B (HVF Contribution Form).

<sup>118</sup> Factual & Legal Analysis at 36 n.18, MUR 4633 (Triad Mgmt. Servs., *et al.*).

<sup>119</sup> Respondents also argue that donors lacked "actual knowledge" of how the SPCs would use their contributions and therefore cannot be in violation of 11 C.F.R. § 110.1(h). *See* HVF Resp. at 8, 11; SPCs Resp. at 3-4. We agree that there is no information in the Complaint that indicates that HVF donors had actual knowledge of how the SPCs would use their contributions.

<sup>120</sup> *See* Compl. at 8 & ¶¶ 116, 123-30. Even under the Supreme Court's broader interpretation of the earmarking regulations, there is no information that HVF donors "telegraphed" their intent to support a particular candidate. *See McCutcheon*, 134 S. Ct. at 1455.

1           However, evidence of donor knowledge may be discovered in the course of our proposed  
2 investigation of the Respondents' joint fundraising activities. Accordingly, we recommend that  
3 the Commission take no action at this time on the alleged violations of 52 U.S.C. § 30116(a)(8)  
4 and 52 U.S.C. § 30122.

5 **IV. PROPOSED INVESTIGATION**

6           The investigation would seek information regarding the formation and operation of the  
7 joint fundraising committee as well as the extent of coordination between the DNC and HFA.  
8 We plan to request information about the relationship between HFA, DNC, and the SPCs in  
9 connection with the joint fundraising, the movement of funds between HVF, the SPCs, and the  
10 DNC, and whether the SPCs independently consented to or authorized the movement of such  
11 funds. This information is material in determining each participant's knowledge of and  
12 agreement to efforts to circumvent the contribution limits, allowing us to evaluate the extent of  
13 any violations and, if so, the liability of each participant. We also plan to request information  
14 regarding the extent to which the DNC coordinated expenditures with HFA. Specifically, we  
15 will seek information regarding the implementation of the MOU between the DNC and HFA,  
16 including information on HFA's role in approving communications, staffing, operations, and  
17 expenditures of the DNC. We recommend that the Commission authorize the use of compulsory  
18 process, if necessary.

1 **V. RECOMMENDATIONS**

2 1. Open a MUR for RR 17L-36 and merge it with MUR 7304;

3 2. Open a MUR for RR 17L-46 and merge it with MUR 7304;

4 3.

5 4.

6 5.

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12 10. Find reason to believe that Hillary Victory Fund and Elizabeth Jones in her official  
13 capacity as treasurer, Hillary for America and Elizabeth Jones in her official capacity  
14 as treasurer, DNC Services Corporation/DNC and William Q. Derrough in his official  
15 capacity as treasurer, and the thirty-eight SPCs violated 11 C.F.R. § 102.17(c)(1) and  
16 (2);

17 11. Find reason to believe that DNC Services Corporation/DNC and William Q.  
18 Derrough in his official capacity as treasurer violated 52 U.S.C. § 30116(f);

19 12. Find reason to believe that Hillary Victory Fund and Elizabeth Jones in her official  
20 capacity as treasurer, DNC Services Corporation/DNC and William Q. Derrough in  
21 his official capacity as treasurer, and the thirty-eight SPCs violated 52 U.S.C.  
22 § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b);

23 13. Find reason to believe the Texas Democratic Party  
24  
25 the Democratic Party of South Carolina,  
26 violated 52 U.S.C. §  
27 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b);

28 14. Find reason to believe that DNC Services Corporation/DNC and William Q.  
29 Derrough in his official capacity as treasurer violated 52 U.S.C. § 30116(a) and 11  
30 C.F.R. §§ 109.20(a) and 109.32; and

31 15. Find reason to believe that Hillary for America and Elizabeth Jones in her official  
32 violated 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 109.20(a) and 109.32.

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- 1           16. Take no action at this time with regard to the alleged violations of 52 U.S.C.
- 2                 §§ 30116(a)(8) and 30122 and 11 C.F.R. §§ 110.4 and 110.6 against all Respondents.
- 3           17. Approve the attached Factual and Legal Analyses; and
- 4           18. Approve the appropriate letters.

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Lisa J. Stevenson  
Acting General Counsel

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6 9/28/18  
7 Date

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29 Attachments:

- 30 1. Summary of Related Referrals  
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Matter	State Party Respondent	Summary of Referral	Committee Response	Notes
RR 17L-46	Democratic Party of South Carolina	RAD referred the Democratic Party of South Carolina for its failure to disclose financial activity totaling \$2,110,627.71 on its original 2016 August Monthly and 12-Day Pre-General Reports. Specifically, the Committee amended these reports to disclose additional receipts and disbursements, including two transfers totaling \$1,050,000 from HVF and two disbursements totaling \$1,050,000 to the DNC. <sup>123</sup>	The Committee acknowledges its reporting errors but argues that its failure to report the activity at issue was due to "inadvertent oversight caused by the large and unprecedented financial activity undertaken" in 2016. The Committee further states that almost all of the amounts included in its amendments involve the omission of two transfers from HVF totaling \$1,050,000 and two transfers totaling the same amount to the DNC that were not detected because the errors caused no net change to the Committee's cash-on-hand balance. When it discovered the errors during a Spring 2017 review of its 2016 joint fundraising activity, the Committee amended its disclosure reports, and HVF and the DNC each timely disclosed the respective transactions to the Commission. <sup>124</sup>	The Complaint in MUR 7304 includes these transfers as potential reporting violations.

<sup>123</sup> RR 17L-46 (Democratic Party of S.C.).

<sup>124</sup> Resp. at 1-2, RR 17L-46 (Democratic Party of S.C.).

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