

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6932

COMPLAINT FILED: 04/17/2015

SUPPLEMENT FILED: 06/01/2015

NOTIFICATIONS: 04/23/2015; 06/10/2015

06/11/2015

LAST RESPONSE RECEIVED: 08/03/2015

DATE ACTIVATED: 09/21/2015

ELECTION CYCLE: 2016

EXPIRATION OF SOL: 04/01/2018 – 05/22/2020

**COMPLAINANT:**

Foundation for Accountability and Civic Trust

**RESPONDENTS:**

Hillary Rodham Clinton

Hillary for America and Jose H. Villarreal in his  
official capacity as treasurer

Ready PAC (f/k/a Ready for Hillary PAC) and Amy

Wills Gray in her official capacity as treasurer

Correct the Record and Elizabeth Cohen in her  
official capacity as treasurer

Unknown Respondent

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30102(e)(1)

52 U.S.C. § 30116(a)(1)(A), (f)

52 U.S.C. § 30118(a)

52 U.S.C. § 30121(a)(2)

11 C.F.R. § 100.131

11 C.F.R. § 109.20

11 C.F.R. § 109.21

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter arises out of a complaint alleging that Hillary Rodham Clinton, her principal campaign committee, Hillary for America and Jose H. Villarreal in his official capacity as treasurer ("HFA"), and two unauthorized political committees — Ready PAC and Amy Wills

1 Gray in her official capacity as treasurer (formerly known as Ready for Hillary PAC) and  
2 Correct the Record and Elizabeth Cohen in her official capacity as treasurer ("CTR") violated  
3 provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). The  
4 Complaint makes four principal allegations. First, that Clinton failed to timely file her Statement  
5 of Candidacy because she became a candidate more than 15 days prior to registering with the  
6 Commission. Second, that Clinton accepted excessive and prohibited contributions in the form  
7 of payments for several public speaking engagements.<sup>1</sup> Third, that Clinton or her agents  
8 impermissibly coordinated with unauthorized committees. Fourth, that HFA received an  
9 excessive in-kind contribution by "swapping" email lists with an unidentified independent group  
10 which, in turn, had swapped email lists with Ready PAC.

11 As discussed below, the alleged facts do not indicate that Clinton became a candidate  
12 more than 15 days prior to her official registration. Moreover, the payments she received for  
13 speaking engagements were apparently earned in the ordinary course of her business as a public  
14 figure and, therefore, were not contributions. Further, the available information does not support  
15 a finding that Clinton impermissibly coordinated with any unauthorized committee. However,  
16 the available information indicates that the email list swaps may not have been *bona fide*  
17 transactions and, therefore, may have resulted in an excessive in-kind contribution.

18 Therefore, we recommend that the Commission find: (1) no reason to believe that Clinton  
19 violated 52 U.S.C. § 30102(e)(1) by failing to timely file her Statement of Candidacy; (2) no  
20 reason to believe that Clinton and HFA violated 52 U.S.C. §§ 30116(f), 30118(a), 30121(a)(2)  
21 by accepting excessive and prohibited contributions in connection with her paid speeches; (3) no

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<sup>1</sup> This also raises the allegation that HFA accepted those excessive and prohibited contributions after Clinton designated HFA as her principal campaign committee. The same is true for the allegations that Clinton or her agents impermissibly coordinated with unauthorized committees.

1 reason to believe that Ready PAC, Clinton, and HFA violated 52 U.S.C. § 30116(a), (f) by  
2 making and knowingly accepting excessive contributions in connection with coordinated  
3 communications; (4) take no action at this time regarding the allegation that CTR, Clinton, and  
4 HFA violated 52 U.S.C. § 30116(a), (f) by making and knowingly accepting excessive  
5 contributions in connection with coordinated communications, because the alleged facts relate to  
6 open matters before the Commission; and (5) reason to believe that Ready PAC, HFA, and an  
7 unknown respondent violated 52 U.S.C. § 30116(a), (f) by making and knowingly accepting an  
8 excessive contribution in connection with Ready PAC's email list. In addition, we recommend  
9 that the Commission authorize an investigation regarding the suspect transactions involving the  
10 email list.

## 11 **II. FACTUAL BACKGROUND**

### 12 **A. Clinton's Candidacy**

13 On April 12, 2015, Clinton publicly announced her candidacy for president.<sup>2</sup> The next  
14 day, she filed a Statement of Candidacy with the Commission and declared HFA as her principal  
15 campaign committee with Jose H. Villarreal as treasurer.<sup>3</sup> Clinton asserts that she became a  
16 candidate on April 1, 2015, the same day that she entered into a lease for space in Brooklyn,  
17 New York to use as her campaign headquarters.<sup>4</sup>

18 The Complaint alleges that the "duration and substance" of Clinton's activities indicate  
19 that she decided to become a candidate prior to April 1, 2015, and, therefore, violated the Act by

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<sup>2</sup> Clinton Resp. at 2 (June 10, 2015). HFA adopted the Clinton Response, by letter, on August 3, 2015. Hereinafter, that Response is referred to as "Clinton & HFA Resp."

<sup>3</sup> Hillary Clinton Statement of Candidacy (Apr. 13, 2015); *see also* HFA Statement of Org. (Apr. 13, 2015).

<sup>4</sup> Clinton & HFA Resp. at 2.

1 failing to timely file her Statement of Candidacy.<sup>5</sup> The Complaint asserts that Clinton met with  
2 campaign consultants nearly two years before she announced her candidacy, made or authorized  
3 statements that suggested she was a candidate, approved a preliminary campaign budget,  
4 searched for campaign headquarters, assembled a campaign staff, encouraged several  
5 unauthorized groups that supported her potential candidacy, and hired marketing and branding  
6 experts.

7 In response, Clinton argues that her official registration was within the Act's 15-day  
8 window for submitting a Statement of Candidacy after becoming a candidate.<sup>6</sup> She concedes  
9 that she "spent some time exploring whether to run for President," but maintains that all such  
10 activities complied with the Commission's regulations for "testing the waters" of a potential  
11 candidacy.<sup>7</sup> Her testing the waters activities began on January 12, 2015, according to the first  
12 disclosure report that HFA filed with the Commission.<sup>8</sup>

13 **B. Clinton's Speaking Engagements**

14 Prior to announcing her candidacy, and during her testing the waters phase, Clinton was  
15 paid substantial amounts for various speaking engagements.<sup>9</sup> For example, she received an  
16 estimated \$300,000 from a women's membership organization, \$300,000 from a college, and

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<sup>5</sup> Compl. at 7 (Apr. 17, 2015); *see also* 52 U.S.C. § 30102(e)(1).

<sup>6</sup> Clinton & HFA Resp. at 5.

<sup>7</sup> *Id.* at 2, 5.

<sup>8</sup> Between January 12, 2015, and March 31, 2015, Clinton spent \$173,066 on items such as "Payroll & Benefits," "Legal Services," "Office Furniture," "Rent," "Strategic Consulting Services," and "Travel." HFA Amended 2015 July Quarterly Rpt. at 14,499-500; 14,505-08; 14,511-16; 14,518-19; 14,566-71 (Sept. 3, 2015). Clinton self-financed her activities and paid vendors directly, which HFA disclosed as in-kind contributions. *Id.* at 14,499; 14,505-07; 14,510-12; 14,518; 14,565.

<sup>9</sup> Compl. at 3 (citing Rosalind S. Helderman and Philip Rucker, *Romney's Speaking Fee at Public University is \$50,000, Far Less than Clinton's*, WASH. POST, Jan. 20, 2015) (reporting that Clinton "has spoken to dozens of industry associations, Wall Street banks, universities and other groups").

1 \$250,000 from an Ottawa-based think tank.<sup>10</sup> The Complaint alleges that Clinton used her public  
2 speaking appearances “to fund her non-declared presidential campaign,” and therefore accepted  
3 excessive and prohibited contributions.<sup>11</sup> Clinton maintains that this was part of her “regular,  
4 ongoing business” while deciding whether to run for president.<sup>12</sup>

5 **C. Alleged Coordination With Unauthorized Committees**

6 Clinton was allegedly supported by unauthorized committees “working on her behalf, and  
7 essentially performing tasks that are necessary for a campaign.”<sup>13</sup> First, in early 2013, Huma  
8 Abedin, one of Clinton’s closest aides, was reportedly contacted by someone from Priorities  
9 USA regarding “trouble brewing” between Priorities USA and Ready PAC, seeking guidance on  
10 how the groups should work together.<sup>14</sup> The call reportedly “touched off a larger debate in  
11 Clinton’s circle” and “Clinton herself was forced to grapple with the run-in between the two  
12 groups.”<sup>15</sup> There is no indication regarding how Clinton or Abedin responded, but the cited  
13 news article states that Ready PAC and Priorities USA subsequently resolved their conflict.<sup>16</sup>

14 Second, in early March 2015, someone from Clinton’s office reportedly provided CTR  
15 with “a brief set of talking points” about the controversy surrounding Clinton’s handling of

<sup>10</sup> Compl., Ex. F (Amy Chozick, *Precampaign Costs Mounting, Clinton Gets a Silicon Valley Paycheck*, N.Y. TIMES, Feb. 24, 2015); Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015); Compl. at 4 (citing L. Ian MacDonald, *Clinton Speech in Ottawa Offers New Life to Old Friendship*, IPOLITICS, Oct. 5, 2014).

<sup>11</sup> Compl. at 3, 7-8; *see also* 52 U.S.C. §§ 30116(f), 30118(a), 30121(a)(2).

<sup>12</sup> *See* Clinton & HFA Resp. at 5-6.

<sup>13</sup> Compl. at 4.

<sup>14</sup> Compl., Ex. A (Maggie Haberman, *Hillary Clinton’s Shadow Campaign*, POLITICO, Jan. 5, 2014). Priorities USA was an independent-expenditure-only political committee that formerly supported Barack Obama’s 2012 candidacy but “was in discussions to reinvent itself as a pro-Hillary Clinton endeavor.” *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See id.* (“Eventually they settled on a solution: Ready for Hillary would focus on collecting and analyzing voter data, accepting donations up to \$25,000. Priorities would be the super PAC for mega-donors, working solely on paid advertising.”).

1 emails as Secretary of State, instructing CTR “to dismiss the story as silly and to compare  
2 Clinton’s use of a private e-mail account to former secretary of state Colin Powell’s use of an  
3 AOL account.”<sup>17</sup>

4 The Complaint alleges that Clinton or her agents impermissibly coordinated with those  
5 unauthorized committees.<sup>18</sup> Respondents deny that there was impermissible coordination.<sup>19</sup>

6 **D. HFA’s Receipt of Ready PAC’s Email List**

7 The Complaint alleges that HFA received an excessive in-kind contribution when it  
8 obtained Ready PAC’s email list in May 2015, after Clinton announced her candidacy.<sup>20</sup> HFA  
9 reportedly acquired the email list through a “swap” with “another independent group.”<sup>21</sup> Both  
10 Ready PAC and HFA acknowledge having exchanged email lists — apparently, Ready PAC  
11 exchanged its email list with the independent group which, in turn, exchanged the list with  
12 HFA.<sup>22</sup> However, both HFA and Ready PAC argue that no contribution resulted because the  
13 lists involved in the swap agreements were of equal market value.<sup>23</sup>

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<sup>17</sup> Compl., Ex. H (Daniel Halper, *Hillary Clinton Coordinates With Pro-Hillary Super PAC*, WEEKLY STANDARD, Mar. 11, 2015) (quoting Philip Rucker and Paul Kane, *Some Top Democrats are Alarmed About Clinton’s Readiness for a Campaign*, WASH. POST, Mar. 11, 2015); see Compl. at 4.

<sup>18</sup> Compl. at 8; Supp. Compl. at 2 (June 8, 2015).

<sup>19</sup> See Clinton & HFA Resp. at 5-6; Ready PAC Resp. at 4-6 (June 4, 2015); see also CTR Resp. at 2 (July 1, 2015) (arguing that the Complaint “does not present any sufficiently specific facts to support its allegation and those few facts that are presented are incorrect”).

<sup>20</sup> Supp. Compl. at 2.

<sup>21</sup> See *id.*, Ex. A (Annie Karni, *Hillary Clinton Campaign Scores Ready for Hillary Email List*, POLITICO, May 30, 2015).

<sup>22</sup> Clinton & HFA Supp. Resp. at 1 (Aug. 3, 2015); see Ready PAC Supp. Resp. at 2 (July 10, 2015).

<sup>23</sup> Clinton & HFA Supp. Resp. at 1; Ready PAC Supp. Resp. at 3.

**III. LEGAL ANALYSIS**

**A. There is No Reason to Believe That Clinton Failed to Timely File Her Statement of Candidacy**

An individual becomes a candidate if she receives contributions or makes expenditures in excess of \$5,000, or consents to another doing so on her behalf.<sup>24</sup> The Commission's regulations create a limited exception to the definitions of contribution and expenditure — and therefore to the \$5,000 candidacy threshold — to allow individuals to conduct certain activities to evaluate a potential candidacy (*i.e.*, to “test the waters”).<sup>25</sup> The regulations define testing the waters activities as those “conducted to determine whether an individual should become a candidate,” and include, but are not limited to, conducting a poll, telephone calls, and travel.<sup>26</sup> Only funds received and payments made “solely for this purpose” are permissible under this exception; they are not contributions and expenditures under the Act, but they are nonetheless still subject to the limitations and prohibitions of the Act.<sup>27</sup>

The Commission has opined that an individual who has crossed the \$5,000 threshold becomes a candidate “when he or she makes a private determination that he or she will run for federal office.”<sup>28</sup> The Commission's regulation enumerates circumstances that indicate when an

<sup>24</sup> 52 U.S.C. § 30101(2); *see* 11 C.F.R. § 100.3(a) (same).

<sup>25</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>26</sup> *Id.* §§ 100.72(a), 100.131(a).

<sup>27</sup> *Id.* §§ 100.72(a), 100.131(a). When an individual becomes a candidate, funds received or payments made during the course of testing the waters become contributions or expenditures subject to the reporting requirements of the Act and are to be reported as such on the first disclosure report filed by the candidate's authorized committee. *Id.* § 101.3.

<sup>28</sup> Advisory Op. 2015-09 at 5 (Senate Majority PAC and House Majority PAC) (“AO 2015-09”); *accord* Advisory Op. 1981-32 at 4 (Askew) (“AO 1981-32”); Advisory Op. 1982-03 at 3 (Cranston) (“AO 1982-03”).

1 individual has decided to become a candidate.<sup>29</sup> Where those examples do not apply, the  
2 Commission has distinguished between activities “directed to an evaluation of the feasibility of  
3 one’s candidacy,” and those “signifying that a private decision to become a candidate has been  
4 made” or conducted “as a means of seeking some affirmation or reinforcement of a private  
5 decision . . . to be a candidate.”<sup>30</sup> Within fifteen days of becoming a candidate, the individual  
6 must register with the Commission and designate a principal campaign committee, which itself  
7 must file a Statement of Organization within ten days.<sup>31</sup>

8 The Complaint alleges that Clinton “made the decision” to become a candidate prior to  
9 April 1, 2015, because she conducted activities that were “only relevant to a campaign.”<sup>32</sup>  
10 However, it appears that Clinton’s alleged activities were reasonably consistent with testing the  
11 waters of a potential candidacy and with Clinton’s ongoing business as a public figure.  
12 Moreover, Clinton’s alleged activities, viewed as a whole, do not suggest that she had created a  
13 campaign structure. Further, there is no indication that Clinton raised funds in excess of what  
14 could reasonably be expected for be used to explore a potential candidacy. Not only does the  
15 available information fail to show that Clinton had decided to become a candidate, there are  
16 questions about the credibility of the alleged facts.<sup>33</sup> Therefore, as fully explained below, we

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<sup>29</sup> They include: (1) advertising to publicize an intent to campaign for federal office; (2) fundraising in excess of what could reasonably expected to be used for testing the waters activity; (3) making statements that refer to the individual as a candidate; (4) conducting activities in close proximity to the election or over a protracted period of time; or (5) taking action to qualify for the ballot. 11 C.F.R. §§ 100.72(b); 100.131(b).

<sup>30</sup> AO 1981-32 at 4.

<sup>31</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. §§ 101.1(a), 102.1(a).

<sup>32</sup> Compl. at 7.

<sup>33</sup> The allegations are almost entirely based on paraphrased statements vaguely attributed to individuals “familiar” or “in close contact” with Clinton’s activities who describe her activities in general terms without reference to specific examples. Quoted statements and other descriptions in those same news articles generally maintain that Clinton was still deciding whether to run and that her activities, and those of her associates, were in furtherance of helping her make that decision.



1 recommend that the Commission find no reason to believe that Clinton violated 52 U.S.C.  
2 § 30102(e)(1) by failing to timely file her Statement of Candidacy.

3 1. Duration of Clinton's Testing the Waters Activities

4 Testing the waters activities conducted "over a protracted period of time" may indicate  
5 that an individual has decided to become a candidate.<sup>34</sup> There is no bright-line test for  
6 determining what constitutes a protracted period of time, but the Commission has opined that  
7 testing the waters activities often begin "well in advance of an election."<sup>35</sup>

8 The Complaint asserts that that Clinton began testing the waters as early as 2013 — about  
9 two years before she announced her candidacy — when she met with political consultants from  
10 the Dewey Square Group for a "detailed presentation on preparing for a 2016 presidential  
11 campaign."<sup>36</sup> There is no information showing that Clinton made any payments in connection  
12 with the meeting. The news article cited by the Complaint states that the "hourlong gathering"  
13 took place at Clinton's home in Washington and describes the attendees as "a handful of  
14 aides."<sup>37</sup> It also states that the meeting was organized by "a longtime Clinton intimate also at  
15 Dewey Square who had informally become [Clinton's] political eyes and ears of late."<sup>38</sup> Clinton  
16 contends that it was a meeting with "past supporters" to "discuss the current political

<sup>34</sup> 11 C.F.R. §§ 100.72(b)(4); 100.131; *see also* AO 2015-09 at 6 ("[T]he length of time that an individual spends deliberating whether to become a candidate is one factor and does not, in and of itself, determine whether the individual has become a candidate.").

<sup>35</sup> Factual & Legal Analysis at 6, MUR 5722 (Friends for Lauzen) (concluding that a poll conducted "to determine the feasibility of a potential run for Congress in an election that was over two years away . . . would still fall within the 'testing the waters' regulation").

<sup>36</sup> Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) (reporting that Clinton "said little and made no commitments"); *see* Compl. at 2.

<sup>37</sup> Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014); *but see id.* (describing the presenters as "outside her immediate circle").

<sup>38</sup> *Id.* There is no indication, from HFA's disclosure reports, that Clinton or HFA made any payments to Dewey Square Group during Clinton's testing the waters phase or during her campaign.

1 environment and a potential run for office,” and denies that it was a testing the waters activity  
2 under the Act and Commission regulations.<sup>39</sup> In any event, the lack of any alleged subsequent  
3 testing the waters activity until January 2015 — about four months before Clinton announced her  
4 candidacy — undercuts the assertion that her activities were “protracted.”

5           2.       Statements Regarding Clinton’s Potential Candidacy

6           Authorized statements that “refer to [an individual] as a candidate for a particular office”  
7 indicate that he or she has decided to become a candidate.<sup>40</sup> Commentary on matters of public  
8 concern does not trigger candidacy.<sup>41</sup> The Complaint alleges that Clinton acted like a candidate  
9 when she “weighed in on public issues on social media and during speeches.”<sup>42</sup> In particular,  
10 there is a tweet from Clinton regarding issues being discussed by two Republican presidential  
11 candidates.<sup>43</sup> Clearly, this type of speech is not indicative of a candidacy.

12           The Complaint further alleges that “individuals connected with Clinton’s campaign . . .  
13 generally acknowledge[d]” that she was a candidate.<sup>44</sup> It points to paraphrased statements made  
14 by unidentified Clinton associates who claimed that Clinton had decided to run.<sup>45</sup> This is not  
15 enough to show that Clinton had actually made such a decision. Moreover, those statements are

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<sup>39</sup> Clinton & HFA Resp. at 5 n.2.

<sup>40</sup> 11 C.F.R. §§ 100.72(b)(3); 100.131(b)(3).

<sup>41</sup> See, e.g., Factual & Legal Analysis at 9, MUR 6430 (Steven Daines) (finding that commentary in a radio ad on the issue of federal healthcare reform did not trigger candidacy).

<sup>42</sup> Compl. at 2.

<sup>43</sup> *Id.*, Ex. D (Anne Gearan and Dan Balz, *Official or Not, Hillary Clinton Builds a Massive 2016 Team-in-Waiting*, WASH. POST, Feb. 6, 2015) (reporting on a February 2015 tweet responding to comments from Sen. Rand Paul and Gov. Chris Christie in which she stated: “The science is clear: The earth is round, the sky is blue, and #vaccineswork. Let’s protect all our kids. #GrandmothersKnowBest”); see Compl. at 2.

<sup>44</sup> Compl. at 3.

<sup>45</sup> E.g., Compl., Ex. E (Mike Allen, *Inside Hillary Clinton’s 2016 Plan*, POLITICO, Jan. 26, 2015) (“Campaign advisers say the likelihood of a campaign . . . went to 100 percent.”).

1 directly contradicted by quoted statements in the same articles attributed to Clinton's authorized  
2 spokesperson explaining that Clinton was still deciding.<sup>46</sup>

3           3.     Operational Planning

4           Individuals contemplating candidacy are permitted to take certain practical and essential  
5 steps to prepare for and evaluate the feasibility of a campaign. In AO 1981-32 (Askew), the  
6 Commission concluded that activities undertaken for the purpose of assessing "the potential and  
7 mechanics of constructing a national campaign organization" were acceptable testing the waters  
8 activities.<sup>47</sup> The Commission has also expressed the caveat that otherwise permissible testing the  
9 waters activities may trigger candidacy when, "in context, [they] represent the establishment of a  
10 campaign organization."<sup>48</sup>

11          The Complaint asserts that Clinton's activities prior to April 1, 2014, "include those that  
12 could only be campaign related, such as approving a preliminary campaign budget, searching for  
13 a campaign headquarters location, and assembling campaign staff . . . ."<sup>49</sup> Clinton reportedly  
14 identified or "hired" members of her campaign staff, including the campaign chairman,

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<sup>46</sup> Compl. at 3 n.1 (citing Ruby Cramer, *Future Clinton Campaign Staffers Working as Volunteers*, BUZZFEED NEWS, Mar. 17, 2015) (quote from Clinton spokesperson Nick Merrill stating that, "[s]he hasn't made a decision about running. She is currently 'testing the waters,' as the Federal Election Commission calls it"); Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015) (quote from Merrill including the caveat "if she runs" when describing her potential candidacy); *see also* Compl. at 3 n.1 (citing Haberman, POLITICO, Jan. 7, 2015) (quoting a "Clinton aide" who explained that Clinton was "using this time to look at what components are necessary to build . . . [a] campaign, so that if she decides to run, she'll be ready").

<sup>47</sup> AO 1981-32 at 2, 4.

<sup>48</sup> *Id.* at 4.

<sup>49</sup> Compl. at 2; *see id.*, Ex. E (Allen, POLITICO, Jan. 26, 2015) (reporting, without specifics, that Clinton approved a "preliminary budget" after Christmas 2014); Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015) (reporting that Clinton was "closing in on a New York City campaign headquarters").

1 campaign manager, chief strategist, lead pollster, lead media adviser, communications director,  
2 and communications strategist.<sup>50</sup>

3 First, Clinton's apparent approval of a preliminary campaign budget and efforts to locate  
4 a possible campaign headquarters appear to constitute preparatory steps. Respondents assert that  
5 Clinton merely "sketched out what a budget might look like in order to determine how much  
6 funding would be necessary to wage the campaign" and "identified office space that could be  
7 used in the event she decided to run."<sup>51</sup> They contend that "understanding the parameters of a  
8 potential budget is an essential component of testing the waters."<sup>52</sup> Respondents also explain  
9 that Clinton did not actually sign the lease for her campaign headquarters until April 1, 2015, the  
10 day that she claims to have become a candidate.<sup>53</sup>

11 Second, her identification of potential campaign staff members similarly appears to have  
12 been a preparatory step. Clinton maintains that she "spoke with individuals who could play  
13 important roles in her campaign if she decided to run," and that this was part of evaluating the  
14 feasibility of a potential candidacy.<sup>54</sup> She contends that "recruiting sought-after staff is often a  
15 necessary precondition to becoming a candidate," and points to instances where individuals have

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<sup>50</sup> See, e.g., Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015); see also Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015); Compl. at 3 n.1 (citing Dan Merica, *Top Aide Leaving Foundation to Build Clinton's 2016 Fundraising Team*, CNN, Feb. 9, 2015; Jonathan Martin, *Mandy Grunwald to Join Clinton Team*, N.Y. TIMES, Feb. 5, 2015; Peter Nicholas and Carol E. Lee, *Top White House Official to Leave for Emerging Hillary Clinton Campaign*, WALL ST. J., Feb. 4, 2015); Compl. at 3 (citing Anne Gearan and Philip Rucker, *Hillary Clinton Recruits Chief Strategist, Media Adviser for 2016 Effort*, WASH. POST, Jan. 13, 2015).

<sup>51</sup> Clinton & HFA Resp. at 2. Further, they note that Clinton did not enter into a lease for campaign headquarters until April 1, 2015, when she decided to become a candidate, and that, in any event, entering into a lease does not itself indicate that an individual who is testing the waters has become a candidate. *Id.* at 2, 5.

<sup>52</sup> *Id.* at 4-5 ("One cannot know whether a campaign is 'feasible' without determining how much the campaign might cost.").

<sup>53</sup> *Id.* at 2, 5. It appears that Clinton leased separate office space out of which to conduct her testing the waters activities. HFA Amended 2015 July Quarterly Rpt. at 14,506 (Sept. 3, 2015).

<sup>54</sup> Clinton & HFA Resp. at 2, 4.

1 decided not to run because "key staff joined rival campaigns."<sup>55</sup> The alleged facts do not appear  
2 to contradict these contentions.

3 The relevant articles generally discuss Clinton's "hiring" of a campaign staff in a  
4 forward-looking manner (*e.g.*, "expected," "campaign-manager-in-waiting," "team-in-waiting")  
5 and often use ambiguous terms that do not necessarily imply that anyone was officially hired or  
6 actually began working in the discussed role (*e.g.*, "tapped," "recruited").<sup>56</sup> One article states  
7 that a Clinton adviser was "putting markers on prospective staff to keep them accessible as he  
8 holds off on formal hires."<sup>57</sup> Some individuals reportedly left their current positions to support  
9 Clinton, but there is no indication that any worked on projects related to a campaign.<sup>58</sup> Clinton  
10 was permitted to hire those individuals in a non-campaign role to assist with her testing the  
11 waters activities or with her general political activities.<sup>59</sup> In fact, she acknowledges paying six  
12 individuals a total of \$105,655 for reported testing the waters activities.<sup>60</sup> One article vaguely  
13 states, without providing specifics, that Clinton had a team of "unpaid volunteers" who were

<sup>55</sup> *Id.* at 4 (citing Ashley Parker and Jonathan Martin, *Support Waning, Romney Decides Against 2016 Bid*, N.Y. TIMES, Jan. 30, 2015).

<sup>56</sup> *See, e.g.*, Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015); Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015); (Rucker & Kane, WASH. POST, Mar. 11, 2015 (cited by Compl., Ex. H (Halper, WEEKLY STANDARD, Mar. 11, 2015))); Compl. at 3 n.1 (citing Maggie Haberman, *Clinton Brings in Mook, Benenson for Likely Team*, POLITICO, Jan. 7, 2015).

<sup>57</sup> Compl. at 3 n.1 (citing Gabriel Debenedetti and Edward-Issac Doveve, *All-Too-Ready for Hillary*, POLITICO, Feb. 18, 2015).

<sup>58</sup> *Id.* at 2-3. One of the cited articles states that "Clinton has barely begun building her campaign juggernaut, and prospective staffers are getting restless," and that "few of these people have been hired for set roles." *Id.* at 3 n.1 (citing Debenedetti & Doveve, POLITICO, Feb. 18, 2015).

<sup>59</sup> As a well-known politician, Clinton retains a team of political aides, and she apparently requires a team to accompany her on speaking engagements. Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) (describing Clinton's "team of paid political advisers"); L. Ian MacDonald, iPOLITICS, Oct. 5, 2014).

<sup>60</sup> HFA Amended 2015 July Quarterly Rpt. at 14,511-14; 14,518-19; 14,566-71 (Sept. 3, 2015). This includes payments to an LLC apparently operated by a consumer marketing specialist who assisted Clinton.

1 “building her all but certain presidential bid” — a Clinton spokesperson responded to the article  
2 by claiming that the volunteers were helping her decide whether she should run.<sup>61</sup>

3 Also, there is no indication from the alleged facts that Clinton, based on the aggregate of  
4 all her operational planning, had established a campaign organization. One article states that  
5 Clinton “has been operating without a full team.”<sup>62</sup> Another states that “despite widespread  
6 assumptions that Clinton has assembled a campaign juggernaut ready to be unveiled as soon as  
7 she makes her White House run official, the reality is that she has little more than a budding  
8 operation that’s far from set.”<sup>63</sup> The same article cites to a “Democrat familiar with the process,”  
9 who claimed that the notion Clinton had built “some sort of campaign-in-waiting,” was untrue,  
10 and a “Democratic operative” asserted that potential donors “are getting antsy” and Clinton’s  
11 future team “want[s] to start working.”<sup>64</sup> Based on the available information, it does not appear  
12 that Clinton moved beyond preparatory steps for a potential campaign.

13 4. Support From Unauthorized Committees

14 The Complaint alleges that Clinton’s involvement with unauthorized committees is  
15 indicative of her decision to become a candidate.<sup>65</sup> To show that Clinton endorsed their efforts,  
16 the Complaint asserts that Clinton was involved in mediating a dispute between Ready PAC and

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<sup>61</sup> Compl. at 3 n.1 (citing Cramer, BUZZFEED NEWS, Mar. 17, 2015). It appears that the author was assuming that Clinton’s staff was developing a campaign rather than merely evaluating the feasibility of a campaign.

<sup>62</sup> Rucker & Kane, WASH. POST, Mar. 11, 2015 (cited by Compl., Ex. H (Halper, WEEKLY STANDARD, Mar. 11, 2015)).

<sup>63</sup> Compl. at 3 n.1 (citing Debenedetti & Dove, POLITICO, Feb. 18, 2015).

<sup>64</sup> *Id.*; but see Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015) (vaguely stating that Clinton was “locking in wealthy donors”); Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015) (reporting, but without providing any specifics, that a “component of Hillary Clinton’s emerging strategy involves quietly but aggressively courting key endorsers from the left, who could help increase progressives’ comfort level and take the wind out of a potential challenge”); cf. AO 1982-03 at 3 (concluding that “the exemptions are available to determine ‘political support’ for a potential candidacy).

<sup>65</sup> Compl. at 4, 8.

1 Priorities USA, and that her office delivered CTR with talking points about the controversy  
2 surrounding her handling of emails.<sup>66</sup>

3 First, there is no indication that the alleged mediation of a dispute between Ready PAC  
4 and Priorities USA was indicative of Clinton's decision to become a candidate. The same article  
5 that describes this occurrence also states that the groups only had her "tacit approval," and that  
6 unauthorized committees were "jockeying to be part of the Clinton movement but operating  
7 beyond her immediate direction and control."<sup>67</sup> Moreover, it states that, when deciding how to  
8 intervene in the row between Ready PAC and Priorities USA, Clinton made sure "to keep her  
9 team distant from the work of the super PACs to avoid brushing up against rules forbidding  
10 coordination."<sup>68</sup> It is unclear whether Clinton or her agents actually provided the groups with  
11 any material support in deciding on a mutual strategy.

12 Second, the alleged provision of talking points to CTR does not appear sufficient to  
13 establish that Clinton decided to become a candidate. The Complaint asserts that Clinton's  
14 involvement with unauthorized political committees was indicative of her decision to become a  
15 candidate.<sup>69</sup> However, according to the source article, Clinton's representatives provided  
16 information regarding her email controversy to a wider audience of supporters than just CTR,  
17 including her "longtime allies in the Senate and House leadership."<sup>70</sup> Further, the article

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<sup>66</sup> *Id.* at 4. The Complaint further asserts that "[a]ll twenty-nine of the Ready for Hillary staffers will have an opportunity to officially join Clinton's campaign, with six already being hired." *Id.*; *id.*, Ex. I (Annie Karni, *Ready for Hillary Staff Join Clinton Campaign*, POLITICO, Apr. 1, 2015). The cited article was published the same day that Clinton says she decided to become a candidate.

<sup>67</sup> Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

<sup>68</sup> *Id.*

<sup>69</sup> Compl. at 4.

<sup>70</sup> Ricker & Kane, WASH. POST, Mar. 11, 2015 (cited by Compl., Ex. H (Halper, WEEKLY STANDARD, Mar. 11, 2015)).

1 reported that CTR received less information than Clinton's allies in the form of "very brief"  
2 talking points, instructing the group to dismiss the controversy as silly and to compare Clinton's  
3 use of a private email account to Colin Powell's use of an AOL account.<sup>71</sup> Thus, as noted in her  
4 Response, such information does not appear to be "electoral," and we lack sufficient facts to  
5 conclude that Clinton or her agents provided CTR with any talking points in order make  
6 expenditures that would help her eventual candidacy.<sup>72</sup> Although the Clinton email controversy  
7 became a focal point of the election, the fact that Clinton zealously defended herself at this time  
8 does not, by itself, indicate that she had decided to become a candidate

9 Furthermore, the Complaint generally asserts that unauthorized political committees were  
10 "working on [Clinton's] behalf, and essentially performing tasks that are necessary for a  
11 campaign."<sup>73</sup> However, the Complaint does not substantiate this allegation with any specifics  
12 about the work performed by the groups.<sup>74</sup> Without more, there is no basis to conclude that  
13 Clinton's support from those committees indicated that she decided to become a candidate.

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<sup>71</sup> *Id.* The article vaguely suggests that CTR may have received additional information from Clinton's representatives. *See id.* ("The group was given no additional information for days, leaving Correct the Record founder David Brock and other surrogates to craft their own, sometimes incongruous, defenses."). Assuming there were additional communications, there is no basis to conclude that their general content was any different from the talking points.

<sup>72</sup> Clinton & HFA Resp. at 6; *see also* Draft A at 8, Agenda Document 15-57A, Advisory Op. 2015-09 (Senate Majority PAC and House Majority PAC) (concluding that a prospective candidate's "involvement and consent" to a single-candidate committee's receiving contributions and making expenditures on his or her behalf may trigger candidacy).

<sup>73</sup> Compl. at 4.

<sup>74</sup> *But see* discussion *infra* Part III.D (describing how Ready PAC hoped to gather names of supporters that it could pass along to Clinton's campaign). Even if this was one of Ready PAC's goals, there is no suggestion that Clinton or her agents directed Ready PAC. Indeed, one of the cited articles states that it was "far from certain" that the group's data would be welcomed by a Clinton campaign. Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).



5. Consultations With Marketing and Branding Experts

In AO 1981-32, the Commission concluded that the hiring of political consultants “for the purpose of assisting with advice on the potential and mechanics of constructing a national campaign organization,” was within the scope of testing the waters.<sup>75</sup> However, such activities may not be “carried out in a fashion indicating that a campaign organization is actually being established, rather than remaining a matter for consultation.”<sup>76</sup>

The Complaint argues that Clinton’s decision to consult with marketing and branding experts indicates that she decided to run for president.<sup>77</sup> Clinton reportedly hired a firm to conduct self-opposition research, “considered critical in campaigns,”<sup>78</sup> and hired two sought-after consumer marketing specialists “to refresh the well-established brand for tomorrow’s marketplace . . . and help her make emotional connection with voters.”<sup>79</sup> The cited articles tend to characterize the experts’ work as campaign-related, but, at the same time, they admit that the scope of their work was “unclear.”<sup>80</sup> One of the articles states that Clinton hired the marketing specialists “onto her team of trusted political advisers,” not necessarily onto her campaign.<sup>81</sup>

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<sup>75</sup> AO 1981-32 at 2, 4.

<sup>76</sup> *Id.* at 5.

<sup>77</sup> Compl. at 7.

<sup>78</sup> *Id.*, Ex. B (Maggie Haberman, *Hillary Clinton Begins Process of Vetting — Herself*, N.Y. TIMES, Feb. 20, 2015).

<sup>79</sup> Compl., Ex. C (Phillip Rucker and Anne Gearan, *The Making of Hillary 5.0 — Marketing Wizards Help Re-Imagine Clinton Brand*, WASH. POST, Feb. 21, 2015). Clinton reportedly hired Wendy Clark, who took an unpaid leave from her position as president of brands and strategic marketing for carbonated beverages in North America at Coca-Cola, and Roy Spence, co-founder and chairman of GSD&M who has created well-known advertising campaigns — they are described as “two of corporate America’s branding wizards.” *Id.*

<sup>80</sup> Compl., Ex. B (Haberman, N.Y. TIMES, Feb. 20, 2015); *see* Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015) (“But the plans for Clinton’s rebranding are not yet clear.”).

<sup>81</sup> Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015).

1 Clinton claims that she “commissioned . . . self-research” and “consulted with campaign  
2 and other professionals” as part of deciding whether to become a candidate.<sup>82</sup> She contends that  
3 this “is precisely the type of activity that the FEC contemplates will occur during the testing-the-  
4 waters phase.”<sup>83</sup> Clinton’s explanation appears to be credible. It is possible that she hired these  
5 consultants for an opinion about her “potential vulnerabilities” as she decided whether to run for  
6 president.<sup>84</sup> Indeed, one of the cited articles states that Clinton’s “own history shows the  
7 potential for peril,” and talks about how, in 2008, “Clinton’s rebranding went badly, starting with  
8 a misreading of the zeitgeist . . . [that was] Obama’s promise of hope and change.”<sup>85</sup>  
9 Furthermore, the work provided by marketing and branding experts would be of use to Clinton  
10 with respect to her ongoing career as a public figure and in-demand speaker.

11 In AO 1981-32, the Commission opined that it was permissible for an individual to  
12 “ascertain” whether the public perceived him as a presidential contender, as long as steps were  
13 not taken to “project [him] to the public” as a contender.<sup>86</sup> There are no facts on record showing  
14 that Clinton implemented any of the advice she may have received from the experts. In AO  
15 1982-03, the Commission stated that the line between assessing public support and acting on that  
16 information is demonstrating by moving “into the process of planning and scheduling public  
17 activities designed to heighten . . . political appeal to the electorate.”<sup>87</sup> Again, there are no facts

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<sup>82</sup> Clinton & HFA Resp. at 2. HFA reported that Clinton paid what appears to be Wendy Clark’s LLC at total of \$29,166 for “strategic consulting services.” HFA Amended 2015 July Quarterly Rpt. at 14,518-19 (Sept. 3, 2015). Clinton also directly paid Clark \$744 for “employee benefits.” *Id.* at 14,511.

<sup>83</sup> Clinton & HFA Resp. at 4.

<sup>84</sup> Compl., Ex. B (Haberman, N.Y. TIMES, Feb. 20, 2015).

<sup>85</sup> Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015).

<sup>86</sup> AO 1981-32 at 4-5.

<sup>87</sup> AO 1982-03 at 4.

1 on record showing that Clinton engaged in such public activities. Without more, there is no basis  
2 to conclude that Clinton's alleged hiring of marketing and branding experts was necessarily  
3 indicative of a decision to run for president.

4           6.     Conclusion

5           The alleged facts regarding Clinton's duration of testing the waters activities, public  
6 statements, operational planning, support from unauthorized political committees, and hiring of  
7 marketing and branding experts do not indicate the Clinton decided to become a candidate prior  
8 to April 1, 2015. Her alleged activities did not "take on a partisan political quality which would  
9 indicate that a decision has been made to seek nomination for election, or election, to a Federal  
10 office."<sup>88</sup> Therefore, we recommend that the Commission find no reason to believe that Clinton  
11 violated 52 U.S.C. § 30102(e)(1) by failing to timely file her Statement of Candidacy.

12           **B.     There is No Reason to Believe That Clinton Accepted Excessive or Prohibited**  
13           **Contributions in Connection With Her Speaking Engagements**

14           The Act defines a contribution as "anything of value made by any person for the purpose  
15 of influencing any election for Federal office."<sup>89</sup> Moreover, the Act places limits on the amounts  
16 of contributions that candidates may accept, and prohibits the acceptance of contributions from  
17 corporations and foreign nationals.<sup>90</sup> The Commission's regulations state that income received  
18 during an election cycle, including a salary or other earned income that the candidate receives for  
19 *bona fide* employment, is considered the "personal funds" of a candidate and not a contribution  
20 subject to the limits and prohibitions of the Act.<sup>91</sup>

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<sup>88</sup> AO 1981-32 at 4.

<sup>89</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>90</sup> *Id.* §§ 30116(a), 30118(a), 30121(a).

<sup>91</sup> 11 C.F.R. § 100.33(b); *see also* 11 C.F.R. § 113.1(g)(6)(iii).

1 The Complaint alleges that the large payments Clinton received from apparent domestic  
2 and foreign corporations for speaking engagements prior to announcing her candidacy were  
3 contributions because Clinton was funding “her non-declared presidential campaign,” and, in  
4 light of their size and origins, were both excessive and prohibited.<sup>92</sup> Clinton maintains that this  
5 was part of her “regular, ongoing business” that she continued while she was deciding whether to  
6 run for president and, therefore, none of the transactions were contributions.<sup>93</sup> Indeed, one of the  
7 cited articles states that Clinton gave speeches “to dozens of industry associations, Wall Street  
8 banks, universities and other groups” and used a speaking agency to manage her engagements.<sup>94</sup>  
9 There is no indication that the entities paid Clinton to influence her potential campaign or that  
10 Clinton engaged in any campaign-related or testing the waters activity during the course of her  
11 speeches.<sup>95</sup> Accordingly, it appears that the payments were *bona fide*. Therefore, we recommend  
12 that the Commission find no reason to believe that Clinton and HFA violated 52 U.S.C.  
13 §§ 30116(a), 30118(a), or 30121(a)(2) by accepting excessive and prohibited contributions.

14 **C. Alleged Coordination With Unauthorized Committees**

15 The Act prohibits any person from making, and any candidate or committee from  
16 knowingly accepting, excessive contributions.<sup>96</sup> In addition, the Act provides that “expenditures  
17 made by any person in cooperation, consultation, or concert, with, or at the request or suggestion

<sup>92</sup> Compl. at 3-4, 8; *see id.*, Ex. F (Chozick, N.Y. TIMES, Feb. 24, 2015).

<sup>93</sup> *See Clinton & HFA Resp.* at 5-6.

<sup>94</sup> Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015).

<sup>95</sup> *Cf.* Compl., Ex. F (Chozick, N.Y. TIMES, Feb. 24, 2015) (describing one of her speeches as a “keynote address” at a women’s conference); Compl. at 3 (citing Alex Seitz-Wald, *Clinton Mixes Help for Democrats with Paid Gigs*, MSNBC, Oct. 2, 2014) (describing other speeches as keynote addresses at various conferences). Moreover, the cited articles report that Clinton often donated her fees to the Clinton foundation. Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015); Compl. at 3 (citing Seitz-Wald, MSNBC, Oct. 2, 2014).

<sup>96</sup> 52 U.S.C. § 30116(a), (f).

1 of, a candidate, his authorized political committee, or their agents” shall be considered a  
2 contribution to such candidate.<sup>97</sup> An expenditure for a communication is “coordinated,” and  
3 therefore treated as a contribution under the Act, when the communication: (1) is paid for, in  
4 whole or part, by a person other than the candidate, committee, or party; (2) satisfies at least one  
5 of the content standards described in 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the  
6 conduct standards described in 11 C.F.R. § 109.21(d).<sup>98</sup> The Complaint alleges that “Clinton has  
7 taken actions that constitute prohibited coordination with the super PACs from which she  
8 benefits.”<sup>99</sup>

9 1. There is No Reason to Believe That Clinton and HFA Impermissibly  
10 Coordinated With Ready PAC and Priorities USA

11 The Complaint alleges that Clinton was involved in mediating tension between Ready  
12 PAC and Priorities USA.<sup>100</sup> However, the Complaint does not provide any information  
13 regarding expenditures that might have been coordinated.<sup>101</sup> Moreover, there is no indication  
14 that Clinton or her agents cooperated, consulted, requested, or suggested that either committee  
15 make any expenditures. Rather, the cited article describes one phone call between a Priorities  
16 USA official and Clinton aide Huma Abedin which apparently resulted in an edict from Clinton  
17 that things “needed to be sorted out.”<sup>102</sup> The article specifically states that Clinton “wanted to  
18 keep her team distant from the work of the super PACs to avoid brushing up against the rules

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<sup>97</sup> *Id.* § 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20.

<sup>98</sup> 11 C.F.R. § 109.21(a)(1)-(3).

<sup>99</sup> Compl. at 8.

<sup>100</sup> *Id.* at 4, 8.

<sup>101</sup> Ready PAC denies that it made any communications that would satisfy the content and conduct prongs of the Commission’s regulation. Ready PAC Resp. at 5.

<sup>102</sup> Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014); *see* Compl. at 4.

1 forbidding coordination.”<sup>103</sup> Therefore, we recommend that the Commission find no reason to  
2 believe that Ready PAC made, and Clinton and HFA knowingly accepted, excessive  
3 contributions.<sup>104</sup>

4           2.       The Commission Should Take No Action at This Time Regarding the  
5                   Allegation That Clinton and HFA Impermissibly Coordinated With CTR

6           The Complaint alleges that Clinton’s office provided a “brief set of talking points” to  
7 CTR regarding her handling of emails while Secretary of State.<sup>105</sup> The allegation appears to  
8 focus on the conduct prong of the Commission’s regulation.<sup>106</sup> But there are no facts suggesting  
9 that CTR paid for any communications using the talking points, and there is no information as to  
10 the content of any such communications. Moreover, it is worth noting, as explained above, that  
11 the source article was actually describing how CTR received limited support from Clinton’s  
12 office in comparison to her “longtime allies in the Senate and House leadership.”<sup>107</sup> However,  
13 because these facts directly relate to the allegations in open MURs 6940, 7097, 7146, and 7160,  
14 we recommend that the Commission take no action at this time with respect to the allegation that  
15 CTR made, and Clinton and HFA knowingly accepted, excessive contributions.<sup>108</sup>

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<sup>103</sup> Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

<sup>104</sup> Priorities USA was not notified as a respondent due to an administrative oversight. Given the lack of information supporting the allegation, we do not recommend that the Commission notify the committee at this time. We therefore make no recommendation as to Priorities USA.

<sup>105</sup> Compl., Ex H (Halper, WEEKLY STANDARD, Mar. 11, 2015) (quoting Rucker & Kane, WASH. POST, Mar. 11, 2015). CTR asserts that “the Complaint is not actually referring to CTR at all. In March of this year CTR did not exist. At that time CTR was a project of American Bridge 21st Century.” CTR Resp. at 2. However, the cited article makes clear that it is referring to “Correct the Record, a project of the Democratic-aligned super PAC American Bridge 21st Century.” Compl., Ex. H (Halper, WEEKLY STANDARD, Mar. 11, 2015).

<sup>106</sup> See 11 C.F.R. § 109.21(d)(2)(i) (providing that the conduct prong is satisfied if the candidate or her agents are materially involved in decisions regarding the content of a communication).

<sup>107</sup> *Supra* note 70.

<sup>108</sup> *Supra* note 71 (explaining the possibility that Clinton’s representatives provided CTR with additional information related to the email controversy).

**D. There is Reason to Believe That the Series of Email "Swaps" Resulted in an Excessive In-Kind Contribution**

The Commission has long recognized that committees may sell, rent, or exchange their lists for fair market value.<sup>109</sup> Moreover, the Commission has opined that list rentals shall not be treated as contributions so long as the list is transferred "at the usual and normal charge in a *bona fide*, arm's-length transaction" and is "used in a commercially reasonable manner."<sup>110</sup> The provision of any goods or services without charge or at a charge that is less than the usual and normal charge is an in-kind contribution, the amount of which is the difference between the usual and normal charge and the amount charged.<sup>111</sup>

The Complaint alleges that a series of email list "swaps," which reportedly occurred several weeks after Clinton announced her candidacy, resulted in HFA knowingly accepting an excessive in-kind contribution in the form of Ready PAC's email list.<sup>112</sup> It appears that Ready PAC swapped lists with an "independent group" and that entity, in turn, swapped lists with HFA.<sup>113</sup> Ready PAC reportedly spent upwards of \$15 million to develop the list of 4 million supporters over the course of two years.<sup>114</sup>

<sup>109</sup> E.g., Advisory Op. 2014-09 at 4 n.6 (REED Marketing) ("AO 2014-09"); Advisory Op. 2014-06 at 8 (Ryan, Ryan for Congress, and Prosperity Action); Advisory Op. 2002-14 at 5 (Libertarian Nat'l Comm.) ("AO 2002-14"); Advisory Op. 1982-41 at 2 (Dellums) ("AO 1982-41").

<sup>110</sup> AO 2014-09 at 4 n.6 (permitting a "contractually limited, commercially reasonable exchange" of a marketing firm's services for a political committee's mailing list); AO 1982-41 at 2 ("[A]ssuming such multi-party exchanges are routine and usual in the list brokering industry, the Commission concludes that this exchange would not result in a contribution, but is instead a bargained-for exchange of consideration in a commercial transaction.").

<sup>111</sup> 11 C.F.R. § 100.52(d)(1) (providing "mailing lists" as an example of goods or services).

<sup>112</sup> Supp. Compl. at 1-2; *see* Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015) (describing Ready PAC's email list as a "data gold mine that will immediately bolster [Clinton's] fundraising and organizing efforts").

<sup>113</sup> *See* Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

<sup>114</sup> Compl., Ex. G (Cameron Joseph, *Ready for Hillary Ready to Step Aside as She Prepares Campaign*, THE HILL, Mar. 22, 2015); Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

1 Ready PAC appears to acknowledge the swap and contends that it “exchanged lists . . .  
2 pursuant to written agreements that ensured both entities received equal value.”<sup>115</sup> HFA  
3 acknowledges the swap and contends that “the names exchanged by HFA had an equal market  
4 value to the names received by HFA.”<sup>116</sup> Neither respondent provides any specific information  
5 regarding the identity of the “independent group” or the values of the exchanged lists.

6 The available information suggests that the series of transactions that resulted in HFA  
7 obtaining Ready PAC’s email list may not have been *bona fide*.<sup>117</sup> A March 2015 article,  
8 published a few weeks before Clinton announced her candidacy, reported that Ready PAC had  
9 “worked up plans to share [its] full supporter list with the Clinton campaign either through a list  
10 rental . . . or list sharing.”<sup>118</sup> The same article noted that Ready PAC was “planning to dissolve  
11 as soon as possible after Clinton formally announces,” and quoted the group’s executive director  
12 as saying “[w]hen she announces a decision, our work will be complete.”<sup>119</sup>

13 Ready PAC admits that, after Clinton announced her candidacy, it “effectively shut down  
14 operations.”<sup>120</sup> Yet, without any ongoing purpose, the committee apparently exchanged email  
15 lists with the unidentified independent group. Based on these facts, it appears that Ready PAC’s  
16 intention was to ultimately convey its list to HFA. Moreover, there is information suggesting

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<sup>115</sup> Ready PAC Supp. Resp. at 2.

<sup>116</sup> Clinton & HFA Supp. Resp. at 1.

<sup>117</sup> Cf. Advisory Op. 1983-02 (Philadelphia Electric) (concluding that, in the context of an exchange or sale, “each list’s value, at least in part, is determined on the basis of the committee’s political fundraising efforts or other political use of the list”).

<sup>118</sup> Compl., Ex. G (Joseph, THE HILL, Mar. 22, 2015); see also Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) (“Ready for Hillary hopes to make its data available to a 2016 Clinton campaign.”).

<sup>119</sup> *Id.*

<sup>120</sup> Ready PAC Resp. at 2.

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1 that HFA may have been aware of the arrangement.<sup>121</sup> Further, there are questions as to whether  
2 HFA's list and Ready PAC's list were of equal value. The news article that reported on the  
3 alleged list swaps claimed that "senior campaign officials admitted they were relying in part on  
4 an outdated supporter list from 2008" and described a campaign volunteer's "unproductive"  
5 phone-banking session using names from the outdated list.<sup>122</sup>

6 Therefore, we recommend that the Commission find reason to believe that HFA, Ready  
7 PAC, and an unknown respondent violated 52 U.S.C. § 30116(a), (f) by making and knowingly  
8 accepting an excessive in-kind contribution.

#### 9 IV. PROPOSED INVESTIGATION

10 We propose to conduct additional fact finding regarding the series of email list swaps  
11 involving Ready PAC, HFA, and an unidentified "independent group" for the purpose of  
12 determining whether the transactions were *bona fide* and ascertaining the values of the  
13 exchanged lists. We will seek to conduct the investigation through voluntary means, but we  
14 recommend that the Commission authorize the use of compulsory process.

#### 15 V. RECOMMENDATIONS

- 16 1. Find no reason to believe that Hillary Rodham Clinton violated 52 U.S.C.  
17 § 30102(e)(1) by failing to timely file her Statement of Candidacy;
- 18 2. Find no reason to believe that Hillary Rodham Clinton and Hillary for America  
19 and Jose H. Villarreal in his official capacity as treasurer violated 52 U.S.C.  
20 §§ 30116(f), 30118(a), or 30121(a)(2) by accepting excessive and prohibited  
21 contributions in connection with Clinton's paid speeches;
- 22 3. Find no reason to believe that Hillary Rodham Clinton, Hillary for America and  
23 Jose H. Villarreal in his official capacity as treasurer, and Ready PAC and Amy  
24  
25

<sup>121</sup> Cf. Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015) ("But for the first six weeks of Clinton's 2016 presidential campaign, that data trove was unavailable and tied up with lawyers reviewing the options available to the campaign: they could trade an old list for the new list . . .").

<sup>122</sup> Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

Wills Gray in her official capacity as treasurer violated 52 U.S.C. § 30116(a), (f) by making and knowingly accepting excessive contributions in connection with coordinated communications;

4. Take no action at this time regarding the allegation that Hillary Rodham Clinton, Hillary for America and Jose H. Villarreal in his official capacity as treasurer, and Correct the Record and Elizabeth Cohen in her official capacity as treasurer violated 52 U.S.C. § 30116(a), (f) by making and knowingly accepting excessive contributions in connection with coordinated communications;
5. Find reason to believe that Hillary for America and Jose H. Villarreal in his official capacity as treasurer, Ready PAC and Amy Wills Gray in her official capacity as treasurer, and an unknown respondent violated 52 U.S.C. § 30116(a), (f) by making and knowingly accepting an excessive contribution in connection with Ready PAC's email list;
6. Approve the attached Factual and Legal Analyses;
7. Authorize the use of compulsory process; and
8. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Date: 5/18/17

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