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999 E Street, NW
Washington, DC 20463

2014 SEP 17 PM 5: 01

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR 6775

DATE RECEIVED: January 27, 2014

DATE ACTIVATED: May 20, 2014

EARLIEST SOL: January 5, 2019

LATEST SOL: January 5, 2019

ELECTION CYCLE: 2016

COMPLAINANT:

Stop Hillary PAC

RESPONDENTS:

Ready for Hillary PAC and Amy Wills Gray in her
Official Capacity as Treasurer
Hillary Clinton
Friends of Hillary and Shelly Moskwa in her
Official Capacity as Treasurer

RELEVANT STATUTES AND
REGULATIONS:

52 U.S.C. § 30101(2)¹
52 U.S.C. § 30101(6)
52 U.S.C. § 30102(e)
52 U.S.C. § 30103(a)
52 U.S.C. § 30104
52 U.S.C. § 30116
52 U.S.C. § 30118
52 U.S.C. § 30120
11 C.F.R. § 100.3(a)
11 C.F.R. § 100.72
11 C.F.R. § 100.131
11 C.F.R. § 101.1(a)
11 C.F.R. § 102.1(a)
11 C.F.R. § 102.13(c)
11 C.F.R. § 104.3
11 C.F.R. § 110.11(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 **I. INTRODUCTION**

2 Ready for Hillary PAC is a non-connected political committee, the stated purpose of
3 which is to encourage Hillary Clinton to run for President in 2016. In January 2014, Ready for
4 Hillary PAC sent an e-mail to numerous recipients offering free "Ready for Hillary" bumper
5 stickers and otherwise encouraging support for Clinton's potential candidacy. Ready for Hillary
6 PAC reportedly rented the recipient list it used to distribute the e-mail from Friends of Hillary,
7 Clinton's authorized committee from her 2006 senatorial campaign and the successor committee
8 to her 2008 presidential campaign. The Complaint alleges that Ready for Hillary PAC's use of
9 an e-mail list obtained from Friends of Hillary indicates that Clinton or her agents authorized the
10 message, that the contributions and expenditures of Ready for Hillary PAC in connection with
11 Clinton's possible candidacy therefore must be attributed to Clinton herself, and that Clinton
12 triggered candidate status as a result.

13 After reviewing the Complaint, Responses, and other available information, we conclude
14 that the facts presented here do not suggest that Clinton became a candidate under the Act.
15 Nonetheless, the record reflects that Ready for Hillary PAC failed to report to the Commission
16 any payment for the rental of the e-mail list in question, a violation of the Act's reporting
17 requirements. It is not clear from the record whether that reporting failure was the result of mere
18 oversight or some other cause. Because that answer likely will inform the Commission's
19 treatment of the reporting issue, we propose to conduct a discrete investigation to obtain further
20 information necessary to recommend a resolution consistent with the Commission's handling of
21 prior similar matters.

NO. 1-11-15-1501

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 On January 25, 2013, Ready for Hillary PAC registered with the Commission as an
4 independent expenditure-only political committee that supports more than one candidate.²
5 Ready for Hillary PAC states that its purpose is to “encourage Hillary [Clinton] to run” and show
6 Clinton that if she decides to run, she will have a “grassroots army of supporters behind her who
7 are ready to help her win.”³ On May 28, 2014, Ready for Hillary PAC provided notice to the
8 Commission through a Miscellaneous Form 99 that it had converted to a non-connected political
9 committee that maintains a “non-contribution” account and created an additional depository
10 account for the purpose of making contributions to candidates and committees in accordance
11 with *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011).⁴ Ready for Hillary PAC has raised
12 approximately \$8.2 million and spent approximately \$7.4 million through the first half of 2014.⁵

13 Friends of Hillary served as Clinton’s principal authorized campaign committee for the
14 office of Senator from New York in 2000 and 2006. Friends of Hillary has not terminated.
15 Hillary Clinton for President is Clinton’s former authorized campaign committee for the office of
16 President in 2008.⁶ After Hillary Clinton for President paid off its debts and terminated, all of its
17 remaining assets were consolidated in Friends of Hillary.⁷

² Ready for Hillary PAC, Statement of Organization (filed Jan. 25, 2013).

³ See About Ready for Hillary, <https://www.readyforhillary.com/about> (last visited Sept. 16, 2014).

⁴ Ready for Hillary PAC, Form 99 (filed May 28, 2014).

⁵ Ready for Hillary PAC, 2014 July Quarterly Rpt. (filed July 15, 2014); Ready for Hillary PAC, 2013 Year-End Report (amended Sept. 2, 2014).

⁶ Hillary Clinton, Friends of Hillary, and Shelly Moskwa Resp. at 2-3 (“Clinton Resp.”). Hillary Clinton for President terminated in February 2013. Hillary Clinton for President, Termination Approval (Feb. 26, 2014). Hillary Clinton for President was not named as a Respondent in this matter. Nevertheless, Clinton and Friends of Hillary state in their joint Response that the Commission should deem the Response as filed on behalf of Hillary

1 According to the Complaint, Ready for Hillary PAC used a mailing list owned by Friends
2 of Hillary to distribute an e-mail to members of that list in January 2014.⁸ The Complaint
3 attaches an article from a periodical's online blog discussing the e-mail, as well as what appears
4 to be a copy of the content of the e-mail dated January 5, 2014.⁹ Those sources reflect that the
5 e-mail originated from "General Wes Clark [info@hillaryclinton.com]," with the subject line
6 "Free Hillary Clinton Bumper Sticker." *Id.* The text reads as follows:

7 Have you picked up your free Ready for Hillary bumper sticker yet?

8
9 Please take a moment to read this special message from General Wes Clark.
10 Ready For Hillary PAC is solely responsible for the content of this message.

11
12 Grassroots movements happen when neighbors talk to neighbors and tell them
13 to get involved.

14
15 One of the best ways to spark these conversations about Hillary potentially
16 running in 2016 is by showing your support right now.

17
18 Have you picked up your free Ready for Hillary bumper sticker yet?

19
20 <https://www.readyforhillary.com/Free-Stickers>

21
22 Hillary has what it takes to be the next President of the United States. But
23 today, as she decides whether to run she needs to see our support.

24
25 Now is the time to get our support for Hillary organized and ready for 2016.
26 Claim your free sticker: Proudly put your support for Hillary on display and
27 tell your friends to do the same.
28

Clinton for President "should the Commission's position change at any point in this proceeding." Clinton Resp. at 1 n.1.

⁷ *Id.* at 3. The transfer of Hillary Clinton for President's assets to Friends of Hillary appears to have been permissible under 11 C.F.R. § 110.3(c)(4), which addresses transfers between former campaign committees.

⁸ Compl. at 1-2.

⁹ See *id.*, Ex. A (attaching Zeke J. Miller, *Hillary Clinton Campaign Rents Email List to Pro-Hillary Super PAC*, TIME, Jan. 5, 2014, available at <http://swampland.time.com/2014/01/05/hillary-clinton-rents-email-list-to-pro-hillary-super-pac/>); *id.*, Ex. B (attaching *She Makes It Official?*, DRUDGE REPORT (Jan. 5, 2014), <http://drudgereport.com/flash3b.htm>).

1 Thanks for joining with us,
2
3 General Wes Clark.¹⁰

4 The hillaryclinton.com URL address is registered to Friends of Hillary.¹¹ According to
5 media reports, Clinton's 2008 presidential campaign rented its e-mail list to Ready for Hillary
6 PAC in connection with the January 2014 e-mail message.¹² Seth Bringman, a spokesman for
7 Ready for Hillary PAC, reportedly stated that Ready for Hillary PAC rented the
8 hillaryclinton.com e-mail list to "connect with [Clinton's] past supporters."¹³

9 Ready for Hillary PAC's Response acknowledges that it sent the e-mail and that it used
10 Friend of Hillary's e-mail list, but asserts that it paid Friends of Hillary the usual and normal
11 charge — \$136,841.70 for a one-time use — through Trilogy Interactive, the list brokerage firm
12 used by Friends of Hillary.¹⁴ The Response states that Friends of Hillary used Trilogy to handle
13 certain aspects of the transaction, "including collecting the payment" for the e-mail list and the
14 "actual sending" of the e-mail in question.¹⁵ Ready for Hillary PAC's disclosure reports,
15 however, do not reflect that it made any payment to Friends of Hillary, Trilogy, or any other
16 entity for a list rental during the relevant time period. Friends of Hillary's disclosure reports
17 indicate that it received payments from Trilogy of \$4,073 on August 16, 2013, \$70,000 on

¹⁰ *Id.*, Ex. B. Ready for Hillary PAC's Response attaches what appears to be a recipient's printed copy of the e-mail dated January 3, 2014. Ready for Hillary PAC and Amy Wills Gray Resp., Ex. 1 ("Ready for Hillary PAC Resp."). This version differs slightly from the one provided in the Complaint, in that it includes a "CONTRIBUTE" link and a disclaimer box at the bottom of the e-mail. *Id.* Ready for Hillary PAC's Response does not address the discrepancies or the fact that it appears that the e-mail may have been sent out over a period of several days. *Id.*

¹¹ Compl. at 1-2, Ex. D.

¹² *Id.*, Ex. A.

¹³ *Id.*

¹⁴ Ready for Hillary PAC Resp. at 2-3, 5-6.

¹⁵ *Id.* at 2.

1 "outside vendors," it otherwise provides no information corroborating the value of the list or
2 explaining the method used to conclude its value was \$136,841.70.²² Moreover, despite Friends
3 of Hillary's retention of Trilogy as its broker, Moskwa avers without further elaboration that she
4 was responsible for arranging for entities to rent the list, including Ready for Hillary PAC.²³ As
5 to Trilogy's role, its employee Eric Wilfong represents that he was responsible for "managing
6 and overseeing" the list rentals "conducted by" Friends of Hillary.²⁴

7 Friends of Hillary asserts that it rented its list to 88 lessees in total and that Ready for
8 Hillary PAC paid the same rate as its other lessees, including non-political entities.²⁵ Friends of
9 Hillary's disclosure reports indicate that it received 18 payments for list rentals between 2013
10 and 2014, ranging in amount from \$260 to \$203,683. Friends of Hillary reported these payments
11 as coming from Trilogy, another list brokerage firm, and directly from campaign committees.

12 Wilfong states that he explained to Friends of Hillary that the hillaryclinton.com URL
13 address should appear as the sender of the e-mail to prevent SPAM blocking and consistent with
14 industry best practices.²⁶ According to the Response, in connection with its efforts to lease its
15 e-mail list and to preclude licensee requests for refund, Friends of Hillary sought to ensure that
16 any e-mails a potential licensee may send would be identified by the recipient as "legitimate"

²² *Id.*, Ex. A.

²³ *Id.*, Ex. A ¶¶ 6-7.

²⁴ *Id.*, Ex. D ¶ 2. Wilfong does not address the fair market value of the list in his affidavit, nor does he attest that Ready for Hillary PAC paid Trilogy for the use of the list or that all renters paid the same rate. *Id.*

²⁵ *Id.* at 3.

²⁶ *Id.*, Ex. D ¶ 4.

1 and would be less likely to be blocked as SPAM.²⁷ Finally, the Response asserts that Clinton
2 and Friends of Hillary did not approve, agree to, or edit the contents of the e-mail in question.²⁸

3 **B. Legal Analysis**

4 The Complaint alleges that by conveying the mailing list to Ready for Hillary PAC and
5 permitting it to use the hillaryclinton.com URL, Clinton and Friends of Hillary were acting "in
6 furtherance" of Ready for Hillary PAC's stated goals and therefore gave their consent to Ready
7 for Hillary PAC to accept contributions and make expenditures on Clinton's behalf.²⁹ The
8 Complaint asserts that, by giving this consent, Clinton triggered candidate status under the Act
9 and, for the same reason, that Ready for Hillary PAC became an authorized committee of
10 Clinton that improperly failed to register as such with the Commission.³⁰ Moreover, the
11 Complaint alleges that, because Ready for Hillary PAC is in truth Clinton's authorized
12 committee, it is violating the Act by supporting more than one candidate and by accepting
13 excessive and prohibited contributions on Clinton's behalf.³¹ Finally, the Complaint alleges that
14 the e-mail did not include the proper disclaimer because it failed to acknowledge that it was
15 authorized by Clinton or that Ready for Hillary PAC paid for the communication.³²

²⁷ *Id.* at 6-7.

²⁸ *Id.* at 2.

²⁹ Compl. at 2-3.

³⁰ *Id.* at 3.

³¹ *Id.*

³² *Id.* at 3-4.

CONFIDENTIAL

1 1. Even If Authorized by Clinton, the Exploratory Activities of Ready for
2 Hillary PAC Would Not Trigger Candidate Status

3 Under the Act, an individual is deemed a “candidate” if he or she receives contributions
4 or makes expenditures in excess of \$5,000, or consents to another doing so on the individual’s
5 behalf.³³ Once that threshold is satisfied, the candidate has 15 days to designate a principal
6 campaign committee by filing a Statement of Candidacy with the Commission.³⁴ The principal
7 campaign committee, in turn, must file a Statement of Organization within ten days of its
8 designation and must file disclosure reports with the Commission in accordance with 52 U.S.C.
9 §§ 30104(a) and (b) (formerly 2 U.S.C. §§ 434(a) and (b)).³⁵ In addition, a candidate may not
10 designate a political committee that supports or has supported more than one candidate as his or
11 her authorized committee, unless that political committee is the national political party of the
12 candidate for office of President nominated by that party or is a joint fundraising committee.³⁶

13 The Commission has created a limited exemption to the definitions of contribution and
14 expenditure — and therefore to the \$5,000 candidacy threshold — to allow individuals to
15 conduct certain activities designed to evaluate a potential candidacy (e.g., to “test the waters”).³⁷
16 Funds received and payments made “solely for the purpose of determining whether an individual

³³ 52 U.S.C. § 30101(2)(A), (B) (formerly 2 U.S.C. § 431(2)(A), (B)); 11 C.F.R. § 100.3(a).

³⁴ 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)); 11 C.F.R. § 101.1(a).

³⁵ 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)); 11 C.F.R. § 102.1(a).

³⁶ 52 U.S.C. § 30102(e)(3)(A) (formerly 2 U.S.C. § 432(e)(3)(A)); 11 C.F.R. § 102.13(e).

³⁷ 11 C.F.R. §§ 100.72, 100.131. Commission regulations describe five non-exhaustive examples of activities that indicate that an individual is not merely testing the waters, but has decided to become a candidate for federal office: (1) using general public political advertising to publicize his or her intention to campaign for federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and (5) taking action to qualify for the ballot under state law. *Id.*

1 should become a candidate” are not considered contributions or expenditures under the Act.³⁸

2 An individual who is testing the waters need not register or file disclosure reports with the
3 Commission unless and until the individual subsequently decides to run for federal office.³⁹

4 Thus, even assuming that Clinton authorized Ready for Hillary PAC to receive and spend
5 funds exceeding \$5,000 on her behalf as the Complaint alleges, she would not become a
6 candidate as a result of those activities so long as they were related only to testing the waters.⁴⁰

7 And the available record here reflects that Clinton and Ready for Hillary PAC have confined
8 their activities solely to evaluating a *potential* candidacy. Clinton has publicly stated that she has
9 not decided whether she will run for the office of President in 2016,⁴¹ and no other information
10 indicates that she has taken steps designed to amass campaign funds for a future candidacy.⁴²

11 With respect to Ready for Hillary PAC, the record reflects that it seeks to encourage Clinton to
12 run and to build support for a potential Clinton candidacy,⁴³ not an existing candidacy. Ready

³⁸ *Id.* These funds, however, are subject to the limitations and prohibitions of the Act. *Id.*

³⁹ *See, e.g.*, Advisory Op. 1981-32 (Askew); Advisory Op. 1979-26 (Grassley).

⁴⁰ *See* 11 C.F.R. §§ 100.72, 100.131.

⁴¹ *See, e.g.*, Clinton Resp., Ex. B (attaching Lauren Effron, *Hillary Clinton on 2016 Presidential Run: 'I'll Make that Decision Sometime Next Year'*, ABC NEWS, Dec. 18, 2013 (quoting Clinton as stating “I haven’t made up my mind. . . . It’s such a difficult decision, and it’s one that I’m not going to rush into . . . and I don’t think we should be looking at the next election”); Paige Lavender, *Hillary Clinton: 'I'm Both Pragmatic and Realistic' About Running for President in 2016*, HUFF POST POLITICS, Sept. 22, 2013 (quoting Clinton as stating “I’m not in any hurry. I think it’s a serious decision, not to be made lightly, but it’s also not one that has to be made soon.”); Carrie Dann, *Hillary Clinton Talks Benghazi, Gates, 2016*, NBC POLITICS, Jan. 27, 2014 (quoting Clinton as stating “I don’t know . . . I’m not thinking about it” when asked about “her plans for 2016” at a National Automobile Dealers Association convention); Aliyah Frumin, *Hillary Clinton Insists on 2016: 'I Don't Know,'* HARDBALL WITH CHRIS MATTHEWS, Jan. 27, 2014 (same); Brian Knowlton, *Bill Clinton Says He's Unsure of Wife's 2016 Plans*, N.Y. TIMES, Sept. 23, 2012 (quoting Bill Clinton as stating “I don’t know” and that he had “no earthy idea” when asked whether his wife would decide to run in 2016 on CBS’s *Face the Nation*)).

⁴² *See id.*

⁴³ Ready for Hillary PAC’s purpose appears analogous to that of a draft committee. Although the term “draft committee” is not defined in the Act or Commission regulations, some courts have addressed the concept of draft committees in assessing the political committee status of certain groups. *See FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981) (“MNPL”) (holding that Congress had never acted expressly to

1 for Hillary PAC's materials are framed in terms of encouraging Clinton to run, and do not
2 expressly refer to Clinton as a candidate.⁴⁴ The e-mail in question, for example, states that
3 showing Clinton support will "spark . . . conversations about Hillary *potentially* running in
4 2016."⁴⁵ It further states that "today, as *she decides whether to run* she needs to see our
5 support."⁴⁶ Thus, it appears that the actions of both Clinton and Ready for Hillary PAC are
6 aimed at evaluating the feasibility of her candidacy and do not signify that Clinton has decided to
7 become a candidate.⁴⁷

8 Because neither Clinton nor Ready for Hillary PAC appear to have received contributions
9 or made expenditures in excess of \$5,000 in connection with seeking her nomination or election

bring "draft" groups within the coverage of the contribution limitations); *FEC v. Citizens for Democratic Alternatives in 1980*, 655 F.2d 397 (D.C. Cir. 1981) (adopting reasoning of *MNPL*); *FEC v. Florida for Kennedy Committee*, 681 F.2d 1281 (11th Cir. 1982) (holding that "draft" groups were not within the Act's jurisdiction because there is no candidate, and political committees must be under the control of a candidate or have the major purpose to nominate or elect a candidate); *see also Unity08 v. FEC*, 596 F.3d 861 (D.C. Cir 2010) (holding that Unity08, which sought to facilitate an online nominating process to choose a mixed party ticket for President and Vice President, was not subject to regulation as a political committee unless and until it selected a "clearly identified" candidate); *FEC v. GOPAC*, 917 F. Supp. 851 (D.D.C. 1996) (holding that organization's support for a "farm team" of future candidates did not constitute support for a federal candidate for purposes of determining organization's major purpose).

The Commission also has promulgated regulations concerning names for political committees that reference draft committees. *See* 11 C.F.R. § 102.14(b)(2) (providing that a "political committee established solely to draft an individual or to encourage him or her to become a candidate may include the name of such individual in the name of the committee provided the committee's name clearly indicates that it is a draft committee"). In Advisory Op. 1995-09 (NewtWatch PAC), the Commission determined that the naming restrictions apply to the use of an individual's first name if it clearly conveys the identity of the candidate. Because Ready for Hillary PAC is registered with the Commission as a hybrid PAC that supports more than one candidate, however, it is not clear that it was established "solely to draft" Clinton and thus falls within the scope of the draft committee regulation. Regardless, because we conclude that Clinton has not become a candidate, the provisions of the Act and Commission regulations that generally prohibit an unauthorized committee from "includ[ing] the name of any candidate in its name" are inapposite here. *See* 52 U.S.C. § 30102(e)(4) (formerly 2 U.S.C. § 432(e)(4)); 11 C.F.R. § 102.14(a); Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees, 59 Fed. Reg. 17,267, 17,269 (Apr. 12, 1994).

⁴⁴ *See* Ready for Hillary, <https://www.readyforhillary.com> (last visited Sept. 16, 2014).

⁴⁵ Compl., Ex. B (emphasis added).

⁴⁶ *Id.* (emphasis added).

⁴⁷ *See, e.g.*, Advisory Op. 1981-32 (Askew).

1 to federal office, Clinton would not have triggered candidate status under the Act even if she had
2 consented to the activities of Ready for Hillary PAC. Accordingly, we recommend that the
3 Commission find no reason to believe that Clinton violated 52 U.S.C. § 30102(e)(1) (formerly 2
4 U.S.C. § 432(e)(1)) by failing to register with the Commission as a candidate. Further, because
5 Clinton does not appear to be a candidate under the Act, she is not required to designate a
6 principal campaign committee, and we recommend that the Commission find no reason to
7 believe that Clinton and Ready for Hillary PAC violated 52 U.S.C. §§ 30102(e)(1) and 30103(a)
8 (formerly 2 U.S.C. §§ 432(e)(1) and 433(a)) by failing to register with the Commission as
9 Clinton's authorized committee. Finally, because Clinton does not appear to be a candidate and
10 did not designate Ready for Hillary PAC as her principal campaign committee, we recommend
11 that the Commission find no reason to believe that Ready for Hillary PAC violated 52 U.S.C.
12 § 30102(e)(3)(A) (formerly 2 U.S.C. § 432(e)(3)(A)) by serving as Clinton's authorized
13 committee.

14 2. There Is Reason to Believe that Ready for Hillary PAC Failed to Report a
15 Disbursement for Use of the Mailing List

16 The Act requires committee treasurers to file reports of receipts and disbursements in
17 accordance with the provisions of 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434).⁴⁸ These reports
18 must include, among other things, the total amount of the committee's receipts and
19 disbursements during the relevant period.⁴⁹ The Act also requires committees to itemize receipts
20 and disbursements and disclose the name and address of each person who has made any
21 contribution or received any disbursement in an aggregate amount or value in excess of \$200

⁴⁸ 52 U.S.C. § 30104(a)(1) (formerly 2 U.S.C. § 434(a)); 11 C.F.R. § 104.1(a).

⁴⁹ 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)); 11 C.F.R. § 104.3.

1 within the calendar year, together with the date and amount of any such contribution or
2 disbursement.⁵⁰

3 The Respondents each assert in their unsworn responses that Ready for Hillary PAC paid
4 \$136,841.70 to Friends of Hillary for a one-time right to use the e-mail list, and Clinton and
5 Friends of Hillary provide a copy of the licensing agreement between Ready for Hillary PAC and
6 Friends of Hillary in connection with that transaction.⁵¹ Ready for Hillary PAC also represents
7 that Friends of Hillary used a third-party list brokerage firm, Trilogy Interactive, to handle
8 certain aspects of the transaction, including "collecting the payment" for the e-mail list.⁵² The
9 licensing agreement, executed December 10, 2013, indicates that payment was to be made
10 through Trilogy upon execution of the agreement.⁵³

11 As discussed above, and despite the Respondents' claims regarding payment, however,
12 Ready for Hillary PAC's disclosure reports do not reflect that Ready for Hillary PAC made any
13 payment to Friends of Hillary, Trilogy, or any other entity for the e-mail list rental. We therefore
14 recommend that the Commission find reason to believe that Ready for Hillary PAC violated
15 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) by failing to comply with the Act's reporting
16 requirements.

17 The present record does not resolve why Ready for Hillary PAC failed to report any
18 disbursement for its rental of the e-mail list — for instance, whether it was the result of clerical
19 error or oversight, some technical problem, or whether it simply failed to convey the funds for

⁵⁰ 52 U.S.C. § 30104(b)(2)-(6) (formerly 2 U.S.C. § 434(b)(2)-(6)); 11 C.F.R. §§ 104.3(a)(3)-(4), (b)(2)-(4).

⁵¹ See Ready for Hillary PAC Resp. at 2-3, 5-6; Clinton Resp. at 3, 5, Ex. C.

⁵² Ready For Hillary PAC Resp. at 2.

⁵³ Clinton Resp., Ex. C.

1 the rental or decided not to report the disbursement for some other reason. In prior matters
2 involving reporting violations, the Commission has taken into account the nature and cause of
3 the reporting error when determining whether to pursue the violation through pre-probable cause
4 conciliation or some other resolution, such as dismissal or referral to the Alternative Dispute
5 Resolution Office.⁵⁴ The Commission also has previously recognized that a brief investigation to
6 determine the circumstances surrounding the exclusion of a disbursement from a committee's
7 disclosure report may be warranted in certain circumstances to assess potential aggravating or
8 mitigating factors.⁵⁵ Accordingly, rather than recommend that the Commission proceed directly
9 to pre-probable cause conciliation in connection with the apparent reporting violation here, we
10 propose to engage in a limited factual inquiry to determine why Ready for Hillary PAC failed to
11 report a payment to Trilogy in connection with its receipt of the e-mail list.⁵⁶

⁵⁴ See, e.g., MUR 6576 (Wright McLeod for Congress, *et al.*) (dismissing reporting violations based on, among other things, the nature of the violations); MUR 6554 (Friends of Weiner, *et al.*) (dismissing debt reporting violation based on the "unique circumstances" concerning the disputed debt at issue); MUR 6456 (Liberators for Congress, *et al.*) (EPS) (dismissing reporting violations caused by clerical or software error); MUR 6424 (Lally for Congress, *et al.*) (EPS) (same); MUR 6369 (Randy Hultgren for Congress, *et al.*) (EPS) (same);

⁵⁵ See First Gen. Counsel's Rpt. at 3, MUR 5709 (Gallagher for Senate, *et al.*).

The Committee's response to RAD explains what happened but neither how nor why.

Certification dated Feb. 24, 2006, MUR 5709 (Gallagher for Senate, *et al.*) (approving investigation recommendation discussed in First General Counsel's Report).

⁵⁶ If Ready for Hillary PAC failed to report its claimed payment to the Commission because it never made the payment, this fact may suggest that Clinton or her agents essentially funded certain exploratory activities of Ready for Hillary PAC, which in turn may suggest that they did in fact authorize those activities as the Complaint alleges. See Compl. at 2-3. And although that fact would not convert Clinton to a candidate under the Act, *see supra* Part II.B.1, if Clinton authorized Ready for Hillary PAC's exploratory activity then she nonetheless may have violated the terms of the Commission's testing-the-waters regulations, which obligate individuals who are evaluating a potential candidacy to receive or spend funds in compliance with the amount and source limitations of the Act. See 11 C.F.R. §§ 100.72(a), 101.131(a). Because our proposed investigation into the reporting violation will resolve the

1 3. There Is No Reason to Believe that Ready for Hillary PAC Failed to
2 Provide an Adequate Disclaimer

3 If a communication by a political committee is authorized by a candidate, an authorized
4 political committee, or its agents, then it must state that it has been paid for by such authorized
5 political committee.⁵⁷ If a communication is not authorized by a candidate, an authorized
6 political committee of a candidate, or its agents, then it must state the name and permanent street
7 address, telephone number or World Wide Web address of the person who paid for the
8 communication and state that it is not authorized by any candidate or candidate's committee.⁵⁸

9 Here, the version of the e-mail attached to Ready for Hillary PAC's Response included a
10 sufficient disclaimer for an unauthorized committee.⁵⁹ Moreover, because Clinton was not a
11 candidate, even if she had authorized the e-mail, it would not require any further disclaimer.⁶⁰
12 Accordingly, we recommend that the Commission find no reason to believe that Ready for
13 Hillary PAC failed to state that the January 5, 2014, "Free Hillary Clinton Bumper Sticker"
14 e-mail was authorized by Clinton in violation of 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d).⁶¹

payment question, we recommend that the Commission take no action at this time with respect to any potential violation of 11 C.F.R. §§ 100.72(a) and 101.131(a).

⁵⁷ 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)); 11 C.F.R. §§ 110.11(a)(1), (b)(2).

⁵⁸ 52 U.S.C. § 30120(a)(3) (formerly 2 U.S.C. § 441d(a)(3)); 11 C.F.R. § 110.11(b)(3).

⁵⁹ See Ready for Hillary PAC Resp., Ex. 1 (including a disclaimer box stating that the e-mail was paid for by Ready for Hillary PAC and not authorized by any candidate or candidate's committee and providing a World Wide Web address for Ready for Hillary PAC).

⁶⁰ 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(2); see also MUR 6256 (Babich).

⁶¹ Nonetheless, we note that if Friends of Hillary, Clinton's authorized committee from her prior candidacy, had authorized the e-mail, then under the Act and relevant Commission regulations, the e-mail's disclaimer should have stated as much. See 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)); 11 C.F.R. § 110.11(b)(2). Because our proposed investigation concerning the apparent reporting violation may shed light on the extent to which Friends of Hillary authorized the e-mail that Ready for Hillary PAC distributed to the Friends of Hillary mailing list, see *supra* note 56, we recommend that the Commission take no action at this time with respect to whether the e-mail failed to state if it was authorized by Friends of Hillary as required by 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d).

1 **III. INVESTIGATION**

2 We seek authorization to conduct a limited investigation into whether Ready for Hillary
3 PAC paid Friends of Hillary \$136,841.70 to use Friends of Hillary's e-mail list and the
4 circumstances surrounding the failure to report that transaction. Although we will seek to obtain
5 the relevant information voluntarily, we recommend that the Commission authorize the use of
6 compulsory process, as necessary.


7 **IV. RECOMMENDATIONS**


- 8 1. Find no find reason to believe that Hillary Clinton violated 52 U.S.C. § 30102(e)(1)
9 (formerly 2 U.S.C. § 432(e)(1)) by failing to register with the Commission as a
10 candidate.
11
- 12 2. Find no reason to believe that Ready for Hillary PAC and Amy Wills Gray in her
13 Official Capacity as Treasurer violated 52 U.S.C. §§ 30102(e)(1) and 30103(a)
14 (formerly 2 U.S.C. §§ 432(e)(1) and 433(a)) by failing to register with the
15 Commission as Hillary Clinton's authorized committee.
16
- 17 3. Find no reason to believe that that Ready for Hillary PAC and Amy Wills Gray in her
18 Official Capacity as Treasurer violated 52 U.S.C. § 30102(e)(3)(A) (formerly 2
19 U.S.C. § 432(e)(3)(A)) by serving as Hillary Clinton's authorized committee.
20
- 21 4. Find reason to believe that Ready for Hillary PAC and Amy Wills Gray in her
22 Official Capacity as Treasurer violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C.
23 § 434(b)).
24
- 25 5. Take no action at this time with respect to the allegation that Ready for Hillary PAC
26 and Amy Wills Gray in her Official Capacity as Treasurer, Hillary Clinton, and
27 Friends of Hillary and Shelly Moskwa in her Official Capacity as Treasurer violated
28 11 C.F.R. §§ 100.72(a) and 101.131(a) by accepting or authorizing the receipt of
29 excessive and prohibited contributions.
30
- 31 6. Find no reason to believe that Ready for Hillary PAC and Amy Wills Gray in her
32 Official Capacity as Treasurer failed to state that the January 5, 2014, "Free Hillary
33 Clinton Bumper Sticker" e-mail was authorized by Hillary Clinton in violation of 52
34 U.S.C. § 30120 (formerly 2 U.S.C. § 441d).
35

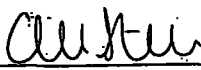
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7. Take no action at this time with respect to the allegation that Ready for Hillary PAC and Amy Wills Gray in her Official Capacity as Treasurer failed to state that the January 5, 2014, "Free Hillary Clinton Bumper Sticker" e-mail was authorized by Friends of Hillary in violation of 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d).
8. Authorize the use of compulsory process in this matter, as necessary.
9. Approve the attached Factual & Legal Analyses.
10. Approve the appropriate letters.

9/17/14
Date

BY: 
Daniel A. Petalas
Associate General Counsel


William A. Powers
Assistant General Counsel


Allison T. Steinle
Attorney