

**BEFORE THE
FEDERAL ELECTION COMMISSION**

American Democracy Legal Fund
455 Massachusetts Avenue, N.W.
Washington, DC 20001

MUR # 6888

Complainant,

v.

Republican National Committee
310 First Street, SE
Washington, DC 20003

American Crossroads
P.O. Box 34414
Washington, DC 20043

Crossroads GPS
P.O. Box 34413
Washington, DC 20043

Americans for Prosperity
2111 Wilson Blvd, Suite #350
Arlington, VA 22201

GOP Data Trust LLC
735 8th Street SE, Suite #200
Washington, DC 20003

i360, LLC
2300 Clarendon Blvd, Suite #800
Arlington, VA 22201

Respondents.

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2014 OCT 23 AM 9:40
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COMPLAINT

Complainant files this complaint with the Federal Election Commission (the "FEC" or "Commission") under 2 U.S.C. § 437g(a)(1) against the Republican National Committee, Anthony Parker, Treasurer, (the "RNC"); American Crossroads, Caleb Crosby, Treasurer ("American Crossroads"); Crossroads Grassroots Policy Strategies ("Crossroads GPS");

Americans for Prosperity ("AFP"); the GOP Data Trust LLC ("Data Trust"); and i360, LLC ("i360") (collectively "Respondents") for numerous violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Based on numerous recent press reports and public admissions, Respondents appear to be illegally coordinating through the ongoing exchange of non-public strategic campaign and party data resulting in millions of dollars in prohibited contributions from Super PACs and corporations to Republican campaigns and parties in the form of "coordinated communications."

In sum, the RNC has created a for-profit entity, the Data Trust, charged with maintaining, sharing, and operating the RNC's vast database of information concerning hundreds of millions of Americans. The Data Trust not only operates the RNC's voter file, but also apparently provides the same data to American Crossroads, Crossroads GPS, and presumably numerous other outside organizations that are legally required to operate independently of the Republican Party and its candidates. Recently, the RNC and the Data Trust have also started passing party and campaign data to the Koch brother's organization, AFP and all customers of the Data Trust's new partner i360, a data management firm that supplies voter information to other conservative organizations. Significantly for purposes of the Act, the Data Trust has now unveiled a new technical upgrade that allows the RNC, Republican campaigns, and "everyone on [their] side,"¹ to not only "access voter information anytime . . . but update it instantly, so others viewing the voter lists can see the information immediately."² The move to a real time exchange of non-public, strategically material data through a common vendor constitutes "coordination" under the Act, and means that the purported "independent expenditures" of American Crossroads,

¹ Matea Gold, "Americans for Prosperity Plows Millions Into Building Conservative Ground Force," Washington Post (Oct. 6, 2014), *available at* http://www.washingtonpost.com/politics/americans-for-prosperity-plows-millions-into-building-conservative-ground-force/2014/10/06/692469b6-4b35-11e4-b72e-d60a9229cc10_story.html.

² Alex Roarty, "Did the GOP Just Take a Big Leap Forward in Data?" National Journal (July 14, 2014), *available at* <http://www.nationaljournal.com/politics/did-the-gop-just-take-a-big-leap-forward-in-data-20140714>.

Crossroads GPS, AFP and other outside organizations are in fact, excessive, illegal, in-kind contributions to the RNC.

Furthermore, American Crossroads, Crossroads GPS and presumably other outside groups are paying the Data Trust such significant sums that the Data Trust can apparently charge the RNC far less than the fair market value for the extensive data services that it reportedly provides. Outside groups that accept unlimited contributions from undisclosed dark money sources are subsidizing the RNC's entire data program in violation of the law. Finally, the mere fact that the RNC established, financed, maintains and controls the Data Trust is itself a violation of law, since the Data Trust accepts and spends sums not subject to the contribution limits, source restrictions, or reporting requirements of the Act.

Data and analytics are some of the most important aspects of running a modern political campaign, informing every critical strategic decision. The Republican Party, Republican campaigns, one of the biggest Republican Super PACs, the Koch brothers' AFP, and the largest outside organizations supporting the Republican Party platform are operating by using the same data, and exchanging all of their information related to that data in real time. This amounts to illegal coordination, and the FEC should act immediately to investigate the full scope of these violations, determine what other parties, campaigns, and outside groups are also illegally sharing data, ensure they cease immediately, and seek the appropriate financial penalties.

A. Factual Background

1. The RNC Created the Data Trust to Administer the Committee's Database of Voter Lists and Information.

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In 2011, the RNC formed a for-profit entity, the Data Trust, "to shoulder the cost of maintaining and improving the party's voter file."³ The intention was for the Data Trust to be the centralized vehicle through which the Republican Party's database of information regarding voters could be maintained, updated and shared with candidates and allied groups throughout the country.⁴ News articles indicate that the Data Trust is not only "backed by the Republican National Committee,"⁵ but is "effectively a subsidiary of the RNC."⁶ Key members of the Republican Party infrastructure were selected for high ranking positions at the Data Trust. Mike Duncan, a former chairman of the RNC, has also served as chairman of the Data Trust.⁷ Johnny DeStafano, the executive director of the Data Trust, is a former high ranking aide to John Boehner, and the former deputy executive director of the National Republican Congressional Committee.⁸

After the Party's defeat in the Presidential election in 2012, the Republicans doubled down on their efforts given the extreme significance of voter file data. The Party's own post-election report noted that "[u]se of data and measurement is critical," and highlighted the "need [for] candidates, managers, Party operatives, communications professionals, fundraisers and strategists who understand and are willing to employ data in decision-making at every level."⁹ The Data Trust continues to play a significant role in the stated goal of the Republican Party "to

³ Eliana Johnson, "RNC's Data Push Greeted with Skepticism," *National Review* (Feb. 2, 2014), available at <http://www.nationalreview.com/article/370962/rncs-data-push-greeted-skepticism-eliana-johnson>.

⁴ Chris Moody, "Republican National Committee To Build Platform to Share Voter Data," *Yahoo News* (Mar. 15, 2013), available at <http://news.yahoo.com/blogs/the-ticket/republican-national-committee-build-voter-data-sharing-platform-090301874--election.html>.

⁵ Roarty, "Did the GOP Just Take a Big Leap Forward in Data?"

⁶ Eliana Johnson, "The GOP's Data Surge," *National Review* (January 16, 2014), available at <http://www.nationalreview.com/article/368581/gops-data-surge-eliana-johnson>.

⁷ Johnson, "RNC's Data Push Greeted with Skepticism".

⁸ David Drucker, "Data Trust Hires ex-Boehner Aide Johnny DeStafano to Run GOP Technology Effort," *Washington Examiner* (July 29, 2013), available at <http://washingtonexaminer.com/data-trust-hires-ex-boehner-aide-johnny-destefano-to-run-gop-technology-effort/article/2533603>.

⁹ Republican National Committee, *Growth & Opportunity Project 25*, available at http://growthopp.gop.com/RNC_Growth_Opportunity_Book_2013.pdf.

generate better data for everyone.”¹⁰ Beyond simply “exercising control” over the RNC’s voter list project and “manag[ing] RNC data,” the Data Trust “manage[s] the open platform that will be built using RNC data.”¹¹

2. The Data Trust Serves as the Voter File Vendor both for Republican Candidates and Committees and for Supposedly “Independent” Outside Groups.

The Data Trust platform allows “Republican campaigns and their allies to share voter information with one another in real time,” so that “campaigns and ‘approved outside groups’ can access a voter’s information anytime, update a voter’s information instantly, and automatically see the information that other campaigns or outside groups add to a voter’s record.”¹² The RNC’s own spokesperson described this platform as the way the Party “is going to create an open data environment to give Republican data users more access to the RNC’s premier data warehouse,” to use for their own political activities.¹³ In her words, any time the RNC collects data on a voter that can be used to target advertisements and to hone the party’s message, “we want to have that information and share that with everyone on our side.”¹⁴

This “open data environment” is open not only to all outside organizations that access data through the Data Trust, but also all organizations that obtain their data from i360, the Koch brothers’ data operation. i360 describes itself as a “leading data and technology resource for the pro-free-market political and advocacy community.”¹⁵ It not only has a “comprehensive national data warehouse” containing “hundreds of data points on every American adult that is currently or potentially politically active,” but also offers its partners “a host of technologies such as

¹⁰ Chris Moody, “Republican National Committee to Build Platform to Share Voter Data”.

¹¹ Thomas Edsall, “In Data We Trust,” N.Y. Times (May 8, 2013), available at <http://opinionator.blogs.nytimes.com/2013/05/08/in-data-we-trust>.

¹² Roarty, “Did the GOP Just Take a Big Leap Forward in Data?”

¹³ Rachel Weiner, “RNC Launching New Data-Sharing Platform,” Washington Post (May 1, 2013), available at <http://www.washingtonpost.com/blogs/post-politics/wp/2013/05/01/rnc-launching-new-data-sharing-platform/>.

¹⁴ Gold, “Americans for Prosperity Plows Millions Into Building Conservative Ground Force”.

¹⁵ See i360, <http://www.i-360.com/> (last accessed Sep. 2, 2014).

grassroots and analytical tools that help [its] clients understand data and put it to use, effectively.”¹⁶ In late August, the Data Trust and i360 announced a “historic data sharing partnership” with the goal of each entity’s clients “having access to more and better data” by sharing and updating data across each entity’s respective voter database.¹⁷ According to the terms of the partnership,

Clients of either The Data Trust or i360 can improve the data shared with all clients. For example, if a client of either company conducting voter outreach identifies a voter attribute or preference, clients of the other organization will benefit from that information. As a result, conservative groups and campaigns will have more information about voters at their disposal for their own activities than ever before.¹⁸

The Data Trust’s real-time data-sharing partnership with i360 and all of i360’s clients is particularly significant given the identities of the outside organizations that utilize i360’s data. i360 serves “as repository for the data amassed by the [conservative billionaires Charles and David] Kochs’ political empire.”¹⁹ Members of the “political empire” that utilize i360’s data management services include “AFP and about a dozen other groups in the Koch-backed political network”²⁰ AFP alone is reportedly planning to make over \$125 in independent expenditures supporting the RNC’s candidates in the upcoming 2014 midterm election.²¹ According to press reports, i360 is owned by the same Koch-backed entity that funds AFP –

¹⁶ i360, “Data Trust, i360 Announce Historic Data Sharing Partnership,” (Aug. 28, 2014), available at <http://www.i-360.com/data-trust-i360-announce-historic-data-sharing-partnership/>.

¹⁷ GOP Data Trust, “Data Trust and i360 Announce Historic Data Sharing Partnership” (Aug. 28, 2014), available at <http://www.gopdatatrust.com/blog/?p=95>.

¹⁸ *Id.*

¹⁹ Josh Israel, “The Koch Brothers and the Republican Party Have Just Joined Forces to Track Voters,” ThinkProgress (Aug. 28, 2014), available at <http://thinkprogress.org/justice/2014/08/28/3476810/koch-brothers-rnc-data/>.

²⁰ Gold, “Americans for Prosperity Plows Millions Into Building Conservative Ground Force.”

²¹ Kenneth P. Vogel, “Koch Brothers’ Americans for Prosperity Plans \$125 Million Spending Spree,” Politico (May 8, 2014), available at <http://www.politico.com/story/2014/05/koch-brothers-americans-for-prosperity-2014-elections-106520.html>.

Freedom Partners.²² Moreover, in 2012, Freedom Partners reported making \$5.8 million in payments to the Themis Trust,²³ which has been described as i360's "sister firm,"²⁴ "partner,"²⁵ and "offshoot."²⁶ The Themis Trust, in turn, reported "Intel360, LLC," as one of its highest paid contractors in 2010.²⁷ Upon information and belief, "Intel360" and i360 are one-in-the-same.²⁸

In fact, AFP and the RNC admit that they are sharing voter data with one another via the Data Trust. As the most recent of many press reports discussing the coordination between the RNC and outside groups described it, "as they go door to door, AFP activists are gathering information that filters back to Republican campaigns. . . ."²⁹ The Data Trust technology, which one AFP employee described as "awesome," "pinpoints which likely voters canvassers should approach, then allows them to instantly upload information from each contact."³⁰ AFP operatives also described how their "data is also much richer than before" because the Data Trust allows "the Republican National Committee and conservative groups to share information from the field" with one another.³¹ It is not just that AFP is providing its field data to the party and

²² Jon Ward, "The Behind the Scenes Story of the RNC's Quest for Data Supremacy," HuffingtonPost.com (Apr. 21, 2013), available at http://www.huffingtonpost.com/2014/04/18/rnc-data_n_5153927.html; Mike Allen & Jim Vandehei, "The Koch Brothers' Secret Bank," Politico (Sep. 11, 2013), available at <http://www.politico.com/story/2013/09/behind-the-curtain-exclusive-the-koch-brothers-secret-bank-96669.html>.

²³ Allen & Vandehei, "The Koch Brothers' Secret Bank."

²⁴ Steven Rosenfeld, "The Big Winners of the GOP's Brutal Civil War: The Koch Brothers," Salon (Feb. 13, 2014), available at

http://www.salon.com/2014/02/13/the_big_winners_of_the_gops_brutal_civil_war_the_koch_brothers_partner/.

²⁵ Kenneth P. Vogel & Maggie Haberman, "Karl Rove, Koch Brothers Lead Charge to Control Republican Data," Politico (Apr. 22, 2013), available at <http://www.politico.com/story/2013/04/karl-rove-koch-brothers-control-republican-data-90385.html>.

²⁶ Kirsten Andersen, "Data Wars: As GOP Races to Catch Up with Dems before 2014, Will Social Conservatives Be Left Behind?", LifeSite News (June 11, 2013), available at <http://www.lifesitenews.com/news/data-wars-as-gop-races-to-catch-up-with-dems-before-2014-will-social-conser>.

²⁷ Themis Trust, IRS Form 990 (Mar. 30, 2012), available at http://pdfs.citizensaudit.org/2012_04_EO/27-2005005_990O_201103.pdf.

²⁸ See Peter Henderson, "Kochs Help Republicans Catch Up on Technology," Reuters (May 17, 2012) (describing Intel360 as a voter database company that provides data mining services to find voters likely to respond to tailored messages), available at <http://www.reuters.com/article/2012/05/17/us-usa-politics-kochs-idUSBRE84G0E820120517>.

²⁹ Gold, "Americans for Prosperity Plows Millions Into Building Conservative Ground Force."

³⁰ *Id.*

³¹ *Id.*

campaigns, but the party and campaigns are also giving their data to the outside groups. Another report described the RNC's data-sharing with outside groups by explaining that:

[The RNC's] volunteers feed data that they get about the voter – answers to questions, or nothing whether they've already voted – back into their phones, which immediately updates and enriches the RNC's main voter file. This real-time updating is meanwhile zipping across the conservative universe ... So the details that campaign volunteers collected on prospected voters are flowing through the RNC to Data Trust and to grass-roots canvassers – and vice versa. That data became immensely richer in August when Data Trust signed an info-sharing agreement with i360, the Koch brothers' voter-data project.³²

Underscoring just how dismissive the RNC is toward the federal laws banning such coordination, an RNC spokesperson recently stated on the record that “[a]ny time we are having a conversation with voters, we want to have that information and share that with everyone on our side.”³³

AFP and other groups presumably then use this highly-valuable voter data shared by the RNC and Republican campaigns when developing their independent expenditures supporting those candidates.

3. Outside Soft-Money Groups are Subsidizing the RNC's Data Operation

Despite the central role that the Data Trust is playing in the RNC's data operation, the RNC has paid the organization astonishingly little. Most recently, in March 2014, the RNC reported a \$25,000.00 disbursement to the Data Trust with a stated purpose of “data processing services.”³⁴ This appears to be the only payment the RNC has ever made to the Data Trust. The same cannot be said for American Crossroads and Crossroads GPS. Both entities have made substantial payments to the Data Trust, and given the nature of the relationship between the two groups, presumably are freely sharing the Republican Party data between them. American

³² Kimberley A. Strassel, “Leapfrogging the Democrats’ Tech Advantage,” *The Wall Street Journal* (Sep. 21, 2014), available at <http://online.wsj.com/articles/the-weekend-interview-leapfrogging-the-democrats-tech-advantage-1411167060>.

³³ Gold, “Americans for Prosperity Plows Millions Into Building Conservative Ground Force.”

³⁴ See Exhibit A.

Crossroads reported a \$1,000,000.00 disbursement to the Data Trust on an FEC report in 2012 for a list rental,³⁵ and Crossroads GPS listed the Data Trust as one of its highest compensated independent contractors on its IRS Form 990 for calendar year 2012.³⁶ The organization reported compensation to the Data Trust of \$1,000,000.00 for “database services.”³⁷ While Crossroads GPS has yet to file its IRS Form 990 covering calendar year 2013, these payments to the Data Trust have presumably continued through the present.

Further, as was the case for the RNC, the relationship between American Crossroads and the Data Trust appears to go well beyond that of an ordinary vendor and customer. Mike Duncan, the former RNC chair who until recently also served as the chairman of the Data Trust, also served as the chairman of American Crossroads.³⁸ Additionally, the Data Trust recently awarded a major contract to Liberty Works, a company with clear ties to Karl Rove, the founder of American Crossroads.³⁹ Adding to the sophisticated web of relationships between Respondents, it was the RNC that announced the awarding of the Data Trust’s contract to the Rove-allied group, rather than the Trust itself.⁴⁰

4. Republican Party and Campaign Data Shared with Outside Groups is Used to Shape their “Independent Expenditures”

The special election in Florida’s 13th Congressional District on March 11, 2014 is a useful lens through which to view the significant issues raised by the Respondents’ attempts to create an extensive data sharing program between party and supposedly independent organizations. According to the Republican Party, “the voter database they[] spent a year

³⁵ See Exhibit B.

³⁶ See Exhibit C.

³⁷ *Id.*

³⁸ See American Crossroads, About – Leadership Team, <http://www.americancrossroads.org/leadership-team/> (last accessed Aug. 15, 2014).

³⁹ Edsall, “In Data We Trust”.

⁴⁰ *Id.*

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tirelessly building from scratch . . . was essential to [Republican candidate David] Jolly's surprising win in [the] special election in Florida."⁴¹ Specifically, the RNC helped Republicans "target[] voters for persuasion – a process strategists say was accomplished in part by combining their own information with what was available at the RNC's revamped Data Trust, a central hub of information for GOP campaigns."⁴² But the Republican party wasn't the only organization spending huge sums to get Jolly elected. American Crossroads, apparently working off the same RNC Data Trust voter file, spent \$471,012.28 on advertisements in the race that they claimed were "independent expenditures."⁴³

Ultimately, a recent article on the Data Trust's new "real time" capabilities captured the exact type of illegal coordination it facilitates:

Imagine a volunteer for the U.S. Chamber of Commerce in Arkansas, trying to assist Rep. Tom Cotton in his race against Democratic Sen. Mark Pryor, knocks on a voter's door in Little Rock and discovers the potential GOP supporter owns a gun. In the world of voter outreach, it's a potentially crucial piece of information; with the right pitch from a group like the National Rifle Association, for instance, it could prove decisive in getting that voter to pull the lever for Cotton. Except, in years past, it's also the kind of information that the two separate groups would never share with each other, at least not by November. Beginning this week, Republicans are trying to change that.⁴⁴

If the RNC, other party committees, and Republican campaigns are using the Data Trust as the Republicans claim, every piece of information they generate and collect regarding their targeted voters is flowing freely to American Crossroads, Crossroads GPS, and every other independent outside groups that signs up for Data Trust voter file access as well as to i360, AFP and the entire network of the Koch brother's political operation. The outside groups know exactly who the

⁴¹ Alex Roarty, "Inside the Republican Database Behind David Jolly's Upset Victory" National Journal (March 18, 2014), available at <http://www.nationaljournal.com/politics/inside-the-republican-database-behind-david-jolly-s-upset-victory-20140318>.

⁴² *Id.*

⁴³ See American Crossroads, 24/48 Hour Report of Independent Expenditures (Mar. 8, 2014), <http://docquery.fec.gov/pdf/521/14960492521/14960492521.pdf> (last accessed Aug. 15, 2014).

⁴⁴ Roarty, "Inside the Republican Database Behind David Jolly's Upset Victory".

Republican Party and Republican campaigns need them to target and what they should say, because they are working from the party and candidate data.

The fact that the Republican party and candidate data is shared with the outside groups in real time leads to further coordination. By examining party and candidate data immediately and day to day, the outside groups that are required to operate independently can easily determine who the party and candidates are targeting, which areas they are focusing their efforts, where their field programs have holes and need additional support, and the equivalent of insider polling - essentially the entire private field strategy of a campaign or party operation.

B. Legal Analysis

1. The RNC and outside groups appear to have engaged in illegal coordination through the Data Trust and i360, resulting in prohibited and excessive contributions.

Pursuant to 52 U.S.C. § 30116(a)(7)(B)(i), “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate.” The same rule applies to party committees under 52 U.S.C. § 30116(a)(7)(B)(ii). The Commission’s regulations implementing this provision further explain that an expenditure for a communication will be considered an in-kind contribution to a campaign or party if it is (1) paid for by an entity other than the party, candidate or candidate’s campaign; (2) meets certain content standards, including by being a public communication that expressly advocates the election or defeat of a clearly identified candidate; and (3) meets certain conduct standards, including the payor and the candidate, the candidate’s opponent, or a political party using a

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common vendor.⁴⁵ The “common vendor” standard is satisfied if the payor uses a particular vendor to create, produce or distribute a communication;⁴⁶ when that vendor has provided certain specific services to the candidate identified in the communication, that candidate’s opponent, or a political party during the previous 120 days, including “identifying voters or developing lists”;⁴⁷ and the vendor then uses or conveys to the payor material information about the candidate’s or the political party’s plans, projects, activities, or needs, or information used previously in providing services to the candidate or the political party.⁴⁸

Since 2011, the year that the Data Trust was formed and they started receiving the party and candidate data, American Crossroads and Crossroads GPS have spent significant amounts of money on communications identified as “independent expenditures.”⁴⁹ AFP, which now has access to the party and candidate data through the exchange between i360 and the Data Trust, is also currently spending millions of dollars on “independent expenditures.”⁵⁰ By definition, “independent expenditures” are communications that expressly advocate the election or defeat of a clearly identified candidate.⁵¹ Accordingly, the “independent expenditures” made by these groups satisfy the first two prongs of the coordination analysis described above: each communication was paid for by someone other than a party or candidate and satisfied the “content prong.”

The third prong of the coordination analysis also appears to be satisfied as the Data Trust and i360 have acted as a common vendor for the RNC and American Crossroads, Crossroads GPS, AFP, and presumably other outside groups supportive of the Republican Party. (Indeed,

⁴⁵ See 11 C.F.R. §§ 109.21(a), (c)(3), (d)(4).

⁴⁶ See *id.* § 109.21(d)(4)(i).

⁴⁷ See *id.* § 109.21(d)(4)(ii)(G) (emphasis added).

⁴⁸ See *id.* §§ 109.21(d)(4)(iii)(A), (B).

⁴⁹ See Exhibits D and E, attached, for a full list of independent expenditures made by American Crossroads and Crossroads GPS since 2011.

⁵⁰ See Vogel, “Koch Brothers’ Americans for Prosperity Plans \$125 Million Spending Spree”.

⁵¹ See 11 C.F.R. § 100.16(a).

according to one report, the RNC is sharing the wealth of voter knowledge held by the Data Trust with "any outside partner.")⁵² Since the Data Trust was formed, both American Crossroads and Crossroads GPS have used the Trust as a vendor, making combined payments of at least \$1,025,000.00 for services described as "list rentals" and "database services." During that same time period, the RNC has relied on the Trust to maintain and control its entire voter file and has also used the Trust as a vendor, making a payment of at least \$25,000 for "data processing services." These vague descriptions aside, it is clear from the Republican Party's own stated objectives and press statements that the Data Trust exists primarily to help all of its customers with one of the services specifically listed in the FEC regulation defining the "common vendor" standard: *identifying voters* that represent the key to Republican electoral victories. Moreover, the granularity of information that flows between the campaigns and the RNC and outside groups through the Data Trust means that the outside groups not only receive individual voter records from the candidates and parties, but that the RNC is also telegraphing, on a movement-by-movement basis, which types of voters it is talking to, how it is structuring its field, outreach and targeting, and its overall strategy for voter contact and persuasion. This allows supposedly "independent" groups to track, in real time, Republican campaigns' voter contact activities, down to which doors it is knocking and which phone numbers it is dialing in a given day but also get the big picture of its inside strategies. And news reports indicate that with the platform managed by the Data Trust now shared by i360, AFP and the other Koch brother customers of i360 are also receiving this real time download of strategic information from the RNC and Republican candidates via the same "common vendor."

Stated plainly, the Data Trust provides the RNC with services to "identify voters" and "develop lists" on a continuous basis, using the most valuable voter data available. At the same

⁵² Strassel, "Leapfrogging the Democrats' Tech Advantage".

time, the Data Trust is providing the exact same IDs and lists to outside groups running supposedly “independent” expenditures. Customers don’t have to wait for non-public information provided to the Trust to be shared between them, as the most recent upgrade allows that information to be shared in real time, “so others viewing the voter lists can see the information immediately.”⁵³ To quote from the language of the FEC’s regulation, the Data Trust and i360 are “using” and “conveying ... information about the campaign plans, projects, activities or needs” of campaigns and parties that is “material to the creation, production, or distribution of communication.”⁵⁴ More specifically, outside groups that are required to stay independent of the RNC are using the RNC’s own data – via the common vendor, Data Trust – to produce targeted communications aimed specifically at persuading voters to support the RNC’s candidates in an upcoming election. This is precisely the activity that the coordination rules regarding a common vendor are intended to prohibit.

Accordingly, it appears that any “independent expenditures” made by American Crossroads, Crossroads GPS or AFP that are based on data obtained through the Data Trust or i360 are, in fact, coordinated communications with the RNC and other campaigns providing data into the system. Rather than being “independent,” the payments for such communications should be treated as in-kind contributions to the RNC and Republican campaigns. As American Crossroads, Crossroads GPS and AFP are prohibited from making contributions to the RNC, these payments represent prohibited contributions of huge amounts that have been, and presumably will continue to be, accepted by the RNC.

And this may only be the tip of the iceberg. It is clear that the Republican Party’s intention is for all candidates, committees, and allied groups to participate in the shared use of

⁵³ Roarty, “Did the GOP Just Take a Big Leap Forward in Data?”

⁵⁴ 11 C.F.R. § 109.21(d)(4)(iii).

data through the Data Trust. The goal appears to be for all communications made by all candidates, committees and allied groups to be informed by information shared through the Data Trust and i360, which could result in rampant abuse of the contribution limits and source restrictions of the Act by the entire Republican Party and their allied outside groups in the form of coordinated communications. The Commission must expeditiously investigate the Data Trust's and i360's activities and its customers to end the far-reaching coordination scheme as soon as possible and impose the proper penalties for any prohibited or excessive contributions that have been made to date.

2. The RNC Appears to Have Received Excessive Contributions in the Form of In-Kind Data Services From the Data Trust.

The Act defines "contribution" broadly to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."⁵⁵ FEC regulations further provide that "the provision of goods or services without charge or at a charge that is less than the usual and normal charge . . . is a contribution."⁵⁶ The "usual and normal charge" for services means the "hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered."⁵⁷ These definitions apply to services provided to a political committee "for any purpose."

The Act limits the amount of a contribution that a candidate or political party may accept from a given source.⁵⁸ A corporation is strictly prohibited from making a contribution in any

⁵⁵ 52 U.S.C. § 30101(8)(A).

⁵⁶ 11 C.F.R. § 100.52(d).

⁵⁷ *Id.*

⁵⁸ 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b)(1).

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amount to any candidate or political party.⁵⁹ A corporation's payment for services on behalf of a candidate or political party results in an impermissible corporate contribution, unless the candidate or political party pays the usual and normal charge for such services in a timely manner.⁶⁰

News articles indicate that the Data Trust has provided extensive services to the RNC. It is described as the entity that "is backed by the Republican National Committee that maintains a master list of voter information nationwide," and the RNC itself has cited the recent developments at the Data Trust as evidence that "[f]or the first time ever, a party committee is going to create an open data environment to give Republican data users more access to the RNC's premier data warehouse."⁶¹ Despite this apparent provision of extensive services, reports filed with the FEC indicate that the RNC made a single payment to the Data Trust in 2014 for \$25,000.

It is clear that this amount does not accurately reflect the fair market value for the comprehensive services provided to the RNC, resulting in a prohibited in-kind contribution. Based on information and belief regarding commercially prevailing rates in the campaign data industry, a single, \$25,000 payment is not close to the "usual and normal" charge for such extensive services. Further, the Commission has repeatedly concluded that the purchase of goods or services at a discount constitutes an in-kind contribution if the discounted items are not made available on the same terms and conditions to the vendor's other customers.⁶² Here, the facts indicate that other customers are in fact paying significantly more than the RNC for services from the Data Trust. American Crossroads alone has paid the Data Trust nearly forty

⁵⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

⁶⁰ See 11 C.F.R. § 100.52(d).

⁶¹ Weiner, "RNC Launching New Data-Sharing Platform".

⁶² See, e.g., Advisory Opinion 2004-18 (Lieberman) (July 15, 2004).

times the amount the RNC has paid for its services. It is impossible that the fair market value of services provided to an outside group is \$1,000,000 when the fair market value of the same services provided to the RNC is only \$25,000.

Accordingly, the RNC appears to have accepted, and the Data Trust appears to have made, excessive impermissible contributions in the form of sharply subsidized services. According to press reports, this violation of the Act and Commission regulations is also intentional. The RNC apparently decided to house its data operation in a for-profit company specifically so that other organizations could subsidize the high cost of such an operation – according to one report, the RNC created the Data Trust “to shoulder the cost of building and maintaining the GOP’s voter file” because the committee “was looking for ways to deal with the debt left in the wake of Michael Steele’s chairmanship.”⁶³

3. The RNC Appears to Have Illegally Established, Financed, Maintained, and/or Controlled the Data Trust.

The Act and Commission regulations provide that any entity that is “directly or indirectly established, financed, maintained or controlled” by a national party committee may not solicit, receive, or direct contributions that are not subject to the prohibitions and limitations of federal law.⁶⁴ In other words, an entity established, financed, maintained or controlled by the RNC is subject to the same “soft money” restrictions as the RNC itself and cannot accept unlimited financial support from any source.

To determinate whether a national party committee has “established” an entity for these purposes, the Commission focuses on whether the national party committee “had an active or

⁶³ Johnson, “The GOP’s Data Surge”.

⁶⁴ 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.10(c)(2).

significant role in the formation of the entity.”⁶⁵ Further, to determine whether a national party committee “controls” an entity, the Commission considers, among other facts, whether the entity has officers who used to be officers of the national party committee, indicating a formal or ongoing relationship between the sponsor and the entity.⁶⁶

According to press reports, the Data Trust was clearly established by the RNC, and remains controlled by the Committee. As the New York Times reported in 2013, “the RNC cannot publicly reveal that it has created the Data Trust, even though, in fact, it did, according to a high-level official of the RNC”⁶⁷ One media account stated as a matter of fact that the Data Trust is “effectively a subsidiary of the RNC,” while another referenced “the RNC’s revamped Data Trust.” The Data Trust’s website is even branded with the official logos of the RNC, as well as the National Republican Congressional Committee and the National Republican Senatorial Committee.⁶⁸

As further evidence of the RNC’s control, when the Data Trust recently awarded a major contract to another vendor for voter file management and collection services, it was the RNC who made the announcement, rather than either of the contracting parties. The RNC’s unilateral decision then paved the way for American Crossroads and other “approved outside groups” to have comprehensive, real-time access to the RNC’s data. Finally, at least two officers of the Data Trust have ties to the Republican Party apparatus, including its Chairman, Mike Duncan, and executive director, as described above.

There is clear evidence that the RNC both established and controls the Data Trust. As a result, the Data Trust is subject to the same “soft money” restrictions as the RNC itself, and

⁶⁵ 11 C.F.R. § 300.2(c)(2)(ix).

⁶⁶ *Id.* § 300.2(c)(2)(vi).

⁶⁷ Edsall, “In Data We Trust”.

⁶⁸ *See* Exhibit F.

cannot accept unlimited contributions or contributions from prohibited sources such as corporations. The Commission should immediately investigate whether the Data Trust has, in fact, accepted such contributions and, if so, should impose the appropriate penalties.

C. REQUESTED ACTION

Data and analytics has developed into the driving force behind nearly every strategic decision made by political candidates, parties, and outside groups. Given this critical role, the Commission must take any and all measures necessary to ensure that the use of such data and analytics by candidates, political parties, and outside groups is done in strict compliance with the Act and Commission regulations.

Here, the facts demonstrate that the RNC has formed a partnership with American Crossroads and the Koch brothers and devoted significant resources to a data system that blatantly flouts the law. These groups established and control the Data Trust, a for-profit company, to maintain and upgrade the RNC's voter file and manage the platform by which all allied Republican groups can share data in real time. Such establishment and control of a for-profit company by the RNC is itself prohibited by the Act and Commission regulations. But beyond this basic violation, publicly available information suggests that the RNC has paid the Data Trust a shockingly small amount for these services, resulting in an apparent prohibited in-kind contribution.

Most significantly, however, Respondents appear to have engaged in illegal coordination through common vendors the Data Trust and i360, by sharing real time information to enhance the effectiveness of targeted communications. While obviously politically beneficial, the legal result is massive prohibited and excessive contributions to the RNC. Worse still, news reports indicate that the scheme was intentional: the RNC actually planned for this type of coordination

to occur when it created the Data Trust and has recently promoted new upgrades and improvements designed to make this illegal sharing of information even faster and more widespread. American Crossroads, Crossroads GPS and AFP are three examples of "independent" groups that have been a part of this apparent coordination scheme, but the facts indicate that they are likely only three of many Republican Party-aligned groups in on the Data Trust/i360 scheme. Unfortunately, all and any of the "independent expenditures" made by outside groups using the RNC's data either through the Data Trust or i360 constitute prohibited, excessive contributions to the RNC.

We respectfully request that the Commission investigate these violations and any additional coordination between the RNC, the Republican Party, Republican candidates, American Crossroads, Crossroads GPS, AFP and all other customers or subscribers to the Data Trust or i360; enjoin Respondents from further violations of the Act; and assign the maximum fines permitted by law.



Sincerely,

Handwritten signature of Brad Woodhouse in black ink.

Brad Woodhouse
Treasurer
American Democracy Legal Fund

SUBSCRIBED AND SWORN to before me this 14 day of October, 2014.

Handwritten signature of Ashley D. Rombro in black ink.

Notary Public

My Commission Expires:

2/28/2019

Exhibit A

Image# 14941116203

**SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE 2599 OF 2949

21b 22 23 24 25 26
 27 28a 28b 28c 29 30b

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
REPUBLICAN NATIONAL COMMITTEE

Full Name (Last, First, Middle Initial)

A. JOHN GIBSON

Date of Disbursement

Mailing Address 310 First Street SE

03 19 2014

City Washington State DC Zip Code 20003

Transaction ID : 2014M04L21A00129

Purpose of Disbursement
TRAVEL EXPENSES

Amount of Each Disbursement this Period

Candidate Name

Category/
Type

1897.28

Office Sought: House Senate President
Disbursement For: Primary General
Other (specify) ▾

State: District:

Full Name (Last, First, Middle Initial)

B. JOHN GIBSON

Date of Disbursement

Mailing Address 310 First Street SE

03 26 2014

City Washington State DC Zip Code 20003

Transaction ID : 2014M04L21A00140

Purpose of Disbursement
TRAVEL EXPENSES

Amount of Each Disbursement this Period

Candidate Name

Category/
Type

1252.93

Office Sought: House Senate President
Disbursement For: Primary General
Other (specify) ▾

State: District:

Full Name (Last, First, Middle Initial)

C. GOP DATA TRUST LLC

Date of Disbursement

Mailing Address PO BOX 12365

03 27 2014

City ARLINGTON State VA Zip Code 22219

Transaction ID : 2014M04L21A00148

Purpose of Disbursement
DATA PROCESSING SERVICES

Amount of Each Disbursement this Period

Candidate Name

Category/
Type

25000.00

Office Sought: House Senate President
Disbursement For: Primary General
Other (specify) ▾

State: District:

BUBTOTAL of Disbursements This Page (optional) ▶

26150.21

TOTAL This Period (last page this line number only) ▶

110304740101010001

Exhibit B

Image# 12971827878

**SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)							PAGE 63 OF 128			
	<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
American Crossroads

Full Name (Last, First, Middle Initial) A. THE MK GROUP LLC		Date of Disbursement 06 01 2012
Mailing Address 5905 GLOSTER ROAD		Transaction ID: 8821B.11794
City BETHESDA	State MD	Zip Code 20818
Purpose of Disbursement DONOR DEVELOPMENT	Candidate Name	Amount of Each Disbursement this Period 7500.00
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General Other (specify) ▾	Category/Type
State: District: 00		

Full Name (Last, First, Middle Initial) B. DATA TRUST LLC		Date of Disbursement 06 04 2012
Mailing Address P.O. BOX 12385		Transaction ID: 8821B.11779
City ARLINGTON	State VA	Zip Code 22219
Purpose of Disbursement LIST RENTAL	Candidate Name	Amount of Each Disbursement this Period 100000.00
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General Other (specify) ▾	Category/Type
State: District: 00		

Full Name (Last, First, Middle Initial) C. PNC BANK		Date of Disbursement 06 04 2012
Mailing Address ONE FINANCIAL PARKWAY		Transaction ID: 8821B.11780
City KALAMAZOO	State MI	Zip Code 49008
Purpose of Disbursement CREDIT CARD PAYMENT - SEE MEMO ENTRIES	Candidate Name	Amount of Each Disbursement this Period 3482.69
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General Other (specify) ▾	Category/Type
State: District: 00		

SUBTOTAL of Disbursements This Page (optional)	1010882.69
TOTAL This Period (last page this line number only)	

110047100-110001

Exhibit F

110041201-11111

The screenshot shows a web browser window with the URL www.gopdatatrust.com. The page features the Data Trust logo and a navigation menu with links for HOME, PRODUCTS & SERVICES, TEAM, JOIN THE TEAM, CONTACT, BLOG, and DATRUST. The main content area is titled "Data Enhancements" and lists various data services. At the bottom, there are logos for GAP, NRCC, and NRSCA.

data trust

HOME PRODUCTS & SERVICES TEAM JOIN THE TEAM CONTACT BLOG DATRUST

Data Enhancements

Our national voter file (50 states + DC) includes

- Age/Gender/Demographics
- Geographic
- Political Affiliations
- Contact (mailing, phone, e-mail)
- Vote History

We additionally enhance our file with

- Voter Scoring
- National Change of Address Processing
- Address Standardization & CASS Certification
- Geocode & Census Block Assignment
- Landline, Cell Phone and E-mail Appends
- Organization/Candidate Lists
- Consumer Data (lifestyle, financial, etc.)

Need data outside of what's listed here? Contact us to find out if we have access or can perform ad-hoc data acquisition/ingestion.

GAP NRCC NRSCA