



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6775
Ready for Hillary PAC and)
Amy Wills Gray in her official capacity as treasurer, *et al.*)

**STATEMENT OF REASONS OF
COMMISSIONER LEE E. GOODMAN**

The complaint in this matter alleged that Ready for Hillary PAC (“Ready for Hillary”), an independent expenditure-only political committee (a so-called “Super PAC”), and Friends of Hillary, Hillary Clinton’s authorized committee from a prior campaign, violated the Federal Election Campaign Act of 1971 (“Act”) when Ready for Hillary disseminated a mass email supporting Hillary Clinton’s prospective presidential candidacy using a Friends of Hillary email list. The Commission unanimously found no reason to believe the allegation that the campaign committee’s provision of its email list to the Super PAC triggered Hillary Clinton’s candidacy for president prior to her official announcement in April 2015. Commissioners split evenly, however, over whether there was reason to believe Ready for Hillary failed to report a disbursement for use of the mailing list.

The basis for the Commission’s conclusions is largely set forth in the two Factual & Legal Analysis documents included in the file. I write separately here to highlight several important factual and legal aspects of this case, and also to express concern over the higher burden my colleagues and the Office of General Counsel (“OGC”) sought to impose *sua sponte* on committees when reporting disbursements.

I. Factual Background

The Ready for Hillary Super PAC registered with the FEC on January 25, 2013.¹ The committee was styled as “a nationwide grassroots movement encouraging the former Secretary of State to run for president in 2016” and was “the vehicle through which Americans from all walks of life [could show Clinton] that if she decides to run for president, she will have a grassroots army of supporters behind her who are ready to help her win.”² Funds raised by the organization would go toward “list-building, digital advertising and on-the-ground organizing,” with particular emphasis on

¹ MUR 6775 (Ready for Hillary PAC, et al.) Ready for Hillary Resp. at 2.

² MUR 6775 (Ready for Hillary PAC, et al.) Compl. at Ex. G.

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cultivating a database of Clinton supporters around the country.³ The plan, according to the group, was to make the contact list available to the presidential campaign if Clinton ultimately ran for office.⁴

To help the committee achieve its goals, Friends of Hillary entered into a license agreement with Ready for Hillary in December 2013.⁵ The agreement between the executive director of Ready for Hillary PAC, Adam Parkhomenko, and the treasurer of Friends of Hillary, Shelly Moskwa, gave Ready for Hillary use of the Clinton campaign's email list in exchange for a licensing fee of \$136,841.70.⁶ Using that list, Ready for Hillary sent emails to prospective Clinton supporters from General Wes Clark declaring that "Hillary has what it takes to be the next President of the United States," encouraging recipients to pick up a free Ready for Hillary bumper sticker, and urging citizens "to get our support for Hillary organized and ready for 2016."⁷

Before the email was sent, however, the Clinton campaign worked with Ready for Hillary to facilitate the email message. Specifically, when Friends of Hillary rented its contact list to others, the campaign's technology vendor had advised that emails sent from a domain name other than hillaryclinton.com – like readyforhillary.com – were more likely to get marked as SPAM by email providers such as Gmail, Hotmail, and Yahoo.⁸ Rather than engage in "costly and time consuming" background work to allow emails to be sent from a readyforhillary.com address without getting blocked by the SPAM filters, the Clinton campaign allowed Ready for Hillary to disseminate emails using the hillaryclinton.com domain name.⁹ Accordingly, the Clark email went to the public from the address info@hillaryclinton.com, a connection the complaint highlighted several times.¹⁰

In addition to concerns about whether the list rental triggered candidacy status for Hillary Clinton, both the complaint and response filed by the Clinton campaign raised the issue of whether the list rental resulted in coordination between Friends of Hillary, which remained Clinton's authorized Senate campaign committee, and the Ready for Hillary Super PAC, thus jeopardizing Ready for Hillary's status as an independent committee or resulting in an excessive contribution to Friends of Hillary. The complaint attached an article flagging the potential coordination problem, although the author ultimately concluded that "because Clinton is not a declared candidate there is nothing improper about the list rental."¹¹ The Friends of Hillary response also invoked the FEC's coordination rules and criticized the idea that a non-candidate could become a candidate as a result of the contacts with a Super PAC.

³ MUR 6775 (Ready for Hillary PAC, et al.) Compl. at Ex. K.

⁴ *Id.*

⁵ The list originally belonged to Hillary Clinton's 2008 presidential campaign, but was transferred to Friends of Hillary when the presidential campaign wound down. *See* MUR 6775 (Ready for Hillary PAC, et al.) Friends of Hillary Resp. at 2, Ex. A, ¶ 4 (affidavit of Shelly Moskwa). Friends of Hillary was the former principal campaign committee of Hillary Clinton when she ran to represent New York in the United States Senate. *See id.* at 1.

⁶ MUR 6775 (Ready for Hillary PAC, et al.) Friends of Hillary Resp. at Ex. A (affidavit of Shelly Moskwa), ¶ 7, C.

⁷ *Id.* at Ex. 1.

⁸ *Id.* at 6.

⁹ MUR 6775 (Ready for Hillary PAC, et al.) Compl. at 1, 2, Ex. B.

¹⁰ *Id.*

¹¹ *Id.* at Ex. A.

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All of this information was before the Commission when the Commission voted on this matter on February 10, 2015, and neither OGC nor my colleagues thought that these facts merited further scrutiny. I agreed with that conclusion.¹²

II. Legal Conclusions

A. Candidacy and Use of Email List for Communications

The Office of the General Counsel (“OGC”) concluded that Clinton did not become a candidate under the Act, nor did Ready for Hillary fail to provide an adequate disclaimer on the email, and recommended that the Commission find no reason to believe a violation of the law had occurred as to those allegations.¹³ I, along with my colleagues, agreed with OGC that Clinton did not trigger candidate status in this matter and that the Ready for Hillary email included a sufficient disclaimer.¹⁴ In particular, we agreed that because the Super PAC and Hillary Clinton were only engaged in activities to evaluate a potential Clinton candidacy, there were no contributions or expenditures made that would have triggered candidacy status for Clinton¹⁵ and therefore the additional disclaimer requirements under the Act applicable to candidates did not apply.¹⁶

B. Reporting the License Payment for the Clinton Email List

While not raised in the Complaint, OGC nevertheless scrutinized whether the Ready for Hillary committee reports reflected the \$136,841.70 paid to rent the list. Not finding an explicit line entry for an “email list rental” paid to Friends of Hillary, OGC recommended an investigation to verify that the payment was made.

As a threshold matter, OGC added this alleged legal violation to the matter *sua sponte* because OGC was unable to spot a disbursement from Ready for Hillary to the Clinton Committee for list

¹² Subsequent to the vote on this matter, Commissioner Ravel expressed a different view of the law with respect to other potential candidates. See Ann M. Ravel, *Delaying Your Candidacy Doesn't Mean You Can Avoid Campaign Finance Rules*, Washington Post (Mar. 31, 2015).

¹³ MUR 6775 (Ready for Hillary PAC, et al.) First General Counsel’s Report. OGC also recommended the Commission take no action at this time as to the allegation in the complaint concerning whether Ready for Hillary and Friends of Hillary violated 11 C.F.R. 100.72(a) and 101.13(a) by accepting or authorizing the receipt of excessive and prohibited contributions, as well as to whether Ready for Hillary PAC failed to state that the email was authorized by Friends of Hillary. For similar reasons found in this statement, we also dismissed the alleged violation of 52 U.S.C. § 30120 (formerly 2 U.S.C § 441d). Additionally, because Clinton was not a candidate, we voted to find no reason to believe the alleged violation of 11 C.F.R. 100.72(a) and 101.131(a). See MUR 6775 (Ready for Hillary PAC, et al.) Certification, February 10, 2015. For a more extensive account of the facts and allegations in this matter, please see OGC’s First General Counsel’s report.

¹⁴ MUR 6775 (Ready for Hillary PAC, et al.) Certification (Feb. 11, 2015).

¹⁵ See 11 C.F.R. § 100.72 (“Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions” and are only subject to the Act’s reporting requirements if and when the individual becomes a candidate); *id.* § 100.131(a) (“Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures” and are only subject to the Act’s reporting requirements if and when the individual becomes a candidate).

¹⁶ 52 U.S.C. § 30120(d)(1); 11 C.F.R. § 110.11(b).

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rental on Ready for Hillary's disbursement reports. Respondent was not provided any notice or an opportunity to respond to the added legal violation, which would be a procedural ground for dismissal.¹⁷

As to the substance of OGC's argument, both Ready for Hillary and Friends of Hillary state that Ready for Hillary paid for the use of the email list.¹⁸ The committee may pay a vendor other than Friends of Hillary, who in turn obtains the list from Friends of Hillary without disclosing Friends of Hillary as the ultimate payee.¹⁹ Moreover, the committee does not have an obligation to identify the payment specifically as a "list rental."²⁰ Ready for Hillary's disclosure reports show payments for "online advertising" made to a vendor on and around the date of the licensing agreement that would cover the cost of the email list.²¹ This uncontroverted record resolved the issue, without the need for any type of investigation. Accordingly, I voted as part of the controlling group of three commissioners to dismiss the recommendation as to 52 U.S.C. § 30104(b) (formerly 2 U.S.C. §434(b)), and the matter was dismissed.²²



Lee E. Goodman
Commissioner

Date: March 29, 2016

¹⁷ 52 U.S.C. § 30109(a) (in complaint-generated matters, respondents must be notified of the alleged violations and provided an opportunity to respond); 11 C.F.R. §§ 111.5, 111.6 (same).

¹⁸ Ready for Hillary Resp. at 2 (stating that it paid the "usual and normal charge" at "fair market value" in an "arms length transaction" through a vendor for a "one-time use" of the list); Friends of Hillary Resp. at 5 (pointing to the license agreement between the Committees for the use of the list to demonstrate the transaction was made at fair market value).

¹⁹ See, e.g., MUR 6894 (Steve Russell for Congress) Factual and Legal Analysis at 1-2 (committee may pay vendor who in turn pays ultimate service provider).

²⁰ See *Statement of Policy: "Purpose of Disbursement" Entries for Filings With the Commission*, 72 Fed. Reg. 887 (Jan. 9, 2007) (the adequacy of disbursement purpose descriptions are considered in light of the description and the recipient; adequate examples of disbursement purposes include "'Media' for a disbursement to a television or radio communication company").

²¹ See Ready for Hillary Amended 2013 Year End Report at 885-891 (Sept. 2, 2014) (disclosing hundreds of thousands of dollars in payments to Rising Tide Interactive, LLC for "online advertising").

²² MUR 6775 (Ready for Hillary PAC, et al.) Commission Certification ¶ 2(e) (Feb. 11, 2015). After this matter was dismissed, Ready for Hillary confirmed that payments to a vendor for "online advertising" covered the vendor's license payments to Friends of Hillary and stated that the PAC would amend its reports to reflect the specific payment for use of the email list, although it was not required to do so and the payment to the primary vendor was already disclosed.

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