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February 5, 2021

Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination &
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Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: Supplemental Response in MUR 7147

Dear Mr. Jordan,

This Supplemental Response is submitted by the undersigned counsel on behalf of Respondent Make America Number 1 and Jacquelyn James, in her capacity as Treasurer of Make America Number 1 (the "Respondent"), in response to the Third Supplement filed by Campaign Legal Center in MUR 7147. The Office of General Counsel forwarded the Third Supplement, dated October 14, 2020, to counsel on January 25, 2021. The Third Supplement repeats many of the baseless allegations included in Campaign Legal Center's (CLC) previous filings and purports to present new evidence of violations of the Act. This Supplemental Response addresses the additional facts presented in CLC's Third Supplement and demonstrates that CLC still has not presented any actual evidence of any violation of the Act by Respondents.

I. CLC Misrepresents Brittany Kaiser's Interview

CLC claims that "a Cambridge Analytica employee working on the Keep the Promise I account repeatedly described the Cruz campaign's strategies, plans, and activities." Third Supplement ¶ 6. A review of the nearly 30-minute interview makes clear that Cambridge Analytica's subsequent press release and Ms. Kaiser's email (included in the Third Supplement and Exhibits A and B) are credible and reliable. Cambridge Analytica's press release explained that comments that Ms. Kaiser purportedly made about Senator Cruz's campaign and its "potential strategy were purely speculative" and "Ms. Kaiser does not work on the presidential campaign of Senator Ted Cruz." Third Supplement, Exhibit A. Ms. Kaiser's follow-up email

noted that she "took this interview after a firm briefing to the journalist that I do not work on the Presidential campaign, and did not have any knowledge of the strategies or tactics currently being employed in the Senator's campaign, so therefore could only speak generally about our company's methodologies." Third Supplement, Exhibit B.

The interviewer repeatedly asked about Senator Cruz's campaign, and Ms. Kaiser's comments were always presented in general terms regarding how Cambridge Analytica analyzed voters and created predictive algorithms. She never discussed actual work performed by Cambridge Analytica for Senator Cruz's campaign. In fact, when the interviewer asked a specific question about what Cambridge Analytica provided to Senator Cruz before a town hall, Ms. Kaiser responded, "I don't work within Senator Cruz's firewall so I couldn't tell you specifically, but I would say on many of our campaigns around the country that that's how our technology should be applied."[1] Later in the interview, when the interviewer again asked her for specific information about the Cruz campaign, she repeated "As I said, I don't directly work on the campaign."[2] Ms. Kaiser's interview provides no support for the allegation that Cambridge Analytica did not employ appropriate firewalls. Rather, it supports the fact that Cambridge Analytica had effective firewalls in place.

II. CLC Misrepresents Cambridge Analytica's Post-Election Reports

CLC's Third Supplement also references Cambridge Analytica's Post-Election Report, primarily to make the uncontested and irrelevant point that Cambridge Analytica produced advertising for Make America Number 1, but also to suggest that the "Crooked Hillary" theme used in this advertising was "strikingly consistent with the message, themes, and content of ads run by the Trump campaign itself." (CLC's specific common vendor coordination allegations are addressed below.) On January 20, 2021, one of the authors of Cambridge Analytica's Post-Election Report, Ed DeNicola, published an op-ed that specifically referenced Cambridge Analytica's firewall policy. Mr. DeNicola wrote:

> The people working on the candidates' campaigns were by law not allowed to collaborate on the super PAC campaigns. The reason for this has to do with campaign versus super PAC contributions. The former is limited, and the latter is not. The company was strict about keeping these separate.
>
> For instance, if an employee was working in a firewall for the Donald J. Trump for President (DJTfP) campaign, they were not permitted to discuss the campaign with anyone working on the Make America Number One (MAN1) super PAC campaign.[3]

As Mr. DeNicola states in his Affidavit, attached, Cambridge Analytica maintained a firewall policy throughout the 2016 election period and the company's post-election reports were

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[1] The Hill, *We're Talking With Brittany Kaiser of Ted Cruz's To Data Mining Firm Cambridge Analytica*, Facebook Live (Apr. 26, 2016), https://www.facebook.com/watch/live/?v=10153727734744087&ref=watch_permalink (16:15 - 16:40).
[2] *Id*. at 19:44-20:11.
[3] Ed DeNicola, *Presidency Lost: No Cambridge Analytica*, MediaPost (Jan. 20, 2021), https://www.mediapost.com/publications/article/359634/presidency-lost-no-cambridge-analytica.html.

prepared by staff who were given access to various clients' data and work product only after the election was over and the firewall no longer in place. *See* Exhibit A, Affidadvit of Ed DeNicola. In addition, Mr. DeNicola affirms that he confused two reports due to a file labeling error. See Exhibit A ¶ 9; Third Supplement ¶ 26. Finally, Mr. DeNicola states that the "[t]o the best of his knowledge," the "project calendar" referenced at Paragraph 25 of the Third Supplement "is an integrated calendar produced after the 2016 election, following the removal of CA's Firewalls, and it includes work performed for campaigns and PACs, as well as commercial client." Exhibit A ¶ 10. In sum, Cambridge Analytica's post-election reports and associated materials provide no support for the allegation that Cambridge Analytica did not employ appropriate firewalls.

III. CLC's New Common Vendor Allegations Are Not Supported By Any Actual Evidence of Collaborative Conduct

A. CLC's Allegations

CLC alleges impermissible coordination between Respondents Make America Number 1 and Donald J. Trump for President, Inc. and through a common vendor, Cambridge Analytica. Under this theory, three standards must be met to find a violation of the law. First, a public communication must be paid for by a person other than a candidate, political party, or an agent of either.[4] Second, the public communication must satisfy one of four content standards.[5] Third, the involved parties must satisfy one of five conduct standards.[6]

Neither CLC's initial Complaint, nor its Supplements, contain any actual evidence that non-public campaign-related information was transferred from the Trump campaign to Make America Number 1 through a common vendor, namely Cambridge Analytica. The record contains no evidence of coordination conduct.

CLC's evidence falls into two broad categories: (1) identifying individuals who have relationships with multiple parties identified in CLC's complaint; and (2) alleging similarities in communications produced for both the Trump campaign and Make America Number 1. None of CLC's allegations is accompanied by any actual evidence of common vendor coordination.

CLC alleges that "key Trump campaign officials – such as Steve Bannon and Kellyanne Conway – were involved in Cambridge Analytica's operations" and "that top Cambridge Analytica officers and former super PAC officials were playing major roles in the Trump campaign." Supplement 2-3, ¶ 17. CLC does not present any evidence that any of these individuals served as a conduit of information between organizations. CLC's Complaint and Supplements include pages and pages of details about these individuals that are entirely irrelevant to the question of whether any coordinated communications were made. Moreover, various identified individuals have provided sworn affidavits that have accompanied responses to CLC's Complaint and Supplements, refuting CLC's innuendo, hyperbole, and obvious attempt to manufacture guilt by association with figures unpopular on the Left.

[4] 11 C.F.R. § 109.21(a)(1).
[5] *Id*. § 109.21(a)(2), (c).
[6] *Id*. § 109.21(a)(3), (d).

CLC alleges there were "striking parallels between the advertisements that Cambridge Analytica produced for the super PAC and those disseminated by the Trump campaign," but there is no discussion of particular advertisements or what these allegedly "striking parallels" were exactly. Supplement at 3. The allegedly "striking parallels" appear to be that both the Trump campaign and Make America Number 1 distributed communications featuring the "Crooked Hillary" theme. *See* Supplement ¶¶ 18, 32. CLC quotes Cambridge Analytica's post-election report which states that "[o]ver the course of the election cycle, from July to November, Cambridge Analytica produced all of the creative behind Defeat Crooked Hillary's ad campaigns." Supplement ¶ 20. According to ABC News, however, President Trump first used the nickname "Crooked Hillary" on April 16, 2016.[7] The "Crooked Hillary" nickname and theme were public information months before they appeared in any Make America Number 1 communication. This nickname and theme cannot serve as the basis of a common vendor coordination allegation *even if* it was conveyed by a common vendor – which did not occur here. *See* 11 C.F.R. § 109.21(d)(4)(iii) ("This paragraph, (d)(4)(iii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source.").

B. Common Vendor Conduct Standard

The Complaint alleges coordination through a common vendor. Under 11 C.F.R. § 109.21(d)(4), the "common vendor" standard consists of three parts, and requires a showing of the following:

> (i) The person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor, as defined in 11 CFR 116.1(c), to create, produce, or distribute the communication;
>
> (ii) That commercial vendor, including any owner, officer, or employee of the commercial vendor, has provided any of the following services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days:
>
> > (A) Development of media strategy, including the selection or purchasing of advertising slots;
> > (B) Selection of audiences;
> > (C) Polling;
> > (D) Fundraising;
> > (E) Developing the content of a public communication;
> > (F) Producing a public communication;
> > (G) Identifying voters or developing voter lists, mailing lists, or donor lists;

[7] Paola Chavez and Veronica Stracqualursi, *From 'Crooked Hillary' to 'Little Marco,' Donald Trump's Many Nicknames*, ABC News, May 11, 2016, https://abcnews.go.com/Politics/crooked-hillary-marco-donald-trumps-nicknames/story?id=39035114.

(H) Selecting personnel, contractors, or subcontractors; or
(I) Consulting or otherwise providing political or media advice; ***and***

(iii) That commercial vendor uses or conveys to the person paying for the communication:

(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

The "uses or conveys" requirement, at (iii) above, is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source.[8]

Furthermore, Commission regulations provide that the common vendor standard is not met if the commercial vendor has established and implemented a written firewall policy that prohibits the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee.[9]

An effective firewall prevents non-public information from being "used or conveyed" in the manner described at 11 C.F.R. § 109.21(d)(4)(iii). Commission regulations are clear that a firewall policy is a safe harbor and not a requirement.

CLC alleges that "[a]s a vendor providing services to both the super PAC and the campaigns of candidates support by that super PAC … Cambridge Analytica was *in a position to share or apply* strategic information from its work for candidates to develop and target communications for the super PAC that were consistent with or complementary to those of the candidates." Supplement ¶ 29 (emphasis added). One complaint and three supplements later, however, CLC has presented *no* evidence that any Cambridge Analytica personnel actually "shared or applied" any such strategic information. CLC appears to concede as much and refers to its own baseless speculation as merely an "inference" that coordination occurred. *See* Supplement ¶ 32. "Inferences" not accompanied by actual evidence of coordinated conduct are insufficient for a reason to believe finding. *See* MUR 6570, First General Counsel's Report at 13

[8] 11 C.F.R. § 109.21(d)(4)(iii).
[9] *Id.* § 109.21(h).

("Given the conclusory nature of the Complaint's allegations regarding the conveyance of information by a common vendor, the Complaint is essentially relying on a presumption of coordination, precisely the inferential leap the E&J disfavors.").

CLC contended in its initial Complaint that "[t]he Commission has consistently found reason to believe that FECA has been violated if the first two parts of the common vendor test are satisfied." Complaint ¶ 53. This is an egregious misstatement of the law that ignores all Commission precedent since mid-2005.

C. Past Commission Treatment of Common Vendor Allegations

1. Explanation and Justification Established That Existence of Common Vendor Is Permissible and Creates No Presumption of Coordination

When the common vendor provision was adopted, the Commission made clear that the mere existence of a common vendor does not violate any provision of the Act or Commission regulations, nor does it create any presumption of coordination. In other words, the use of a common vendor is not, in and of itself, impermissible or a violation of any regulatory standard. The Commission explained, "[e]ven those vendors who provide one or more of the specified services are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders."[10] The Commission noted that "[i]t disagrees with those commenters who contended the proposed standard created any 'prohibition' on the use of common vendors, and likewise disagrees with the commenters who suggested it established a presumption of coordination."[11] Finally, the Commission emphasized that "[t]he final rule does not require the use of any confidentiality agreement or ethical screen **because it does not presume coordination from the mere presence of a common vendor**."[12]

Rather, the behavior targeted by the common vendor standard is "the sharing of information about plans, projects, activities, or needs of a candidate or political party through a common vendor."[13] The critical "requirement encompasses situations in which the vendor assumes the role of a conduit of information between a candidate or political party committee and the person making or paying for the communication, as well as situations in which the vendor makes use of the information received from the candidate or political party committee without actually transferring that information to another person."[14]

The fact that a common vendor was used does not suggest any violation of the law because there is nothing impermissible about using a common vendor, and the Commission stated in the *Explanation and Justification* that it would draw no presumption that coordination occurred from the mere fact of a common vendor. Rather, a reason to believe finding requires that *some* evidence be presented in the Complaint showing or suggesting that the third part of the coordination test has been met.

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[10] Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003).
[11] *Id*.
[12] *Id*. at 437 (emphasis added).
[13] *Id*. at 436.
[14] *Id*. at 437.

2. Early Enforcement Cases Improperly Found Reason to Believe Without Evidence of Any Coordination Conduct

In a small number of enforcement matters on which the Commission voted in 2005, both the General Counsel and a majority of the Commission failed to honor the 2003 Explanation and Justification. These examples, however, are outliers and subsequent matters corrected the Commission's error.

On April 19, 2005, the Commission voted 4-2 to find reason to believe in MUR 5502 (Martinez for Senate), although the Factual and Legal Analysis indicates a lesser standard was actually applied: "Because the first two parts of the 'common vendor' test are met, there is *sufficient basis to investigate* whether the use or exchange of information occurred as described in 11 C.F.R. § 109.21(d)(4)(iii)."[15] The Office of General Counsel deposed three individuals but then explained: "The information developed in the investigation indicates that neither Stevens-Schriefer nor Red October used or conveyed to the Martinez campaign information pertaining to the plans, projects, activities or needs of the Bush campaign that was material to the creation, production, or distribution of the Martinez advertisements."[16] Sixteen months after improperly voting to find "reason to believe" (or, more accurately, "sufficient basis to investigate"), the Commission unanimously voted to take no further action and closed the file.

On June 21, 2005, the Commission voted 4-1 to find "reason to believe" in MUR 5546, again applying the lesser "sufficient basis to investigate" standard.[17] The Office of General Counsel undertook an investigation and, once again, found no wrongdoing: "Our investigation revealed substantial information about the roles of Mr. Synhorst and the various vendors involved, but has produced no credible evidence that any coordination occurred."[18] Nearly two years after finding "reason to believe," the Commission unanimously voted to take no further action and closed the file in February 2007.

In these cases,[19] the Commission voted to find that there was "a sufficient basis to investigate" the common vendor allegations but did not require the Complaint to include <u>any</u> evidence that the vendor actually "used or conveyed" information about a candidate's campaign plans, projects, activities or needs. While there was no evidence that the common vendors in these cases facilitated any impermissible coordination, the respondents were nevertheless subjected to lengthy investigations. More recently, three Commissioners rejected this approach, explaining that "[t]he RTB standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges."[20] However, in MURs 5502 and 5546, the respondents were forced to demonstrate their innocence after the Commission presumed

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[15] MUR 5502 (Martinez for Senate), Factual and Legal Analysis at 8 (emphasis added).
[16] MUR 5502 (Martinez for Senate), General Counsel's Report #2 at 2.
[17] *See* MUR 5546 (Progress For America Voter Fund), Factual and Legal Analysis at 9 ("Because the first two parts of the 'common vendor' test are met, there is a *sufficient basis to investigate* whether the use or exchange of information occurred as described in 11 C.F.R. § 109.21(d)(4)(iii).") (emphasis added).
[18] MUR 5546 (Progress For America Voter Fund), General Counsel's Report #2 at 2.
[19] The Commission appears to have taken the same approach in MUR 5403/5466 (America Coming Together).
[20] MUR 6056 (Protect Colorado Jobs), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 n.12.

coordination on the basis of exactly the facts that it previously told the regulated community would not lead to any such presumption.

The stated basis for the "reason to believe" findings in MURs 5502 and 5546 is plainly inconsistent with the Commission's 2003 Explanation and Justification. The Commission found reason to believe where the evidence showed only "the mere presence of a common vendor" after informing the regulated community that "the mere presence of a common vendor" would lead to no presumption of coordination. The absence of any evidence showing a violation of the law was apparently accommodated through use of the "sufficient basis to investigate" standard, which does not exist in the statute and is inconsistent with the "reason to believe" requirement.[21] Shortly after finding reason to believe in these two matters, the Commission adopted a different approach to "common vendor" allegations.

3. Commission Precedent Requires Complainants To Provide Evidence That "Common Vendor" "Used or Conveyed" Material Information

In August 2005, the Commission applied a notably different standard which hewed far more closely to the "common vendor" discussion in the 2003 Explanation and Justification and the "reason to believe" standard set forth in MUR 4960. In MUR 5609, the Commission voted unanimously to find no reason to believe after the General Counsel noted that "the available information provides no support for an inquiry into whether the third element of the coordinated communications regulation was satisfied – the conduct standard."[22] In a footnote, the General Counsel explained that the vendor in this matter did not respond in detail to every allegation, "but in the absence of more specific allegations in the complaint, they constitute a sufficient rebuttal that he engaged in conduct that would satisfy the coordinated communications conduct standard."[23]

In 2006, the Commission voted to find no reason to believe where there was insufficient "specific information" to suggest that the conduct standard was met.[24] On January 11, 2007, the Commission unanimously voted to find no reason to believe where the First General Counsel's Report noted that "the mere presence of a common vendor is not sufficient to satisfy the conduct prong of the coordinated communication test."[25] In 2009, the General Counsel wrote, "the use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the 'conduct' prong of the coordination test."[26]

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[21] *See* MUR 4960 (Clinton), Statement of Reasons of David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2 ("The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. . . . Unwarranted legal conclusions from asserted facts, ... or mere speculation, ... will not be accepted as true.").
[22] MUR 5609, First General Counsel's Report at 6.
[23] *Id*. at 7 n.4.
[24] *See* MUR 5754, Factual and Legal Analysis ("the complaint does not contain sufficient information on which to base an investigation into whether MOVF satisfied the 'conduct' standard of the coordinated communications test, nor does it even specifically identify which 'conduct' standard would apply to the activity complained of"). This document, available at https://www.fec.gov/files/legal/murs/5754/000058F5.pdf, is undated in the Commission's database, but the Factual and Legal Analysis in MUR 6050 (Boswell for Congress) describes it as being dated December 12, 2006.
[25] MUR 5691, First General Counsel's Report at 8.
[26] MUR 6050, First General Counsel's Report at 9.

In another 2009 case, the Commission reiterated that "the use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the conduct prong of the coordination test."[27] In this matter, the Commission unanimously voted to dismiss the Complaint and explained that the commercial vendor "appears to satisfy only the first two of the three common vendor elements," but "[t]he third common vendor element is not met … because there is no information suggesting that SRCP used or conveyed material information about RCCNM or 'Can't Trust' to Freedom's Watch. The complaint only states that the use of a mutual vendor 'further suggests' information sharing, *but does not indicate what information … was actually shared*."[28]

In 2010, the Commission rejected the complainant's "unsupported allegations" where "[t]he complaint … *provides no specific information* indicating that conduct showing coordination based on a common vendor theory occurred, and only speculates that the common vendor … 'very likely' used or conveyed to the payor information about the [candidate's] campaign plans, projects, activities, or needs."[29]

In 2012, the General Counsel produced, and three Commissioners supported, an explanation of the "common vendor" standard that is consistent with the 2003 Explanation and Justification. The General Counsel wrote:

> [T]he Complaint does not present any allegations of specific conduct, and we did not locate any publicly available information, including any press accounts, which assert any influence by the Berman Committee or any conveyed information. As several of the Respondents note, during the 2002 coordination rulemaking, the Commission specifically rejected the idea that use of a common vendor alone would establish a "presumption of coordination." Instead, the regulation "focuses on the sharing of information … through a common vendor to the spender who pays for a communication that could not then be considered to be made 'totally independently' from the candidate." *See* E&J, 68 Fed. Reg. at 436. Given the conclusory nature of the Complaint's allegations regarding the conveyance of information by a common vendor, the Complaint is essentially relying on a presumption of coordination, precisely the inferential leap the E&J disfavors. Accordingly, we do not believe the allegations are sufficient to find reason to believe a common vendor conveyed information as contemplated in the coordination regulation.
>
> [***]
>
> Given the conclusory nature of the Complaint – made without personal knowledge or reference to supporting evidence – and the lack of information available from any other source that would support a reasonable inference that the activities here may have been coordinated within the meaning of the regulations, we conclude that the Commission lacks a sufficient basis to find that a violation occurred.[30]

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[27] MUR 6120, Factual and Legal Analysis at 11.
[28] *Id*. at 11-12 (emphasis added).
[29] MUR 6269, Factual and Legal Analysis at 6 (emphasis added).
[30] MUR 6570, First General Counsel's Report at 12-13, 14. The three Commissioners who voted against the General Counsel's recommendation explained their support for a "limited investigation" in two Statements of

This passage is significant because it correctly recognizes that without "any allegations of specific conduct," a reason to believe finding must necessarily "rely[] on a presumption of coordination." Finding reason to believe on the basis of this "presumption" is inconsistent with the 2003 Explanation and Justification. Notwithstanding the divided vote in MUR 6570, the Commission approved a Factual and Legal Analysis the following year that concluded: "the Complaint fails to present any information indicating that Mailing Pros used or conveyed to America Shining any information regarding Jay Chen or the Chen Committee, much less information material to the creation, production, or distribution of the mailers."[31]

The Office of General Counsel has continued to recommend dismissing common vendor coordination complaints where "the conduct prong of the Commission's coordination regulations does not appear to be met because there is no information to indicate that the vendor conveyed non-public information regarding the [campaign committee's] plans, projects, activities, or needs."[32] In MUR 6984 (Right to Rise USA), the General Counsel recommended against finding reason to believe that common vendor coordination occurred where "the Complaint provides *no direct factual information* showing that Redwave – either directly or through Kochel or Albrecht – provided RTR with non-public information about Jeb 2016's 'plans, projects, activities, or needs' …. Rather, the Complaint uses Kochel and Albrecht's connections to Redwave to make an *inference* that RTR and Jeb 2016 engaged in conduct that resulted in the Mailers being coordinated."[33]

In a 2019 Statement of Reasons, Vice Chairman Petersen and Commissioner Hunter voted against pursuing "common vendor coordination" allegations, in part, because "the record did not contain any 'specific information' indicating that, despite the firewall policy, information about … campaign plans, projects, activities, or needs was conveyed to the Super PAC, or that if such information were conveyed, it was material to the Super PAC's express advocacy communications."[34]

In summary, the Commission has used different standards when approaching "common vendor" complaints at the "reason to believe" stage. The approach urged by the Complainants (to find reason to believe where "the first two parts of the common vendor test are satisfied," even in the absence of credible evidence pertaining to the third part of the test) has not been used since 2005, and since then the Commission has consistently required evidence of actual conduct at the reason to believe stage. This approach is consistent with the 2003 Explanation and Justification and appropriately implements the Commission's requirement that coordination not be presumed from the "mere presence of a common vendor."

Reasons. Neither Statement of Reasons suggested that "reason to believe" may be found on the basis of "the mere presence of common vendor."

[31] MUR 6668, Factual and Legal Analysis at 8.

[32] MURs 7403 and 7441 (Dr. John Joyce for Congress), First General Counsel's Report at 7.

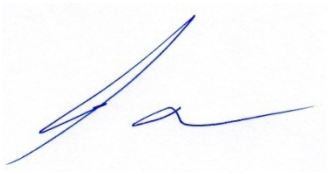
[33] MUR 6984 (Right to Rise USA), First General Counsel's Report at 9-10.

[34] MUR 7006 (Heaney for Congress), Statement of Reasons of Vice Chairman Petersen and Commissioner Hunter at 4.

IV. Conclusion

For the reasons set forth above, and as explained in prior submissions, the Commission should find no reason to believe a violation of the Act occurred and dismiss this matter.

Sincerely,



Jason Torchinsky
Michael Bayes
HOLTZMAN VOGEL JOSEFIAK TORCHINSKY, PLLC
Counsel to Jacquelyn James, Treasurer

Laurence Levy
GREENBERG TRAURIG, LLP
Counsel for Make America Number 1

Attachment

Ed DeNicola

BEFORE THE FEDERAL ELECTION COMMISSION MUR 7147

I, Ed DeNicola , in accordance with the provisions of 28 U.S.C. 1746, make the following statement in support of the response of Make America Number 1, PAC to MUR 7147; it is provided to the best of my recollection.

1. Starting in December of 2015 I was a consultant for Cambridge Analytica("CA"), in May of 2016 I became an employee as Head of TV and remained in that position until May of 2018.
2. I had 20 years of experience working in TV, in particular for the Nielsen Company and TiVo Research.
3. In that capacity I worked on establishing a program at CA for television ad buying. Due to CA's strict firewall policy, however, I was unable to participate in developing strategies for many political clients CA represented in the 2016 election cycle.
4. In January 2021, I wrote an Op-Ed that was published in Marketing Weekly, which is annexed as Exhibit 1 to this Affidavit. I did this of my own accord and was not aware of the MUR 7147 complaint amendment at the time I authored the Op Ed.
5. I was aware that CA colleagues worked on various political campaigns and that procedures were in place to maintain firewalls. Because of my role at CA, I was not involved in developing or implementing campaign plans, projects, or activities of any political campaigns. CA's strict firewall policy was overseen by the company's Chief Operating Officer, Julian Wheatland.
6. After the conclusion of the 2016 election cycle, I was asked to work with colleagues to author after-action reports of CA's work during the election cycle, with an emphasis on the work performed for Make America Number 1 and the Trump campaign. With the 2016 election over, the Firewalls previously in place were removed and we were given access to both client's data and work product for the purpose of preparing our reports.
7. The report annexed as Exhibit I, "Make America Number One After Action Report", dated November 2016, annexed to the Campaign Legal Center ("CLC") amended

complaint, is a report of which I was one of the authors. Again, it was prepared after the completion of the election, as should be clear from its title.

8. I have reviewed the other reports annexed to the CLC amended complaint, all of which were prepared after the referenced election.
9. I also wrote the email annexed to the CLC amended complaint as Exhibit M, in which I confused two after action-reports on February 22, 2017. I maintained a file of all the reports because I found them to be well written and informative. When a colleague requested a report copy I inadvertently sent the wrong report. This error was a result of improperly labeling the reports in my file.
10. I have also reviewed Exhibit L, to the CLC amended complaint, which appears to be a project calendar for Cambridge Analytica in 2016. I note the screen shot is dated Tuesday, December 9, 2019, which was a month after the election and after we had completed our after-action reports and other analytics regarding CA's work during the election season. To the best of my knowledge, this is an integrated calendar produced after the 2016 election, following the removal of CA's Firewalls, and it includes work performed for campaigns and PACs, as well as commercial clients.

Dated: February 5, 2021

Ed DeNicola

Subscribed and sworn before me the 5 day of February, 2021.

Joseph Scott Spagnoli
Notary Public of New Jersey
My Commission Expires 11/13/2023

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL: cela@fec.gov FAX: 202-219-3923

MUR # **7147**

Name of Counsel: Jason Torchinsky; Michael Bayes

Firm: Holtzman Vogel Josefiak Torchinsky PLLC

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Telephone: 540-341-8808 Fax: 540-341-8809

E-mail: jtorchinsky@hvjt.law; jmbayes@hvjt.law

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

02/05/2021
Date

Signature (Respondent/Agent)

Treasurer
Title

RESPONDENT: Jacquelyn James, Treasurer of Make America Number 1

(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 2 Roosevelt Avenue
(Please Print)

Port Jefferson Sta, NY 11776

Telephone (H): _____ (W): _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.