



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By First Class Mail

Marc E. Elias, Esq.
Perkins Coie LLP
700 13th Street NW, Suite 600
Washington, DC 20005

AUG - 9 2019

RE: MUR 7449

Dear Mr. Elias:

On August 8, 2018, the Federal Election Commission ("Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on July 23, 2019, voted to dismiss the allegations that you violated 52 U.S.C. § 30104(b)(5)(A). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents and the allegations that you violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(b) and (h)(1). The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Anne Robinson, the attorney assigned to this matter, at (202) 694-1650 or arobinson@fec.gov.

Sincerely,

A handwritten signature in blue ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Perkins Coie LLP
Marc Elias

MUR 7449

I. INTRODUCTION

The Complaint in this matter was filed in connection with certain disbursements made by the Democratic National Committee (“DNC”) and Hillary for America (“HFA”) (collectively, the “Committees”) to Perkins Coie LLP (“Perkins Coie”) for legal services, when in fact the payments were allegedly passed through to the research firm Fusion GPS (“Fusion”) for the purpose of opposition research.¹ The Complaint alleges that Perkins Coie partner Marc Elias and Perkins Coie aided and abetted the alleged reporting violations by the Committees.² The Complaint also alleges that Elias and Perkins Coie violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(b) and (h)(1).³

For the reasons set forth below, the Commission dismisses the allegations that Elias and Perkins Coie violated 52 U.S.C. § 30104(b)(5)(A) by allegedly aiding and abetting the filing of inaccurate disclosure reports.

II. FACTUAL BACKGROUND

HFA is the authorized committee of Hillary Clinton’s 2016 presidential campaign, and the DNC is the national committee of the Democratic Party.⁴ Fusion is a research consulting

¹ Compl. at 2, 10-14 (Aug. 2, 2018).

² *Id.* at 14-16.

³ *Id.* at 18. The Commission takes no action at this time as to these allegations.

⁴ *See* Amended Statement of Organization, HFA (June 8, 2016); Amended Statement of Organization, DNC (Sept. 17, 2018).

1 firm headquartered in Washington, DC.⁵ Glenn Simpson is the majority owner of Fusion and
 2 has testified under oath regarding the research conducted by Fusion for Clinton and the DNC.⁶
 3 Christopher Steele is a British national who worked as a subcontractor to Fusion through his
 4 investigative research firm, Orbis Business Intelligence.⁷ Perkins Coie is a law firm of which
 5 Marc Elias is a partner.⁸ Elias's biography on Perkins Coie's website states that he "served as
 6 general counsel to" HFA "in 2016."⁹

7 Perkins Coie was approached by Fusion in March 2016 and agreed to pay for the
 8 continuation of research on then-candidate Donald J. Trump that Fusion had conducted on behalf
 9 of a Republican donor.¹⁰ Marc Elias and Perkins Coie reportedly formally retained Fusion in

⁵ See <http://www.fusiongps.com/>.

⁶ See U.S. House of Representatives Permanent Select Committee on Intelligence, Executive Session, Interview of Glenn Simpson, 5-6 (Nov. 14, 2017), <http://docs.house.gov/meetings/IG/IG00/20180118/106796/HMTG-115-IG00-20180118-SD002.pdf> ("Simpson House Interview") (noting that Simpson testified under oath); U.S. Senate Judiciary Committee, Interview of Glenn Simpson, 9-10, 14 (Aug. 22, 2017), https://www.feinstein.senate.gov/public/_cache/files/3/9/3974a291-ddbe-4525-9ed1-22bab43c05ae/934A3562824ACA7BB4D915E97709D2F.simpson-transcript-redacted.pdf ("Simpson Senate Interview") (providing that Simpson did not testify under oath but that he understood that making a false statement to Congress was a federal crime). Fusion is the trade name of Bean LLC, which is a Delaware corporation registered in the District of Columbia. See Simpson Senate Interview at 14-15; Simpson House Interview at 6; Delaware Dep't of State Div. of Corps., *General Information Name Search*, <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (enter Entity Name: Bean LLC or File No.: 4854128); D.C. Dep't of Consumer and Regulatory Affairs, *My D.C. Business Center Quick Search*, <https://mybusiness.dc.gov/#/quicksearch> (enter Business Name: Bean or File No.: L53032).

⁷ Compl. at 2-3, 7-8 (citing Jane Mayer, *Christopher Steele, The Man Behind the Trump Dossier*, THE NEW YORKER (Mar. 12, 2018), <https://www.newyorker.com/magazine/2018/03/12/christopher-steele-the-man-behind-the-trump-dossier> ("New Yorker Article")). According to the New Yorker Article, Steele co-founded Orbis, which is located in Mayfair, London, UK, in 2008.

⁸ See *Marc E. Elias*, Perkins Coie LLP, <https://www.perkinscoie.com/en/professionals/marc-e-elias.html>.

⁹ See *id.*

¹⁰ See Adam Entous, Devlin Barrett, and Rosalind Henderman, *Clinton Campaign, DNC Paid for Research that Led to Russia Dossier*, THE WASHINGTON POST (Oct. 24, 2017), https://www.washingtonpost.com/world/national-security/clinton-campaign-dnc-paid-for-research-that-led-to-russia-dossier/2017/10/24/226fabf0-b8e4-11e7-a908-a3470754bbb9_story.html?utm_term=.e2c61bfdabec ("Post Article"). Fusion had previously been paid by The Washington Free Beacon, which stopped paying in April or May

1 April 2016.¹¹ HFA campaign manager Robby Mook reportedly approved a budget request for
2 the research without knowing the identity of the researcher.¹² Simpson, when asked in his
3 congressional testimony whether he was aware, when Fusion was retained by Perkins Coie, that
4 Perkins Coie was working on behalf of the DNC, testified that “nobody gave me a document or
5 informed me specifically of that” but also that he did not think Perkins Coie was engaging
6 Fusion for itself; Simpson further testified that “I have been in Washington for several decades,
7 and I spent a lot of time on Capitol Hill and it was well-known to me that Perkins Coie
8 represented the DNC.”¹³ Fusion likely worked for Perkins Coie on a series of 30-day contracts,
9 and their relationship ended with the 2016 presidential election.¹⁴

2016 once Trump appeared to secure the Republican nomination for President. *See* Simpson House Interview at 11-12.

¹¹ *See* Post Article; *see also* Compl. at 4; Simpson House Interview at 12-13. The Post Article cites sources “familiar with the matter.” The information provided by Perkins Coie and Elias is largely drawn from a letter from Perkins Coie to the Zuckerman Spaeder LLP (“Zuckerman”) law firm, counsel for Fusion, authorizing Zuckerman to disclose certain information regarding Perkins Coie’s hiring of Fusion. Hillary for America/DNC Services Corp./Democratic National Committee/Perkins Coie LLP/Marc Elias Joint Resp. at 3, Ex. 1 (Letter from Matthew J. Gehringer, General Counsel, Perkins Coie, to William W. Taylor, III, Zuckerman (Oct. 24, 2017) (Oct. 3, 2018) (“Resp.”)).

¹² New Yorker Article (“Mook had approved Perkins Coie’s budget request for opposition research without knowing who was producing it.”); Simpson Senate Interview at 139-40 (testifying that the “dossier” published online by BuzzFeed in January 2017, which was comprised of sixteen pre-election memoranda and one post-election memorandum, represents the “entire universe” of memoranda Steele and Orbis created for Fusion).

¹³ Simpson House Interview at 19-21 (explaining further that “I knew it was the DNC that we were working for” because “I was generally aware that Perkins Coie represented the DNC”). Simpson did not address whether he knew that HFA was also a client, but he did deny having any “dealings” with Clinton. *Id.* at 106. Simpson also, however, testified that he had, over the years, fielded journalists’ questions about the Clinton Foundation and Hillary Clinton, but that “at some point, you know, that became a conflict of interest.” *Id.* at 150-51 (not specifying at which point he knew that became a conflict or how he knew).

¹⁴ Resp., Ex. 1; *see* Simpson House Interview at 8, 74 (explaining that Fusion’s business practice was to engage with a client on a 30-day contract, provide a report to the client, and engage for another 30 days if the client chose to do so); Simpson Senate Interview at 289-90.

1 Fusion reportedly stated that it was paid \$1.02 million by Perkins Coie for fees and
2 expenses related to the research on Trump.¹⁵ Perkins Coie publicly acknowledged that it hired
3 Fusion on behalf of HFA and the DNC, and the Committees appear to have shared the costs
4 related to Fusion's work for Perkins Coie.¹⁶ In fact, the DNC reported making a \$66,500
5 payment to Perkins Coie on August 16, 2016 for "Research Consulting." Overall, the DNC
6 reported paying \$5,267,642.67 to Perkins Coie between March and December 2016.¹⁷ HFA
7 reported paying a total of \$4,941,201.09 to Perkins Coie between March and December 2016.¹⁸
8 The reported \$1.02 million figure representing Perkins Coie's total payments to Fusion would
9 comprise 8.4% of all the fees paid to Perkins Coie by the Committees during the 2015-2016
10 election cycle. HFA reported the purpose of all amounts it paid Perkins Coie as "Legal
11 Services." The DNC, for the most part, reported that the purpose of its Perkins Coie payments
12 was "Legal and Compliance Consulting." In addition, other DNC payments to the law firm
13 listed "Postage & Shipping," "Travel," "Data Services Subscription," and "Printing & Copying."

¹⁵ Compl. at 5 (citing Mark Hosenball, *Ex-British Spy Paid \$168,000 for Trump Dossier, U.S. Firm Discloses*, REUTERS (Nov. 1, 2017), <https://www.reuters.com/article/us-usa-trump-russia-dossier/ex-british-spy-paid-168000-for-trump-dossier-u-s-firm-discloses-idUSKBN1D15XH> ("Reuters Article") (citing a public statement by Fusion)).

¹⁶ Compl. at 4 (citing Kenneth P. Vogel, *Clinton Campaign and Democratic Party Helped Pay for Russia Trump Dossier*, THE NEW YORK TIMES (Oct. 24, 2017), <https://www.nytimes.com/2017/10/24/us/politics/clinton-dnc-russia-dossier.html> ("Times Article"); see Post Article; see also Resp. at 3, Ex. 1.

¹⁷ See generally DNC 2016 Disclosure Reports. The DNC paid Perkins Coie \$6,726,407.25 between January 1, 2015, and December 31, 2016, of which \$6,466,711.46 was for "Legal and Compliance Consulting." See generally DNC 2015-16 Disclosure Reports.

¹⁸ See generally HFA 2016 Disclosure Reports. HFA paid \$5,631,421.02 to Perkins Coie between January 1, 2015, and December 31, 2016 for "Legal Services." See generally HFA 2015-16 Disclosure Reports.

1 **III. LEGAL ANALYSIS**

2 The Act and Commission regulations require political committees to report the name and
3 address of each person to whom they make expenditures or other disbursements aggregating
4 more than \$200 per calendar year, or per election cycle for authorized committees, as well as the
5 date, amount, and purpose of such payments.¹⁹

6 The Complaint alleges that Elias and Perkins Coie violated the Act by aiding and abetting
7 false reporting by HFA and the DNC by “funneling” disbursements to Fusion through Perkins
8 Coie.²⁰ In support of this allegation, the Complaint cites several cases upholding convictions for
9 aiding and abetting in *criminal* campaign finance cases but does not provide support for an
10 aiding and abetting violation under the Act in the *civil* enforcement context.²¹ Elias and Perkins
11 Coie state that these are not cognizable allegations before the Commission.²² Moreover, the
12 particular context here, in which Elias and Perkins Coie are also the Committees’ compliance
13 counsel, presents an additional consideration counseling against an aiding and abetting violation.
14 In light of these considerations, the Commission dismisses the allegations that Elias and Perkins
15 Coie violated 52 U.S.C. § 30104(b)(5)(A) by allegedly aiding and abetting the filing of
16 inaccurate disclosure reports.

¹⁹ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (all political committees).

²⁰ Compl. at 14-16.

²¹ *Id.* at 15-16; *cf.* Factual and Legal Analysis at 2, MUR 5712 (Gov. Arnold Schwarzenegger) (finding no such liability in the context of aiding and abetting the solicitation of soft money donations); *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1118 (D. Utah 2018) (striking the helping or assisting portion of the Commission’s regulation codified at 11 C.F.R. § 110.4(b)(1)(iii)); Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005) (explaining that treasurers may, in certain matters, be notified in both their official and personal capacities and that, in such matters, the Commission will make findings as to the committee and the treasurer in both their official and personal capacities).

²² Resp. at 9-10.