



The
Coolidge Reagan
Foundation

April 22, 2022

BY OVERNIGHT MAIL AND E-MAIL

Special Counsel John H. Durham, Esq.
Assistant Special Counsel Jonathan E. Algor, Esq.
U.S. Department of Justice
145 N Street, N.E.
Room 3E.803
Washington, D.C. 20530
Jonathan.algor@usdoj.gov

Re: *United States of America v. Sussman*, Crim. No. 21-582 (CRC) (D.D.C. filed Sept. 16, 2021)

Dear Mr. Durham and Mr. Algor,

I write on behalf of the Coolidge-Reagan Foundation (“the Foundation”), a 501(c)(3) nonprofit corporation devoted to protecting the First Amendment and ensuring fair elections, with regard to recent filings by Hillary for America (“HFA”) and the Democratic National Committee (“DNC”) in the above-captioned case.

HFA and the DNC each filed a motion to intervene in *United States v. Sussman* “as an interested non-party to assert privilege claims over documents and information that the Government seeks to compel.” Hillary for America’s Motion to Intervene, *United States v. Sussman*, No. 21-582 (CRC), D.E. #86, at 1 (D.D.C. Apr. 19, 2022) [hereinafter, “HFA Motion”]; accord Democratic National Committee’s Motion to Intervene, *United States v. Sussman*, No. 21-582 (CRC), D.E. #89, at 1 (D.D.C. Apr. 19, 2022) [hereinafter, “DNC Motion”]. Both entities argue the materials the Government seeks to obtain from Perkins Coie and its consultant, Fusion GPS, “are protected by the attorney-client privilege and the attorney work product doctrine.” HFA Motion at 1; DNC Motion at 1-2. **These representations by HFA and the DNC appear inconsistent with the terms of the Conciliation Agreements those entities executed with the Federal Election Commission (“FEC”).**

In August 2018, the Foundation filed an Administrative Complaint with the FEC regarding HFA, the DNC, Perkins Coie, and Christopher Steele, pursuant to 52 U.S.C. § 30109(a)(1). See Verified Complaint (Aug. 1, 2018), *Coolidge Reagan Foundation v. Steele*, FEC MUR 7449 [hereinafter, “Administrative Complaint”]. A true and complete copy of the Administrative Complaint is included as Exhibit 1 to this letter.

The complaint alleged HFA and the DNC used HFA’s law firm, Perkins Coie, to hire and funnel over \$1 million to “outside research firms” such as Fusion GPS “to perform potentially sensitive, controversial, or politically embarrassing” opposition research into Donald Trump. *Id.* ¶¶ 7-8, 12. This opposition



research was “for political purposes, to find damaging information concerning [Trump] that could be used against him in the campaign.” *Id.* ¶ 10. The research was not “for the purpose of assisting Perkins Coie in providing legal advice to HFA or the DNC.” *Id.* The complaint explained, “Because Fusion GPS’s work was to further HFA’s and the DNC’s political and campaign-related goals, rather than for the purpose of providing legal advice or assisting with impending or potential litigation, it was not covered by attorney-client, work-product, or any other privileges.” *Id.* ¶ 11.

The complaint pointed out that HFA reported all of its payments to Perkins Coie throughout 2016 and 2017—including payments made in connection with Fusion GPS—as being for “LEGAL SERVICES.” *Id.* ¶ 14. The DNC, in contrast, reported its payments to Perkins Coie as being for a variety of purposes, including “LEGAL AND COMPLIANCE CONSULTING” and “LEGAL AND COMPLIANCE SERVICES,” but none of these claimed purposes had anything to do with opposition research, background investigations, or Donald Trump. *Id.* ¶ 15. The complaint declared:

By intentionally obscuring their payments to Perkins Coie and failing to disclose the true purpose of those payments, HFA and the DNC were able to avoid publicly reporting on their statutorily required FEC disclosure forms the fact that they were paying Fusion GPS to perform opposition research on Trump with the intent of influencing the outcome of the 2016 presidential election.

Id. ¶ 13; *see also id.* ¶ 16 (alleging that HFA and the DNC used Perkins Coie as a “straw man intermediary for this pervasively political, non-legal work,” allowing them to “mask their relationship to Fusion GPS from the public in the critical weeks before the 2016 presidential election, in direct violation of federal campaign finance law”).

Based on these allegations, the complaint contended that HFA and the DNC violated 52 U.S.C. §§ 30104(b)(5)(A) and 30104(b)(6)(B)(v) by failing to accurately report that the purpose of a substantial amount of their payments to Perkins Coie was for opposition research, and that Fusion GPS was actually the recipient of those payments. *See* Administrative Complaint at 10-14 (Counts I-II). The FEC accepted the Administrative Complaint on August 8, 2018, and designed it Matter Under Review #7449. A true and complete copy of the FEC’s acknowledgement letter is included as Exhibit 2 to this letter.

Several years later, in February 2022, both HFA and the DNC executed Conciliation Agreements with the FEC to settle the investigation triggered by this complaint (as well as other administrative complaints raising similar allegations that had been independently filed by other, unrelated entities). *See* Conciliation Agreement, *In re* Hillary for America, et al., MURs 7291 and 7449 (Feb. 22, 2022) [hereinafter, “HFA Agreement”]; Conciliation Agreement, *In re* DNC Servs. Corp./DNC, et al., MURs 7291 and 7449 (Feb. 22, 2022) [hereinafter, “DNC Agreement”]. True and complete copies of these Conciliation Agreements are included as Exhibits 3 and 4 to this letter. HFA’s conciliation agreement expressly declared that, following an investigation, the FEC “found probable cause to believe” HFA had violated 52 U.S.C. § 30104(b)(5)(A) and its accompanying regulation “by misreporting the purpose of certain disbursements.” HFA Agreement at 1. The DNC’s conciliation agreement went further, specifying the FEC found probable



The
Coolidge Reagan
Foundation

cause to believe the DNC's "misreporting" had "violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v)." DNC Agreement at 1.

Both agreements declare, "Solely for the purpose of settling this matter expeditiously and to avoid further legal costs, Respondent does not concede, **but will not further contest the Commission's finding of probable cause to believe.**" HFA Agreement ¶ VI; DNC Agreement ¶ VI (emphasis added). HFA agreed to pay a fine of \$8,000 and refrain from future violations of 52 U.S.C. § 30104(b)(5)(A). HFA Agreement ¶ VII(1)-(2). The DNC agreed to pay a fine of \$105,000 and refrain from future violations of 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v). DNC Agreement ¶ VII(1)-(2). The FEC's Office of General Counsel has prepared a memorandum that the FEC voted to approve in order to make these probable cause determinations, *See* 52 U.S.C. § 30109(a)(3), but it will not be made public for another week, *see* 11 C.F.R. § 111.20(c). That document, which your office can likely obtain from the FEC, will provide greater detail concerning the FEC's findings that HFA and the DNC agreed to refrain from contesting.

At a minimum, however, in order to "sett[le]" the FEC's investigations "expeditiously," **both HFA and the DNC agreed to "not further contest the Commission's finding of probable cause to believe" that HFA and the DNC had falsely reported their payments through Perkins Coie to Fusion GPS as being for legal services.** In *Sussman*, in contrast, it appears HFA and the DNC are nevertheless asserting materials generated by Fusion GPS and provided to Perkins Coie are protected by attorney-client privilege and work-product doctrine. These arguments run directly contrary to the FEC's probable cause determinations and appear to be barred by HFA's and the DNC's conciliation agreements with the FEC. The Government should not permit HFA and the DNC to adopt conflicting positions in different proceedings, depending on the federal agency against which they are litigating. The Court may also find these breaches of the conciliation agreements material in ruling on any privilege claims.

HFA and the DNC lied on their campaign finance filings to make it appear that Fusion GPS's opposition research into Donald Trump was performed in connection with legal services. They should not be permitted to peddle these false claims before a federal court.

We are happy to provide any additional information that may be helpful in this, or any other related matter.

Sincerely,

Dan Backer, Esq.

Counsel

Coolidge Reagan Foundation