

**BEFORE THE FEDERAL ELECTION COMMISSION**

Foundation for Accountability and Civic Trust  
1717 K. Street, Suite 900  
Washington DC 20006

Complainant,

v.

Hillary Clinton  
c/o Ready for Hillary PAC  
P.O. Box 7705  
McLean, VA 22106

Respondent.

**COMPLAINT**

Pursuant to 52 U.S.C. §30109(a)(1), the Foundation for Accountability and Civic Trust (FACT) files this complaint with the Federal Election Commission (FEC or Commission) against Hillary Clinton to determine if the following activities constitute serious violations of the Federal Election Campaign Act of 1971 as amended (Act) and Commission regulations. The information contained in this complaint is based on media reports, public records, and information and belief. Based upon numerous media reports, Hillary Clinton's activities have extended beyond merely testing the waters to determine whether a candidacy for President is feasible, and she should be deemed to be a candidate under the Act. Consequently, she is bound by the Act's contribution, registration, and reporting requirements, which do not appear to have been met. The Commission must conduct an immediate and thorough investigation into these practices. *See* 52 U.S.C. § 30109(a)(2); 11 C.F.R. § 111.4(a).

## **Background Facts**

The media has widely reported on Hillary Clinton's activities surrounding her campaign for president in 2016: Beginning in the summer of 2013, Clinton began holding strategy sessions with advisors to discuss campaign mechanics and plans. Maggie Haberman, Hillary Clinton's Shadow Campaign, Politico, Jan. 5, 2014 [hereinafter Shadow Campaign] (attached as Exhibit A). She has sought the advice of corporate branding experts, marketing experts, and scholars, as well as hiring a research firm to do self-opposition research on herself. Maggie Haberman, Hillary Clinton Begins Process of Vetting—Herself, The New York Times, Feb. 20, 2015 (attached as Exhibit B); Phillip Rucker and Ann Gearan, The Making of Hillary 5.0, The Washington Post, Feb. 21, 2015 (attached as Exhibit C). As a candidate would, she has weighed in on public issues on social media and during speeches. Haberman, Shadow Campaign; Anne Gearan & Dan Balz, Official or Not, Hillary Clinton Builds a Massive 2016 Team-In-Waiting, The Washington Post, Feb. 5, 2015 [hereinafter Official or Not] (attached as Exhibit D).

Clinton's activities also include those that could only be campaign related, such as approving a preliminary campaign budget, searching for a campaign headquarters location, and assembling campaign staff, including "a campaign chairman, a campaign manager, a chief strategist and lead pollster, another pollster, a lead media advisor, a communications director, a deputy communications director, a focus group director and a communications strategist." Gearan & Balz, Official or Not; Mike Allen, Inside Hillary Clinton's 2016 Plan, Politico, Jan. 26, 2015 (attached as Exhibit E). Clinton directly made several of the staff decisions and numerous campaign staff members have been publically identified, some of which left their prior employment to join the campaign, i.e. John Podesta, Robby Mook, Joel Benenson, Jennifer

Palmieri, Jim Margois, Dennis Cheng, and Mandy Grunwald. Gearan & Balz, Official or Not; Allen, Inside Hillary Clinton's 2016 Plan.<sup>1</sup>

Moreover, individuals connected with Clinton's campaign and the media generally acknowledge that she is a candidate. Campaign advisors reportedly explained that after Clinton made budget and staff decisions in late 2014, the likelihood of her running for president is 100%. Her activities have been repeatedly described as a "virtual campaign in waiting" and "a shadow campaign." Gearan & Balz, Official or Not; Allen, Inside Hillary Clinton's 2016 Plan; Habberman, Shadow Campaign.

The media has further reported on how Clinton is funding her campaign. Late in 2014 and 2015, Clinton continued to give paid speeches in the United States and Canada, with the reported explanation for these speeches as her need to fund her non-declared presidential campaign. Amy Chozick, Precampaign Costs Mounting Clinton Gets a Silicon Valley Paycheck, The New York Times First Draft, Feb. 24, 2015 (attached as Exhibit F); *see also id.* (reporting Clinton was paid an estimated \$300,000 for speech in February 2015); Rosalind Helderman and Phillip Rucker, Romney's Speaking Fee at Public University is \$50,000, Far Less Than Clinton's, The Washington Post, Jan. 20, 2015 (reporting Clinton was giving two paid speeches at Canadian events in January 2015); Alex Seitz-Wald, Clinton Mixes Help for Democrats with Paid Gigs, MSNBC, October 2, 2014 (reporting Clinton gave two paid speeches in October 2014 at CREW Network's 2014

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<sup>1</sup> *See also* Ruby Cramer, Future Clinton Campaign Staffers Working as Volunteers, BuzzFeed News, Mar. 17, 2015; Edward-Isaac Dove and Gabriel Debenedetti, All-Too-Ready for Hillary, Politico, Feb. 18, 2015; Maggie Haberman, Hillary Clinton Bring in Robby Mook, Joel Benenson for Likely Team, Politico, Feb. 18, 2015; Dan Merica, Top Aid Leaving Clinton Foundation to Build Clinton's 2016 Fundraising Team, CNN, Feb. 9, 2015; Julie Pace, Democratic Wise Man Splits Loyalties Between Obama, Clinton, The Associated Press, Feb. 9, 2015; Jonathan Martin, Mandy Grunwald to Join Clinton Team, The New York Times, Feb. 5, 2015; Peter Nicholas and Carol E. Lee, Top White House Official to Leave for Emerging Hillary Clinton Campaign, The Wall Street Journal, Feb. 4, 2015; Anne Gearan and Phillip Rucker, Hillary Clinton Recruits Chief Strategist, Media Advisor for 2016 Effort, The Washington Post, Jan. 13, 2015.

Convention and Marketplace and at a conference sponsored by the tech company Salesforce); L. Ian MacDonald, Clinton Speech In Ottawa Offers New Life to Old Friendship, iPolitics, October 5, 2014 (reporting that Clinton was paid \$250,000 for a speech at Ottawa based think tank Canada 2020).

Additionally, Clinton has the support of super PACs who are working on her behalf, and essentially performing tasks that are necessary for a campaign. Habberman, Shadow Campaign. When two of the pro-Clinton super PACs, Ready for Hillary and Priorities USA, had differing views, they turned to a Clinton aide for guidance. *Id.* “Clinton herself was forced to grapple with the run-in between the two groups,” ultimately coming to a resolution under which Ready for Hillary would focus on analyzing voter data and contribution under \$25,000 and Priorities USA would focus on mega-donors and paid advertising. *Id.* The Executive Director for Ready for Hillary also stated that the “goal is to identify as many supporters as possible and if she announces she’s running to transition as many of them over to the campaign.” Cameron Joseph, Ready for Hillary Ready to Step Aside as She Prepared Campaign, The Hill, Mar. 22, 2015 (attached as Exhibit G). All twenty-nine of the Ready for Hillary staffers will have an opportunity to officially join Clinton’s campaign, with six already being hired. Annie Karni, Ready for Hillary Staff Join Clinton Campaign, Politico, April 1, 2015 (attached as Exhibit I). In addition, Clinton has also been involved with another super PAC—Clinton’s office gave Correct the Record talking points to address the story on the controversy surrounding Clinton’s email use while serving as Secretary of the Department of State. Daniel Halper, Hillary Clinton Coordinates with Pro-Hillary Super PAC, The Weekly Standard, Mar. 11, 2015 (attached as Exhibit H). All of these reports indicate that Clinton is a candidate and should be bound by campaign finance law.

### **Applicable Law**

The Federal Election Campaign Act specifically defines who is a candidate subject to the Act's requirements. 52 U.S.C. §§ 30101, 30104, 30116, 30118. A candidate is an individual who seeks election to a federal office and receives contributions or makes expenditures in excess of \$5000. 52 U.S.C. §§ 30101(2). There is, however, an exception to this statutory classification of a candidate. An individual who is contemplating running for federal office may conduct "testing the waters" activities. 11 C.F.R. § 100.72. These are limited activities done to determine whether an individual should become a candidate, i.e. done to determine whether there is sufficient support to make a campaign feasible. 11 C.F.R. § 100.72. Permissible testing the waters activities include conducting a poll, telephone calls, and travel. 11 C.F.R. § 100.72. If an individual "merely conducts selected testing the waters activities," then it is not necessary "to register or report as a candidate even if [she] raises or spends more than \$5000 on those activities . . . . Nevertheless, the individual must comply with the contribution limits and prohibitions." FEC.<sup>2</sup>

The testing the waters exemption is only applicable for activities to determine whether a campaign is feasible, and once the activities go beyond this purpose, the individual is deemed to be a candidate. 11. C.F.R. § 100.72. The Code of Federal Regulations explains:

This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

- (1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.
- (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

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<sup>2</sup> Available at: <http://www.fec.gov/press/resources/2016PresidentialExploratoryCommitteesnm.shtml>.

(3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(4) The individual conducts activities in close proximity to the election or over a protracted period of time.

(5) The individual has taken action to qualify for the ballot under State law.

11 C.F.R. § 100.72.

Once an individual is no longer testing the waters and is deemed to be a candidate under the Act, any “funds that were raised or spent to test the waters apply to the \$5,000 threshold for qualifying as a candidate.” FEC, [www.fec.gov](http://www.fec.gov) (citing 11 C.F.R. §§ 100.72(a), 100.131). “Once that threshold is exceeded, the individual must register with the FEC, and begin to file reports . . . .” *Id.* (citing 11 C.F.R. §§ 100.72(a), 100.131). The candidate registration must occur no later than fifteen days after becoming a candidate and include a written designation of a principal campaign committee. 52 U.S.C. § 30102(e)(1). Within ten days of the candidate registration, the principal campaign committee must file a statement of organization. 52 U.S.C. § 30103. Thereafter, the treasurer of the principal campaign committee must file reports of receipts and disbursements. 52 U.S.C. § 30104. The first treasurer’s report must include “all activity that occurred prior to reaching the \$5,000 threshold, including any testing the waters activities.” FEC, [www.fec.gov](http://www.fec.gov).

Additionally, a presidential candidate is subject to regulations about contributions and interactions with other political organizations. Contributions are broadly defined to include money, but also “anything of value . . . for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A). A presidential candidate may not accept contributions from an individual that exceeds \$2,700, a political party committees or other multicandidate PACs that exceeds \$5,000, or from corporations or labor organizations in any amount. 52 U.S.C. §§ 30116, 30118.

Presidential candidates are not permitted to coordinate with a super PAC, from which the candidate benefits, or accept donations from the super PAC. 52 U.S.C. §§ 30101, 30118.

### **Analysis**

The news reports above identify behavior that appears to be contrary to the Federal Election Campaign Act. To ensure compliance with campaign finance laws, an individual is not considered to be a candidate when she publically declares a candidacy, but rather is deemed to be a candidate once she receives or spends a threshold amount. 52 U.S.C. § 30101. While there is an exception to the threshold amount for testing the waters, this exception is simply for individuals who are in fact determining whether a candidacy is feasible and any activity must be limited to determining whether to run. 11 C.F.R. § 100.72. An individual cannot claim to be testing the waters, but actually taking actions that would be relevant to conducting a campaign. *Id.* Once an individual conducts campaign activities, she is deemed to be a candidate and must abide by the Act's requirements. 52 U.S.C. § 30101; 11 C.F.R. § 100.72. Both the duration and substance of Hillary Clinton's activities indicate that she is in fact a candidate and cannot avoid the disclosure and transparency required by law.

Not only has Clinton's activities been occurring for a protracted period of time, but they directly relate to conducting a campaign. Reportedly, since 2013, Clinton has been meeting with advisors, branding experts, marketing experts, and scholars to formulate campaign plans and policy positions. Additionally, she has taken actions that are only relevant to a campaign—she has assembled a campaign staff, approved a preliminary campaign budget, and is seeking out a commercial space for her campaign headquarters in her home state. It also appears that she has already made the decision to run, as her campaign advisors reportedly stated she is running, and has approved a preliminary campaign budget and several key hires. Yet during this time, Clinton

has continued to give paid speeches, possibly paid by corporations and other organizations in excess of contribution limits to fund her campaign related activities. Several super PACs have also been conducting campaign activities on Clinton's behalf, with which she has reportedly interacted and raised questions of coordination.

Candidates should not be permitted to avoid campaign finance and election laws simply by claiming they are testing the waters, especially when their actions clearly demonstrate otherwise. Based upon the numerous media reports, there is evidence that Clinton is not simply testing the waters, but rather has made the decision to run for federal office and has conducted activities to be classified as a candidate under the Act. As such, there is reason to believe she has not complied with the candidate registration and reporting requirements, as well as the limits and restrictions on contributions to candidates. 52 U.S.C. §§ 30102-30104, 30116-30118. Finally, there is reason to investigate whether Clinton has taken actions that constitute prohibited coordination with the super PACs from which she benefits. The Commission should investigate whether Clinton is in fact a candidate, and whether she has received any contributions not permitted under the Act and made all reports required by the Act, as well as whether she has engaged in prohibited coordination with super PACs. This type of behavior is directly contrary to the Federal Elections Campaign Act, and prevents the public from obtaining information it deserves and holding candidates accountable.

### **Conclusion**

For the reasons discussed in this complaint, the Commission should conduct an immediate and thorough investigation into these allegations. If it should find violations of the Act, the Commission must then hold the Respondent accountable.

