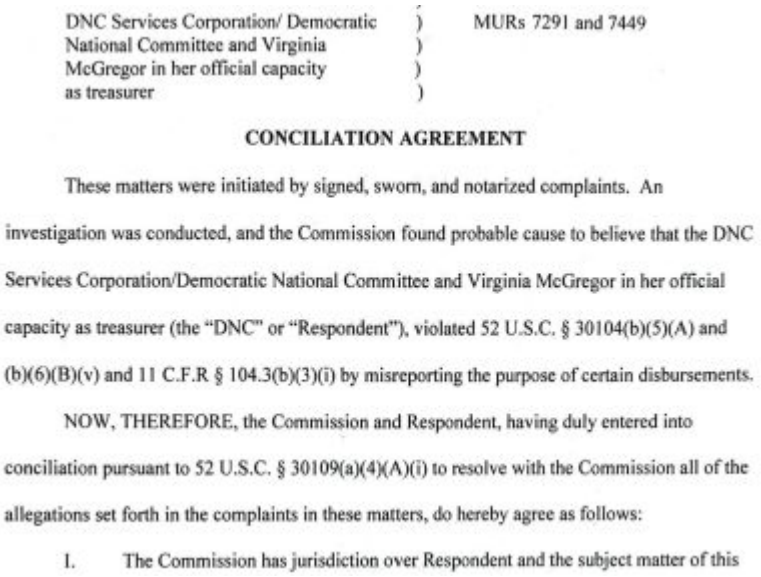
Of Conciliation Agreements and Rounding Errors

by Joseph DeMaio, ©2022



DNC Services Corporation/ Democratic National Committee and Virginia McGregor in her official capacity as treasurer) MURs 7291 and 7449

CONCILIATION AGREEMENT

These matters were initiated by signed, sworn, and notarized complaints. An investigation was conducted, and the Commission found probable cause to believe that the DNC Services Corporation/Democratic National Committee and Virginia McGregor in her official capacity as treasurer (the "DNC" or "Respondent"), violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v) and 11 C.F.R § 104.3(b)(3)(i) by misreporting the purpose of certain disbursements.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 52 U.S.C. § 30109(a)(4)(A)(i) to resolve with the Commission all of the allegations set forth in the complaints in these matters, do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this

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(Apr. 1, 2022) — The Federal Election Commission ("FEC") has entered into two "Conciliation Agreements" with the 2016 "Hillary for America" ("HFA") Presidential Campaign and the Democratic [*sic*] National Committee ("DNC"). The two agreements – one for HFA, the other for the DNC – purport to resolve and settle "probable cause to believe" violation of law determinations by the FEC.

Those determinations are the result of allegations that both entities violated federal law by intentionally misreporting – some might argue "falsifying" – the purpose of monetary disbursements made to the "consulting firm" Fusion GPS via the D.C. powerhouse law firm Perkins Coie, LLP. A complaint had been filed in 2018 by the Coolidge Reagan Foundation alleging the irregularities now addressed by the FEC.

Specifically, HFA and DNC claimed on their required FEC financial disclosure reports that monies they disbursed were for "legal services" rendered by Perkins Coie when in fact, the disbursements by Perkins Coie made to Fusion GPS were for "opposition research" targeting then-presidential candidate Donald Trump and ultimately taking the form of the concocted and thoroughly debunked "Steele Dossier" used against President Trump.

Following an investigation, the FEC found "probable cause to believe" that 52 U.S.C. § 30104(b)(5)(A) had been violated. The aggregate amount of disbursements made in 2016 by Perkins Coie – utilizing funds from HFA and the DNC – totaled $1,024,407.97. As part of the agreements reached, HFA and DNC agreed to pay civil penalties of $8,000 and $105,000, respectively. Seriously?

Thus, civil penalties have been imposed amounting to a stunning ***11%*** of the sums paid by HFA and DNC to Perkins Coie over a 42-day period in 2016 – July 15 through August 26 – and thereafter funneled to Fusion GPS for the X-rated fantasy dossier intended to torpedo "Orange Man Bad."

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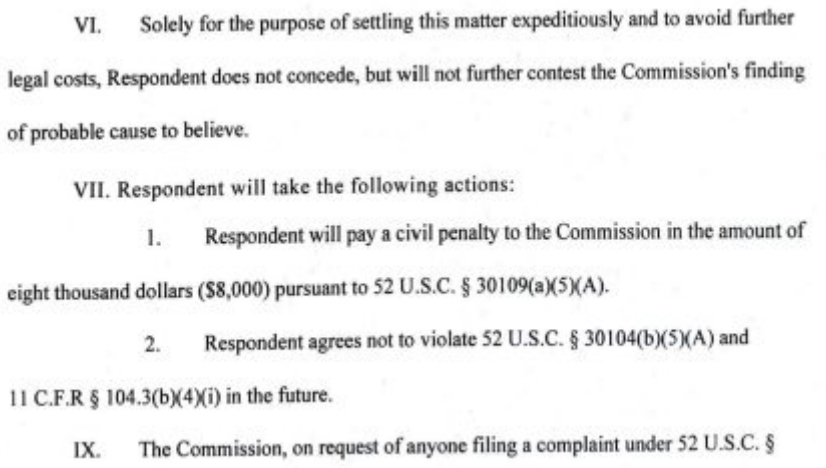
Within the corrupt I-495 freeway oval called "the Beltway," those sums are, at most, a "tap on the wrist" and at worst, what D.C. denizens usually call a "rounding error." Or as to the $8K penalty imposed on HFA, perhaps a modest meal at an exclusive D.C. eatery for Slick Willie's spouse while he was "in travel status" to Jeffrey Epstein's island.

On the other hand, there are several interesting things disclosed by the agreements as well as by the cover letter sent by the FEC to Dan Backer, a lawyer for the Coolidge Reagan Foundation which had filed the complaint in September 2018 precipitating the FEC investigation.

First, the glossary of FEC terms defines a "conciliation agreement" thusly: "An agreement reached by a respondent and the Commission. Generally, such an agreement includes a description of the facts and the law, ***admissions of the violations by the respondent***, conduct prohibition, any remedial actions the respondent must take and a provision for the payment of a civil penalty by the respondent." (Emphasis added).

Even a cursory examination of the two agreements discloses that neither HFA nor the DNC admit commission of the violations as to which FEC found that "probable cause" existed. In fact, both agreements plainly reject such admissions, stating: "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." (Emphasis added).

Translation: the FEC, HFA and the DNC have seemingly entered into an agreement that fundamentally violates the FEC's own standards – admission of a violation – for resolving issues of this nature. Reader alert: wait for the explanation that "generally" does not mean "always." In essence, the "agreements" operate more like sweetheart memos to simply make the matter "disappear" upon the payment of what some might be tempted to label as "chump change."



VI. 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.

VII. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Commission in the amount of eight thousand dollars ($8,000) pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent agrees not to violate 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R § 104.3(b)(4)(i) in the future.

IX. The Commission, on request of anyone filing a complaint under 52 U.S.C. §

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Second, the cover letter to Mr. Backer informs that as part of the "resolution" of the issues, the FEC "… also dismissed the allegation that Marc Elias [*i.e.*, then a partner at Perkins Coie] and Perkins Coie, LLP and Hillary for America and Elizabeth Jones in her official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(b) and (h)(1)." Really?

52 U.S.C. § 30121 prohibits, "a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national." Translation: foreign nationals are prohibited from making political donations in connection with any federal, state or local election or making such donations to a "committee of a political party," and others are forbidden to solicit or accept same.

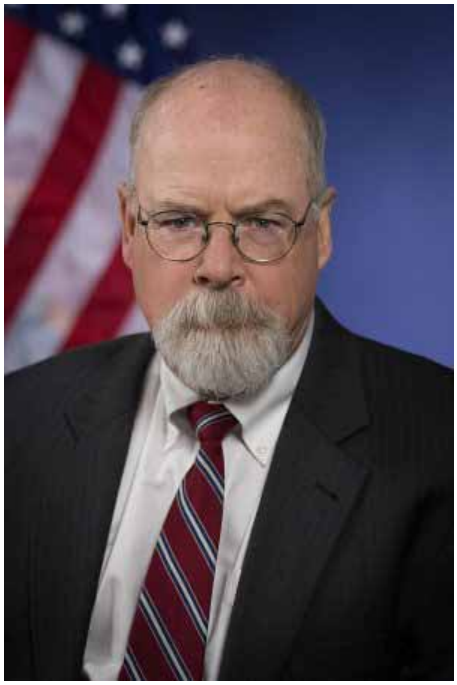
The Coolidge Reagan Foundation complaint (*see* Complaint, Count III, ¶¶ 45 – 53)) specifically asserted that Marc Elias and Perkins Coie, LLP – by acting as straw-man conduits for the funneling of monies from HFA and the DNC to Fusion GPS – were

intentionally aiding and abetting HFA and the DNC in their violations of federal campaign and reporting laws, citing several federal appellate decisions upholding indictments and criminal convictions against those who similarly aid and abet. So why were the allegations against Perkins Coie, LLP and its partner Marc Elias dismissed?

We may never know…, although it is worth noting that (1) Marc Elias was General Counsel to the 2016 Clinton Campaign, and (2) as part of the ongoing criminal investigation into the "anomalies" of the "Russia Hoax" attack against President Trump discussed here, Special Counsel John Durham has disclosed some interesting information.

Specifically, he has identified one of the persons of interest in the investigation as "Tech Executive-1" – believed to be Rodney Joffe – as having had meetings and communications with a "law partner at Law Firm-1 [*i.e.*, Perkins Coie] who was then serving as General Counsel to the Clinton Campaign ('Campaign Lawyer-1')." Interesting…, no?

It will be revealing to see what, if anything, develops in John Durham's investigation as a result of the "dismissal" of the "foreign nationals" donation and "aiding and abetting" allegations revealed in the FEC cover letter as relates to "Campaign Lawyer-1." However, do not be surprised that if Durham begins to focus more intently on Perkins Coie and Elias, their lawyers will urge the flawed "conciliation agreement" as precluding an indictment on concocted "double jeopardy" grounds. Beltway nonsense…, but par for the course.



Special Counsel John Durham is investigating the origins of the Trump-Russia "collusion" narrative apparently initiated by the 2016 Hillary Clinton campaign and furthered by certain government operatives and the media

Third, the agreements specify that HFA and DNC agree "not to violate" the relevant statute and related federal regulation in the future. How an agreement to ***comply*** with the law into the future somehow operates as "consideration" for the underlying agreement – quite apart from the fact that it violates its own definition – is a Beltway mystery…, but then of course, many mysteries persist within the Beltway. Among many others, Benghazi immediately comes to mind, as addressed here.

But I digress.

Finally, the FEC – charged with monitoring numbers and financial transactions regarding political donations and expenditures – should proofread its "conciliation agreements" more carefully: both agreements, using Roman numerals for paragraph breaks, omit a paragraph "VIII," skipping directly from paragraph "VII" (Arabic "7") to paragraph "IX" (Arabic "9").

While likely a careless typo omission, perhaps Mr. Backer might inquire if the original "agreements" actually ***do*** contain an eighth paragraph, mistakenly omitted from the copies sent to him and if so, what that "inadvertently omitted" paragraph provides. Stay tuned.

Yes, Virginia, these are the folks who claim as their mission statement: "To protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws." What a joke. Too bad the fate of the Republic lies, at least in part, in these federal officials' hands.

Let us see what comes next from John Durham.