Before the Federal Election Commission

Project Veritas Action Fund
1214 E Boston Post Rd.
Mamaroneck, NY 10543

James O'Keefe III
1214 E Boston Post Rd.
Mamaroneck, NY 10543

v.

Hillary for America,
Jose H. Villareal, Treasurer
P.O. Box 5256
New York, NY 10185-5256

Democratic National Committee
430 S. Capitol St. SE
Washington, DC 20003

Democracy Partners
1250 Eye St. NW #250
Washington, DC 20005

Scott Foval
d/b/a The Foval Group
7045 Briar Ln.
Sun Prairie, WI 53590

Priorities USA Action
1101 15th St. NW
Washington, DC 20005

Alliance for Retired Americans
815 16th St. NW, Fourth Floor
Washington, DC 20006

Americans United for Change
P.O. Box 34606
Washington, DC 20043

Complaint

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that Priorities USA Action ("Priorities"), Alliance for Retired Americans ("AFRA"), Americans United for Change ("AUFC") have made, and the Hillary for America ("HFA") presidential campaign committee and Democratic National Committee ("DNC") have accepted prohibited and excessive contributions in the form of coordinated expenditures in violation of the Federal Election Campaign Act ("FECA") and FEC regulations. It also involves the actions of Democracy Partners and Scott Foval,[1] doing business as The Foval Group, acting as willing accomplices to circumvent federal election law.
2. Journalists with Project Veritas Action Fund ("PVA") have uncovered a criminal conspiracy where, in the words of Scott Foval, "The way that works is: The [HFA] campaign pays DNC, DNC pays Democracy Partners, Democracy Partners pays The Foval Group, The Foval Group goes and executes . . . on the ground."[2] This has been done in a manner to evade federal election law and violating coordinated expenditure rules.
3. Actions taken to transform independent speech into coordinated expenditures with candidates or political parties are treated as contributions and thus subject to source and

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[1] After airing its investigative report, Americans United for Change announced the termination of Foval as staff with the group. *See HEADS ROLL: Democratic Operative FIRED After O'Keefe Video Exposé*, THE SEAN HANNITY SHOW, Oct. 18, 2016, http://www.hannity.com/articles/election-493995/heads-roll-democratic-operative-fired-after-15212754/.

[2] *See Rigging the Election – Video 1: Clinton Campaign and DNC Incite Violence at Trump Rallies*, PROJECT VERITAS ACTION, Oct. 17, 2016, http://www.projectveritasaction.com/video/rigging-election-video-i-clinton-campaign-and-dnc-incite-violence-trump-rallies. PVA has created a transcript of the conversations and circumstances surrounding each quote attached as EXHIBIT A.

amount limits as provided in the FECA. *See, e.g.*, 52 U.S.C. §§ 30118(a), (b)(2); 11 CFR 109.22.

4. This criminal conspiracy involves the knowing and willful creation of coordinated expenditures from prohibited corporate sources. As is detailed numerous times in the Veritas transcript, attached as EXHIBIT A, the supposedly independent speech and actions of third-party groups were directed, controlled, or puppeteered by HFA or the DNC. Indeed, the record establishes not just simple violations of the FECA's coordination provisions, but ongoing knowing and willful evasion of federal election law requirements through a complicated scheme. Because this conspiracy involves large numbers of employees, heightened travel, production, and distribution costs and because of the nationwide scale of the operation, upon information and belief, this triggers criminal penalties under 52 U.S.C. § 30109(d)(1)(A)(i).
5. By failing to abide by the law, these respondents misled the public about the true identity of speakers and funding sources for political protests and advocacy campaigns. This sort of evasion undermines the public's trust in the electoral process and allows elite political operatives to operate above the law.

Facts

6. On April 13, 2015, Hillary Clinton filed with the Commission Form 2, Statement of Candidacy, establishing her as a federal candidate seeking the office of president in the 2016 election. She designated "Hillary for America" as her principal campaign committee.
7. Democratic National Committee is an unincorporated organization and serves as the governing body of the Democratic Party of the United States. It is registered as a national committee with the FEC. 2 U.S.C. § 431(14).

8. Democracy Partners is a self-described "strategic consulting group" with offices nationwide. It is registered as a limited liability company ("LLC") in Washington, DC.
9. The Foval Group appears to be Scott Foval doing business as the Foval Group.
10. Priorities USA Action is registered as an independent-expenditure-only committee, or "Super PAC," with the Commission. It is headquartered in Washington, DC.
11. Americans United for Change is non-profit corporation organized under Section 501(c)(4) of the IRS Code.
12. Alliance for Retired Americans is non-profit corporation organized under Section 501(c)(4) of the IRS Code.
13. For six months, PVA conducted an undercover investigation into the inner-workings of national politics. While attending rallies, political gatherings, and other events, PVA agents began to learn that the supposedly spontaneous and independent protests occurring at Donald Trump events nationwide were controlled and directed by Democratic Party operatives. This led PVA to investigate the matter further by planting PVA agents in various political organizations to learn about the chain of command. This included learning about the use of homeless and mentally ill people to disrupt or cause problems at political events. It also included the use of shared political messaging, approved by the DNC or HFA, by third-party groups.
14. To prevent against allegedly independent groups from acting as mere conduits of candidates or political parties, federal election law imposes anti-coordination requirements. *See* 52 U.S.C. § 30116(a)(7)(B)(C). These involve three prongs that must be satisfied in order that certain speech or activities be deemed truly independent. 11 CFR 109.37.

15. Under the FECA, a communication is considered coordinated when: (1) the communication is paid for, in whole or in part, by someone else other than a candidate, committee, or political party committee; (2) the communication satisfies one of the content standards in 11 CFR 109.37(a)(2), (3); and (3) the communication satisfies one of the conduct standards set forth in 11 CFR 109.21(d).

Evidence of Activities Violating the Conduct Prong

16. One of the most important prongs of the FEC's coordination standard involves conduct. The conduct prong examines interactions between people paying for a communication and the candidate, campaign or political party committee. Specifically problematic are interactions where a "communication is created, produced, or distributed at the request or suggestion" of the candidate or campaign or political party committee. 11 CFR 109.21(d). Additionally, where a candidate or campaign or political party committee is materially involved with decisions about content, intended audiences, means or mode of communication, or specific media outlet used, the conduct prong will be satisfied. 11 CFR 109.21(d)(2). In instances where substantial discussion has occurred between a campaign and third-party groups about plans, projects, or activities relevant to the creation or distribution of a communication, the conduct prong will be met. 11 CFR 109.21(d)(3). Lastly, where common vendors or former employees or independent contractors share specific information in given timeframes, the conduct prong may be established. 11 CFR 109.21(d)(4), (5).

17. In the PVA report, several condemning statements by political operatives indicate that HFA was materially involved with the political messaging of third-party groups and indeed, even directed it at times. Evidence of such wrongdoing is found below.

a. On 09/23/16 Scott Foval of AUFC: "So you'll get [the budget proposal] when you get back then. Because I don't think I can get it and cleared with Bob before-" PVA Journalist: "And you also have to clear it with the DN-, or that's afterwards?" Scott Foval: "The messaging is what we have to clear. We already made the call over to Brooklyn to get the clearance from the campaign, because they want to do it anyway."[3] PVA Journalist: "For when he asks, the aggressive birddogging is the stuff inside with the phones." Scott Foval: "So fundraiser insertion, and the duck call thing is kind of an integrated thing with the same team of people, with a group of I.E. [Independent Expenditure] folks bolted on." Exh. A. at 4.[4]

b. On 09/15/16 Scott Foval of AUFC: "[W]hat we don't need is for it to show up on CNN that the DNC paid for 'x' people to...that's not gonna happen. We need to keep it, you know, I hate to use the Beyonce term, 'partition,' but we need to keep the partition." *Id.* at 1.

c. On 9/23/16, Scott Foval of AUFC: "So the operation is to insert and get the doc message in there if we can or the extremist message depending on - we have to clear this with the DNC." PVA Reporter: [Inaudible]. Scott Foval: "With

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[3] *See* EXHIBIT C, e-mail from Scott Foval to Steve Packard detailing how AUFC, Voces De La Frontera Action, and Democracy Partners would stage protests and carry out media campaigns that would be developed to help demonstrate "why they should vote against these candidates." This third-party activity designed to "vote against these candidates" had to be cleared by the HFA or DNC committees. *See* EXHIBIT A at 4.

[4] *See* EXHIBIT D, August 26, 2016 e-mail from Robert Creamer to Charles Roth, cc: to Caroline Ciccone and Brad Woodhouse, and related attachments (Americans United for Change Fall 2016 Plan, Voces De La Frontera Action's Lation's in the Badger State, Voces Action Budget Excel sheet). This exhibit illustrates AUFC's promotion of its "rapid response" program to "hold Republicans accountable" and Voces' promotion and budget for similar programs. These are all shared by carbon copy with Brad Woodhouse of Correct the Record, a Super PAC. As detailed in EXHIBIT A, these are approved or cleared by Hillary for America or the DNC. *See* EXHIBIT A at 4, 9.

Democratic National Committee, we have to clear which methods we're going to be targeting at each event but they can insert into multiple events now through the end of the election on a continual - on a daily basis but basically do a chase all the way across the country." *Id.* at 9.

d. On 09/15/16 "Scott Foval of AUFC: We talk about lots of things that we don't talk about." *Id.* at 2.

e. On 09/15/16 "PVA Journalist: Do they know -- I mean, Bob Creamer is--" Scott Foval: "Between Bob, myself, Aaron Black, Brad Woodhouse, a few other people in town, everybody hears about everything, were basically on the same group of conference calls...." *Id.* at 3.

f. Scott Foval on 09/23/16 describing his shared roles as staff or contractor for political committees and non-profits: "I am contracted to [Bob Creamer] but I answer to the head of Special Events for the DNC and the head of special events and political for the campaign." *Id.* at 8. "I came on to AUFC in the beginning of August, but I've been with Democracy since the beginning of June before I even left PFAW." *Id.* at 5.

18. In many instances, every plan to have third-party groups launch protests at political events, incite political violence, or engage in plain electoral advocacy had to be approved by HFA or the DNC or follow messaging provided by HFA or the DNC. Democracy Partners and the Foval Group were used as intermediaries to circumvent federal election law requirements to do so. This activity clearly satisfies the conduct prong.

19. Many factors, each independently conclusive, considered by the Commission in determining whether the conduct prong is satisfied are met here. Here, Scott Foval

expressly notes that Democracy Partners, the Foval Group, AUFC, Priorities USA, and AFRA deploy communications that are created, produced, or distributed at the request, suggestion or assent of HFA and DNC. For example, before AUFC and others engaged in "aggressive birddogging," they sought the permission of HFA.[5] *Id.* at 4. If that were not enough, HFA and the DNC appear to be materially involved in decisions about content, means, and mode of communication. The transcript includes, for example, evidence that the DNC had to pre-approve contemplated "extremist message[s]." *Id.* at 9. It also appears that there has been substantial discussion between the AUFC, Priorities USA, AFRA, Democracy Partners, and the Foval Group with HFA and the DNC. Indeed, the included transcript nicely illustrates nearly such conduct. The record further suggests the possibility that AUFC, AFRA, Democracy Partners, and the Foval Group used common vendors with the HFA and DNC.

Evidence of Activities Violating the Content Prong

20. A communication or activity may satisfy the content prong if it, among other things: (a) is a public communication expressly advocating the election or defeat of a clearly identified candidate; or (b) is made within 90 (congressional) or 120 (presidential) days of an election and refers to House, Senate, or Presidential candidates and is distributed within that candidate's jurisdiction. 11 CFR 109.21(c)(4).

21. Activities and speech violating the content prong follow below.

[5] Further reporting by Wikileaks confirms the HFA's knowledge and encouragement of "bird dogging" as a vital component of its electoral advocacy strategy. *See* July 4, 2015 e-mail from re47@hillaryclinton.com to xhinojosa@hillaryclinton.com through WikiLeaks at: https://wikileaks.org/podesta-emails/emailid/3833.

a. "Donald Ducks His Taxes."[6] PVA discovered the transfer of a mock "Donald Duck" character originally used by the DNC to spread a message that "Donald Ducks his taxes." The investigation demonstrated tension between the Walt Disney Company and the DNC over its usage, which led the DNC to transfer that advertising slogan and project to the AUFC. Since "Donald Ducks his taxes" is a reference to a presidential candidate running for office within 120 days of an election, it satisfies the content prong.[7]

   i. On 09/23/16 Scott Foval of AUFC: "The whole duck thing? That came about, the reason we moved it from DNC to AUFC was just to do a hopscotch but the actually idea passed way back in May." Exh. A at 5.

   ii. Scott Foval on 09/23/16 suggests that a "giant floating duck on the river [will pass] Trump Tower in Chicago. A giant floating duck the Hudson when [Donald Trump is] there. A giant duck on a flatbed outside his hotel in DC when he's there." *Id.* at 4. Further, Foval plans a "Trump duck message, and then we're going into the events, everyone has their phone, we insert like twenty people, twenty to thirty into the events, where they all have their phones set to go off on the exact same time, on an alarm, with the duck call, on the inside of the events all at once…" *Id.* at 5–6.

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[6] At some point during the summer of 2016, the DNC began using a "Donald Duck" figure to convey a negative message about Donald Trump and to vote against him. *See* Jacob Gersham, *DNC's Anti-Trump Mascot 'Donald Ducks' May Run Afoul of Trademark Protections*, WALL ST. J., Aug. 18, 2016, *available at* http://blogs.wsj.com/law/2016/08/18/anti-trump-mascot-donald-ducks-may-run-afoul-of-trademark-protections/?mod=WSJBlog&cb=logged0.8400450810856372

[7] *See* EXHIBIT B, detailing the use of "Donald Ducks his Taxes" during the 2016 electoral cycle.

b. Outside Group Shared Messaging. It became apparent in the course of the investigation that numerous third-party groups participated in weekly calls to determine shared electoral strategy between HFA, DNC, and outside groups. This included discussions about how to shape content and messaging to benefit the HFA and DNC. Because third-party groups engaged in the production of public communications that referenced candidates for presidential office, these satisfy the content prong.

   i. The transcript includes multiple references to deploying individuals in Trump fundraisers and rallies to disrupt them. Also, Scott Foval notes that the group needs to get DNC approval to insert "extremist message." *Id.* at 9.[8]

   ii. Based on information and belief, many of the staged, artificial protests occurring at Trump rallies nationwide included individuals with signs reading, in part "#DumpTrump" or "No Hate, No Racism, No Trump" or simply "Nope" with an unflattering picture of Donald Trump.

   iii. On 09/15/16 Scott Foval: "[W]ith AUFC, we can do other things. All I have to do is call Bob, call Brad..." PVA Journalist: "Things like North Carolina." Scott Foval: "Things like North Carolina. Umm...when we go to things like the state fair. I don't know if you saw the 'Make misogyny great again' signs around...we've been doing this duck all over the place..." *Id.* at 1.

[8] *See also* EXHIBIT D, detailing outside group involvement and coordination these efforts through Robert Creamer and Democracy Partners' assistance.

iv. On 09/23/16 Scott Foval: "We have a clip deliverable that we have to deliver every day for our group of clients who are involved in this project, AUSC, A4C which is Alliance For Change, Alliance for Retired Americans which is part of AFL-CIO. They are one of our partners on the AUFC stuff for Social Security. It depends on the issue. And then there's the DNC and the campaigns and Priorities (Hillary's super pac). Priorities are a big part of this too." *Id.* at 7.

v. The investigated subjects spoke of the benefit of "private firms" as a means to direct funding and communication messaging to non-profits and outside groups. The "private firms, we can do whatever we want, we don't have to disclose it."[9] *Id.* at 9. After discussing payment options, funding AUFC is agreed upon. "I'll write a donation directly to AUFC." *Id.*

22. Because third-party groups acted in tandem with HFA and the DNC through Democracy Partners and the Foval Group and created public communications featuring candidates for public office, these satisfy the content prong. The record demonstrates that the DNC transferred its possession of the "Donald Ducks" communications project to the AUFC, which includes a clear reference to Donald Trump within 120 days of the presidential election. Additional evidence shows that the Foval Group, working in tandem with the DNC and HFA, provided communication clips to third-party groups to use on a daily basis

[9] This sentence amounts to the fatal conceit of the private firm operatives. Under the FECA, while private firms may enjoy less demanding disclosure requirements, they are still prohibited from conspiring with others to violate anti-coordination provisions. Under 18 U.S.C. § 2, whoever aids, abets, counsels, commands, induces, or procures the commission of an offense against the United States is punishable as a principal.

as well as provided for the training and creation of "conflict engagement" at Donald Trump events.

Evidence of Activities Violating the Payment Prong

23. To satisfy the payment prong, communications or activities in question must be paid for, in whole or in part, by someone other than a candidate, the candidate's authorized committee, or a political party committee.

24. The FECA makes clear that compensation paid to a person to render services to a campaign is an in-kind contribution. Indeed, "compensation for personal services" has been defined to include the "payment by any person of compensation for personal services of another person if those services are rendered without charge to a political committee for any purpose." 11 CFR 100.54. This has been interpreted broadly by the FEC such that legal services donated for an amicus brief constituted a contribution and employers paying workers to renovate a candidate's campaign headquarters constituted contributions as well. *See, e.g.*, Advisory Opinion ("AO") 2006-22 (Jenkins & Gilchrist); AO 1982-04 (Apodaca). To date, the FEC has signaled approval for investigations of potentially unlawful contributions where compensated services were provided on behalf of a campaign or where "other indicia of concerted activity" existed. MUR 6021 (DNC & Kerry for President 2004), First General Counsel's Report at 10.

25. Where third party groups have disbursed funds for office space, web hosting, producing advertisements, media training and outreach, and travel expenses related to presidential elections, these constitute coordinated expenditures under the law. 52 U.S.C. § 30116(a)(7)(B)(i); 11 CFR 109.20. Moreover, contributions can occur where personal services are rendered to a political committee without any charge, or with a discounted

rate. 52 U.S.C. 30101(8)(A)(ii); 11 CFR 100.54. These services are considered in-kind contributions if they were conducted at the request or suggestion of a candidate or committee. MUR 6021 (DNC & Kerry for President 2004), First General Counsel's Report at 10.

26. Activities violating the payment prong include the following.

a. Scott Foval of AUFC on 09/15/16 "So, I'll give an example. In Iowa. Progress Iowa has a built-in group of people that they can message, who will show up. But what they will not do, is do that unless someone is paying them on the project. Because there's staff time involved, there's transportation involved, there's food, lodging training, whatever, involved. We have these organizations around the country who are allies, who are on the I.E. side, who are on the labor side, but we also have them on our side where we can buy that list and say, 'Hey, if you want spend the next two months leading up the election, making things difficult for Donald Trump...I'd say demographically, getting vets do things is very easy, A) because they need the money, B) they're fearless." Exh. A at 3.

b. Potentially illegal activities including paying people to move to Wisconsin to vote. Scott Foval: "So, so paying people to relocate to the state of Wisconsin in order to vote, we're literally just running out of time for them to, you know, register to vote." PVA Reporter: "Right." Scott Foval: "And it's a same-day registration." PVA Reporter: "That's..." PVA Reporter: "That's what may be illegal." *Id.* at 11.

c. Scott Foval of AUFC: "So we will deliver a framed budget. That will have these two things built on, so Voces Field, which is 14K, and Voces Media, which is pending, right now it's at a minimum of five and up to twenty depending on what

we can get funded. These two exist under the Foval Group, okay? These exist under Democracy Partners/AUFC. And so the idea is to fold this stuff into what he's already done. And I really would like to get his help on this, I'm not asking him to fund the whole thing. But if he put 5K towards it I can get the other money." *Id.* at 12.[10]

d. After discussing options for payment to Democracy Partners or the Foval Group, payment to the 501(c)(4) AUFC is agreed upon. *Id.* at 9.

27. The arrangement of the payment of outside, third-party group electoral messaging, protests, and related activity satisfies the payment prong.

LEGAL VIOLATIONS

28. Based on the foregoing,

a. Democracy Partners, Scott Foval or the Foval Group, AUFC, Priorities USA, and the AFRA made illegal in-kind contributions to the HFA and DNC in the form of coordinated expenditures. The coordinated expenditures at issue here include planning staged protests, disruptions, and creating and distributing shared political messaging about the 2016 election. Expenditures made in coordination with a candidate or party committee are in-kind contributions. 52 § U.S.C. 30116(a)(7)(B)(i), 11 CFR 109.20. Contributions from unions and corporations in connection with any election to political office are strictly forbidden under federal election law. 11 CFR 114.2(a).

b. Democracy Partners, Scott Foval or the Foval Group, AUFC, Priorities USA, and the AFRA made prohibited in-kind contributions to the HFA and DNC in the form

[10] *See* Exh. C.

of compensation for the personal services of staff members. Compensation paid by any of the respondents for sending individuals to protest or engage in electoral messaging would be considered contributions to HFA or the DNC provided they were undertaken at the request or suggestion or in coordination with a candidate or party committee. 52 § U.S.C. 30101(8)(A)(ii); *see also* 11 CFR 100.54.

c. HFA and the DNC have failed to report contributions in the form of coordinated expenditures by Priorities USA. The FECA requires candidates and parties to report and disclose contributions, including in-kind contributions, received from political committees. *See* 52 U.S.C. § 30104(b). Based on the record established above, Priorities USA's participation in coordinated expenditures would require HFA and the DNC to report these contributions, yet they failed to do so. 52 U.S.C. §§ 30104(b)(2)(D), (b)(3)(B).

29. The Commission should find reason to believe that Hillary for America and other named respondents have violated 52 U.S.C. § 30101, *et seq.* and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Because of the weighty public interests at stake here, it should do so within 120 days of the filing of this complaint. 52 U.S.C. § 30109(a)(8)(A). The complainants request that the FEC impose sanctions appropriate to these violations and take further action as may be appropriate, including referring this matter to the Department of Justice for a criminal investigation.

Benjamin Barr
Counsel
Project Veritas Action Fund

1214 E Boston Post Rd.
Mamaroneck, NY 10543

VERIFICATION

Project Veritas Action Fund and James O'Keefe verify that the statements made in this complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

James O'Keefe

Sworn to and subscribed to before me this 10th day of October, 2016.

Notary Public

Jennifer Zern
Notary Public, State of New York
No. 01ZE6180257
Qualified in Westchester County
Commission Expires ~~January 7,~~ February 21, 2020