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OFFICE OF
GENERAL COUNSEL

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Office of General Counsel
Attn: Lisa J. Stevenson, Acting General Counsel
Federal Election Commission
1025 First Street NE
Washington, DC 20463

Re: Advisory Opinion Request

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion on behalf of Defending Digital Campaigns, Inc., (“DDC” or the “Organization”), a nonprofit corporation formed under the provisions of the District of Columbia Nonprofit Corporation Act (D.C. Code, Title 29), seeking guidance on the permissibility of a number of proposed activities under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Federal Election Commission (“FEC” or the “Commission”) regulations.

BACKGROUND

Ongoing attempts by foreign powers to undermine our democratic processes through cyber and information operations pose a novel and unprecedented threat to the integrity of our electoral system.¹ While this threat has many facets, the vulnerability of modern political committees to cyberattack and infiltration has been repeatedly exploited by foreign actors over the past several election cycles and arguably represents one of the most critical weaknesses in our collective defenses against this new form of warfare. This is particularly alarming given the amount of sensitive voter information and other data that campaigns regularly collect and share. And given the scale and interconnectedness of the modern American campaign landscape, shoring up this weakness will require both a widely distributed deployment of resources and expertise as well as a greater level of communication and nonpartisan cooperation among and between campaigns, political parties, and the cybersecurity community. We have also seen candidates personally targeted and imagine their families are vulnerable as well. The frailty of their personal online security can be a very tempting vector of attack for adversaries who wish to punish lawmakers or candidates they believe are acting counter to their interests.

¹ Press Release, Senate Intel Completes Review of Intelligence Community Assessment on Russian Activities in the 2016 U.S. Elections (May 16, 2018), <https://www.burr.senate.gov/press/releases/senate-intel-completes-review-of-intelligence-community-assessment-on-russian-activities-in-the-2016-us-elections>.

DDC intends to address this systemic vulnerability by facilitating the development and delivery of a set of campaign-tailored resources and training aimed at fortifying campaign committees and other political committees against these attacks, and by developing and maintaining channels for information sharing among committees, technology providers, and cybersecurity experts in the public and private sectors. In short, DDC intends to operate as an Information Sharing and Analysis Organization (“ISAO”) for the most vulnerable players in our electoral system: campaigns and political parties.

DDC seeks assurance from the Commission that engaging in these activities on a nonpartisan basis according to neutral, objective criteria will not result in DDC or its private sector sponsors and partners making “contributions” under the Act. Although these activities will necessarily entail the provision of resources to individual political committees, the purpose of these efforts is not to benefit any one campaign or political party over another or to otherwise influence any federal election. Rather, DDC plans to make resources available to all candidates who meet simple, objective criteria, regardless of party. The purpose is to help safeguard American elections from foreign interference by providing these defenses to a critical mass of those political committees most vulnerable to attack, and by fostering the development of an information sharing network that can detect and coordinate effective responses to new threats and outbreaks before they have a chance to negatively impact the integrity of our elections.

DDC’s proposal is ambitious and contemplates activities that the Commission has not had occasion to consider in the context of a threat to our democratic institutions as unique and unprecedented as the one we currently face. However, as “the agency of the United States Government charged with protecting our federal election financing system from foreign attack,”² the FEC has a unique responsibility to do all it can to facilitate nonpartisan efforts aimed at providing campaigns and political parties with the resources and information they need to defend themselves from these extraordinary attacks. In the face of this threat, “failure to act is no longer an option.”³

I. The Threat Facing Campaigns and Political Parties

While Russia’s activities in the 2016 elections exposed serious national security vulnerabilities in our election infrastructure, for several election cycles individual campaigns and political parties have proven to be particularly tempting targets for foreign powers and other malicious actors operating online. In 2008, Chinese hackers infiltrated the Obama and McCain campaigns, and stole large quantities of information from both. In 2012, the Obama and Romney campaigns each faced hacking attempts against their networks and websites. And in 2016, cyber operatives

² Statement of Commissioner Ellen L. Weintraub On the FEC’s Unanimous Bipartisan Decision to Address Internet Political Advertising Disclaimers (Nov. 16, 2017), <https://www.fec.gov/resources/cms-content/documents/ELW-statement-on-FECs-opening-of-a-disclaimer-rulemaking.pdf>.

³ *Id.*

believed to be sponsored by Russia stole and leaked tens of thousands of emails and documents from Democratic campaign staff.⁴

As campaigns and political parties have become increasingly digital, they have become increasingly vulnerable to cyberattacks. And Congressional campaigns—with less staff, resources, and institutional experience than presidential campaigns and national party committees—are even more vulnerable to cyberattacks and are likely to be increasingly targeted in future elections. Indeed, news reports of attempted or successful hacks of Congressional campaigns have become more and more common:

- In March 2018, the campaign of Tennessee Senate candidate Phil Bredesen contacted the FBI about a potential breach of its system.⁵
- Also in March, the campaign of a U.S. House candidate in California's 45th district discovered that its systems had been breached and reported the incident to the FBI. The campaign reportedly decided it could not afford the cost of a professional cybersecurity firm to investigate the attack, nor did it have the resources to replace infected computers.⁶
- A second candidate for U.S. House in California, Dr. Hans Keirstead, reported sophisticated phishing emails, which successfully gained credentials to access Dr. Keirstead's email, as well as repeated attempts to gain access to the campaign's website, including "130,000 attempts to gain administrator access through the cloud server that was used to house the site."⁷
- In July 2018, the campaign of Alabama congressional candidate Tabitha Isner announced that Russians had attempted to hack the campaign's website.⁸ Later that day, Microsoft announced that it had helped detect and block attempted hacks of three congressional campaigns so far in 2018.⁹

⁴ Defending Digital Democracy Project, *The Cybersecurity Campaign Playbook 5* (rev. May 3, 2018), https://www.belfercenter.org/sites/default/files/files/publication/CampaignPlaybook_0.pdf.

⁵ Miles Parks, *Senate Campaign In Tennessee Fears Hack After Impostor's Emails Request Money*, NPR (Mar. 8, 2018), <https://www.npr.org/2018/03/08/592028416/senate-campaign-in-tennessee-fears-hack-after-imposter-emails-request-money>.

⁶ Joel Schectman & Christopher Bing, *Exclusive: FBI Probing Cyber Attack on Congressional Campaign in California*, Reuters (Aug. 17, 2018), <https://www.reuters.com/article/us-usa-election-hacking-exclusive/exclusive-fbi-probing-cyber-attack-on-congressional-campaign-in-california-sources-idUSKBN1L22BZ>.

⁷ Mark Morales, *Democrat Who Challenged GOP Congressman Said He Was Hacked*, CNN (Aug. 15, 2018), <https://www.cnn.com/2018/08/15/politics/dana-rohrbacher-opponent-cyberattack-hack/index.html>.

⁸ Holley Long, *Campaign: Russians Attempted to Hack AL Congressional Candidate's Website*, WFSA-12 (July 19, 2018), <http://www.wsfa.com/story/38688628/campaign-russians-attempted-to-hack-al-congressional-candidates-website>.

⁹ Eric Geller, *Microsoft Reveals First Known Midterm Campaign Hacking Attempts*, Politico (July 19, 2018), <https://www.politico.com/story/2018/07/19/midterm-campaign-hacking-microsoft-733256>.

II. Establishment of the Defending Digital Democracy Project

In the wake of the 2016 elections, the Belfer Center for Science and International Affairs at Harvard Kennedy School launched a new, bipartisan initiative called the Defending Digital Democracy Project (“D3P”).¹⁰ Co-led by the former campaign managers for Hillary Clinton and Mitt Romney and experts from the national security and technology communities, the project aimed to identify and recommend strategies, tools, and technology to protect democratic processes and systems from cyber and information attacks by creating a unique and bipartisan team comprising political operatives and leaders in the cybersecurity and national security fields.

Recognizing the lack of resources available to campaigns struggling to deal with cybersecurity issues, D3P released “The Cybersecurity Campaign Playbook” (the “Playbook”) in November 2017.¹¹ The Playbook was designed to give campaigns of any size simple, actionable guidance to make their information more secure from adversaries trying to attack their organization.

It has, however, become increasingly apparent that campaigns are in need of more direct, hands-on assistance to address cybersecurity threats. As the Playbook explains:

Today’s campaigns are uniquely soft targets. They’re inherently temporary and transient. They don’t have the time or money to develop long-term, well-tested security strategies. Large numbers of new staff are often onboarded quickly without much time for training. They may bring their own hardware from home and the malware lurking on it. Events move quickly, the stakes are high, and people feel that they don’t have time to care about cybersecurity. There are a lot of opportunities for something to go wrong.

At the same time, campaigns rely more and more on proprietary information about voters, donors, and public opinion. They also store sensitive documents like opposition research, vulnerability studies, personnel vetting documents, first-draft policy papers, and emails on various servers. The risks of a potential attack are increasing and so are the consequences.

Unfortunately, the vast majority of campaigns simply do not have adequate resources to address these threats. Most campaigns do not have the resources to hire full-time, professional cybersecurity staff, and even basic cybersecurity consulting software and services can overextend the budget of most congressional campaigns. Even presidential campaigns and national party committees require expert guidance to know how to best allocate resources for cybersecurity.

¹⁰ Harvard Kennedy School, Belfer Center for Science and International Affairs, Defending Digital Democracy Project, <https://www.belfercenter.org/project/defending-digital-democracy> (last visited Sept. 5, 2018).

¹¹ *The Cybersecurity Campaign Playbook*, *supra* note 4.

Furthermore, outside actors like private sector digital platforms, cybersecurity providers, and government agencies don't have access to a nonpartisan medium trusted by campaign operatives to share information and coordinate action. This lack of information sharing leads to otherwise preventable breaches and makes it more difficult to detect and respond to threats before it's too late.

III. DDC's Structure and Activities

D3P's founding members formed DDC as a distinct nonprofit organization with the specific mission of directly engaging with national party committees and congressional and presidential campaigns. DDC's planned engagement has two overarching and interrelated aims: to provide campaigns and political parties with the specific knowledge, training, and resources they need to defend themselves from cyber threats; and to create secure, nonpartisan forums for information sharing among and between campaigns, political parties, technology providers, law enforcement, and other government agencies in order to detect new and emerging cyber threats and facilitate the development and deployment of effective responses to neutralize them.

DDC is structured to ensure it operates as a truly nonpartisan, not-for-profit organization. It was established as a District of Columbia nonprofit corporation and is organized as a social welfare organization under Section 501(c)(4) of the Internal Revenue Code.¹² To demonstrate DDC's truly nonpartisan focus, DDC's organizing documents require the Organization to adhere to the Internal Revenue Code's prohibitions on political campaign intervention that apply to Section 501(c)(3) organizations. Specifically, DDC's articles of incorporation and bylaws mandate that the Organization "shall not participate in, or intervene in (including the publishing or distribution of statements concerning), any political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of Section 501(c)(3) of the Code."¹³ In addition, pursuant to DDC's organizing documents, and in accordance with IRS rules governing Section 501(c) organizations, DDC directors, officers, and staff are explicitly barred from personally profiting from the Organization's activities apart from board-approved reasonable compensation for officers and employees, which will be determined in accordance with recognized procedures and best practices for nonprofit salary determinations.¹⁴

The Organization's initial board of directors—consisting of Democrat Robby Mook, Republican Matt Rhoades, and Debora Plunkett, former Director of Information Assurance at the NSA and veteran of the National Security Council in both Democratic and Republican administrations—creates a well-rounded foundation for DDC's mission. Day-to-day operations of the Organization are managed by a nonpartisan President and staff. DDC's board of directors provides oversight

¹² See Articles of Incorporation of Defending Digital Campaigns, Inc. (Attached hereto as Appendix A).

¹³ See *id.*, Bylaws of Defending Digital Campaigns, Inc. (Attached hereto as Appendix B, Exhibit A).

¹⁴ See Defending Digital Campaigns, Inc., Compensation Review Policy (Attached hereto as Appendix B, Exhibit E).

and will be assisted by an advisory committee of veteran political operatives, cybersecurity professionals, and private sector digital platform providers.

IV. DDC's Proposed Eligibility Criteria

DDC plans to make its services available to each of the 11 active, federally-registered national party committees,¹⁵ and to federally-registered candidate committees satisfying any of the following objective eligibility requirements (collectively, "Eligible Committees" or "Committees"):

- 1) House candidates whose committees have raised at least \$50,000 in receipts for the current election cycle, and Senate candidates whose committees have raised at least \$100,000 in receipts for the current cycle;
- 2) House or Senate candidates who have qualified for the general election ballot in their respective races; or
- 3) Any presidential candidate who is polling above 5% nationally.

DDC has selected these clear, nonpartisan criteria to ensure that the national party committees and campaigns most likely to become targets of cyberattacks have access to DDC's services on a fair and equal basis. DDC will proactively reach out to Eligible Committees in a consistent manner and offer the same suite of services to all Eligible Committees in a given race.

DDC plans to eventually make a number of services available to Eligible Committees. However, DDC will phase in services as resources and time allow and will not provide a service unless it has the resources available to provide that service to all Eligible Committees in a given election cycle and/or race.

V. DDC's Proposed Activities

DDC's planned program of activities is still under development and will ultimately depend on several factors, including funding availability, the outcome of negotiations with potential corporate, institutional, and government partners, and the Commission's guidance on the permissibility of various activities under the Act and FEC regulations. However, DDC is interested in engaging in one or more the following activities.

¹⁵ It is our understanding that there are currently 11 active federally-registered national party committees: Republican National Committee (#C00003418); DNC services corp./Dem. Nat'l Committee (#C00010603); NRSC (#C00027466); DSCC (#C00042366); NRCC (#C00075820); DCCC (#C00000935); Socialist Workers National Campaign Committee (#C00111476); Socialist National Committee (#C00129668); Libertarian National Committee (#C00255695); Green Party of the United States (#C000370221); and the Green Senatorial Campaign Committee (#C00428664). Although DDC currently does not have the resources to engage with state political party committees, it may do so in future election cycles.

A. Information Sharing

As the Department of Homeland Security has recognized, “America’s cyber adversaries move with speed and stealth. To keep pace, all types of organizations . . . need to be able to share and respond to cyber risks in as close to real-time as possible.”¹⁶ Private sector entities, government agencies, campaigns, and political party committees receive information every day on malicious email addresses, IP addresses, and other intelligence on cyber threats targeting campaigns and elections. “Organizations engaged in information sharing related to cybersecurity risks and incidents play an invaluable role in the collective cybersecurity of the United States.”¹⁷ DDC would like to create information sharing systems—listservs, bulletins, etc.—to anonymously share such information and potentially collaborate with the Federal Bureau of Investigation, the Department of Homeland Security, and other law enforcement officials to further enhance this information. The private sector and many of the platform providers for campaigns and political parties, in particular, have a wealth of information on cyber threats targeting campaigns and elections. Currently, there is no streamlined, nonpartisan clearinghouse for these actors to share this information. DDC would like to fill this void by functioning as an ISAO focused on cyber threats targeting the political campaign community; there would be no charge for private sector entities, government agencies, or Eligible Committees to participate in DDC’s information-sharing activities.

A nonpartisan, independent entity is needed to play this role, since campaigns have proven reluctant to engage directly with the Federal Bureau of Investigation and Department of Homeland Security. A trusted, independent entity can be a place where government, the private sector, and campaigns could each pool and monitor intelligence about attacks on an anonymous basis.

Furthermore, a nonpartisan, independent entity can provide campaigns with advice and assistance accessing resources in the case of a suspected breach and could encourage or even help facilitate engagement with the government.

B. Cybersecurity Hotline

DDC would like to create and operate a cybersecurity “hotline” that Eligible Committees could call for advice or coaching on cybersecurity issues. This hotline would also serve to identify new and emerging cybersecurity threats in order to notify appropriate government agencies as necessary. There would be no fee for Eligible Committees to call the hotline.

¹⁶ U.S. Dep’t of Homeland Security, Information Sharing and Analysis Organizations (ISAOs), <https://www.dhs.gov/isao> (last visited Sept. 5, 2018).

¹⁷ *Id.*

C. Cybersecurity “Bootcamps,” Advanced Training, and Certification Courses

DDC would like to offer cybersecurity training opportunities or “bootcamps” for Eligible Committees’ leadership and IT staff on core campaign cybersecurity issues. DDC also would like to offer advanced cybersecurity training and certification courses for Eligible Committees’ IT staff. There would be no fee for Eligible Committees’ staff to attend any of these training opportunities. For efficiency purposes, DDC may consider hosting such trainings at central locations and providing free or discounted transportation and lodging for Eligible Committees’ staff to attend. DDC may recruit cybersecurity experts to speak at such trainings in a volunteer capacity and would likely contract with cybersecurity firms to provide the advanced training and certification courses.

D. On-Site Training and Assistance

As D3P recognized in the Playbook, “[c]ybersecurity is fundamentally a human problem, not a technical one. . . . Successful cybersecurity practices depend on creating a culture of cybersecurity awareness.” Although off-site training will help Eligible Committees’ IT staff learn core cybersecurity practices, it is vital for all employees of Eligible Committees to receive basic information security training. Moreover, Eligible Committees may need advice on how to implement cybersecurity practices into their own infrastructure. DDC would like to facilitate free on-site visits to Eligible Committee offices by cybersecurity professionals to provide information security training and/or general cybersecurity assistance. Under one option, cybersecurity professionals would provide these services in a volunteer capacity while on unpaid leave or while on paid leave accrued in accordance with their employers’ existing leave policies. Under a second option, DDC would establish partnerships with cybersecurity firms that would agree to provide paid leave to their employees to provide this on-site cybersecurity assistance.

E. Cybersecurity Incident Response and Monitoring Services

DDC would like to offer cybersecurity incident response services and brand monitoring services to Eligible Committees free of charge or at a reduced cost. To offer these services, DDC would enter into retainer agreements with one or more digital security vendors and brand protection services. It is often difficult and cost-prohibitive for campaigns and political parties to work with digital security vendors. DDC would like to retain a digital security firm providing incident response services and allow Eligible Committees to contact the retained firm in the event of a suspected phishing attack, to forward suspicious emails, etc. DDC may also enter into similar retainer agreements with one or more brand protection services—entities with the ability to provide monitoring and notification services that identify fake websites being set up to imitate legitimate campaigns or political parties. Such vendors would monitor the Internet for fraudulent or unauthorized activities purporting to be those of Eligible Committees and notify Eligible Committees of any such activities.

F. Free or Reduced-Cost Software

DDC would like to work with technology companies—such as platform providers like Google and Microsoft—to customize the companies' existing software for campaigns and political parties, similar to the manner in which companies frequently customize their products and services for particular types of customers (e.g., students, small businesses, nonprofit organizations). DDC would also like to negotiate partnerships with these companies to secure free or discounted licenses for both customized and off-the-shelf software for Eligible Committees. These software license agreements would be entered into between the software providers and Eligible Committees, but DDC would act as an intermediary between the providers and Eligible Committees to ensure that licenses are provided on a fair and equal basis to all Eligible Committees. In addition, DDC staff would provide Eligible Committees with assistance installing the software and educating staff on proper use of the software.

G. Free or Reduced-Cost Hardware

Similarly, DDC would like to enter into partnerships with technology providers to provide Eligible Committees with free or reduced-cost hardware, such as Yubi-keys used to provide two-factor authentication for Eligible Committee computers. Again, DDC would not purchase the hardware itself, but would act as an intermediary between the providers and Eligible Committees to ensure that the hardware is provided on a fair and equal basis to all Eligible Committees, and to educate Eligible Committee staff on its proper use.

QUESTIONS PRESENTED

1. Whether DDC may allow Eligible Committees to participate in the following DDC activities without making in-kind contributions to participating Eligible Committees:
 - a. DDC's free cybersecurity information-sharing forums; and
 - b. DDC's free cybersecurity hotline, which Eligible Committees could call to ask basic cybersecurity questions or report cybersecurity incidents.
2. Whether DDC may provide cybersecurity bootcamps, advanced training sessions, and certification courses without charge to Eligible Committees without making in-kind contributions to such Eligible Committees.
3. Whether DDC may entirely or partially pay for the transportation and lodging expenses of Eligible Committees' staff to attend DDC's cybersecurity bootcamps, advanced training sessions, and/or certification courses without making in-kind contributions to such Eligible Committees.

4. Whether DDC may coordinate on-site cybersecurity training and assistance for Eligible Committees without making in-kind contributions to Eligible Committees when such training and assistance is provided by:
 - a. Cybersecurity professionals employed by cybersecurity firms with whom DDC has a partnership and who have agreed to provide paid leave to employees to conduct such on-site training and assistance; and/or
 - b. Cybersecurity professionals who are acting in a volunteer capacity.
5. Whether DDC may provide cybersecurity incident response services and brand monitoring services to Eligible Committees free of charge or at a reduced cost without making in-kind contributions to such Eligible Committees.
6. Whether DDC may facilitate the provision of free and/or discounted cybersecurity-related software licenses and/or hardware from private sector companies to Eligible Committees without DDC or the private sector companies making in-kind contributions to Eligible Committees receiving such software licenses and/or hardware licenses.
7. Whether DDC may assist Eligible Committees with installing and using the software licenses and/or hardware referred to in Question 6 without making in-kind contributions to such Eligible Committees.

LEGAL ANALYSIS

- I. **DDC's proposed activities are not for the purpose of influencing federal elections and, accordingly, DDC may undertake the activities described above to counter foreign interference in American elections without making prohibited corporate in-kind contributions under the Act.**

Because DDC's proposed activities are for the purpose of protecting U.S. elections from foreign interference—and not for the purpose of influencing the elections themselves—the proposed activities fall outside of the scope of the Act and would not result in prohibited corporate in-kind contributions to Eligible Committees.

The Act and Commission regulations prohibit a corporation from making any contribution to a candidate in connection with a federal election.¹⁸ The Act defines “contribution” to include anything of value “made by any person for the purpose of influencing any election for Federal office.”¹⁹ A contribution also includes “the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge

¹⁸ 52 U.S.C. § 30118(a), (b)(2); *see also* 11 C.F.R. § 114.2(b).

¹⁹ 52 U.S.C. § 30101(8)(A)(i).

for any purpose.”²⁰ Commission regulations further provide that “anything of value” includes in-kind contributions, such as the provision of goods or services “without charge or at a charge that is less than the usual and normal charge for such goods or services.”²¹

DDC’s proposed activities fall outside the scope of the Act and Commission regulations because they are not “for the purpose of influencing” any federal election. Rather, their purpose is to help protect our system of democratic governance by providing political party and campaign committees on a nonpartisan basis with the specifically tailored resources they need to participate in the electoral process free from interference by malicious actors attempting to undermine the integrity of American elections. Although individual campaigns and political parties will necessarily benefit from these activities by receiving resources and information that they would otherwise not have access to and/or could not afford, this assistance would be provided according to predetermined, nonpartisan, objective criteria, and would never favor one candidate or political party over another. Further, the ultimate beneficiary of these activities will be the nation’s voters and the electoral system itself, much the same way that an immunization program inoculates individuals for the ultimate purpose of safeguarding an entire community from a disease.

The Commission has on several occasions considered the applicability of the Act to nonpartisan activities that—while resulting in services or other direct or indirect benefits being provided to individual political committees—were found not to be for the purpose of influencing a federal election and concluded that such activities did not constitute contributions or expenditures for purposes of the Act.

For example, in Advisory Opinion 2000-16, the Commission approved another proposal intended to combat a threat to our democratic institutions, albeit one considerably less immediate and acute than foreign interference in our elections. In that opinion the Commission unanimously approved a proposal by a nonprofit organization to pay for the production and placement of several internet advertisements in support of various Presidential candidates in order to “examine and address the problem of young voter disengagement from the political process and the threat this disengagement poses to democracy at large.”²² Under the proposal, the advertisements would be viewed by approximately 36,000 individuals as part of a project designed to study political disengagement among young Americans.²³ The organization’s request to the Commission stressed that the company was nonpartisan in both its structure and its activities and, as a 501(c)(3) organization, it was prohibited from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office.²⁴ As explained to the Commission, the organization’s motivation for producing and placing the advertisements was to generate survey data that would aid in the evaluation of the organization’s

²⁰ *Id.* § 30101(8)(A)(ii); 11 C.F.R. § 100.54 (emphasis added).

²¹ 11 C.F.R. § 100.52(d)(l).

²² FEC Adv. Op. 2000-16 (Third Millennium).

²³ *Id.*

²⁴ See Request for an Advisory Opinion by Third Millennium (June 8, 2000).

hypothesis regarding why young Americans vote in such low numbers.²⁵ The Commission, accordingly, found that the proposal was permissible under the Act.²⁶

More recently, in Advisory Opinion 2015-14, the Commission determined that a university could provide a stipend and academic credit for a student's campaign internship without making a prohibited contribution under the Act. Although, as noted above, the definition of "contribution" expressly includes "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge *for any purpose*,"²⁷ the Commission concluded that because the grant program stipends were being "provided to students for *bona fide* educational objectives, not for the provision of personal services to federal campaigns,"²⁸ they did not result in impermissible corporate contributions from the university.

As with the stipend approved by the Commission in Advisory Opinion 2015-14, DDC's proposed payments of compensation to staff and fees to third-party cybersecurity professionals and firms would enable the provision of personal services to campaigns and political parties. And just as the Commission nonetheless permitted the stipend because the underlying objective of the university's internship program was to provide students with educational opportunities, not to influence federal elections, so too should the Commission permit the payments proposed by DDC because their underlying objective is not to influence the outcome of any federal election but rather to provide the American public with elections free from foreign interference. And unlike the stipend—which subsidized a student's ability to engage in federal election-influencing activities that directly furthered a campaign's electoral objectives, and did not automatically trigger the provision of equal support to the opposing campaign—DDC's payments would only be used to protect campaigns and political parties from cybersecurity threats and would be proactively offered on an equal, nonpartisan basis to competing campaigns and parties.

Further support for the permissibility of DDC's proposed activities under the Act can be found in the group of statutory and regulatory exemptions to the corporate contribution ban for candidate-related activities by nonprofit organizations. These exemptions—which allow nonprofit organizations to prepare and distribute voter guides,²⁹ engage in nonpartisan activity designed to encourage individuals to vote or to register to vote,³⁰ stage candidate debates,³¹ engage in press activities, and host candidate appearances on their premises,³²—share a common theme of protecting and encouraging nonpartisan activities that are intended to foster civic engagement and facilitate the proper functioning of democratic processes. The fact that DDC's proposed

²⁵ See *id.*, FEC Adv. Op. 2000-16 (Third Millennium).

²⁶ FEC Adv. Op. 2000-16 (Third Millennium).

²⁷ 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54 (emphasis added).

²⁸ FEC Adv. Op. 2015-14 (Hillary for America II) at 4.

²⁹ 11 C.F.R. § 114.4(c)(5).

³⁰ 52 U.S.C. § 30101(9)(B)(ii).

³¹ 11 C.F.R. 110.13.

³² *Id.* § 114.4(c)(7).

activities do not fit squarely within any of these exemptions, but share elements with most of them, reflects the reality that the Act and Commission regulations simply did not envision the specter of foreign interference in the electoral process itself, the burden it would impose on the proper functioning of the electoral process, and the nonpartisan role that nonprofit organizations could play in addressing this issue.

However, the Commission has previously adapted and applied these exemptions to new circumstances and could appropriately do so here as well. In Advisory Opinion 2011-26, the Commission extended application of the exception to the definition of expenditure for nonpartisan activity designed to encourage individuals to vote or to register to vote to also cover raising and spending funds for the purposes of identifying citizens who do not possess photographic identification in states that require a citizen to present photographic identification to register to vote or to vote, and to assist those citizens in obtaining such photographic identification. The Commission found that these activities were connected because they were “intended to encourage or assist individuals to register to vote or to vote, by making it possible for them to satisfy State laws requiring photographic identification in order to register to vote or to vote.”³³

DDC’s proposed activities are also distinguishable from fact patterns under which the Commission has rejected proposals by corporations to provide free or discounted services to campaigns. For example, in Advisory Opinion 1996-2, the Commission held that CompuServe could not offer a product to campaigns free of charge when it typically charged other non-campaign users for the same service, rejecting CompuServe’s argument that the publicity it would receive from free users would heighten the company’s prestige and goodwill and encourage subscribers and, thus, was not a corporate contribution.³⁴ The Commission concluded that “substantial publicity, goodwill or other commercial benefit does not negate or reduce the corporate contribution” as “[s]uch publicity or benefit does not constitute consideration.”³⁵ Here, by contrast, DDC is not arguing that its proposed activities with the Eligible Committees represent a fair-market exchange of value or would otherwise provide DDC with any offsetting benefit other than helping to accomplish its core objective of protecting American elections from foreign interference.

II. The provision of free or discounted software and/or hardware to Eligible Committees by private sector entities, as described above and facilitated by DDC, would also not result in prohibited corporate in-kind contributions under the Act.

The conclusion above should likewise extend to the free or discounted software and/or hardware provided by private sector entities, so long as it is under the nonpartisan control and direction of DDC, and in accordance with the pre-determined neutral and objective criteria described above.

³³ FEC Adv. Op. 2011-26 (Martin H. Freeman).

³⁴ FEC Adv. Op. 1996-02 (CompuServe).

³⁵ *Id.*

Although the Commission has reviewed numerous proposed and actual relationships between corporate vendors and political campaigns to determine whether they would or did result in a prohibited in-kind contribution to the campaigns, to our knowledge the Commission has not grappled with this fact pattern. However, it has addressed an analogous situation, in which it permitted the use of corporate funding for debates staged by nonprofit organizations.³⁶

In *Becker v. FEC* the Court held that FEC debate regulations allowing corporate funding of certain debate staging organizations reflected a permissible construction of the Act and were not inconsistent with the definitions of “contribution” and “expenditure” provided by the Act.³⁷

Just as nonpartisan debate staging organizations are permitted to accept corporate funding and support, so too should DDC be permitted to accept the support and specialized expertise of corporate sponsors and other private-sectors entities needed to successfully engage in this critical, nonpartisan project.

CONCLUSION

In conclusion, we respectfully submit that DDC’s proposed activities fall outside the scope of the Act and, therefore, would not result in prohibited corporate in-kind contributions to Eligible Committees.

We would be happy to provide any additional information you may request. We look forward to your response.

Very truly yours,



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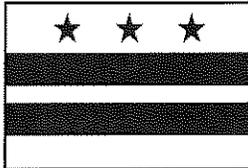
Counsel to Defending Digital Campaigns, Inc.

³⁶ See 11 C.F.R. § 110.13.

³⁷ *Becker v. Fed. Election Comm'n*, 230 F.3d 381, 394 (1st Cir. 2000), *cert. denied*, 532 U.S. 1007 (2001).

APPENDIX A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CORPORATIONS DIVISION



C E R T I F I C A T E

THIS IS TO CERTIFY that all applicable provisions of the District of Columbia Business Organizations Code have been complied with and accordingly, this **CERTIFICATE OF INCORPORATION** is hereby issued to:

Defending Digital Campaigns, Inc.

Effective Date: 7/31/2018

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed as of 7/31/2018 2:40 PM

Business and Professional Licensing Administration



A handwritten signature in cursive script that reads 'Patricia E. Grays'.

PATRICIA E. GRAYS
Superintendent of Corporations
Corporations Division

Muriel Bowser
Mayor

Tracking #: 4ZPoZYHM

JUL 31 2018

File Copy

ARTICLES OF INCORPORATION
of
DEFENDING DIGITAL CAMPAIGNS, INC.

TO: Department of Consumer and Regulatory Affairs
District of Columbia Government
Corporations Division

The undersigned, acting as the Incorporator of a nonprofit corporation under the provisions of the District of Columbia Business Organizations Code (D.C. Code, Title 29) (the "Act"), adopts the following Articles of Incorporation:

FIRST: The name of the Corporation is Defending Digital Campaigns, Inc. (the "Corporation").

SECOND: The Corporation is incorporated as a nonprofit corporation under D.C. Code, Title 29, Chapter 4.

THIRD: The period of the Corporation's duration is perpetual.

FOURTH: The Corporation is organized as a social welfare organization within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as now in effect or as hereafter may be amended (the "Code"). The purposes for which the Corporation is formed are to provide education and research for civic institutions on cybersecurity best practices and assist them in implementing technologies, processes, resources, and solutions for enhancing cybersecurity and resilience to hostile cyber acts targeting the domestic democratic process, and to engage in any lawful act or activity for which corporations may be organized under the Act. In furtherance thereof, the Corporation shall have all the general powers enumerated in Section 29-403.02 of the Act as now in effect or as may hereafter be amended, together with the power to solicit grants and contributions for such purposes, except as the same may be limited by Section 501(c)(4) of the Code.

FIFTH: The Corporation is not authorized to issue shares of stock.

SIXTH: The Corporation shall have no members.

SEVENTH: The powers of the Corporation shall be exercised, and its affairs conducted, by a board of directors of the Corporation (the "Board of Directors") who shall be elected by the existing Board of Directors in the manner provided for from time to time in the Bylaws of the Corporation. The number of directors may be increased or decreased pursuant to the Bylaws of the Corporation, but shall not be less than the minimum number of directors required by law.

EIGHTH: Provisions for the regulation of the internal affairs of the Corporation, including provisions for distribution of assets on dissolution or final liquidation are as follows:

A. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any director or officer of the Corporation or any other private individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of its purposes as described herein.

B. Notwithstanding any other provisions of these Articles of Incorporation, the Corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from Federal income taxation as a corporation described in Section 501(c)(4) of the Code, or cause it to lose such exempt status.

C. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements concerning), any political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of Section 501(c)(3) of the Code.

D. In the event of dissolution or final liquidation of the Corporation, the remaining assets of the Corporation shall, after paying or making provision for the payment of all of the liabilities and obligations of the Corporation, be distributed as the Board of Directors shall determine for one or more exempt purposes within the meaning of Section 501(c)(4) of the Code and in accordance with applicable law and regulations.

E. To the fullest extent permitted by the Act, as now in effect or as may hereafter be amended, no officer or director of the Corporation shall be personally liable to the Corporation for monetary damages for any breach of fiduciary duty as an officer or director of the Corporation; provided, however, that such relief from liability shall not apply in any instance where such relief is inconsistent with applicable law. Subject to the provisions of the Bylaws, the Corporation shall indemnify any officer, director, or agent of the Corporation to the fullest extent permitted by and in accordance with the Act.

NINTH: The address, including street and number, of the initial registered office of the Corporation is Corporation Service Company, and the name of its initial registered agent at such address is 1090 Vermont Avenue, N.W., Washington, DC 20005.

TENTH: The name and address of the incorporator are as follows:

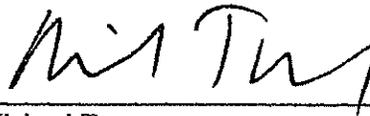
<i>Name</i>	<i>Address</i>
Michael Toner	Wiley Rein LLP 1776 K Street NW Washington, DC 20016

DATED: July 31, 2018

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
ARTICLES OF INCORPORATION
of
DEFENDING DIGITAL CAMPAIGNS, INC.**

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation as of the date set forth above.

A handwritten signature in black ink, appearing to read "Michael Toner", written over a horizontal line.

Michael Toner
Incorporator

APPENDIX B

ORGANIZATIONAL ACTION TAKEN BY WRITTEN CONSENT
of
THE BOARD OF DIRECTORS
of
DEFENDING DIGITAL CAMPAIGNS, INC.

The undersigned, being and constituting all of the members of the Board of Directors of Defending Digital Campaigns, Inc. (the "Corporation"), a District of Columbia nonprofit corporation, for purposes of taking action in lieu of an organizational meeting of the Board of Directors, pursuant to Section 29-402.05 of the District of Columbia Nonprofit Corporation Act of 2010, hereby adopt the following resolutions and waive all requirements of notice.

Adoption of Bylaws

WHEREAS, the Articles of Incorporation of the Corporation were filed with the Department of Consumer and Regulatory Affairs of the District of Columbia as of July 31, 2018; and

WHEREAS, the Bylaws of the Corporation, attached hereto as Exhibit A, have been presented to the Board of Directors of the Corporation (the "Board"), it hereby is:

RESOLVED, that the Bylaws are adopted in their entirety and ordered to be made a permanent part of the records of the Corporation.

Election of Officers

WHEREAS, the election of officers of the Corporation is to be undertaken by the Board as specified in the Bylaws, it hereby is:

RESOLVED, that the following persons are elected to the office set forth opposite their names until their respective successors are elected, or until their prior resignation or removal:

<i>Name of Officer</i>	<i>Corporate Office</i>
Robert Mook	President
Matthew Rhoades	Treasurer

Adoption of Governance Policies

WHEREAS, the Board has determined it is in the best interests of the Corporation to adopt certain governance policies,

WHEREAS, the Conflict of Interest Policy, Whistleblower Policy, Document Retention Policy, and Compensation Review Policy attached hereto as Exhibits B, C, D, and E were presented to the Board, it hereby is:

RESOLVED, that each of the Conflict of Interest Policy, Whistleblower Policy, and Document Retention Policy is hereby approved and adopted in its entirety, and ordered to be inserted in the minute book of the Corporation.

Other Organizational Actions

WHEREAS, the following organizational actions of the Corporation have been reviewed by the Board, and the Board deems it is advisable and in the best interests of the Corporation to take the following actions, it hereby is:

RESOLVED, that the officers of the Corporation shall make such filings and take such actions as may be necessary to cause the Corporation to make an election to be exempt from tax pursuant to Section 501(c)(4) of the Internal Revenue Code of 1986, as amended; and it is

FURTHER RESOLVED, that the accounting and tax year of the Corporation shall be the calendar year, unless otherwise determined by resolution of the Board at a later date pursuant to the provisions of the Bylaws; and it is

FURTHER RESOLVED, that the officers of the Corporation are hereby authorized to pay all fees and expenses incident to and necessary for the organization of the Corporation; and it is

FURTHER RESOLVED, that the President and Treasurer of the Corporation be, and are hereby authorized to open such bank accounts in the name of the Corporation in such bank or banks such officers shall determine necessary for the deposit of funds belonging to the Corporation, such funds to be withdrawn only by check of the Corporation and other orders for the payment of money drawn in the name of the Corporation when signed by an officer of the Corporation; and it is

FURTHER RESOLVED, that the officers of the Corporation are hereby authorized to exercise all such powers of the Corporation and take all such lawful acts that they deem necessary to implement the foregoing resolutions of the Corporation that are not by law, by the Certificate of Incorporation, or by the Bylaws of the Corporation reserved or required to be exercised or done by the Board of Directors; and it is

FURTHER RESOLVED, that all activities and actions taken and documents executed heretofore by any incorporator, director or officer of the Corporation in connection with the organization and operation of the Corporation are hereby ratified, confirmed and approved in all respects.

This action by written consent may be signed in any number of counterparts, all of which when taken together will constitute one and the same document.

Dated: August 1, 2018

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
ORGANIZATIONAL ACTION TAKEN BY WRITTEN CONSENT
of
THE BOARD OF DIRECTORS
of
DEFENDING DIGITAL CAMPAIGNS, INC.**

IN WITNESS WHEREOF, the undersigned have executed this Written Consent,
effective as of the date set forth above.



Robert Mook
Director

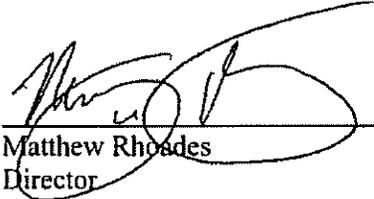
Matthew Rhoades
Director

Debora Plunkett
Director

**SIGNATURE PAGE TO
ORGANIZATIONAL ACTION TAKEN BY WRITTEN CONSENT
of
THE BOARD OF DIRECTORS
of
DEFENDING DIGITAL CAMPAIGNS, INC.**

IN WITNESS WHEREOF, the undersigned have executed this Written Consent,
effective as of the date set forth above.

Robert Mook
Director



Matthew Rhodes
Director

Debora Plunkett
Director

**SIGNATURE PAGE TO
ORGANIZATIONAL ACTION TAKEN BY WRITTEN CONSENT
of
THE BOARD OF DIRECTORS
of
DEFENDING DIGITAL CAMPAIGNS, INC.**

IN WITNESS WHEREOF, the undersigned have executed this Written Consent,
effective as of the date set forth above.

Robert Mook
Director

Matthew Rhoades
Director

Debra A. Plunkett
Debra Plunkett
Director

EXHIBIT INDEX

Exhibit A	Bylaws
Exhibit B	Conflict of Interest Policy
Exhibit C	Whistleblower Policy
Exhibit D	Document Retention Policy
Exhibit E	Compensation Review Policy

EXHIBIT A

Bylaws
(see attached)

BYLAWS
of
DEFENDING DIGITAL CAMPAIGNS, INC.

(formed under the District of Columbia
Nonprofit Corporation Act of 2010)

(adopted August 1, 2018)

ARTICLE I

Name and Location

Section 1.01 *Name*. The name of the corporation (the “Corporation”) is Defending Digital Campaigns, Inc.

Section 1.02 *Location*. The principal office of the Corporation shall be located at such location within or without the District of Columbia as the Board of Directors shall determine. The Corporation may maintain additional offices at such other places as the Board of Directors may determine from time to time.

Section 1.03 *Registered Office and Agent*. The Corporation shall continuously maintain a registered office and agent within the District of Columbia at such place as may be designated by the Board of Directors. The Corporation’s initial registered office and agent are set forth in the Articles of Incorporation.

ARTICLE II

Purposes

The Corporation is organized as a social welfare organization within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as now in effect or as hereafter may be amended. The purposes for which the Corporation is formed are to provide education and research for civic institutions on cybersecurity best practices and assist them in implementing technologies, processes, resources, and solutions for enhancing cybersecurity and resilience to hostile cyber acts targeting the domestic democratic process. In addition to the foregoing, the Corporation may carry on any other social welfare (within the meaning of Internal Revenue Code Section 501(c)(4)) activity which is consistent with the other provisions of these Bylaws and which may be lawfully carried on by a corporation organized under the District of Columbia Nonprofit Corporation Act of 2010. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements concerning), any political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of Section 501(c)(3) of the Code.

ARTICLE III

Board of Directors

Section 3.01 *Power of Board of Directors and Qualifications of Directors.* The business and affairs of the Corporation shall be managed by the Board of Directors.

Section 3.02 *Number of Directors.* The number of directors constituting the Board of Directors shall be no less than three (3), and the initial Board of Directors consists of the directors named in the Action by the Sole Incorporator dated July 31, 2018. The number of directors may be increased or otherwise amended from time to time by the Board of Directors.

Section 3.03 *Election of Directors.* The initial directors named by the action of the incorporator shall hold office until the next election of directors. Thereafter, directors shall be elected by the Board of Directors at the Board of Directors annual meeting subject to the term described herein.

Section 3.04 *Term of Directors.* The term of a Director shall be one year. Notwithstanding the foregoing, the term of any director shall not end until the date the term begins for any directors elected in his or her stead (or until the Board of Directors expressly votes to eliminate such director position).

Anyone elected to fill a vacancy for a Director, from whatever cause arising, shall serve only for the remainder of the term of the Director whose death, removal or resignation created the vacancy. Any new Director elected or appointed pursuant to Section 3.03 (not to fill a vacancy) at a time other than a Board of Directors annual meeting shall serve a term of one year or less commensurate with the term of the other Directors then elected.

Section 3.05 *Removal and Resignations.* A director may be removed with or without cause at any time by a majority vote of the Board of Directors. Any director may resign at any time upon written notice to the Board of Directors.

Section 3.06 *Vacancies.* Any vacancy occurring in the Board of Directors for any reason may be filled by the Board of Directors as specified in Sections 3.03 and 3.04.

Section 3.07 *Quorum of Board of Directors and Action of the Board of Directors.* Unless a greater proportion is required by law, the presence of a majority of the directors shall constitute a quorum for the transaction of business and, except as otherwise provided by law or by the Articles of Incorporation or these Bylaws, the majority vote of the directors present at the meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.10 *Meetings of the Board of Directors.* Annual or other meetings of the Board of Directors may be held at any time upon call of a majority of all directors or at least three (3) directors, whichever is fewer. A meeting of the Board of Directors may be held at such time and place within or without the District of Columbia as may be determined by the Board of Directors and shall be set forth in the notice for such meeting. Notice of all meetings shall be delivered in writing to all directors at least one (1) business day before such meeting. Such notice requirement may be waived in writing before, at or after such meeting and the participation of any director in any meeting, other than an appearance solely to object to the lack or form of notice, shall be deemed such a waiver. Notice of any meeting may be delivered personally, by facsimile or by electronic or regular mail.

Section 3.11 *Informal Action by the Board of Directors; Meetings by Telephone Conference.* Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all directors consent in writing thereto. The resolution and the written consents thereto by the directors shall be filed with the minutes of proceedings of the Board of Directors. Any one or more directors may participate in a meeting of the Board of Directors by means of telephone conference or similar communications equipment by means of which all persons participating in the meeting can communicate with one another. Participation in a meeting by such means shall constitute presence in person at the meeting.

Section 3.12 *Compensation of Directors.* The Corporation may not pay any compensation to directors for their services rendered as directors, but the Corporation may reimburse directors for expenses incurred in the performance of their duties to the Corporation. Directors may receive reasonable compensation for serving the Corporation in any other capacity, including without limitation as an officer of the Corporation.

ARTICLE IV

Committees

Section 4.01 *Board Committees.* The Board of Directors, by resolution passed by a majority of the directors, may designate one or more committees, each of which shall consist of two or more directors only, which committees, to the extent provided in such resolution, shall have and may exercise the authority of the Board of Directors in the management of the Corporation. Each such committee and each member thereof shall serve at the pleasure of the Board of Directors. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty under law to the Corporation. The proceedings and meetings of any such committee shall be governed by the rules for meetings of the Board of Directors.

Section 4.02 *Advisory Committee.* The Advisory Committee shall serve as an advisory body to the Board of Directors and the Corporation's officers, and shall be composed of persons who are knowledgeable about cybersecurity and election processes, and are supportive of the Corporation's mission and programs. The Advisory Committee is invited and encouraged to offer advice and guidance as to the policies and activities of the Corporation. The Advisory Committee shall not have or purport to exercise any powers of the Board of Directors nor shall it have the power to bind the Corporation in any manner. Members of the Advisory Committee shall be appointed by the Board of Directors.

ARTICLE V

Officers and Agents

Section 5.01 *Officers.* The Board of Directors shall elect a President and Treasurer, and it may also elect one or more other officers and may give any of them such further designation or alternate titles as it considers desirable. Any two or more offices may be held by the same person.

Section 5.02 *Election and Term of Office.* Each officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified or until his earlier death, resignation or removal.

Section 5.03 *Removal and Resignations.* The Board of Directors may remove any officer at any time with or without cause. Any officer may resign at any time by giving written notice to the Board of Directors. Any resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective.

Section 5.04 *Vacancies.* Any vacancy in any office may be filled by the Board of Directors. An officer appointed or elected to fill a vacancy shall hold office for the unexpired term of his predecessor in office, and until his successor is elected and qualified, or until his earlier death, resignation or removal.

Section 5.05 *Powers and Duties of Officers.* Subject to the control of the Board of Directors, all officers as between themselves and the Corporation shall have such authority and perform such duties in the management of the Corporation as may be provided by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices.

President. The President shall preside at meetings of the Board of Directors unless otherwise designated by the Board and shall serve as the chief executive officer of the Corporation. The President shall supervise and control all of the affairs of the Corporation in accordance with policies and directives approved by the Board of Directors. The President shall be a designated agent of the Corporation for the purpose of signing all Corporation documents. The President shall also be responsible for the keeping of an accurate record of the proceedings of all meetings of the Board of Directors, and shall give or cause to be given all notices in accordance with these Bylaws or as required by law.

Treasurer. The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Corporation. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all monies and other valuable property of the Corporation in the name and to the credit of the Corporation in such banks or depositories, as the Board of Directors may designate, within 10 days of receipt by the Corporation. Whenever required by the Board of Directors, the Treasurer shall render a statement of accounts. The Treasurer shall at all reasonable times exhibit the books and accounts to any officer or director of the Corporation, and shall perform all other duties incident to the office of Treasurer. The Treasurer shall be a designated agent of the Corporation for the purpose of signing all Corporation documents.

Section 5.06 *Agents and Employees.* The Board of Directors may appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the Board of Directors. The Board of Directors may remove any agent or employee at any time with or without cause. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights.

Section 5.07 *Compensation of Officers, Agents, and Employees.* The Corporation may pay compensation to officers for services rendered to the Corporation in their capacity as officers, and officers may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by a majority of the Board of Directors. The Corporation may pay compensation in reasonable amounts to agents and employees for services rendered, such amounts to be fixed by the Board of Directors or, if the Board of Directors delegates power to any officer or officers, then by such officer or officers.

ARTICLE VI

Miscellaneous

Section 6.01 *Prohibited Activities.*

(a) *Actions Jeopardizing Tax Status.* This Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxes under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United State internal revenue law.

(b) *Private Inurement.* No part of the net income or net assets of the Corporation shall inure to the benefit of, or be distributable to, its directors, officers, members or other private persons. However, the Corporation is authorized to pay reasonable compensation for services actually rendered and to make payments and distributions in furtherance of its tax-exempt purposes

Section 6.02 *Fiscal Year.* The fiscal year of the Corporation shall be the calendar year, or such other period as may be fixed by the Board of Directors.

Section 6.03 *Checks, Notes, Contributions, Contracts.* The Board of Directors shall determine who shall be authorized from time to time on the Corporation's behalf to (a) sign checks, drafts, or other orders for payment of money; (b) to sign acceptances, notes, or other evidences of indebtedness; (c) to enter into contracts; or (d) to execute and deliver other documents and instruments.

Section 6.04 *Books and Records.* The Corporation shall keep correct and complete books and records of account, the activities and transactions of the Corporation, minutes of the proceedings of the Board of Directors and any committee of the Corporation, and a current list of the directors and officers of the Corporation.

Section 6.05 *Amendment of Articles of Incorporation and Bylaws.* The Articles of Incorporation and these Bylaws of the Corporation may be adopted, amended, or repealed in whole or in part by action of a majority of the Board of Directors.

Section 6.06 *Financial Statements and Reports.* An independent auditor appointed or approved by the Board shall at such times, if and as the Board determines, prepare for the Corporation as a whole a consolidated financial statement, including a statement of combined capital assets and liabilities, a statement of revenues, expenses and distributions, a list of projects and/or organizations to or for which funds were used or distributed, and such other additional reports or information as may be ordered from time to time by the Board. The auditor may also

prepare such financial data as may be necessary for returns or reports required by the state or federal government to be filed by the Corporation. The auditor's charges and expenses shall be proper expenses of administration.

Section 6.07 Indemnification and Insurance. The Corporation shall indemnify any director, officer, employee or agent, any former director, officer, employee or agent against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative, or investigative) to which he may be or is made a party by reason of being or having been such director, officer, employee or agent if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation. However, there shall be no indemnification in respect of any claim, issue or matter as to which he shall have been adjudged to be liable to the Corporation for damages arising out of his gross negligence or willful misconduct.

The Corporation may advance expenses to, or where appropriate may itself, at its expense, undertake the defense of, any director, officer, employee or agent; provided that such director, officer, employee or agent shall undertake to repay such expense if it should be ultimately determined that he is not entitled to indemnification under this Section.

The indemnification and advancement of expenses provided by this Section shall not be deemed exclusive of any other rights to which such director, officer, employee or agent may be entitled under any statute, Bylaw, agreement, vote of disinterested directors or otherwise, and shall not restrict the power of the Corporation to make any indemnification permitted by law.

The Board of Directors may authorize the purchase of insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, against any liability asserted against or incurred by him in any such capacity, or which arises out of such person's status as a director, officer, employee, or agent whether or not the Corporation would have the power to indemnify such person against that liability under law.

The rights to indemnification set forth in this Section are expressly conditioned upon such rights not violating the Corporation's status as a tax-exempt organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, as amended.

If any part of this Section shall be found invalid or ineffective, the validity and effectiveness of the remaining parts shall not be affected thereby.

Section 6.08 Dissolution. The Corporation may be dissolved at any time by majority vote of the directors then in office. Upon the dissolution or winding up of the Corporation, or in the event it shall cease to engage in carrying out the purposes and goals set forth in these Bylaws, all of the business, properties, assets and income of the Corporation remaining after payment, or provision for payment, of all debts and liabilities of this Corporation, shall be distributed as the Board of Directors shall determine for one or more exempt purposes within the meaning of Sections 501(c)(4) of the Internal Revenue Code of 1986, as amended, and in accordance with applicable law and regulations

EXHIBIT B

Conflict of Interest Policy
(see attached)

DEFENDING DIGITAL CAMPAIGNS, INC.
(the "Organization")

Conflict of Interest Policy

I. Purpose

The purpose of this conflict of interest policy is to protect the Organization's interests as a tax-exempt, nonprofit and social welfare organization when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might possibly result in an excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit organizations.

II. Definitions

- A. Interested Person** – Any director, principal officer, or member of a committee with board of directors delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
- B. Financial Interest** – A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
1. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement;
 2. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement;
or
 3. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Section III(B), a person who has a financial interest may have a conflict of interest only if the board of directors or committee with board of directors delegated powers decides that a conflict of interest exists.

III. Procedures

- A. Duty to Disclose** – In connection with any actual or possible conflict of interest, an interested person must disclose on an ongoing basis the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with board of directors delegated powers considering the proposed transaction or arrangement.

B. Determining Whether a Conflict of Interest Exists – After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the board of directors or committee with board of directors delegated powers meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

C. Procedures for Addressing the Conflict of Interest

1. An interested person may make a presentation at the board of directors or committee with board of directors-delegated powers meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
2. The President of the Organization or chairperson of the committee with board of directors-delegated powers shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
3. After exercising due diligence, the board of directors or committee with board of directors delegated powers shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
4. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the board of directors or committee with board of directors delegated powers shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

D. Violations of the Conflict of Interest Policy

1. If the board of directors or committee with board of directors-delegated powers has reasonable cause to believe a member has failed to disclose an actual or possible conflict of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
2. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the board of directors or committee with board of directors delegated powers determines the

member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

IV. Records of Proceedings

The minutes of the board of directors and all committees with board of directors-delegated powers shall contain:

- A. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the decision of the board of directors or committee with board of directors delegated powers as to whether a conflict of interest in fact existed; and
- B. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion (including any alternatives to the proposed transaction or arrangement), and a record of any votes taken in connection with the proceedings.

V. Compensation

- A. A director who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that director's compensation.
- B. A voting member of any committee with board of directors-delegated powers whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- C. No director or voting member of any committee with board of directors delegated-powers whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any such committee regarding compensation.

VI. Annual Statements

Each director, principal officer, and member of a committee with board of directors-delegated powers shall annually sign a statement which affirms such person:

- A. Has received a copy of the conflict of interest policy;
- B. Has read and understands the policy;
- C. Has agreed to comply with the policy; and

- D.** Understands the Organization is a nonprofit, social welfare organization and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

VII. Periodic Reviews

To ensure the Organization operates in a manner consistent with its social welfare purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- i.** Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining; and
- ii.** Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further the social welfare purposes of the Organization and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

VIII. Use of Outside Experts

When conducting the periodic reviews pursuant to Section VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the board of directors of its responsibility for ensuring periodic reviews are conducted.

EXHIBIT C

Whistleblower Policy
(see attached)

DEFENDING DIGITAL CAMPAIGNS, INC.

Whistleblower Policy

This Whistleblower Policy (1) encourages Defending Digital Campaigns, Inc. (the “Corporation”) staff and volunteers to come forward with information on possible illegal practices or serious violations of adopted policies of the Corporation; (2) specifies that the Corporation will protect any such person from retaliation; and (3) identifies where and how such information can be reported.

- 1. Encouragement of Reporting.** The Corporation encourages complaints, reports, or inquiries about possible illegal practices or serious violations of the Corporation’s policies, including illegal or improper conduct by the Corporation itself, by its leadership, or by others on its behalf. Appropriate subjects to raise under this policy would include financial improprieties, accounting or audit matters, ethical violations, or other similar illegal or improper practices.
- 2. Protection from Retaliation.** The Corporation prohibits retaliation by or on behalf of the organization against staff or volunteers who make good-faith complaints, reports, or inquiries under this policy or who participate in a review or investigation under this policy. This protection extends to those whose allegations are made in good faith but prove to be mistaken. The Corporation reserves the right to discipline persons who make bad faith, knowingly false, or vexatious complaints, reports, or inquiries or who otherwise abuse this policy.
- 3. Where to Report.** Complaints, reports, or inquiries may be made under this policy on a confidential or anonymous basis. Complaints should describe in detail the specific facts demonstrating the bases for the complaints, reports, or inquiries. Complaints may be directed to the Corporation’s President; if this person is implicated in the complaint, report, or inquiry, then it should be directed to any other member of the Corporation’s board of directors. The Corporation will conduct a prompt, discreet, and objective review or investigation. Staff or volunteers must recognize that the Corporation may be unable to fully evaluate a vague or general complaint, report, or inquiry that is made anonymously.

EXHIBIT D

Document Retention Policy
(see attached)

DEFENDING DIGITAL CAMPAIGNS, INC.

Document Retention and Destruction Policy

This Document Retention and Destruction Policy identifies the record retention responsibilities of directors, officers, staff, volunteers, and outside agents and vendors of Defending Digital Campaigns, Inc. (the "Corporation") for maintaining and documenting the storage and destruction of the Corporation's paper and electronic documents and records.

1. **Rules.** The Corporation's directors, officers, staff, consultants, vendors, and volunteers are required to honor the following rules:
 - a. All documents or records containing information concerning the Corporation should be closely guarded and considered as containing confidential information not to be disseminated or distributed outside of the Corporation.
 - b. No paper or electronic documents will be destroyed or deleted if pertinent to any ongoing or anticipated government investigation or proceeding or any civil or criminal judicial proceeding.
 - c. Paper or electronic documents listed for retention below will be transferred and maintained by the President or his designee.
 - d. All other paper documents that do not fall under the retention schedule below will be destroyed after three years.
 - e. All other electronic documents that are not currently being used and do not fall under the retention schedule below will be deleted from all individual computers, databases, networks, and back-up storage after one year.
2. **Retain Permanently**
 - a. **Governance records** – Articles of Incorporation and Bylaws, and any amendments thereto, other organizational documents, governing board and committee written consents and minutes.
 - b. **Tax records** – Filed federal and state tax returns/reports and supporting records, application for tax exemption, tax exemption determination letter and related correspondence, and any files related to tax audits.
 - c. **Intellectual property records** – Copyright and trademark registrations and samples of protected works.
 - d. **Audit and Financial Records** – Audited financial statements, attorney contingent liability letters.

- e. **Pension and benefit records** – Pension (ERISA) plan participant/beneficiary records, actuarial reports, related correspondence with government agencies, and supporting records.
- f. **Insurance records** – Expired insurance policies, insurance records, accident reports, claims, etc.

3. Retain for 10 Years

- a. **Government relations records** – Federal and state lobbying and political contribution reports and supporting records.

3. Retain for 7 Years

- a. **Employment Records/Personnel Files** – Employee names, addresses, social security numbers, dates of birth, INS Form 1-9, resume/application materials, job descriptions, dates of hire and termination/separation, employment agreements, evaluations, compensation information, promotions, transfers, disciplinary matters, time/payroll records, leave/comp time/FMLA, engagement and discharge correspondence, documentation of basis for independent contractor status, independent contractor agreements (retain for all current employees and independent contractors and for seven years after the departure of each individual).

4. Retain for 3 Years

- a. **Employment Applications** – Resume/application materials for individuals who did not become employees.
- b. **Lease, Contract, and License Records** – Software license agreements, vendor, hotel, and service agreements, consultant agreements, and all other agreements (retain during the term of the agreement and for three years after the termination, expiration, or non-renewal of each agreement).
- c. **Banking Records** – Bank reconciliations, bank statements, deposit slips, checks.

5. Retain for 1 Year

All other pertinent electronic records, documents, and files, such as correspondence files, publications, survey information.

6. Exceptions

Any exceptions to these rules and the terms for retention may be granted only by the Corporation's President or Board of Directors in writing.

EXHIBIT E

Compensation Review Policy
(see attached)

DEFENDING DIGITAL CAMPAIGNS, INC.
(the "Organization")

Compensation Review Policy

This Compensation Review Policy applies to the Organization's Chief Employed Executive, Officers, Key Employees, and Disqualified Persons. The purpose of this policy is to ensure the Organization does not engage in any "excess benefit transaction" as defined in Section 4958 of the Internal Revenue Code ("I.R.C.") and regulations promulgated thereunder.¹

1. Definitions

- a. **Chief Employed Executive** – The chief executive officer, executive director, or top management official (i.e., the employee who has ultimate responsibility for implementing the decisions of the Organization's governing body or for supervising the management, administration, or operations of the Organization).
- b. **Officer** – A person elected or appointed to manage the Organization's daily operations, such as a president, vice president, secretary, or treasurer. The officers of the Organization are determined by reference to its organizing document, bylaws, or resolutions of its governing body, or as otherwise designated consistent with state law, but at a minimum include those officers required by applicable law. The Organization's top management official and top financial official (the person who has ultimate responsibility for managing the Organization's finances) are included as officers.
- c. **Key Employee** – An employee of the Organization who meets all three of the following tests: (a) *\$100,000 Test* – receives reportable compensation from the Organization and all related organizations in excess of \$100,000 for the year; (b) *Responsibility Test* – the employee (i) has responsibility, powers, or influence over the Organization as a whole that is similar to those of officers, directors, or trustees, (ii) manages a discrete segment or activity of the Organization that represents 10% or more of its activities, assets, income, or expenses of the Organization, as compared to the Organization as a whole, or (iii) has or shares authority to control or determine 10% or more of the Organization's capital expenditures, operating budget, or compensation for employees; and (c) *Top 20 Test* – is one of the 20 employees (that satisfy the \$100,000 Test and Responsibility Test) with the highest reportable compensation from the Organization and related organizations for the year.
- d. **Disqualified Person** – Any person (including any management company or entity acting as a consultant or independent contractor) in a position to exercise substantial influence over the affairs of the organization. To be a disqualified person, it is not necessary that the person *actually* exercise substantial influence,

¹ See *An Introduction to I.R.C. 4958 (Intermediate Sanctions)* by Lawrence M. Brauer, Toussaint T. Tyson, Leonard J. Henzke and Debra J. Kawecki, (2002 EO CPE Text, page 259) (the "Introduction to I.R.C. 4958").

only that the person *be in a position to* exercise substantial influence. (See Treas. Reg. 53.4958-3T).

2. Compensation Review Process

- a. Review and Approval.** The compensation of the Chief Employed Executive and each Officer, Key Employee or Disqualified Person shall be reviewed and approved by the board of directors or compensation committee of the Organization, provided that directors or other persons with conflicts of interest with respect to the compensation arrangement at issue shall not be involved in this review and approval.
- b. Use of Comparable Compensation Data.** The compensation of the Chief Employed Executive and each Officer, Key Employee or Disqualified Person shall be reviewed and approved using data as to comparable compensation for similarly qualified persons in functionally comparable positions at similarly situated organizations.
- c. Contemporaneous Documentation and Recordkeeping.** There shall be contemporaneous documentation and recordkeeping with respect to the deliberations and decisions regarding the compensation arrangement. The board of directors or compensation committee evaluating such compensation arrangement may, but shall not be required, to use the “Rebuttable Presumption Checklist” or other tools set forth in the Introduction to I.R.C. 4958.