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**FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT**

MUR: 6962
DATE COMPLAINT FILED: September 3, 2015
DATE OF NOTIFICATION: September 16, 2015
LAST RESPONSE RECEIVED: January 4, 2017
DATE ACTIVATED: September 20, 2016

EXPIRATION OF SOL: June 13, 2020
ELECTION CYCLE: 2016

COMPLAINANTS:

Stop Hillary PAC
Dan Backer

RESPONDENTS:

Hillary for America and Jose Villarreal in his
official capacity as treasurer
Hillary Rodham Clinton
Molly Barker
Project Veritas Action Fund
James O'Keefe
Laura Loomer
Unknown Respondent

**RELEVANT STATUTE AND
REGULATION:**

52 U.S.C. § 30121(a), (b)
52 U.S.C. § 30122
11 C.F.R. § 110.4(b)(iv)
11 C.F.R. § 110.20(a), (b), (g), (h)(1)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

MUR: 6982
DATE COMPLAINT FILED: November 10, 2015
DATE OF NOTIFICATION: November 17, 2015
LAST RESPONSE RECEIVED: November 9, 2016
DATE ACTIVATED: September 20, 2016

EXPIRATION OF SOL: September 1, 2020
ELECTION CYCLE: 2016

COMPLAINANTS:

American Democracy Legal Fund
Brad Woodhouse

RESPONDENTS:

Project Veritas

Project Veritas Action Fund
James O'Keefe
Laura Loomer
Unknown Respondent
Hillary for America and Jose Villarreal in his
official capacity as treasurer
Hillary Rodham Clinton
Molly Barker

**RELEVANT STATUTE AND
REGULATION:**

52 U.S.C. § 30121(a), (b)
52 U.S.C. § 30122
11 C.F.R. § 110.4(b)(i), (ii), (iii), (iv)
11 C.F.R. § 110.20(a), (b), (g), (h)(1)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaints relate to a Project Veritas Action Fund's¹ ("PVA") employee's purchase of campaign merchandise at a Hillary Clinton campaign rally with funds allegedly provided by a Canadian citizen. The Complaint in MUR 6962 alleges that Hillary Clinton, her authorized campaign committee, and the campaign's Director of Marketing, Molly Barker, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by soliciting and receiving a contribution from a foreign national through a conduit donor. The Complaint in MUR 6982 alleges that PVA and its President James O'Keefe violated the Act by

¹ Project Veritas is a 501(c)(3) entity with the self-described purpose to "[i]nvestigate and expose corruption, dishonesty, self-dealing, waste, fraud, and other misconduct in both public and private institutions." *See About, PROJECT VERITAS*, <http://projectveritas.com/about/> (last visited Jan. 17, 2017). The Complaint in 6982 only alleges violations of the Act by Project Veritas, O'Keefe, and Loomer. In its Response, Project Veritas argued, among other things, that it was improperly named as a Respondent, and Project Veritas Action Fund ("PVA"), a separate 501(c)(4) entity, should be substituted. Project Veritas Resp. at 1-2 (Dec. 3, 2015). PVA was then provided notice and an opportunity to respond to the Complaint. Although the entities are related, based on their representations and a full review of the available facts, it appears that PVA, not Project Veritas, is the entity involved in the activity at issue.

1 assisting in the making of a contribution from a foreign national and by acting as a conduit for
2 the foreign national contribution to the Committee.

3 Based on the available information, we recommend that the Commission find no reason
4 to believe that Hillary Clinton, James O'Keefe, or Project Veritas violated the Act and exercise
5 its prosecutorial discretion to dismiss the allegations against the remaining Respondents, and
6 close the files.

7 **II. FACTUAL BACKGROUND**

8 On April 12, 2015, Hillary Clinton declared her candidacy for President. Clinton
9 designated Hillary for America as her authorized campaign committee and Jose Villarreal as its
10 treasurer ("the Committee"). On June 13, 2015, Clinton held a campaign launch rally on
11 Roosevelt Island in New York City. At the rally, the Committee had a booth where attendees
12 could make campaign contributions by purchasing Hillary Clinton merchandise including hats,
13 shirts, pins, and stickers. The booth was manned by employees of Clinton's authorized
14 campaign committee, Hillary for America, including Compliance Manager Erin Tibe and
15 Director of Marketing Molly Barker.

16 The basis of the two complaints is a YouTube video posted by PVA showing discussions
17 between the Clinton campaign employees, a PVA employee, Laura Loomer,² and a self-
18 identified Canadian citizen regarding whether foreign nationals were permitted to purchase
19 campaign merchandise.³ The identity of the Canadian donor is unknown.

² Project Veritas Action Fund Resp. (MUR 6982) at 1 (Nov. 9, 2016). Loomer was initially noticed as an unknown respondent, but was identified in PVA's Response.

³ Complaint at note 3, citing Project Veritas Action, *HIDDEN CAM: Hillary's National Marketing Director Illegally Accepting Foreign Contribution*, YOUTUBE (Sept. 1, 2015), <https://www.youtube.com/watch?v=qxF7Z2N7Y4> [hereinafter *Video*].

1 The relevant events in the video began as Loomer stood in line to purchase Hillary
2 Clinton merchandise and met an individual who identified herself as a Canadian national
3 residing in Montreal.⁴ As the two approached the front of the line, the Canadian national
4 identified herself as such to Barker.⁵ Barker summoned another Committee staffer, identified in
5 the video as Tibe, who stated that the Committee could not accept a donation from the Canadian
6 national unless she had a U.S. Passport or Green Card.⁶ Loomer then encouraged the Committee
7 to accept the donation from the Canadian national, stating, "She drove all the way from Canada
8 to support Hillary, you could give her, she's paying cash."⁷ Tibe apologized and explained it
9 was not the Committee's prohibition, but instead Commission rules that prohibit foreign
10 contributions.⁸

11 The Canadian national next asked whether she could give the money to Loomer and have
12 Loomer make the contribution for her.⁹ Barker responded, "She [Loomer] could make a
13 donation."¹⁰ The Canadian national then asked Loomer, "Can you buy it for me?" Loomer
14 agreed, responding, "Sure, I'll buy it."¹¹ It is not clear from the video whether Barker heard this
15 exchange. Loomer then asked Barker, "So Canadians can't buy them, but Americans can buy it

⁴ Video, *supra* note 3. Although the video is narrated by O'Keefe, this summary of events is based on the actions and statements depicted in the video and not on O'Keefe's narration.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

1 for them?"¹² Barker responded, "Not technically, you would just be making the donation."¹³ At
2 that point it appears, although the order of events is unclear from the video, that Loomer received
3 money from the Canadian national, made the donation to the Committee in her own name in
4 exchange for Committee merchandise, and gave some of the merchandise to the Canadian
5 national. The total contribution from Loomer was \$75, with \$35 or \$45 coming from the
6 Canadian national.¹⁴

7 The Complaint in MUR 6962 alleges that the Committee and Barker violated the Act and
8 Commission regulations by accepting a contribution from a known foreign national. The
9 Committee argues that Barker made a good faith effort to comply with the law and resisted
10 multiple requests to accept a contribution from the Canadian national, asserting that Barker was
11 unaware of the exchange of money between Loomer and the Canadian national and therefore she
12 could not have knowingly violated the Act.¹⁵

13 The Complaint in MUR 6982 alleges that PVA and Loomer violated the Act by soliciting
14 or providing substantial assistance to a foreign national in the making of a contribution to the
15 Committee from an individual she knew was a foreign national and by making a contribution in
16 the name of another. With respect to Loomer's assistance to the Canadian national, PVA argues
17 that it is not clear that the individual is a foreign national.¹⁶ PVA further argues that no violation
18 of the prohibition against making a contribution in the name of another occurred because the

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*; Hillary for America Resp. at 1 (Nov. 5, 2015); Project Veritas Resp. at 2 (Dec. 2, 2015); Project Veritas Action Fund Resp. at 3.

¹⁵ Hillary for America Resp. at 2-3.

¹⁶ *Id.* at 3.

1 total contribution was less than \$200 and therefore did not have to be reported by the
2 Committee.¹⁷ Finally, PVA argues that any violations on its part are *de minimis* and should be
3 dismissed.¹⁸ Neither Complaint alleges that Clinton or O'Keefe had any direct involvement with
4 or personal knowledge of the transaction in question.

5 III. LEGAL ANALYSIS

6 The Act and Commission regulations prohibit a foreign national from making a
7 contribution—directly or indirectly through any other person—in connection with an election to
8 any political office.¹⁹ A “foreign national” is an individual who is not a citizen of the United
9 States or a national of the United States and who is not lawfully admitted for permanent
10 residence.²⁰ A contribution is defined as “any gift, subscription, loan, advance, or deposit of
11 money or anything of value made by any person for the purpose of influencing any election for
12 Federal office.”²¹ Purchasing campaign merchandise from a committee qualifies as a
13 contribution.²²

14 Similarly, individuals are prohibited from knowingly soliciting, accepting, or receiving a
15 contribution from a foreign national.²³ “Knowingly” is defined in the regulations, and includes

¹⁷ Project Veritas Action Fund Resp. at 3.

¹⁸ *Id.*

¹⁹ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

²⁰ 52 U.S.C. § 30121(b).

²¹ *Id.* § 30101(8)(A).

²² See, e.g., *Citizens' Guide*, FED. ELECTION COMM'N, <http://www.fec.gov/pages/brochures/citizens.shtml> (last visited Oct. 11, 2016) (“[I]f you pay \$15 for a T-shirt sold by a campaign, your contribution amounts to \$15....”).

²³ 11 C.F.R. § 110.20(g). It is also a violation of Commission regulations to “knowingly provide substantial assistance in the solicitation, making, acceptance, or receipt of” a foreign national contribution. *Id.* § 110.20(h).

1 having actual knowledge, being aware of facts that would lead a reasonable person to conclude
2 that there is a substantial probability that the funds are from a foreign national, or being aware of
3 facts that would lead a reasonable person to inquire whether the funds came from a foreign
4 national.²⁴

5 The Act and Commission regulations also prohibit making and knowingly accepting
6 contributions in the name of another person.²⁵ It is a violation of Commission regulations to
7 “[k]nowingly help or assist any person in making a contribution in the name of another.”²⁶

8 Based on a review of the footage, it appears that Loomer violated the Act by knowingly
9 providing substantial assistance to a foreign national in making a contribution. Loomer knew the
10 Canadian was a foreign national based on their interactions depicted in the video.²⁷ Loomer also
11 knew, based on the conversation with Tibe, that the Committee was prohibited from accepting
12 contributions from foreign nationals. Despite this knowledge, it appears Loomer accepted
13 money from the Canadian national and used it to purchase campaign merchandise.²⁸ But for
14 Loomer’s assistance, the Canadian national could not have made a contribution to the
15 Committee.

16 The same analysis supports a finding that Loomer violated the Act by serving as the
17 conduit for the Canadian national’s contribution. By assisting the Canadian national in the

²⁴ *Id.* § 110.20(a)(4).

²⁵ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(i), (iv).

²⁶ 11 C.F.R. § 110.4(b)(iii).

²⁷ PVA argues that it cannot be certain the individual was actually a foreign national, however, neither it nor the Committee dispute that the individual presented herself as a Canadian citizen.

²⁸ Although it alludes to the transaction, the video does not show Loomer and the Canadian national exchange money, leaving open the possibility that Loomer used her own money to make the contribution and gifted the merchandise to the Canadian. The Responses, however, concede that Loomer took money from the Canadian.

1 making of a contribution in the name of another person, Loomer violated the Act. PVA's
2 argument that there was no violation because the contribution did not have to be reported is
3 contrary to common sense and Commission regulations. Under PVA's theory, an individual
4 would be allowed to make unlimited contributions in the name of another person so long as they
5 were below the reporting threshold of \$200. There is no minimum threshold for a violation of
6 the conduit-donor prohibition.²⁹

7 Barker and the Committee may also have violated the Act by accepting a foreign national
8 contribution because, based on the facts available to them, a reasonable person might have
9 inquired as to the source of the funds Loomer used to make a contribution. Although it is not
10 clear from the video which portions, if any, of the conversation between Loomer and the
11 Canadian national she overheard, Barker's statements and actions suggest she may have been
12 aware of sufficient facts to satisfy the "knowingly" standard.³⁰ Specifically, Barker was told the
13 Canadian national did not have a U.S. Passport or Green Card, she asked Tibe whether the
14 Committee could accept a contribution from the Canadian national, and she was asked by
15 Loomer whether an American could make a contribution on behalf of a foreign national.
16 Moreover, the conversation between Loomer and the Canadian national arranging the transfer of
17 money took place in close proximity to Barker. Based on these facts and circumstances, Barker
18 and the Committee may have violated the prohibition against knowingly accepting foreign
19 national contributions.

²⁹ See 11 C.F.R. § 110.4.

³⁰ The Committee specifically denies that Barker had any knowledge that the purchase was partially funded by the Canadian national. Hillary for America Resp. at 3.

1 Again, the same analysis suggests that Barker and the Committee may have violated the
2 Act by accepting a contribution in the name of another. Although it is unclear what, if anything,
3 Barker overheard, it is possible that she accepted the contribution from Loomer with knowledge
4 that at least a portion of it originated from the Canadian national. This would be a violation of
5 the Act.

6 Finally, although not specifically discussed in either Complaint, it is clear from the video
7 that the Canadian national violated the Act by indirectly making a contribution to the Committee.
8 Taking the individual at her word that she is a Canadian citizen, she violated the prohibition on
9 foreign national contributions by making the contribution to the Committee by giving money to
10 Loomer to purchase campaign merchandise on her behalf.

11 IV. CONCLUSION

12 There is no information available to suggest Clinton or O'Keefe were in any way
13 involved with or aware of the transaction giving rise to these matters. Accordingly, we
14 recommend that the Commission find no reason to believe that Clinton or O'Keefe violated the
15 Act. Additionally, based on its representations that it is not the proper respondent in this matter
16 and a full review of the available information, we recommend that the Commission find no
17 reason to believe that Project Veritas violated the Act.

18 The available information indicates that the remaining Respondents violated or may have
19 violated the Act's prohibition against making and accepting foreign national contributions and
20 making and receiving contributions in the name of another. Nevertheless, the facts in these
21 matters support dismissing the Complaints as a matter of prosecutorial discretion because the
22 potential amount in violation (between \$35 and \$45) is very small.

23 Recommending dismissal in the present matters is in line with our recommendations in

1 similar past matters. For instance, MURs 6931 and 6933 (Laffen 4 Senate, *et al.*) involved
2 allegations of impermissible foreign national contributions totaling \$4,445.42 to a state senator's
3 committee and \$2,500 to a governor's committee.³¹ The complaints were dismissed through the
4 Commission's Enforcement Priority System.³² Similarly, in MUR 6976 (Streets, *et al.*), we
5 recommended dismissing allegations of a \$3,000 impermissible foreign national contribution
6 based on the small amount of the contribution.³³ The amount of the contribution in the present
7 matters is significantly smaller than those in Laffen and Streets.

8 Based on these circumstances, the Office of General Counsel recommends that the
9 Commission exercise its prosecutorial discretion and dismiss the allegations that the remaining
10 Respondents violated the Act.³⁴

11 V. RECOMMENDATIONS

- 12 1. Dismiss the allegations that Hillary for America and Jose Villarreal in his official
13 capacity as treasurer and Molly Barker violated 52 U.S.C. § 30121(a)(2), 52 U.S.C.
14 § 30122, 11 C.F.R. § 110.4(b)(iv), and 11 C.F.R. § 110.20(g);
- 15 2. Find no reason to believe that Hillary Rodham Clinton violated 52 U.S.C.
16 § 30121(a)(2), 52 U.S.C. § 30122, 11 C.F.R. § 110.4(b)(iv), and 11 C.F.R.
17 § 110.20(g);
- 18 3. Dismiss the allegations that Project Veritas Action Fund and Loomer violated 52
19 U.S.C. § 30121(a)(2), 52 U.S.C. § 30122, 11 C.F.R. § 110.4(b)(i), (ii), and (iii), and
20 11 C.F.R. § 110.20(g);
- 21 4. Find no reason to believe that Project Veritas and James O'Keefe violated 52
22 U.S.C. § 30121(a)(2), 52 U.S.C. § 30122, 11 C.F.R. § 110.4(b)(i), (ii), and (iii), and
23
24
25

³¹ See Factual & Legal Analysis (Laffen) at 3, MURs 6931 and 6933 (Laffen 4 Senate, *et al.*); Factual & Legal Analysis (Dalrymple) at 3, MUR 6931 (Laffen 4 Senate, *et al.*).

³² Factual & Legal Analysis (Laffen) at 3, MURs 6931 and 6933 (Laffen 4 Senate, *et al.*); Factual & Legal Analysis (Dalrymple) at 3, MUR 6931 (Laffen 4 Senate, *et al.*).

³³ First Gen. Counsel's Rpt. at 7, MUR 6976 (Streets, *et al.*).

³⁴ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 11 C.F.R. § 110.20(g);
2

3 5. Dismiss the allegations that the Unknown Respondent violated 52 U.S.C.
4 § 30121(a)(1)(A), 52 U.S.C. § 30122, 11 C.F.R. § 110.4(b)(i), and 11 C.F.R.
5 § 110.20(b);
6

7 6. Approve the attached Factual and Legal Analysis;

8 7. Approve the appropriate letters; and

9 8. Close the files.
10

11 Lisa J. Stevenson
12 Acting General Counsel

13
14 1-18-17
15 Date

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