

campaign.³ Tierranueva has shared Mr. Jaffe's Laguna Beach home address, and the company has bought and sold a house owned by Mr. Jaffe's father.⁴ Tierranueva was incorporated in 2011 by a paralegal at Miami corporate law firm Bilzin Sumberg Baena Price & Alexrod LLP.⁵ The company's current street address is that of the law firm.⁶

2. Tread Standard LLC

Tread Standard, the provider of the larger of the two contributions in question, was formed in Delaware in April, just a month and a half before making its \$150,000 contribution to Right to Rise.⁷ At the time that Tread Standard's contribution was disclosed, Right to Rise did not provide a mailing address for the company.⁸

A media report indicates that a paralegal from Miami corporate law firm Bilzin Sumberg Baena Price & Alexrod LLP filed the documents that incorporated Tread Standard.⁹ However, when asked about the company, firm partner Brian Bilzin stated that he had never heard of Tread Standard.¹⁰ The paralegal who filed the documents creating Tread Standard is the same person named as the registered agent for Tierranueva.¹¹

B. LEGAL ARGUMENT

1. Tread Standard LLC and Tierranueva LLC were used to make contributions in the names of other persons.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Mider, *supra* note 1.

⁷ *Id.*

⁸ Paul Blumenthal, "We're Still in the Dark About Some Super PAC Donors," *Huffington Post* (Aug. 19, 2015, 7:35 PM), http://www.huffingtonpost.com/entry/disclosed-super-pac-donations_55d38968e4b07addcb445bb7.

⁹ Mider, *supra* note 1.

¹⁰ *Id.*

¹¹ *Id.*

The Act provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution.”¹² The regulation implementing the statute provides the following two examples of “contributions in the name of another”:

- Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate committee at the time the contribution is made.¹³
- Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.¹⁴

Publicly available news reports strongly suggest that John Doe, Jane Doe, and other persons who created, operate, and contributed to Tread Standard violated 52 U.S.C. § 30122. John Doe, Jane Doe, and other persons gave “money . . . all or part of which was provided to the contributor,” Tread Standard, even though John Doe, Jane Doe, and other persons were the true contributors; and did so without disclosing that they were the source of the money to Right to Rise at the time the contribution was made.¹⁵ Public reports also indicate that Mr. Jaffe and other persons who created, operate, and contributed to Tierranueva have violated 52 U.S.C. § 30122. Their violation results from “[g]iving money . . . all or part of which was provided to” Tierranueva by them as the true contributors without disclosing themselves as source of the money to Right to Rise at the time the contribution was made.¹⁶ Further, Right to Rise is in violation of the Act because it knowingly accepted those contributions in the names of Tierranueva and Tread Standard, and reported the contributions as made by Tierranueva and Tread Standard, even

¹² 52 U.S.C. § 30122.

¹³ 11 C.F.R. § 110.4(2)(i).

¹⁴ *Id.* § 110.4(2)(ii).

¹⁵ *See id.* § 110.4(2)(i).

¹⁶ *See id.*

though it was certainly aware of the individual(s) or entities that were the true source of the funds.

2. Tierranueva and Tread Standard Failed to Register As Political Committees Under the Act.

The Act defines a political committee as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.”¹⁷

The Supreme Court has interpreted “political committee” to encompass organizations whose “major purpose . . . is the nomination or election of a candidate.”¹⁸

The Federal Election Commission (“FEC”) has explained the connection between the Act and relevant case law:

[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct— whether its major purpose is Federal campaign activity (*i.e.*, the nomination and election of a Federal candidate).¹⁹

Taking the above together, there is a two-prong test for political committee status under federal law: (1) whether an organization’s “major purpose” is to influence the nomination or election of a candidate, and (2) whether the organization receives contributions or makes expenditures of \$1,000 or more in a calendar year.

¹⁷ 52 U.S.C. § 30101(4)(A).

¹⁸ *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (per curiam); see also *Fed. Election Comm’n v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986) (noting that if a 501(c)(4)’s independent expenditures became “so extensive that the organization’s major purpose may be regarded as campaign activity, [then] the corporation would be classified as a political committee” and that, as a result, the corporation “would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns.”).

¹⁹ Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007), <http://www.gpo.gov/fdsys/pkg/FR-2007-02-07/pdf/E7-1936.pdf>.

Any entity that meets this test for political committee status must file a statement of organization with the FEC,²⁰ comply with the organizational and recordkeeping requirements,²¹ and file disclosure reports.²² Further, the political committee's disclosures must provide detailed information regarding the committee's financial activities and the identities of donors who have contributed \$200 or more to the committee within the calendar year.²³

Public reports strongly suggest that Tread Standard and Tierranueva have met the two-prong test for political committee status. There is no indication that Tread Standard was created for any other reason than to donate \$150,000 to Right to Rise. Indeed, there are no reports on any other ventures that Tread Standard has pursued since its incorporation. Similarly, Tierranueva's contribution of \$25,000 to Right to Rise seems to be the primary purpose for its existence. Other than the purchase and reselling of Mr. Jaffe's father's house, there is no report of any other activity of significance in which Tierranueva has engaged since its creation in 2011. As such, influencing the nomination or election of Mr. Bush seems to be the major purpose of both companies. Additionally, both companies have met the contribution requirement necessary to trigger political committee status with Tread Standard and Tierranueva receiving \$150,000 and \$25,000, respectively.²⁴ Given the lack of any revenue or income streams that would have allowed either company to give those donations on their own, the donations they provided to Right to Rise must have come from outside sources. Therefore, Tread Standard and its creators and Tierranueva and Mr. Jaffe and other persons who created it are in violation of the Act by

²⁰ 52 U.S.C. § 30103.

²¹ *Id.* § 30102.

²² *Id.* § 30104.

²³ *Id.* § 30104(b).

²⁴ For an example of a for-profit entity found to be a political committee, see *Fed. Election Comm'n v. Malenick*, 310 F. Supp. 2d 230 (D.D.C. 2004), *rev'd on other grounds*, No. Civ. A. 02-1237(JR), 2005 WL 588222 (D.D.C. Mar. 7, 2005).

