



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By First Class Mail

Kyle Prall
HC4President
7301 RR 620 N
Suite 155 Box 145
Austin, TX 78726

MAY - 8 2018

RE: MURs 7011 and 7092

Dear Mr. Prall:

On February 19, June 29, and July 18, 2016, the Federal Election Commission (the "Commission") notified HC4President and you in your official capacity as treasurer and you in your personal capacity, of two complaints and a supplement to a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy those complaints were forwarded to you at that time.

Upon review of the allegations contained in the complaints, supplemental complaint, information supplied by you, and other available information, the Commission, on April 24, 2018, found that there is reason to believe that HC4President and you, in your official capacity as treasurer, violated 52 U.S.C. § 30124(b)(1), provisions of the Act. The Commission also found reason to believe that you violated 52 U.S.C. § 30124(b)(2) in your personal capacity and found no reason to believe that you violated 52 U.S.C. § 30114(b)(1). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 USC § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

MURs 7011 and 7092
Kyle Prall
Page 2

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

MURs 7011 and 7092

Kyle Prall

Page 3

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650 or apena-wallace@fec.gov.

On behalf of the Commission,

Caroline C. Hunter
Chair

Enclosures

Factual and Legal Analysis

Designation of Counsel Form

Procedures

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: HC4President and Kyle Prall MURs 7011/7092
in his official capacity as treasurer
Kyle Prall

I. INTRODUCTION

These matters were generated by two complaints filed with the Federal Election Commission (“Commission”). *See* 52 U.S.C. § 30109(a)(1). Complainants allege, among other things, that an unauthorized political committee, HC4President and Kyle Prall in his official capacity as treasurer (“HC4P” or the “Committee”), violated 52 U.S.C. § 30124(b) of the Federal Election Campaign Act of 1971, as amended (the “Act”) by fraudulently misrepresenting that it acted for, or on behalf of, federal candidate Hillary Clinton for the purpose of soliciting contributions through its website, hc4president.org. HC4P denies the allegations. It contends that because it complied with the relevant registration, reporting, and disclaimer requirements under the Act, it took the proper measures to inform the public that HC4P was an unauthorized committee.

HC4P’s website misrepresented that HC4P was part of Clinton’s campaign or authorized by Clinton, and that contributions made through HC4P’s website would flow directly to Clinton’s campaign. The record also indicates that HC4P’s misrepresentations were made with an intent to deceive. In addition, the facts indicate that the Kyle Prall was responsible for both HC4P’s website and the website of another unauthorized committee, Socially Responsible Government (f/k/a Feel B.E.R.N.) and Grace Rogers in her official capacity as treasurer (“SRG”). Therefore, the Commission finds reason to believe that HC4President and Kyle Prall

1 in his official capacity as treasurer, and Kyle Prall in his personal capacity, violated 52 U.S.C.
2 § 30124(b).

3 In addition, the Complaint in MUR 7092 alleges that Prall, as “PAC CEO,” as well as
4 numerous vendors who received disbursements from SRG, violated the Act by converting
5 committee funds to personal use.¹ Because SRG is not an authorized committee, however, the
6 Commission finds no reason to believe that Kyle Prall violated 52 U.S.C. § 30114(b) and
7 11 C.F.R. § 113.1(g).

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Fraudulent Misrepresentation**

10 1. Legal Standard

11 The Act provides that no person shall fraudulently misrepresent themselves as speaking,
12 writing, or otherwise acting for, or on behalf of, any candidate or agent thereof for the purpose of
13 soliciting contributions or donations.² Further, the Act provides that no person shall willfully
14 and knowingly participate in or conspire to participate in any plan or scheme to engage in such
15 behavior.³ Although the Act requires that the violator have the intent to deceive, it does not

¹ Compl., MUR 7092 at 5–8 (June 24, 2016) (“MUR 7092 Compl.”).

² 52 U.S.C. § 30124(b)(1); *see also* 11 C.F.R. § 110.16(b)(1).

³ 52 U.S.C. § 30124(b)(2); *see also* 11 C.F.R. § 110.16(b)(2).

1 require proof of the common law fraud elements of justifiable reliance and damages.⁴ “Even
2 absent an express misrepresentation, a representation is fraudulent if it was reasonably calculated
3 to deceive persons of ordinary prudence and comprehension.”⁵

4 2. There is Reason to Believe that HC4P Fraudulently Misrepresented Itself
5 as Acting for or on behalf of Clinton for the Purpose of Soliciting
6 Contributions

7
8 a. *Factual Background*

9 HC4P registered with the Commission in January 2016 as an unauthorized political
10 committee supporting a single candidate, Hillary Clinton, who was a candidate for U.S. President
11 in 2016.⁶ Kyle Prall is its treasurer.⁷

12 HC4P operated a website at the URL⁸ www.hc4president.org, which is no longer

⁴ See *FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010) (finding that defendants knowingly and willfully violated 2 U.S.C. § 441h(b) (now 52 U.S.C. § 30124(b)); Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002) (“Explanation and Justification”) (citing *Neder v. United States*, 527 U.S. 1, 24-25 (1999)) (distinguishing fraud in federal campaign finance abuses from common law tort action on the basis of Congress intending to penalize schemes as well as actions taken to defraud and the damaging effect of misrepresentation); Factual & Legal Analysis at 4, MUR 5472 (Jody Novacek).

⁵ *Novacek*, 739 F. Supp. 2d at 961.

⁶ Statement of Organization, HC4President (Jan. 19, 2016).

⁷ *Id.*

⁸ “URL” stands for uniform resource locator, which is commonly referred to as a web address. The URL provides a means to access a specific web resource on a computer network, *e.g.*, a website on the Internet. In HC4P’s web address, the segment “www.hc4president.org” is specifically referred to as the hostname, which is a label that can be used to identify the IP address of the website.

MURs 7011/7092 (HC4President, *et al.*)
 Factual and Legal Analysis
 Page 4 of 10

1 functional.⁹ The title of the website — as displayed in the browser tab — was “Hillary Clinton
 2 for President – Committee to Elect Hillary Clinton.”¹⁰ A static header at the top of each page of
 3 the website displayed the following logo:¹¹



4
 5 The website’s home page included an embedded video — produced by HFA and featuring
 6 HFA’s logo — of Clinton’s official campaign launch.¹² On the “About Us” page of the website,
 7 HC4P described itself as “[f]irst and foremost, [] a group of huge Hillary Clinton supporters”
 8 whose “hope is to raise enough money to make a significant positive impact on Hillary’s
 9 campaign and to get the word out about her campaign platform and initiatives.”¹³ The website
 10 provided information about Clinton, including her stances on various issues and recent news

⁹ HCFORPRESIDENT.ORG, <http://hcforphresident.org> (last visited May 20, 2016); Compl. MUR 7011, Attach. A (“MUR 7011 Compl.”). Screenshots from this site were attached to the Complaint filed for MUR 7011. Based on a comparison of the various screenshots available it appears that at times the committee listed its website address as “hcforphresident.org,” using the word “for” in place of the number 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* The embedded video was posted to Clinton’s official YouTube channel and features a disclaimer at its conclusion that states “Paid for by Hillary for America.” Hillary for America, *Hillary Clinton’s Official Campaign Launch Video*, YOUTUBE (June 13, 2016), <https://www.youtube.com/watch?v=-i8vdM15K6c>.

¹³ *About Us*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/about-us/> (last visited May 20, 2016). The website further stated that HC4P’s “ultimate goal is to help Hillary Clinton become the 45th President and first woman elected to the office” and that it will accomplish this goal by raising awareness of Clinton’s policy positions, through get-out-the-vote activities, and “donat[ing] directly to other volunteer groups that support Hillary in battleground and other areas.” *Id.*

1 about the candidate.¹⁴ When users clicked certain links from a drop-down menu on HC4P
2 homepage, they were taken directly to pages of Hillary for America's website.¹⁵

3 The HC4P website also featured several "Donate Now" buttons that link to the website's
4 donation page.¹⁶ The following slogans accompanied the donation buttons:

- 5 • "Support Hillary Clinton"
- 6 • "Stand with Hillary"
- 7 • "Support Hillary Today [a]nd Stand With [t]he Middle Class. Donate [T]oday
8 and Become an Official Supporter"
- 9 • "Support Hillary Today and Stand [w]ith the Middle Class. Donate today to help
10 Hillary Clinton become our nation's 45th President."¹⁷

11 A copy of the donation page, attached to the Complaint,¹⁸ featured the words "Donation to
12 Hillary Clinton Campaign" at the top, followed by fields requesting the donor's personal and
13 billing information.¹⁹

14 A blue footer at the bottom of the website featured the following disclaimer, in small
15 white font:

¹⁴ *About Us*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/about-us/>; *Contact Us*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/contact-us/>; *Issues*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/issues/>.

¹⁵ *About Us*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/about-us/>; *Contact Us*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/contact-us/>; *Issues*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/issues/>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ MUR 7011 Compl, Attach. C.

¹⁹ *Id.*

1 Paid for by the hc4president Committee (hc4president.org) and not
2 authorized by any candidate or candidate's committee. –
3 hc4president.org © 2016 All Rights Reserved.²⁰

4 Another page solicited contributions by stating the following:

5 Your contribution goes directly toward paying for training
6 volunteers to knock on doors, make phone calls and spread the
7 word about Hillary's movement. It also helps pay for our
8 initiatives to help voters obtain the appropriate ID and
9 transportation to voting facilities. With your help we can take back
10 our country.²¹

11 The Complaint in MUR 7011 describes the experience of one Clinton supporter who, in
12 attempting to donate to Clinton, "was directed to the website of HC4P," where she made a
13 contribution to HC4P.²² According to the Complaint, at the time the supporter made her
14 contribution to HC4P, a Google search for the terms "donate Hillary Clinton for President" or
15 "donate to Hillary Clinton" generated links to HC4P's website as the first or second result.²³
16 Exhibits attached to the Complaint show that these search results were a Google Adwords
17 advertisement for HCforPresident.org, which featured the words "Donate to Hillary Clinton –
18 hc4president.org" and "Make History – Support Hillary for President by donating today."²⁴ The
19 Complaint states that after the supporter made her contribution to HC4P, she received a reply

²⁰ *Id.*, Attach. A.

²¹ *Id.*, Attach. B.

²² *Id.* at 1.

²³ *Id.* at 2 & Attach. F, G.

²⁴ *Id.*, Attach. F, G.

1 email from “info@feelbern.org” thanking her for her donation to “Feel the Bern.”²⁵ Feelbern.org
2 is the URL for a website operated by SRG.²⁶

3 In its response, HC4P acknowledges that for a short period of time, donations to HC4P
4 generated response emails from info@feelbern.org.²⁷ However, the committee states that the
5 emails were the result of a “technological issue” that has since been resolved.²⁸ HC4P asserts
6 that the same consultant designed HC4P’s and SRG’s websites and that the response emails were
7 the result of “email coding which was improperly copied from the consultant’s earlier project.”²⁹
8 HC4P states that no funds donated to HC4P were ever misapplied to another committee.³⁰

9 *b. Legal Analysis*

10 Based on the information in the record, HC4P appears to have fraudulently
11 misrepresented that it was acting for, or on behalf of, Clinton’s official campaign for the purpose
12 of soliciting contributions. HC4P identifies itself as “Hillary Clinton for President – Committee
13 to Elect Hillary Clinton.”³¹ HC4P’s website also indicates that contributions directly benefit
14 Clinton or HFA, rather than HC4P. The site solicits contributions by stating: “Donate today and
15 Become an *Official* Supporter” and entreats viewers to “Support Hillary Clinton,” “Stand with
16 Hillary,” and “Donate today to help Hillary Clinton become our nation’s 45th President,” which

²⁵ *Id.* at 1-2.

²⁶ FEELBERN.ORG, www.feelbern.org.

²⁷ HC4P Resp. at 1 (Mar. 15, 2016).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ HCFORPRESIDENT.ORG, <http://hcforphresident.org> (last visited May 20, 2016); Compl. MUR 7011, Attach. A (“MUR 7011 Compl.”).

1 suggests that a contribution to HC4P is essentially a donation to Clinton's campaign.³² Indeed,
2 HC4P's PayPal donation page featured the statement "Donation to Hillary Clinton Campaign" at
3 the top. Further, HC4P's Google advertisement contains the banner slogan "Donate to Hillary
4 Clinton," explicitly suggesting that contributions to HC4P will flow directly to the candidate.³³

5 HC4P denies that its website makes any fraudulent misrepresentations.³⁴ To the contrary,
6 it claims that HC4P is clearly registered with the Commission as an unauthorized committee and
7 has included appropriate disclaimers on all of its webpages, which state that the website was paid
8 for by HC4P and not authorized by any candidate or candidate's committee.³⁵ The mere
9 presence of disclaimers is not dispositive here, where the Committee falsely claimed to be there
10 "Committee to Elect Hillary Clinton."

11 Moreover, HC4P's apparent lack of disbursement in support of Clinton's candidacy
12 further demonstrates HC4P's fraudulent intent.³⁶ Because HC4P's website fraudulently
13 misrepresents HC4P as acting on behalf of Hillary Clinton, the Commission finds reason to
14 believe that HC4P violated 52 U.S.C. § 30124(b).

³² See MUR 7011 Compl. Attach. A, B.

³³ See *id.*, Attach. F, G.

³⁴ HC4P Resp. at 1.

³⁵ *Id.*

³⁶ *Cf. Novacek*, 739 F. Supp. 2d at 965.

1 3. There is Reason to Believe that Kyle Prall Violated Section 30124(b)

2 The Act imposes liability for any “person” who fraudulently solicits contributions.³⁷

3 Thus, the Commission has pursued not just the committee or entity for violations of Section
4 30124(b), but also the individual who is responsible for such a committee or entity.³⁸

5 The factual record indicates that Prall, who is the treasurer of HC4P and designated agent
6 for SRG, was responsible for the websites of both committees. As the apparent founder of these
7 entities, he likely directed the content, organization, and purpose of the websites at issue, and his
8 involvement with both committees may help explain why the websites were so similar and
9 contained almost identical language. Further, the fact that he directed such similar operations
10 concerning two competing candidates also tends to show that his intent was not to support the
11 election of a particular candidate, but rather to lead a venture designed to mislead individuals
12 into donating funds. The Complaint in MUR 7092 also raises questions concerning Prall’s
13 potential ties to the companies SRG paid during the election cycle and whether Prall received
14 any benefit from any of those payments.³⁹ Accordingly, the Commission finds reason to believe
15 that Prall violated 52 U.S.C. § 30124(b)(2).

16 **B. Personal Use**

17 The Complaint in MUR 7092 identifies payments made by SRG to Prall and to a number
18 of contractors and vendors, including Johan Garcia, LCGM LLC, NHT Productions, DMF

³⁷ 52 U.S.C. § 30124(b).

³⁸ See F&LA, MUR 6531 (Obama-Biden 2012); F&LA, MUR 5472 (Novacek).

³⁹ See, e.g., F&LA at 9–11 MUR 5472 (Novacek) (making knowing and willful reason to believe findings as to the treasurer in her personal capacity in part because of her ties with businesses doing work for the committee).

MURs 7011/7092 (HC4President, *et al.*)
Factual and Legal Analysis
Page 10 of 10

1 Marketing Solutions, and Upwork Global, Inc.⁴⁰ The Complaint alleges Prall and the vendors
2 misused committee funds in violation of the Act's prohibition against the personal use of
3 campaign funds.⁴¹

4 The Act prohibits the conversion of "contributions accepted by a candidate" to personal
5 use.⁴² Because SRG is an unauthorized committee, the Act's personal use provisions are not
6 applicable here. Therefore, the Commission finds no reason to believe that Kyle Prall violated
7 52 U.S.C. § 30114(b)(1).

⁴⁰ MUR 7092 Compl. at 5–8.

⁴¹ *Id.* at 8.

⁴² *See* 52 U.S.C. § 30114(a), (b).