



FEDERAL ELECTION COMMISSION
Washington, DC

VIA Email and CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Email: billhuizenga@pdscompliance.com
admin@pdscompliance.com

March 2, 2021

James Barry, Campaign Manager
 Huizenga for Congress
 P.O. Box 254
 Zeeland, MI 49464-1509

RE: MUR 7140
 Americans for Sensible Solutions PAC

Dear Mr. Barry:

This is in reference to the complaint you filed on behalf of Huizenga for Congress with the Federal Election Commission on September 22, 2016. Based on that complaint, on February 8, 2018, the Commission found that there was reason to believe Americans for Sensible Solutions PAC and David Garrett in his official capacity as treasurer violated 52 U.S.C. §§ 30124(b)(1), 30104(a) and (b), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed. On February 9, 2021, the Commission was equally divided on whether to find reason to believe that Garrett in his personal capacity violated 52 U.S.C. § 30124(b)(1). After considering the circumstances of this matter, the Commission determined to dismiss this matter and closed the file on February 9, 2021. One or more Statements of Reasons providing a basis for the Commission's decision to dismiss will follow.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen

Mark Allen
 Assistant General Counsel

Enclosure

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Americans for Sensible Solutions PAC and
David Garrett in his official capacity as treasurer

MUR: 7140

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) pursuant to 52 U.S.C. § 30109(a)(1). Complainant alleges that Americans for Sensible Solutions PAC and David Garrett in his official capacity as treasurer (the “Committee”), an independent-expenditure-only political committee (“IEOPC”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by fraudulently misrepresenting that it was acting on behalf of congressional candidate Bill Huizenga and his principal campaign committee, Huizenga for Congress, (“HFC”) to solicit contributions through a Twitter account named “@HuizengaTrump16” and by selling unauthorized “Huizenga Trump 2016 Unity Gifts” such as mugs, shirts, and buttons online. The Committee did not respond to the Complaint.

As set forth below, the Committee appears to have solicited contributions through online media that fraudulently misrepresented that the Committee was acting for or on behalf of Huizenga. In addition, the Committee failed to report its receipts, disbursements, and cash-on-hand balance from 2016 to the present. Therefore, there is reason to believe that the Committee violated 52 U.S.C. §§ 30124(b)(1) and 30104(a) and (b).

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Fraudulent Misrepresentation**

3 1. Legal Standard

4 The Act provides that no person shall fraudulently misrepresent themselves as speaking,
 5 writing, or otherwise acting for, or on behalf of, any candidate or agent thereof for the purpose of
 6 soliciting contributions or donations.¹ Further, the Act provides that no person shall willfully
 7 and knowingly participate in or conspire to participate in any plan or scheme to engage in such
 8 behavior.² Although the Act requires that the violator have the intent to deceive, it does not
 9 require proof of the common law fraud elements of justifiable reliance and damages.³ Even
 10 absent an express misrepresentation, a representation is fraudulent “if it was reasonably
 11 calculated to deceive persons of ordinary prudence and comprehension.”⁴

12 2. There is Reason to Believe that the Committee Fraudulently Misrepresented Itself
 13 as Acting for or on Behalf of Huizenga and HFC for the Purpose of Soliciting
 14 Contributions

15 a. Factual Background

17 The Committee registered with the Commission on May 3, 2016, as an IEOPC.⁵ David

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

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

³ *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, 202) (“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 and Legal Analysis at 4, MUR 5472 (Jody Novacek).

⁴ *Novacek*, 739 F. Supp. 2d at 961.

⁵ *See* Statement of Organization (May 3, 2016).

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1 Garrett is its treasurer.⁶ Since registering with the Commission, the Committee filed only one
 2 disclosure report, the 2016 July Quarterly Report,⁷ which it filed in response to a Request for
 3 Additional Information (“RFAI”) from the Commission’s Reports Analysis Division (“RAD”)
 4 based on the Committee’s failure to file reports.⁸ The Committee submitted a handwritten 2016
 5 July Quarterly Report by regular mail, and the report disclosed no receipts, disbursements, and
 6 cash-on-hand.⁹ RAD notified the Committee of its obligation to file electronically; however, the
 7 Committee did not resubmit the report electronically.¹⁰ In addition, RAD notified the Committee
 8 of its failure to file its 2016 October Quarterly Report, Post-General Report, and Year-End
 9 Report, but the Committee did not respond or file the reports.¹¹

10 The Complainant alleges that beginning in May 2016, the Committee used Huizenga’s
 11 name and likeness to “mislead Americans and sell merchandise” without permission.¹²
 12 Specifically, the Complaint alleges that the Committee established a Twitter account named
 13 “@HuizengaTrump16,” which solicits donations via PayPal.¹³ The Twitter account also directs
 14 visitors to a page on Zazzle¹⁴ selling “Huizenga Trump 2016 Unity Gifts,” including mugs,

⁶ *Id.*

⁷ See 2016 July Quarterly Report (Aug. 8, 2016).

⁸ See RFAI – Failure to File – July Quarterly Report (Aug. 2, 2016).

⁹ See 2016 July Quarterly Report (Aug. 8, 2016).

¹⁰ See Notice of Paper Filing (Sept. 13, 2016).

¹¹ See RFAI – Failure to File – October Quarterly Report (Oct. 31, 2016); RFAI – Failure to File – Post-General Report (Dec. 28, 2016); RFAI – Failure to File – Year-End Report (Feb. 16, 2017).

¹² Compl. at 1 (Sept. 22, 2016).

¹³ *Id.*

¹⁴ “Zazzle” is an electronic commerce website that sells customizable products to customers. See www.zazzle.com/about.

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1 shirts, buttons, key chains, hats, and sweatshirts.¹⁵ According to the Complaint, the Zazzle page
 2 states: “This website is managed by the Americans for Sensible Solutions Political Action
 3 Committee along with the Republican Organization for Legislative Loyalty,¹⁶ and is intended to
 4 encourage unity between these two tremendous candidates and highlight the overwhelming
 5 similarity between their respective agendas and policy positions.”

6 The Complaint did not provide copies of either the Twitter account or Zazzle page. The
 7 available information indicates that during 2016, the Committee established accounts on Twitter,
 8 Zazzle, Imgur,¹⁷ Pinterest, and Facebook using Huizenga’s name and likeness, and that it has
 9 conducted similar unauthorized activity regarding many other federal candidates.

10 i. *@HuizengaTrump16 Twitter account*

11 The @HuizengaTrump16 Twitter account was suspended shortly after the Complaint was
 12 filed. The word “unofficial” appears in the account heading, but not in the tweets themselves.
 13 The account contains tweets from “Unity: Bill Huizenga@HuizengaTrump16” soliciting
 14 donations to the Committee’s PayPal account and containing links to a Zazzle page selling
 15 merchandise. Each tweet contains a “TrumpHuizenga 2016” campaign logo; a slogan, “Make
 16 the Michigan 2nd Great Again!;” and the web address, “www.HuizengaTrump2016.org.”¹⁸ The
 17 tweet soliciting donations states: “Please donate \$64 to the Huizenga Trump Unity 2016
 18 Campaign today!” A copy of the tweet is shown below.

¹⁵ *Id.*

¹⁶ The Republican Organization for Legislative Loyalty is not registered with the Commission as a political committee. At this time, we have no information regarding this entity.

¹⁷ Imgur is an online image sharing website. *See* <http://imgur.com/about>.

¹⁸ The website, “www.HuizengaTrump2016.org,” is no longer functioning.

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UNITY: Bill Huizenga @HuizengaTrump16 · Jul 16

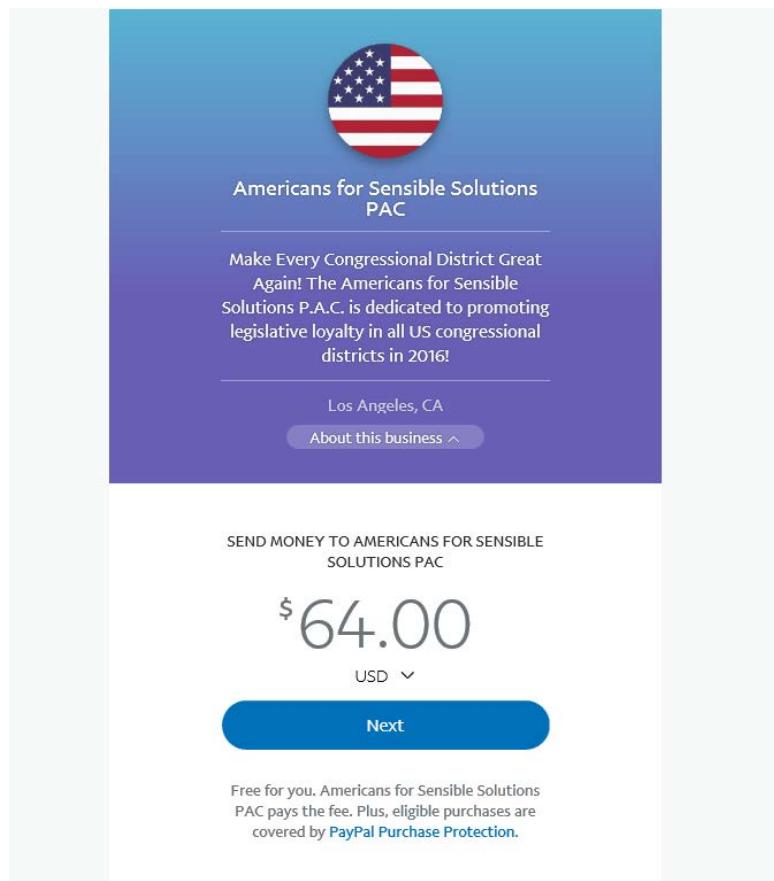
Please donate \$64 to the Huizenga Trump Unity 2016 Campaign today!

paypal.me/americansfor...

1



2 The first page of the Committee's PayPal account is also shown below.



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1 There are several other @HuizengaTrump16 tweets linking to the Zazzle page, and each
2 separately displays a hat, campaign button, mug, shirt, sweatshirt, or keychain with the “Trump
3 Huizenga 2016” campaign logo, slogan, and website address. An example of a tweet linking to
4 the Zazzle page selling the campaign button is shown below.



5
6 ii. *Zazzle page*
7 The Zazzle page selling Huizenga Trump 2016 Unity merchandize is no longer
8 functioning.¹⁹ Photographs of the merchandise for sale on that page appear in the
9 @HuizengaTrump16 Twitter account, as well as in other social media accounts discussed below.

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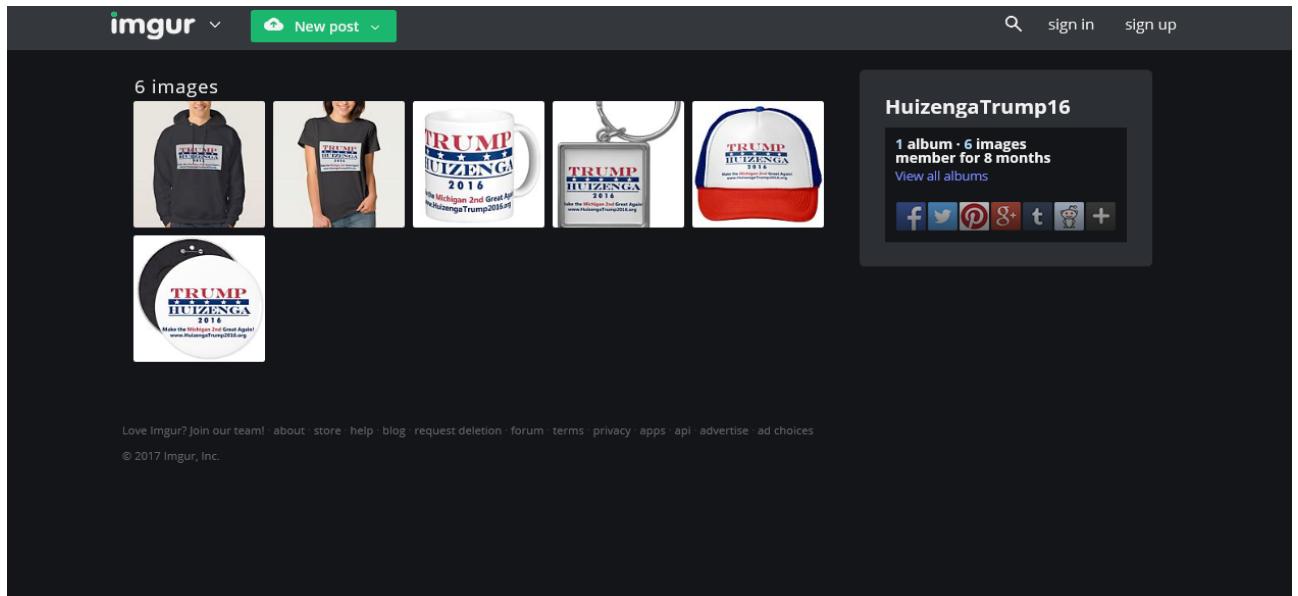
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iii. *Imgur Account*

The Committee also established a “HuizengaTrump16” Imgur account with images of the

3 Huizenga Trump 2016 Unity merchandise sold on Zazzle. A copy of the Imgur account is shown

4 below.²⁰



iv. *Pinterest*

Similarly, the Committee created a Pinterest page saving images of the Huijenga Trump

⁸ 2016 Unity merchandise sold on Zazzle. A copy of the Pinterest page is shown below.²¹

¹⁹ See e.g., http://www.zazzle.com/huizenga_trump_2016_unity_button-145054775072021025 (broken link).

20 See <http://huizengatrump16.imgur.com/all/>.

²¹ See <https://www.pinterest.com/billhuizenga/>.

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- 1 Clicking on the photographs of the merchandise shows that the Committee used
- 2 Huizenga's name (and picture) as the person "saving" the photographs to Pinterest. For
- 3 example:²²

²² See <https://www.pinterest.com/pin/135319163783754045/>.

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- 1
- 2 v. *“Trump Huizenga 2016 Unity Campaign” Facebook page*
- 3 In addition, the Committee created a “Trump Huizenga 2016 Unity Campaign” Facebook
- 4 page, which solicits donations to its PayPal account, and it also sells merchandise with
- 5 Huizenga’s name.
- 6 The posts on the Facebook page are similar to those on the Twitter account, and display a
- 7 Trump Huizenga 2016 campaign logo, slogan, and website address. A copy of one post
- 8 soliciting donations is shown below.

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Posts



Bill Huizenga

July 16, 2016 ·



Please donate \$64 to the Huizenga Trump Unity 2016 Campaign today!

paypal.me/americansforsensible/64



Like Comment

1

2 vi. *Unauthorized activity with respect to other federal candidates*

3 It appears that the Committee created at least thirty-three (33) “unofficial” “Unity
4 Trump16” Facebook accounts naming various House and Senate candidates, soliciting donations
5 to its PayPal account, and selling merchandise with the candidates’ names. One such example is
6 the “Unofficial: Adam Kinzinger 2016 Unity Campaign” Facebook page.²³ A post on that page
7 displays a Trump Kinzinger 2016 campaign logo and solicits donations as follows: “Please
8 donate \$64 to the Kinzinger Trump Unity 2016 Campaign today!” and links to the Committee’s
9 PayPal account. The post is shown below.

²³

Available at <https://facebook.com/Unofficial-Adam-Kinzinger-2016-Unity-Campaign-1734617503493915/>.

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Posts



1

2 In addition, the Committee marketed “unity gifts” on Zazzle using other candidates’
 3 names. For example, the Committee offered a “Kinzinger Trump 2016 Unity Sweatshirt” for
 4 sale that contained a campaign logo, slogan, and website similar to that of the Committee’s
 5 Huizenga Trump 2016 Unity merchandise, as shown below.²⁴

²⁴

See https://www.zazzle.com/kinzinger_trump_2016_unity_sweatshirt-235489038152365133.

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2 The Zazzle page also states in pertinent part:

3 This website is managed by the Americans for Sensible
 4 Solutions Political Action Committee along with The
 5 Republican Organization for Legislative Loyalty, and is
 6 intended to encourage unity between these two tremendous
 7 candidates and highlight the overwhelming similarity between
 8 their respective agendas and policy positions. By law, the
 9 Americans for Sensible Solutions P.A.C. may not collaborate,
 10 collude or coordinate with either the campaigns of either Adam
 11 Kinzinger or Donald Trump. Please support a unified
 12 Republican Party in the November Elections by donating to our
 13 Political Action Committee or purchasing Unity items below.²⁵

14 In addition, in August 2016, Rep. Carlos Curbelo of Florida's 26th Congressional District
 15 reportedly sent a cease-and-desist letter to the Committee for creating a series of unauthorized
 16 social media accounts and e-commerce websites unlawfully using Curbelo's name and likeness
 17 for commercial purposes and soliciting contributions.²⁶ In pertinent part, the letter reportedly
 18 states that the Committee created a fraudulent Twitter account named @CurbeloTrump16, and

²⁵ See *id.*

²⁶ See Matt Dixon, *Curbelo sends cease-and-desist to new PAC tying him to Trump*, POLITICO.COM, <http://www.politico.com/states/florida/story/2016/08/curbelo-sends-cease-and-desist-to-new-pac-tying-him-to-trump-104606>.

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1 Facebook, Pinterest, and Imgur accounts each containing a “fraudulent ‘Trump Curbelo 2016’
 2 campaign logo” and that the Committee uses “the accounts to sell t-shirts, buttons and other
 3 merchandise donning the fake logo on e-commerce site, Zazzle.”²⁷ The cease-and-desist letter
 4 also asserts that, among other violations of state and federal law, the Committee “engaged in an
 5 intentional effort to raise political contributions using Mr. Curbelo’s name” in violation of the
 6 Act.²⁸ According to the letter, the social media accounts include links to “donate \$64 to the
 7 Curbelo Trump Unity 2016 Campaign today!” directing users to a PayPal account for the
 8 Committee.²⁹ The alleged fake campaign logo on a button described in the Curbelo cease-and-
 9 desist letter is shown below.³⁰



10
 11 Finally, a local news broadcast in New Hampshire reported that the Committee was using
 12 then-U.S. Senator Kelly Ayotte’s name without permission on social media accounts, soliciting

²⁷ See *id.*; letter from Charles R. Spies, Counsel to Carlos Curbelo and Carlos Curbelo Congress, to David Garrett, Treasurer (Aug. 8, 2016) available at <http://www.politico.com/states/f/?id=00000156-705f-d872-ad77-f47f1c410000>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Curbelo cease-and-desist letter at n.3 citing <http://curbelotrump16.imgur.com/all/>.

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1 donations of \$64 to an unauthorized “Trump Ayotte Unity” campaign through a PayPal account,
 2 and selling unauthorized “Trump Ayotte 2016” merchandise on Zazzle.³¹

3 b. Legal Analysis

4 Based on the information in the record, the Committee appears to have misrepresented
 5 that it was acting on behalf of Huizenga’s official campaign for the purpose of soliciting
 6 contributions.

7 The Committee does not clearly identify itself as distinct from Huizenga and HFC, thus
 8 implying that Huizenga and HFC authorized the activity, when they did not. The use of
 9 Huizenga’s name in the Twitter address @HuizengaTrump16 and each tweet, and on the
 10 Facebook page “Trump Huizenga 2016 Unity Campaign” and in Facebook posts, while soliciting
 11 contributions via the Committee’s PayPal account, misleads the ordinary reader into believing
 12 that Huizenga is making or endorsing the solicitation. These accounts and messages also appear
 13 designed to create the impression that funds contributed would support Huizenga’s campaign.³²

14 The corroborative evidence supports a reasonable inference that the Committee intended to cause
 15 such confusion. The statements on Twitter and Facebook suggest that the contributions directly
 16 benefit Huizenga, rather than the Committee. For example, the solicitation: “Donate \$64 to the
 17 Trump Huizenga Unity 2016 Campaign today!” suggests that a contribution to the Committee is
 18 essentially a donation to Huizenga’s campaign. The mere presence of disclaimers is not
 19 dispositive here, where the Committee falsely claimed to be Huizenga and HFC.

³¹ See Deane, Kevin, *A ‘PAC’ is asking for your \$64 to support Trump/Ayotte*, NH1.COM,
<http://www.nh1.com/news/a-pac-is-asking-for-your-64-to-support-trump-ayotte/>.

³² Although reliance is not a necessary element, it is persuasive in establishing that fraudulent
 misrepresentation occurred. See 67 Fed. Reg. at 76,969. The Commission has found such information persuasive.
See, e.g., Factual & Legal Analysis at 4-5, MUR 6531 (Obama-Biden 2012).

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1 Moreover, that the Committee filed only one disclosure report tends to support a finding
 2 that it violated section 30124. The Committee's failure to file disclosure reports is in itself
 3 "probative of [a] Committee's intent to misrepresent itself to the public,"³³ because the
 4 Committee has failed to disclose how it spends the contributions it receives. The Committee's
 5 single report filed, 2016 July Quarterly Report, discloses no receipts, disbursements, or
 6 contributions made to Huizenga or any other federal candidate.³⁴ The Committee's apparent lack
 7 of disbursement in support of Huizenga's candidacy further demonstrates the Committee's
 8 fraudulent intent.³⁵

9 Based on the factual record as described above, the Committee appears to have
 10 misrepresented that it was acting for or on behalf of Huizenga's official campaign for the purpose
 11 of soliciting contributions. Accordingly, the Commission finds reason to believe that the
 12 Americans for Sensible Solutions PAC and David Garrett in his official capacity as treasurer
 13 violated 52 U.S.C. § 30124(b)(1).³⁶

³³ Factual & Legal Analysis at 9, MUR 5472 (Republican Victory 2004 Committee) (Feb. 8, 2005) (stating that "failure to file reports with the Commission indicating on what, if anything the money raised has been spent may be probative of the Committee's intent to misrepresent itself to the public."). *See also* Factual & Legal Analysis at 10, MUR 6633 (Republican Majority Campaign) (Mar. 7, 2014) ("[w]eighing against a finding of reason to believe that the Respondent violated [52 U.S.C. § 30124(b)] is the fact that [the Respondent] is registered with the Commission and complies with its reporting requirements.").

³⁴ *See* 2016 July Quarterly Report (Aug. 8, 2016).

³⁵ *Cf. Novacek*, 739 F. Supp. 2d at 965.

³⁶ By naming its Twitter account "@HuizengaTrump16," the Committee used the name of a candidate in a special project without showing opposition to that candidate, in violation of the Act and Commission regulations. 52 U.S.C. § 30102(e)(4); 11 C.F.R. § 102.14(a). An unauthorized committee may only include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(3); *see also* Advisory Op. 1995-09 at 6 (NewtWatch PAC) ("The operation of a World Wide Web site would be considered a project of the Committee"); Advisory Op. 2015-04 at 3-4 (Collective Actions PAC) (determining that a committee's "online activities are 'projects' that fall within the scope of 11 C.F.R. § 102.14"). These restrictions on the use of a candidate's name, however, have recently been the subject of litigation. In August 2016, the D.C. Circuit ruled that the Plaintiff committee was entitled to a preliminary injunction enjoining the application of 11 C.F.R. § 102.14(a) against its website and social

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1 **B. Failure to File Disclosure Reports**

2 Each treasurer of a political committee is required to file reports of receipts and
3 disbursements in accordance with 52 U.S.C. § 30104(a). Each report shall disclose the amount
4 of cash-on-hand at the beginning and end of the reporting period, the total amount of receipts for
5 the reporting period and for the calendar year, and the total amount of disbursements for the
6 reporting period for the calendar year.³⁷

7 The Committee failed to file its 2016 July Quarterly Report properly, and it failed to file
8 its 2016 October Quarterly Report, Post-General Report, Year-End Report, and its 2017 April
9 Quarterly Report. Therefore, there is reason to believe that the Committee violated 52 U.S.C.
10 § 30104(a) and (b) by failing to properly report its receipts and disbursements as required by the
11 Act.

media pages as a possible content-based ban on speech. *See Pursuing America's Greatness v. FEC*, 831 F. Supp. 3d 500 (D.C. Cir. Aug. 2, 2016). In light of this ongoing litigation, the Commission makes no findings as to the Committee's possible violation of 11 C.F.R. § 102.14(a) at this time.

³⁷ 52 U.S.C. § 30104(b)(1), (2), (4).