

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

MUR: 7194  
DATE COMPLAINT FILED: Nov. 7, 2016  
DATE OF NOTIFICATION: N/A  
DATE OF LAST RESPONSE: N/A  
DATE ACTIVATED: May 3, 2017

EXPIRATION OF SOL: Nov. 7, 2021  
ELECTION CYCLE: 2016

**COMPLAINANT:** Marc E. Elias, General Counsel to Hillary for America<sup>1</sup>

**RESPONDENT:** Unknown Respondent

<b>RELEVANT STATUTES AND REGULATIONS:</b>	52 U.S.C. § 30124(b) 52 U.S.C. § 30121(a)(1)(C) 11 C.F.R. § 110.16(b)(2) 11 C.F.R. § 110.20(f)
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**INTERNAL REPORTS CHECKED:** None

**FEDERAL AGENCIES CHECKED:** None

## 1. INTRODUCTION

29 The Complaint contains allegations against an unknown respondent (“Unknown  
30 Respondent”) regarding an apparently fraudulent Hillary Clinton website, including an allegation  
31 that Unknown Respondent violated the Federal Election Campaign Act of 1971, as amended (the  
32 “Act”) by fraudulently misrepresenting itself as acting for, or on behalf of, 2016 Presidential  
33 candidate Hillary Clinton for the purpose of soliciting contributions. For the reasons set forth  
34 below, we recommend that the Commission find reason to believe that Unknown Respondent

<sup>1</sup> The Complaint is also addressed to the Department of Justice's Public Integrity Section and the Federal Bureau of Investigation's Public Corruption Unit.

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1 violated 52 U.S.C. § 30124(b) and approve the attached subpoena, which seeks information  
 2 identifying the respondent.

3 **II. FACTUAL SUMMARY**

4 The Complaint, filed by General Counsel for Hillary for America (“HFA” or the  
 5 “Committee”), alleges that the operator of a website, [www.votehillaryonline.com](http://www.votehillaryonline.com), fraudulently  
 6 misrepresented itself as acting on behalf of HFA or Clinton for the purpose of soliciting  
 7 contributions.<sup>2</sup> According to the Complaint, the website is “a sophisticated reproduction of the  
 8 Committee’s actual website” that “displays campaign imagery, the Committee’s logo, and the  
 9 Committee’s disclaimer.”<sup>3</sup> The Complaint asserts that the website includes a fundraising  
 10 function, but the Committee has never authorized the operator of the website to collect funds on  
 11 its behalf and does not know where any funds collected by the website would have been routed.<sup>4</sup>

12 In addition, the Complaint states that the website falsely informed supporters that they  
 13 could vote for Clinton via the site.<sup>5</sup> This allegation is beyond the Commission’s jurisdiction and  
 14 will not be discussed further.

15 Publicly available information reveals that the website was registered on November 7,  
 16 2016 — the day before Election Day — and is no longer active.<sup>6</sup> The sworn Complaint  
 17 describes the website in detail, but it did not provide screenshots, and we have been unable to

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<sup>2</sup> Compl. at 1-2 (Nov. 7, 2016).

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> <https://www.whois.com/whois/votehillaryonline.com> (showing a registration date of November 7, 2016). It is unclear when the website was taken down.

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1 locate a cached version of the active site.<sup>7</sup> However, we located multiple online message boards  
2 on which participants purportedly discussed the website and posted images of the site as it was  
3 being developed.<sup>8</sup> Those images show the use of HFA's logo, font, color scheme, and  
4 disclaimer. The images also show that a donate button was featured on the site, though the  
5 available record does not disclose where that donate button led.<sup>9</sup> The below screenshot from the  
6 message board displays a page from the under-construction website, including the "donate"  
7 button, which appears under the "Get Involved" heading:

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<sup>7</sup> The site appears to be protected by robots.txt, a file that prevents systematic browsing (also known as "crawling") and archiving of websites.

<sup>8</sup> See, e.g., <https://archive.4plebs.org/pol/thread/95596041/> (linking to <https://img.4plebs.org/boards/pol/image/1478/04/1478041459740.jpg>) (last visited July 25, 2017); <https://archive.4plebs.org/pol/thread/96632519/> (linking to <https://img.4plebs.org/boards/pol/image/1478/52/1478523336071.jpg>) (last visited July 25, 2017).

<sup>9</sup> *Id.* We note that an early draft of the site appears to have been hosted at <http://www.theabfa.com>. See <https://archive.4plebs.org/pol/thread/96632519/> (last visited July 26, 2017) (Nov. 7, 2016, 9:15:10 comment referring to an "old URL"). In a cached version of theabfa.com on the Way Back Machine, the donate button redirects to the true HFA website. However, our review indicates that theabfa.com was the draft form of votehillaryonline.com, and we do not know where the live version directed users who clicked "donate."

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## Vote for Hillary online

I'm with her

Help decide the future of our great country.



**Get texts from Hillary**

Phone number

Email

**Text me**

By clicking "Text me", you agree that you would like to receive periodic text messages from Hillary for America. Msg&Data rates may apply. Text STOP to cancel or HELP for help. Terms of Service / Privacy Policy

**Learn**

About  
 Issues  
 Blog  
 Speeches

**Get involved**

Find my state  
 Volunteer  
 Shop  
 Jobs  
 Help from Home  
 Donate  
 Raise  
 Protect the vote

**Follow**

Facebook  
 Twitter  
 YouTube  
 Instagram  
 Pinterest  
 LinkedIn  
 Medium

**Paid for by Hillary for America, a grassroots campaign of over 2 million donors committed to**

1 We do not know the identity of the website's domain holder. We searched whois.com, a website that discloses the registered domain holder of particular websites, and learned that

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1 www.votehillaryonline.com is registered to an entity named WhoIsGuard, Inc. (“WhoIsGuard”).

2 WhoIsGuard is a service that conceals the identities of domain holders.<sup>10</sup>

3 **III. LEGAL ANALYSIS**

4 The Act and Commission regulations prohibit persons from fraudulently misrepresenting  
 5 themselves as speaking, writing, or otherwise acting for or on behalf of any candidate or political  
 6 party, or as an agent of a candidate or political party, for the purpose of soliciting contributions  
 7 or donations.<sup>11</sup> Further, the Act provides that no person shall willfully and knowingly participate  
 8 in or conspire to participate in any plan or scheme to engage in such behavior.<sup>12</sup>

9 To determine whether a person has engaged in fraudulent misrepresentation, the  
 10 Commission has previously considered such factors as: (1) whether the respondent political  
 11 committee was registered and reporting to the Commission, if required;<sup>13</sup> (2) the presence of  
 12 adequate disclaimers;<sup>14</sup> (3) inclusion of statements implying that the respondents acted with the

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<sup>10</sup> See <https://www.whois.com/whois/votehillaryonline.com>. The WhoIsGuard service is provided by the corporation Namecheap. See <https://www.namecheap.com/security/whoisguard.aspx>. Likewise, the draft version of the site, [www.theabfa.com](http://www.theabfa.com), is protected by PrivacyProtect, LLC, a similar privacy protection service. See <https://www.whois.com/whois/theabfa.com>.

Based on message boards discussing the website, it appears the site's creators may be foreign nationals. In one posting, a self-identified creator of the site requested help in securing a domain, stating “no one of our team comes from US [sic].” <https://archive.4plebs.org/pol/thread/96625952/> (last visited July 26, 2017). The poster appears to have an Italian internet service provider (“ISP”) address, though ISPs can be masked and manipulated. It is unclear whether a United States citizen or foreign national ultimately paid for the registration of the website.

<sup>11</sup> 52 U.S.C. § 30124(b).

<sup>12</sup> *Id.* § 30124(b)(2); *see also* 11 C.F.R. § 110.16(b)(2).

<sup>13</sup> Factual & Legal Analysis (“F&LA”) at 10, MUR 6633 (Republican Majority Campaign) (“Weighing 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 . . . .”).

<sup>14</sup> F&LA at 10, MUR 6641 (CAPE PAC) (“The Commission has previously held that the presence of an adequate disclaimer identifying the person or entity that paid for and authorized a communication can defeat an inference that a respondent maintained the requisite intent to deceive for purposes of a section [30124] violation.”).

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1 authority of the represented candidate;<sup>15</sup> (4) inclusion of statements implying that contributions  
 2 to the respondent would go directly to the represented candidate;<sup>16</sup> (5) mimicry of the  
 3 candidate's website<sup>17</sup> or use of the candidate's official logo;<sup>18</sup> (6) whether any individuals were  
 4 actually misled by the website;<sup>19</sup> and (7) whether the respondent used a misleading name.<sup>20</sup>

5 The available record indicates that Unknown Respondent represented itself as soliciting  
 6 contributions on behalf of HFA. The website appears to have mimicked HFA's site, used the  
 7 Committee's official logo, and, perhaps most deceptively, included a disclaimer stating that it  
 8 was paid for by the Committee. The website's name itself, "votehillaryonline," is misleading.  
 9 Together, these facts suggest Unknown Respondent expressly misrepresented itself as the

<sup>15</sup> Gen. Counsel's Brief at 14-16, MUR 5951 (Californians for Change) (recommending probable cause to believe Californians for Obama violated [section 30124] by, *inter alia*, approving a telemarketing solicitation script that stated "We are Senator Obama's California organization to help put the face-of-change in the White House" and where an officer went by the title "State Chairman," thereby giving "the impression that the organization was the official representative of the national Obama campaign in the State of California"); Certification, MUR 5951 (Aug. 3, 2011); *see also* First Gen. Counsel's Report ("FGCR") at 3, MURs 5443, 5495, 5505 (johnfkerry-2004.com) (recommending reason to believe respondent engaged in express misrepresentation through a website that stated it was "paid for and authorized by John Kerry for President, Inc. 2004"); *cf.* FGCR at 9-10, MUR 7004 (The 2016 Committee) (recommending no reason to believe where respondent's communications did not contain any statements purportedly made by or on behalf of the candidate and expressly stated that respondent was not authorized by any candidate or candidate's committee).

<sup>16</sup> Compare, e.g., Gen. Counsel's Brief at 8, MUR 5472 (RVC) (recommending probable cause in part on the basis of the statement "Contributions or gifts to the *Republican Party* are not deductible as charitable contributions") (emphasis in original) *with* F&LA at 10, MUR 6641 (CAPE PAC) (finding no reason to believe statements such as "Help CAPE PAC re-elect Allen West to Congress" led to fraudulent misrepresentation); *see also* FGCR at 10, MUR 7011 (HC4President) (recommending reason to believe where language like "donate today to become an official supporter" suggested the committee's authorization, and respondent website used messaging and logos similar to the committee's website) (open matter).

<sup>17</sup> FGCR at 3, MURs 5443, 5495, 5505 (johnfkerry-2004.com) (recommending reason to believe respondents violated the Act by copying several pages from the candidate's legitimate website).

<sup>18</sup> F&LA, MUR 6531 (Obama-Biden 2012) (finding reason to believe respondent violated the Act in part by placing the Obama for America logo on its website); *see also* FGCR at 9, MUR 6997 (Americans Socially United) (recommending reason to believe where website used logo similar to candidate's) (open matter).

<sup>19</sup> Gen. Counsel's Brief at 14-16, MUR 5951 (Californians for Change) (recommending probable cause to believe Californians for Obama violated [section 30124], in part because members of the public were in fact misled).

<sup>20</sup> *Id.*

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1 Clinton committee, and did so while soliciting contributions. Accordingly, we recommend that  
2 the Commission find that Unknown Respondent violated 52 U.S.C. § 30124(b).<sup>21</sup>

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<sup>21</sup> Additionally, publicly available information on message boards indicates that some of the persons involved in creating the website may have been foreign nationals, suggesting a potential violation of the Act's prohibition on expenditures by foreign nationals. *See* 52 U.S.C. § 30121(a)(1)(C); 11 § C.F.R. 110.20(f). However, that information does not provide a sufficient basis to conclude whether the website was financed by foreign nationals. Accordingly, we make no recommendation as to that provision of the Act at this time. If our proposed investigation uncovers information identifying Unknown Respondent as a foreign national, we will make the appropriate recommendations.

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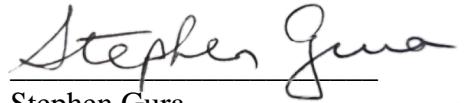
1    **V.    RECOMMENDATIONS**

2            1.    Find reason to believe that Unknown Respondent violated 52 U.S.C. § 30124(b);  
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4            2.    Approve the attached Factual and Legal Analysis;<sup>24</sup>  
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6            3.    Approve the use of compulsory process;  
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8            4.    Approve the attached subpoena; and  
9  
10          5.    Approve the appropriate letters.

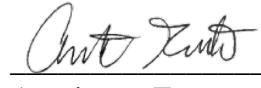
13            Lisa J. Stevenson  
14            Acting General Counsel

16            Kathleen M. Guith  
17            Associate General Counsel  
18            for Enforcement

21            Date: 8.1.17

  
22            Stephen Gura  
23            Deputy Associate General Counsel  
24            for Enforcement

26              
27            Mark Shonkwiler  
28            Assistant General Counsel

31              
32            Antoinette Fuoto  
33            Attorney

36            Attachments:

37            1.    Factual and Legal Analysis

<sup>24</sup>            The Factual and Legal Analysis will be sent to the party responsible for the website after its identity is known and the Commission substitutes that entity for the Unknown Respondent.