

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 America¹

RESPONDENT:

Unknown Respondent

**RELEVANT STATUTES AND
REGULATIONS:**

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)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

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

¹ The Complaint is also addressed to the Department of Justice’s Public Integrity Section and the Federal Bureau of Investigation’s Public Corruption Unit.

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

II. FACTUAL SUMMARY

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

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

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information reveals that the website was registered on November 7, 2016 — the day before Election Day — and is no longer active.⁶ The sworn Complaint describes the website in detail, but it did not provide screenshots, and we have been unable to

² Compl. at 1-2 (Nov. 7, 2016).

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.*

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

1 locate a cached version of the active site.⁷ 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.⁸ 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.⁹ 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:

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

⁸ 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).

⁹ *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."



	Get texts from Hillary	Learn	Get involved	Follow
	Phone number	About	Find my state	Facebook
	Email	Issues	Volunteer	Twitter
		Blog	Shop	YouTube
		Speeches	Jobs	Instagram
	Text me	Help from Home	Donate	Pinterest
	<small>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</small>	Raise	LinkedIn	
		Protect the vote	Medium	
<div data-bbox="475 1413 1094 1465"> Paid for by Hillary for America, a grassroots campaign of over 2 million donors committed to </div>				

1

2 We do not know the identity of the website's domain holder. We searched whois.com, a

3 website that discloses the registered domain holder of particular websites, and learned that

www.votehillaryonline.com is registered to an entity named WhoIsGuard, Inc. (“WhoIsGuard”).
 WhoIsGuard is a service that conceals the identities of domain holders.¹⁰

III. LEGAL ANALYSIS

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

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

¹⁰ 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, 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.

¹¹ 52 U.S.C. § 30124(b).

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

¹³ 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 . . .”).

¹⁴ 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.”).

1 authority of the represented candidate;¹⁵ (4) inclusion of statements implying that contributions
 2 to the respondent would go directly to the represented candidate;¹⁶ (5) mimicry of the
 3 candidate's website¹⁷ or use of the candidate's official logo;¹⁸ (6) whether any individuals were
 4 actually misled by the website;¹⁹ and (7) whether the respondent used a misleading name.²⁰

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

¹⁵ 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 (johnkerry-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).

¹⁶ *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).

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

¹⁸ 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).

¹⁹ 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).

²⁰ *Id.*

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).²¹

²¹ 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.

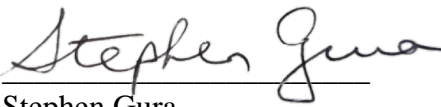
V. RECOMMENDATIONS

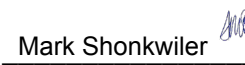
1. Find reason to believe that Unknown Respondent violated 52 U.S.C. § 30124(b);
2. Approve the attached Factual and Legal Analysis;²⁴
3. Approve the use of compulsory process;
4. Approve the attached subpoena; and
5. Approve the appropriate letters.

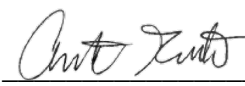
Lisa J. Stevenson
 Acting General Counsel

Kathleen M. Guith
 Associate General Counsel
 for Enforcement

Date: 8.1.17


 Stephen Gura
 Deputy Associate General Counsel
 for Enforcement


 Mark Shonkwiler
 Assistant General Counsel


 Antoinette Fuoto
 Attorney

Attachments:

1. Factual and Legal Analysis

²⁴ 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.