



FEDERAL ELECTION COMMISSION
Washington, DC

MEMORANDUM

TO: The Commission

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SUBJECT: MUR 7194 (Unknown Respondent) – Circulation of Revised Factual and Legal Analysis

On February 8, 2018, the Commission voted to find reason to believe that Unknown Respondent violated 52 U.S.C. § 30124(b) and approved the use of compulsory process.¹ There was an insufficient number of votes to approve the Factual and Legal Analysis at that time.² The attached revised Factual and Legal Analysis reflects the Commission's analysis in other recent fraudulent misrepresentation matters, MUR 6997 (Americans Socially United) and MURs 7011/7092 (HC4President).³

¹ See Certification, MUR 7194 (Unknown Respondent) (Feb. 12, 2018).

² See *id.*

³ See Certification, MUR 6997 (Americans Socially United) (Apr. 25, 2018); Certification, MURs 7011/7092 (HC4President) (Apr. 25, 2018).

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Accordingly, we recommend that the Commission approve the attached Factual and Legal Analysis.

Attachments:

1. Revised Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Unknown Respondent MUR: 7194

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, the Commission finds reason to believe that Unknown Respondent violated 52 U.S.C. § 30124(b).

II. FACTUAL SUMMARY

The Complaint, filed by the 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.¹ 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.”² 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.³

¹ Compl. at 1-2 (Nov. 7, 2016).

² *Id.* at 2.

³ *Id.*

1 In addition, the Complaint states that the website falsely informed supporters that they
2 could vote for Clinton via the site.⁴ This allegation is beyond the Commission’s jurisdiction and
3 will not be discussed further.

4 Publicly available information reveals that the website was registered on November 7,
5 2016 — the day before Election Day — and is no longer active.⁵ The sworn Complaint
6 describes the website in detail, but it did not provide screenshots, and the Commission has been
7 unable to locate a cached version of the active site.⁶ However, the Office of General Counsel
8 (“OGC”) located multiple online message boards on which participants purportedly discussed
9 the website and posted images of the site as it was being developed.⁷ Those images show the use
10 of HFA’s logo, font, color scheme, and disclaimer. The images also show that a donate button
11 was featured on the site, though the information in the record does not disclose where that donate
12 button led.⁸ The below screenshot from the message board displays a page from the under-
13 construction website, including the “donate” button, which appears under the “Get Involved”
14 heading:

⁴ *Id.*

⁵ <https://www.whois.com/whois/votehillaryonline.com> (showing a registration date of November 7, 2016). It is unclear when the website was taken down.

⁶ The site appears to be protected by robots.txt, a file that prevents systematic browsing (also known as “crawling”) and archiving of websites.

⁷ *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).

⁸ *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, OGC’s review indicates that theabfa.com was the draft form of votehillaryonline.com, and we therefore do not know where the live version directed users who clicked “donate.”

Vote for Hillary online

I'm with her

Help decide the future of our great country.



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

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2 The Commission does not know the identity of the website's domain holder. OGC
3 searched whois.com, a website that discloses the registered domain holder of particular websites,

1 and learned that www.votehillaryonline.com is registered to an entity named WhoIsGuard, Inc.
 2 (“WhoIsGuard”). WhoIsGuard is a service that conceals the identities of domain holders.⁹

3 III. LEGAL ANALYSIS

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.¹⁰ 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.¹¹ 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.¹² “Even
 10 absent an express misrepresentation, a representation is fraudulent if it was reasonably calculated
 11 to deceive persons of ordinary prudence and comprehension.”¹³

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⁹ 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.

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

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

¹² 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).

¹³ *Novacek*, 739 F. Supp. 2d at 961.

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Factual and Legal Analysis

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1 The information in the record indicates that Unknown Respondent fraudulently
2 misrepresented itself as soliciting contributions for, or on behalf of, HFA and Clinton. The
3 website appears to have mimicked HFA's website, used the Committee's official logo, and,
4 perhaps most deceptively, included a disclaimer stating that it was paid for by the Committee.
5 The website's name itself, "votehillaryonline," is misleading. Together, these facts suggest
6 Unknown Respondent fraudulently misrepresented itself as acting for, or on behalf of, Clinton
7 and HFA, and did so while soliciting contributions. Accordingly, the Commission finds that
8 Unknown Respondent violated 52 U.S.C. § 30124(b).¹⁴

¹⁴ 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. The Commission will take appropriate action if it discovers that the website was financed by foreign nationals.