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BEFORE THE FEDERAL ELECTION COMMISSION

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v.

MUR No. 7486

45COMMITTEE, INC.
P.O. Box 710993
Herndon, VA 20171

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that 45Committee, a person that reported independent expenditures to the Commission under ID:C90016478 and electioneering communications under ID:C30002679, has violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. 45Committee—whose name is a reference to the election of the 45th president in 2016—spent \$22,010,335 on independent expenditures and electioneering communications in the final weeks of the 2016 election, and although these political expenditures constituted around half of its overall spending in 2016, 45Committee failed to register as a political committee and to file reports of its receipts and disbursements.
3. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission *shall* make an

investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

4. Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit 501(c)(3) organization whose mission is to protect and strengthen the U.S. democratic process through litigation and other legal advocacy. CLC participates in judicial and administrative matters throughout the nation regarding campaign finance, voting rights, redistricting, and government ethics issues.

FACTS

5. 45Committee, Inc. is a social welfare organization exempt from income tax under Section 501(c)(4) of the Internal Revenue Code.¹
6. On October 27, 2015, the *Wall Street Journal* reported that “[a] collection of top GOP operatives, financed by prominent Republican donors, is launching two new groups to take aim at Democratic presidential frontrunner Hillary Clinton.”² As the *Journal* proceeded to describe:

The groups—Future45, a super PAC, and 45Committee, an issue-advocacy organization—are designed to seize on issues that emerge in the campaign or comments Mrs. Clinton makes and quickly assemble ads that will run both online and on television. Organizers are hoping the groups will become something of an experimental, quick-strike vehicle to see what messages and tactics work.

. . . .

Future45 and the 45Committee, both references to the numerical ranking of the next president, enter the fray as Mrs. Clinton regains her perch as the clear favorite to be the next Democratic presidential nominee.³

7. On September 28, 2016, *POLITICO* reported that:

[Future45], along with 45Committee, had been created in October to attack Clinton, but both had gone largely dormant during the heated Republican primary. So Todd Ricketts

¹ See 45Committee Inc., Return of Organization Exempt from Income Tax, IRS Form 990, at 1 (filed Feb. 15, 2018), <https://www.documentcloud.org/documents/4390683-45Committe-2016-Form-990.html>.

² Patrick O’Connor & Rebecca Ballhaus, *New GOP Groups Taking Aim at Hillary Clinton*, WALL ST. J. (Oct. 27, 2015), <https://www.wsj.com/articles/prominent-gop-donors-launch-new-groups-to-take-aim-at-hillary-clinton-1445984161>.

³ *Id.*

essentially took them over this month with the intention of running pro-Trump ads, and began making calls seeking support from fellow mega-donors, many of whom had also vehemently opposed Trump.⁴

Ricketts, *POLITICO* reported, “is making a particular effort to win over donors who want to help Trump but are leery of having their names publicly associated with the polarizing Republican nominee.”⁵ *POLITICO* quoted “a fundraiser who is familiar with—but not connected to—Ricketts’ fundraising effort,” who said, “There is a substantial appetite for a nondisclosing vehicle, because it’s embarrassing to support Trump There are more donors who are willing to support Donald anonymously than with their names on it.”⁶

8. On October 1, 2016, *CNN* reported that:

The Ricketts family, the founder and heirs to the TD Ameritrade fortune, have told associates that the Adelsons has pledged \$25 million to their groups, which includes a revived super PAC, Future 45, and the nonprofit 501(c)(4) group, 45Committee. It is unclear how the Adelsons plan to split their checks between the entities.

And two people who have spoken personally with Todd Ricketts this week said Ricketts said he now had \$35 million in the bank thanks to the Adelson donation and was working toward raising \$70 million, earmarked exclusively for the presidential race.⁷

9. On October 6, 2016, the *New York Times* reported that 45Committee “will begin airing ads criticizing Hillary Clinton and praising Donald J. Trump as the 2016 election enters its final weeks. . . . The ads are part of a multimillion-dollar spending effort in battleground states, said the group’s president, Brian Baker.”⁸ The *Times* quoted Baker as saying:

⁴ Kenneth P. Vogel, *Secret money to boost Trump*, *POLITICO* (Sept. 28, 2016), <https://www.politico.com/story/2016/09/secret-money-to-boost-trump-228817>.

⁵ *Id.*

⁶ *Id.*

⁷ Theodore Schleifer, *Trump finally hits the big-money jackpot*, *CNN* (Oct. 1, 2016), <https://www.cnn.com/2016/10/01/politics/donald-trump-big-money-success/index.html>.

⁸ Maggie Haberman, *Pro-Trump Group to Release Ads as Part of Major Swing State Effort*, *N.Y. TIMES* (Oct. 6, 2016), <https://www.nytimes.com/2016/10/07/us/politics/campaign-ads.html>.

“It will take a builder and a proven job creator to get Americans working again,” Mr. Baker said. “As we all know, after 40 years in political life, Secretary Clinton is not the change our country needs — in fact, it is no change at all.”⁹

10. During the 2016 election cycle, 45Committee reported spending \$21,339,015 on independent expenditures opposing presidential candidate Hillary Clinton or supporting her opponent, Donald Trump; all of the communications were disseminated between October 4, 2016 and November 5, 2016.¹⁰ It additionally reported spending \$671,320 on electioneering communications opposing Florida U.S. Senate candidate Patrick Murphy; those communications were disseminated on October 27, 2016.¹¹
11. According to the Center for Public Integrity’s Political Ad Tracker, which analyzes broadcast ads and ads run on national cable collected by Kantar Media/CMAG, 45Committee aired 5,241 broadcast spots in the second half of 2016; all ran from October 2 through November 5, 2016, and were concentrated in the swing states of Pennsylvania, North Carolina, and Florida.¹² The tracker shows that this number *exceeded* the number of broadcast spots aired by Future45, 45Committee’s sister super PAC, as well as the number aired by the Republican National Committee.¹³

⁹ *Id.*

¹⁰ 45 Committee Inc., Year-End Report of Independent Expenditures Made and Contributions Received, FEC Form 5, at 3-11 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

¹¹ 45 Committee Inc., 24 Hour Electioneering Communication Notice, FEC Form 9, at 3 (filed Oct. 28, 2016), <http://docquery.fec.gov/pdf/385/201610319037011385/201610319037011385.pdf>.

¹² Center for Public Integrity, *Ad Tracker*, <https://www.publicintegrity.org/2016/01/21/19162/ad-tracker> (last visited Aug. 17, 2018). Notably, 45Committee’s ads ran up until election day. For example, after the Clinton campaign challenged the veracity of a 45Committee ad and asked stations to take it down, attorneys for the law firm Clark Hill responded to the stations on behalf of 45Committee and Future 45, writing “We trust you will make a fact-based decision and continue to air these ads in order to allow the American people to be fully educated about their candidates for President. With just one day before the election, any decision to stop airing the ad will cause irreparable harm to 45Committee and Future45.” Letter from Clark Hill to Station Manager (Nov. 7, 2016) (attached as Exhibit A).

¹³ *Id.*

12. During the entirety of 2016, 45Committee's Twitter account tweeted only six times; all six tweets were posted in October or November, and all pertained to the 2016 election.

Specifically:

- On October 6, 2016, 45Committee tweeted, "A tired career politician who will increase #taxes & cost jobs, or a proven job creator who will fight for good US jobs? The choice is clear," along with 45Committee's ad titled "Same Path."¹⁴ The ad featured multiple images of Trump and Clinton, attacked Clinton, called Trump a "proven job creator," and pictured a ballot with Trump's name illuminated.¹⁵
- On October 7, 2016, 45Committee tweeted, "It's time to make America strong again," together with the "Same Path" ad.¹⁶
- Later in the day on October 7, 2016, 45Committee tweeted a longer version of the ad, which this time it titled "Strong Again," with the tweeted message, "Americans don't need 4 more years of job loss & higher taxes from a career politician. We need someone with a proven record of job creation."¹⁷ This ad, like the shorter version, attacked Clinton, praised Trump as a "proven job creator," and showed a ballot with Trump's name illuminated, but it also concluded with a message to "Vote November 8th" (while a voice-over said, "And it starts November 8th with your vote. The time for change is right now"), followed immediately by an image of Trump.¹⁸
- On October 9, 2016, 45Committee again tweeted out the "Strong Again" ad with the message, "We need to change Washington and make America strong again. The time for change is now and it starts in November with your vote."¹⁹
- On November 6, 2016, two days before the election, 45Committee tweeted, "Stop the Clinton scandals and make America strong again," along with video of a third ad titled "Real Change."²⁰ After showing pictures of Clinton while telling its viewers that "America can't afford a president too distracted by their own endless scandals..." (among other lines), the ad concluded with an image of Trump overlaid with the text, "Stop the Clinton Scandals. Vote for Real Change November 8th."²¹
- Also on November 6, 2016, 45Committee tweeted a "Why Isn't Hillary Ahead?" ad along with the text, "'Why aren't I 50 points ahead, you might ask,' says Hillary Clinton.

¹⁴ 45Committee, *A tired career politician*, TWITTER (Oct. 6, 2016), https://twitter.com/45_Committee/status/784129857466798080.

¹⁵ *Id.*

¹⁶ 45Committee, *It's time to make America strong again*, TWITTER (Oct. 7, 2016), https://twitter.com/45_Committee/status/784383293772800002.

¹⁷ 45Committee, *Americans don't need 4 more years of job loss*, Twitter (Oct. 7, 2016), https://twitter.com/45_Committee/status/784451489666174977.

¹⁸ *Id.*

¹⁹ 45Committee, *We need to change Washington*, TWITTER (Oct. 9, 2016), https://twitter.com/45_Committee/status/785118896206454788.

²⁰ 45Committee, *Stop the Clinton scandals*, TWITTER (Nov. 6, 2016), https://twitter.com/45_Committee/status/795288754953027586.

²¹ *Id.*

Watch the video and find out why.”²² The ad featured multiple video clips of Clinton and attacked her for not having driven a car since 1996, for making \$100 million, and for being under FBI investigation.²³

13. On its Facebook page, 45Committee posted only once in 2016, on October 6. That post read, “A tired career politician who will increase taxes and cost jobs, or a proven job creator who will fight for good American jobs? The choice is clear. It’s time to make America strong again,” and included a video of the “Same Path” ad.²⁴
14. On February 15, 2018, 45Committee filed its Form 990 annual return with the Internal Revenue Service (“IRS”), for the 2016 tax year beginning April 1, 2016 and ending March 31, 2017.²⁵ 45Committee reported \$46,362,986 in revenue and \$45,556,334 in expenses during the tax year.²⁶
15. Therefore, the \$22,010,335 that 45Committee spent on independent expenditures and electioneering communications in the weeks before the 2016 election constituted 48.3 percent of its overall spending in the 2016 tax year.

SUMMARY OF THE LAW

16. FECA defines the term “political committee” to mean “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5(a). “Contribution” is defined as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any

²² 45Committee, “*Why aren’t I 50 points ahead,*” TWITTER (Nov. 6, 2016), https://twitter.com/45_Committee/status/795332438398373888

²³ *Id.*

²⁴ 45Committee, *A tired career politician*, FACEBOOK (Oct. 6, 2016), <https://www.facebook.com/45Committee/videos/353576058317537/>.

²⁵ 45Committee Inc., Return of Organization Exempt from Income Tax, IRS Form 990, at 1 (filed Feb. 15, 2018), available at <https://www.documentcloud.org/documents/4390683-45Committee-2016-Form-990.html>.

²⁶ *Id.*

person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i). “Expenditure” is similarly defined as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i).

17. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term “political committee” to “only encompass organizations that are under the control of a candidate *or the major purpose of which is the nomination or election of a candidate.*” *Id.* at 79 (emphasis added). Again, in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Court invoked the “major purpose” test and noted, in the context of analyzing the activities of a 501(c)(4) group, that if a group’s independent spending activities “become so extensive that the *organization’s major purpose may be regarded as campaign activity*, the corporation would be classified as a political committee.” *Id.* at 262 (emphasis added). In that instance, the Court continued, the group would become subject to the “obligations and restrictions applicable to those groups *whose primary objective is to influence political campaigns.*” *Id.* (emphasis added). The Court in *McConnell v. FEC*, 540 U.S. 93 (2003), restated the “major purpose” test for political committee status as iterated in *Buckley*. *Id.* at 170 n.64.

18. The Commission has explained:

[D]etermining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).

Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007).

19. “[A]n organization[’s] relative spending in the most recent calendar year” is a particularly relevant time period for assessing a group’s major purpose. *CREW v. FEC*, 209 F. Supp. 3d 77, 93-94 (D.D.C. 2016) (noting that Congress defined “political committee” in terms of calendar-year spending at 52 U.S.C. § 30101(4), and finding Commissioners acted contrary to law by limiting their analysis to group’s lifetime spending and failing to consider whether an organization’s major purpose had changed).²⁷
20. In addition to reviewing an organization’s overall spending, the Commission conducts a fact-specific case-by-case analysis to determine if an organization’s major purpose is the nomination or election of federal candidates. For example, the Commission will consider an organization’s public statements in determining its purpose,²⁸ and will examine conduct other than publicly available advertisements, such as materials distributed to donors and fundraising appeals.²⁹ See 72 Fed. Reg. at 5601.³⁰
21. Courts have upheld the Commission’s fact-based major purpose test. See, e.g., *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 555-58 (4th Cir. 2012) (“RTAA”) (rejecting the claim that the only method to determine PAC status is to examine whether “campaign-related

²⁷ The court also rejected the categorical exclusion of electioneering communications or other non-express advocacy communications from the major purpose analysis. 209 F. Supp. 3d at 93 (“Indeed, it blinks reality to conclude that many of the ads considered by the Commissioners in this case were not designed to influence the election or defeat of a particular candidate in an ongoing race.”); see also *CREW v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (“[T]o the extent that the Commission considers an entity’s spending in assessing its major purpose, it must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate.”).

²⁸ See, e.g., *FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004) (court found organization evidenced its major purpose through its own materials, which stated the organization’s main goal of supporting the election of the Republican Party candidates for Federal office and through efforts to get prospective donors to consider supporting Federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (“organization’s [major] purpose may be evidenced by its public statements of its purpose or by other means”); Advisory Opinion 2006–20 (Unity 08) (organization evidenced its major purpose through organizational statements of purpose on Web site).

²⁹ *Malenick*, 310 F. Supp. 2d at 234-36 (examining organizations’ materials distributed to prospective donors).

³⁰ See, e.g., *RTAA* at 558 (describing the Commission’s multi-factor major-purpose test as “a sensible approach to determining whether an organization qualifies for PAC status”); see also *Free Speech v. FEC*, 720 F.3d 788, 797-98 (10th Cir. 2013) (upholding the Commission’s multi-factor major-purpose approach).

speech amounts to 50% of all expenditures,” and concluding that the Commission’s comprehensive consideration of multiple factors was “sensible, . . . consistent with Supreme Court precedent and does not unlawfully deter protected speech”). Courts reviewing state laws governing political committees have described similar fact-based major purpose tests, *see, e.g., Corsi v. Elections Comm.*, 2012-Ohio-4831, ¶ 24, 981 N.E.2d 919, 927, *cert. denied*, 571 U.S. 826 (2013) (quoting *RTAA* and noting that “[t]he determination of an organization’s ‘primary or major purpose’ is a fact intensive analysis and such a determination must weigh a number of considerations”), and upheld state laws that more broadly define “political committee.”³¹

22. For the reasons set forth above, there is a two-prong test for “political committee” status under federal law: (1) whether the entity or other group of persons receives “contributions” or makes “expenditures” of \$1,000 or more in a calendar year, and, if so, (2) whether an entity or other group of persons has a “major purpose” of influencing the “nomination or election of a candidate,” as stated by *Buckley*.

³¹ *See, e.g., Yamada v. Snipes*, 786 F.3d 1182, 1194-95 (9th Cir. 2015) (upholding state law defining political committee to include any group making more than \$1,000 in expenditures over two years, regardless of whether the group has a major purpose of influencing an election); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 134-39 (2d Cir. 2014) (“VRTL”) (2015) (upholding state law defining political committee as any group spending more than \$1,000 in two years to support or oppose a candidate; rejecting argument that political committee status must be limited to groups with a “major purpose” to influence elections); *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 414-15 (5th Cir. 2014) (upholding state law that defined political committee to include any group which engages in “some” activities that “support[] or oppos[e]” a candidate); *Worley v. Fla. Sec’y of State*, 717 F.3d 1238, 1240, 1253 (11th Cir. 2013) (upholding state law applying political committee status to groups that raise contributions or spend “more than \$500 in a year to expressly advocate the election or defeat of a candidate”); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 470-71, 491 (7th Cir. 2012) (upholding state law defining political committee to include any group that spent more than \$3,000 on ads that “almost verbatim” met federal definition of electioneering communications); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 42, 54-57, 59 (1st Cir. 2011) (upholding disclosure law for political committees, even though law did not require a political committee have a “major purpose” of influencing an election); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1008-12 (9th Cir. 2010) (upholding state law defining political committee as a group with a “primary or one of the primary purposes” to “affect, directly or indirectly, governmental decision making by supporting or opposing candidates”).

23. Any entity that meets the definition of a “political committee” must file a “statement of organization” with the Commission, 52 U.S.C. § 30103, must comply with the organizational and recordkeeping requirements of 52 U.S.C. § 30102, and must file periodic disclosure reports of its receipts and disbursements, 52 U.S.C. § 30104.³²
24. The political committee disclosure reports required by FECA must disclose to the Commission and the public, including complainants, specific information regarding such committee’s financial activities, including the identity of any donor who has contributed \$200 or more to the committee within the calendar year. *See* 52 U.S.C. § 30104(b). Courts have repeatedly recognized the importance of campaign finance disclosure to informing the electorate. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 369 (2010) (“[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.”); *see also Stop This Insanity Inc. Emp. Leadership Fund v. FEC*, 761 F.3d 10, 17 (D.C. Cir. 2014) (describing the “First Amendment rights of the public to know the identity of those who seek to influence their vote”).

CAUSES OF ACTION

I. 45COMMITTEE FAILED TO REGISTER AS A POLITICAL COMMITTEE

25. Based on published reports and filings with the Commission and the Internal Revenue Service, there is reason to believe that 45Committee met the two-prong test for political committee status by (1) making “expenditures” of \$1,000 or more in a calendar year, and (2) having the “major purpose” of influencing the “nomination or election of a candidate.”

³² In addition, a “political committee” that makes contributions, including in-kind contributions and coordinated communications, is subject to limits on the contributions it receives, 52 U.S.C. § 30116(a)(1), (a)(2), (f), and may not accept contributions from corporations, 52 U.S.C. § 30118(a). *See* FEC Ad. Op. 2010-11, at 2 (Commonsense Ten) (concluding that committee that “intends to make only independent expenditures” and “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is not subject to contribution limits).

26. 45Committee reported \$22,010,335 in election-related spending to the Commission in the final weeks of the 2016 election: \$21,339,015 on independent expenditures³³ and \$671,320 on electioneering communications.³⁴ Together, this election-related spending constituted 48.3 percent of the \$45,556,334 that 45Committee spent overall in its 2016 tax year, which ran from April 1, 2016 to March 31, 2017.³⁵ (By contrast, in the 2015 tax year, when no national elections were held, 45Committee raised only \$2,225,000 and spent \$1,008,469.³⁶) Moreover, 45Committee's independent expenditure and electioneering communication reports may not reflect the total of its election-related spending, such as overhead costs.³⁷
27. 45Committee's election-related disbursements likely constituted an even higher percentage of its overall spending during the 2016 *calendar* year. 45Committee reportedly made an estimated \$4 million of its \$45.5 million in spending for tax year 2016 in the first several weeks of 2017.³⁸ Thus, unless 45Committee engaged in significant non-campaign spending in January through March of 2016, it appears that at least \$22,010,335 of 45Committee's \$41.5 million spent in calendar year 2016—53%—was on election-related disbursements.³⁹

³³ 45 Committee Inc., Year-End Report of Independent Expenditures Made and Contributions Received, FEC Form 5, at 1, 11 (filed Jan. 31, 2017),

<http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

³⁴ 45 Committee Inc., 24 Hour Electioneering Communication Notice, FEC Form 9, at 3 (filed Oct. 28, 2016), <http://docquery.fec.gov/pdf/385/201610319037011385/201610319037011385.pdf>.

³⁵ 45Committee Inc., Return of Organization Exempt from Income Tax, IRS Form 990, at 1 (filed Feb. 15, 2018), available at <https://www.documentcloud.org/documents/4390683-45Committee-2016-Form-990.html>.

³⁶ *Id.*

³⁷ For example, a committee that raises \$1,000,000, spends \$300,000 on fundraising costs and \$300,000 on staff salaries and overhead, and reports \$400,000 on independent expenditures, would have a major purpose of influencing elections, not a major purpose of paying fundraising costs, staff salaries, and overhead.

³⁸ Tom LoBianco, *First on CNN: Pro-Trump Group Hacked, Website Taken Down in Cabinet Fight*, CNN (Feb. 6, 2017), <https://www.cnn.com/2017/02/06/politics/45-committee-website-hacked/index.html>. The "news" section of 45Committee's website indicates that it did not disseminate any advertisements between the November 8, 2016 election and the end of 2016; its first post-election advertisement aired January 18, 2017. *News*, 45Committee, <http://45committee.com/news/> (last visited May 11, 2018).

³⁹ 45Committee spent \$45,556,334 between April 1, 2016 and March 31, 2017; subtracting the \$4 million spent in the first several weeks of 2017 on non-election-related nominee communications indicates that 45Committee spent no more than \$41,556,334 in April through December 2016. As a result, 45Committee's \$22,010,335 in independent expenditures and electioneering communications during that period constituted 52.9 percent of its spending; its \$21,339,015 in independent expenditures alone constituted 51.34 percent of its spending.

28. The ads 45Committee ran in the 2016 calendar year were almost entirely disseminated in the weeks before the election and targeted to voters in swing states. According to the Center for Public Integrity’s Political Ad Tracker, which analyzes broadcast ads and ads run on national cable collected by Kantar Media/CMAG, 45Committee aired 5,241 broadcast spots from October 2 through November 5, 2016, and those ads were concentrated in the presidential swing states of Pennsylvania, North Carolina, and Florida.⁴⁰
29. 45Committee’s annual return filed with the IRS suggests its other spending in 2016 may have been intended to support the nomination or election of a candidate in the 2016 election. In Part VII, Section B of its annual return, 45Committee reported a total of \$38.3 million in payments—approximately 84% of its total expenditures—to “independent contractors” for what it described as “media ads services.”⁴¹ Four out of the five firms⁴² were the same vendors that 45Committee had reported to the Commission as having produced or placed its independent expenditures and electioneering communications:
- i. On its reports filed with the Commission, 45Committee reported paying \$15.6 million to the firm Del Cielo Media LLC for independent expenditures (in the form of four “media placements”),⁴³ but its annual return filed with the IRS shows

⁴⁰ Center for Public Integrity, *Ad Tracker*, <https://www.publicintegrity.org/2016/01/21/19162/ad-tracker> (last visited Aug. 17, 2018).

⁴¹ 45Committee Inc., Return of Organization Exempt from Income Tax, IRS Form 990, at 8 (filed Feb. 15, 2018), available at <https://www.documentcloud.org/documents/4390683-45Committee-2016-Form-990.html>.

⁴² The fifth independent contractor that 45Committee disclosed to the IRS as having received more than \$100,000 was Target Enterprises LLC, in Sherman Oaks, California. 45Committee did not report to the FEC that it paid a firm with the same name for independent expenditures or electioneering communications; it did pay “TargetPoint Consulting” in Alexandria, Virginia for electioneering communications, but these appear to be separate firms. Compare <https://www.targetpointconsulting.com/> with <https://targetla.com/>. According to Federal Communications Commission records, 45Committee contracted with Target Enterprises for at least some of the advertisements it aired in early 2017 supporting President Trump’s nominees. See Target Enterprises, *Agreement Form for Non-Candidate Advertising* (Jan. 25, 2017) (disclosing broadcast purchase on behalf of 45Committee on station WJRT-FLINT for advertisements “Supporting the President’s nominee for HHS Secretary and repealing Obamacare”), attached as Exhibit B.

⁴³ 45Committee, Itemized Independent Expenditures, FEC Schedule 5-E, at 3, 4, 8, 10 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

that it paid Del Cielo Media LLC \$17.4 million. On its website, Del Cielo Media describes the various “media buying services” it provides for “your election” and “your campaign.”⁴⁴ According to a May 2017 piece on *Campaign & Elections*, Del Cielo Media is a “venture focusing on PACs” headed by “GOP media buyer Paul Winn.”⁴⁵

- ii. On its reports filed with the Commission, 45Committee reported paying \$420,493 to Connell Donatelli Inc. for independent expenditures (two “media placements”),⁴⁶ but reported paying the firm a total of \$10.3 million on its annual return filed with the IRS. Connell Donatelli describes itself as “the pioneers of political advertising on the web.”⁴⁷
- iii. On its reports filed with the Commission, 45Committee reported paying \$4.6 million to the firm DDC for independent expenditures (in the form of eight “media placements”),⁴⁸ but its annual IRS return shows it paid the firm a total of \$6.1 million over the tax year.
- iv. On its reports filed with the Commission, 45Committee reported paid Mentzer Media Services \$663,320 for “media placement” for its electioneering communications,⁴⁹ but its annual IRS return shows it paid the firm \$3.8 million over the tax year. Mentzer Media emphasizes that it “has been helping clients win

⁴⁴ About, Del Cielo Media, <http://delcielomedia.com/about.html> (last visited Aug. 16, 2018).

⁴⁵ Sean J. Miller, *Consultants Grapple with Early Vote Ad Strategy*, CAMPAIGNS & ELECTIONS (May 22, 2017), <https://www.campaignsandelections.com/campaign-insider/consultants-grapple-with-early-vote-ad-strategy>.

⁴⁶ 45Committee, Itemized Independent Expenditures, FEC Schedule 5-E, at 4 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

⁴⁷ About CDI, Connell Donatelli, <https://www.connelldonatelli.com/> (last visited Aug. 16, 2018).

⁴⁸ 45Committee, Itemized Independent Expenditures, FEC Schedule 5-E, at 5, 6, 7, 9 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

⁴⁹ 45Committee, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, FEC Schedule 9-B, at 3 (filed Oct. 28, 2016), <http://docquery.fec.gov/pdf/385/201610319037011385/201610319037011385.pdf>.

elections and campaigns through targeted media buys since 1991” and touts its “combined 82 years of political media buying experience.”⁵⁰ In a 2012 piece on Mentzer, *The Washington Post* described the firm as “the top of the small-but-critical campaign sub-specialty of media buying.”⁵¹

It appears likely that a substantial portion of the \$37,600,000 paid to these four political consulting firms for “media ads services” were for election-related purposes. The disbursements disclosed on 45Committee’s annual return to the IRS, but not disclosed on its reports to the Commission, may reflect (1) that the total cost of 45Committee’s independent expenditures and electioneering communications were not fully reflected on reports filed with the Commission, and/or (2) that the additional disbursements to these campaign vendors were for election-related communications in 2016 that did not constitute independent expenditures or electioneering communications, but which should nonetheless be considered election-related for purposes of the major purpose test, given the timing of 45Committee’s ads, *see supra* ¶28, and the fact that the payments are to the same vendors as produced its other election-related communications.

30. In addition to reviewing an organization’s overall spending, the Commission considers other materials in determining an organization’s major purpose, such as its public statements⁵² and fundraising appeals.⁵³ This evidence further indicates that 45Committee has the major purpose of influencing the election of candidates. For example:

i. Its name is a reference to the numerical ranking of the president elected in 2016.⁵⁴

⁵⁰ *About Us*, Mentzer Media, <http://www.mentzermedia.com/> (last visited Aug. 16, 2018).

⁵¹ Bill Turque, *Master of the art of the media buy*, WASH. POST (Sept. 5, 2012), https://www.washingtonpost.com/politics/master-of-the-art-of-the-media-buy/2012/09/05/f47a8f9c-f761-11e1-8b93-c4f4ab1c8d13_story.html?utm_term=.e2fe6ed483f1.

⁵² *See sources cited supra* note 28.

⁵³ *See sources cited supra* note 29.

⁵⁴ O’Connor & Ballhaus, *supra* note 2.

- ii. The *Wall Street Journal* described 45Committee as one of two groups launched by “[a] collection of top GOP operatives [and] financed by prominent Republican donors . . . to take aim at Democratic presidential frontrunner Hillary Clinton.”⁵⁵
- iii. 45Committee officials solicited contributions from “donors who want to help Trump but are leery of having their names publicly associated with the polarizing Republican nominee.”⁵⁶ As one consultant told *POLITICO* about 45Committee, “[t]here is a substantial appetite for a nondisclosing vehicle, because it’s embarrassing to support Trump . . . There are more donors who are willing to support Donald anonymously than with their names on it.”⁵⁷
- iv. 45Committee raised money “earmarked exclusively for the presidential race.”⁵⁸
- v. In one of 45Committee president Brian Baker’s few statements on behalf of the organization in 2016,⁵⁹ he said, “It will take a builder and a proven job creator to get Americans working again. . . As we all know, after 40 years in political life, Secretary Clinton is not the change our country needs — in fact, it is no change at all.”⁶⁰
- vi. 45Committee’s social media accounts were entirely dedicated to influencing the 2016 election. During the entirety of 2016, 45Committee’s Twitter account tweeted only six times; all six tweets were posted in October or November, and

⁵⁵ *Id.*

⁵⁶ Vogel, *supra* note 4.

⁵⁷ *Id.*

⁵⁸ Schleifer, *supra* note 7.

⁵⁹ See, e.g., Google Keyword Search for “Brian Baker” and “45Committee,” Date Range Jan. 31, 2016 to Dec. 31, 2016,

https://www.google.com/search?q=%22brian+baker%22+%2245committee%22&rlz=1C1NHXL_enUS740US740&tbs=cdr:1,cd_min:1/1/2016,cd_max:12/31/2016&filter=0&biw=1212&bih=634 (last visited Aug. 15, 2018).

⁶⁰ Haberman, *supra* note 8.

all pertained to the 2016 election.⁶¹ 45Committee's Facebook page included only one post in 2016: a video attacking Clinton and supporting Trump.⁶² At no time did 45Committee's major social media accounts in 2016 post anything other than content expressly promoting Trump or attacking Clinton.

31. Consequently, as demonstrated by 45Committee's extensive spending on federal campaign activity, its fundraising appeals, public statements by its president and other individuals familiar with its activities, and indeed its very name, there is reason to believe that 45Committee's major purpose in 2016 was the nomination or election of federal candidates, and it was thus a political committee, as defined at 52 U.S.C. § 30101(4).
32. Therefore, 45Committee violated 52 U.S.C. §§ 30102 and 30103 by failing to organize and register as a political committee.

II. 45COMMITTEE FAILED TO FILE REPORTS AS A POLITICAL COMMITTEE

33. As a political committee, 45Committee was required to file periodic reports with the Commission that, among other things, (1) identified all individuals who contributed an aggregate of more than \$200 in a year and the amount contributed; (2) identified all political committees that contributed and the amount; (3) detailed outstanding debts and obligations; and (4) listed all of 45Committee's expenditures. 52 U.S.C. § 30104.
34. By failing to file these reports, 45Committee violated its reporting obligations at 52 U.S.C. § 30104.

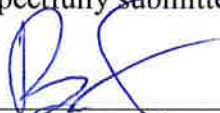
PRAYER FOR RELIEF

⁶¹ See sources cited *supra* ¶ 12.

⁶² See sources cited *supra* ¶ 13.

35. Wherefore, the Commission should find reason to believe that 45Committee violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
36. The Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,



Campaign Legal Center, by
Brendan M. Fischer
1411 K Street, NW, Suite 1400
Washington, DC 20005
(202) 736-2200



Margaret Christ
1411 K Street NW, Suite 1400
Washington, DC 20005
(202) 736-2200

Brendan M. Fischer
Campaign Legal Center
1411 K Street, NW, Suite 1400
Washington, DC 20002
Counsel to the Campaign Legal Center,
Margaret Christ

August 23, 2018

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Margaret Christ

Margaret Christ

Sworn to and subscribed before me this 23 day of August 2018.

Notary Public



For Complainant Campaign Legal Center

Brendan M. Fischer

Sworn to and subscribed before me this 23 day of August 2018.

Notary Public



Exhibit A

CLARK HILL

Charles R. Spies
T 202.572.8663
F 202.572.8683
Email: cspies@clarkhill.com

Clark Hill PLC
601 Pennsylvania Avenue NW
North Building, Suite 1000
Washington, DC 20004
T 202.772.0909
F 202.772.0919

clarkhill.com

November 7, 2016

ATTENTION STATION MANAGER

Re: 45Committee and Future45's Advertisements

On behalf of 45Committee and Future45 (collectively, the "Committees"), we write about a letter you may have received from counsel to Hillary for America, the principal campaign committee for Hillary Clinton ("Clinton"), regarding a series of advertisements sponsored by the Committees that may currently be airing on your station. The letter takes issue with the Committees' advertisements that inform the voting public of Hillary Clinton's long history of scandals and criminal investigations.

Specifically, Clinton's letter asserts that the Committees' "ads falsely claim that Secretary Clinton is currently under investigation by the Federal Bureau of Investigation ("FBI") for emails that she sent or received while serving as Secretary of State," and that that "at no point did the FBI 're-open' an investigation into Secretary Clinton's emails." As support for this contention, Clinton's counsel asserts that "Comey updated Congress again that the FBI had 'reviewed all communications' that were newly discovered and had 'not changed our conclusions' that Secretary Clinton is cleared of all wrongdoing." The twisted Clinton logic here is that because Director Comey has to-date declined to indict Secretary Clinton that she is supposedly cleared of wrongdoing and no longer being investigated. This is factually and logically absurd. The letter also misstates the actual language in the Committees' ads, and utterly fails to account for the **multiple investigations into the Clintons by the FBI and various other investigative bodies, including the ongoing FBI investigation of the Bill, Hillary & Chelsea Clinton Foundation (i.e., the "Clinton Foundation")**.

The letter from Clinton's counsel is a desperate attempt to conceal Clinton's embarrassing and politically damaging history of scandal and lying to the American people. It is meant to intimidate stations with two days left until the election. Clinton's challenge is baseless. Each and every statement in the Committees' advertisements are carefully worded, documented and supported. The Committees' advertisements are accurate in every respect, raise critical character issues, and should continue to air.

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Director Comey's Letter to Congress on November 6th Did Not State that the Investigation Into Clinton Was Closed

Clinton's letter maintains that the Committees' advertisements are false, claiming that "Director Comey updated Congress again that the FBI had 'reviewed all communications' that were newly discovered and had 'not changed our conclusions' that Secretary Clinton is cleared of all wrongdoing." This is **NOT** what Director Comey's letter said. Nowhere in the letter does it state that "Secretary Clinton is cleared of all wrongdoing," and most significantly, it does not state that the investigation was closed or terminated. It simply states that "we have not changed our conclusions that we expressed in July with respect to Secretary Clinton." Importantly, Director Comey's letter to Congress on October 28th stated that:

I am writing to inform you that the investigative team briefed me on this yesterday, and I agreed that **the FBI should take investigative steps** designed to allow investigators to review these emails to determine whether they contain classified information, **as well as to assess their importance to our investigation.**

Numerous current and former government officials and countless news organizations concluded that this amounted to a reopening of the FBI investigation into Hillary Clinton and her private email server.¹ The fact that Director Comey wrote a letter to Congress yesterday stating only that "we have not changed our conclusions" does **NOT** amount to a closing of the investigation into Clinton's private email server. Moreover, the fact that Director Comey's letter states in the final underlined portion of the quote above, "as well as to assess their importance **to our investigation,**" means that the investigation never ended. If the investigation into Clinton had truly been closed, then Director Comey would not have explicitly referenced "**our investigation.**"

Clinton's Letter Misquotes the Language in the Committees' Advertisements

The letter from Clinton's counsel argues that the Committees' "ads falsely claim that Secretary Clinton is currently under investigation by the Federal Bureau of Investigation ("FBI") for emails that she sent or received while serving as Secretary of State." None of the ads cited by Clinton make these explicit statements. As an initial matter, if a candidate is going to request that stations remove numerous advertisements in a single cease and desist letter, it is the candidate's obligation to cite explicit language in each advertisement with which the candidate takes issue. Clinton's letter fails to cite any specific language in the Committees' ads.

¹ See, e.g. CBS Evening News, Oct. 28, 2016, available at <https://www.youtube.com/watch?v=IL27Gqk-beo> ("Today the FBI unexpectedly reopened its criminal investigation of Hillary Clinton's private email servers.").

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Instead, Clinton's letter lists at least five advertisements sponsored by the Committee and makes the blanket statement that the Committees' "ads falsely claim that Secretary Clinton is currently under investigation by the Federal Bureau of Investigation ("FBI") for emails that she sent or received while serving as Secretary of State." Although it is difficult to ascertain which ads Clinton's counsel is referring to—he incorrectly states the name of the Committees' ads and even lists an ad that stopped running in early October—none of the Committees' ads that are presently on the air say "currently" and none of the ads make the statement that Clinton is under FBI investigation "for emails that she sent or received while serving as Secretary of State." To the contrary, the ads make general references to Clinton's scandals and corruption and simply cite a Wall Street Journal headline from October 29th on screen that stated "FBI Reopens Clinton Email Probe." The Committees' picturing of a newspaper headline is hardly grounds to get an ad removed from the air.

Clinton's Letter Falsely Assumes that the Committees' Advertisements are Based Solely on the FBI's Investigation into Clinton's Use of a Private Email Server

Clinton's letter is based entirely on its mischaracterization of Director Comey's letter to Congress yesterday morning. The letter ignores the fact that the Clintons are currently under FBI investigation for their illicit role in the Clinton Foundation. Any references in the Committees' ads to Hillary Clinton or the Clintons being under investigation by the FBI are substantiated by these additional investigations. In fact, numerous articles have revealed that the FBI is currently investigating the Clinton Foundation and Hillary Clinton's role in apparent pay to play schemes.

On October 30th, the Wall Street Journal reported that "[t]he probe of the foundation began more than a year ago to determine whether financial crimes or influence peddling occurred related to the charity," and that "[a]ccording to a person familiar with the probes, on Aug. 12, a senior Justice Department official called [FBI second in command] Mr. McCabe to voice his displeasure at finding that **New York FBI agents were still openly pursuing the Clinton Foundation probe during the election season.**"² A Reuters piece from November 3rd noted that "**Democratic Party sources** said such a faction was likely responsible for a recent surge in media leaks on alleged details of **an ongoing FBI investigation of the Clinton Foundation.**"³ Politico also made clear that there is "an ongoing investigation into Clinton Foundation."⁴ Lastly, just yesterday, the Weekly Standard definitively maintained that "**[t]here is an ongoing investigation into the Clinton Foundation,**" and reported that "CNN Senior Law Enforcement Analyst Tom Fuentes, a former top FBI official, cited conversations with 'several' senior FBI

² Devlin Barrett, *FBI in Internal Feud Over Hillary Clinton Probe*, WALL ST. J., Oct. 30, 2016, available at <http://www.wsj.com/articles/laptop-may-include-thousands-of-emails-linked-to-hillary-clintons-private-server-1477854957>.

³ Mark Hosenball, *FBI fear of leaks drove decision on emails linked to Clinton: sources*, REUTERS, Nov. 3, 2016, available at <http://www.reuters.com/article/us-usa-election-fbi-leaks-idUSKBN12Y2QD>.

⁴ Kelsey Sutton, *Fox News' Bret Baier apologizes for 'mistake' in Clinton Foundation report*, POLITICO, Nov. 4, 2016, available at <http://www.politico.com/blogs/on-media/2016/11/fox-news-bret-baier-sorry-for-clinton-foundation-report-230743>.

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officials when reported three times last weekend that the FBI investigation of the Clinton Foundation was 'ongoing.'⁵ Quoting Fuentes, the Weekly Standard piece adds:

“The FBI has an intensive investigation ongoing into the Clinton Foundation,” Fuentes said. “The FBI made the determination that the investigation would go forward as a comprehensive unified case and be coordinated. So that investigation is ongoing and Huma Abedin and her role in the foundation and possible allegations concerning the activities of the Secretary of State in the nature of the Foundation and possible pay-to-play, that's still being looked at.”⁶

All of these reports and statements make clear that there is a current, ongoing investigation in the Clinton Foundation and that the FBI is actively looking into “allegations concerning the activities of the Secretary of State in the nature of the Foundation and possible pay-to-play.”⁷ Therefore, even assuming arguendo that the FBI investigation into Clinton's private email server has concluded—which, as explained above, it has not—the language in the Committees' advertisements are accurate in light of the ongoing FBI investigation into the Bill, Hillary & Chelsea Clinton Foundation.

Conclusion

In threatening your station with baseless arguments, Clinton is trying to halt a healthy discussion about the candidates for President, by cutting off her critics' access to the airwaves. While Clinton is welcome to purchase airtime on your station to defend her record, or attempt to make the case that her long history of dishonesty and corruption is somehow good for America – she cannot silence her critics by taking away their right to respond. Clinton is a public figure, and the ability to criticize a candidate's policies, and matters of public importance, lies at the heart of the First Amendment, as courts have repeatedly recognized. *See, e.g. Time, Inc. v. Hill*, 385 U.S. 374 (1967); *New York Times v. Sullivan*, 376 U.S. 254 (1964). As you know, the Federal Communications Commission has held that stations best meet their public interest obligations “by presenting contrasting views” and encouraging “robust, wide-open debate.” *In re Complaint by Hon. Ronald Reagan*, 38 F.C.C.2D 314 (1972). It has consistently rejected invitations by political figures to “judge the truth or falsity of material being broadcast on either side of a currently controversial issue.” *Id. Accord In re Complaint by Alan S. Burstein*, 43 F.C.C.2d 590 (1973); *In re Complaint by Patton Echols*, 43 F.C.C.2d 479 (1973).

The facts set forth above clearly support each and every claim made in 45Committee and Future45's advertisements. We trust you will make a fact-based decision and continue to air these ads in order to allow the American people to be fully educated about their candidates for

⁵ Stephen F. Hayes, *Clinton Foundation Probe Continues*, WEEKLY STANDARD, Nov. 6, 2016, available at <http://www.weeklystandard.com/clinton-foundation-probe-continues/article/2005261>.

⁶ *Id.*

⁷ *Id.*

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President. With just one day before the election, any decision to stop airing the ad will cause irreparable harm to 45Committee and Future45.

If you have any questions, or believe that 45Committee and Future45's ads are somehow unfit for airing on your station, we ask that you contact us immediately to discuss this matter further. I can be reached directly at (202) 772-0915.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles R. Spies". The signature is written in a cursive style with a large initial "C".

Charles R. Spies
James E. Tyrrell III
Counsel to 45Committee and Future45

Exhibit B



Target Enterprises
15260 Ventura Boulevard, Suite 1240
Sherman Oaks, CA 91403
(818) 905-0005

AGREEMENT FORM FOR NON-CANDIDATE ADVERTISING

Station and Location: WJRT-FLINT	Date: 01/25/1017
-------------------------------------	---------------------

I, **TARGET ENTERPRISES** do hereby request station time concerning the following issue:

Supporting the President's nominee for HHS Secretary and repealing Obamacare

SEE ATTACHED SCHEDULES

This broadcast time will be used by: 45Committee

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"	
<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

I represent that the payment for the above described broadcast time has been furnished by
(name & address)

45Committee, PO Box 710993, Herndon, VA 20171

and are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors (or attach separately):

Board of Directors: Brian Baker, Sara Fagen, Rob Collins, Matt Well.

Julie Iadanza, Target Enterprises

01/24/2017

Signature of Issue Advertiser (Sponsor)

Date

To be Signed by Station Representative

Accepted

Accepted in Part

Rejected

Julie Iadanza

Digitally signed by Julie Iadanza
Date: 2016.09.06 10:22:20 -07'00'

Signature

Date

Printed Name

Title