

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR: 7591**

DATE COMPLAINT FILED: Apr. 3, 2019

DATE OF LAST NOTIFICATION: Apr. 10, 2019

DATE OF LAST RESPONSE: Apr. 23, 2019

DATE ACTIVATED: Nov. 29, 2019

ELECTION CYCLES: 2020

EXPIRATION OF SOL: Oct. 26, 2021

COMPLAINANT:

Martin A. Lamb

RESPONDENT:

MA4Trump

Dianna Ploss

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(4), (8)

52 U.S.C. § 30103(a)

52 U.S.C. § 30104(a)(1)

11 C.F.R. § 100.5

11 C.F.R. § 102.14

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that MA4Trump, which holds itself out as being founded and operated by Boston area radio host Dianna Ploss, failed to register and report as a political committee after raising and spending money for events supporting President Donald J. Trump's 2020 re-election. The Complaint also alleges that MA4Trump's use of the name "Trump" in its name violates the law by improperly holding itself out as an authorized candidate committee and that it failed to use the required disclaimer in a newspaper advertisement.

The Response asserts that MA4Trump is a trade name under which Ploss, an individual, conducts her political activities, and that there is no legal entity separate from Ploss. The

1 Response argues that because MA4Trump is not a separate legal entity, there is no committee,
2 club, association, or group of persons required to register and report as a political committee.
3 The Response does not address the allegations regarding the use of “Trump” in the group’s name
4 or the lack of a disclaimer.

5 Because the available record supports the inference that MA4Trump, which repeatedly
6 advertised itself as a “team,” raised and spent in excess of \$1,000 in 2019 and devoted itself
7 almost completely to supporting Trump’s re-election, we recommend that the Commission find
8 reason to believe that MA4 Trump and Dianna Ploss d/b/a MA4Trump violated 52 U.S.C. §§
9 30103(a) & 30104(a)(1) by failing to register and file reports as a political committee, and 52
10 U.S.C. § 30120(a) by failing to include the required disclaimer in a newspaper advertisement.
11 We further recommend that the Commission authorize compulsory process to determine the
12 scope of MA4Trump’s activities. Finally, we recommend that the Commission take no action as
13 to the allegation that MA4Trump improperly used Trump’s name.

14 **II. FACTUAL BACKGROUND**

15 Dianna Ploss is a radio host in Boston, Massachusetts.¹ Ploss has identified herself as a
16 Massachusetts 2016 Trump Campaign Deputy State Director.² Her personal website describes
17 her as being “dedicated to helping Americans understand the issues we face today, using her

¹ See DIANNA PLOSS WEBSITE, available at <https://diannaploss.com/> (last accessed February 6, 2020) (stating that the Dianna Ploss show is on WSMN1590).

² MUR 7591, Compl., Ex. A. (Apr. 02, 2019).

1 multiple media platforms to spread the message.”³ Her website’s homepage features several
2 images of Donald Trump.⁴

3 Ploss’s homepage states that she founded MA4Trump in February 2016, and that since
4 the group’s inception, she has “rallied President Trump supporters across Massachusetts and
5 beyond.”⁵ The homepage says that “[t]he MA4Trump Team is dedicated to helping President
6 Trump win his 2020 re-election!”⁶ MA4Trump is discussed repeatedly throughout Ploss’s
7 website, and has its own subpage on her website.⁷ MA4Trump also has a Twitter page, a
8 Facebook group where members of the public can post, and had a Facebook page that appears to
9 have been deactivated sometime around December 2019.⁸ The social media pages post a variety
10 of political memes, videos, and news articles.⁹ Many of the posts mention Donald Trump,
11 candidates for the Democratic Presidential nomination in 2020, and Hillary Clinton.¹⁰

³ *Id.*

⁴ *See id.*

⁵ *Id.*

⁶ *Id.*

⁷ *See* DIANNA PLOSS WEBSITE, MA4TRUMP TEAMS, available at <https://diannaploss.com/ma4trump> (last accessed Feb. 6, 2020).

⁸ *See id.*; MA4TRUMP TWITTER PAGE, available at https://twitter.com/MA4_Trump (last accessed Feb. 6, 2020); MA4TRUMP FACEBOOK GROUP, available at <https://www.facebook.com/groups/1645790582350852/Trump> (last accessed Feb. 6, 2020); MA4TRUMP FACEBOOK PAGE, available at <https://www.facebook.com/MA4Trump> (last accessed Dec. 17, 2019) (at the time of this writing, MA4Trump’s Facebook page has been deactivated. The Office of General Counsel was able to ascertain some information from that site before it was deactivated).

⁹ *See, e.g.*, MA4Trump Facebook page, available at <https://www.facebook.com/MA4Trump/> (last accessed Dec. 17, 2019). There is also a Facebook page dedicated to “Trump-Pets 2020” that appears to be associated with MA4Trump. *See* TRUMP-PETS 2020 FACEBOOK PAGE, available at <https://www.facebook.com/TrumpPets/> (last accessed Feb. 6, 2020).

¹⁰ *Id.*

1 The Complaint includes an advertisement for an event the Respondents hosted on January
2 27, 2019, that was billed as “Massachusetts for Trump’s 3rd Annual Christmas Party and Trump
3 2020 Campaign Kick Off.”¹¹ The advertisement says that tickets for the event were \$35 per
4 person, with checks payable to MA4Trump.¹² The advertisement states that participants will
5 “learn how to get involved in the Massachusetts Campaign to re-elect President Donald J. Trump
6 in a room filled with fellow supporters.”¹³ The advertisement further states that

7 Dianna played a critical role in 2016. She coordinated and energized hundreds of
8 volunteers across Massachusetts to work for victory in November 2016. To help
9 Donald Trump, Dianna directed the MA4Trump Team that integrated emails, a
10 website, social media posts and pages and field activities in an unprecedented
11 manner.¹⁴
12

13 The Complaint alleges that this information establishes that MA4Trump is a political
14 committee, which is either affiliated with Donald Trump, or in the alternative, is an unaffiliated
15 committee that is using Donald Trump’s name, in violation of the Act.¹⁵ Finally, the Complaint
16 alleges that the attached advertisement fails to include the required disclaimers.¹⁶

17 The Response states MA4Trump is not a committee or group of people appointed for a
18 specific function, but consists solely of Ploss.¹⁷ The Response therefore asserts that MA4Trump

¹¹ MUR 7591, Compl., Ex. A. (Apr. 02, 2019).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 1.

¹⁶ *Id.*

¹⁷ MUR 7591, Resp. at 1 (Apr. 24, 2019).

1 is not a political committee under the Act.¹⁸ The Response states the January 27 event was not a
2 fundraiser, and that the ticket price went to cover expenses for the event.¹⁹ The Response asserts
3 that the event “was a party where President Trump supporters came together and collectively
4 celebrated the common interest of supporting President Donald J. Trump.”²⁰

5 MA4Trump’s Facebook page contained an “Events” page, which showed dozens of past
6 events. Ploss was identified as the host for some of those events; MA4Trump was identified as
7 the host for others.²¹ For example, MA4Trump was identified as the host for nine events in 2019
8 and one event in 2020. Those are:

- 9 • Dianna Ploss hosts Massachusetts 4 Trump Christmas party (January 26, 2020);
- 10 • President Trump Rally in Dallas, Texas (October 17, 2019);²²
- 11 • President Trump Rally in Minneapolis, Minnesota (October 10, 2019);²³
- 12 • President Trump Rally in Fayetteville, North Carolina (September 9, 2019);²⁴
- 13 • Celebrate July 4th with President Trump in DC (July 4, 2019);²⁵
- 14 • Celebrate President Trump’s Birthday with MA4Trump (June 14, 2019);²⁶

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 1-2.

²¹ MA4TRUMP FACEBOOK PAGE, available at <https://www.facebook.com/MA4Trump/> (last accessed Dec. 17, 2019).

²² This event appears to have been hosted by Donald Trump’s 2020 reelection campaign; it does not appear that MA4Trump played any role in the event other than creating a Facebook event for it.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Attendees purchased their own food and drink. According to the event page, 21 people attended and 128 were interested.

- 1 • Massachusetts 4 Trump 2020 Movement Makes Stop in Bourne (Apr. 27,
2 2019);²⁷
- 3 • Massachusetts 4 Trump 2020 Movement Makes Stop in Fitchburg (Apr. 26,
4 2019);²⁸
- 5 • Massachusetts Trump 2020 Movement Makes Stop in Winthrop (Mar. 7, 2019);²⁹
- 6 • Massachusetts 4 Trump Christmas Party and Trump 2020 Kick-Off (Jan. 27,
7 2019).³⁰

8 **III. LEGAL ANALYSIS**

9 **A. There is Reason to Believe That MA4 Trump is a Political Committee.**

10 The Act and Commission regulations define a “political committee” as “any committee,
 11 club, association or other group of persons which receives contributions aggregating in excess of
 12 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
 13 during a calendar year.”³¹ The term “contribution” includes any gift, subscription, loan,
 14 advance, or deposit of money or anything of value made by any person for the purpose of
 15 influencing any election for Federal office.³² Commission regulations consider the entire
 16 amount spent to attend a fundraiser or political event that expressly advocates the election of a
 17 federal candidate to be a contribution.³³ Political committees must file a statement of

²⁷ Donations of an unspecified amount were accepted at the door to cover the cost of light refreshments. According to the event page, 13 people attended and 52 were interested.

²⁸ Tickets were \$30 per person, and space was limited to 90 people. According to the event page, 13 people attended and 145 were interested.

²⁹ The page says that MA4Trump does not take donations. According to the event page, 32 people attended and 291 were interested.

³⁰ According to the event page, tickets were \$35 per person. 78 people attended and 400 were interested.

³¹ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

³² 52 U.S.C. § 30101(8)(A)(i).

³³ 11 C.F.R. § 100.53. (Entire amount paid to attend political event is a contribution).

1 registration within 10 days of becoming a political committee and must file periodic reports with
2 the Commission.³⁴

3 In *Buckley v. Valeo*,³⁵ the Supreme Court held that defining political committee status
4 “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” might be overbroad,
5 reaching “groups engaged purely in issue discussion.”³⁶ To cure that infirmity, the Court
6 concluded that the term “political committee” “need only encompass organizations that are under
7 the control of a candidate or the *major purpose of which is the nomination or election of a*
8 *candidate.*”³⁷ Accordingly, under the statute as thus construed, an organization that is not
9 controlled by a candidate must register as a political committee only if (1) it crosses the \$1,000
10 threshold and (2) it has as its “major purpose” the nomination or election of federal candidates.
11 The Commission generally considers on a case-by-case basis whether a group’s major purpose is
12 the nomination or election of a federal candidate.³⁸

13 *1. MA4Trump Raised and Spent More Than \$1,000 in 2019 to Influence the 2020*
14 *Presidential Election.*

15
16 The available information supports a reasonable inference that MA4Trump both raised
17 and spent more than \$1,000 in 2019 to influence the 2020 Presidential election. The information

³⁴ 52 U.S.C. § 30103(a); 30104(a)(1).

³⁵ 424 U.S. 1 (1976).

³⁶ *Id.* at 79.

³⁷ *Id.* (emphasis added).

³⁸ See Political Committee Status, 72 Fed. Reg. 5,596 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”).

1 shows that MA4Trump sponsored numerous events for the express purpose of supporting
2 Trump's re-election, and that funds were raised for and spent on those events.

3 A review of MA4Trump's Facebook events in 2019 shows at least three events where
4 donations were accepted:

- 5 • *Massachusetts 4 Trump 2020 Movement Makes Stop in Bourne*, held on April 27, 2019.
6 Donations of an unspecified amount were accepted at the door to cover the cost of light
7 refreshments. According to the event page, 13 people attended and 52 were interested in
8 the event.³⁹
- 9 • *Massachusetts 4 Trump 2020 Movement Makes Stop in Fitchburg*, held on April 26,
10 2019. Tickets were \$30 per person, and space was limited to 90 people. According to
11 the event page, 13 people attended and 145 were interested in the event.⁴⁰
- 12 • *Massachusetts 4 Trump Christmas Party and Trump 2020 Kick-Off*, held on January 27,
13 2019. According to the event page, tickets were \$35 per person, 78 people attended and
14 400 were interested.⁴¹

15 The number of people attending each of these events, as shown on the Facebook pages,
16 multiplied by the advertised ticket prices, supports a reasonable inference that MA4Trump raised
17 more than \$1,000 in contributions in 2019. For example, if all 78 people who indicated they
18 attended the January 27, 2019, "Christmas Party and 2020 Kick-Off" actually attended that
19 event, MA4Trump would have raised \$2,730 in contributions on that night alone. Of course, that
20 figure would be higher if people who indicated they were "interested," or who did not respond to

³⁹ MA4TRUMP FACEBOOK PAGE, available at <https://www.facebook.com/MA4Trump/> (last accessed Dec. 17, 2019).

⁴⁰ *Id.*

⁴¹ *Id.* OGC's review of MA4Trump's Facebook page showed that MA4Trump hosted similar events, where funds were raised, in 2016, 2017, and 2018. However, that Facebook page was deactivated before the information regarding those events was recorded.

1 the Facebook event at all, attended and contributed.⁴² As shown in the Complaint's exhibit,
2 MA4Trump had a bank account that accepted checks made payable to MA4Trump.⁴³

3 Respondents assert that the ticket price for the January 27 event "helped to cover the
4 expense of food, music, and a safe venue," but this argument does not change the conclusion that
5 the amounts attendees paid were contributions.⁴⁴ The Commission has consistently advised that
6 if a political committee includes the cost of food or beverages in the charge that donors must pay
7 to attend an event, an attendee's payment of that charge constitutes a payment to attend a
8 fundraiser under 11 C.F.R. § 100.53, and is thus a contribution.⁴⁵

9 There is also information that MA4Trump expended more than \$1,000 in 2019. The
10 Response is silent as to the specific amount of expenditures made by MA4Trump. However, the
11 Response's assertion that the ticket price for the January 27 event helped to cover the expense of
12 food, music, and a safe venue supports an inference that most, if not all, of the funds raised for
13 all of MA4Trump's events were spent to cover the costs of those explicitly pro-Trump events,
14 indicating that MA4Trump made expenditures exceeding \$1,000 in that year.⁴⁶

⁴² We recognize that the total amount raised at this event would be lower if not as many people actually attended as shown on the Facebook page, but even if the actual amount raised was 50% lower than indicated by the page, the total still would exceed \$1,000.

⁴³ See Compl., Ex. A.

⁴⁴ See Resp. at 1.

⁴⁵ Advisory Op. 2015-07 (Hillary for America).

⁴⁶ See generally, Advisory Op. 2015-07 (concluding that meals are a thing of value at a fundraiser event); Advisory Op. 1982-50 (Florida Breakfast and Lunch Bunch) (concluding that amounts paid by individuals for a meal at an event held by a political committee would be a contribution to that committee); Advisory Op. 1988-22 (San Joaquin Valley Republican Associates) (concluding that if a luncheon involves the express advocacy, then the luncheon is a campaign event, and payment for luncheon expenses would be a contribution).

The activities that MA4Trump engaged in to campaign for Trump in 2016, as shown in the advertisement attached to the Complaint, also suggest spending by MA4Trump. While the information does not show exactly what MA4Trump did to support Trump during 2016, the apparent integration of emails, a website, social media

1 2. *MA4Trump's Major Purpose Is Supporting the Election of Donald Trump.*

2 MA4Trump's name and online communications unequivocally state that MA4Trump's
3 major purpose is to support Donald Trump. Ploss's homepage states that she founded
4 MA4Trump in February 2016; that section of the homepage immediately follows with "[s]ince
5 its inception, Dianna has rallied President Trump supporters across Massachusetts and
6 beyond."⁴⁷ The homepage states that MA4Trump's Facebook Group "connects President Trump
7 Supporters from all over the world," its Facebook Page "serves as a fun and educational tool,
8 spreading President Trump's America First message," and about its Twitter page that "[t]he
9 MA4Trump Team is dedicated to helping President Trump win his 2020 re-election!"⁴⁸ All of
10 those webpages contain numerous messages and pictures expressing support for Trump.
11 MA4Trump's name further suggests that the group's primary purpose is supporting Trump. The
12 advertisement attached to the Complaint, ostensibly written by Ploss, states that during the 2016
13 election, MA4Trump "integrated emails, a website, social media posts and pages and field
14 activities in an unprecedented manner."⁴⁹ These activities were done "[t]o help Donald Trump. .
15 . . ."⁵⁰ The advertisement goes on to state that attendees will "learn how to get involved in the
16 Massachusetts Campaign to re-elect President Donald J. Trump in a room filled with fellow
17 supporters."⁵¹ Although the materials make brief references to other candidates, such as

posts/pages, and field activities, done in an "unprecedented manner" as claimed in the advertisement, could have required the expenditure of more than \$1,000 for the purpose of influencing the 2016 election.

⁴⁷ DIANNA PLOSS WEBSITE, available at <https://diannaploss.com/> (last accessed February 6, 2020).

⁴⁸ *Id.*

⁴⁹ Compl. Ex. A.

⁵⁰ *Id.*

⁵¹ *Id.*

1 Massachusetts Republican Gubernatorial candidate Scott Lively, the clear focus of the
2 organization is to support Donald Trump.

3 *3. MA4Trump is a Group of Persons.*

4 The Response's primary argument is that MA4Trump is not a legal entity separate from
5 Ploss, it cannot be considered a committee or group of people, and it thus falls outside the
6 definition of a political committee.⁵² The record, however, does not support this assertion.

7 First, MA4Trump repeatedly refers to itself as being a "team," and an ordinary definition
8 of "team" is "two or more people working together."⁵³ The advertisement attached to the
9 Complaint says that Ploss "directed the MA4Trump *Team*. . . ."⁵⁴ Similar language is used when
10 describing MA4Trump on Ploss's website when it says "[m]embers of the MA4Trump *Team*
11 were in Nashua New Hampshire," "[t]he MA4Trump Page is managed by the MA4Trump
12 *Team*," and "[t]he MA4Trump *Team* is dedicated to helping President Trump win his 2020 re-
13 election!"⁵⁵ MA4Trump's name itself is inconsistent with Respondents' assertion that it consists
14 of only Ploss. The name suggests that the organization includes numerous Massachusetts

⁵² See Resp. at 1; see generally 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁵³ *Team*, NEW OXFORD AMERICAN DICTIONARY, (3rd ed. 2010).

⁵⁴ Compl., Ex. A.

⁵⁵ See DIANNA PLOSS WEBSITE, available at <https://diannaploss.com/> (last accessed February 6, 2020) (emphasis added).

1 citizens, not a single person. Thus, MA4Trump's own communications and name contradict its
2 claim that it consists of just Ploss.⁵⁶

3 Second, rather than using only Dianna Ploss's personal funds, MA4Trump solicited and
4 raised funds from donors who paid money to sponsor various events supporting Trump's
5 election. Thus, the individuals who attended the events and otherwise participated in
6 MA4Trump election-related activities acted as part of a group. In Advisory Opinion 1980-126
7 (Independent Voters for a Republican Victory) the Commission analyzed whether an entity
8 ("IVRV") was a "group of persons" under the Act.⁵⁷ IVRV solicited funds from a broad range
9 of persons across the country, and those funds were used to advocate the election of Republican
10 candidates in the 1980 election.⁵⁸ The solicited individuals were encouraged to send checks
11 made out to IVRV, to be deposited in a bank account that the group's founder, Warren Lewis,
12 had established in the group's name.⁵⁹ Although Lewis purported to have maintained control
13 over IVRV's organizational decision-making, the Commission concluded that Lewis had reached
14 beyond his personal funds and resources to involve numerous contributors in group, and that
15 such contributors therefore participated in the activities of IVRV, causing it to fall within the
16 definition of "any other group of persons" and qualify as a political committee⁶⁰ Similarly, both
17 the Commission and federal courts have found that a group that collected and spent funds for

⁵⁶ We recognize that some of the statements about the "MA4Trump Team" might include puffery, but such a conclusion would be speculative.

⁵⁷ Advisory Op. 1980-126 (Independent Voters for a Republican Victory) at 1-2.

⁵⁸ *Id.* at 2.

⁵⁹ *Id.*

⁶⁰ *Id.*

1 election related activity without incorporating as a separate legal entity could trigger political
2 committee status.⁶¹ Thus, Commission precedent supports the conclusion that while Ploss
3 directed MA4Trump's activities, those activities also involved a larger group of people who
4 contributed to MA4Trump, and were therefore a part of that group.⁶²

5 Accordingly, we recommend that the Commission find reason to believe that MA4Trump
6 and Dianna Ploss d/b/a MA4Trump violated 52 U.S.C. §§ 30103(a) & 30104(a)(1) by failing to
7 register and report as a political committee. As explained below, the proposed investigation
8 would seek to determine how much MA4Trump received in contributions, and what
9 disbursements it made to support Trump's election and re-election.⁶³

10 **B. There is Reason to Believe that MA4Trump Failed to Use the Necessary**
11 **Disclaimer in its Advertisement.**

12
13 The Complaint alleges that its attached advertisement failed to include the necessary
14 disclaimer, in violation the Act.⁶⁴ Political committees must include a disclaimer on all public
15 communications, bulk electronic mail, and websites available to the general public, regardless of
16 whether the communication contains express advocacy or solicits funds in connection with a
17 federal election.⁶⁵ When a communication is paid for by a political committee that is not
18 authorized by a candidate, an authorized political committee of a candidate, or its agents, the
19 disclaimer must clearly state the name, permanent street address, telephone number, or World

⁶¹ *Fed. Election Comm'n v. Malenick*, 310 F. Supp. 2d 230, 234 (D.D.C. 2004), *rev'd in part on reconsideration*, No. CIV.A. 02-1237 (JR), 2005 WL 588222 (D.D.C. Mar. 7, 2005).

⁶² *See supra*, p. 8-9.

⁶³ The Response suggests that the group plans to continue raising and spending funds in support of Trump's 2020 re-election campaign. Resp. at 1-2.

⁶⁴ Compl. at 1.

⁶⁵ 52 U.S.C. § 30120; 11C.F.R. § 110.11(a)(1).

1 Wide Web address of the person who paid for the communication, and state that the
2 communication is not authorized by any candidate or candidate's committee.⁶⁶ Public
3 communications include a newspaper advertisement. In printed communications, the disclaimer
4 must be contained within a printed box set apart from the contents of the communications.⁶⁷

5 For the reasons stated above, MA4Trump is a political committee, and all of its public
6 communications, as defined in 11 C.F.R. §100.26, were required to include a disclaimer.⁶⁸ Even
7 if it were not a political committee, its public communications containing express advocacy or
8 solicitations were required to include a disclaimer.⁶⁹

9 The advertisement attached to the Complaint includes no disclaimer at all, and because
10 MA4Trump is a political committee, the lack of a disclaimer on the ad is a violation.⁷⁰ The ad
11 also publicizes an event for which the group sold tickets to raise funds.⁷¹ Thus, regardless of
12 whether the group was a political committee, a disclaimer was required because the
13 advertisement solicited contributions. As a result, we recommend that the Commission find

⁶⁶ 52 U.S.C. § 30120(a). Because we have no information suggesting that any of MA4Trump's online communications were paid communications, we make no recommendations at this time as to whether those online communications should have had disclaimers.

⁶⁷ *Id.* § 110.11(c)(2)(ii).

⁶⁸ 11 C.F.R. § 110.11(a)(1).

⁶⁹ *Id.* § 110.11(a)(2)-(3).

⁷⁰ Compl. Ex. A.

⁷¹ *Id.*

1 reason to believe that MA4Trump and Dianna Ploss d/b/a MA4Trump violated 52 U.S.C. §
2 30120(a).

3 **C. The Commission Should Take No Action at This Time as to Whether**
4 **MA4Trump Violated the Act by Fraudulently Misrepresenting Itself or by**
5 **Using a Candidate's Name.**
6

7 The Act provides that no person shall fraudulently misrepresent the person as speaking,
8 writing, or otherwise acting for, or on behalf of, any candidate or agent thereof for the purpose of
9 soliciting contributions or donations.⁷² Although the Act requires that the violator have the
10 intent to deceive, it does not require proof of the common law fraud elements of justifiable
11 reliance and damages.⁷³ Absent an express misrepresentation, a representation is considered
12 fraudulent “if it was reasonably calculated to deceive persons of ordinary prudence and
13 comprehension.”⁷⁴

14 To determine whether a person has engaged in fraudulent misrepresentation, the
15 Commission has previously considered such factors as: (1) whether the respondent political

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

⁷³ *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 and Legal Analysis (“F&LA”) at 4, MUR 5472 (Jody Novacek).

⁷⁴ *Novacek*, 739 F. Supp. 2d at 961; *see also United States v. Thomas*, 377 F.3d 232, 242 (2d Cir. 2004) (citing, *inter alia*, *Silverman v. United States*, 213 F.2d 405 (5th Cir. 1954) (holding that, if the mails are used in a scheme devised with the intent to defraud, the fact that there is no misrepresentation of a single existing fact makes no difference in the fraudulent nature of the scheme); F&LA at 9, MUR 5951 (Californians for Change f/k/a Californians for Obama).

1 committee was registered and reporting to the Commission, if required;⁷⁵ (2) the presence of
 2 adequate disclaimers;⁷⁶ (3) inclusion of statements implying that the respondents acted with the
 3 authority of the represented candidate;⁷⁷ (4) inclusion of statements implying that contributions
 4 to the respondent would go directly to the represented candidate;⁷⁸ (5) mimicry of the
 5 candidate's website⁷⁹ or use of the candidate's official logo;⁸⁰ (6) whether any individuals were
 6 actually misled by the website;⁸¹ (7) and whether the respondent used a misleading name.⁸²

⁷⁵ F&LA at 10, MUR 6633 (Republican Majority Campaign) (“[w]eighing against a finding of reason to believe that the Respondent violated [52 U.S.C. § 30124(b)] is the fact that [the Respondent] is registered with the Commission and complies with its reporting requirements”); *see also* First Gen. Counsel's Report at 12, MUR 5472 (Republican Victory 2004 Committee) (“failure to file reports with the Commission indicating on what, if anything, money raised has been spent may be probative of the Committee's intent to misrepresent itself to the public.”).

⁷⁶ F&LA at 10, MUR 6641 (CAPE PAC) ([t]he 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.”).

⁷⁷ 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 at 3, MURs 5443, 5495, 5505 (johnfkerry-2004.com) (recommending reason to believe a respondent engaged in express misrepresentation through a website that stated it was “paid for and authorized by John Kerry for President, Inc. 2004”).

⁷⁸ *Compare, e.g.*, Gen. Counsel's Brief at 8, MUR 5472 (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 (finding no reason to believe statements such as “Help CAPE PAC re-elect Allen West to Congress” led to fraudulent misrepresentation).

⁷⁹ First Gen. Counsel's Report 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).

⁸⁰ F&LA, MUR 6531 (Obama-Biden 2012) (finding reason to believe a respondent violated the Act in part by placing the Obama for America logo on its website and merchandise).

⁸¹ Gen. Counsel's Brief at 14–16, MUR 5951 (Californians for Change) (recommending probable cause to believe Californians for Obama violated [section 30124] by, in part on the basis that multiple members of the public were in fact misled and contributed money to the respondents under the belief it would be contributed to then-Senator Barack Obama).

⁸² *Id.*

1 Here, there are some factors that suggest MA4Trump might have violated the prohibition
2 on fraudulent misrepresentation. The group's name could have misled supporters into thinking
3 the group was affiliated with the Trump campaign. And, as discussed above, the group failed to
4 register, despite being required to under the Act, and it failed to include any disclaimer in the
5 advertisement that was attached to the Complaint.⁸³ There is, however, no information to
6 suggest that any of the other criteria for fraudulent misrepresentation are present, nor is there any
7 information otherwise suggesting that Ploss found or managed the ground with the intent to
8 deceive contributors. While MA4Trump raised more than \$1,000 in funds, the Response's
9 representation that the funds raised at the January 2019 event covered the cost of food, music,
10 and a safe venue is plausible, and we have no information to the contrary. The available
11 information suggests that the group was not raising funds to enrich itself, but to cover the costs
12 for each individual event.

13 On balance, we recommend that the Commission take no action at this time regarding
14 fraudulent misrepresentation. If information regarding this potential violation becomes available
15 during the course of the proposed investigation, we will make the appropriate recommendations.

16 The Act and Commission regulations also provide that the name of each authorized
17 committee shall include the name of the candidate who authorized the committee, and that the
18 name of each unauthorized committee shall not include the name of any candidate.⁸⁴ The
19 Commission has interpreted "name" for the purposes of this section of the Act to include "any
20 name under which a committee conducts activities, such as solicitations or other

⁸³ Compl. Ex. A.

⁸⁴ 52 U.S.C. § 30102(e)(4); 11 C.F.R. § 102.14(a).

1 communications, including a special project name or other designation.”⁸⁵ An unauthorized
2 committee may only include the name of a candidate in the title of a special project name or
3 other communication if the title clearly and unambiguously shows opposition to the named
4 candidate.⁸⁶ This restriction applies to the use of a candidate’s first name “where the first name
5 clearly conveys the identity of the candidate.”⁸⁷

6 On March 21, 2019, the U. S. District Court for the District of Columbia declared
7 11 C.F.R. 102.14(a) unconstitutional and permanently enjoined the Commission from enforcing
8 it.⁸⁸ In light of the District Court’s ruling, we recommend that the Commission take no action at
9 this time that MA4Trump violated 11 C.F.R. 102.14(a).⁸⁹

10 **IV. PROPOSED INVESTIGATION**

11 It is unclear how much MA4Trump received and disbursed, how much cash it currently
12 has on hand, and what activities the group has taken to support Trump. We intend to determine
13 the amounts raised and spent by MA4Trump, how many donors it has, and whether it has spent
14 funds on any federal political activity other than the events described above to support Trump.

⁸⁵ *Id.*

⁸⁶ 11 C.F.R. § 102.14(b)(3).

⁸⁷ Advisory Op. 1995-09 at 5–6 (NewtWatch PAC) (finding that the title “NewtWatch” obviously referred to then Speaker of the House Newt Gingrich); *see* Advisory Op. 2015-04 at 3 (Collective Actions PAC); F&LA, MUR 6775 (Ready for Hillary PAC, *et al.*); *cf.* *Buckley v. Valeo*, 424 U.S. 1, 43 n.51 (1976) (interpreting the term “clearly identified” to include a candidate’s name, nickname, initials, photograph, or other unambiguous reference as part of a communication).

⁸⁸ *Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 363 F. Supp. 3d 94, 105 (D.D.C. 2019).

⁸⁹ Because any litigation of this matter would take place in Massachusetts, the Commission could engage in inter-circuit nonacquiescence. *See United States v. Mendoza*, 464, U.S. 154 (1984) (holding that an adverse ruling against the federal government in one circuit does not prevent the government from litigating the same issue before another circuit court). We nonetheless recommend that the Commission take no action as to the alleged misuse of Trump’s name by MA4Trump, in light of the ruling in *Pursuing America’s Greatness*. The District Court struck 11 C.F.R. § 102.14(a), and there were insufficient votes to appeal that decision.

1 We also plan to seek information about any other MA4Trump events and activities during its
2 existence. Although we plan to use informal investigative methods, we recommend that the
3 Commission authorize the use of compulsory process, in the event the parties do not cooperate
4 with the investigation.

5 **V. RECOMMENDATIONS**

- 6 1. Find reason to believe that MA4Trump and Dianna Ploss d/b/a MA4Trump violated
7 52 U.S.C. §§ 30103(a) & 30104(a)(1);
- 8 2. Find reason to believe that MA4Trump and Dianna Ploss d/b/a MA4Trump violated
9 52 U.S.C. § 30120(a);
- 10 3. Authorize compulsory process;
- 11 4. Approve the attached Factual and Legal Analysis;
- 12 5. Take no action at this time that MA4Trump violated 52 U.S.C. § 30124(b) & 11
13 C.F.R. 102.14(a); and

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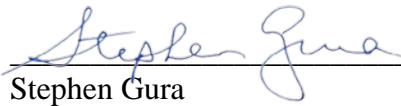
1 6. Approve the appropriate letters.


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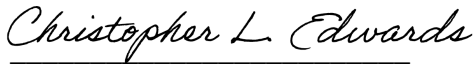
Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

04.03.20
Date


Stephen Gura
Deputy Associate General Counsel for Enforcement


Mark Shonkwiler
Assistant General Counsel


Christopher L. Edwards
Attorney