

BEFORE THE FEDERAL ELECTION COMMISSION

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v.

MUR No. 7609

DONALD J. TRUMP FOR PRESIDENT, INC.
725 Fifth Avenue
New York, NY 10022

2019 MAY -9 AM 11:00
OFFICE OF
GENERAL COUNSEL

COMPLAINT

On May 7, 2019, President Donald Trump's campaign issued an official statement that criticized the "dishonest fundraising" practices of certain groups and informed potential donors that only five entities were "authorized" or "approved" by President Trump or the Republican National Committee. These five named entities were the Trump campaign, the RNC, two joint fundraising committees, and America First Action — a super PAC. Federal law and Federal Election Commission ("FEC") regulations prohibit campaigns from soliciting contributions to super PACs unless certain critical measures are taken to ensure that the solicited contributions comply with federal contribution limits. The Trump campaign took no such measures in its May 7 solicitation, instead issuing a blanket endorsement of contributions to the "approved" super PAC — contributions that would include corporate and unlimited funds, which federal

candidates are prohibited from soliciting. For these reasons, as explained below, there is reason to believe that the Trump campaign violated the ban on soliciting contributions that do not comply with federal statutory law.

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Donald J. Trump for President, Inc. (Committee ID C00580100) has violated 52 U.S.C. § 30125(e), the prohibition on federal campaigns soliciting and directing funds that do not comply with the source prohibitions and amount limitations of the Federal Election Campaign Act, 52 U.S.C. § 30101 *et seq.* (“FECA”).
2. On May 5, 2019, Complainant Campaign Legal Center (“CLC”), along with *Axios*, issued a report describing how an organization named the “Presidential Coalition” had been fundraising off of connections to President Trump while devoting only a trivial amount of its spending to the political causes it claimed to support.¹ President Trump was reportedly “[f]urious” with the organization for the fundraising practices described in the report.²
3. On May 7, 2019, apparently in response to the CLC and *Axios* report, the Trump campaign issued a statement entitled “**Trump Campaign Statement on Dishonest Fundraising Groups**”:

¹ Maggie Christ & Brendan Fischer, “Can I Count on You?” *How the Presidential Coalition Has Capitalized on Its Leader’s Ties to the President and Misled Donors*, CLC (May 2019), <https://campaignlegal.org/document/profitting-proximity-report-presidential-coalitions-misleading-fundraising-practices>; *see also* Alayna Treene, Jonathan Swan, & Harry Stevens, *Scoop: Inside a Top Trump Adviser’s Fundraising Mirage*, AXIOS (May 5, 2019), <https://www.axios.com/david-bossie-fundraising-presidential-coalition-3bf22829-8a89-4a10-84b7-7310e02c2ef2.html>.

² Asawin Suebsaeng & Lachlan Markay, *Trump Furious with Ally David Bossie over His Reported Self-Dealing*, DAILY BEAST (May 7, 2019), <https://www.thedailybeast.com/trump-furious-with-ally-david-bossie-over-his-reported-self-dealing>.

- MAY 7 2019 -

Trump Campaign Statement on Dishonest Fundraising Groups

The following is a statement from the Donald J. Trump for President campaign:

President Trump's campaign condemns any organization that deceptively uses the President's name, likeness, trademarks, or branding and confuses voters. There is no excuse for any group, including ones run by people who claim to be part of our 'coalition,' to suggest they directly support President Trump's re-election or any other candidates, when in fact their actions show they are interested in filling their own pockets with money from innocent Americans' paychecks, and sadly, retirements. We encourage the appropriate authorities to investigate all alleged scam groups for potential illegal activities.

There are only four official fundraising organizations authorized by President Trump or the RNC: Donald J. Trump for President, the Republican National Committee, and two joint fundraising committees with the RNC, The Trump Make American Great Again Committee (TMAGAC) and Trump Victory. In addition, there is one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump's policies and agendas.

4. FECA provides that no “agent of a candidate or an individual holding Federal office, or . . . entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office” may “solicit . . . [or] direct . . . funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements” of FECA. 52 U.S.C. § 30125(e)(1); *see* 11 C.F.R. §§ 300.60, 300.61. These “limitations” and “prohibitions” of FECA include the \$5,000 limit on contributions to multicandidate committees, 52 U.S.C. § 30116(a)(2), and the prohibition on corporate contributions to committees, *id.* § 30118.
5. Commission regulations provide that an “agent” of a candidate for purposes of the solicitation prohibition is any entity that has “actual authority, express or implied” to “solicit, receive, direct, transfer, or spend funds in connection with any election” on behalf of the candidate. 11 C.F.R. § 300.2(b).
6. For purposes of the ban on soliciting soft money, Commission regulations define “to solicit” as

to ask, request, or recommend, explicitly or implicitly, that another person make a contribution . . . or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.

Id. § 300.2(m).
7. For purposes of the ban on directing soft money, Commission regulations define “to direct” as “to guide, directly or indirectly, a person who has expressed an intent to make a

contribution . . . or otherwise provide anything of value, by identifying a . . . political committee or organization, for the receipt of such funds, or things of value.” *Id.*

§ 300.2(n).

THERE IS REASON TO BELIEVE THE TRUMP CAMPAIGN VIOLATED 52 U.S.C. § 30125(e)

8. Pursuant to the statute and regulations noted above, the Trump campaign is both an “agent” of President Donald J. Trump and an entity “directly or indirectly established, financed, maintained or controlled by or acting on behalf” of President Trump.
9. President Trump is both a holder of federal office and a candidate. *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 300.2(o).
10. The Trump campaign’s May 7 statement was a “solicitation” under section 300.2(m) because that statement can be “reasonably understood in the context in which it is made” as “a clear message . . . recommending that another person make a contribution.” In particular, the May 7 statement explicitly contrasts, on one hand, “dishonest fundraising” by groups that falsely “suggest they directly support President Trump’s reelection,” with, on the other hand, the five named “authorized” and “approved” groups. By doing so, the statement indicates that these five named groups’ “fundraising” is not “dishonest” because the funds contributed to them “directly support President Trump’s reelection.”
11. Accordingly, the Trump campaign’s statement, “reasonably understood in the context in which it is made,” recommends that anyone who wishes to support President Trump’s reelection should make contributions to the five named groups. *See Shays v. FEC*, 414 F.3d 76, 106 (D.C. Cir. 2005) (holding that purpose of section 30125(e) is to prohibit candidates from engaging in “winks, nods, and circumlocutions to channel money in favored directions”); Definitions of “Solicit” and Direct,” 71 Fed. Reg. 13926, 13928

(Mar. 20, 2006) (quoting *Shays* and explaining that Commission’s definition of “‘to solicit’ covers . . . communications that *implicitly or indirectly* seek to elicit a contribution or donation” by making the candidate’s “intention clear without overtly ‘asking’ for money”” (emphasis added)); Factual & Legal Analysis at 4, MUR 6827 (Kent Roth for Congress) (Dec. 11, 2014),

<https://eqs.fec.gov/eqsdocsMUR/15044370033.pdf> (“[T]he Commission has explicitly defined ‘solicit’ broadly to include both explicit and implicit suggestions that another person make a contribution.”).

12. Furthermore, the Trump campaign’s statement “direct[ed]” contributions within the meaning of 11 C.F.R. § 300.2(n). By identifying the five groups that “directly support President Trump’s reelection,” the statement “guide[d], directly or indirectly” any contributors who wish to support that reelection campaign by providing “the identity of an appropriate recipient” of such funds. 71 Fed. Reg. at 13932. Indeed, that is by far the most natural reading of the Trump campaign’s listing of the five “authorized” and “approved” groups: the list provides guidance to contributors who wish to know where to send their contributions to most effectively and directly aid the President’s reelection effort.
13. One of these named groups, America First Action, is a super PAC.³ As such, America First Action is permitted to accept contributions without regard to the contribution limits of section 30116 or the corporate contribution prohibition of section 30118.⁴

³ See *America First Action, Inc., About This Committee*, FEC, <https://www.fec.gov/data/committee/C00637512/?tab=about-committee> (last visited May 7, 2019).

⁴ See *America First Action, Inc., Raising*, FEC, <https://www.fec.gov/data/committee/C00637512/?tab=raising> (last visited May 7, 2019) (listing hundreds of individual and corporate contributions in excess of contribution limit, including 16 contributions of \$1,000,000 or more).

14. The Commission has repeatedly emphasized that section 30125(e) permits federal candidates and their agents to solicit contributions to super PACs only within FECA's amount limits and source prohibitions. *See, e.g.*, Advisory Opinion 2011-12 (Majority PAC) at 1 (permitting federal candidates to appear at super PAC fundraisers "so long as they restrict any solicitation they make to funds subject to the limitations, prohibitions and reporting requirements of the Act"); Advisory Opinion 2015-09 (Senate Majority PAC) at 7 (acknowledging that FECA prohibits agents acting on behalf of candidates from soliciting nonfederal contributions to super PAC). Commission regulations describe the means by which such a solicitation may be limited: by displaying "a clear and conspicuous written notice . . . that the solicitation . . . does not seek funds in excess of" federal limits or from prohibited sources. 11 C.F.R. § 300.64(b)(2)(ii); *cf.* Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events, 75 Fed. Reg. 24375, 24380 (May 5, 2010) ("The Commission concludes that any solicitation that is not limited either by its express terms or otherwise (such as through a clear and conspicuous oral statement or written notice) risks being understood as soliciting donations in amounts and from sources prohibited under the Act . . .").
15. The Trump campaign's statement did not limit its solicitation and direction of funds to America First Action to individual contributions of \$5,000 or less. To the contrary, the Trump campaign's statement endorsed contributions to America First Action wholeheartedly and without qualification, referring to that super PAC as "approved" by the campaign, "run by allies of the President," and "a trusted supporter of President Trump's policies and agenda."

16. By soliciting and directing contributions to America First Action without regard to FECA's amount limits and source prohibitions, the Trump campaign violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61.

CONCLUSION

17. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed . . . 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).
18. Accordingly, the Commission should find reason to believe that Donald J. Trump for President, Inc. violated 52 U.S.C. § 30125 and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondent from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with FECA.

Respectfully submitted,



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May 9, 2019

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 Campaign Legal Center

Ada Noti

Adav Noti

Sworn to and subscribed before me this 9 day of May 2019.



For Complainant End Citizens United PAC

Tiffany Muller

Tiffany Muller

Sworn to and subscribed before me this 8 day of May 2019.



For Complainant Tiffany Muller

Tiffany Muller

Tiffany Muller

Sworn to and subscribed before me this 8 day of May 2019.

