

**BEFORE THE
FEDERAL ELECTION COMMISSION**

<p>RaiseUP 441 North Lee Street, Suite 100 Alexandria, VA 22314</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;">v.</p> <p>EXPENSIFY, INC. 548 MARKET STREET #61434 SAN FRANCISCO, CA 94103</p> <hr style="border: 0.5px solid black; margin-top: 5px;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>MUR 7838</p>
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VERIFIED COMPLAINT

Parties

1. Complainant RaiseUP is a federally registered independent-expenditure only committee with its principal place of business in Alexandria, Virginia.

2. Respondent EXPENSIFY, INC. is a private corporation with its principal place of business in San Francisco, California.

Expensify's Violations of the Federal Election Campaign Act ("FECA")

3. Expensify is a software company that develops an expense management system for personal and business use. David Barrett is Expensify's Chief Executive Officer and Founder.

4. On October 22, 2020, at 9:53 P.M, Barrett sent an e-mail in his official capacity as "Founder and CEO of Expensify" to all of the approximately ten million customers in Expensify's customer database or e-mail system, using his official Expensify e-mail address (davidb@expensify.com), and—on information and belief—through Expensify's computer systems, network, server, and Internet service.

5. A true and complete copy of the e-mail is included with this Complaint as Exhibit 1.

6. The e-mail repeatedly expressly advocated the election of Joe Biden and the defeat of Donald Trump for the office of President. Among other things, the e-mail stated:

a. “[A]nything less than a vote for Biden is a vote against democracy.”

(emphasis in original).

b. “That’s right, I’m saying a vote for Trump, a vote for a third-party candidate, or simply not voting at all—they’re all the same”

c. “You know what to do: **show up on November 3rd and vote for Biden.**”

(emphasis added).

d. “[A]nother 4 (or as Trump has hinted—8, or more?) years of Trump leadership will damage our democracy to such an extent, I’m obligated on behalf of shareholders to take any action I can to avoid it. I am confident our democracy (and Expensify) can survive a Biden presidency. I can’t say the same about Trump.”

e. “Biden wins by promoting democracy; Trump wins by suppressing it. **A vote for Biden is a vote for democracy.**” (emphasis added).

f. The subject of the e-mail was “[Expensify] Protect democracy, vote for Biden.”

7. The first line of the e-mail expressly acknowledged, “I know you don’t want to hear this from me.”

8. The e-mail constituted a communication from Expensify, rather than Barrett in his individual capacity:

a. The e-mail was sent from an official Expensify e-mail address.

b. The e-mail was signed, “-david” and immediately underneath, “Founder and CEO of Expensify.”

c. The bottom of the e-mail stated, “Sent by: Expensify, Inc. – 548 Market Street #61434 – San Francisco, CA 94103.”

d. The subject of the e-mail was “[Expensify] Protect democracy, vote for Biden.”

e. The e-mail expressly declared Barrett was “obligated on behalf of shareholders” to send it.

f. The e-mail was sent using Expensify resources to a confidential mailing list or database of approximately 10 million Expensify customers.

9. The FECA defines an “expenditure” as a “distribution . . . or gift of . . . anything of value . . . made for the purpose of influencing a federal campaign.” 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111(a). Moreover, “[T]he provision of any goods or services without charge . . . is an expenditure. Examples of such goods or services include, but are not limited to: . . . facilities, equipment, . . . and mailing lists.” 11 C.F.R. § 100.111(e)(1).

10. Expensify’s e-mail constituted an expenditure under the FECA. It involved a gift of something of value, as well as the provision of services without charge, because:

a. The e-mail was sent to the company’s official e-mail list containing approximately ten million customers. Usage of such a list of approximately ten million active, valid e-mail addresses is a valuable good or service that carries a substantial fair market value. The uncompensated use of mailing lists to influence a federal election is expressly recognized as a type of expenditure. 11 C.F.R. § 100.111(e)(1).

b. The use of Expensify's computer systems, network, server, e-mail system, and Internet service to electronically distribute approximately ten million e-mails on Expensify's behalf is a valuable service that carries a substantial fair market value. The uncompensated use of equipment to influence a federal election is expressly recognized as a type of expenditure. 11 C.F.R. § 100.111(e)(1).

11. The e-mail does not fall within any exceptions to the definition of expenditure.

12. The e-mail does not fall within 11 C.F.R. § 100.134(a)'s exception to the definition of "expenditure" because Expensify intentionally distributed it to millions of recipients far beyond its stockholders and executive or administrative personnel.

13. The e-mail does not fall within 11 C.F.R. § 100.155's exception to the definition of "expenditure" for uncompensated Internet activity by individuals for two reasons.

a. First, the e-mail was sent by and/or on behalf of a corporation, Expensify, and was not merely the activity of an "individual." The § 100.155 exception applies to corporate activity only when the corporation: (i) "is wholly owned by one or more individuals," (ii) it "engages primarily in Internet activities," and (iii) it "does not derive a substantial portion of its revenues from sources other than income from its Internet activities." 11 C.F.R. § 100.155(d). The term "Internet activities" in this context refers to the distribution of communications over the Internet, including "[s]ending or forwarding electronic messages; providing a hyperlink or other direct access to another person's website; blogging; creating, maintaining, or hosting a website." *Id.* § 100.155(b). Expensify does not meet these requirements. Therefore, it is not the sort of corporation whose uncompensated internet activity falls outside the definition of "expenditure."

b. Second, even if the e-mail falls within the scope of § 100.155(a) for whatever reason, that section provides that neither the "uncompensated personal services" of the

e-mail’s author, nor the “use of equipment or services” to send the e-mail—regardless of who owns them—qualifies as an expenditure. 11 C.F.R. § 100.155(a). Here, however, the e-mail was sent to ten million recipients from Expensify’s propriety client database or e-mail list. Section 100.155(a) does not exempt usage of such an e-mail list, and its fair-market value, from the definition of “expenditure.” Thus, at the very least, the e-mail reflects an expenditure equaling the fair-market rental value of the list of ten million current, active e-mail addresses.

14. The e-mail does not fall within 11 C.F.R. § 114.4(c)(6)(ii)’s exception to the definition of “expenditure” for “endorsements” for four reasons.

- a. First, the e-mail did not expressly state it was “endorsing” a candidate.
- b. Second, the e-mail contained repeated express words of opposition to a particular candidate (Trump) that are completely independent of any endorsement, thus bringing the e-mail outside the scope of 11 C.F.R. § 114.4(c)(6)(i)-(ii).
- c. Third, to the extent the e-mail endorsed a candidate, it went far beyond to provide extensive argumentation in support of that candidate.
- d. Fourth, even if the e-mail qualified as an endorsement, under 11 C.F.R. § 114.4(c)(6)(ii), only certain disbursements in connection with that endorsement are exempt from the definition of “expenditure.” In particular, disbursements are not treated as expenditures only if notice of the endorsement is circulated solely to “representatives of the news media.” *Id.* Here, in contrast, Expensify’s e-mail list or customer database was used to send the e-mail to approximately ten million Expensify customers. The fair market value of the use of a customer mailing list of ten million active, current e-mail addresses does not fall within § 114.4(c)(6)(ii)’s exception. It is therefore considered an “expenditure.”

15. Expensify's e-mail was an independent expenditure under 11 C.F.R. § 114.10(a). *See also* 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16(a) (defining "independent expenditure" as "an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents").

16. Expensify did not report its independent expenditure to the FEC within 24 hours—or at all—even though it is less than 20 days (and more than 24 hours) before a federal election.

17. Expensify did not include the statutorily required disclaimer on its e-mail.

COUNT I
FAILURE TO FILE 24-HOUR REPORT
CONCERNING INDEPENDENT EXPENDITURE
Against Expensify
in violation of 52 U.S.C. § 30104(g)(1)(A) and 11 C.F.R. § 109.10(d)

18. Complainant re-alleges and incorporates by reference the preceding paragraphs as if set forth fully herein.

19. 52 U.S.C. § 30104(g)(1)(A) and 11 C.F.R. § 109.10(d) provide, when a person makes an independent expenditure aggregating \$1,000 or more with respect to a given election after the 20th day before the election (but more than 24 hours in advance of that election), he must report it to the Commission by 11:59 P.M. Eastern time on the day after it is publicly disseminated. *See also* 52 U.S.C. § 30104(g)(3)(A); 11 C.F.R. § 104.4(a), (e)(1).

20. The report must include, among other things, the person's name and address, the person to whom the expenditure was made; the amount, date, and purpose of the expenditure; a statement indicating whether it was in support of, or opposition to, a particular candidate, together with that candidate's name; the states in which the communication was distributed (if the criteria

set forth in 11 C.F.R. § 104.3(b)(3)(vii)(C) are met); and a verified certification as to whether the expenditure was coordinated. 11 C.F.R. § 109.10(e)(1). The report must be verified under penalty of perjury. 52 U.S.C. § 30104(b)(6)(B)(iii), (g)(3)(B); 11 C.F.R. § 109.10(e)(2).

21. On October 22, 2020, Expensify made an independent expenditure by distributing an e-mail supporting Joe Biden and/or opposing Donald Trump for President in the 2020 general election to its list or database of approximately 10 million customers using its computer systems, network, e-mail system, and Internet service.

22. Expensify's independent expenditure exceeded \$1,000. This is based on the fair market value of the use of:

a. Expensify's list or database of approximately 10 million current, active, and valid customers' e-mail addresses, and/or

b. Expensify's computer systems, network, server, e-mail system, and Internet service to electronically distribute approximately ten million e-mails.

23. The 24-hour report for that expenditure was due to be filed with the FEC no later than 11:59 P.M. on Friday, October 23.

24. Expensify failed to file a report publicly disclosing its independent expenditure by 11:59 P.M. on Friday, October 23.

WHEREFORE, Expensify violated 52 U.S.C. § 30104(g)(1)(A) and 11 C.F.R. § 109.10(d).

COUNT II
FAILURE TO INCLUDE STATUTORY VALID DISCLAIMER
Against Expensify
in violation of 52 U.S.C. § 30120(a)(3), (c)(2), (c)(3)

25. Complainant re-alleges and incorporates by reference the preceding paragraphs as if set forth fully herein.

26. On October 22, 2020, Expensify made an independent expenditure by distributing an e-mail supporting Joe Biden and/or opposing Donald Trump for President in the 2020 general election to its list or database of approximately 10 million customers using its computer systems, network, e-mail system, and Internet service.

27. The bottom of the e-mail stated, “Sent by: Expensify, Inc. – 548 Market Street #61434 – San Francisco, CA 94103.” This message did not appear in a printed box, and was not placed on a background of a contrasting color.

28. 52 U.S.C. § 30120(a) provides, “[W]henever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate,” federal disclaimer requirements apply.

29. 52 U.S.C § 30120(a)(3) adds, if the communication is not authorized by a candidate, candidate committee, or its agents, the disclaimer “shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate’s committee.”

30. The disclaimer in Expensify’s e-mail violated this requirement because it failed to “state that the communication is not authorized by any candidate or candidate’s committee.” 52 U.S.C. § 30120(a)(3).

31. Any such disclaimer shall “be contained in a printed box set apart from the other contents of the communication.” 52 U.S.C. § 30120(c)(2).

32. The disclaimer in Expensify’s e-mail violated this requirement because it did not appear “in a printed box.” *Id.*

33. Federal law further requires the disclaimer to “be printed with a reasonable degree of color contrast between the background and printed statement.” 52 U.S.C. § 30120(c)(3).

34. The disclaimer in Expensify’s e-mail violated this requirement because it was not printed with any “color contrast between the background and printed statement.” *Id.*

WHEREFORE, Expensify violated 52 U.S.C. § 30120(a)(3), (c)(2), (c)(3).

CONCLUSION

For these reasons, Complainant RaiseUp respectfully requests the Federal Election Commission commence enforcement proceedings against Respondent Expensify, Inc.

VERIFICATION

I declare under penalty of perjury the foregoing is true and correct to the best of my personal knowledge.

Dated October 26, 2020

Respectfully submitted,



Dan Backer, Esq.

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dan@political.law

Counsel for Complainant RaiseUp

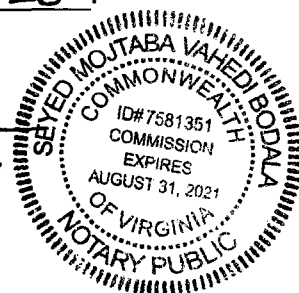
SIGNED AND SWORN BEFORE A NOTARY PUBLIC

Commonwealth of Virginia

County of Fairfax

Subscribed and sworn to before me on this 26 day of October, 2020.

My Commission expires on 8-31-2021 *Vahedy*



Dan Backer

Subject: FW: [Expensify] Protect democracy, vote for Biden.

----- Forwarded message -----

From: **David Barrett** <davidb@expensify.com>
 Date: Thu, Oct 22, 2020 at 9:53 PM
 Subject: [Expensify] Protect democracy, vote for Biden.
 To: [REDACTED]

I know you don't want to hear this from me. And I guarantee I don't want to say it. But we are facing an unprecedented attack on the foundations of democracy itself. If you are a US citizen, **anything less than a vote for Biden is a vote against democracy.**

That's right, I'm saying a vote for Trump, a vote for a third-party candidate, or simply not voting at all -- they're all the same, and they all mean:

"I care more about my favorite issue than democracy. I believe Trump winning is more important than democracy. I am comfortable standing aside and allowing democracy to be methodically dismantled, in plain sight."

If the polls are accurate, there's a roughly 50% chance that you agree Trump needs to go. You know what to do: **show up on November 3rd and vote for Biden.** Or even better, don't wait until then: vote today. Go to Vote.org if you need help figuring out how.

The rest of this email is intended to address the concerns of those who disagree, and I'll try to take the most likely questions in turn:

Q: Why do you care so much about democracy?

Democracy is core to our business success, in a variety of ways. Internally, we are a famously "flat" organization -- nobody reports to anyone else, and advancement is the result of meeting well defined criteria as judged by the vote of those who have already advanced. How we compensate each other is left up to a team vote as well. Even our external business model depends on individual employees "electing" to adopt Expensify as individuals, and then "campaigning" internally to get it adopted companywide. At every layer, democracy is our core competitive advantage -- both as a company, and as a nation. But that advantage is only as strong as the clarity of our rules and the fairness of their application. Any attempt to disrupt the rules or apply them unfairly is a direct threat to the strength of our company, and the strength of our nation.

Q: What gives you the right to tell me what to do?

The first amendment. To be clear, you don't need to listen. But the first amendment exists to encourage people like you and me to find some way to talk about the issues that matter, set aside our differences, and find a common ground on which to collectively govern 331 million citizens. Yes democratic self-rule can be inconvenient. But a burden of democracy is that this is literally our job, so I'm asking all of us to take it seriously.

Q: But you're a company, shouldn't you remain neutral?

Expensify depends on a functioning society and economy; not many expense reports get filed during a civil war. As CEO of this business, it's my job to plot a course through any storm -- and all evidence suggests that another 4 (or as Trump has hinted -- 8, or more?) years of Trump leadership will damage our democracy to such an extent, I'm obligated on behalf of shareholders to take any action I can to avoid it. I am confident our democracy (and Expensify) can survive a Biden presidency. I can't say the same about Trump. It's truly as simple as that.

Q: Don't you think you're... exaggerating a bit?

I truly wish I was. I wouldn't be sending this email if this election were just about "normal issues" -- taxes, legislative priorities, healthcare, etc. But it isn't. This election is a referendum on what limits, if any, we place on our elected leaders to govern us in a fair and representative way. **This election will decide if widespread voter suppression is an acceptable governing tactic.**

Q: Doesn't everyone suppress votes?

Not like Trump. This is the most heavily litigated election in history, with over 300 lawsuits rushing through the courts before election day. And in every case, Biden is pushing to enable voters while Trump is pushing to suppress them. The trend couldn't be more clear: Biden wants democracy, Trump does not. **A vote for Trump is to endorse voter suppression, it really is very basic.** This isn't about party politics: if Biden were advocating for half of the voter suppression that Trump is actively doing, then I'd be fighting against Biden, too. This is bigger than politics as usual: this is about the very foundation of our nation.

Q: Isn't Trump just trying to prevent voter fraud?

Voter fraud is virtually nonexistent, as overwhelmingly shown by [data showcased by the White House itself](#). That data comes from the Heritage Foundation, a conservative think tank counting every single known case of voter fraud since 1948, which adds up to only 1,290 distinct votes over 78 years. In 2016 alone there were 138 million votes. There is just no credible argument that voter fraud is significant, even based on Trump's own data.

Q: Isn't Biden just using more widespread voting to get elected?

Absolutely. This is the heart of the issue. Biden believes that enabling more people to vote will help him win. Biden wins by promoting democracy; Trump wins by suppressing it. **A vote for Biden is a vote for democracy.**

Q: So what if Trump gets elected by voter suppression, all's fair right?

Well that's what we're going to decide, on November 3rd. Do you want your elected official to win based on the merits of their ideas? Or based on the ruthlessness of their voter suppression? And if you're ok with "just a little suppression" -- where do you draw the line?

Q: Why send me this when the polls say Biden is going to win?

The polls said Trump was going to lose last time, and he didn't. But even if the polls can be trusted, that might still not be enough. Trump has stated repeatedly he will only honor an election that he personally feels is fair. So much depending on his personal judgement is worrying, because he has rejected the overwhelming expert consensus that voter fraud has been negligible historically, and has also said he believes it would be impossible to lose a fair election. Accordingly, the only way to ensure a peaceful transition of power is to ensure this election is an overwhelming, undeniable landslide in favor of Biden. Any excuse to question the election is an opportunity for Trump to refuse to leave the White House, plunging this country into a Constitutional crisis bordering on civil war. No matter how slight that

risk might be, the consequences of it happening would be so catastrophic to society and the economy, we need to do all we can to prevent it.

So one final plea. As a fellow citizen, I fully support and respect your Constitutional right to disagree -- and as an avid supporter of democracy, I value that disagreement. Constructive, well-informed debate (hopefully using [the most accurate, least biased news source available](#)) is what makes this nation so exceptional.

But the Constitution is only as strong as the respect we give it. I'm asking you to cherish it close to your heart, and demand that those you elect do the same.

-david
Founder and CEO of Expensify

PS: Agree or disagree? Reply to this email to share your thoughts with Concierge, or hit me up on Twitter [@dbarrett](#) to discuss!

PPS: Want to do even more? Support the [National Popular Vote](#) to make every vote count equally toward the presidential election, even if you aren't in one of the 12 states deciding this election.

PPPS: Are you annoyed that you received this as a non-US citizen? If you're lucky enough to live in a democracy, then I'd encourage you to protect it and be willing to do uncomfortable things -- like emailing millions of customers -- to defend it.

Sent by: Expensify, Inc. - 548 Market St #61434 - San Francisco, CA 94103
To unsubscribe, please click here