

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
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MARGARET CHRIST
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v.

MUR No. **7867**

OUR AMERICAN CENTURY
Cabell Hobbs, Treasurer
P.O. Box 365
McLean, VA 22101

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that the super PAC Our American Century (ID: C00532630) has violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*, by making illegal, unreported, and excessive in-kind contributions to candidate Donald Trump’s campaign committee, Donald J. Trump for President, Inc.
2. According to Google’s archive of political ads, Our American Century spent between \$5,100 and \$251,000 to distribute one of the Trump campaign’s own video ads to voters in Michigan, Arizona, Pennsylvania, and Ohio. The super PAC republished the Trump campaign’s ad in its entirety; the ad even included the Trump campaign’s original “paid for by” disclaimer.

3. By paying to republish and distribute the Trump campaign’s advertisement, Our American Century made in-kind contributions to the Trump campaign, 52 U.S.C. § 30116(a)(7)(b)(iii); 11 C.F.R. § 109.23(a), and therefore violated 52 U.S.C. § 30116(a) because those contributions exceeded federal limits, and violated 52 U.S.C. § 30104(b) because the contributions were not reported. As a super PAC, Our American Century could only raise and spend unlimited funds if it did not contribute to candidates; however, because it made candidate contributions, Our American Century was not entitled to raise funds in unlimited amounts, and therefore it violated 52 U.S.C. § 30116(a)(1)(C) and 11 C.F.R. § 110.9 by accepting over \$7.5 million in contributions that exceeded FECA’s limits. Our American Century additionally violated 52 U.S.C. § 30120(a) by failing to include a disclaimer stating that it paid to distribute the advertisements.
4. Publicly available records show that Our American Century spent between \$5,100 and \$251,000 unlawfully republishing Trump campaign ads on the Google network, but the total amount in violation could be far higher. Of the \$5.5 million that Our American Century spent on digital independent expenditures in 2020, only \$259,800 appeared in the Google archive, and a smaller amount was spent on Facebook; the super PAC’s digital advertisements run on other platforms are not publicly available.
5. “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).
6. 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 relies on the accurate and complete reporting of campaign finance information to carry out activities central to its mission, including research, analysis, and reporting about campaign spending and the true sources and scope of candidates' financial support. CLC participates in judicial and administrative matters throughout the nation regarding campaign finance, voting rights, redistricting, and government ethics issues.

FACTS

7. Our American Century is an independent expenditure-only political action committee (*i.e.*, a “super PAC”), originally formed in 2012 under the name “Geaux PAC.”¹ It stated to the Commission upon its formation that it “intends to raise funds in unlimited amounts from individuals and corporations,” but “will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.”²
8. In the 2020 election cycle, Our American Century raised over \$7.55 million, \$7 million of which came from one individual, and \$500,000 of which came from another individual.³ It reported \$5.5 million in independent expenditures.⁴ All of Our American Century’s independent expenditures supported presidential candidate Donald J. Trump or opposed presidential candidate Joseph Biden, and each independent expenditure was reported to the

¹ Geaux PAC, Statement of Organization, FEC Form 1 (filed Oct. 11, 2012), <https://docquery.fec.gov/pdf/172/12030913172/12030913172.pdf>; Our American Century, Statement of Organization, FEC Form 1 at 1 (amended Feb. 15, 2017), <https://docquery.fec.gov/pdf/496/201702159049699496/201702159049699496.pdf> (amending statement of organization to change committee’s name, address, email address, and website).

² Letter from Geaux PAC to FEC (Oct. 11, 2012), <https://docquery.fec.gov/pdf/172/12030913172/12030913172.pdf>.

³ Our American Century, Receipts, 2019-20, FEC.GOV, https://www.fec.gov/data/receipts/?two_year_transaction_period=2020&committee_id=C00532630&data_type=processed (showing Fredric Eshelman giving one \$5 million contribution and two \$1 million contributions, and Timothy Dunn giving \$500,000) (last visited Dec. 16, 2020).

⁴ Our American Century, 2020 Post General Report, FEC Form 3X at 3-4 (filed Dec. 3, 2020), <https://docquery.fec.gov/pdf/475/202012039338271475/202012039338271475.pdf>.

Commission as “digital media.”⁵ The super PAC did not disclose contributions to any candidate’s campaign committee.⁶

9. According to Google’s political ad archive, between October 8, 2020 and November 3, 2020, Our American Century spent \$259,800 on ads run on Google platforms such as YouTube.⁷ At least six of those purchases republished a video ad originally created by Donald J. Trump’s campaign committee titled “As per your request, Joe,” and available on Trump’s YouTube page.⁸ The ad purchases were as follows:

- a) Between October 23, 2020 and October 30, 2020, Our American Century spent between \$1,000 and \$50,000 to distribute “As per your request, Joe” to voters in Michigan;⁹
- b) Between October 23, 2020 and October 30, 2020, Our American Century spent between \$1,000 and \$50,000 to distribute “As per your request, Joe” to voters in Ohio;¹⁰

⁵ Our American Century, Independent Expenditures (24- and 48-hour reports), 2019-20, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00532630&is_notice=true&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Dec. 16, 2020); Our American Century, Independent Expenditures (regularly scheduled reports), 2019-20, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00532630&is_notice=false&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Dec. 16, 2020).

⁶ Our American Century, Disbursements, 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?committee_id=C00532630&two_year_transaction_period=2020&data_type=processed (showing no contributions to other committees) (last visited Dec. 16, 2020).

⁷ Our American Century, Google Transparency Report, GOOGLE <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520> (last visited Dec. 11, 2020).

⁸ Donald J. Trump, “As Per Your Request, Joe...,” YOUTUBE (Oct. 22, 2020), https://www.youtube.com/watch?v=NnrEh9_5_9I.

⁹ Our American Century, “As Per Your Request, Joe...,” (disseminated in Michigan Oct. 23, 2020 – Oct. 30, 2020), Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR502843432302018560>.

¹⁰ Our American Century, “As Per Your Request, Joe...,” (disseminated in Ohio Oct. 23, 2020 – Oct. 30, 2020), Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR330228902834208768>.

- c) Between October 23, 2020 and October 30, 2020, Our American Century spent between \$1,000 and \$50,000 to distribute “As per your request, Joe” to voters in Pennsylvania;¹¹
 - d) Between October 23, 2020 and October 30, 2020, Our American Century spent between \$1,100 and \$51,000 on two ad buys to distribute “As per your request, Joe” to voters in Arizona;¹² and
 - e) Between October 26, 2020 and October 30, 2020, Our American Century spent an additional \$1,000 to \$50,000 to distribute “As per your request, Joe” to voters in Arizona.¹³
10. The disclaimer at the end of each video ad stated “paid for by Donald J. Trump for President, Inc.,” yet the Google archive shows that Our American Century paid to disseminate the communications.

SUMMARY OF THE LAW

11. In the 2020 cycle, the statutory limit on the amount a federal candidate or his authorized campaign committee may accept from an individual donor is \$2,800 per election. 52 U.S.C. § 30116(a)(1). Contributions from a multicandidate committee to a candidate or authorized committee may not exceed \$5,000 per calendar year. 52 U.S.C. § 30116(a)(2)(A).

¹¹ Our American Century, “*As Per Your Request, Joe...*,” (disseminated in Pennsylvania Oct. 23, 2020 – Oct. 30, 2020), Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR45376226403024896>.

¹² Our American Century, “*As Per Your Request, Joe...*,” (disseminated in Arizona Oct. 23, 2020 – Oct. 30, 2020), Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR357180131854254080> (“Amount spent \$1k-\$50k”); Our American Century, “*As Per Your Request, Joe...*,” (disseminated in Arizona Oct. 23, 2020 – Oct. 30, 2020), Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR498269463930470400> (“Amount spent \$100-\$1k”).

¹³ Our American Century, “*As Per Your Request, Joe...*,” (disseminated in Arizona Oct. 26, 2020 – Oct. 30, 2020), Google Transparency Report, GOOGLE, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR371102148085153792>.

12. A “contribution” includes “any gift, subscription, loan, advance, or deposit 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(8)(A)(i); *see also* 11 C.F.R. §§ 100.52(a), 114.1(a)(1). “Anything of value” includes all in-kind contributions. 11 C.F.R. § 100.52(d)(1).
13. FECA provides that “the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered an expenditure.” 52 U.S.C. § 30116(a)(7)(B)(iii). Commission regulations further provide that the republication of campaign materials “prepared by the candidate, the candidate's authorized committee, or an agent of the foregoing” is a contribution for purposes of contribution limitations and reporting responsibilities of the person making the expenditure. 11 C.F.R. § 109.23(a). The candidate who prepared the materials is not considered to have received an in-kind contribution and is not required to report an expenditure, unless the republication is a coordinated communication under 11 C.F.R. §§ 109.21 or 109.37. *Id.*
14. The Commission explained this rule as follows:

[W]hether or not the dissemination, distribution, or republication qualifies as a coordinated communication under 11 CFR 109.21, paragraph (a) of section 109.23, like former section 109.1(d)(1), requires the person financing such dissemination, distribution, or republication *always* to treat that financing, for the purposes of that person’s contribution limits and reporting requirements, as an in-kind contribution made to the candidate who initially prepared the campaign material. In other words, the person financing the communication must report the payment for that communication if that person is a political committee or is otherwise required to report contributions. Furthermore, that person must count the amount of the payment towards that person’s contribution limits with respect to that candidate under 11 CFR 110.1 (persons other than political committees) or 11 CFR 110.2 (multicandidate political committees) . . .

Coordinated and Independent Expenditures, Final Rules & Explanation & Justification, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (emphasis added).

15. The Commission has previously found reason to believe that a super PAC violated the contribution limits at 52 U.S.C. § 30116(a) and reporting requirements at 52 U.S.C. § 30104(b) by republishing substantial portions of a candidate’s campaign advertisement, and entered into a conciliation agreement. MUR 6535 (Restore Our Future), Conciliation Agreement at 1-4;¹⁴ *see also* MUR 6535 (Restore Our Future), Factual and Legal Analysis at 1-7.¹⁵
16. A nonconnected political committee may only accept contributions of up to \$5,000 in a calendar year, 52 U.S.C. § 30116(a)(1)(C), and shall not knowingly accept any contribution in excess of FECA’s limits, 11 C.F.R. § 110.9. However, a nonconnected committee may raise funds in unlimited amounts if it does not use those funds to make direct or in-kind contributions to federal candidates or committees. Advisory Opinion 2010-11 at 2-3 (Commonsense Ten) (July 22, 2010); *see also SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (en banc).
17. All public communications that expressly advocate the election of a clearly identified federal candidate must include a disclaimer identifying who paid for the communication, and

¹⁴ Available at Notification with Factual and Legal Analysis to Campaign Legal Center from FEC at 2-5, MUR 6535 (Nov. 19, 2015) <https://www.fec.gov/files/legal/murs/6535/15044382273.pdf>.

¹⁵ Available at *id.* at 6-12. In that case, the super PAC republished an advertisement created five years earlier, by the candidate’s campaign in a previous election cycle; the Commission acknowledged that MUR 6535 was a “case of first impression,” since the agency had “not previously considered whether the phrase ‘campaign materials prepared by the candidate [or] his campaign committees’ is limited to campaign materials prepared during the same election cycle in which a third party republishes the materials.” MUR 6535 (Restore Our Future), Factual and Legal Analysis at 5, 7. The super PAC interpreted the regulation’s use of the term “candidate” to limit its scope to candidate materials created within the same election cycle, an interpretation that the Commission acknowledged “was not unreasonable.” *Id.* at 7. Given those “unique circumstances,” the Commission exercised its discretion to enter into a pre-probable cause conciliation agreement, and the super PAC agreed to a \$50,000 fine. MUR 6535 (Restore Our Future), Conciliation Agreement at 3. None of those mitigating factors are present here.

whether the communication was authorized by a candidate. 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11. A disclaimer on such a communication that is not paid for or authorized by a candidate must “clearly state the full 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.” 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3). The term “public communication” includes “communications placed for a fee on another person’s Web site.” 11 C.F.R. § 100.26. A person paying for a digital public communication that expressly advocates the election of a clearly identified federal candidate must include all disclaimer information specified by 52 U.S.C. § 30120(a). Advisory Opinion 2017-12 at 1 (Take Back Action Fund) (Dec. 15, 2017).

CAUSES OF ACTION

COUNT I:

OUR AMERICAN CENTURY MADE ILLEGAL, EXCESSIVE, AND UNREPORTED IN-KIND CONTRIBUTIONS BY REPUBLISHING TRUMP CAMPAIGN MATERIALS

18. Our American Century spent between \$5,100 and \$251,000 on Google financing the dissemination, distribution, or republication of a campaign advertisement prepared by the Donald J. Trump campaign committee or its agents.¹⁶
19. Republication “of campaign materials prepared by the candidate, his campaign committees, or their authorized agents” is a contribution subject to FECA’s limits, prohibitions, and reporting requirements. 52 U.S.C. § 30116(a)(7)(b)(iii); 11 C.F.R. § 109.23(a).

¹⁶ See sources cited *supra* ¶ 9. The spending information for each ad in the Google ad library is only provided in ranges (*e.g.*, \$100-\$1,000, \$1,000-\$50,000) rather than in discrete amounts.

20. On its reports filed with the Commission, Our American Century did not report any contributions to the Trump campaign committee.¹⁷
21. As a result, there is reason to believe that Our American Century violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions to Donald J. Trump for President, Inc., and additionally violated 52 U.S.C. § 30104(b) by failing to report those excessive contributions. Because there is reason to believe, the Commission should investigate the full extent of the violation, and examine whether the committee republished Trump advertisements on platforms other than Google, since only \$259,800 out of the \$5.5 million that Our American Century spent on digital independent expenditures appeared on Google networks.
22. The Commission has previously found reason to believe that a super PAC violated FECA by republishing a candidate's campaign advertisement, and exercised its discretion to enter into a conciliation agreement and levy a relaxed \$50,000 fine. MUR 6535 (Restore Our Future), Conciliation Agreement at 1-4.¹⁸ The Commission should seek more significant penalties in this case. The Commission should seek civil penalties commensurate with the severity of the violation that are significant enough to deter others from repeating it.

COUNT II:
OUR AMERICAN CENTURY ILLEGALLY ACCEPTED EXCESS CONTRIBUTIONS

¹⁷ See sources cited *supra* ¶ 8.

¹⁸ The Commission exercised its discretion in MUR 6535 because it involved several mitigating factors not present here: it was a “case of first impression” where a super PAC republished substantial portions of a candidate advertisement created five years earlier in a previous election cycle, and where the respondent’s regulatory interpretation was “not unreasonable.” MUR 6535 (Restore Our Future), Factual and Legal Analysis at 1-7, Conciliation Agreement at 1-4. There are no such mitigating factors in this case: the advertisement republished by Our American Century was created by Trump’s campaign just weeks before, and Our American Century republished the ad in its entirety, with the ad even including the original “paid for by Donald J. Trump for President” disclaimer.

23. A nonconnected political committee may raise funds in unlimited amounts only if it does not use those funds to make contributions to federal candidates or committees. Advisory Opinion 2010-11 at 2-3 (Commonsense Ten); *see also SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (en banc). Upon its formation, Our American Century told the Commission in a sworn statement that it “intends to raise funds in unlimited amounts from individuals and corporations,” but “will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.”¹⁹
24. In the 2020 cycle, Our American Century raised \$7 million from one individual, and \$500,000 from another individual; as described *supra* Count I, it then used those funds to make contributions to Donald J. Trump for President, Inc.
25. Because Our American Century made contributions to a candidate’s campaign committee, it was not entitled to raise funds in unlimited amounts. As a result, it violated 52 U.S.C. § 30116(a)(1)(C) and 11 C.F.R. § 110.9 by accepting contributions in excess of FECA’s limits, and additionally violated its sworn statement to the Commission that it would not make contributions to a candidate committee.

**COUNT III:
OUR AMERICAN CENTURY VIOLATED DISCLAIMER REQUIREMENTS**

26. Persons paying for digital independent expenditures must include a disclaimer that “clearly state[s] the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state[s] that the communication is not authorized by any candidate or candidate’s committee.” 52 U.S.C § 30120(a)(3); Advisory Opinion 2017-12 at 1 (Take Back Action Fund) (Dec. 15, 2017).

¹⁹ See sources cited *supra* ¶7.

27. Our American Century paid between \$5,100 and \$251,000 to disseminate the “As per your request, Joe” video advertisement on Google’s networks, yet the advertisement ended with a disclaimer that stated “Paid for by Donald J. Trump for President, Inc.”²⁰
28. Therefore, there is reason to believe Our American Century violated section 30120(a) by failing to include a disclaimer stating that it paid for the “As per your request, Joe” communications, failing to include its address, telephone number, or website address, and failing to disclose whether the communication was authorized by any candidate or candidate’s committee.

PRAYER FOR RELIEF

29. Wherefore, the Commission should find reason to believe that Our American Century violated 52 U.S.C. § 30101, *et seq.*, and should conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
30. 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,



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²⁰ See sources cited *supra* ¶ 9.



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December 16, 2020

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 16 day of December 2020.

Notary Public



For Complainant Campaign Legal Center

Brendan M. Fischer

Sworn to and subscribed before me this 16 day of December 2020.

Notary Public