

In the matter of:

Alvin Bragg
Biden for President

MUR **8274**

COMPLAINT

1. America First Legal Foundation (“AFL”) brings this complaint before the Federal Election Commission (“FEC or “Commission”) seeking an immediate investigation and enforcement action against Alvin Bragg and Biden for President (“Respondents”) for direct and serious violations of the Federal Election Campaign Act (“Act”).

2. President Biden, the incumbent candidate for the 2024 presidential election, looked to lawfare to destroy his chief political opponent, former President Donald J. Trump, and made the following statement regarding Trump’s electoral prospects in November 2024: “if he does run. I’m making sure he, under legitimate efforts of our Constitution, does not become the next President again.”¹

3. In coordination with Biden and his campaign, New York County District Attorney Alvin Bragg resurrected the “hush money” “zombie case” as part of that lawfare strategy against Trump under a legal theory that his predecessor had previously sent “back into the grave,” out of concerns that the felony charges would not hold up in court.²

¹ See Remarks by President Biden in Press Conference, WHITE HOUSE (Nov. 9, 2022), <https://perma.cc/YZ39-QP2Z>.

² See Erica Orden, *How a Hush Money Scandal Turned into a Criminal Case*, POLITICO (Apr. 15, 2024), <https://perma.cc/M9BE-KXH6> (quoting MARK POMERANTZ, PEOPLE v. DONALD TRUMP (2023)); see also STAFF OF H. COMM. ON THE JUDICIARY, INTERIM REPORT: AN ANATOMY OF A POLITICAL PROSECUTION (Apr. 25, 2024), <https://perma.cc/HNC7-X97B>.

4. By pursuing the politically motivated prosecution against Trump, Bragg made an excessive contribution in the form of a coordinated expenditure in violation of 52 U.S.C. § 30116(a)(1)(A).

5. Correspondingly, Biden for President knowingly accepted an excessive contribution in the form of a coordinated expenditure in violation of 52 U.S.C. § 30116(f).

6. Additionally, Biden for President violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a)–(b) by failing to provide the required disclosure information.

Complainant

7. Complainant AFL is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

8. In furtherance of its mission, AFL seeks to expose unethical and illegal conduct of government officials. One way that AFL does this is by gathering information related to coordinated election interference activities by government agencies and officials and making such information available to the public through its website, press releases, and social media. Publicizing campaign finance violators and filing complaints with the Commission serve AFL’s mission by keeping the public informed and deterring future campaign finance law violations. Therefore, AFL is

harmed when a regulated person or entity either fails to disclose or provides false information in reports required by the Act, 52 U.S.C. § 30101 *et seq.*

9. Also, AFL relies on the Commission to properly administer the Act's reporting requirements because these disclosure reports are the only source of information that AFL can use to determine if a regulated person complies with the Act. The proper administration of the Act includes ensuring that all disclosure reports are correctly and timely filed with the Commission.

10. Federal enforcement is necessary when federal campaign finance and support turn from independent law enforcement prosecution to election interference and public corruption. *McCormick v. United States*, 500 U.S. 257 (1991); *Evans v. United States*, 504 U.S. 255 (1992). Therefore, AFL's programmatic activity is hindered when the Commission fails to administer the Act properly. *See Campaign Legal Ctr. v. FEC*, 266 F. Supp. 3d 141, 146 (D.D.C. 2022) (citing *FEC v. Akins*, 524 U.S. 11, 14 (1998)).

Respondents

11. Alvin L. Bragg, Jr., located at One Hogan Place, New York, NY 10013, is the New York County District Attorney.

12. Biden for President (FEC Identification Number: C00703975), located at P.O. Box 58174, Philadelphia, Pennsylvania 19102, is Joseph R. Biden Jr.'s Principal Campaign Committee for the 2024 election.

Facts

13. To influence the 2024 election, Biden and his allies have pursued lawfare to physically remove former President Trump from the campaign trail, drain his resources, harm his reputation, and potentially disqualify him from the ballot.³ Regarding Mr. Trump's electoral prospects in November 2024, Biden stated: "if he does run. I'm making sure he, under legitimate efforts of our Constitution, does not become the next President again."⁴

14. As the New York County District Attorney, Alvin Bragg contributed to Biden's lawfare strategy by resurrecting the "hush money" "zombie case" against Trump under a legal theory that his predecessor had previously sent "back into the grave," out of concerns that the felony charges would not hold up in court.⁵ The case concerned federal subject matter identical to a matter that the United States Department of Justice had previously declined to prosecute in 2018, and Bragg's prosecution relies heavily on the testimony of Michael Cohen — a felon convicted for

³ See, e.g., Andrew C. McCarthy, *Biden's Collusion in the Anti-Trump Lawfare Gambit*, NAT'L REV. (Apr. 27, 2024), <https://perma.cc/G6MD-XUQQ>; Brooke Singman, *Rep Jordan Urges Congress to 'Defund Lawfare Activities' of Trump Prosecutors*, FOX NEWS (June 3, 2024), <https://perma.cc/7VNJ-7YSZ>; Josh Christenson, *Republicans Tear Into AG Merrick Garland Over Trump 'Lawfare' After 'Hush Money' Conviction*, N.Y. POST (June 4, 2024), <https://perma.cc/H3WQ-DSYE>; Jordan Boyd, *Democrats' Election Interference Starts With Lawfare That Keeps Trump From Campaigning*, THE FEDERALIST (Feb. 16, 2024), <https://perma.cc/T8RS-HS4A>; Elise Stefanik, Opinion, *The Democrats Are Using Lawfare Against Trump Because They Can't Beat Him Fairly*, NEWSWEEK (updated Dec. 18, 2023), <https://perma.cc/48PS-3HGF>;

⁴ *Remarks by President Biden in Press Conference*, WHITE HOUSE (Nov. 9, 2022), <https://perma.cc/YZ39-QP2Z>.

⁵ See Erica Orden, *How a Hush Money Scandal Turned into a Criminal Case*, POLITICO (Apr. 15, 2024), <https://perma.cc/M9BE-KXH6> (quoting MARK POMERANTZ, PEOPLE v. DONALD TRUMP (2023)).

lying to Congress with a demonstrable animus towards Trump.⁶ In February 2022, two prosecutors leading the case, Mark Pomerantz and Carey Dunne, resigned from the District Attorney's Office because Bragg "had doubts about moving forward with the case against Trump."⁷ But even Pomerantz acknowledged that the charges would rely on "untested" legal theories.⁸

15. By virtue of holding the Office of the New York County District Attorney, Bragg's "most dangerous power [is] that he will pick people that he thinks should get, rather than pick cases that need to be prosecuted [because] a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone [, and] the greatest danger of abuse of prosecuting power lies [when] the real crime becomes that of being unpopular with the predominant or governing group [or] being attached to the wrong political views."⁹

16. New York Rule of Professional Conduct 3.8 provides, *inter alia*, that a prosecutor "shall not institute, cause to be instituted or maintain a criminal charge when the prosecutor or other government lawyer knows or it is obvious that the charge is not supported by probable cause."¹⁰ Comment 1 to Rule 3.8 provides, "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the

⁶ Letter from Chairman Jim Jordan, H. Comm. on the Judiciary, to the Hon. Merrick Garland, Att'y Gen., U.S. Dep't Justice (Apr. 30, 2024), <https://perma.cc/T6VZ-TADY>.

⁷ William K. Rashbaum et al., *2 Prosecutors Leading N.Y. Trump Inquiry Resign, Clouding Case's Future*, N.Y. TIMES (Feb. 23, 2022), <https://perma.cc/FQU7-A8NP>.

⁸ Luc Cohen, *Trump Hush Money Trial Stems From 'Zombie Case' Brought Back to Life*, REUTERS (Apr. 9, 2024), <https://perma.cc/54BL-WEEY>.

⁹ Robert H. Jackson, *The Federal Prosecutor*, 24 J. AM. JUD. SOC'Y 18 (1940), 31 J. CRIM. L. 3 (1940) (address at Conference of United States Attorneys, Washington, D.C., April 1, 1940).

¹⁰ N.Y. RULES OF PRO. CONDUCT r. 3.8.

defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.”¹¹ Comment 5 provides that, “a prosecutor’s extrajudicial statement can create the additional problem of increasing public condemnation of the accused.”¹²

17. Bragg’s resurrection of the “hush money” “zombie case” based on “untested” legal theories against Trump violated his professional duties as the New York County District Attorney. During his campaign to become District Attorney, Bragg “remind[ed] voters frequently that in his former job, he sued Mr. Trump’s administration ‘more than a hundred times.’”¹³ Bragg would not have prosecuted Trump but for Trump’s candidacy.

18. Bragg’s commitment to getting Trump gained him the support of senior Biden political operatives. One day after Bragg announced his primary campaign against his predecessor,¹⁴ Bragg received a contribution from Chiraag Bains,¹⁵ who would later become a Deputy Assistant to the President in the Biden White House.¹⁶

¹¹ N.Y. RULES OF PRO. CONDUCT r. 3.8 cmt. 1.

¹² N.Y. RULES OF PRO. CONDUCT r. 3.8 cmt. 5.

¹³ Jonah E. Bromwich et al., *2 Leading Manhattan D.A. Candidates Face the Trump Question*, N.Y. TIMES (June 2, 2021), <https://perma.cc/EFZ4-ZP6D>.

¹⁴ See Anna Sanders, *Alvin Bragg Announces Democratic Primary Campaign Against Manhattan DA Cy Vance*, N.Y. DAILY NEWS (June 18, 2019), <https://perma.cc/PQG6-9V3J>.

¹⁵ NYSBOE Public Report System: Contributions By Recipient, N.Y. STATE Bd. ELECTIONS, <https://perma.cc/VQB6-QMJ8> (search in “Candidate Name” search bar for “Alvin Bragg – District Attorney”; then search in the search bar for “Bains”).

¹⁶ Chiraag Bains, PAUL & DAISY SOROS FELLOWSHIPS FOR NEW AMERICANS, <https://perma.cc/2VR2-22DW>.

On June 29, 2019, Bragg received a contribution from Adam Hickey,¹⁷ who would later serve as a senior official in Biden's Department of Justice.¹⁸

19. Bragg's commitment to getting Trump also gained him the support of Billionaire George Soros and Color of Change, a progressive prosecutor front group.¹⁹ On May 8, 2021, the Political Action Committee for Color of Change endorsed Bragg, and a week later, Soros gave \$1 million to Color of Change, who then used part of that money to support Bragg's election.²⁰ Between 2019 and 2021, Soros' son, Jonathan Soros, and his wife, Jennifer Allan Soros, made five separate contributions to Bragg's campaign.²¹

20. In December 2022, New York County District Attorney Alvin Bragg reportedly hired Matthew B. Colangelo to "jump-start" his office's investigation of President Trump, due to Colangelo's "history of taking on Donald J. Trump and his family business."²² Colangelo contributed to Bragg's campaign for District Attorney

¹⁷ *NYSBOE Public Report System: Contributions By Recipient*, N.Y. STATE BD. ELECTIONS, <https://perma.cc/VQB6-QMJ8> (search in "Candidate Name" search bar for "Alvin Bragg – District Attorney"; then search in the search bar for "Hickey").

¹⁸ *Senior Justice Department Official Joins Mayer Brown as Partner*, MAYER BROWN (May 15, 2023), <https://perma.cc/ALX9-9HBY>.

¹⁹ Charles "Cully" Stimson & Zack Smith, *Commentary: Washington Post Fact-Checker Should Try Checking Facts About Soros Prosecutors*, HERITAGE FOUND. (Apr. 12, 2023), <https://perma.cc/4GEB-MLVH>; see also Rashad Robinson, Statement, *Color of Change Asserts That Trump Indictment Points to the Importance of Progressive Prosecutors*, COLOR OF CHANGE (May 31, 2024), <https://perma.cc/ZVU3-DYEB> ("Color of Change PAC worked to help elect and hold progressive prosecutor Alvin Bragg accountable once in office. *We have seen the fruits of our labor*, not only with Bragg's prosecution of Trump but with thousands of decisions that he has made and millions of decisions made by progressive prosecutors we helped elect nation-wide.") (emphasis added).

²⁰ *Id.*

²¹ *NYSBOE Public Report System: Contributions By Recipient*, N.Y. STATE BD. ELECTIONS, <https://perma.cc/VQB6-QMJ8> (search in "Candidate Name" search bar for "Alvin Bragg – District Attorney"; then search in the search bar for "Soros").

²² Jonah E. Bromwich, *Manhattan D.A. Hires Ex-Justice Official to Help Lead Trump Inquiry*, N.Y. TIMES (Dec. 5, 2022), <https://perma.cc/NF8F-B8RK>.

three separate times.²³ Colangelo previously served in senior positions in Biden's Department of Justice and the New York Attorney General's Office, both of which had competing investigations related to President Trump.²⁴ At the Biden Department of Justice, Colangelo served as the politically appointed Acting Associate Attorney General — the number three in the Department.²⁵ Despite this link between the Biden Department of Justice and Bragg's District Attorney's Office, Attorney General Merrick Garland refused during a congressional hearing to commit to turning over communications between his Department and Bragg's Office.²⁶

21. On April 4, 2023, District Attorney Bragg announced a 34-count felony indictment of former President Donald J. Trump.²⁷ Biden Victory Fund, a joint funding representative for Biden for President,²⁸ received \$250,000 from George Soros on September 29, 2023, another \$350,000 on November 30, 2023, and another \$303,000 on December 21, 2023.²⁹

22. On the final day of the trial, the Biden campaign held a press conference starring Robert De Niro across the street from the courtroom.³⁰ Moments after the

²³ *NYSBOE Public Report System: Contributions By Recipient*, N.Y. STATE BD. ELECTIONS, <https://perma.cc/VQB6-QMJ8> (search in "Candidate Name" search bar for "Alvin Bragg – District Attorney"; then search in the search bar for "Colangelo").

²⁴ *Id*; see also Letter from Chairman Jim Jordan, H. Comm. on the Judiciary, to Matthew B. Colangelo, Senior Couns., N.Y. Co. District Att'y's Off. (Apr. 7, 2024), <https://perma.cc/L6VM-3LU8>.

²⁵ Letter from Chairman Jim Jordan, H. Comm. on the Judiciary, to the Hon. Letitia James, Att'y Gen. of the State of N.Y. (May 15, 2024), <https://perma.cc/SM79-T7V5>.

²⁶ Press Release, Rep. Matt Gaetz, Congressman Gaetz Slams AG Garland on Alleging the DOJ Communicating with State Prosecutors Against President Trump is a 'Conspiracy Theory' (June 4, 2024), <https://perma.cc/D85Z-2K4R>.

²⁷ Manhattan Dist. Att'y's Off., Press Release, District Attorney Bragg Announces 34-Count Felony Indictment of Former President Donald J. Trump (Apr. 4, 2023), <https://perma.cc/4AE8-UN2H>.

²⁸ See Biden for President Statement of Org., FEC Form 1 (Aug. 27, 2023).

²⁹ *Browse Receipts*, FED. ELECTION COMM'N, <https://perma.cc/BG2D-5FVS>.

³⁰ Colleen Long & Zeke Miller, *Biden Campaign Sends Allies de Niro and First Responders to Trump's NY Trial to Put Focus on Jan. 6*, ASSOCIATED PRESS (May 28, 2024), <https://perma.cc/L4LS-ARUM>.

jury verdict, the Biden campaign posted the statement: “In New York today, we saw that no one is above the law Convicted felon or not, Trump will be the Republican nominee for president. The threat Trump poses to our democracy has never been greater.”³¹

23. Alex Soros — heir to his father’s political action committee that spent \$32 million to defeat Republicans during the 2022 midterm elections³² — stated that “Democrats should refer to Trump as a convicted felon at every opportunity. Repetition is the key to a successful message and we want people to wrestle with the notion of hiring a convicted felon for the most important job in the country!”³³ On the same day, Color of Change issued a statement characterizing “Bragg’s prosecution of Trump” as a “fruit[] of our labor.”³⁴

24. To obtain the verdict, however, Bragg’s office “contorted the law in an unprecedented manner in their quest to snare their prey.”³⁵ Among other things, Bragg violated a Supreme Court doctrine known as “primary jurisdiction doctrine,” which says that a court should stay or dismiss a claim when it implicates issues within the special competence of a federal administrative agency;³⁶ and in Trump’s case, the Commission failed to find reason to believe that Trump violated the Act.³⁷

³¹ Biden-Harris HQ (@BidenHQ), X (May 30, 2024, 5:44 PM), <https://perma.cc/49NF-PUQC>.

³² Joseph Vazquez et al., *Meet the New Boss*, MRC Bus. (Nov. 15, 2023), <https://perma.cc/4MXE-6TE7>.

³³ Alex Soros (@AlexanderSoros), X (May 31, 2024, 2:49 PM), <https://perma.cc/HB3J-H54V>.

³⁴ Rashad Robinson, Statement, *Color of Change Asserts That Trump Indictment Points to the Importance of Progressive Prosecutors*, COLOR OF CHANGE (May 31, 2024), <https://perma.cc/ZVU3-DYEB>.

³⁵ Elie Honig, *Prosecutors Got Trump — But They Contorted the Law*, INTELLIGENCER (May 31, 2024), <https://perma.cc/H6L9-XZA7>.

³⁶ Daniel Z. Epstein, *Bragg’s Prosecution of Trump Violates This Important Legal Doctrine*, WASH. EXAMINER (May 9, 2024), <https://perma.cc/6XWU-G4ZE>.

³⁷ See Statement of Reasons of Comm’rs Sean J. Cooksey and James E. “Trey” Trainor III, MURs 7313, 7319, and 7379 (Apr. 26, 2021).

25. Bragg's prosecution has physically removed Trump from the campaign trail,³⁸ drained his resources,³⁹ harmed his reputation among voters,⁴⁰ and potentially disqualified him from the ballot in certain jurisdictions.⁴¹

Analysis

A. Excessive Contributions

26. Under the Act, 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,"⁴² and an "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office."⁴³ Under Commission regulations, the phrase "anything of value" includes all in-kind contributions.⁴⁴ In-kind contributions include, among other things, coordinated expenditures, which are expenditures made "in cooperation, consultation, or concert, with, or at the request of, a candidate," the candidate's authorized committee, or their agents.⁴⁵ The Act and Commission regulations

³⁸ Jordan Boyd, *Democrats' Election Interference Starts With Lawfare That Keeps Trump From Campaigning*, THE FEDERALIST (Feb. 16, 2024), <https://perma.cc/T8RS-HS4A>.

³⁹ Richard Lardner & Aaron Kessler, *Trump Spent \$76 Million Over Last Two Years on Attorneys as Legal Troubles Mount Ahead of Election*, ASSOCIATED PRESS (updated Feb. 2, 2024), <https://perma.cc/HQP2-4WN7>.

⁴⁰ Eric Levitz, *Trump's Felony Conviction Has Hurt Him in the Polls*, VOX (June 7, 2024), <https://perma.cc/6NJQ-XGSK>; see also Reid J. Epstein & Nicholas Nehamas, *Democrats Push Biden to Make Trump's Felonies a Top 2024 Issue*, N.Y. TIMES (June 1, 2024), <https://perma.cc/J5D5-PAAF>.

⁴¹ See, e.g., Danny Westneat, *Plot Twist: WA Has a Law Against Felons Running for Office*, SEATTLE TIMES (June 1, 2024), <https://perma.cc/H739-KM2T>; Maggie Astor, *Trump Has Been Convicted. Can He Still Run for President?* N.Y. TIMES (May 31, 2024), <https://perma.cc/W4HP-THU3>.

⁴² 52 U.S.C. § 30101(8)(A).

⁴³ 52 U.S.C. § 30101(9)(A).

⁴⁴ 11 C.F.R. § 100.52(d).

⁴⁵ 52 U.S.C. § 30116(a)(7)(B)(i); see 11 C.F.R. § 109.20 (defining "coordination"); see also *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

prohibit any person from making aggregate contributions to a candidate's authorized committee in excess of a specified amount — which, during the 2024 election cycle, is \$3,300 per election — and prohibits candidates and authorized committees from knowingly accepting contributions from individuals in excess of this amount.⁴⁶ The hush money prosecution can be analyzed as an “expenditure” coordinated with a federal candidate, Biden. The analysis is considered below, and Bragg’s prosecution is a “contribution” under the Act.

27. The available information indicates that Bragg’s hush money prosecution was “coordinated” with Biden,⁴⁷ *i.e.*, it was made “in cooperation, consultation or concert with, or at the request or suggestion of” Biden.⁴⁸ The FEC Office of the General Counsel has consistently recommended that the Commission find reason to believe that acts by a third party intended to influence an election and “coordinated” with a candidate, authorized committee, or agent thereof result in a

⁴⁶ 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(b), 110.9; *see* Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 89 Fed. Reg. 5534, 5536 (Jan. 29, 2024).

⁴⁷ *See, e.g.*, Press Release, Chairman Jim Jordan, Chairman Jordan Investigates Justice Department Coordination with Alvin Bragg’s Politicized Prosecution (Apr. 30, 2024), <https://perma.cc/3DGL-B77Y>; Press Release, Mo. Att’y Gen. Andrew Bailey, Attorney General Bailey Demands DOJ Turn Over Documents Relating to Prosecutions of President Trump (May 9, 2024), <https://perma.cc/A9D5-W8BE> (“Given the timing (Bragg charged Trump only after Trump declared his candidacy for President), the transparent weakness of the charges, and the effect the charges have in keeping Trump off the campaign trail, there is substantial reason to suspect the Biden administration has coordinated with Bragg and others to bring prosecutions against Trump”).

⁴⁸ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)–(b). The Commission has explained that expenditures that are not made for communications are analyzed under the Commission’s regulation at 11 C.F.R. § 109.20(b) and not under the Commission’s three-part test for “coordinated communications” under 11 C.F.R. § 109.21. Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003).

contribution by the person making the expenditure or political committee with whom the expenditure is coordinated.⁴⁹

28. The available information includes strong circumstantial indications that Bragg coordinated with Biden — *i.e.*, that he acted in cooperation, consultation, or concert with, or at the request or suggestion of Biden. Bragg reportedly hired Colangelo — the former number three official at Biden’s Department of Justice — to “jump-start” his office’s investigation of President Trump.⁵⁰ Despite that link between the Biden Department of Justice and Bragg’s District Attorney’s Office, Attorney General Merrick Garland refused during a congressional hearing to commit to turning over communications between his Department and Bragg’s Office.⁵¹ On the final day of the trial, the Biden campaign held a press conference across the street from the courtroom.⁵² Moments after the jury verdict, the Biden campaign posted the statement: “In New York today, we saw that no one is above the law Convicted felon or not, Trump will be the Republican nominee for president. The threat Trump poses to our democracy has never been greater.”⁵³

⁴⁹ See 11 C.F.R. § 109.20(a)–(b); *see, e.g.*, First Gen. Counsel’s Report at 29–41, MURs 7313, 7319, and 7379 (Michael D. Cohen, *et al.*) (recommending finding reason to believe that Cohen made, and Trump and the Trump Committee knowingly accepted, an excessive contribution in contribution in the form of a coordinated expenditure).

⁵⁰ Jonah E. Bromwich, *Manhattan D.A. Hires Ex-Justice Official to Help Lead Trump Inquiry*, N.Y. TIMES (Dec. 5, 2022), <https://perma.cc/NF8F-B8RK>; Letter from Chairman Jim Jordan, H. Comm. on the Judiciary, to the Hon. Letitia James, Att’y Gen. of the State of N.Y. (May 15, 2024), <https://perma.cc/SM79-T7V5>.

⁵¹ Press Release, Rep. Matt Gaetz, Congressman Gaetz Slams AG Garland on Alleging the DOJ Communicating with State Prosecutors Against President Trump is a ‘Conspiracy Theory’ (June 4, 2024), <https://perma.cc/D85Z-2K4R>.

⁵² Colleen Long & Zeke Miller, *Biden Campaign Sends Allies de Niro and First Responders to Trump’s NY Trial to Put Focus on Jan. 6*, ASSOCIATED PRESS (May 28, 2024), <https://perma.cc/L4LS-ARUM>.

⁵³ Biden-Harris HQ (@BidenHQ), X (May 30, 2024, 5:44 PM), <https://perma.cc/49NF-PUQC>.

29. In analyzing whether an act made by a third party to a candidate is a “contribution” or “expenditure,”⁵⁴ the Commission has concluded that “the question under the Act is whether” the act or service was “provided for the purpose of influencing a federal election, not whether [it] provided a benefit to [a federal candidate’s] campaign.”⁵⁵ The electoral purpose of an act may be clear on its face, as in payments to solicit contributions or for communications that expressly advocate for the election or defeat of a specific candidate, or inferred from the surrounding circumstances.⁵⁶

30. When electoral purpose is not apparent on its face, the Commission has concluded that acts would result in a contribution or expenditure if they were made to potentially advance a candidacy, if they were made because of the beneficiary’s status as a federal candidate, or if the act was coordinated with the candidate or his campaign. For example, in Advisory Opinion 1980-57, the Commission concluded that funds raised for federal candidate’s lawsuit seeking removal of a potential opponent from the ballot were contributions because litigation “to force an election opponent off the ballot … is as much an effort to influence an election as is a campaign advertisement derogating that opponent.”⁵⁷

⁵⁴ 52 U.S.C. §§ 30101(8)(A)(i); 30101(9)(A)(i).

⁵⁵ Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*).

⁵⁶ A federal court, in the context of a criminal case, has articulated that a third party’s payment to a candidate is a “contribution” if the person behind it has the *principal* purpose of influencing a federal election, even if that is not their *only* purpose — acknowledging that “[p]eople rarely act with a single purpose in mind.” Jury Instrs., *United States v. Edwards*, No. 1:11-CR-161, 2012 WL 1856481 (M.D.N.C. May 18, 2012).

⁵⁷ Advisory Op. 1980-57 at 3 (Gonzalez).

31. Similarly, in Advisory Opinion 1990-05, the Commission concluded that the publication expenses of a newsletter published by a candidate-owned company would be expenditures if the newsletter referred to the candidate's campaign or qualifications for office, referred to issues or policy positions raised in the campaign (by the candidate or his opponents), or if the distribution of the newsletter significantly expanded or otherwise indicated that it was being used as a campaign communication.⁵⁸ The Commission indicated that any discussion of issues or policies "closely associated" with the candidate's federal campaign "would be inevitably perceived by readers as promoting your candidacy," and the newsletter would therefore be "viewed by the Commission as election-related and subject to the Act."⁵⁹

32. Conversely, the Commission has previously found that activity by or in connection with a federal candidate that is undertaken for any number of non-electoral purposes — including, *e.g.*, activity to fulfill the obligations of holding government office,⁶⁰ or engage in non-candidate oriented election litigation⁶¹ — does not necessarily result in a "contribution" or "expenditure," even if such activity confers a benefit on a federal candidate or otherwise impacts a federal election.

⁵⁸ Advisory Op. 1990-05 at 4.

⁵⁹ *Id.* at 2, 4; see also Advisory Op. 2000-08 at 2-3 (a donor's provision of a monetary "gift" to a federal candidate to express "gratitude" and "deep appreciation" to him for running for office would be made to influence a federal election — notwithstanding the donor's statements that he intended that the gift be used solely for personal expenses and did not "wish to directly support [the candidate's] campaign" — because "the proposed gift would not be made but for the recipient's status as a Federal candidate; it is, therefore, linked to the Federal election" and "would be considered a contribution.").

⁶⁰ *E.g.*, Advisory Op. 1981-37 at 2 (Gephardt) (federal candidate did not receive a contribution by appearing at a series of "public affairs forums" paid for by a corporation because "the purpose of the activity is not to influence the nomination or election of a candidate for Federal office but rather in connection with the duties of a Federal officeholder" regardless of indirect benefit to future campaigns).

⁶¹ *E.g.*, Factual & Legal Analysis at 8, MUR 7024 (free legal services provided to a federal candidate challenging FEC disclosure regulations were not contributions because the services were provided "for the purpose of challenging a rule of general application, not to influence a particular election").

33. With respect to Bragg's prosecution of Trump, however, the inescapable inference is that he acted "in cooperation, consultation, or concert, with, or at the request of"⁶² Biden for the principal purpose of influencing the 2024 presidential election. The overall record in these matters — including Colangelo's "jump-starting" of the case, Garland's refusal to disclose communications between his Department and Bragg's office, and the Biden campaign's press event and statement immediately after the trial and conviction — demonstrates that the purpose of Bragg's hush money prosecution was to harm Trump's candidacy and that charges would not have been brought but for Trump's status as a presidential candidate. As a prosecutor, Bragg was duty-bound to fairly exercise the powers of his government office unbiased by personal or political aims.⁶³ As with the facts the Commission considered in Advisory Opinion 1980-57, the available information in this matter supports the conclusion that the purpose of the hush money prosecution was to influence the 2024 election through lawfare seeking to physically remove Trump from the campaign, drain his resources, harm his reputation, and potentially disqualify him from the ballot.⁶⁴

34. Because the available information supports a conclusion that Bragg's prosecution of Trump was coordinated with Biden and made for the purpose of influencing the 2024 presidential election, it is a "coordinated expenditure" under the

⁶² 52 U.S.C. § 30146(a)(7)(B)(i); 11 C.F.R. § 109.20(a)–(b).

⁶³ See *supra* ¶¶ 18–19. Cf. Advisory Op. 1981-37 at 2.

⁶⁴ See Advisory Op. 1980-57 at 3; see also Statement of Reasons of Chairman David M. Mason, Vice Chairman Karl J. Sandstrom, and Comm'rs Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold at 4, MUR 5141 (Moran) (Mar. 11, 2002) (considering such factors as: (1) whether the action "would free up other funds of the candidate for campaign purposes," (2) whether the action would provide the candidate "more time to spend on the campaign instead of pursuing his or her usual employment," and (3) whether the action would not have been made "but for the candidacy").

Act resulting in an in-kind contribution by Bragg to Biden for President. Under the Act and Commission regulations, therefore, Bragg made, and Biden for President knowingly accepted, a contribution in excess of the \$3,300 per-election individual contribution limit.⁶⁵

B. Disclosure

35. The Act and Commission regulations require political committees to file periodic reports accurately disclosing all of their receipts, disbursements, and debts, including coordinated expenditures.⁶⁶ These disclosure requirements serve important transparency and anticorruption interests, as they “provide[] the electorate with information as to where political campaign money comes from and how it is spent[,] ... [and] deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.”⁶⁷ Political committees must report the total amount of all receipts and disbursements for the reporting period and, for a committee authorized by a candidate, the election cycle;⁶⁸ itemize the name and address of each person from whom the committee received contributions aggregating in excess of \$200 in an election cycle, along with the dates and amounts of the contributions;⁶⁹ and itemize the name and address of each person

⁶⁵ As a reference point or purposes of calculating the amount in violation, salaries for Assistant District Attorneys range from \$85,000 to \$171,500. *Legal Staff Employment — Manhattan District Attorneys Office*, <https://perma.cc/ZLP8-C3LG>. See, e.g., Emily Finn, *How Much Is Trump's Hush Money Trial Costing NYC?* NEWSNATION (Apr. 16, 2024), <https://perma.cc/6UHH-XZW3>; see also *supra* notes 3, 27–30.

⁶⁶ 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

⁶⁷ *Buckley v. Valeo*, 424 U.S. 1, 66–67 (1976) (internal quotation marks omitted); see *Citizens United v. FEC*, 558 U.S. 310, 369–71 (2010) (describing importance of disclosure requirements because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

⁶⁸ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a)(3), (b)(2).

⁶⁹ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

to whom the committee made expenditures exceeding, in aggregate amount or value, \$200 per election cycle, as well as the date, amount, and purpose of the expenditures.⁷⁰

36. The available information indicates that Biden for President violated its disclosure obligations under the Act when it failed to provide required contribution information in connection with the Bragg prosecution as a “coordinated expenditure.” A coordinated expenditure must be reported as both a contribution received by, and an expenditure made by, the authorized committees of the candidate with whom the expenditure was coordinated.⁷¹ Because the Bragg prosecution was a contribution in the form of a coordinated expenditure, Biden for President had to report it as both a receipt from Bragg, including the date, amount, and purpose of the in-kind contribution.⁷²

⁷⁰ 52 U.S.C. § 30d04(b)(5)(A); 11 C.F.R. § 104.3(b)(4)(i).

⁷¹ 11 C.F.R. § 104.13(a)(1)–(2); *see* Coordinated and Independent Expenditures, 68 Fed. Reg. at 422 (explaining that committees must report coordinated expenditures in this manner in order to not overstate cash-on-hand balances).

⁷² 52 U.S.C. § 30d04(b)(3)(A), (b)(5)(A); 11 C.F.R. § 104.3(a)(4)(i), (b)(4)(i); *see, e.g.*, Conciliation Agreement ¶ IV.4–5, 7, 11–12, MUR 7073 (Alexander Meluskey for U.S. Senate) (June 20, 20d9) (acknowledging that when a candidate used a radio broadcast to solicit contributions and engage in express advocacy relating to his campaign, *i.e.*, to influence a federal election, the candidate’s authorized committee violated the Act by failing to disclose as “contributions” the \$16,235.29 that paid for that broadcast); *see also* First Gen. Counsel’s Report at 46–48, MURs 7313, 7319, and 7379 (Michael D. Cohen, *et al.*) (recommending finding reason to believe that the Trump Committee violated 52 U.S.C. § 30d04(b) and 11 C.F.R. § 104.3(a) and (b) by failing to provide required disclosure information).

Count I

37. The Act and Commission regulations prohibit any person from making aggregate contributions to a candidate's authorized committee in excess of a specified amount — which, during the 2024 election cycle, is \$3,300 per election.⁷³

38. As detailed above, Bragg's hush money prosecution was "coordinated" with Biden, *i.e.*, it was made "in cooperation, consultation or concert with, or at the request or suggestion of" Biden.

39. Accordingly, Bragg made an excessive contribution in the form of a coordinated expenditure in violation of 52 U.S.C. § 30116(a)(1)(A) by pursuing the politically motivated prosecution against Trump.

Count II

40. The Act and Commission regulations prohibit candidates and authorized committees from knowingly accepting contributions from individuals in excess of a specified amount — which, during the 2024 election cycle, is \$3,300 per election.⁷⁴

41. As detailed above, Bragg's hush money prosecution was "coordinated" with Biden, *i.e.*, it was made "in cooperation, consultation or concert with, or at the request or suggestion of" Biden.

⁷³ 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(h), 110.9; *see* Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 89 Fed. Reg. 5534, 5536 (Jan. 29, 2024).

⁷⁴ 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(b), 110.9; *see* Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 89 Fed. Reg. 5534, 5536 (Jan. 29, 2024).

42. Accordingly, Biden for President knowingly accepted an excessive contribution in the form of a coordinated expenditure in violation of 52 U.S.C. § 30116(f).

Count III

43. The Act and Commission regulations require political committees to file periodic reports accurately disclosing all of their receipts, disbursements, and debts, including coordinated expenditures.⁷⁵

44. As detailed above, Biden for President violated their disclosure obligations under the Act when they failed to provide required contribution information in connection with the Bragg prosecution as a “coordinated expenditure.”

45. Accordingly, Biden for President violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a)–(b) by failing to provide the required disclosure information.

Conclusion

46. WHEREFORE, America First Legal Foundation requests that the FEC conduct an investigation into these allegations; declare the Respondents to have violated the FECA and applicable FEC regulations; and order Biden for President to correct these violations by filing public reports identifying the coordinated expenditures relating to Bragg’s prosecution of Donald J. Trump. In addition, the Complainant requests that the FEC impose sanctions appropriate to these violations, and take such further action as may be appropriate, including referring this matter to the Department of Justice for criminal prosecution.

⁷⁵ 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

June 11, 2024.

Respectfully submitted,

/s/ Juli Z. Haller
ON BEHALF OF THE COMPLAINANT
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VERIFICATION

America First Legal Foundation hereby verifies that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

B. Halle
B. Halle

Julia Z. Haller

Sworn to and subscribed before me this 11 day of June, 2024.

Alyssa Graham

Notary Public



District of Columbia

Signed and sworn to (or affirmed) before me
on 6/11/24 by Julia Haller

Date 0 Name(s) of individual(s) making statement

Date _____ Name(s) of trainee(s) _____
Alyssa Graham

Signature of Notarial Officer

Notary Public

Title of Office

My commission expires: 1/31/29