

**BEFORE THE FEDERAL ELECTION COMMISSION**

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v.

MUR No. \_\_\_\_\_

THORNTON LAW FIRM  
100 Summer St., 30<sup>th</sup> Floor  
Boston, Mass. 02110

MICHAEL THORNTON  
100 Summer St., 30<sup>th</sup> Floor  
Boston, Mass. 02110

GARRETT BRADLEY  
100 Summer St., 30<sup>th</sup> Floor  
Boston, Mass. 02110

DAVID STROUSS  
100 Summer St., 30<sup>th</sup> Floor  
Boston, Mass. 02110

**COMPLAINT**

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that there is reason to believe Thornton Law Firm has violated 52 U.S.C. § 30122 by making contributions in the name of another, namely Michael Thornton, Garrett Bradley and David Strauss, and that Thornton, Bradley and Strauss have violated 52 U.S.C. § 30122 by knowingly permitting their names to be used for the making of such contributions, in violation of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*

2. By Thornton Law Firm failing to report its contributions to the recipient candidates and political committees, it misled the public and complainant Bathija about the true sources of support for those candidates and political committees, depriving the public and complainant Bathija of the facts necessary to properly evaluate candidates for federal office and to cast an informed vote.

### FACTS

3. On October 29, the *Boston Globe* and Center for Responsive Politics (“CRP”) reported on a “pattern of payments” by the Thornton Law Firm, where contributions from its attorneys to federal candidates and political committees were “offset by bonus payments” paid to the attorneys by the firm:

From 2010 through 2014, [David] Strouss and [Garrett] Bradley, along with founding partner Michael Thornton and his wife, donated nearly \$1.6 million to Democratic Party fund-raising committees and a parade of politicians — from Senate minority leader Harry Reid of Nevada to Hawaii gubernatorial candidate David Ige to Senator Elizabeth Warren of Massachusetts. Over the same span, the lawyers received \$1.4 million listed as “bonuses” in Thornton Law Firm records; more than 280 of the contributions precisely matched bonuses that were paid within 10 days.

That payback system, which involved other partners as well, helped make Thornton the 11th-ranked law firm nationally for political contributions in 2014, according to data analyzed by the center, even though it is not among the 100 largest in Massachusetts.

. . . .

Bonus checks that were reviewed by the Globe [from three former employees] made clear that the payments were for political donations, with notations giving the name of the politician the partner had donated to.<sup>1</sup>

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<sup>1</sup> Andrea Estes & Viveca Novak, *Law Firm ‘Bonuses’ Tied to Political Donations*, BOSTON GLOBE / CENTER FOR RESPONSIVE POLITICS (Oct. 29, 2016), <https://www.bostonglobe.com/metro/2016/10/29/prominent-democratic-law-firm-pays-questionable-bonuses-partners-for-campaign-contributions/GpD5tRQZR7pRe8hwAvQw8N/story.html>.

4. The *Globe* and CRP additionally noted:

Campaign contribution and law firm records from 2010 through 2014 show that Thornton donated the most, and the firm gave him bonuses that matched not only his donations, but at least 33 made by his wife, Amy, who runs an investment fund. The couple donated just over \$1 million between 2010 and 2014, and Thornton received \$862,450 in offsetting bonuses.

....

Bradley made donations of \$340,535 and received almost as much in bonuses — \$339,000 over that period, the records shows.

Strouss gave \$205,150 over the five years and received almost the same amount in bonuses — \$197,150.

By donating as individuals, lawyers for the firm were able to collectively give far more to individual candidates in a single year than the firm could have donated directly under federal law.<sup>2</sup>

5. The *Globe* and CRP reported that the reimbursement policy began after the firm became increasingly involved in fundraising:

As the number of fund-raisers started piling up, partners began to grouse. Even though Thornton called the contributions “voluntary,” partners felt pressured to give, according to the former employee. After all, Michael Thornton was the firm’s lead partner, with enormous sway over what the other partners were paid.

So, according to three former employees, Thornton Law Firm adopted the donation reimbursement system.<sup>3</sup>

6. The *Globe* and CRP reported that “Brian Kelly, Thornton’s outside counsel, said the firm’s practice is legal because, at the end of each quarter, the firm’s accountant deducts the political donations from something called the ‘capital account’ of each partner with the firm:”

The capital account is a way for the accountant to keep track of the partners’ share of equity in the firm. The deductions from the capital account are on paper only, Kelly acknowledged. When partners leave the firm, they may be entitled to a payment from the capital account that Kelly says is reduced by the amount of reimbursements received.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

....

Kelly provided a written statement from Michael Thornton saying that “an error made internally” led to the payments being called bonuses. Thornton said he changed the way they were labeled in 2015, several years into the program, when he discovered the mistake.<sup>4</sup>

7. However, the *Globe* and CRP noted:

Kelly, who has given varying explanations of the reimbursement policy since first being asked about it in July, declined to provide a copy of a legal opinion that he said justified the repayment program. He also declined to say whether lawyers who left the firm were required to pay when the bonuses they received exceeded their equity in the firm.

But one thing is certain: The policy was so complicated that some lawyers at the firm didn’t understand it, said former employees. They were just happy to get their money back.<sup>5</sup>

**PROHIBITION ON CONTRIBUTIONS IN THE NAME OF ANOTHER**

8. FECA provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.”

52 U.S.C. § 30122.

9. “Contribution” is defined as “any gift ...loan [or] advance . . . 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).

10. The Commission regulation implementing the statutory prohibition on “contributions in the name of another” provides the following examples of “contributions in the name of another”:

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

- “Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made,” 11 C.F.R. § 110.4(b)(2)(i).
  - “Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.” 11 C.F.R. § 110.4(b)(2)(ii).
11. As the Commission has observed, “This section serves to insure disclosure of the source of contributions to Federal candidates and political committees as well as compliance with the Act's limitations and prohibitions.” Advisory Opinion 1986-41 (Air Transport) at 2.
12. The Commission has previously advised that this section would be violated by the “augmentation of compensation paid to an employee, in any manner, where such augmentation is done to effect a contribution in the employee's name to Federal candidates or political committees.” *Id.*

#### **CAUSE OF ACTION**

##### **COUNT I: THORNTON LAW FIRM HAS VIOLATED THE STRAW DONOR BAN**

13. Based on published reports, there is reason to believe that Thornton Law Firm has violated 52 U.S.C. § 30122 by “[m]aking a contribution of money . . . and attributing as the source of the money . . . another person [namely, Michael Thornton, Garrett Bradley, and David Strouss] when in fact [Thornton Law Firm was] the source.” *See* 11 C.F.R. § 110.4(b)(2)(ii).

14. According to published reports, the making of a contribution in the name of another was carried out by Thornton Law Firm paying “bonuses” to its partners in the same amount as their contributions. This appears functionally identical to the bonus reimbursements that the Commission found impermissible in AO 1986-41.
15. Thornton Law Firm’s claim that the value of the “bonus” is deducted from each partner’s capital account is not credible. According to published reports, while the Firm’s outside counsel “has given varying explanations of the reimbursement policy,” one explanation was that the contribution reimbursement program was established because Thornton partners “began to grouse” about the pressure to make contributions from their personal funds.<sup>6</sup> Yet, if the reimbursement is effectively coming from each partner’s own funds held in their capital account, then the reimbursement program would appear to provide little incentive to make contributions and would do little to address the “grousing.” Additionally, the former employees contacted by the *Globe* and CRP reportedly did not understand the reimbursement program to have involved funds held in their capital accounts, and the policy apparently does not account for situations where the “bonuses” exceed a partner’s equity in the capital account.<sup>7</sup>
16. If, as Thornton claims, the reimbursement policy actually does involve deductions from each partner’s capital account, it may only be permissible if part of a regular compensation program that employees may use or redeem as a salary equivalent for a variety of activities—and not only as a means of effectuating an employee’s political

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<sup>6</sup> Estes & Novak, *Law Firm ‘Bonuses’ Tied to Political Donations*, *supra* note 1.  
<sup>7</sup> *Id.*

contributions. AO 2009-31 (MAXIMUS, Inc.).<sup>8</sup> There is no evidence that Thornton Law Firm partners have been allowed to draw advance payments from their capital account for any other purpose besides political contributions. In any case, Thornton’s reimbursement policy should be reflected in a written policy—one that was developed before reporters started raising questions about apparent straw donations—and those deductions from each partner’s capital account should have been accounted for in every quarter since the reimbursement program reportedly began.

**COUNT II: THORNTON LAW FIRM HAS MADE CONTRIBUTIONS  
IN EXCESS OF FEDERAL LIMITS**

17. FECA establishes limits on the amount that a partnership like Thornton Law Firm may contribute to a federal candidate’s campaign committee, to a state party committee, and to a national party committee. 52 U.S.C § 30116(a).<sup>9</sup>
18. Based on published reports, there is reason to believe that Thornton Law Firm violated these federal limits by reimbursing Thornton, Bradley, and Strouss for contributions made in their names, but which in the aggregate exceeded the amount that Thornton Law Firm could legally give directly to the recipient candidates and committees.

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<sup>8</sup> AO 2009-31 involved a company whose employees earned credit as part of their regular compensation that could be used for 1) paid personal leave, 2) pay during personal or financial hardship, or 3) accumulated and traded-in for a lump sum payment upon leaving their job. *Id.* The Commission approved a proposal to allow the employees to voluntarily trade-in their credits to make contributions to the company’s SSF or charitable foundation, since “neither the earning of the credits nor the ability to redeem them depends on an employee’s . . . political activity.” *Id.* at 3. The Commission found the proposal analogous to a payroll deduction plan. *Id.*

<sup>9</sup> During the 2016 election cycle, a partnership like Thornton Law Firm may only contribute up to \$2,700 per election to a federal candidate’s campaign committee, up to \$5,000 to a state party committee, and up to \$33,400 to a national party committee. These limits are indexed for inflation in odd-numbered years; accordingly, the contribution limits in past election cycles were lower. 11 C.F.R. § 110.17(e).

19. For example, according to the *Globe* and CRP, in 2010 the three partners contributed \$2,000 each to Sen. Harry Reid in their own names, and that same day the firm reimbursed their contributions.<sup>10</sup> As a result, the firm contributed at least \$6,000 to Reid's campaign committee, in excess of the \$2,400 candidate committee contribution limit in place for the 2010 election cycle.<sup>11</sup>
20. In 2011, Michael Thornton and his wife contributed \$30,800 each to the Democratic Senatorial Campaign Committee (DSCC) in their own names, and the firm reimbursed those contributions shortly thereafter.<sup>12</sup> As a result, the firm contributed at least \$61,600 to the DSCC, in excess of the \$30,800 party committee contribution limit that applied during the 2011-2012 cycle.<sup>13</sup>
21. The *Globe* and CRP reported that, between 2007 and 2016, lawyers at Thornton Law Firm contributed at least \$1,500,000 to the DSCC, \$333,000 to the Democratic National Committee, and \$181,400 to the Massachusetts Democratic Party, as well as contributing tens of thousands of dollars to several federal candidates.<sup>14</sup> There is reason to believe that Thornton Law Firm reimbursed its employees for all or some of these contributions, and therefore made contributions in excess of FECA's limits. *Id.*

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<sup>10</sup> Estes & Novak, *Law Firm 'Bonuses' Tied to Political Donations*, *supra* note 1.

<sup>11</sup> See Contribution Limits for 2009-10, FEDERAL ELECTION COMM'N, <http://www.fec.gov/info/contriblimits0910.pdf>.

<sup>12</sup> Estes & Novak. The *Globe* and CRP reported that, between 2007 and 2016, lawyers at Thornton Law Firm contributed at least \$1,500,000 to the DSCC, \$333,000 to the Democratic National Committee, and \$181,400 to the Massachusetts Democratic Party. *Id.*

<sup>13</sup> See Contribution Limits for 2011-2012, FED. ELEC. COMM'N, <http://www.fec.gov/info/contriblimits1112.pdf>.

<sup>14</sup> Estes & Novak.



22. Accordingly, based on published reports, there is reason to believe that Thornton Law Firm has made contributions in excess of FECA's limits, in violation of 52 U.S.C § 30116(a).

**COUNT III: MICHAEL THORNTON, GARRETT BRADLEY, AND DAVID STROUSS  
HAVE VIOLATED THE STRAW DONOR BAN**

23. Based on published reports, complainants have reason to believe that Michael Thornton, Garrett Bradley, and David Strauss may have violated 52 U.S.C. § 30122 by “[g]iving money . . . , all or part of which was provided to the contributor[s] by [Thornton Law Firm] (the true contributor) without disclosing the source of money” to the recipient candidates and political committees at the time the contribution was made. *See* 11 C.F.R. § 110.4(b)(2)(i).

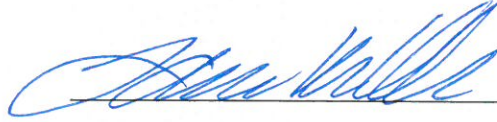
24. Accordingly, based on published reports, complainants have reason to believe that Michael Thornton, Garrett Bradley, and David Strauss may have violated 52 U.S.C. § 30122 by “knowingly permit[ting their] name[s] to be used to effect such a contribution.” 52 U.S.C. § 30122.

**PRAYER FOR RELIEF**

25. Wherefore, the Commission should find reason to believe that Thornton Law Firm and its partners have violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. §§ 30122, 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 respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

November 2, 2016

Respectfully submitted,



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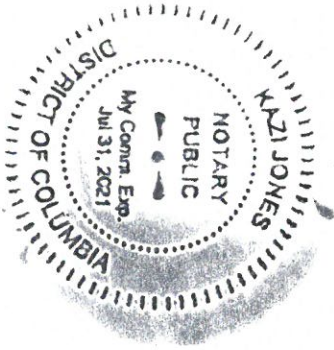
Counsel to the Campaign Legal Center

**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**



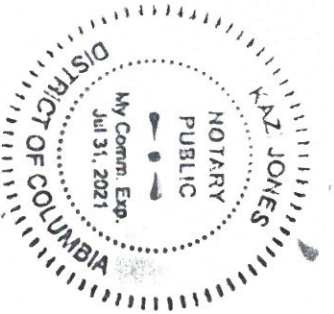
A handwritten signature in blue ink, appearing to read "Lawrence M. Noble", written over a horizontal line.

Lawrence M. Noble

Sworn to and subscribed before me this 2 day of November 2016.

A handwritten signature in blue ink, appearing to read "Kazi Jones", written over a horizontal line.

Notary Public



**For Complainant Sandhya Bathija**

A handwritten signature in blue ink, appearing to read "Sandhya Bathija", written over a horizontal line.

Sandhya Bathija

Sworn to and subscribed before me this 2 day of November 2016.

A handwritten signature in blue ink, appearing to read "Kazi Jones", written over a horizontal line.

Notary Public