

BEFORE THE FEDERAL ELECTION COMMISSION

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Washington, DC 20005
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v.

MUR No. _____

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

DONALD J. TRUMP FOUNDATION
c/o Mazars USA LLP
60 Crossways Pk
Woodbury, NY 11797

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

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Donald J. Trump, a candidate in the 2016 presidential election, his authorized campaign committee, Donald J. Trump for President, Inc. (I.D.: C00580100), and his foundation, the Donald J. Trump Foundation, violated provisions of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. Specifically, candidate Trump and his agents “solicit[ed],” and the Donald J. Trump Foundation “receiv[ed],” soft money funds in connection with an election.

Respondents announced these soft money solicitations and receipts at a campaign event held in Iowa just days before the Iowa nominating caucus, where attendees were told “it is imperative that you all get out and caucus for Donald J. Trump and vote for Donald J. Trump.” The campaign then “direct[ed]” how the Foundation “spen[t]” the soft money proceeds, with the Trump campaign selecting the recipients, timing the disbursements to have the maximum impact on the Iowa election, and distributing the funds at official campaign events via checks emblazoned with the Trump campaign slogan. As a result, Donald J. Trump, Donald J. Trump for President, Inc., and the Donald J. Trump Foundation violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by “solicit[ing],” “receiv[ing],” “direct[ing],” and “spend[ing]” soft money funds “in connection with an election for federal office” that were not “subject to the limitations, prohibitions, and reporting requirements” of FECA.

3. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2); *see also* 11 C.F.R. § 111.4(a) (emphasis added).

STATEMENT OF FACTS

4. Donald J. Trump was a candidate in the 2016 presidential election. Donald J. Trump for President, Inc. is his authorized campaign committee.¹ The Donald J. Trump Foundation is a tax-exempt corporation organized under Section 501(c)(3) of the Internal Revenue Code; its president is Donald J. Trump.

¹ Donald J. Trump for President, Inc., Statement of Organization, FEC Form 1, at 2 (amended Jan. 20, 2017), <http://docquery.fec.gov/pdf/839/201701209041435839/201701209041435839.pdf>.

5. On June 14, 2018, the Charities Bureau of the New York State Office of the Attorney General (“OAG”) filed a petition for dissolution against the Donald J. Trump Foundation for several potential violations of New York law. In the course of the investigation, the OAG uncovered emails and other evidence that Donald J. Trump and Donald J. Trump for President, Inc. raised funds for the Foundation in connection with the 2016 election, and directed the spending of Foundation funds in connection with the 2016 election.
6. Also on June 14, 2018, OAG sent a letter to the Commission presenting this evidence. That letter is attached as Exhibit A and incorporated by reference herein.²
7. The investigation obtained compelling evidence that, during the 2016 election cycle, Donald J. Trump for President, Inc.:

extensively directed and coordinated the Foundation's activities in connection with a nationally televised charitable fundraiser for the Foundation in Des Moines, Iowa on January 28, 2016 (the "Iowa Fundraiser"), including the timing, recipients, and amounts of disbursements of the proceeds from that event. As was well-publicized at the time, and as the Investigation confirmed, then-candidate Trump decided to hold the Fundraiser at the same time as a televised debate of the Republican presidential candidates, in which Mr. Trump declined to participate. The events took place less than one week before the February 1, 2016 Iowa caucuses.³

8. The investigation found that “the Iowa Fundraiser was planned, organized, financed and directed by the Trump campaign, with administrative assistance from the Foundation,”⁴ and that the website for the event was created by the Trump campaign’s digital consultant Brad Parscale.⁵ Trump or his agents raised \$5.6 million in connection with the fundraiser,

² OAG’s June 14, 2018 letter provides substantial evidence that the Donald J. Trump Foundation made expenditures in support of Donald J. Trump’s election, and that those expenditures were coordinated with Donald J. Trump for President, Inc. within the meaning of 52 U.S.C. § 30116(a)(7)(B)(i) and 11 C.F.R. § 109.20. The Campaign Legal Center’s instant complaint provides additional evidence and analysis demonstrating that there is reason to believe that these actors also violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61.

³ Ex. A at 2-3 (internal citations omitted).

⁴ *Id.* at 3.

⁵ *See id.* at 4; OAG Ex. 10, 2016 Form CHAR410-A, Part G, Line 3(c), https://ag.ny.gov/sites/default/files/ex_10.pdf; OAG Ex. 7, Transcript of Jeff McConney at 134-35

some of which went directly from donors to other charities, and \$2.823 million of which was contributed to the Trump Foundation.⁶ \$1.67 million was raised from the DonaldTrumpforVets.com website.⁷

9. At the nationally televised event, candidate Trump announced the outcome of the fundraising drive, and named several donors who had donated large sums.⁸ Trump said, “Carl Icahn gave \$500,000,” apparently in response to a personal solicitation from Trump.⁹ Trump also stated that Richard LeFrak had given \$100,000;¹⁰ the “Fisher family” had given \$75,000; Howard Lawberg \$100,000;¹¹ Ike and Lori Perlmutter \$1,000,000;¹² and J.J Cafaro \$50,000.¹³ Trump brought Phil Ruffin on stage to announce a \$1 million donation.¹⁴

https://ag.ny.gov/sites/default/files/ex_7.pdf; OAG Ex. 6. Transcript of Allen Weisselberg at 36-37, https://ag.ny.gov/sites/default/files/ex_6.pdf.

⁶ See OAG Ex. 14, Document entitled Veterans Fundraiser January 28, 2016, https://ag.ny.gov/sites/default/files/ex_14.pdf.

⁷ See DONALD TRUMP FOR VETS, <https://www.donaldtrumpforvets.com/> (acknowledging “Over \$1,670,000 raised online”) (last visited June 21, 2018).

⁸ *Presidential Candidate Donald Trump Rally in Des Moines, Iowa*, C-SPAN (Jan. 28, 2016), <https://www.c-span.org/video/?403832-1/presidential-candidate-donald-trump-rally-des-moines-iowa>. C-SPAN captioned the televised fundraiser as a “Campaign Rally in Des Moines, Iowa,” described Donald Trump as a “Republican Presidential Candidate,” and identified the “hosting organization” as the “Trump Presidential Campaign.”

⁹ *Id.* at 4:49 to 4:52 (“Carl Icahn gave \$500,000. One quick phone call—‘would \$500,000 be ok?’”)

¹⁰ LeFrak was later named to President Trump’s Advisory Council on Infrastructure. See Melanie Zanova, *Nonprofit Group Sues Trump Over Infrastructure Council*, THE HILL (July 25, 2017), <http://thehill.com/policy/transportation/343718-nonprofit-group-sues-trump-over-infrastructure-council>.

¹¹ *Id.* at 4:56 to 5:37.

¹² *Id.* at 8:23 to 8:40.

¹³ Cafaro was convicted in 2002 for providing an unlawful gratuity to former Congressman James Traficant--\$13,000 to have the then-Congressman help Cafaro’s company secure a federal contract--and in 2010 for making excessive and undisclosed contributions to his daughter’s Congressional campaign. See *Cafaro Sentenced to 3 Years Probation, Fined \$250,000*, THE BUSINESS JOURNAL (June 8, 2010), <https://bit.ly/2I8Shtr>.

¹⁴ *Presidential Candidate Donald Trump Rally in Des Moines, Iowa*, *supra* note 8, at 11:22 to 11:49. Ruffin declared that he had initially sent a \$1 million contribution to support Trump’s candidacy, which Trump returned, so he and his wife would be donating to Trump’s charity instead. (“...about two years ago, I said ‘Donald if you ever run for president I’ll give you a million dollars.’ Well, he ran, I gave him a million dollars—he sent it back. He said ‘I can’t take your money.’ I couldn’t believe it. In any case, he’s a great man, and uh, I’m very happy—my wife and I will donate \$1 million to your charity”). Trump confirmed that Ruffin had sent him a \$1 million contribution to support his campaign. (“He actually sent me a million dollars, and he said there’s ten or twenty more of them if you want it, if you need it, and I sent it back. I just can’t stand it. You know, I’m self-funding my own campaign, right?”). *Id.* at 11:59 to 12:12.

10. Trump also acknowledged soliciting a \$1 million contribution from a donor whose name he declined to publicly state:

“A very, very rich man in New York, a very good friend of mine, and he wants to be anonymous...I said, ‘do me a favor, can you give me a million bucks for this?’ He said, ‘what?’ I said, ‘don’t worry about it, just give me a million.’ He said, ‘no no, just tell me,’ I said, ‘it’s for the vets.’ He said, ‘you got it.’”¹⁵

11. Internet personalities Diamond & Silk told the audience at the event, “I want you all to know that it is imperative that you all get out and caucus for Donald J. Trump and vote for Donald J. Trump...it is up to all of us to help Donald J. Trump make America great again.”¹⁶
12. Following the fundraising event, Donald J. Trump for President, Inc. staff “dictated the manner in which the Trump Foundation disbursed the proceeds, including the timing, amounts, and recipients of the grants,” according to the OAG.¹⁷ The OAG investigation found that Donald J. Trump for President, Inc. staff instructed the Foundation to make five grants in Iowa in the days before the February 1, 2016 Iowa presidential nominating caucuses.¹⁸
13. One day after the fundraiser, on January 29, 2016, Trump's campaign manager Corey Lewandowski emailed the Trump’s Foundation treasurer, Allen Weisselberg, to ask, "Is there any way we can make some disbursements [from the proceeds of the fundraiser] this week while in Iowa? Specifically on Saturday,” January 30th, which was two days before the election.¹⁹

¹⁵ *Id.* at 5:39 to 6:08.

¹⁶ *Id.* at 51:12 to 52:00.

¹⁷ Ex. A at 4.

¹⁸ *Id.*

¹⁹ OAG Ex. 15, Email exchange between Allen Weisselberg and Corey Lewandowski dated January 29, 2016, https://ag.ny.gov/sites/default/files/ex_15.pdf

14. Mr. Weisselberg wrote back to Mr. Lewandowski asking Lewandowski “to put together a list of the Iowa veterans organizations you have in mind along with dollar amounts [Will] give them to the boss.”²⁰ Mr. Lewandowski then emailed Mr. Weisselberg and Mr. McConney a list of veterans organizations to receive the grants, which according to the list’s metadata was created by Trump campaign staff.²¹ The official Donald J. Trump for President, Inc. website later published a similar list of the recipient organizations.²²
15. At a campaign rally on January 29, 2016 in Council Bluffs, Iowa, Mr. Trump handed an enlarged copy of a \$100,000 check to Partners for Patriots.²³ The check included the campaign slogan “Make America Great Again.”²⁴ Jerry Falwell, Jr. announced the delivery of the check at the campaign rally,²⁵ and declared that the donation proved Mr. Trump’s qualifications as a candidate, stating, “I mean, how often do you see a presidential candidate giving money away instead of taking it. I think that is wonderful.”²⁶
16. At the time, the Trump Foundation was unaware that the Trump campaign had selected Partners for Patriots to receive the funds.²⁷ A week after the January 29, 2016 event, on February 8, 2016, Trump Foundation representative McConney emailed Trump campaign manager Lewandowski a news article about the rally, writing:

²⁰ *Id.*

²¹ OAG Ex. 16, Email from Corey Lewandowski to JeffMcConney dated January 29, 2016, https://ag.ny.gov/sites/default/files/ex_16.pdf.

²² https://assets.donaldjtrump.com/MILITARY_CHARITIES_SHEET_FOR_MR._TRUMP.pdf; *see also* *Donald Trump Says He Wanted to Keep Veterans Fundraising ‘Quiet,’ But He Touted it Instead*, POLITIFACT (May 31, 2016), <https://bit.ly/1RKtlWf> (describing the list as a “statement by the Trump campaign after the [January 28 fundraising] event”).

²³ *See Trump Gives Giant Check to Veterans Group*, WASH. POST (Jan. 31, 2016), <https://wapo.st/2Mba8Cw>.

²⁴ *Id.*

²⁵ *Id.* (“we have got a group here today that is going to receive the second disbursement of that six million dollars that was raised the other night. If that group would come on the stage now, it's called Partners for Patriots.”)

²⁶ *Id.*

²⁷ Shiffman Aff., OAG Ex. 26, Email exchange between Corey Lewandowski and Jeff McConney dated February 8, 2016, https://ag.ny.gov/sites/default/files/ex_26.pdf.

“I was talking to Chris today and he mentioned this "check" was given out (see video). This is not one of the charities we've cut a check to yet. Are there other charities like this? I want to make sure we get every charity what was promised to them especially since some of the donors are drawing their checks directly to the charities. Do you have a list of what's been promised so far?”²⁸

Mr. Lewandowski replied, “I’ll make sure we fix it going forward.”²⁹

17. At an Iowa campaign rally on January 31, 2016, Mr. Trump again handed a \$100,000 check emblazoned with the “Make America Great Again” campaign logo to the charity Support Siouland Soldiers.³⁰

18. At an Iowa campaign rally on the day of the caucuses, February 1, 2016, Mr. Trump again announced a \$100,000 donation to Mulberry Street Veterans Shelter,³¹ and acknowledged that the distribution of the checks was helping his campaign and polling:

In lieu of the [Republican presidential primary] debate, I said let's have a rally for the veterans. . . . At that rally, we raised in one hour six million dollars So what we did, we raised this money, and we are giving it out, and we just gave out a check for a hundred thousand dollars a little while ago, and we are giving out another check, and they can bring it up and we are going to deliver it right here We have so many of these checks. They are all over the place. We are giving them out. This was in lieu, and, by the way, the poll numbers just came down from New Hampshire, I went through the roof. I think they respect the fact that I, that we stand up for our rights So, congratulations to Mulberry Street.³²

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Woody Gottburg, *Siouland Soldiers Receives Big Trump Donation*, KSCJ (Jan. 31, 2016), <http://kscj.com/2016/01/31/support-siouland-soldiers-receives-big-trump-donation/>.

³¹ The actual name of the recipient charity is Central Iowa Shelter and Services. See Timothy Meinch, *Trump Donation Surprises D.M. Shelter*, DES MOINES REGISTER (Feb. 16, 2016), <https://www.desmoinesregister.com/story/news/2016/02/15/trump-donation-surprises-des-moines-shelter/80415606/>.

³² See Berneice Mariela, *Full Speech: Donald Trump Rally in Cedar Rapids, IA with Sarah Palin on Caucus Day (2 1 16)*, YOUTUBE (Feb. 10, 2016), <https://www.youtube.com/watch?v=VXt1KPpkwN0>; see also Kevin Landrigan, *NH Trump Supporters Mentioned in NY's Lawsuit Against President and Three of His Children*, NEW HAMPSHIRE UNION LEADER (June 14, 2018), <http://www.newhampshire.com/politics/ny-sues-trump-three-of-his-children-over-illegal-self-dealing-through-foundation-20180614>.

19. Mr. Trump described the distribution of donations as reflecting favorably on his qualifications as a candidate and as distinguishing him from his opponent. In one press conference, for example, he said, “When I raise money for the veterans, and it's a massive amount of money, find out how much Hillary Clinton's given to the veterans. Nothing.”³³
20. On February 16, 2016, the Trump Foundation’s McConney wrote the Trump campaign’s Lewandowski seeking further direction from the Trump campaign concerning the Trump Foundation's fundraising activities and charitable disbursements: “Do you have a list of which veterans charities you want these funds sent to and how much for each charity?? ... Lastly, how much longer do you want to keep the TrumpForVets website up and running?”³⁴
21. On March 22, 2016, in response to campaign-related media inquiries about the distribution of fundraiser proceeds, the Trump campaign’s Lewandowski emailed the Trump Foundation’s McConney and Weisselberg to request a \$100,000 check to a veteran’s charity; Mr. McConney authorized the check fifteen minutes later.³⁵
22. On May 30, 2016, the Trump campaign posted a list of recipient veteran groups on its official campaign website.³⁶

APPLICABLE LAW

³³ See OAG Ex. A at 6.

³⁴ OAG Ex. 19, Email from Jeff McConney to Corey Lewandowski, dated Feb. 16, 2016, https://ag.ny.gov/sites/default/files/ex_19.pdf.

³⁵ OAG Ex. 23, Email from Corey Lewandowski to Allen Weisselberg and Jeff McConney, dated Mar. 22, 2016, https://ag.ny.gov/sites/default/files/ex_23.pdf

³⁶ <https://goo.gl/C6KdXN> (archive copy of May 30, 2016 Trump Campaign webpage featuring chart of Foundation grants); *see also* <https://goo.gl/5k4Tuk> (archive copy of May 24, 2016, Trump Campaign webpage featuring CBS press report on statements of Mr. Lewandowski regarding Mr. Trump's contributions to veterans groups).

23. Federal law limits to \$2,700 the amount of a contribution that a candidate or her authorized campaign committee may accept from an individual donor. 52 U.S.C § 30116(a)(1).

24. FECA's "soft money" prohibition states:

A candidate, individual holding Federal office, agent of a candidate or individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not —

(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act....

52 U.S.C. § 30125(e)(1) (emphasis added).

25. Commission regulations similarly prohibit any candidate, agent of a candidate, or entity "directly or indirectly established, financed, maintained or controlled by" a candidate from raising or spending soft money. 11 C.F.R. §§ 300.60, 300.61.

26. To "solicit" means "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." 11 C.F.R. § 300.2(m). A "solicitation" includes a communication that mentioned a method of making a donation, provides instructions on how or where to send donations, or that identifies a web address where the page is specifically dedicated to receiving donations. *Id.* § 300.2(m)(1).

27. An "agent" of a candidate is a person who "has actual authority, either express or implied," to "solicit, receive, direct, transfer, or spend funds in connection with any election." 11 C.F.R. § 300.2(b)(3).

28. To “direct” means “to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a . . . organization, for the receipt of such funds, or things of value. The contribution, donation, transfer, or thing of value may be made or provided directly or through a conduit or intermediary.” 11 C.F.R. § 300.22(n).
29. Section 30125(e) makes clear that candidates cannot do indirectly what they cannot do directly. Candidates and their campaign committees are prohibited from directly raising or spending soft money—i.e., funds in excess of FECA’s \$2,700-per-election individual contribution limit and funds from prohibited sources like corporations—in connection with a federal election. Candidates and their campaign committees are also prohibited from indirectly raising and spending such funds through an entity “acting on behalf of” the candidate or through an entity that the candidate “established” or “financed” or “maintained” or “controlled.” Any such entity is covered by the same soft money prohibition as the candidate is, whether such entity was “directly” established, financed, maintained, or controlled by a candidate or campaign committee, or “indirectly.”

CAUSES OF ACTION

- I. **Donald J. Trump, Donald J. Trump for President, Inc., and the Donald J. Trump Foundation Violated Section 30125(e) by Illegally Soliciting, Receiving, Spending, and/or Directing Soft Money in Connection with an Election for Federal Office.**
30. Mr. Trump is a “candidate” within the meaning of FECA. 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3. His authorized campaign committee, Donald J. Trump for President, Inc., is an entity established, financed, maintained and controlled by him. 11 C.F.R. § 300.2(c). His 501(c)(3) private charitable foundation, the Donald J. Trump Foundation, is also an entity established, financed, maintained, and

controlled by him. *Id.*³⁷ In January 2016, Corey Lewandowski was an “agent” of Trump and Donald J. Trump for President, Inc., and as campaign manager Lewandowski had authority to solicit, receive, direct, transfer, and spend funds on behalf of Trump and Donald J. Trump for President, Inc. 11 C.F.R. § 300.2(b).

31. Section 30125(e)(1)(a) prohibits any federal candidate or agent of a candidate, or any entity directly or indirectly established, financed, maintained, or controlled by such candidate, from “solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing]” funds “in connection with an election for federal office” that are not “subject to the limitations, prohibitions, and reporting requirements” of FECA, as described in 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61.

32. The January 28, 2016 televised fundraising event was held “in connection with an election for Federal office.” Donald J. Trump for President, Inc. organized and paid for the January 28 event. The website used to facilitate donations, DonaldTrumpforVets.com, was created by the Trump campaign’s digital consultant, Brad Parscale.³⁸ Internet personalities Diamond & Silk told the audience at the event, “I want you all to know that it is imperative that you all get out and caucus for Donald J. Trump and vote for Donald J. Trump...it is up to all of us to help Donald J. Trump make America great again.”³⁹

³⁷ See, e.g., Ex. A at 11-12 (“Mr. Trump’s eponymous Foundation, although formed well prior to his announcement of his candidacy, was nonetheless established by him, and during the 2016 presidential campaign he was authorized to, and did, exercise considerable control over all aspects of its activities as the Board President.”) citing OAG Ex. 20, emails between Mr. Lawrence Glick and others dated March 7, 2016 https://ag.ny.gov/sites/default/files/ex_20.pdf (describing candidate Trump approving a \$40,000 donation from the Donald J. Trump Foundation and signing the check).

³⁸ OAG Ex. 7, Transcript of Jeff McConney at 134-35, https://ag.ny.gov/sites/default/files/ex_7.pdf

³⁹ *Presidential Candidate Donald Trump Rally in Des Moines, Iowa*, *supra* note 8, at 51:12 to 52:00.

33. From the stage at the event, candidate Trump acknowledged that he had solicited and received soft money, i.e., funds that were not subject to FECA’s \$2,700 per election individual contribution limit and reporting requirements. Mr. Trump said that he had solicited and received \$500,000 from Carl Icahn,⁴⁰ and had solicited and received \$1 million from a donor whose identity he declined to publicly disclose.⁴¹ Mr. Trump brought Phil Ruffin on stage to announce Trump’s receipt of a \$1 million donation.⁴² Mr. Trump also stated that Richard LeFrak had given \$100,000;⁴³ the “Fisher family” had given \$75,000; Howard Lawberg \$100,000;⁴⁴ Ike and Lori Perlmutter \$1,000,000;⁴⁵ and J.J. Cafaro \$50,000.⁴⁶ It does not appear that Mr. Trump had ever held a fundraiser, or solicited and received funds, for veteran charities before becoming a candidate; but for Mr. Trump’s candidacy, he would not have held the fundraiser.
34. Following the January 28, 2016 fundraiser, the candidate, his campaign, and their agents “direct[ed]” and “spen[t]” the soft money funds “in connection with an election for Federal office.” Specifically, Trump campaign manager Corey Lewandowski timed the disbursements to have the maximum impact on the February 1, 2016 Iowa nominating caucus.⁴⁷ At least three checks were

⁴⁰ *Id.* at 4:49 to 4:52 (“Carl Icahn gave \$500,000. One quick phone call—‘would \$500,000 be ok?’”)

⁴¹ *Id.* at 5:39 to 6:08. (“A very, very rich man in New York, a very good friend of mine, and he wants to be anonymous...I said, ‘do me a favor, can you give me a million bucks for this?’ He said, ‘what?’ I said, ‘don’t worry about it, just give me a million.’ He said, ‘no no, just tell me,’ I said, ‘it’s for the vets.’ He said, ‘you got it.’”)

⁴² *Id.* at 11:22 to 11:49. Trump confirmed that Ruffin had sent him \$1 million. *Id.* at 11:59 to 12:12.

⁴³ LeFrak was later named to President Trump’s Advisory Council on Infrastructure. *See* Melanie Zanova, *Nonprofit Group Sues Trump Over Infrastructure Council*, THE HILL (July 25, 2017), <http://thehill.com/policy/transportation/343718-nonprofit-group-sues-trump-over-infrastructure-council>.

⁴⁴ *Presidential Candidate Donald Trump Rally in Des Moines, Iowa*, *supra* note 8, at 4:56 to 5:37.

⁴⁵ *Id.* at 8:23 to 8:40.

⁴⁶ *Id.*

⁴⁷ On January 29, 2016, Lewandowski emailed Trump Foundation treasurer Weisselberg to ask, ‘Is there any way we can make some disbursements [from the proceeds of the fundraiser] this week while in Iowa? Specifically on Saturday [January 30th].’

distributed from the stage at official campaign events in the days before the Iowa election, and emblazoned with the campaign slogan “Make America Great Again.”⁴⁸ When announcing the delivery of a check at a January 29, 2016 campaign rally, Jerry Falwell, Jr. declared that the donation proved Mr. Trump’s qualifications as a candidate.⁴⁹ At an Iowa campaign rally on February 1, 2016, Mr. Trump acknowledged that the distribution of the checks was helping his campaign and polling.⁵⁰ Mr. Trump later described the distribution of donations as reflecting favorably on his qualifications as a candidate, and as distinguishing him from his opponent.⁵¹

35. Emails indicate that the Trump campaign directed and controlled how the funds would be spent, which provide further evidence that the funds were spent in connection with the presidential election. Shortly after the fundraiser, Trump campaign manager Lewandowski asked the Trump Foundation’s treasurer, Mr. Weisselberg, to distribute checks in advance of the Iowa election; the treasurer

⁴⁸ See *Trump Gives Giant Check to Veterans Group*, WASH. POST (Jan. 31, 2016), <https://wapo.st/2Mba8Cw>; Woody Gottburg, *Siouxland Soldiers Receives Big Trump Donation*, KSCJ (Jan. 31, 2016), <http://kscj.com/2016/01/31/support-siouxland-soldiers-receives-big-trump-donation/>; Kevin Landrigan, *NH Trump Supporters Mentioned in NY’s Lawsuit Against President and Three of His Children*, NEW HAMPSHIRE UNION LEADER (June 14, 2018), <http://www.newhampshire.com/politics/ny-sues-trump-three-of-his-children-over-illegal-self-dealing-through-foundation-20180614>.

⁴⁹ “I mean, how often do you see a presidential candidate giving money away instead of taking it. I think that is wonderful.” See *Trump Gives Giant Check to Veterans Group*, WASH. POST (Jan. 31, 2016), <https://wapo.st/2Mba8Cw>.

⁵⁰ “We have so many of these checks. They are all over the place. We are giving them out. This was in lieu, and, by the way, the poll numbers just came down from New Hampshire, I went through the roof.” Berneice Mariela, *Full Speech: Donald Trump Rally in Cedar Rapids, IA with Sarah Palin on Caucus Day (2 1 16)*, YOUTUBE (Feb. 10, 2016), <https://www.youtube.com/watch?v=VXt1KPpkwN0>.

⁵¹ In one press conference, Trump said, “When I raise money for the veterans, and it’s a massive amount of money, find out how much Hillary Clinton’s given to the veterans. Nothing.” <https://bit.ly/21mPa64> at 14:00. Notably, one of Trump’s opponents, Carly Fiorina, offered to give between \$1.5 and \$2 million to veteran causes from her campaign committee if Trump agreed to a debate, that offer was made with hard money funds and so would have complied with section 30125(e). Libby Nelson, *Ted Cruz and Carly Fiorina Offer Millions to Veterans’ Groups—but Only if Trump Debates*, VOX (Jan. 28, 2016) <https://www.vox.com/2016/1/28/10858520/cruz-trump-debate-veterans>.

replied by asking the Trump campaign manager “to put together a list of the Iowa veterans organizations you have in mind along with dollar amounts.”⁵² Mr. Lewandowski replied with a list of grant recipients, created by Trump campaign staff,⁵³ a document that was then published on the official campaign website.⁵⁴ Other emails show agents of the Donald J. Trump for President, Inc. and Foundation staff coordinating closely on the distribution of checks.⁵⁵ Moreover, the Trump campaign apparently selected the recipient of the \$100,000 donation announced at the January 29, 2016 campaign event without consulting with the Trump Foundation;⁵⁶ the Trump Foundation learned about the recipient through news reports⁵⁷ and actual payment was not issued until February 10, 2016.⁵⁸

36. Therefore, there is reason to believe that Donald J. Trump, and entities established, financed, maintained, and controlled by him—Donald J. Trump for President, Inc. and the Donald J. Trump Foundation—violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by “solicit[ing],” “receiv[ing],” “direct[ing]” and “spend[ing]” funds “in connection with an election for federal office” that

⁵² *Id.*

⁵³ OAG Ex. 16, Email from Corey Lewandowski to Jeff McConney dated January 29, 2016, https://ag.ny.gov/sites/default/files/ex_16.pdf.

⁵⁴ [https://assets.donaldjtrump.com/MILITARY CHARITIES SHEET FOR MR. TRUMP.pdf](https://assets.donaldjtrump.com/MILITARY_CHARITIES_SHEET_FOR_MR._TRUMP.pdf); *see also* *Donald Trump Says H Wanted to Keep Veterans Fundraising ‘Quiet,’ But He Touted it Instead*, POLITIFACT (May 31, 2016), <https://bit.ly/1RKtlWf> (describing the list as a “statement by the Trump campaign after the [January 28 fundraising] event”).

⁵⁵ OAG Ex. 20, https://ag.ny.gov/sites/default/files/ex_20.pdf.

⁵⁶ On February 8, 2016, Foundation representative Jeff McConney emailed Trump campaign manager Lewandowski a news article about the January 29 campaign rally, writing “I was talking to Chris today and he mentioned this ‘check’ was given out (see video). This is not one of the charities we’ve cut a check to yet. Are there other charities like this? I want to make sure we get every charity what was promised to them especially since some of the donors are drawing their checks directly to the charities. Do you have a list of what’s been promised so far?” OAG Ex. 26, Email exchange between Corey Lewandowski and Jeff McConney dated February 8, 2016, https://ag.ny.gov/sites/default/files/ex_26.pdf.

⁵⁷ *Id.*

⁵⁸ OAG Ex. 22 https://ag.ny.gov/sites/default/files/ex_22.pdf.

were not “subject to the limitations, prohibitions, and reporting requirements” of FECA. 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61.

37. Specifically, Donald J. Trump violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by personally soliciting soft money donations; directing, through his agent Lewandowski and other agents of his campaign committee, soft money; and spending soft money through agents and/or through the Donald J. Trump Foundation, an entity established, financed, maintained, and controlled by him.
38. Donald J. Trump for President, Inc., an entity established, financed, maintained, and controlled by candidate Trump, violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by directing soft money through agents.
39. The Donald J. Trump Foundation, an entity established, financed, maintained, and controlled by candidate Trump, violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by receiving and spending soft money.⁵⁹

PRAYER FOR RELIEF

40. Wherefore, the Commission should find reason to believe that Donald J. Trump, Donald J. Trump for President, Inc., and the Donald J. Trump Foundation have violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).

⁵⁹ Just because a person is a “candidate” does not mean they are prohibited from raising money for, or directing funds to, charitable organization; such fundraising and spending only is prohibited if it is done in connection with an election. A federal candidate may make a general solicitation of funds for a tax-exempt organization if the organization does not engage in activities in connection with an election, or if the solicitation is not to obtain funds for activities in connection with an election. 52 U.S.C. § 30125(e)(4)(a), 11 C.F.R. § 300.65(a)(1-2). These exceptions are unavailable here; as described above, the Donald J. Trump Foundation has engaged in activities in connection with an election, and candidate Trump solicited funds for the Foundation for activities in connection with an election—indeed, the Trump campaign directed how the funds would be spent, and timed the disbursements to have the maximum impact on the Iowa nominating contest.

41. Further, 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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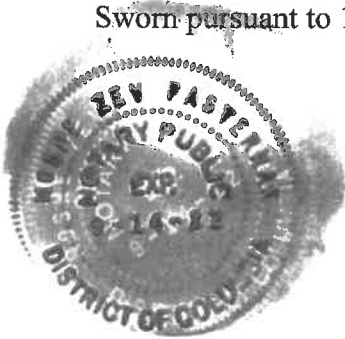
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Sandhya Bathija

July 11, 2018

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 Sandhya Bathija



Sandhya Bathija

Sworn to and subscribed before me this 11 day of July 2018.



Notary Public



For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 11 day of July 2018.



Notary Public

Exhibit A



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
28 LIBERTY STREET
NEW YORK, NEW YORK 10005

BARBARA D. UNDERWOOD
Attorney General

DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

James G. Sheehan, Bureau Chief

June 14, 2018

Commissioner Caroline C. Hunter, Chair
Commissioner Ellen L. Weintraub, Vice Chair
Commissioner Matthew S. Petersen
Commissioner Steven T. Walther
Lisa J. Stevenson, Acting General Counsel

Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: Referral of the Donald J. Trump Foundation, Trump Organization, Donald J. Trump for America, and their agents, and Bradley T. Crate in his official capacity as treasurer.

Dear Commissioners and Ms. Stevenson:

The Charities Bureau of the New York State Attorney General's Office ("OAG") is responsible for regulating New York State charitable organizations, ensuring their compliance with governing rules and law, and representing the interests of charitable beneficiaries. On June 14, 2018, the OAG filed a petition for involuntary dissolution against the Donald J. Trump Foundation (the "Foundation"), a New York not-for-profit corporation, in New York State court.¹ The petition and accompanying papers set forth facts that the OAG uncovered during the course of an investigation of the Foundation with respect to potential violations of New York law governing related party transactions, the administration of charitable assets, and the management and oversight of the not-for-profit corporations (the "Investigation").

As detailed in the petition, the Charities Bureau has concluded that the Foundation and its directors and officers violated multiple sections of New York state law, including provisions that prohibit foundations from engaging in self-dealing, from wasting charitable assets, and from violating the Internal Revenue Code by, among other things, making expenditures to influence the

¹ A copy of the petition and the Affirmation of Assistant Attorney General Steven Shiffman ("Shiffman Aff.") and the Memorandum of Law are attached hereto.

outcome of an election. I write to refer to the Federal Election Commission (the “Commission”) evidence of possible violations of the Federal Election Campaign Act (“FECA” or the “Act”) by the Foundation and Trump Campaign uncovered during the course of the Investigation.

The Investigation acquired substantial credible evidence that the Foundation disbursed in excess of \$2.8 million to influence the 2016 Republican presidential primary election at the direction and under the control of senior leadership of the Trump presidential campaign committee and apparently with the candidate’s knowledge and approval.² As such, the Foundation made – and the committee knowingly accepted – prohibited, excessive, and unreported in-kind contributions during the 2016 presidential election cycle. Moreover, the evidence of coordination and control further indicates that the Foundation and campaign may have violated the so-called soft money provisions of the Act as amended by the Bipartisan Campaign Reform Act of 2002 (“BCRA”). Finally, we refer certain additional evidence relating to a \$25,000 prohibited contribution the Foundation made in 2013 to the political committee of another candidate for public office for any further action that the Commission may deem warranted under the circumstances.

FACTUAL BACKGROUND

The Foundation is recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code and is classified as a private foundation under Section 509(a) of the Code. As such, it may not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of . . . any candidate for public office.”³ In accordance with the Code and New York State law, the Foundation’s certificate of incorporation provides that “[n]o part of the property . . . of the corporation shall be diverted in any manner directly or indirectly or otherwise inure to the benefit of any member, trustee, director or officer of the corporation or any private individual.”⁴ The certificate of incorporation further provides that “[n]o part of the activities of the corporation shall be . . . participating or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.”⁵

The Investigation obtained compelling evidence that Donald J. Trump for President, Inc.⁶ (the “Trump Campaign”) extensively directed and coordinated the Foundation’s activities in connection with a nationally televised charitable fundraiser for the Foundation in Des Moines, Iowa on January 28, 2016 (the “Iowa Fundraiser”), including the timing, recipients, and amounts of disbursements of the proceeds from that event. As was well-publicized at the time, and as the Investigation confirmed, then-candidate Trump decided to hold the Fundraiser at the same time as

² The OAG received documents from the Foundation and certain other third parties during the course of its investigation, but did not request or receive documents directly from the Trump Campaign.

³ See IRS Revenue Ruling 2007-41, 2007-25 I.R.B. (June 18, 2007) available at <https://www.irs.gov/pub/irs-drop/r-07-41.pdf>; see also 26 U.S.C. § 501(c)(3).

⁴ Shiffman Aff., Ex. 2, Donald J. Trump Foundation Certificate of Incorporation, dated Feb. 2, 1987 (“Certificate of Incorporation”), at Section Sixth; N.Y. Not-For-Profit Corp. Law §§ 406 & 515(a) (“N-PCL”).

⁵ Shiffman Aff., Ex. 2, Certificate of Incorporation at Section Seventh; N-PCL § 406.

⁶ Donald J. Trump for President, Inc., FEC Form 1, Statement of Organization, June 29, 2016.

a televised debate of the Republican presidential candidates, in which Mr. Trump declined to participate.⁷ The events took place less than one week before the February 1, 2016 Iowa caucuses.

According to its filing with the Charities Bureau, the Foundation “held [the] nationally televised fundraiser in Iowa to raise funds for veterans’ organizations . . . [and] created a website to allow donors to make charitable contributions online.”⁸ The Investigation found that, in fact, the Iowa Fundraiser was planned, organized, financed, and directed by the Trump Campaign, with administrative assistance from the Foundation. The event was billed as the “Donald J. Trump Special Event for Veterans,” and the website through which the public could get tickets for the event listed a Campaign staffer – the Iowa Deputy State Director for Donald J. Trump for President, Inc. – as the event “Organizer.” Brad Parscale, a Trump Campaign consultant who eventually became the Trump Campaign’s digital media director (and is now Mr. Trump’s re-election campaign manager), created the event website, located at DonaldTrumpForVets.com, which featured the name of the Foundation at the top of the home page and informed visitors that “the Donald J. Trump Foundation is a 501(c)(3) nonprofit organization.”⁹ Executives of the Trump Organization, including Allen Weisselberg, its Executive Vice President and CFO, and Jeff McConney, its Senior Vice President and Controller – both of whom regularly performed tasks for the Foundation – assisted Mr. Parscale in connection with the website project.¹⁰

At the televised fundraising event, the podium was decorated with a sign that borrowed Trump Campaign themes and slogans, displaying the DonaldTrumpForVets.com website on a blue placard with a red border and star pattern identical to the design of Trump Campaign signs and billboards, with Mr. Trump’s name in capital letters and his trademarked campaign slogan, Make America Great Again!¹¹

The Fundraiser reaped approximately \$5.6 million in tax-free donations, some of which went directly from the private donors to veterans charity groups. Of that total, \$2.823 million was contributed to the Foundation.¹²

⁷ See, e.g., “Trump Campaign Statement on Fox News Debate,” Donald J. Trump for President website, Jan. 26, 2016, <http://goo.gl/8Rhm8g>; Philip Rucker, Dan Balz, and Jenna Johnson, *Trump Says He Won’t Participate in GOP Debate on Fox News*, WASH. POST, Jan. 26, 2016, available at https://www.washingtonpost.com/politics/trump-says-he-wont-participate-in-gop-debate-on-fox-news/2016/01/26/58fa0b2e-c490-11e5-a4aa-f25866ba0dc6_story.html?utm_term=.8d08e6a3f2de; Maggie Haberman and Nick Corasaniti, *Donald Trump, In Feud With Fox News, Shuns Debate*, N.Y. TIMES, Jan. 26, 2016, available at <https://www.nytimes.com/2016/01/27/us/politics/trump-feud-fox-debate.html>.

⁸ Shiffman Aff., Ex. 10, 2016 Form CHAR410-A, Part G, Line 3(c).

⁹ Shiffman Aff., Ex. 7, Transcript of Jeff McConney at 134-35.

¹⁰ Shiffman Aff., Ex. 6, Transcript of Allen Weisselberg at 36-37. In addition, on the day of the Iowa Fundraiser, January 28, 2016, Mr. Weisselberg and Mr. McConney flew to Des Moines, Iowa, to be present with the Foundation’s checkbook at the Fundraiser in case Foundation grants were to be disbursed that night. See Shiffman Aff., Ex. 6, Weisselberg Tr. at 29-32, 36-37, 39-40; Shiffman Aff., Ex. 7, McConney Tr. at 128-30. Mr. McConney understood that he was attending the Fundraiser on behalf of the Foundation. McConney Tr. at 133; Weisselberg Tr. at 29-32.

¹¹ See http://a.abcnnews.com/images/Nightline/160129_ntl_debate_1239_16x9_992.jpg (photograph of event podium and candidate). Mr. Trump received a trademark for the well-known Make America Great Again slogan in 2013. See U.S. Patent and Trademark Office, Trademark Electronic Search System Entry for “Make America Great Again,” Registration No. 4773272, available via at <https://www.uspto.gov/trademarks-application-process/search-trademark-database>. The registration application confirms that the purpose of the original mark was for “Political action committee services, namely, promoting public awareness of political issues” and “Fundraising in the field of politics.”

¹² See Shiffman Aff., Ex. 14, Document entitled Veterans Fundraiser January 28, 2016.

Following the Fundraiser, senior Trump Campaign staff dictated the manner in which the Foundation would disburse those proceeds, including the timing, amounts, and recipients of the grants. The Investigation found that Trump Campaign staff instructed the Foundation to make five grants in Iowa right before the February 1, 2016 Iowa caucuses, the first nominating contest of the presidential primaries for the 2016 presidential election. On January 29, 2016, Corey Lewandowski, then Mr. Trump's campaign manager, emailed Mr. Weisselberg to ask, "Is there any way we can make some disbursements [from the proceeds of the fundraiser] this week while in Iowa? Specifically on Saturday [January 30th]." ¹³ Mr. Weisselberg, who testified that he understood that Mr. Lewandowski "wanted some checks with him when he went [to Iowa]," ¹⁴ wrote back to Mr. Lewandowski asking the Trump campaign manager "to put together a list of the Iowa veterans organizations you have in mind along with dollar amounts. . . . [Will] give them to the boss." ¹⁵ Later that same day, Mr. Lewandowski emailed Mr. McConney a list of veterans organizations, created by Trump Campaign staff and approved by Mr. Trump, that should receive the grants from the Foundation. ¹⁶

The Foundation then permitted the Trump Campaign to exhibit and award enlarged presentation copies of supposed Foundation checks to grant recipients at Trump Campaign rallies for the political benefit of Mr. Trump and to support his campaign for President. Mr. Trump held several such political rallies in Iowa in the days leading to and including the date of the Iowa caucuses, February 1, 2016. During those campaign appearances, Mr. Trump personally distributed the presentation copies of Foundation checks to Iowa veterans groups in his capacity both as Foundation president and presidential candidate. The Foundation's name and address were printed on the enlarged presentation checks, along with the Trump Campaign slogan, "Make America Great Again!" Mr. Trump's name in large letters, with a smaller reference to the DonaldTrumpForVets.com website. ¹⁷

On January 29, 2016, at a Trump Campaign rally in Council Bluffs, Iowa, Mr. Trump delivered an enlarged copy of a \$100,000 check to Partners for Patriots. ¹⁸ Jerry Falwell, Jr., making a campaign appearance with Mr. Trump, touted Mr. Trump as a candidate, stating, "I mean, how often do you see a presidential candidate giving money away instead of taking it. I think that is wonderful." Mr. Falwell went on, "we have got a group here today that is going to receive the second disbursement of that six million dollars that was raised the other night. If that group would come on the stage now, it's called Partners for Patriots." At the time that Mr. Trump gave the check copy to Partners for Patriots, however, the Foundation was still unaware that the Trump Campaign had selected Partners for Patriots to receive the funds. ¹⁹ The actual payment was

¹³ Shiffman Aff., Ex. 15, Email exchange between Allen Weisselberg and Corey Lewandowski dated January 29, 2016.

¹⁴ Shiffman Aff., Ex. 6, Weisselberg Tr. at 133.

¹⁵ *Id.*

¹⁶ Shiffman Aff., Ex. 16, Email from Corey Lewandowski to Jeff McConney dated January 29, 2016.

¹⁷ See <https://goo.gl/Jo2Mb8> (photograph of Mr. Trump and presentation check at campaign event at Orpheum Theatre in Sioux City, Iowa on January 31, 2016); <https://goo.gl/RiZ4g1> (photograph of Mr. Trump and presentation check at campaign event at Adler Theater in Davenport, Iowa on January 30, 2016).

¹⁸ See <https://www.c-span.org/video/?403936-1/donald-trump-campaign-rally-council-bluffs-iowa>.

¹⁹ Shiffman Aff., Ex. 26, Email exchange between Corey Lewandowski and Jeff McConney dated February 8, 2016.

requested by the Trump Campaign and issued by check from the Foundation's account only on February 10, 2016.²⁰

On January 30, 2016, at a Trump Campaign event in Davenport, Iowa, the campaign staged the disbursement of another enlarged presentation check for \$100,000 to the Puppy Jake Foundation, another veterans' charity. Video of the event shows Mr. Trump presenting an enlarged copy of the check to the recipient foundation and receiving a round of applause from the audience for doing so.²¹ The pattern repeated the next day, January 31, 2016, when Mr. Trump announced at a Trump Campaign rally in Sioux City, Iowa a Foundation grant of \$100,000 to Support Siouxland Soldiers, again presenting an enlarged promotional version of a supposed Foundation check emblazoned with his campaign slogan.²²

On February 1, 2016, Mr. Trump awarded another enlarged presentation copy of a \$100,000 check to the Mulberry Street Veterans Shelter at a Trump Campaign rally in Cedar Rapids, Iowa. During the rally, Mr. Trump himself drew a connection between the distribution of checks and his political polling numbers:

In lieu of the [Republican presidential primary] debate, I said let's have a rally for the veterans. . . . At that rally, we raised in one hour six million dollars. . . . So what we did, we raised this money, and we are giving it out, and we just gave out a check for a hundred thousand dollars a little while ago, and we are giving out another check, and they can bring it up and we are going to deliver it right here. . . . We have so many of these checks. They are all over the place. We are giving them out. This was in lieu, and, by the way, the poll numbers just came down from New Hampshire, I went through the roof. I think they respect the fact that I, that we stand up for our rights So, congratulations to Mulberry Street.²³

That same day, Mr. Trump also presented a \$100,000 check to Americans For Independent Living (also known as Americans for Equal Living) at a campaign rally in Waterloo, Iowa.²⁴

From the beginning, the Foundation and the Trump Campaign communicated about the handling of disbursements from the Fundraiser, and continued to do so for months after the Fundraiser was held. Records obtained from the Foundation reveal that the Foundation ceded control over the distribution of its charitable funds to senior staff of the Trump Campaign. For example, at the outset of the Iowa campaign events that featured the Foundation disbursements, Mr. Weisselberg of the Foundation asked Mr. Lewandowski, the campaign manager, to "start

²⁰ Shiffman Aff., Ex. 22, Document entitled Donald J. Trump Foundation Inc. List of Contributions to Veterans 2016 and accompanying check images.

²¹ See https://www.youtube.com/watch?v=Am9d_5vu-BU.

²² See <http://www.dailymail.co.uk/news/article-3426562/Even-Melania-campaigns-Donald-Trump-uses-family-invites-children-aboard-private-jet-minute-push-Iowa.html>.

²³ See <https://www.youtube.com/watch?v=WPnzNomBjuE>.

²⁴ See <https://www.gettyimages.com/detail/news-photo/check-is-presented-to-americans-for-independent-living-a-news-photo/507895720#/check-is-presented-to-americans-for-independent-living-a-veterans-by-picture-id507895720>.

thinking how you want to distribute the funds collected for the Vets.”²⁵ In the ensuing email exchange, as noted above, Mr. Lewandowski made it clear that he wanted the first disbursements to be made “while in Iowa” on the Saturday before the Iowa caucus.²⁶ Similarly, on February 16, 2016, Mr. McConney wrote Mr. Lewandowski on behalf of the Foundation seeking further direction from the Trump Campaign concerning the Foundation’s fundraising activities and charitable disbursements: “Do you have a list of which veterans charities you want these funds sent to and how much for each charity?? . . . Lastly, how much longer do you want to keep the TrumpForVets website up and running?”²⁷

On May 31, 2016, after press reports about the Foundation’s failure to disburse all of the charitable funds it had received during the Iowa fundraiser,²⁸ the charitable giving of the Foundation again became the centerpiece to a Trump Campaign political event at which Mr. Trump promoted his candidacy in announcing additional grants of Foundation money to veterans groups. At that event, Mr. Trump discussed the presidential campaign while identifying the groups to receive those residual funds.²⁹ And as with the Iowa events, the Trump Campaign’s slogan was prominently displayed in connection with the announcement of Mr. Trump’s charitable giving.³⁰ Mr. Trump also challenged the press to compare his efforts to those of his political opponent: “When I raise money for the veterans, and it’s a massive amount of money, find out how much Hillary Clinton’s given to the veterans. Nothing.”³¹ At the press conference, Mr. Trump invited a veteran, Al Baldasaro (a Republican member of the New Hampshire state legislature who worked on the Trump campaign during the primary), to address the reporters. During his speech, Mr. Baldasaro applauded Mr. Trump’s fundraising efforts for the veterans charities, and repeated his endorsement of Mr. Trump’s candidacy.³² That same month, the Trump Campaign uploaded to its

²⁵ Shiffman Aff., Ex. 15, Email exchange between Allen Weisselberg and Corey Lewandowski dated January 29, 2016.

²⁶ *Id.*

²⁷ Shiffman Aff. Ex. 19, Email from Jeff McConney to Corey Lewandowski, copy to Allen Weisselberg, dated February 16, 2016.

²⁸ David Fahrenthold, *Trump said he raised \$6 million for veterans. Now his campaign says it was less.* David Fahrenthold, WASH. POST, May 21, 2016, available at https://www.washingtonpost.com/politics/trump-said-he-raised-6-million-for-vets-now-his-campaign-says-it-was-less/2016/05/20/871127a8-1d1f-11e6-b6e0-c53b7ef63b45_story.html?utm_term=.aa71f0258643; *Four months after fundraiser, Trump says he gave \$1 million to veterans group*, WASH. POST, May 24, 2016, available at https://www.washingtonpost.com/news/post-politics/wp/2016/05/24/four-months-later-donald-trump-says-he-gave-1-million-to-veterans-group/?noredirect=on&utm_term=.0e21597aab8f.

²⁹ *Transcripts, Trump Gives Account of Veterans Fundraiser*, CNN, May 31, 2016, available at <http://transcripts.cnn.com/TRANSCRIPTS/1605/31/ath.01.html>; David Fahrenthold, *Trump Announced His Gifts to Veterans. Here’s What We Learned*, WASH. POST, May 31, 2016, available at https://www.washingtonpost.com/news/post-politics/wp/2016/05/30/tomorrow-trump-will-give-more-details-about-his-donations-to-vets-heres-what-we-still-dont-know/?utm_term=.044b61514083.

³⁰ David Fahrenthold and Jose A. DelReal, *Trump Rails Against Scrutiny Over Delayed Donations to Veterans Groups*, WASH. POST, May 31, 2016, available at https://www.washingtonpost.com/news/post-politics/wp/2016/05/31/trump-rails-against-scrutiny-over-delayed-donations-to-veterans-groups/?utm_term=.cfbdefb8845e.

³¹ <https://bit.ly/2ImPa64> at 14:00.

³² *Id.* at 18:40.

website a chart identifying the recipients of the charitable, tax-free contributions received during the “Donald J. Trump Veteran Fundraiser” in Iowa five months earlier.³³

All of the grants issued by the Foundation from the proceeds of the Iowa Fundraiser – which did not include any funds donated by Mr. Trump personally – were selected by the Trump Campaign, with the only approval by the Foundation coming from Mr. Trump (who served as President of the Board and signed each check distributing the proceeds from the Fundraiser), whose political campaign both controlled and benefitted from the manner in which the grants were disbursed. The Foundation Board never met to discuss the Foundation’s involvement in the Fundraiser or any of the Trump Campaign events at which the proceeds from it were disbursed. Nor did the Board ever approve the grants that were made from the proceeds. And as a consequence, the Trump Campaign coopted the benefit of a tax-free, charitable giving process to its political ends.³⁴

The Foundation engaged in unlawful political activity within the Commission’s jurisdiction on at least one other occasion. On September 9, 2013, the Foundation issued a check in the amount of \$25,000 to “And Justice for All,” a Florida political organization that supported the re-election of Pam Bondi to the position of Florida Attorney General. On March 23, 2016, the day after a *Washington Post* story revealed some of the details of this transaction and reported that a government watchdog group had filed a complaint about the contribution, the Foundation filed an IRS Form 4720 disclosing the transaction, and Mr. Trump paid the applicable excise tax.

LEGAL ANALYSIS

The Commission exercises exclusive civil jurisdiction to interpret and enforce the provisions of the Act and the Commission’s implementing regulations.³⁵ This referral does not purport to address every respect in which the evidence here submitted or otherwise available to the Commission may implicate the federal campaign finance laws. Nonetheless, the following assessment gives OAG reason to believe that the Foundation and the Trump Campaign may have violated federal laws within the Commission’s enforcement jurisdiction. These violations may have been knowing and willful given the well-established prohibition on accepting excessive or corporate in-kind contributions.

1. The Foundation Made Prohibited and Excessive In-Kind Contributions to the Trump Campaign that It Knowingly Accepted and Failed to Report.

The circumstances recited above demonstrate that the Foundation disbursed at the direction of the Trump Campaign more than \$2.8 million the Foundation had raised during the campaign-

³³ <https://goo.gl/C6KdXN> (archive copy of May 30, 2016 Trump Campaign webpage featuring chart of Foundation grants); see also <https://goo.gl/5k4Tuk> (archive copy of May 24, 2016, Trump Campaign webpage featuring CBS press report on statements of Mr. Lewandowski regarding Mr. Trump’s contributions to veterans groups).

³⁴ In fact, at the time of the Fundraiser, Mr. Trump had a significant financial stake in the prosperity of his presidential campaign committee, having already provided \$17.5 million in personal loans toward his public promise to self-fund – all the more reason to spend tax-exempt charitable donations of others, rather than his own campaign funds, on costly political activities.

³⁵ 52 U.S.C. § 30106(b)(1).

sponsored fundraising event in Iowa. Approximately \$500,000 of those grants were vigorously promoted by the candidate and other campaign staff and speakers during a series of campaign rallies in Iowa on the eve of the Iowa caucuses—the first nominating contest of the 2016 presidential primary season. The Investigation further obtained compelling evidence that these expenditures were made at the behest and direction of Trump Campaign staff and for the specific purpose of benefitting Mr. Trump’s performance in the Iowa caucuses specifically and as a federal candidate generally.³⁶

Federal law prohibits corporations from making contributions from their general treasury funds in connection with any election of a candidate for federal office.³⁷ This prohibition upon corporate contributions includes not-for-profit corporations, which are further prohibited from engaging in political activity pursuant to the Internal Revenue Code. Nor may a candidate or political committee knowingly accept a corporate contribution.³⁸ An expenditure made in coordination with a candidate or authorized committee is an in-kind contribution to that candidate or committee and must be reported as an expenditure made by that candidate or committee.³⁹ An “expenditure” under the Act is any “payment, distribution . . . or gift of money or anything of value . . . made by any person for the purpose of influencing any election for federal office” or “a written contract, promise, or agreement” to do so.⁴⁰ Such a payment or disbursement of a thing of value is “coordinated” if it is “made in concert or cooperation with or at the request or suggestion of” the candidate or his campaign.⁴¹

A. The Foundation Made an Expenditure when It Disbursed in Excess of \$2.8 Million for the Purpose of Influencing the Presidential Election.

As noted, the terms “contribution” and “expenditure” include gifts or payments of money or “anything of value” so long as they are made “for the purpose of influencing” the election of any person to Federal office.⁴² The phrase “anything of value” is construed broadly, and includes goods or services provided without charge or at less than the usual and normal charge.⁴³

The facts and circumstances developed in the Investigation amply demonstrate that the Trump Campaign specifically orchestrated the Iowa Fundraiser and subsequent campaign events for its political benefit. In particular, the campaign events where Mr. Trump personally distributed promotional checks from the Foundation to veterans groups at official campaign rallies, just days in advance of the Iowa caucuses, underscore that the grants were intended to benefit Mr. Trump’s

³⁶ Additional evidence beyond what the OAG collected from the Foundation may be in the custody of the Trump Campaign, including, without limitation, evidence relating to the use of the list of donors to the website created by Mr. Parscale in connection with the Iowa fundraiser, www.donaldtrumpforvets.com.

³⁷ 52 U.S.C. § 30118(a).

³⁸ *Id.*

³⁹ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20.

⁴⁰ 52 U.S.C. §§ 30101(9), 30118(a).

⁴¹ 52 U.S.C. § 30101(17)(B); *see* 11 C.F.R. § 109.20(a).

⁴² *See* 52 U.S.C. § 30101(8)(A)(i), (9)(a)(i); 11 C.F.R. §§ 100.7(a)(1), 100.8(a)(1). Any contribution or expenditure is required to be disclosed by the receiving and disbursing committee. 52 U.S.C. § 30104(b); 11 CFR §§ 104.3(a)-(b), 104.13. The Trump Campaign apparently did not report any amounts related to the distribution of the grants as a contribution of the Trump Foundation.

⁴³ 11 CFR §§ 100.7(a)(1)(iii)(A), 100.8(a)(1)(iv)(A).

ambitions as candidate – that is, for the purpose of influencing the presidential election – and thus constitute expenditures under the Act.

For these same reasons, the OAG has concluded within its own state enforcement authority that the charitable disbursements of the Foundation constitute impermissible political expenditures to promote and benefit the Trump Campaign and Mr. Trump’s political ambitions, notwithstanding that the grants were made not to the Trump Campaign, but to recipient charities identified by the Trump Campaign.⁴⁴ That finding appears consistent with the FECA, given the broad statutory and regulatory definitions of “contribution” and “expenditure,” which include “directly or indirectly” providing “anything of value”—here, the enormous promotional value afforded the candidate through symbolic distribution during campaign events of the tax-deductible proceeds of others’ charitable giving—beyond merely the campaign’s direct receipt of a payment or money. Therefore, given that the grants were made at the explicit direction of the Trump Campaign—indeed, at the direction of the campaign manager, who specified their distribution on the weekend before the Iowa caucus—there appears to be a compelling factual basis to conclude that the payments were “made . . . for the purpose of influencing any election for federal office.”⁴⁵

In response to certain Advisory Opinion Requests concerning whether federal officeholders’ participation in charitable events resulted in contributions or expenditures by or on behalf of the candidate, the Commission has examined the degree to which the requestors’ involvement in those events related to their candidacy and campaign activity or, rather, their status as officeholder.⁴⁶ Because the degree of separation that the requestors stipulated to when obtaining those Advisory Opinions differs radically from the circumstances uncovered in the Investigation, they do not appear to afford any protection against a Commission enforcement action here. By way of example, the Commission explained in Advisory Opinion 1999-34 that “[t]he question of whether the event or your participation in the event is also for the purpose of promoting your candidacy may be answered by considering the various features of the event and its promotion, and the role of the Committee.” In that Opinion, the officeholder’s participation was intended to benefit local elementary schools and charitable organizations organized under 501(c)(3), not the re-election campaign as candidate, because, among other stipulated facts, the event would be held several months before the relevant primary election and “the disbursement of the proceeds will be controlled by each benefitting PTA or other [charitable] organization.”⁴⁷ In contrast, “a candidate’s participation in an event *as a candidate* would cause the Commission to determine the event was in connection with an election.”⁴⁸ Here there can be no genuine question that the rallies and events at which Mr. Trump and other campaign speakers promoted his Foundation’s philanthropic giving were Trump Campaign events that Mr. Trump attended in his capacity as a candidate for federal office. Moreover, the campaign committee’s extensive coordination of all the material elements of the featured charitable giving further confirms that publicizing the gifts of the Foundation in the context of a political event was intended to serve the purpose of promoting and advancing Mr. Trump’s prospects as a federal candidate in the looming election contest.

⁴⁴ See Petition at 33-60.

⁴⁵ 52 U.S.C. §§ 30101(9), 30118(a).

⁴⁶ See, e.g., Advisory Op. 1999-11 (Byrum); Advisory Op. 1999-34 (Bilirakas).

⁴⁷ Advisory Op. 1999-34 at 5.

⁴⁸ *Id.* at 5 n.3 (citing Advisory Op. 1999-2 (Premera) at 4).

B. The Trump Campaign Directed and Coordinated with the Foundation in Making Expenditures to Benefit the Campaign.

The Investigation uncovered evidence of extensive coordination between the senior-most members of the Trump Foundation and the Trump Campaign regarding both the Iowa fundraiser and the distribution of the charitable proceeds the Foundation received as a result.

The Act provides that “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate.”⁴⁹ The Commission’s coordination regulations distinguish coordinated expenditures generally from expenditures for coordinated communications specifically.⁵⁰ It appears that the disbursements that are central to this matter would be governed by those provisions of the Act and Commission regulations that address coordinated expenditures generally, that is, 52 U.S.C. § 30116(a)(7)(B)(i) and 11 C.F.R. § 109.20, not the coordinated communications regulation at 11 C.F.R. § 109.21.⁵¹

In addition to the facts already related, the Investigation obtained other evidence that the Trump Campaign played the lead role in determining the fate of the grants. For example, Campbell Burr, a Trump Campaign staffer, sent several emails to, among others, Mr. McConney and Mr. Lewandowski, with subjects such as “Vet Donations” and “Updated Vet Donations List.”⁵² Ms. Burr addressed the recipients as the “Team” and provided “an updated list of checks that have been sent to the veterans groups.”⁵³ In that email, she also noted that several of the donations on the list were “going out today,” reflecting the control of the campaign staff over the disbursements.⁵⁴ Mr. Weisselberg, the Trump Organization’s EVP and CFO, admitted that he understood that Ms. Burr was assisting Mr. Lewandowski in making “sure these funds got to where they had to get to.”⁵⁵ In addition, on March 22, 2016, Mr. Lewandowski wrote to Mr. Weisselberg

⁴⁹ *Id.* § 30116(a)(7)(B)(i).

⁵⁰ Compare 11 C.F.R. § 109.20, with *id.* § 109.21.

⁵¹ Nonetheless, the conduct prong of the coordinated communication regulation at 11 C.F.R. § 109.21(d) identifies several activities that the Commission has indicated would constitute actionable coordination even in the circumstance of public communications. First, the grants can fairly be said to have been “created, produced, or distributed at the request or suggestion of” the Trump Campaign. Indeed, the Trump Campaign selected all the grant recipients and the amounts they would receive. *Id.* § 109.21(d)(1)(i). Second, the Campaign was materially involved in determining the content, intended audience, and timing of the grant presentations and payments. *Id.* § 109.21(d)(2)(i)-(v). The metadata from the file containing the list of veterans organizations that Mr. Trump allegedly approved to receive grants confirms that the list was created by the campaign. Mr. Lewandowski sent this list to the Foundation “staff”—that is, Trump Organization personnel whose responsibilities included performing work for the Foundation—who assisting with cutting the checks for the grants. See Shiffman Aff., Ex. 16, Email from Corey Lewandowski to Jeff McConney, dated January 29, 2016 (with metadata for the attachment). Third, there appears to have been substantial discussion between the Foundation and the Trump Campaign about these grants, as “information about the candidate’s . . . plans, projects, activities, or needs [was] conveyed to [the Foundation], and that information [was] material to the creation, production, or distribution” of the grants. *Id.* § 109.21(d)(3). If the level of coordinated activity would be sufficient to satisfy the elevated degree of cooperation necessary to satisfy the conduct prong of the coordinated communication regulation, it should amply satisfy the definition of coordination under the regulatory provision of general application at 11 C.F.R. § 109.20.

⁵² See Shiffman Aff., Ex. 20, Email from Jeff McConney to Larry Glick and Deborah Tarasoff, dated March 7, 2016.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Shiffman Aff., Ex. 6, Weisselberg Tr. 164.

and Mr. McConney, asking that a check for \$100,000 be sent to the Marine Corp Law Enforcement Foundation, and noting that the media has been asking if they received money from the Foundation.⁵⁶ Mr. Weisselberg and Mr. McConney complied and cut a check the same day.⁵⁷

In sum, the factual record revealed in the publicly available information, the internal written communications of the relevant staff and managers, and the testimonial admissions of relevant witnesses all support the conclusion that the Trump Campaign and the Foundation extensively coordinated the decision to conduct the fundraiser in lieu of attending the Iowa debate and in turn the manner in which they would then spend those donated funds, calculated to influence positively the prospects of then-candidate Trump in the imminent caucuses and presidential election.⁵⁸

2. The Trump Campaign's Control Over the Foundation's Activities May Also Violate the Soft Money Prohibitions of the Act

As amended under BCRA, the Act prohibits a candidate or committee from soliciting, receiving, or directing another person to make a contribution, donation, or transfer of funds, or any other thing of value, that is not subject to the prohibitions, limitations, and reporting requirements of the Act. This "soft-money ban" also applies to entities that are directly or indirectly established, financed, maintained, or controlled by a candidate or committee. The Commission has developed ten non-exclusive factors (collectively, the "EFMC factors"), set out in 11 C.F.R. § 300.2(c)(2), to determine whether a person or entity (the "sponsor") "directly or indirectly established, financed, maintained or controlled" another person or entity under 52 U.S.C. § 30125. These factors are examined in the context of the overall relationship between the sponsor and the entity to determine whether the presence of any factor or factors is evidence that the sponsor "directly or indirectly established, financed, maintained or controlled" the entity.

Mr. Trump's eponymous Foundation, although formed well prior to his announcement of candidacy, was nonetheless established by him, and during the 2016 presidential campaign he was authorized to, and did, exercise considerable control over all aspects of its activities as the Board President. The evidence collected in the Investigation further reflects that Mr. Trump personally was consulted in connection with the grants and authorized those disbursements, signing and delivering checks and the cover correspondence.⁵⁹ Moreover, the Foundation received a substantial amount of donations, over \$2.8 million, as a result of the January 28, 2016 fundraiser

⁵⁶ Shiffman Aff., Ex. 21, Email from Corey Lewandowski to Allen Weisselberg, dated March 22, 2016.

⁵⁷ *Id.*; Shiffman Aff., Ex. 22, The Donald J. Trump Foundation Inc. List of Contributions to Veterans; Shiffman Aff., Ex. 23, Email from Jeff McConney to Deborah Tarasoff, dated March 22, 2016.

⁵⁸ In addition to the prohibition against making or accepting a corporate in-kind contribution, the Act prohibits corporations, including their officers, directors, or other representative agents, from facilitating the making of contributions to federal candidates and committees. *See* 11 C.F.R. § 114.2(f)(1). Facilitation includes "using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election" and covers, among other things, ordering staff to plan, organize, or carry out a fundraising project as part of their work responsibilities using corporate resources and the use of corporate facilities in connection with fundraising activities. As noted, the Trump Organization and Foundation authorized the use of staff time to assist and administer the Iowa fundraiser at the direction of the Trump Campaign and subsequent grant awards as instructed by the Trump Campaign, resulting in in-kind contributions to the campaign.


⁵⁹ *See, e.g.*, Shiffman Aff., Ex. 20, Emails between Mr. Lawrence Glick and others dated March 7, 2016.

that the Trump Campaign planned and organized in connection with the pending presidential election. Further, as explained, the Foundation's disbursements of more than \$2.8 million in grants were undertaken at the express direction and control of the Trump Campaign and, once more, in connection with the pending presidential election. Given this and other evidence of direction and control by Mr. Trump, the Trump Campaign, and their agents, it appears that the Foundation was established, financed, maintained, or controlled by Mr. Trump and the Trump Campaign within the meaning of the BCRA soft-money provisions—thus subjecting the Foundation and its agents to those limits and prohibitions as well.⁶⁰

CONCLUSION

The Investigation revealed many instances of close coordination between the Trump Campaign and the Foundation with respect to the Iowa Fundraiser and subsequent distributions, as well as use of the Foundation's assets—both its checkbook and its personnel—to influence the 2016 presidential campaign, activities that implicate 52 U.S.C. §§ 30101(17)(B) and 30125 and 11 C.F.R. §§ 109.20(a) and 300.2, among other provisions of the Act and the Commission's implementing regulations.

Should you have any questions or wish to obtain additional information concerning the OAG Investigation, please contact me at (212) 416-8401.

Sincerely,

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⁶⁰ For these reasons, the exception in the Act and Commission regulations permitting federal candidates to make certain solicitations on behalf of charitable organizations without regard to the prohibitions and limits of the Act are inapplicable here. See 52 U.S.C. § 30125; 11 C.F.R. § 300.65. That safe harbor does not apply where a charity's activities are taken "in connection with" a federal election, as in this case. See 11 C.F.R. § 300.65(a)(1), (2)(ii), (d).