

BEFORE THE FEDERAL ELECTION COMMISSION

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MARGARET CHRIST
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v.

MUR No. _____

45COMMITTEE, INC.
P.O. Box 710993
Herndon, VA 20171

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that 45Committee, a person that reported independent expenditures to the Commission under ID:C90016478 and electioneering communications under ID:C30002679, has violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. 45Committee—whose name is a reference to the election of the 45th president in 2016—spent \$22,010,335 on independent expenditures and electioneering communications in the final weeks of the 2016 election, and although these political expenditures constituted around half of its overall spending in 2016, 45Committee failed to register as a political committee and to file reports of its receipts and disbursements.
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 [FECA] . . . [t]he Commission *shall* make an

investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

4. Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit 501(c)(3) organization whose mission is to protect and strengthen the U.S. democratic process through litigation and other legal advocacy. CLC participates in judicial and administrative matters throughout the nation regarding campaign finance, voting rights, redistricting, and government ethics issues.

FACTS

5. 45Committee, Inc. is a social welfare organization exempt from income tax under Section 501(c)(4) of the Internal Revenue Code.¹
6. On October 27, 2015, the *Wall Street Journal* reported that “[a] collection of top GOP operatives, financed by prominent Republican donors, is launching two new groups to take aim at Democratic presidential frontrunner Hillary Clinton.”² As the *Journal* proceeded to describe:

The groups—Future45, a super PAC, and 45Committee, an issue-advocacy organization—are designed to seize on issues that emerge in the campaign or comments Mrs. Clinton makes and quickly assemble ads that will run both online and on television. Organizers are hoping the groups will become something of an experimental, quick-strike vehicle to see what messages and tactics work.

. . . .

Future45 and the 45Committee, both references to the numerical ranking of the next president, enter the fray as Mrs. Clinton regains her perch as the clear favorite to be the next Democratic presidential nominee.³

7. On September 28, 2016, *POLITICO* reported that:

[Future45], along with 45Committee, had been created in October to attack Clinton, but both had gone largely dormant during the heated Republican primary. So Todd Ricketts

¹ See 45Committee Inc., Return of Organization Exempt from Income Tax, IRS Form 990, at 1 (filed Feb. 15, 2018), <https://www.documentcloud.org/documents/4390683-45Committe-2016-Form-990.html>.

² Patrick O’Connor & Rebecca Ballhaus, *New GOP Groups Taking Aim at Hillary Clinton*, WALL ST. J. (Oct. 27, 2015), <https://www.wsj.com/articles/prominent-gop-donors-launch-new-groups-to-take-aim-at-hillary-clinton-1445984161>.

³ *Id.*

essentially took them over this month with the intention of running pro-Trump ads, and began making calls seeking support from fellow mega-donors, many of whom had also vehemently opposed Trump.⁴

Ricketts, *POLITICO* reported, “is making a particular effort to win over donors who want to help Trump but are leery of having their names publicly associated with the polarizing Republican nominee.”⁵ *POLITICO* quoted “a fundraiser who is familiar with—but not connected to—Ricketts’ fundraising effort,” who said, “There is a substantial appetite for a nondisclosing vehicle, because it’s embarrassing to support Trump There are more donors who are willing to support Donald anonymously than with their names on it.”⁶

8. On October 1, 2016, *CNN* reported that:

The Ricketts family, the founder and heirs to the TD Ameritrade fortune, have told associates that the Adelsons has pledged \$25 million to their groups, which includes a revived super PAC, Future 45, and the nonprofit 501(c)(4) group, 45Committee. It is unclear how the Adelsons plan to split their checks between the entities.

And two people who have spoken personally with Todd Ricketts this week said Ricketts said he now had \$35 million in the bank thanks to the Adelson donation and was working toward raising \$70 million, earmarked exclusively for the presidential race.⁷

9. On October 6, 2016, the *New York Times* reported that 45Committee “will begin airing ads criticizing Hillary Clinton and praising Donald J. Trump as the 2016 election enters its final weeks. . . . The ads are part of a multimillion-dollar spending effort in battleground states, said the group’s president, Brian Baker.”⁸ The *Times* quoted Baker as saying:

⁴ Kenneth P. Vogel, *Secret money to boost Trump*, *POLITICO* (Sept. 28, 2016), <https://www.politico.com/story/2016/09/secret-money-to-boost-trump-228817>.

⁵ *Id.*

⁶ *Id.*

⁷ Theodore Schleifer, *Trump finally hits the big-money jackpot*, *CNN* (Oct. 1, 2016), <https://www.cnn.com/2016/10/01/politics/donald-trump-big-money-success/index.html>.

⁸ Maggie Haberman, *Pro-Trump Group to Release Ads as Part of Major Swing State Effort*, *N.Y. TIMES* (Oct. 6, 2016), <https://www.nytimes.com/2016/10/07/us/politics/campaign-ads.html>.

“It will take a builder and a proven job creator to get Americans working again,” Mr. Baker said. “As we all know, after 40 years in political life, Secretary Clinton is not the change our country needs — in fact, it is no change at all.”⁹

10. During the 2016 election cycle, 45Committee reported spending \$21,339,015 on independent expenditures opposing presidential candidate Hillary Clinton or supporting her opponent, Donald Trump; all of the communications were disseminated between October 4, 2016 and November 5, 2016.¹⁰ It additionally reported spending \$671,320 on electioneering communications opposing Florida U.S. Senate candidate Patrick Murphy; those communications were disseminated on October 27, 2016.¹¹
11. According to the Center for Public Integrity’s Political Ad Tracker, which analyzes broadcast ads and ads run on national cable collected by Kantar Media/CMAG, 45Committee aired 5,241 broadcast spots in the second half of 2016; all ran from October 2 through November 5, 2016, and were concentrated in the swing states of Pennsylvania, North Carolina, and Florida.¹² The tracker shows that this number *exceeded* the number of broadcast spots aired by Future45, 45Committee’s sister super PAC, as well as the number aired by the Republican National Committee.¹³

⁹ *Id.*

¹⁰ 45 Committee Inc., Year-End Report of Independent Expenditures Made and Contributions Received, FEC Form 5, at 3-11 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

¹¹ 45 Committee Inc., 24 Hour Electioneering Communication Notice, FEC Form 9, at 3 (filed Oct. 28, 2016), <http://docquery.fec.gov/pdf/385/201610319037011385/201610319037011385.pdf>.

¹² Center for Public Integrity, *Ad Tracker*, <https://www.publicintegrity.org/2016/01/21/19162/ad-tracker> (last visited Aug. 17, 2018). Notably, 45Committee’s ads ran up until election day. For example, after the Clinton campaign challenged the veracity of a 45Committee ad and asked stations to take it down, attorneys for the law firm Clark Hill responded to the stations on behalf of 45Committee and Future 45, writing “We trust you will make a fact-based decision and continue to air these ads in order to allow the American people to be fully educated about their candidates for President. With just one day before the election, any decision to stop airing the ad will cause irreparable harm to 45Committee and Future45.” Letter from Clark Hill to Station Manager (Nov. 7, 2016) (attached as Exhibit A).

¹³ *Id.*

12. During the entirety of 2016, 45Committee’s Twitter account tweeted only six times; all six tweets were posted in October or November, and all pertained to the 2016 election.

Specifically:

- On October 6, 2016, 45Committee tweeted, “A tired career politician who will increase #taxes & cost jobs, or a proven job creator who will fight for good US jobs? The choice is clear,” along with 45Committee’s ad titled “Same Path.”¹⁴ The ad featured multiple images of Trump and Clinton, attacked Clinton, called Trump a “proven job creator,” and pictured a ballot with Trump’s name illuminated.¹⁵
- On October 7, 2016, 45Committee tweeted, “It’s time to make America strong again,” together with the “Same Path” ad.¹⁶
- Later in the day on October 7, 2016, 45Committee tweeted a longer version of the ad, which this time it titled “Strong Again,” with the tweeted message, “Americans don’t need 4 more years of job loss & higher taxes from a career politician. We need someone with a proven record of job creation.”¹⁷ This ad, like the shorter version, attacked Clinton, praised Trump as a “proven job creator,” and showed a ballot with Trump’s name illuminated, but it also concluded with a message to “Vote November 8th” (while a voice-over said, “And it starts November 8th with your vote. The time for change is right now”), followed immediately by an image of Trump.¹⁸
- On October 9, 2016, 45Committee again tweeted out the “Strong Again” ad with the message, “We need to change Washington and make America strong again. The time for change is now and it starts in November with your vote.”¹⁹
- On November 6, 2016, two days before the election, 45Committee tweeted, “Stop the Clinton scandals and make America strong again,” along with video of a third ad titled “Real Change.”²⁰ After showing pictures of Clinton while telling its viewers that “America can’t afford a president too distracted by their own endless scandals...” (among other lines), the ad concluded with an image of Trump overlaid with the text, “Stop the Clinton Scandals. Vote for Real Change November 8th.”²¹
- Also on November 6, 2016, 45Committee tweeted a “Why Isn’t Hillary Ahead?” ad along with the text, “‘Why aren’t I 50 points ahead, you might ask,’ says Hillary Clinton.

¹⁴ 45Committee, *A tired career politician*, TWITTER (Oct. 6, 2016), https://twitter.com/45_Committee/status/784129857466798080.

¹⁵ *Id.*

¹⁶ 45Committee, *It’s time to make America strong again*, TWITTER (Oct. 7, 2016), https://twitter.com/45_Committee/status/784383293772800002.

¹⁷ 45Committee, *Americans don’t need 4 more years of job loss*, Twitter (Oct. 7, 2016), https://twitter.com/45_Committee/status/784451489666174977.

¹⁸ *Id.*

¹⁹ 45Committee, *We need to change Washington*, TWITTER (Oct. 9, 2016), https://twitter.com/45_Committee/status/785118896206454788.

²⁰ 45Committee, *Stop the Clinton scandals*, TWITTER (Nov. 6, 2016), https://twitter.com/45_Committee/status/795288754953027586.

²¹ *Id.*

Watch the video and find out why.”²² The ad featured multiple video clips of Clinton and attacked her for not having driven a car since 1996, for making \$100 million, and for being under FBI investigation.²³

13. On its Facebook page, 45Committee posted only once in 2016, on October 6. That post read, “A tired career politician who will increase taxes and cost jobs, or a proven job creator who will fight for good American jobs? The choice is clear. It’s time to make America strong again,” and included a video of the “Same Path” ad.²⁴
14. On February 15, 2018, 45Committee filed its Form 990 annual return with the Internal Revenue Service (“IRS”), for the 2016 tax year beginning April 1, 2016 and ending March 31, 2017.²⁵ 45Committee reported \$46,362,986 in revenue and \$45,556,334 in expenses during the tax year.²⁶
15. Therefore, the \$22,010,335 that 45Committee spent on independent expenditures and electioneering communications in the weeks before the 2016 election constituted 48.3 percent of its overall spending in the 2016 tax year.

SUMMARY OF THE LAW

16. FECA defines the term “political committee” to mean “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5(a). “Contribution” is defined as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any

²² 45Committee, “*Why aren’t I 50 points ahead,*” TWITTER (Nov. 6, 2016), https://twitter.com/45_Committee/status/795332438398373888

²³ *Id.*

²⁴ 45Committee, *A tired career politician,* FACEBOOK (Oct. 6, 2016), <https://www.facebook.com/45Committee/videos/353576058317537/>.

²⁵ 45Committee Inc., Return of Organization Exempt from Income Tax, IRS Form 990, at 1 (filed Feb. 15, 2018), available at <https://www.documentcloud.org/documents/4390683-45Committee-2016-Form-990.html>.

²⁶ *Id.*

person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i). “Expenditure” is similarly defined as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i).

17. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term “political committee” to “only encompass organizations that are under the control of a candidate *or the major purpose of which is the nomination or election of a candidate.*” *Id.* at 79 (emphasis added). Again, in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Court invoked the “major purpose” test and noted, in the context of analyzing the activities of a 501(c)(4) group, that if a group’s independent spending activities “become so extensive that the *organization’s major purpose may be regarded as campaign activity*, the corporation would be classified as a political committee.” *Id.* at 262 (emphasis added). In that instance, the Court continued, the group would become subject to the “obligations and restrictions applicable to those groups *whose primary objective is to influence political campaigns.*” *Id.* (emphasis added). The Court in *McConnell v. FEC*, 540 U.S. 93 (2003), restated the “major purpose” test for political committee status as iterated in *Buckley*. *Id.* at 170 n.64.

18. The Commission has explained:

[D]etermining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).

Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007).

19. “[A]n organization[’s] relative spending in the most recent calendar year” is a particularly relevant time period for assessing a group’s major purpose. *CREW v. FEC*, 209 F. Supp. 3d 77, 93-94 (D.D.C. 2016) (noting that Congress defined “political committee” in terms of calendar-year spending at 52 U.S.C. § 30101(4), and finding Commissioners acted contrary to law by limiting their analysis to group’s lifetime spending and failing to consider whether an organization’s major purpose had changed).²⁷
20. In addition to reviewing an organization’s overall spending, the Commission conducts a fact-specific case-by-case analysis to determine if an organization’s major purpose is the nomination or election of federal candidates. For example, the Commission will consider an organization’s public statements in determining its purpose,²⁸ and will examine conduct other than publicly available advertisements, such as materials distributed to donors and fundraising appeals.²⁹ *See* 72 Fed. Reg. at 5601.³⁰
21. Courts have upheld the Commission’s fact-based major purpose test. *See, e.g., Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 555-58 (4th Cir. 2012) (“RTAA”) (rejecting the claim that the only method to determine PAC status is to examine whether “campaign-related

²⁷ The court also rejected the categorical exclusion of electioneering communications or other non-express advocacy communications from the major purpose analysis. 209 F. Supp. 3d at 93 (“Indeed, it blinks reality to conclude that many of the ads considered by the Commissioners in this case were not designed to influence the election or defeat of a particular candidate in an ongoing race.”); *see also* *CREW v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (“[T]o the extent that the Commission considers an entity’s spending in assessing its major purpose, it must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate.”).

²⁸ *See, e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004) (court found organization evidenced its major purpose through its own materials, which stated the organization’s main goal of supporting the election of the Republican Party candidates for Federal office and through efforts to get prospective donors to consider supporting Federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (“organization’s [major] purpose may be evidenced by its public statements of its purpose or by other means”); Advisory Opinion 2006–20 (Unity 08) (organization evidenced its major purpose through organizational statements of purpose on Web site).

²⁹ *Malenick*, 310 F. Supp. 2d at 234-36 (examining organizations’ materials distributed to prospective donors).

³⁰ *See, e.g., RTAA* at 558 (describing the Commission’s multi-factor major-purpose test as “a sensible approach to determining whether an organization qualifies for PAC status”); *see also* *Free Speech v. FEC*, 720 F.3d 788, 797-98 (10th Cir. 2013) (upholding the Commission’s multi-factor major-purpose approach).

speech amounts to 50% of all expenditures,” and concluding that the Commission’s comprehensive consideration of multiple factors was “sensible, . . . consistent with Supreme Court precedent and does not unlawfully deter protected speech”). Courts reviewing state laws governing political committees have described similar fact-based major purpose tests, *see, e.g., Corsi v. Elections Comm.*, 2012-Ohio-4831, ¶ 24, 981 N.E.2d 919, 927, *cert. denied*, 571 U.S. 826 (2013) (quoting *RTAA* and noting that “[t]he determination of an organization’s ‘primary or major purpose’ is a fact intensive analysis and such a determination must weigh a number of considerations”), and upheld state laws that more broadly define “political committee.”³¹

22. For the reasons set forth above, there is a two-prong test for “political committee” status under federal law: (1) whether the entity or other group of persons receives “contributions” or makes “expenditures” of \$1,000 or more in a calendar year, and, if so, (2) whether an entity or other group of persons has a “major purpose” of influencing the “nomination or election of a candidate,” as stated by *Buckley*.

³¹ *See, e.g., Yamada v. Snipes*, 786 F.3d 1182, 1194-95 (9th Cir. 2015) (upholding state law defining political committee to include any group making more than \$1,000 in expenditures over two years, regardless of whether the group has a major purpose of influencing an election); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 134-39 (2d Cir. 2014) (“VRTL”) (2015) (upholding state law defining political committee as any group spending more than \$1,000 in two years to support or oppose a candidate; rejecting argument that political committee status must be limited to groups with a “major purpose” to influence elections); *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 414-15 (5th Cir. 2014) (upholding state law that defined political committee to include any group which engages in “some” activities that “support[] or oppos[e]” a candidate); *Worley v. Fla. Sec’y of State*, 717 F.3d 1238, 1240, 1253 (11th Cir. 2013) (upholding state law applying political committee status to groups that raise contributions or spend “more than \$500 in a year to expressly advocate the election or defeat of a candidate”); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 470-71, 491 (7th Cir. 2012) (upholding state law defining political committee to include any group that spent more than \$3,000 on ads that “almost verbatim” met federal definition of electioneering communications); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 42, 54-57, 59 (1st Cir. 2011) (upholding disclosure law for political committees, even though law did not require a political committee have a “major purpose” of influencing an election); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1008-12 (9th Cir. 2010) (upholding state law defining political committee as a group with a “primary or one of the primary purposes” to “affect, directly or indirectly, governmental decision making by supporting or opposing candidates”).

23. Any entity that meets the definition of a “political committee” must file a “statement of organization” with the Commission, 52 U.S.C. § 30103, must comply with the organizational and recordkeeping requirements of 52 U.S.C. § 30102, and must file periodic disclosure reports of its receipts and disbursements, 52 U.S.C. § 30104.³²
24. The political committee disclosure reports required by FECA must disclose to the Commission and the public, including complainants, specific information regarding such committee’s financial activities, including the identity of any donor who has contributed \$200 or more to the committee within the calendar year. *See* 52 U.S.C. § 30104(b). Courts have repeatedly recognized the importance of campaign finance disclosure to informing the electorate. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 369 (2010) (“[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.”); *see also Stop This Insanity Inc. Emp. Leadership Fund v. FEC*, 761 F.3d 10, 17 (D.C. Cir. 2014) (describing the “First Amendment rights of the public to know the identity of those who seek to influence their vote”).

CAUSES OF ACTION

I. 45COMMITTEE FAILED TO REGISTER AS A POLITICAL COMMITTEE

25. Based on published reports and filings with the Commission and the Internal Revenue Service, there is reason to believe that 45Committee met the two-prong test for political committee status by (1) making “expenditures” of \$1,000 or more in a calendar year, and (2) having the “major purpose” of influencing the “nomination or election of a candidate.”

³² In addition, a “political committee” that makes contributions, including in-kind contributions and coordinated communications, is subject to limits on the contributions it receives, 52 U.S.C. § 30116(a)(1), (a)(2), (f), and may not accept contributions from corporations, 52 U.S.C. § 30118(a). *See* FEC Ad. Op. 2010-11, at 2 (Commonsense Ten) (concluding that committee that “intends to make only independent expenditures” and “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is not subject to contribution limits).

26. 45Committee reported \$22,010,335 in election-related spending to the Commission in the final weeks of the 2016 election: \$21,339,015 on independent expenditures³³ and \$671,320 on electioneering communications.³⁴ Together, this election-related spending constituted 48.3 percent of the \$45,556,334 that 45Committee spent overall in its 2016 tax year, which ran from April 1, 2016 to March 31, 2017.³⁵ (By contrast, in the 2015 tax year, when no national elections were held, 45Committee raised only \$2,225,000 and spent \$1,008,469.³⁶) Moreover, 45Committee’s independent expenditure and electioneering communication reports may not reflect the total of its election-related spending, such as overhead costs.³⁷
27. 45Committee’s election-related disbursements likely constituted an even higher percentage of its overall spending during the 2016 *calendar* year. 45Committee reportedly made an estimated \$4 million of its \$45.5 million in spending for tax year 2016 in the first several weeks of 2017.³⁸ Thus, unless 45Committee engaged in significant non-campaign spending in January through March of 2016, it appears that at least \$22,010,335 of 45Committee’s \$41.5 million spent in calendar year 2016—53%—was on election-related disbursements.³⁹

³³ 45 Committee Inc., Year-End Report of Independent Expenditures Made and Contributions Received, FEC Form 5, at 1, 11 (filed Jan. 31, 2017),

<http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

³⁴ 45 Committee Inc., 24 Hour Electioneering Communication Notice, FEC Form 9, at 3 (filed Oct. 28, 2016), <http://docquery.fec.gov/pdf/385/201610319037011385/201610319037011385.pdf>.

³⁵ 45Committee Inc., Return of Organization Exempt from Income Tax, IRS Form 990, at 1 (filed Feb. 15, 2018), available at <https://www.documentcloud.org/documents/4390683-45Committee-2016-Form-990.html>.

³⁶ *Id.*

³⁷ For example, a committee that raises \$1,000,000, spends \$300,000 on fundraising costs and \$300,000 on staff salaries and overhead, and reports \$400,000 on independent expenditures, would have a major purpose of influencing elections, not a major purpose of paying fundraising costs, staff salaries, and overhead.

³⁸ Tom LoBianco, *First on CNN: Pro-Trump Group Hacked, Website Taken Down in Cabinet Fight*, CNN (Feb. 6, 2017), <https://www.cnn.com/2017/02/06/politics/45-committee-website-hacked/index.html>. The “news” section of 45Committee’s website indicates that it did not disseminate any advertisements between the November 8, 2016 election and the end of 2016; its first post-election advertisement aired January 18, 2017. *News*, 45Committee, <http://45committee.com/news/> (last visited May 11, 2018).

³⁹ 45Committee spent \$45,556,334 between April 1, 2016 and March 31, 2017; subtracting the \$4 million spent in the first several weeks of 2017 on non-election-related nominee communications indicates that 45Committee spent no more than \$41,556,334 in April through December 2016. As a result, 45Committee’s \$22,010,335 in independent expenditures and electioneering communications during that period constituted 52.9 percent of its spending; its \$21,339,015 in independent expenditures alone constituted 51.34 percent of its spending.

28. The ads 45Committee ran in the 2016 calendar year were almost entirely disseminated in the weeks before the election and targeted to voters in swing states. According to the Center for Public Integrity’s Political Ad Tracker, which analyzes broadcast ads and ads run on national cable collected by Kantar Media/CMAG, 45Committee aired 5,241 broadcast spots from October 2 through November 5, 2016, and those ads were concentrated in the presidential swing states of Pennsylvania, North Carolina, and Florida.⁴⁰
29. 45Committee’s annual return filed with the IRS suggests its other spending in 2016 may have been intended to support the nomination or election of a candidate in the 2016 election. In Part VII, Section B of its annual return, 45Committee reported a total of \$38.3 million in payments—approximately 84% of its total expenditures—to “independent contractors” for what it described as “media ads services.”⁴¹ Four out of the five firms⁴² were the same vendors that 45Committee had reported to the Commission as having produced or placed its independent expenditures and electioneering communications:
- i. On its reports filed with the Commission, 45Committee reported paying \$15.6 million to the firm Del Cielo Media LLC for independent expenditures (in the form of four “media placements”),⁴³ but its annual return filed with the IRS shows

⁴⁰ Center for Public Integrity, *Ad Tracker*, <https://www.publicintegrity.org/2016/01/21/19162/ad-tracker> (last visited Aug. 17, 2018).

⁴¹ 45Committee Inc., Return of Organization Exempt from Income Tax, IRS Form 990, at 8 (filed Feb. 15, 2018), available at <https://www.documentcloud.org/documents/4390683-45Committe-2016-Form-990.html>.

⁴² The fifth independent contractor that 45Committee disclosed to the IRS as having received more than \$100,000 was Target Enterprises LLC, in Sherman Oaks, California. 45Committee did not report to the FEC that it paid a firm with the same name for independent expenditures or electioneering communications; it did pay “TargetPoint Consulting” in Alexandria, Virginia for electioneering communications, but these appear to be separate firms. Compare <https://www.targetpointconsulting.com/> with <https://targetla.com/>. According to Federal Communications Commission records, 45Committee contracted with Target Enterprises for at least some of the advertisements it aired in early 2017 supporting President Trump’s nominees. See Target Enterprises, *Agreement Form for Non-Candidate Advertising* (Jan. 25, 2017) (disclosing broadcast purchase on behalf of 45Committee on station WJRT-FLINT for advertisements “Supporting the President’s nominee for HHS Secretary and repealing Obamacare”), attached as Exhibit B.

⁴³ 45Committee, Itemized Independent Expenditures, FEC Schedule 5-E, at 3, 4, 8, 10 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

that it paid Del Cielo Media LLC \$17.4 million. On its website, Del Cielo Media describes the various “media buying services” it provides for “your election” and “your campaign.”⁴⁴ According to a May 2017 piece on *Campaign & Elections*, Del Cielo Media is a “venture focusing on PACs” headed by “GOP media buyer Paul Winn.”⁴⁵

- ii. On its reports filed with the Commission, 45Committee reported paying \$420,493 to Connell Donatelli Inc. for independent expenditures (two “media placements”),⁴⁶ but reported paying the firm a total of \$10.3 million on its annual return filed with the IRS. Connell Donatelli describes itself as “the pioneers of political advertising on the web.”⁴⁷
- iii. On its reports filed with the Commission, 45Committee reported paying \$4.6 million to the firm DDC for independent expenditures (in the form of eight “media placements”),⁴⁸ but its annual IRS return shows it paid the firm a total of \$6.1 million over the tax year.
- iv. On its reports filed with the Commission, 45Committee reported paid Mentzer Media Services \$663,320 for “media placement” for its electioneering communications,⁴⁹ but its annual IRS return shows it paid the firm \$3.8 million over the tax year. Mentzer Media emphasizes that it “has been helping clients win

⁴⁴ *About*, Del Cielo Media, <http://delcielomedia.com/about.html> (last visited Aug. 16, 2018).

⁴⁵ Sean J. Miller, *Consultants Grapple with Early Vote Ad Strategy*, CAMPAIGNS & ELECTIONS (May 22, 2017), <https://www.campaignsandelections.com/campaign-insider/consultants-grapple-with-early-vote-ad-strategy>.

⁴⁶ 45Committee, Itemized Independent Expenditures, FEC Schedule 5-E, at 4 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

⁴⁷ *About CDI*, Connell Donatelli, <https://www.connelldonatelli.com/> (last visited Aug. 16, 2018).

⁴⁸ 45Committee, Itemized Independent Expenditures, FEC Schedule 5-E, at 5, 6, 7, 9 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/652/201701319042382652/201701319042382652.pdf>.

⁴⁹ 45Committee, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, FEC Schedule 9-B, at 3 (filed Oct. 28, 2016), <http://docquery.fec.gov/pdf/385/201610319037011385/201610319037011385.pdf>.

elections and campaigns through targeted media buys since 1991” and touts its “combined 82 years of political media buying experience.”⁵⁰ In a 2012 piece on Mentzer, *The Washington Post* described the firm as “the top of the small-but-critical campaign sub-specialty of media buying.”⁵¹

It appears likely that a substantial portion of the \$37,600,000 paid to these four political consulting firms for “media ads services” were for election-related purposes. The disbursements disclosed on 45Committee’s annual return to the IRS, but not disclosed on its reports to the Commission, may reflect (1) that the total cost of 45Committee’s independent expenditures and electioneering communications were not fully reflected on reports filed with the Commission, and/or (2) that the additional disbursements to these campaign vendors were for election-related communications in 2016 that did not constitute independent expenditures or electioneering communications, but which should nonetheless be considered election-related for purposes of the major purpose test, given the timing of 45Committee’s ads, *see supra* ¶28, and the fact that the payments are to the same vendors as produced its other election-related communications.

30. In addition to reviewing an organization’s overall spending, the Commission considers other materials in determining an organization’s major purpose, such as its public statements⁵² and fundraising appeals.⁵³ This evidence further indicates that 45Committee has the major purpose of influencing the election of candidates. For example:

i. Its name is a reference to the numerical ranking of the president elected in 2016.⁵⁴

⁵⁰ *About Us*, Mentzer Media, <http://www.mentzermedia.com/> (last visited Aug. 16, 2018).

⁵¹ Bill Turque, *Master of the art of the media buy*, WASH. POST (Sept. 5, 2012), https://www.washingtonpost.com/politics/master-of-the-art-of-the-media-buy/2012/09/05/f47a8f9c-f761-11e1-8b93-c4f4ab1c8d13_story.html?utm_term=.e2fe6ed483f1.

⁵² *See* sources cited *supra* note 28.

⁵³ *See* sources cited *supra* note 29.

⁵⁴ O’Connor & Ballhaus, *supra* note 2.

- ii. The *Wall Street Journal* described 45Committee as one of two groups launched by “[a] collection of top GOP operatives [and] financed by prominent Republican donors . . . to take aim at Democratic presidential frontrunner Hillary Clinton.”⁵⁵
- iii. 45Committee officials solicited contributions from “donors who want to help Trump but are leery of having their names publicly associated with the polarizing Republican nominee.”⁵⁶ As one consultant told *POLITICO* about 45Committee, “[t]here is a substantial appetite for a nondisclosing vehicle, because it’s embarrassing to support Trump . . . There are more donors who are willing to support Donald anonymously than with their names on it.”⁵⁷
- iv. 45Committee raised money “earmarked exclusively for the presidential race.”⁵⁸
- v. In one of 45Committee president Brian Baker’s few statements on behalf of the organization in 2016,⁵⁹ he said, “It will take a builder and a proven job creator to get Americans working again. . . As we all know, after 40 years in political life, Secretary Clinton is not the change our country needs — in fact, it is no change at all.”⁶⁰
- vi. 45Committee’s social media accounts were entirely dedicated to influencing the 2016 election. During the entirety of 2016, 45Committee’s Twitter account tweeted only six times; all six tweets were posted in October or November, and

⁵⁵

Id.

⁵⁶ Vogel, *supra* note 4.

⁵⁷ *Id.*

⁵⁸ Schleifer, *supra* note 7.

⁵⁹ See, e.g., Google Keyword Search for “Brian Baker” and “45Committee,” Date Range Jan. 31, 2016 to Dec. 31, 2016,

https://www.google.com/search?q=%22brian+baker%22+%2245committee%22&rlz=1C1NHXL_enUS740US740&tbs=cdr:1,cd_min:1/1/2016,cd_max:12/31/2016&filter=0&biw=1212&bih=634 (last visited Aug. 15, 2018).

⁶⁰ Haberman, *supra* note 8.

all pertained to the 2016 election.⁶¹ 45Committee's Facebook page included only one post in 2016: a video attacking Clinton and supporting Trump.⁶² At no time did 45Committee's major social media accounts in 2016 post anything other than content expressly promoting Trump or attacking Clinton.

31. Consequently, as demonstrated by 45Committee's extensive spending on federal campaign activity, its fundraising appeals, public statements by its president and other individuals familiar with its activities, and indeed its very name, there is reason to believe that 45Committee's major purpose in 2016 was the nomination or election of federal candidates, and it was thus a political committee, as defined at 52 U.S.C. § 30101(4).
32. Therefore, 45Committee violated 52 U.S.C. §§ 30102 and 30103 by failing to organize and register as a political committee.

II. 45COMMITTEE FAILED TO FILE REPORTS AS A POLITICAL COMMITTEE

33. As a political committee, 45Committee was required to file periodic reports with the Commission that, among other things, (1) identified all individuals who contributed an aggregate of more than \$200 in a year and the amount contributed; (2) identified all political committees that contributed and the amount; (3) detailed outstanding debts and obligations; and (4) listed all of 45Committee's expenditures. 52 U.S.C. § 30104.
34. By failing to file these reports, 45Committee violated its reporting obligations at 52 U.S.C. § 30104.

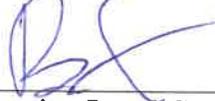
PRAYER FOR RELIEF

⁶¹ See sources cited *supra* ¶ 12.

⁶² See sources cited *supra* ¶ 13.

35. Wherefore, the Commission should find reason to believe that 45Committee violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
36. 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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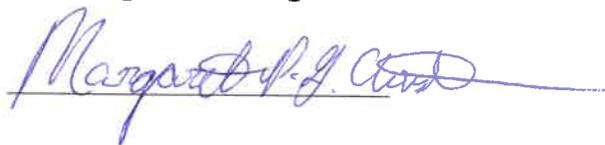
August 23, 2018

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 Margaret Christ



Margaret Christ

Sworn to and subscribed before me this 23 day of August 2018.



For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 23 day of August 2018.



Notary Public

