

**BEFORE THE FEDERAL ELECTION COMMISSION**

CAMPAIGN LEGAL CENTER  
1101 14th Street NW, Suite 400  
Washington, DC 20005

ROGER G. WIEAND  
1101 14th Street NW, Suite 400  
Washington, DC 20005

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

RON DESANTIS,  
RON DESANTIS FOR PRESIDENT  
and CAITLYN TORTORICI in her  
official capacity as treasurer  
P.O. Box 3696  
Tallahassee, FL 32315

NEVER BACK DOWN, INC. and  
CABELL HOBBS in his official  
capacity as treasurer  
P.O. Box 341027  
Austin, TX 78734

**COMPLAINT**

1. Ron DeSantis, a 2024 presidential candidate, has illegally coordinated with Never Back Down, Inc. (“Never PAC” or “NBD”), an independent expenditure-only political committee or “super PAC,” by directly or indirectly providing requests, suggestions, and guidance regarding the super PAC’s messaging in support of his candidacy. Moreover, Never PAC has for months coordinated its activities with and made in-kind contributions to DeSantis and his campaign committee, contravening the explicit legal requirement that super PACs must remain “independent” of—*i.e.*, not coordinate with or make contributions to—federal candidates or their campaigns. As a result, there is reason to believe Never PAC has made, and DeSantis and his campaign have knowingly accepted, prohibited contributions in violation of the Federal Election Campaign Act (“FECA”).

2. While Never PAC appears to have routinely made in-kind contributions to and coordinated with DeSantis and his campaign, it has also raised well over \$130 million from fewer than 200 reported contributions—accepting six- and seven-figure sums from individuals, corporations, and a Florida state PAC formerly known as “Friends of Ron DeSantis,” which DeSantis previously established and used to raise funds supporting his state campaigns.
3. Accordingly, there is reason to believe Never PAC is violating federal laws that have for decades restricted the amounts and sources of money that political committees can accept and spend in coordination with federal candidates. When candidates and “independent” committees disregard these crucial laws, ordinary Americans suffer: Corporations and ultra-wealthy individuals are able to spend vast sums of money on elections, leading to a government that inequitably prioritizes special interests’ policy goals above the needs of everyday Americans.
4. Coordination between a super PAC and a presidential candidate undermines the “independence” that federal courts and the Commission have made clear is an essential, legal requirement that super PACs must abide as a condition of their ability to raise and spend unlimited sums of money on federal elections. Indeed, the “independence of independent expenditures was a central consideration” in the Supreme Court’s *Citizens United* decision,<sup>1</sup> which first opened the door to permit the operation of super PACs like Never PAC, yet, as explained herein, that independence is sorely lacking in the relationship between Never PAC and the DeSantis campaign.

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<sup>1</sup> *SpeechNow.org v. FEC*, 599 F.3d 686, 693 (D.C. Cir. 2010); see *Citizens United*, 558 U.S. 310 (2010).

5. By accepting corporate money and providing coordinated or in-kind contributions to DeSantis’s campaign, Never PAC has also effectively acted as a vehicle for corporations to contribute to and underwrite DeSantis’s campaign, circumventing FECA’s prohibition of corporate contributions to candidates and, moreover, depriving the public of complete and accurate information regarding the sources of funding for DeSantis’s campaign.
6. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Never PAC and the DeSantis campaign have violated FECA, 52 U.S.C. § 30101, *et seq.* “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.”<sup>2</sup>

#### FACTS

7. Ron DeSantis is a 2024 candidate for president, and his authorized campaign committee is Ron DeSantis for President (the “DeSantis campaign”).<sup>3</sup> The DeSantis campaign’s treasurer is Caitlyn Tortorici.<sup>4</sup>
8. Never PAC registered with the Commission as an independent-expenditure-only political committee on February 23, 2023, and its treasurer is Cabell Hobbs.<sup>5</sup>
9. The *Washington Post* reports that from the very start, DeSantis’s campaign and Never PAC “aimed to function as an integrated whole — built with the candidate’s approval, advised by a single law firm, overseen by a board that included DeSantis confidants and seeded with \$82.5 million” that DeSantis had raised through his state PAC, Friends of

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<sup>2</sup> 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

<sup>3</sup> Ron DeSantis for President, Amend. Statement of Org. at 1 (Jun. 12, 2023).

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

<sup>5</sup> Never Back Down, Inc., Statement of Org at 1 (Feb. 23, 2023).

Ron DeSantis.<sup>6</sup> Indeed, DeSantis’s “first campaign manager, Generra Peck, developed the strategy and selected the leadership to lead” Never PAC, and “meetings between the campaign-in-waiting and the super PAC’s team fine-tuned [its] mission.”<sup>7</sup>

10. As of its last regularly filed disclosure report, Never PAC has reported receiving over \$130 million, virtually all of which came from 191 itemized contributions it received through June 30, 2023, the end of the last reporting period for which it filed a disclosure report.<sup>8</sup> Never PAC has also reported accepting numerous contributions from corporations.<sup>9</sup> In addition, it has reported spending over \$26.5 million on operating expenditures and over \$36.5 million on independent expenditures.<sup>10</sup>

*Never PAC Has Been Coordinating Its Activities with the DeSantis Campaign*

11. On December 12, 2023, the *Associated Press* reported that the DeSantis campaign issued a request or suggestion to Never PAC to continue airing a particular advertisement, which the super PAC had recently taken off the air:

Multiple people familiar with DeSantis’ political network said that he and his wife had expressed concerns about the messaging of Never Back Down, the largest super PAC supporting the governor’s campaign, in recent months as his Iowa polling numbers stagnated in late summer and autumn. The governor and his wife, Casey, who is widely considered his top political adviser, were especially frustrated after the group took down a television ad last

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<sup>6</sup> Michael Scherer, *et al.*, *Ron DeSantis Wanted to Change the Way Campaigns Were Funded. Then the Fights Started*, Wash. Post (Dec. 16, 2023), <https://www.washingtonpost.com/politics/2023/12/16/desantis-super-pac-collapse/>.

<sup>7</sup> *Id.*

<sup>8</sup> Never Back Down, Inc., Financial Summary, <https://www.fec.gov/data/committee/C00834077/?tab=summary> (last visited Dec. 17, 2023).

<sup>9</sup> See, e.g., Never Back Down, Inc., 2023 Mid-Year Report at 32 (Jul. 15, 2023), <https://docquery.fec.gov/cgi-bin/fecimg/?202307319588928206> (disclosing a \$250,000 contribution from “Interwest Construction of Jax, Inc.” and a \$250,000 contribution from “MHK of Volusia County, Inc.”).

<sup>10</sup> Never Back Down, Inc., Financial Summary, *supra* note 8 (showing total independent expenditures listed on regularly scheduled reports); Never Back Down, Inc., Independent Expenditures, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&q\\_spender=C00834077&is\\_notice=true&most\\_recent=true&min\\_date=07%2F01%2F2023&max\\_date=12%2F31%2F2024](https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00834077&is_notice=true&most_recent=true&min_date=07%2F01%2F2023&max_date=12%2F31%2F2024) (last visited Dec. 15, 2023) (showing independent expenditures listed on 24/48-Hour Reports in the period not yet covered by a regularly scheduled report).

month that criticized leading Republican rival Nikki Haley for allowing a Chinese manufacturer into South Carolina when she was governor. DeSantis' team shared those messaging concerns with members of Never Back Down's board, which includes Florida-based members with close ties to the governor, according to multiple people briefed on the discussions. Some of the board members then relayed the DeSantis team's wishes to super PAC staff, which was responsible for executing strategy, the people said.<sup>11</sup>

12. The Never PAC ad in question attacked DeSantis's primary opponent, Nikki Haley, for allowing a Chinese manufacturer into South Carolina when Haley was governor. Never PAC began airing the television ad in Iowa and New Hampshire in late October 2023 and removed it from the air in mid-November.<sup>12</sup>
13. Never PAC reportedly decided to take down the ad because it appeared to be "backfiring."<sup>13</sup> According to NBC's reporting, Never PAC's polling and focus groups revealed that, because voters so "readily connected [DeSantis] to the super PAC," they believed that DeSantis was behind the highly critical ad and did not like that he was going negative. Consequently, Never PAC grew concerned that it could not "bring down Haley without damaging DeSantis" and, following a heated internal meeting, stopped running the ad.<sup>14</sup>
14. According to the *Associated Press* article, which cited multiple sources, DeSantis privately expressed that he was "frustrated" by the decision to pull the ad. DeSantis's team shared with Never PAC board members that DeSantis wanted to see the ad go back

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<sup>11</sup> Steve Peoples and Thomas Beaumont, *DeSantis' Campaign and Allied Super PAC Face New Concerns About Legal Conflicts, AP Sources Say*, AP (Dec. 12, 2023), <https://apnews.com/article/desantis-pac-never-back-down-campaign-violation-fa2238e79fa48e18962accfc071278a2>.

<sup>12</sup> *Id.*; Aaron Navarro and Nidia Cavazos, *DeSantis PAC Attack Ad Hits Nikki Haley on China, as 2024 Presidential Rivalry Grows*, CBS (Oct. 22, 2023), <https://www.cbsnews.com/news/ron-desantis-pac-hits-nikki-haley-in-pac-attack-ad-china/>.

<sup>13</sup> Dasha Burns, *et al.*, *Ron DeSantis' Team Was Going After Nikki Haley. They Turned on Each Other Instead*, NBC (Nov. 21, 2023), <https://www.nbcnews.com/politics/2024-election/ron-desantis-nikki-haley-fight-right-never-back-down-rcna126102>.

<sup>14</sup> *Id.*

on the air. Those board members, in turn, “relayed the DeSantis team’s wishes to super PAC staff [ ] responsible for executing strategy.”<sup>15</sup>

15. This was not the first time that the DeSantis campaign provided instructions to Never PAC, either. In a recent memo to donors, DeSantis’s campaign explained how Never PAC and a new “independent” committee, “Fight Right,” would be supporting DeSantis’s candidacy—implicitly conveying exactly how the campaign wanted the “independent” groups to divide responsibilities and spend their resources.<sup>16</sup>
16. In fact, the *Washington Post* reports that DeSantis’s campaign manager published the memo “publicly instructing donors to give elsewhere for TV ads” because DeSantis and his campaign “have been frustrated by reporting on the drama around Never Back Down and critical of the group’s ad strategy.”<sup>17</sup>
17. And over the summer, the DeSantis campaign reportedly “leaked” a document containing precisely the sort of requests and strategic information that candidates and super PACs cannot legally share with each other.<sup>18</sup> The document outlined the campaign’s desire to see heightened attention on certain issues, including China.<sup>19</sup> Indeed, Never PAC’s

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<sup>15</sup> Peoples and Beaumont, *supra* note 11.

<sup>16</sup> Memorandum to “Team DeSantis Investors” from James Uthmeier, Campaign Manager (Nov. 27, 2023), (attached as Ex. A) (hereinafter, “Donor Memo”) (“NBD’s robust organization is unrivaled in its ability to mobilize supporters and get out the vote. We also welcome the independent efforts of a newly established outside organization, *Fight Right*, a pro-DeSantis group that announced they will work closely with NBD and devote full attention to fighting for Ron DeSantis through powerful TV advertising. . . . In the final push for the Iowa Caucus victory, this campaign will proudly fight alongside NBD’s impressive ground game, and Fight Right’s television team.”).

<sup>17</sup> Scherer, Dec. 16, *supra* note 6 (“Uthmeier had written a public memo on behalf of the campaign embracing Fight Right for future television ads and describing Never Back Down as a field operation, even though the group at that point had spent more in advertising than any other campaign or group this cycle, according to AdImpact.”).

<sup>18</sup> “Confidential Friends and Family Update” (Jul. 6, 2023), [https://s3.documentcloud.org/documents/23874013/0051\\_001.pdf](https://s3.documentcloud.org/documents/23874013/0051_001.pdf) (attached as Ex. B) (hereinafter, “Campaign Memo”); see Dasha Burns, *et al.*, *Confidential DeSantis Campaign Memo Looks to Reassure Donors Amid Stumbles*, NBC News (Jul. 13, 2023), <https://www.nbcnews.com/politics/2024-election/confidential-ron-desantis-campaign-memo-reassures-donors-stumbles-rcna93995> (“The document also outlines the message DeSantis’ team plans to deliver to voters through both paid and earned media in the coming months.”).

<sup>19</sup> Campaign Memo, *supra* note 18, at 2–3.

subsequent ad attacking Haley focused on China, and the campaign reiterated—more forcefully through private back channels when the ad came down—that the PAC should continue that line of attack.

18. The leaked document, dated July 6, 2023, also provided additional information about the DeSantis campaign’s needs. For instance, at a time when Never PAC was focused on organizing voters in Iowa, the document made a plea for greater involvement in New Hampshire: “It would be a mistake to take a paid media and field program off the table in service of other states, we will not cede New Hampshire. . . While Super Tuesday is critically important, we will not dedicate resources to Super Tuesday that slow our momentum in New Hampshire.”<sup>20</sup> The document also noted, “While saturation of critical states like Iowa and South Carolina is critical, we see no reason why more expensive markets in New Hampshire should not also be prioritized.”<sup>21</sup> Indeed, recent reporting confirms that Never PAC has been focusing its efforts on New Hampshire and South Carolina, in addition to Iowa.<sup>22</sup> The “leaked” document further revealed a desire for advertising about “Culture,” the economy, and “in the Fall of 2023 . . . woke military, the deep state, school choice and beyond.”<sup>23</sup>
19. Reporting indicates that the campaign strategy memo “was written by [DeSantis’s campaign manager at the time, Generra] Peck,” and that Never PAC staffers “studied the memo line by line.”<sup>24</sup>

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<sup>20</sup> *Id.* at 1.

<sup>21</sup> *Id.* at 3.

<sup>22</sup> Scherer, Dec. 16, *supra* note 6.

<sup>23</sup> Campaign Memo, *supra* note 18, at 2–3.

<sup>24</sup> Shane Goldmacher and Maggie Haberman, *The Sputtering DeSantis Campaign Looks for a Restart*, N.Y. Times (Jul. 23, 2023), <https://www.nytimes.com/2023/07/23/us/politics/desantis-campaign-reboot.html> (“That campaign memo landed at the pro-DeSantis super PAC’s Atlanta headquarters with a thud. It seemed to rebuke the super PAC,

20. These requests and suggestions from the DeSantis team are specific instances amid a backdrop of near-constant cooperation and consultation between the campaign and Never PAC. Since its inception, Never PAC has worked in close cooperation with the DeSantis campaign to maximize their collective resources and execute a plan by which Never PAC would operate as a fully sanctioned arm of the campaign, particularly with regard to the “ground game” traditionally driven by the candidate. Indeed, reports indicate that Never PAC “has carried out much of the work typically performed by a campaign, including devising [DeSantis’s] game plan in Iowa as well as deciding where he goes and who he meets, according to donors and allies.”<sup>25</sup>
21. In April 2023, the *Washington Post* reported that Never PAC had begun organizing and funding ground operations in states with early presidential nominating contests, with Never PAC officials telling donors they “intend to push the bounds of what an independent effort can do in presidential years” including by making a “major push into the sort of organizing in early states that has historically been undertaken by candidates themselves.”<sup>26</sup>
22. A May 2023 report in the *New York Times* similarly indicates that Never PAC was “taking on many tasks often reserved for the campaign itself: securing endorsements in

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calling into question the group’s decision to stay off the airwaves in New Hampshire and the pricey Boston market. Legally, super PACs and campaigns cannot coordinate strategy in private, so leaked memos are one way they communicate.”).

<sup>25</sup> Bill Allison, *et al.*, *DeSantis Super PAC Takes the Wheel on 2024 Bid, Overshadowing His Campaign*, Bloomberg (Aug. 18, 2023), <https://www.bloomberg.com/news/articles/2023-08-18/desantis-super-pac-takes-central-role-in-2024-presidential-bid>.

<sup>26</sup> Michael Scherer, *et al.*, *DeSantis Group Plans Field Program, Showing the Expanding Role of Super PACs*, Wash. Post (Apr. 19, 2023), <https://www.washingtonpost.com/politics/2023/04/19/desantis-super-pac-campaign/>. According to the report, at a Never PAC-sponsored event in Iowa, “volunteers collected the names and contact information of about 48 attendees, who [would] be contacted for future grass-roots organizing opportunities in the state,” and Never PAC was also “launching a Students for DeSantis effort at universities in the early nominating states” that would “involve campus screenings, trainings, speaking engagements and event planning.” *Id.*



early primary states, sending mailers, organizing on campuses, running television ads, raising small donations for the campaign in an escrow account and working behind the scenes to build crowds for the governor’s events.”<sup>27</sup> Indeed, the report illustrates how DeSantis’s campaign works with and benefits from Never PAC resources:

The hand-in-glove efforts [between Never PAC and DeSantis] were on display during Mr. DeSantis’s recent trip to Iowa. After Mr. Trump canceled a rally near Des Moines, the governor decided he wanted to swoop in for a last-minute event in the area. But it wasn’t the governor’s staff that scrambled to bring people to the location but *employees of the super PAC, who, working with Mr. DeSantis’s team*, sent a flurry of texts and calls to assemble a crowd at Jethro’s BBQ that evening.<sup>28</sup>

23. The *Washington Post* reported in July 2023 that the Never PAC ground operation had mobilized an “army of paid workers” to campaign for DeSantis in Iowa:

Unlike traditional presidential field organizing—which is run by an official campaign and driven largely by volunteers—the Never Back Down effort is staffed with an army of paid workers, many of whom have responded to advertisements that offer positions for \$20 to \$22 an hour. . . . between 350 and 400 canvassers, all of whom have been trained and are audited daily . . . have already conducted 163,704 conversations at 713,732 doors, and gathered 7,246 “Commit to Caucus” cards for DeSantis in Iowa alone.<sup>29</sup>

24. Another *Washington Post* report details the “extensive time” DeSantis spends with “super PAC officials on the Never Back Down bus” traveling between “super PAC-hosted” events in Iowa.<sup>30</sup> The bus tour has provided vast amounts of time for super PAC and

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<sup>27</sup> Shane Goldmacher, *et al.*, *DeSantis Allies’ \$200 Million Plan for Beating Trump*, N.Y. Times (May 24, 2023), <https://www.nytimes.com/2023/05/24/us/politics/ron-desantis-2024-super-pac.html>.

<sup>28</sup> *Id.* (emphasis added).

<sup>29</sup> Michael Scherer and Josh Dawsey, *Door-Knocker Complaints Show Risks of DeSantis Super PAC Strategy*, Wash. Post (Jul. 14, 2023), <https://www.washingtonpost.com/politics/2023/07/14/desantis-never-back-down-canvassers/>.

<sup>30</sup> Hannah Knowles, *DeSantis Voiced Complaints About Top Super PAC Strategist, People Familiar With Comments Say*, Wash. Post (Sep. 8, 2023), <https://www.washingtonpost.com/politics/2023/09/08/ron-desantis-super-pac-debate>.

campaign officials to have private discussions about strategy. A person close to Never PAC and familiar with the campaign and super PAC’s relationship said staff from the two groups have shared a meal, are “working very well together,” and are focused on winning the election.<sup>31</sup>

*Never PAC Has Made In-Kind Contributions to the DeSantis Campaign*

25. Beyond coordinating expenditures, Never PAC is making direct in-kind contributions to the DeSantis campaign by subsidizing its expenses.
26. According to the *Washington Post*, Never PAC entered into a joint lease agreement with the DeSantis campaign, an “unusual agreement” that “allows both the DeSantis campaign and the Never Back Down super PAC to lease planes in a larger volume at lower market rates” than if either had leased the planes separately—effectively securing discounted travel for DeSantis’s campaign.<sup>32</sup> The report indicates that “[b]oth the [DeSantis] campaign and the super PAC [made] payments to N2024D LLC, a Florida company created on May 22 that appears to take its name from an airplane tail number celebrating the DeSantis campaign.”<sup>33</sup> However, the report notes that “Never Back Down has not yet taken advantage of the arrangement.”<sup>34</sup>
27. Through the end of July—the latest date for which Never PAC’s spending data has been reported—the super PAC had disbursed \$343,757 to N2024D LLC, while DeSantis’s

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<sup>31</sup> *Id.*

<sup>32</sup> Michael Scherer and Isaac Arnsdorf, *DeSantis Super PAC Shares Cost for Private Air Travel in Unusual Deal*, *Wash. Post* (Aug. 5, 2023), <https://www.washingtonpost.com/politics/2023/08/05/desantis-plane-super-pac/>.

<sup>33</sup> *Id.*; see Rebecca Davis O’Brien, *et al.*, *DeSantis Super PAC Helps Pay for Private Flights, in Unusual Move*, *N.Y. Times* (Oct. 20, 2023), <https://www.nytimes.com/2023/10/20/us/politics/desantis-campaign-funding-money.html> (“Short on cash, Gov. Ron DeSantis’s presidential campaign has found an unusual way to pay for his habit of flying in private planes: passing the cost to the better-funded super PAC that is increasingly intertwined with his operation. . . . In July, his campaign’s first report showed that he had spent \$179,000 on chartered planes, as well as \$483,000 to a limited liability company for “travel.” Never Back Down paid that same company \$343,000 in June.”).

<sup>34</sup> Scherer and Arnsdorf, *supra* note 32.

campaign had disbursed \$501,866 to the company.<sup>35</sup> A more recent *Washington Post* report indicates that the joint effort was designed “to offset costs for the campaign,” and with input from both campaign and super PAC, as N2024D LLC “was founded . . . with help from attorneys for the campaign and Never Back Down to pay for a lease of the private plane DeSantis used to travel to events.”<sup>36</sup>

28. Never PAC has also paid for an astounding share of DeSantis’s events and travel across the state of Iowa, which hosts the first presidential nominating contest. As referenced above, the super PAC plans events, invites DeSantis to speak at the events as a featured guest, and buses him between events alongside super PAC staff, thus allowing DeSantis to meet and greet Iowa voters and financial supporters with his travel and event expenses fully paid for by the super PAC.<sup>37</sup> Never PAC has underwritten DeSantis’s Iowa travel to such an extent that of DeSantis’s reported visits to each of Iowa’s 99 counties, Never PAC has hosted an event in, and paid for his travel to, 92 of them.<sup>38</sup>
29. Never PAC has even provided its research and polling to the DeSantis campaign. In August 2023, detailed strategy documents prepared by Axiom Strategies, a firm owned by Never PAC’s “chief strategist” Jeff Roe, were posted on the firm’s website in the days leading up to the first debate between the Republican presidential primary candidates:

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<sup>35</sup> Disbursements to “N2024D,” [https://www.fec.gov/data/disbursements/?data\\_type=processed&recipient\\_name=N2024D](https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=N2024D) (last visited Dec. 17, 2023).

<sup>36</sup> Scherer, December 16, *supra* note 6.

<sup>37</sup> Knowles, *supra* note 30; Brienne Pfannenstiel, *Ron DeSantis Super PAC Will Host Bus Tour Through Iowa Ahead of Lincoln Dinner*, Des Moines Register (Jul. 22, 2023), <https://www.desmoinesregister.com/story/news/elections/presidential/caucus/2023/07/22/desantis-super-pac-never-back-down-increasingly-will-host-events/70450322007/>.

<sup>38</sup> Peoples and Beaumont, *supra* note 11.

A firm associated with the super PAC that has effectively taken over Mr. DeSantis’s presidential campaign posted online hundreds of pages of blunt advice, research memos and internal polling in early nominating states to guide the Florida governor ahead of the high-stakes Republican presidential debate next Wednesday in Milwaukee. . . . The documents were posted this week on the website of Axiom Strategies, the company owned by Jeff Roe, the chief strategist of Mr. DeSantis’s super PAC, Never Back Down.<sup>39</sup>

These documents, which included opposition research, internal polling data, and specific lines of attack that DeSantis should use against other candidates during the debate, were reportedly “so strategy-heavy that it appears that the super PAC, which recently had a top official . . . leave for the campaign, is trying to dictate how the candidate should conduct himself on the debate stage.” Indeed, one of the documents was “entitled ‘Debate Memo,’ dated Aug. 15, which cynically describes how Mr. DeSantis . . . could wring the most favorable media attention from the debate.”<sup>40</sup> Soon after the *New York Times* reached out to Never PAC for comment on these documents, they were removed from the Axiom Strategies website.<sup>41</sup>

30. Accordingly, Never PAC has conveyed highly valuable strategic information to the DeSantis campaign.

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<sup>39</sup> Jonathan Swan, *et al.*, *Defend Trump and ‘Hammer’ Ramaswamy: DeSantis Allies Reveal Debate Strategy*, N.Y. Times (Aug. 17, 2023), <https://www.nytimes.com/2023/08/17/us/politics/desantis-debate-strategy.html> (“Taken together, the documents reveal the remarkable extent to which the financially struggling DeSantis campaign is relying upon the resources of his super PAC, which raised \$130 million in the first half of the year. The outside group is paying for research on Mr. DeSantis’s rivals, strategic insights and polling—all traditionally the work of campaigns themselves.”).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* (“The New York Times was alerted to the existence of the documents by a person not connected to the DeSantis campaign or the super PAC. After The Times reached out to Never Back Down for comment on Thursday, the group removed from the website a key memo summarizing the suggested strategy for the debate. By Thursday night, all the other documents that were posted had been taken down.”).

31. As the *Washington Post* reported in September 2023, amid shakeups in the campaign, including “laying off staff [and] bringing in new leadership,” the campaign has been “looking to the super PAC to cover more costs.”<sup>42</sup>

## SUMMARY OF THE LAW

### *Contribution Limits and Restrictions*

32. Under FECA, a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office,” and an expenditure includes “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.”<sup>43</sup> Under Commission regulations, “anything of value” in either context includes all in-kind contributions, such as the provision of goods or services at no charge or at a discount.<sup>44</sup>
33. FECA treats an expenditure that is “coordinated” with a federal candidate or committee as an in-kind contribution to the federal candidate or committee with whom, or with which, it is coordinated.<sup>45</sup> An expenditure is “coordinated” if it is “made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate [or] the candidate’s authorized committee.”<sup>46</sup>
34. FECA prohibits making contributions to political committees other than candidate committees aggregating in excess of \$5,000 per year, and further prohibits the knowing

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<sup>42</sup> Knowles, *supra* note 30.

<sup>43</sup> 52 U.S.C. § 30101(8)(A)(i), (B)(i).

<sup>44</sup> 11 C.F.R. §§ 100.52(d)(1), 100.111.

<sup>45</sup> *Id.* § 109.20(b).

<sup>46</sup> *Id.* § 109.20(a); *see also* 52 U.S.C. § 30101(17) (“The term ‘independent expenditure’ means an expenditure . . . (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.”).

acceptance of such contributions.<sup>47</sup> FECA also prohibits knowingly accepting contributions by corporations and labor organizations.<sup>48</sup>

35. Following the Supreme Court’s decision in *Citizens United v. FEC* and the D.C. Circuit’s decision in *SpeechNow.org v. FEC*, the FEC has recognized an exception to the general \$5,000 limit on contributions to political committees: Committees<sup>49</sup> that only make independent expenditures, and that do not make contributions to or otherwise coordinate with federal candidates, are permitted to solicit and raise unlimited contributions for their independent activities, including contributions from corporations and labor unions.<sup>50</sup>

These independent-expenditure-only PACs are now commonly known as “super PACs.”

36. Federal courts and the Commission itself have made clear that an essential condition for super PACs to accept unlimited contributions, including corporate and union money, is that they operate independently from the candidates they support and “make only *independent* expenditures.”<sup>51</sup> The Supreme Court, in *Citizens United*, concluded that the government’s interest in prohibiting corporate *independent* expenditures was insufficient because, in the court’s view, the “absence of prearrangement and coordination of an expenditure . . . alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.”<sup>52</sup> As the U.S. Court of Appeals for the D.C.

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<sup>47</sup> 52 U.S.C. § 30116(a)(1)(C), (f).

<sup>48</sup> *Id.* § 30118(a).

<sup>49</sup> Pursuant to a federal district court’s stipulated order and consent judgment in August 2011, the FEC recognized the same limited exception to FECA’s contribution amount limits and source prohibitions for a segregated, noncontribution account of a political committee—now commonly referred to as a “hybrid PAC”—that maintains two separate accounts, one used to make contributions to candidates and the other used exclusively for independent activity. See FEC Statement on *Carey v. FEC* (2011) (Oct. 6, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-v-fec/>; see also *Carey v. FEC*, Case No. 11-259 (D.D.C. Aug. 19, 2011) (Stipulated Order and Consent Judgment).

<sup>50</sup> See *Citizens United*, 558 U.S. 310; *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Advisory Op. 2010-11 (Commonsense Ten) (July 22, 2010); see also 52 U.S.C. §§ 30116(a)(1), 30118(a).

<sup>51</sup> Advisory Op. 2010-11 at 3 (Commonsense Ten) (citing *Citizens United* and *SpeechNow*) (emphasis added).

<sup>52</sup> *Citizens United*, 558 U.S. at 357.

Circuit has noted, “[t]he independence of independent expenditures was a central consideration in the [*Citizens United*] decision.”<sup>53</sup>

37. The Supreme Court has long recognized that “the rationale for affording special protection to *wholly independent* expenditures” does not extend to *coordinated* expenditures, since “expenditures made after a ‘wink or nod’ often will be ‘as useful to the candidate as cash’” and pose the same dangers of corruption and abuse.<sup>54</sup> Nothing in *Citizens United* or any other judicial decision altered that conclusion or recognized a corporate right to raise and spend money for these coordinated activities.
38. Because a super PAC’s ability to accept unlimited contributions and corporate general treasury funds arises from these court decisions that, on their face, apply only to groups that exclusively make independent expenditures—and not to groups that contribute directly to or coordinate expenditures with a candidate or political party committee—a political committee that contributes to or coordinates its activity with federal candidates or party committees is, by definition, not a “super PAC,” and cannot accept contributions that would violate FECA’s contribution amount limits and source prohibitions.

#### *Coordinated Communications*

39. Under the Commission’s regulations, payments for a communication are coordinated expenditures, and therefore in-kind contributions, if (1) a person other than the candidate or candidate’s campaign paid for the communication, (2) the communication contained certain content, and (3) the communication occurred after certain coordinating conduct.<sup>55</sup>

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<sup>53</sup> *SpeechNow*, 599 F.3d at 693; *see id.* at 696 (“We should be clear, however, that we only decide these questions as applied to contributions to SpeechNow, an independent expenditure-only group. Our holding does not affect, for example, [FECA’s] limits on direct contributions to candidates.”).

<sup>54</sup> *McConnell v. FEC*, 540 U.S. 93, 221 (2003) (emphasis added).

<sup>55</sup> 11 C.F.R. § 109.21(a).

These three requirements are known colloquially as the “payment,” “content,” and “conduct” prongs.

40. The content prong lists five types of communications that are subject to the coordinated communications analysis: (a) electioneering communications, (b) public communications that republish campaign materials, (c) public communications that refer to a clearly identified candidate and air within a specified timeframe in front of the candidate’s electorate, (d) public communications that include express advocacy for or against a clearly identified candidate, and (e) public communications that include the functional equivalent of express advocacy for or against a clearly identified candidate.<sup>56</sup>
41. The conduct prong likewise covers five types of coordinating activities. Most relevant here, the FEC regulations provide that coordination has occurred if a third party creates, produces, or distributes a communication “at the request or suggestion of a candidate, authorized committee” or agent of either, or if the third party proposes a communication and the candidate or committee assents to the proposal.<sup>57</sup>
42. The regulations further provide that coordination is established where the candidate, authorized committee, or an agent of either is “materially involved” in the third party’s decisions about the content of the communication (among other topics) or participates in one or more “substantial discussion” about the communication.<sup>58</sup>

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<sup>56</sup> *Id.* § 109.21(c). For presidential elections, the timeframe covered by the content requirement listed at (c) is 120 days before the primary election or caucus in the state in which the ad airs through the day of the general election.

<sup>57</sup> *Id.* § 109.21(d)(1).

<sup>58</sup> *Id.* § 109.21(d)(2)–(3). The remaining two types of conduct revolve around shared vendors passing information from a campaign to the entity paying for an ad, and former employees or independent contractors of a campaign going to work for the entity paying for the ad. *Id.* § 109.21(d)(4)–(5).



43. Importantly, the Commission’s regulations emphasize that there does not need to be an explicit “agreement or formal collaboration” for a communication be coordinated.<sup>59</sup>

*Reporting/Disclosure Requirements*

44. FECA requires each treasurer of a political committee to file reports of receipts and disbursements with the Commission.<sup>60</sup>
45. For any political committee other than a candidate-authorized committee, such reports must include the total amount of contributions made to other political committees, as well as the name and address of each political committee that has received a contribution from the reporting committee during the reporting period, together with the date and amount of such contribution.<sup>61</sup>
46. For a candidate-authorized committee, such reports must include the total amount of all contributions received from other political committees, as well as the identification of each political committee that makes a contribution to the reporting candidate-authorized committee during the reporting period, together with the date and amount of such contribution.<sup>62</sup>

**CAUSES OF ACTION**

**COUNT I:**

**NEVER BACK DOWN MADE, AND DeSANTIS AND HIS CAMPAIGN KNOWINGLY ACCEPTED, COORDINATED EXPENDITURES IN VIOLATION OF 52 U.S.C. §§ 30116 AND 30118**

47. The available information provides reason to believe Never PAC has coordinated its expenditures with DeSantis, his campaign, and his agents, such that Never PAC has

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<sup>59</sup> *Id.* § 109.21(e).

<sup>60</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>61</sup> 52 U.S.C. § 30104(b)(4)(H)(i), (b)(6)(B)(i); 11 C.F.R. § 104.3(b)(1)(v), (b)(3)(v).

<sup>62</sup> 52 U.S.C. § 30104(b)(2)(D), (b)(3)(B); 11 C.F.R. § 104.3(a)(3)(iv), (a)(4)(ii).

made, and the DeSantis campaign has knowingly accepted, prohibited contributions in the form of coordinated expenditures.

48. Recent reporting indicates that DeSantis’s campaign manager “developed the strategy and selected the leadership to lead” Never PAC, and that “the two operations . . . aimed to function as an integrated whole.”<sup>63</sup> Federal laws prohibit exactly this sort of cooperative, “integrated” activity between a candidate’s campaign and any group or committee that raises and spends unlimited sums of money, including corporate funds, on election influence. Indeed, such “integrated” activity is the opposite of the independence required of super PACs like Never PAC.
49. The public record contains extensive evidence that DeSantis and his staff are, in fact, in regular communication with Never PAC, passing on strategic information and requests and suggestions and assenting to the super PAC’s plans. These interactions are textbook examples of the coordinating “conduct” described in the Commission’s regulations.<sup>64</sup>
50. Most recently and egregiously, a news report indicates that after DeSantis expressed frustration with Never PAC pulling down an ad attacking Nikki Haley, intermediaries conveyed to Never PAC board members that the candidate wanted the super PAC to put the attack ad back on the air. The board members passed that message on to the super PAC employees responsible for making strategic decisions about communications.<sup>65</sup> This conduct must trigger a coordination finding:<sup>66</sup> Because DeSantis has directly or indirectly offered requests or suggestions regarding the distribution and messaging of the super

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<sup>63</sup> Scherer, Dec. 16, *supra* note 6.

<sup>64</sup> *See* 11 C.F.R. § 109.21(d)(1).

<sup>65</sup> Peoples and Beaumont, *supra* note 11.

<sup>66</sup> *See* 11 C.F.R. § 109.21(d)(1).

PAC's advertising, all Never PAC spending that takes DeSantis's input into account is unlawfully coordinated.

51. In addition to finding reason to believe this illegal conduct has occurred, the FEC should speedily investigate whether Never PAC is currently taking steps to act on DeSantis's request, which would make a coordination violation imminent.<sup>67</sup> There is a high likelihood of a future violation when this recent request or suggestion follows previous instances of Never PAC spending in cooperation with the campaign.
52. For instance, in July 2023, a memo authored by DeSantis's campaign manager, which was supposedly "leaked" to the media, contained key strategic insights including that the campaign "will not cede New Hampshire" and that "[w]hile saturation of critical states like Iowa and South Carolina is critical, we see no reason why more expensive markets in New Hampshire should not also be prioritized."<sup>68</sup> The memo also included a list of subjects the campaign wanted to see incorporated in ads; China was one of the those topics.<sup>69</sup>
53. Reporting indicated that Never PAC staffers "studied the memo line by line," and Never PAC has since paid for ads about Nikki Haley's stance on China and made New Hampshire one of its priority states.<sup>70</sup> When a candidate's campaign makes clear, by request or suggestion, where and how it wants a third party like Never PAC to spend its

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<sup>67</sup> See 52 U.S.C. § 30109(a)(2) ("If the Commission . . . determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, *or is about to commit*, a violation of this Act[,] . . . [t]he Commission shall make an investigation of such alleged violation." (emphasis added)).

<sup>68</sup> Campaign Memo, *supra* note 18.

<sup>69</sup> *Id.*

<sup>70</sup> Goldmacher and Haberman, Jul. 23, *supra* note 24; Peoples and Beaumont, *supra* note 11; Scherer, Dec. 16, *supra* note 6.

money on electoral communications and other support, that is among the types of “conduct” that results in an expenditure for a communication being “coordinated.”<sup>71</sup>

54. DeSantis has also spent “extensive time with super PAC officials on the Never Back Down bus,”<sup>72</sup> and Never PAC and DeSantis’s campaign entered into a joint lease agreement for shared use of a private jet.<sup>73</sup> It is difficult to conceive of how DeSantis campaign staff and Never PAC staff could have organized a road and air travel schedule that occupied such a large portion of the candidate’s campaigning time without cooperation and consultation regarding Never PAC’s strategic organization of that travel.
55. In fact, Never PAC’s deep involvement in guiding DeSantis’s movements is strong evidence of coordination. Reporting indicates that the super PAC is directly guiding where and when DeSantis campaigns, including “devising his game plan in Iowa” and “deciding where he goes and who he meets.”<sup>74</sup> This type of operational planning involves the assent of DeSantis to the expenditures Never PAC makes to bring about those meetings and on-the-ground contacts. A candidate approving a super PAC’s planned expenditures is strictly prohibited.<sup>75</sup>
56. Never PAC’s coordination with the DeSantis campaign also extends to the operational support it has been providing to the campaign through on-the-ground canvassing and voter data collection. Reports indicate that DeSantis’s campaign has been regularly “looking to the super PAC to cover more costs,” particularly with respect to organizing on-the-ground campaign efforts in Iowa, which holds one of the earliest presidential

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<sup>71</sup> See 11 C.F.R. § 109.21(d).

<sup>72</sup> Knowles, *supra* note 30.

<sup>73</sup> Scherer and Arnsdorf, *supra* note 32.

<sup>74</sup> Allison, *supra* note 25.

<sup>75</sup> See 11 C.F.R. § 109.21(d)(1).

nominating contests.<sup>76</sup> Never PAC has hired several hundred people to collect voter data and canvass for DeSantis in Iowa,<sup>77</sup> as well as taking on other functions traditionally in the purview of a candidate's campaign, including "securing endorsements in early primary states, sending mailers, organizing on campuses" and even "building crowds for the governor's events."<sup>78</sup> This granular level of involvement in campaign work would almost certainly require some level of cooperation or consultation with DeSantis's campaign or agents to accomplish, and that constitutes coordination with respect to the expenditures Never PAC has made to hire hundreds of paid field staffers.

57. Moreover, even if some of Never PAC's on-the-ground operations are being implemented through use of DeSantis's public campaign schedule, reports make it clear that at least in some instances, Never PAC's staffers are working directly with the candidate or campaign staff.
58. In one particularly illustrative instance, for example, "employees of the super PAC . . . working with Mr. DeSantis's team, sent a flurry of texts and calls to assemble a crowd" at a campaign event taking place that evening.<sup>79</sup> Never PAC staffers working with DeSantis's campaign to arrange a crowd for a "last-minute event" to advance DeSantis's campaign effort is the kind of "cooperation" and "consultation" that makes an expenditure "coordinated" under FECA and Commission regulations,<sup>80</sup> and no super PAC is permitted to coordinate its expenditures with a federal candidate in this manner.

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<sup>76</sup> Knowles, *supra* note 30.

<sup>77</sup> Scherer, Apr. 19, *supra* note 26; Scherer and Dawsey, Jul. 14, *supra* note 29.

<sup>78</sup> Goldmacher, May 24, *supra* note 27.

<sup>79</sup> *Id.*

<sup>80</sup> 11 C.F.R. § 109.20(a).

59. The DeSantis campaign even confirmed its reliance on Never PAC for organizing voters in a November 2023 memo to campaign donors. The communication explains that DeSantis is working “alongside NBD’s impressive ground game,” including an “army” of supporters Never PAC mobilized, to win the election. The communication thus demonstrates the campaign’s significant inside knowledge of the super PAC’s future plans, and the document manifests the campaign’s suggestion that those plans should be continued “alongside” other efforts.<sup>81</sup>
60. Accordingly, based on the foregoing, there is reason to believe that Never PAC, DeSantis, and the DeSantis campaign have violated 52 U.S.C. §§ 30116(a)(1)(A), 30116(f), and 30118(a) as a result of these prohibited coordinated expenditures.

**COUNT II:**

**NEVER BACK DOWN MADE, AND DESANTIS AND HIS CAMPAIGN KNOWINGLY ACCEPTED,  
IN-KIND CONTRIBUTIONS FROM THE PROVISION OF GOODS AND SERVICES  
IN VIOLATION OF 52 U.S.C. §§ 30116 AND 30118**

61. The available information provides reason to believe that Never PAC has also (or in some cases, alternatively) made in-kind contributions to DeSantis and his campaign through the provision of discounted and no-cost goods or services, resulting in Never PAC making, and the DeSantis campaign knowingly accepting, prohibited contributions.
62. Reports indicate that Never PAC has subsidized or underwritten the DeSantis campaign’s travel costs, including ground and air transportation for DeSantis himself.
63. Specifically, DeSantis has regularly traveled to and from Never PAC-hosted events on the super PAC’s buses.<sup>82</sup> While Commission regulations permit a candidate to “attend,

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<sup>81</sup> Donor Memo, *supra* note 16; *see* Scherer, Dec. 16, *supra* note 6 (“[DeSantis campaign manager James] Uthmeier had written a public memo on behalf of the campaign embracing Fight Right for future television ads and describing Never Back Down as a field operation.”).

<sup>82</sup> *See* Pfannenstiel *supra* note 37; Knowles, *supra* note 30.

“speak at, or be a featured guest at a non-Federal fundraising event,”<sup>83</sup> there is no provision that allows a candidate to also receive extensive, free travel in connection with such appearances. Never PAC providing transportation for a federal candidate at no cost to the candidate’s campaign alleviates an expense that the campaign would otherwise have to bear and is therefore an in-kind contribution prohibited under FECA.

64. Moreover, Never PAC and DeSantis’s campaign have reportedly entered into a joint lease agreement for DeSantis’s use of a private jet, allowing Never PAC to pay a substantial portion of the candidate’s air travel costs, which the campaign would otherwise have had to pay.<sup>84</sup> Reports also indicate that at least through the end of July 2023, Never PAC had made no use of the jet,<sup>85</sup> and that the specific purpose of the enterprise was not for the campaign and super PAC to have part-time use of a shared asset, but rather for Never PAC to shoulder a significant portion of DeSantis’s campaign travel costs.<sup>86</sup> Disclosure reports show that this is precisely what has happened: Through the end of July 2023, Never PAC had paid approximately \$343,000 of the \$845,000 in total disbursements to N2024D LLC, or roughly 40% of a cost—the candidate’s air travel—that DeSantis’s campaign would otherwise have had to pay. These payments thus constitute an in-kind contribution by Never PAC to DeSantis’s campaign.<sup>87</sup>

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<sup>83</sup> 11 C.F.R. § 300.64(b); *see* Advisory Op. 2015-09 at 8 (Senate Majority PAC).

<sup>84</sup> Scherer and Arnsdorf, *supra* note 32.

<sup>85</sup> *Id.*

<sup>86</sup> Scherer, Dec. 16, *supra* note 6.

<sup>87</sup> The Commission has considered cost-sharing arrangements to be illegal in-kind contributions in the past. In Advisory Opinion 1985-19 (Thomas J. Vallely for Congress Committee), the Commission concluded that a corporation and a campaign jointly purchasing a computer system would result in a corporate contribution, as the campaign would receive a cost-saving benefit “through the joint arrangement that it would not receive if it acted alone.” Advisory Op. 1985-19 at 2–3.

65. It also appears that Never PAC footed some event costs, amounting to in-kind contributions to the DeSantis campaign. For example, when super PAC employees worked with the DeSantis campaign to make “texts and calls to assemble a crowd” for a last-minute campaign event, the super PAC was deploying its resources—in the form of staff time and communication costs—to offset or underwrite expenses that the DeSantis campaign would otherwise have had to incur to pull together the event.<sup>88</sup>
66. Additionally, in August 2023, Never PAC shared detailed strategy documents, which it must have paid to procure, with the DeSantis campaign through the mechanism of publishing those documents on the website of Axiom Strategies, a firm owned by Never PAC’s chief strategist, Jeff Roe. These documents provided DeSantis, at no charge, valuable insights and information, including internal polling data, opposition research, and suggested lines of attack for DeSantis to use in the first debate between Republican primary candidates.<sup>89</sup> This again is a prohibited contribution, in this case by providing a candidate’s campaign with highly valuable strategic goods and services at no charge.<sup>90</sup>
67. Based on Never PAC’s provision of free and discounted goods and services in the foregoing instances, there is reason to believe that Never PAC, DeSantis, and his campaign violated 52 U.S.C. §§ 30116(a)(1)(A), 30116(f), and 30118(a) by making and knowingly accepting prohibited in-kind contributions.

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<sup>88</sup> See Goldmacher, May 24, *supra* note 27.

<sup>89</sup> Swan, *supra* note 39.

<sup>90</sup> See, e.g., Compl., MUR 8009 (Protect Ohio Values, *et al.*), <https://campaignlegal.org/sites/default/files/2022-06/Vance%20POV%20Complaint%20%28Final%29.pdf>.



**COUNT III:**  
**NEVER BACK DOWN HAS KNOWINGLY ACCEPTED EXCESSIVE AND PROHIBITED CONTRIBUTIONS IN VIOLATION OF 52 U.S.C. §§ 30116(F) AND 30118(A)**

68. Because Never PAC has made and continues to make prohibited contributions to, and expenditures coordinated with, DeSantis and his campaign, there is reason to believe Never PAC is engaging in ongoing violations of FECA by accepting excessive and prohibited contributions.
69. As outlined in the preceding sections, there is ample evidence demonstrating reason to believe Never PAC is both making in-kind contributions to and coordinating expenditures with the DeSantis campaign. In so doing, Never PAC is contravening the “independence” required for it to legally accept unlimited contributions and contributions from corporations under the decisions in *Citizens United* and *SpeechNOW*, as well as FEC Advisory Opinion 2010-11 (Commonsense Ten).<sup>91</sup>
70. The Supreme Court’s decision in *Citizens United* was predicated on the notion that the “absence of prearrangement and coordination” with candidates relieved the danger of corruption that would otherwise attend corporate expenditures. Similarly, the D.C. Circuit in *SpeechNow* acknowledged that “[t]he independence of independent expenditures was a central consideration” of the *Citizens United* decision, and concluded accordingly that “contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption.”<sup>92</sup> Yet Never PAC is not such a group, as the preceding discussion of its coordination with DeSantis makes clear.
71. Likewise, the Commission’s decision in Advisory Opinion 2010-11 (Commonsense Ten) also involved another organization that stipulated it would “make only independent

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<sup>91</sup> *Citizens United*, 558 U.S. 310; *SpeechNow.org*, 599 F.3d 686; Advisory Op. 2010-11 (Commonsense Ten).

<sup>92</sup> *SpeechNow.org*, 599 F.3d at 693–94.

expenditures,”<sup>93</sup> such that it too does not apply, on its face, to a group like Never PAC that makes contributions to, or coordinates its expenditures with, a candidate.

72. Because a group like Never PAC lacks the required independence from candidates on which these decisions were based, the decisions—and the limited exemption for independent-expenditure-only committees from FECA’s contribution limits and corporate contribution prohibition—do not apply.
73. Never PAC’s communications in support of DeSantis’s campaign cannot be considered “independent” expenditures in light of the candidate providing messaging requests or suggestions through intermediaries. And the super PAC’s spending to underwrite or even supplant DeSantis’s campaign operations—including, *e.g.*, hiring staff to canvass and collect voter data for DeSantis, subsidizing or paying DeSantis’s travel costs, and purchasing polling data and opposition research to prepare DeSantis for a candidate debate—is a far cry from the independent political activity that *Citizens United* ruled could not be prohibited.<sup>94</sup> Decades of Supreme Court precedent establish that expenditures coordinated with a candidate are equivalent to a direct contribution to a candidate,<sup>95</sup> and nothing in *Citizens United* or the court decisions following it altered that analysis or recognized a corporate right to spend unlimited amounts in coordination with candidates.

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<sup>93</sup> Advisory Op. 2010-11 at 3 (Commonsense Ten).

<sup>94</sup> *Citizens United*, 558 U.S. at 364.

<sup>95</sup> See *Buckley v. Valeo*, 424 U.S. 1, 46 (1976) (“[C]ontrolled or coordinated expenditures are treated as contributions rather than expenditures under the Act.”); *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 438 (2001) (FECA provides “for a functional, not formal, definition of ‘contribution,’ which includes ‘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[.]’ Expenditures coordinated with a candidate, that is, are contributions under the Act.”); *McConnell*, 540 U.S. at 219 (“Ever since our decision in *Buckley*, it has been settled that expenditures by a noncandidate that are ‘controlled by or coordinated with the candidate and his campaign’ may be treated as indirect contributions subject to FECA’s source and amount limitations.”).

74. By subsidizing DeSantis’s campaign expenses, Never PAC is not making “independent expenditures” as FECA defines that term, or indeed engaging in anything resembling the independent electoral activity that *Citizens United* contemplated.
75. Because Never PAC is *not* a political committee that only makes independent expenditures, it remains subject to FECA’s contribution limits and the prohibition on corporate and union contributions. FECA’s aggregate contribution limit for political committees other than authorized candidate committees is \$5,000 per year, and such committees may not knowingly accept contributions exceeding this amount. Never PAC, however, has reported accepting more than 170 contributions in excess of FECA’s limits since its formation earlier this year, in violation of the law.
76. Moreover, FECA prohibits making or knowingly accepting a contribution from a corporation. Never PAC appears to have accepted multiple contributions from corporations.<sup>96</sup>
77. There is therefore reason to believe each of these corporate and excessive contributions constitutes a separate violation of FECA’s limits and source prohibitions.<sup>97</sup>

**COUNT IV:**  
**NEVER BACK DOWN, DESANTIS, AND THE DESANTIS CAMPAIGN FAILED TO REPORT MAKING/RECEIVING IN-KIND CONTRIBUTIONS, INCLUDING IN THE FORM OF COORDINATED EXPENDITURES, IN VIOLATION OF 52 U.S.C. § 30104(B)**

78. The available information provides reason to believe Never PAC and DeSantis and his campaign have failed to report making and accepting, respectively, in-kind contributions on their required FEC disclosure reports.

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<sup>96</sup> See, e.g., *supra* note 9.

<sup>97</sup> 52 U.S.C. §§ 30116(a)(1)(C), (f), 30118(a).

79. As outlined in the preceding sections, there is ample evidence establishing reason to believe Never PAC made in-kind contributions to DeSantis’s campaign through coordinated expenditures and directly subsidizing campaign activities. However, Never PAC has not reported making a single contribution to DeSantis’s campaign.<sup>98</sup>
80. Likewise, despite the abundant evidence that DeSantis’s campaign has received in-kind contributions from Never PAC, the DeSantis campaign has not reported any of these contributions to the FEC, either.<sup>99</sup>
81. The Act requires political committees to report detailed information about each contribution they make to another political committee and the aggregate of all such contributions.<sup>100</sup> Similarly, authorized candidate committees receiving contributions from other political committees must report details about each contribution, itemized by contributor and including each contribution’s amount, date, and purpose, and the aggregate amount of all such contributions.<sup>101</sup>
82. Because neither Never PAC nor DeSantis’s campaign has reported making or receiving, respectively, any in-kind contributions, despite their coordinated activities, there is reason to believe they have violated the Act’s disclosure provisions.
83. In doing so, they have deprived the public and complainants of their statutory right to know the amounts, dates, and purposes of a candidate’s campaign receipts and spending—information necessary to enable voters to evaluate candidates for office,

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<sup>98</sup> See Never Back Down, Inc., 2023 Mid-Year Report (Jul. 31, 2023).

<sup>99</sup> See Ron DeSantis for President, 2023 July Quarterly Report (Jul. 15, 2023), <https://docquery.fec.gov/pdf/700/202307159583524700/202307159583524700.pdf>.

<sup>100</sup> 52 U.S.C. § 30104(b)(4)(H)(i), (b)(6)(B)(i); 11 C.F.R. § 104.3(b)(1)(v), (b)(3)(v).

<sup>101</sup> 52 U.S.C. § 30104(b)(2)(D), (b)(3)(B); 11 C.F.R. § 104.3(a)(3)(iv), (a)(4)(ii).

“make informed decisions[,] and give proper weight to different speakers and messages.”<sup>102</sup>

84. Indeed, because Never PAC has accepted corporate contributions and used that money to make coordinated expenditures and in-kind contributions to DeSantis’s campaign, both Never PAC and DeSantis’s campaign have denied the public and complainants of information regarding the true sources and amounts of contributions to DeSantis’s campaign—effectively turning Never PAC into a vehicle for funneling contributions from Never PAC’s corporate contributors into unlawful, undisclosed contributions to DeSantis’s campaign.

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<sup>102</sup> *Citizens United*, 558 U.S. at 369–71.

**PRAYER FOR RELIEF**

85. Wherefore, the Commission should find reason to believe that Never PAC, DeSantis, and his campaign have violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
86. 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 FECA.

Respectfully submitted,

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Counsel to the Campaign Legal Center

December 18, 2023

**VERIFICATION**

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center



Saurav Ghosh, Esq.

Sworn to and subscribed before me this 10<sup>th</sup> day of December 2023.



Notary Public



**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 Roger G. Wieand



Roger G. Wieand

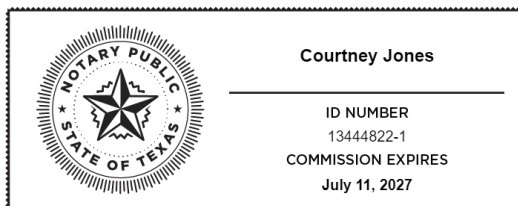
Sworn to and subscribed before me this 18th day of December 2023.



Courtney Jones 07/11/2027

Notary Public

State of Texas; County of Harris



Notarized online using audio-video communication



# EXHIBIT A



# DESANTIS

FOR PRESIDENT

**To:** Team DeSantis Investors  
**From:** James Uthmeier, Campaign Manager  
**Date:** November 27, 2023  
**Re:** Fundraising Update

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As November closes, we thank all the donors and supporters who have made great sacrifices to support Ron DeSantis in his fight to save our country, win this election, and lead America's great comeback. We know and appreciate the time and resources you have devoted to our mission. May God bless all you do for this cause and our country. We have the man for the moment - someone who has proven he will not only fight the important fights but also deliver big wins. And we have the team to help him get the job done!

We are pleased to report that we enter the final weeks of the year in very strong form. Ron DeSantis continues to outwork everyone else in the race. He has already visited 98 of the 99 counties in Iowa and will soon complete the "Full Grassley." He has also secured endorsements from 41 Iowa state legislators - a record that doubles any other candidate in the race - over 100 Iowa faith leaders, 26 Iowa sheriffs, and 120 county chairs. Ron DeSantis continues to inspire the thousands of Iowans that line up each week to



hear him speak, and at every stop we are greeted by more friendly voters proudly proclaiming their decision to flip from other candidates and commit to Ron DeSantis.

The state of our campaign finances remains strong. Fundraising events continue to exceed expectations, and our lean budget has produced needed surpluses at the most crucial time in the race. These resources will become ever important as Ron DeSantis builds momentum in the coming weeks--facing Gavin Newsom in the much-anticipated November 30th debate hosted by Sean Hannity, preparing for his fourth GOP debate victory in Tuscaloosa, AL, and crisscrossing the state of Iowa alongside key endorsers Governor Kim Reynolds and Iowa kingmaker Bob Vander Plaats.

As many of you know, the independent pro-DeSantis outside political organization, *Never Back Down* (NBD), boasts an incredible field operation and ground game - the largest Iowa turnout machine in history. We have accepted many invitations to attend NBD events and look forward to seeing our campaign, their team, and many volunteers help Ron DeSantis bring home a victory on Caucus Night. Without question, NBD's robust organization is unrivaled in its ability to mobilize supporters and get out the vote.

We also welcome the independent efforts of a newly established outside organization, *Fight Right*, a pro-DeSantis group that announced they will work closely with NBD and devote full attention to fighting for Ron DeSantis through powerful TV advertising. As Donald Trump and Nikki Haley work side-by-side spending tens of millions of dollars to attack Ron DeSantis, *Fight Right's* emergence provides welcomed air support.

It is no surprise that Donald Trump has focused the entirety of his attacks on *only* Ron DeSantis, recognizing that our candidate is the most formidable challenger equipped to win Iowa and actually deliver on the former president's outstanding promise. And Nikki Haley's failure to attack the former president makes evident she is running for something other than the nomination. The two-front onslaught against us - backed by millions of dollars of heavy false attacks on the airwaves - has magnified the need for more support for Ron DeSantis on air. *Fight Right's* mission could not have come at a better time.

*Fight Right* has publicly announced their operation features minimal overhead, and 100% of contributions go direct to TV ads. Ron DeSantis is set to meet with financial supporters of *Fight Right* as soon as today. In the final push for the Iowa Caucus victory, this campaign will proudly fight alongside NBD's impressive ground game, and *Fight Right's* television team, to show the people of Iowa that this is a time for choosing, and Ron DeSantis is the candidate that can WIN! We are blessed to have both an *NBD*-army and *Fight Right*-air force out there fighting for us.

Please keep us in your prayers as we continue the fight for America.

# EXHIBIT B

## FUNDRAISING

Today we announced that we raised \$20 million in its first six weeks, reflecting the growing enthusiasm for Governor DeSantis' forward-looking vision for the Great American Comeback. The campaign's haul is the largest first-quarter filing from any non-incumbent Republican candidate in more than a decade. It bests the \$18.3 million former president and de facto incumbent Donald Trump's campaign raised during his first two fundraising quarters as a candidate (\$3.8 in Q4 2022 and \$14.5 in Q1 2023).

Joe Biden's leftist policies are destroying the country, and Republicans are excited to invest in a winner ready to lead America's revival. We are grateful for the investment so many Americans have made to get this country back on track. The fight to save it will be long and challenging, but we have built an operation to share the governor's message and mobilize the millions of people who support it. We are ready to win.

The strong Q2 haul comes after DeSantis recently eclipsed 250 endorsements from state legislators across the nation and unveiled his plan to stop the invasion and secure the border. The policy rollout was the first of many the campaign has planned in the weeks and months ahead.

## STATE OF THE RACE: THE BALLOT IS VERY FLUID

Early state voters are only softly committed to the candidates they select on a ballot question this far out – including many Trump supporters. Our focus group participants in the early states even say they don't plan on making up their mind until they meet the candidates or watch them debate. While we know Trump's floor is ~25%, that leaves  $\frac{3}{4}$ <sup>th</sup>s of the electorate willing to consider other viable options.

What has not changed are the candidates who are realistically being courted by the electorate. As it has been for the last year, Trump and DeSantis remain the only viable options for two-thirds of the likely Republican primary electorate. While Tim Scott has earned a serious look at this stage, his bio is lacking the fight that our electorate is looking for in the next President. We expect Tim Scott to receive appropriate scrutiny in the weeks ahead. We've found low to no interest in Vivek, Burgum, and Nikki while far too many voters will not consider Pence and Christie for them to feel remotely viable.

## WHERE WE PLAN TO COMPETE

Ron DeSantis is running a campaign to win everywhere. **It would be a mistake to take a paid media and field program off the table in service of other states, we will not cede New Hampshire.** From what we can tell, pro-DeSantis efforts are currently and will continue to run a robust effort in Iowa, South Carolina, and New Hampshire, that includes paid media and field.

While Super Tuesday is critically important, we will not dedicate resources to Super Tuesday that slow our momentum in New Hampshire. We expect to revisit this investment in the Fall.

Governor DeSantis and his message are thriving in town hall style engagements. This format allows him to speak directly with voters regarding the issues they care about. Town hall events are the best way for early state voters to get to know Governor DeSantis. The campaign has hosted successful town hall events in Texas, South Carolina and New Hampshire to date.

We are also planning events that feature cookout styled, backyard activities targeting primary voters in Iowa and New Hampshire.

## THE MESSAGE

We will Restore Sanity for the American people.

- BIO: We've found that when voters hear about the Governor's bio – principally as a Dad and as a veteran – they like him and are open to hearing more about him. This is to say nothing of his successes on parental rights, his leadership bringing Florida's economy back during and after COVID, fighting illegal immigration and ensuring border security, that he's not just a fighter, but most importantly a winner. A major paid media effort featuring the Governor's bio (dad/family/veteran) will help us to convert image to ballot.

There is more to the Governor's bio than we even appreciate – for example, when in Congress he refused to take a congressional pension. This and many other examples have yet to even be explored and will likely be features of his bio in the Fall.

- Culture: Governor DeSantis is THE leader of the culture fight in America. We will continue to burnish his record fighting the Left who want to come after our kids and take over society via the "Control Economy" (ESG and DEI). When radical liberals tried to teach school kids to question their gender, Ron DeSantis stood up and protected our children. As President he will continue to fight those who want to inappropriately sexualize our children and steal their innocence. He is THE candidate to lead the culture fight and we need to burnish his record nationally (early states and national cable) to secure this lane.
- The Economy: Equally important, we will offer an economic message to disrupt and win economy voters. American decline was not an accident. It was a choice. Our elites do not consider themselves Americans so much as they think of themselves as "citizens of the world." Their loyalty is not to a discrete nation, but to the bottom line on a balance sheet. And the decisions they've made in leading this country over the past few decades has reflected that worldview – they have governed in their interests rather than *ours*.
- China is a Domestic Policy Threat...but not for the reasons you think: China is not to be thought of as a superpower, but as a desperate power. The chief foreign policy threat to the U.S. is also a domestic policy threat – a desperate China. He will right size China's control over our

hemisphere and stop them from spying on our citizens, stealing our technology and displacing America on the world stage. We do not need them.

## THE POLICY

The **NO EXCUSES** policy agenda will feature bold policy solutions, including:

- The Border: Stop the Invasion (June 2023)
- The Economy (July and August 2023)
- Foreign Policy and China (August 2023)
- Debate (August 2023)

More to come in the Fall of 2023....including woke military, the deep state, school choice and beyond.

## THE FIGHT

Our campaign will make the contrast between Joe Biden and Ron DeSantis clear – but we won't avoid Trump's failings when asked. Our strategy? Question Asked, Question Answered, then on to how we beat Joe Biden.

While Trump is always the most efficient driver of his own negatives, there are numerous other persuasion narratives that can and should be exploited on him. Soft Trump voters and America First conservatives do not look kindly on Trump's record on guns, the deficit and spending, Transgenderism, and his family's his cozy relationship with the Saudi Royal Family.

## THE FORMULA

We will continue to present big, bold ideas that will get people talking in an effort to generate more earned media. More earned media will result in increased standing on the ballot. We will aggressively pursue this formula in the next eight weeks as we understand that standing in the polls is directly tied to earned media – pro-DeSantis surrogates understand the importance to appear on every possible news segment.

In the meantime, voters need to become fully aware of the Governor's bio as described above. While saturation of critical states like Iowa and South Carolina is critical, we see no reason why more expensive markets in New Hampshire should not also be prioritized. **The earned media is the cake. The paid media (early states and national conservative cable) is the icing and keeps the messaging points from the earned media hits in the voter's face.** We are continuing to aggressively fundraise to ensure we can be competitive on both fronts.