

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
and ROGER G. WIEAND
1101 14th Street NW, Suite 400
Washington, DC 20005

v. MUR No. _____

DEAN PHILLIPS, DEAN 24, INC.
and DONALD KUSTER in his
official capacity as treasurer
P.O. Box 741
Excelsior, MN 55331

WE DESERVE BETTER, INC. and
JUSTIN PHILLIPS in his official
capacity as treasurer
584 Castro Street
San Francisco, CA 94114

COMPLAINT

1. Ten days after serving as high-level advisors to Dean Phillips’s 2024 presidential campaign, Matt and Scott Krisiloff organized We Deserve Better, Inc. (“Better PAC”), a “super PAC” that has spent over \$3.3 million supporting Phillips’s candidacy. At least some of Better PAC’s ads—and even the super PAC’s name—utilize messaging tested by the campaign, indicating that the Krisiloffs—who, while serving as campaign advisers, participated in a private text message group among the campaign’s “leadership group,” conducted at least a dozen focus groups in early primary states, commented on an internal campaign polling memo, and had a direct line of communication with Phillips—used their detailed knowledge of the campaign’s private information and strategic plans to inform Better PAC’s activity. As such, there is reason to believe Better PAC illegally coordinated its spending with Phillips’s campaign, contravening the explicit legal

requirement that super PACs must remain “independent” of—*i.e.*, not coordinate with—federal candidates or their campaigns.

2. Because Better PAC appears to have used nonpublic campaign information obtained through the Krisiloffs’ substantial discussions with the Phillips campaign to develop the core content of at least some of Better PAC’s communications, there is reason to believe Better PAC has coordinated its spending with the campaign, violating the 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.
3. Coordination between a super PAC and a presidential campaign 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,¹ which first opened the door to permit the operation of super PACs like Better PAC, yet, as explained herein, at least some of Better PAC’s expenditures were clearly not “independent” from the Phillips campaign.
4. By raising money outside of the Federal Election Campaign Act’s (“FECA” or the “Act”) source and amount restrictions while providing coordinated contributions to Phillips’s campaign, Better PAC has acted as a vehicle for its donors to contribute to and underwrite Phillips’s campaign, circumventing the Act’s prohibition of corporate and excessive contributions to candidates and, moreover, depriving the public of complete and accurate information regarding the sources of funding for Phillips’s campaign.

¹ *SpeechNow.org v. FEC*, 599 F.3d 686, 693 (D.C. Cir. 2010).

5. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Better PAC, Phillips, and his 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.”²

FACTS

6. Dean Phillips is a 2024 candidate for president, and his authorized campaign committee is Dean 24, Inc. (the “Phillips campaign”).³ The Phillips campaign’s treasurer is Donald Kuster.⁴ Phillips registered his campaign committee with the Commission on October 26, 2023,⁵ publicly announcing that he was running for president the next day.⁶
7. Better PAC registered with the Commission as an independent-expenditure-only political committee on December 1, 2023, and its treasurer is Justin Phillips.⁷
8. Better PAC has already reported making over \$3.3 million in independent expenditures supporting Phillips.⁸ Public reporting indicates that the super PAC has raised at least \$4 million.⁹
9. While Better PAC has not yet filed a report disclosing its contributions, news sources indicate that it is raising money well above the \$5,000 contribution limit that applies to traditional PACs. For example, billionaire hedge fund manager Bill Ackman recently

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

³ Dean 24, Inc., Amend. Statement of Org. (Jan. 5, 2024).

⁴ *Id.*

⁵ Dean 24, Inc., Statement of Org. (Oct. 26, 2023).

⁶ Arit John, Eva McKend, and Aaron Pellish, *House Democrat Dean Phillips Launches Primary Challenge Against President Biden*, CNN (Oct. 27, 2023), <https://www.cnn.com/2023/10/26/politics/dean-phillips-presidential-campaign-launch/index.html>.

⁷ We Deserve Better, Inc., Statement of Org. (Dec. 1, 2023).

⁸ We Deserve Better, Inc., 24- and 48-Hour Reports (last visited Jan. 29, 2023).

⁹ Caleb Ecarma, *Silicon Valley Donors Are Using AI to Help Dean Phillips Beat Joe Biden*, Vanity Fair (Jan. 19, 2024), <https://www.vanityfair.com/news/silicon-valley-donors-ai-help-dean-phillips-beat-joe-biden>.

committed to contributing \$1 million to Better PAC.¹⁰ The *Washington Post* also reports that just 17 donors provided all of Better PAC’s launch money.¹¹

The Krisiloffs and the Phillips Campaign

10. According to news reporting, Matt and Scott Krisiloff—brothers who both work as technology entrepreneurs—established Better PAC.¹²
11. Matt Krisiloff, who previously worked at OpenAI, is the founder and CEO of Conception, a company working to develop technology to turn stem cells into human eggs.¹³ His brother Scott Krisiloff previously ran an asset management company and is now an executive at Helion Energy, a nuclear fusion startup.¹⁴
12. Up until shortly before they formed Better PAC, Matt and Scott Krisiloff were integrally involved with the Phillips campaign, serving as high-level strategic advisors.¹⁵
13. The Krisiloffs were reportedly part of “the Phillips campaign’s ‘leadership’ group”—an organization of individuals who acted as advisors to the campaign, regularly exchanging messages with campaign representatives on Signal, an encrypted text messaging

¹⁰ Eric Revell, *Bill Ackman to Give \$1 Million Donation to Biden Challenger’s PAC*, Fox Business (Jan. 14, 2024), <https://www.foxbusiness.com/politics/bill-ackman-give-1-million-donation-biden-challengers-pac>.

¹¹ Meryl Kornfield and Elizabeth Dwoskin, *Silicon Valley Insiders Are Trying to Unseat Biden with Help from AI*, Wash. Post. (Jan. 18, 2024), <https://www.washingtonpost.com/elections/2024/01/18/ai-tech-biden/>. Better PAC’s website does not solicit—or even provide a mechanism to make—contributions from the general public, indicating that it is exclusively raising funds through private solicitation of high-dollar contributions from wealthy individuals and corporations. See We Deserve, <https://wedeseerve.org/#cta> (last visited Jan. 23, 2024).

¹² Tessa Stuart and Andrew Perez, *Biden Challenger Gets Boost of Sorts from Super PAC Tied to Sam Altman*, Rolling Stone (Jan. 9, 2024), <https://www.rollingstone.com/politics/politics-features/dean-phillips-ads-tech-super-pac-sam-altman-1234942841/>. Another Silicon Valley entrepreneur, Jed Somers, was also involved. Kornfield and Dwoskin, *supra* note 11.

¹³ Conception, <https://conception.bio/> (last visited Jan. 23, 2024); David Freeland, *Dean Phillips Met Sam Altman, Then Got Awfully Interested in AI*, N.Y. Mag. (Jan. 18, 2024), <https://nymag.com/intelligencer/2024/01/biden-rival-dean-phillips-getting-help-from-sam-altman.html>; Antonio Regalado, *How Silicon Valley Hatched a Plan to Turn Blood into Human Eggs*, MIT Tech. Review (Oct. 28, 2021), <https://www.technologyreview.com/2021/10/28/1038172/conception-eggs-reproduction-vitro-gametogenesis/>.

¹⁴ Helion, <https://theorg.com/org/helion-energy> (last visited Jan. 23, 2024); Scott Krisiloff, Helion, <https://theorg.com/org/helion-energy/org-chart/scott-krisiloff> (last visited Jan. 23, 2024).

¹⁵ Tessa Stuart, *Did These ‘Tech Bros’ Break the Law Backing Biden’s Rival?* Rolling Stone (Jan. 18, 2024), <https://www.rollingstone.com/politics/politics-features/dean-phillips-biden-challenger-super-pac-sam-altman-1234949460/>.

platform.¹⁶ Documents and interviews reportedly indicate that the Krisiloffs were part of the Phillips campaign’s leadership Signal group until November 21, 2023—a mere ten days before they founded Better PAC.¹⁷

14. As part of their advisory role with the campaign, the Krisiloffs “conducted at least a dozen focus groups about Phillips with voters in New Hampshire, Michigan, and South Carolina both before and after the launch of the campaign.”¹⁸ Given that Phillips did not launch his campaign until late October 2023, some of these focus groups necessarily happened in October or November 2023, just weeks before Better PAC’s formation.
15. In late October and early November 2023, the Krisiloff brothers reportedly marked up “at least one internal Phillips campaign polling memo with their opinions on polling mechanics and their messaging ideas.”¹⁹ For example, the campaign memo contained a series of comments from Scott Krisiloff concerning his “data science perspective” on polling methodology.²⁰ And Matt Krisiloff suggested within the document that “the campaign should poll the idea of Phillips appointing a ‘common sense czar’ whose role would be ‘to find ways to save on spending in government.’”²¹
16. The Krisiloffs’ comments on the campaign memo also reveal that Matt Krisiloff was in direct contact with the candidate, Phillips, conveying some of Phillips’s views of the slogans that the campaign was testing:

¹⁶ *Id.* Signal is a text message application that “provides end-to-end encryption for private communications.” *Quantum Resistance and the Signal Protocol*, Signal (Sep. 19, 2023), <https://signal.org/blog/pqxdh/>.

¹⁷ Stuart, *supra* note 15.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

At one point, while discussing possible campaign slogans [within the polling memo], Matt Krisiloff alludes to having a direct line to the candidate, writing: “as of Friday, Dean was curious about: ‘A Time for Courage,’ ‘Be not Afraid,’ ‘The Quiet Part Out Loud’ (last one I think wonky), ‘Faith over Fear.’”²²

Tellingly, the internal campaign memo showed that another of the “potential slogans to be poll tested” was “We Deserve Better”—the very name that the Krisiloffs would use for their super PAC to support Phillips’s candidacy.²³

17. Finally, the Krisiloff-reviewed campaign memo discussed plans to poll how voters feel about certain policy issues. One staffer commented in the memo that “[w]e can/should explicitly test Medicare for All.”²⁴ The staffer explained that “[Phillips] is sold on the merits but not on the branding, so a split with one question calling it ‘universal health insurance’ or ‘national health insurance’ would be valuable.”²⁵

The Krisiloffs Create Better PAC

18. On November 21, 2023, three weeks after they reviewed the campaign polling memo, the Krisiloffs “abruptly” removed themselves from the Phillips campaign Signal group.²⁶
19. The next day, November 22, 2023, Matt Krisiloff formed a 501(c)(4) “dark money” nonprofit named We Deserve Better Action,²⁷ which “has spent hundreds of thousands of dollars on ads that seek to boost voter turnout in New Hampshire without mentioning Phillips.”²⁸

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

20. Nine days later, on December 1, 2023, the Krisiloff brothers registered Better PAC with the FEC.²⁹ Matt Krisiloff became the super PAC’s leader and Scott Krisiloff took a position on its board of directors.³⁰
21. The names of both the super PAC and 501(c)(4) use the phrase “We Deserve Better,” which, as noted above, is a tagline that “appeared on [the] list of potential campaign slogans circulated inside the Phillips campaign.”³¹ In other words, the Krisiloffs named their purportedly independent pro-Phillips organizations using a slogan that the Phillips campaign field tested while the Krisiloffs served as campaign advisors.
22. Better PAC began making independent expenditures supporting Phillips on December 18, 2023.³² It has placed numerous independent expenditures on television and on digital platforms.³³ At least one of Better PAC’s ads prominently featured the phrase “Medicare for All”—a term that the campaign poll tested against other terms that refer to the issue of healthcare reform because Phillips was “sold on the merits but not on the branding.”³⁴

SUMMARY OF THE LAW

Contribution Limits and Restrictions

23. 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,

²⁹ *Id.*; see We Deserve Better, Inc., Statement of Org. (Dec. 1, 2023).

³⁰ Stuart, *supra* note 15. Scott Krisiloff may have recently parted ways with Better PAC. While Scott Krisiloff’s name continues to appear on forms related to Better PAC’s media buys, Matt Krisiloff has stated that his brother is no longer affiliated with the PAC and the forms reflect a “clerical error.” *Id.*

³¹ *Id.*

³² We Deserve Better, Inc., 24- and 48-Hour Reports (last visited Jan. 18, 2023).

³³ *Id.*

³⁴ Stuart, *supra* note 15. One Better PAC ad even featured the phrase “Medicare for All” beneath “Democrat Dean Phillips for President” for nearly the entire duration of the ad. We Deserve Better, America is Not Affordable 15s, YouTube (Dec. 26, 2023), <https://www.youtube.com/watch?v=2P7gznSX05o> (viewed Jan. 26, 2024).

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.”³⁵ 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.³⁶

24. 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.³⁷ 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.”³⁸
25. FECA prohibits making contributions to political committees other than candidate committees aggregating in excess of \$5,000 per year, and further prohibits the knowing acceptance of such contributions.³⁹ FECA also prohibits knowingly accepting contributions by corporations and labor organizations.⁴⁰
26. 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: committees⁴¹ that only make independent expenditures, and that do not make contributions to or otherwise

³⁵ 52 U.S.C. § 30101(8)(A)(i), (B)(i).

³⁶ 11 C.F.R. §§ 100.52(d)(1), 100.111.

³⁷ *Id.* § 109.20(b).

³⁸ *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.”).

³⁹ 52 U.S.C. § 30116(a)(1)(C), (f).

⁴⁰ *Id.* § 30118(a).

⁴¹ 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* Stipulated Order and Consent Judgment, *Carey v. FEC*, No. 11-259 (D.D.C. Aug. 19, 2011).

coordinate with federal candidates, are permitted to solicit and raise unlimited contributions for their independent activities, including contributions from corporations and labor unions.⁴² These independent-expenditure-only PACs are now commonly known as “super PACs.”

27. 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.”⁴³ 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.”⁴⁴ As the U.S. Court of Appeals for the D.C. Circuit has noted, “[t]he independence of independent expenditures was a central consideration in the [*Citizens United*] decision.”⁴⁵
28. 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.⁴⁶ Nothing in

⁴² See *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow*, 599 F.3d 686;

Advisory Op. 2010-11 (Commonsense Ten) (July 22, 2010); see also 52 U.S.C. §§ 30116(a)(1), 30118(a).

⁴³ Advisory Op. 2010-11 at 3 (Commonsense Ten) (citing *Citizens United* and *SpeechNow*) (emphasis added).

⁴⁴ *Citizens United*, 558 U.S. at 357.

⁴⁵ *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.”).

⁴⁶ *McConnell v. FEC*, 540 U.S. 93, 221 (2003) (emphasis added).

Citizens United or any other judicial decision altered that conclusion or recognized a corporate right to raise and spend money for these coordinated activities.

29. 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

30. 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.⁴⁷ These three requirements are known colloquially as the “payment,” “content,” and “conduct” prongs.
31. 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

⁴⁷ 11 C.F.R. § 109.21(a).

clearly identified candidate, and (e) public communications that include the functional equivalent of express advocacy for or against a clearly identified candidate.⁴⁸

32. The conduct prong likewise covers five types of coordinating activities.⁴⁹ The FEC’s regulations provide that coordination has occurred if:

- (a) 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.⁵⁰
- (b) 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).⁵¹
- (c) The third party has one or more “substantial discussion” with the candidate, their authorized committee, or their agent, about the communication prior to creating, producing, or distributing it. A “substantial discussion” is an exchange in which the third party learns the campaign’s “plans, projects, activities, or needs” and that information is material to the third party’s communication.⁵² The Commission stated in its Explanation and Justification on the coordination regulations that the substantial discussion “analytical framework” asks “whether a discussion

⁴⁸ *Id.* § 109.21(c). For presidential elections, the timeframe covered by the content requirement listed at (c) above is 120 days before the primary election or caucus in the state in which the ad airs through the day of the general election. *Id.* §109.21(c)(4)(ii).

⁴⁹ *Id.* § 109.21(d).

⁵⁰ *Id.* § 109.21(d)(1).

⁵¹ *Id.* § 109.21(d)(2).

⁵² *Id.* § 109.21(d)(3).

occurred, whether certain information was conveyed, and whether that information is material to the” communication.⁵³

- (d) The candidate or their authorized committee shares a vendor with the third party paying for a communication, and the vendor either (1) uses its knowledge of the campaign’s “plans, projects, activities, or needs” to create the third party’s communication, or (2) passes that information onto the third party and the third party uses the information to make the communication.⁵⁴
- (e) The third party paying for the communication was an employee or independent contractor for the campaign within the last 120 days, or employs a former employee or independent contractor of the campaign who departed in the last 120 days, and the third party uses that individual’s knowledge of the campaign’s “plans, projects, activities, or needs” in a way that is material to creating, producing, or distributing the communication.⁵⁵ In its Explanation and Justification discussing the coordination regulations, the Commission indicated that volunteers would not qualify as employees or independent contractors under this standard.⁵⁶ However, the Commission stated that it is aware that some “volunteers’ operate as highly placed consultants who might be given information about the plans, projects, activities, or needs of the candidate . . . with the expectation that the ‘volunteer’ will use or convey that information to effectively coordinate a communication paid for by that ‘volunteer’ or by a third-

⁵³ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 435 (Jan. 3, 2003) (hereinafter, “E&J”).

⁵⁴ 11 C.F.R. § 109.21(d)(4).

⁵⁵ *Id.* § 109.21(d)(5).

⁵⁶ E&J at 439.

party spender.”⁵⁷ This recognition indicates that the Commission may find coordination where highly placed consultant-volunteers operate in this manner, even if not technically applying the former employee/independent contractor standard.⁵⁸

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

CAUSES OF ACTION

COUNT I:

BETTER PAC MADE, AND PHILLIPS AND HIS CAMPAIGN KNOWINGLY ACCEPTED, COORDINATED EXPENDITURES IN VIOLATION OF 52 U.S.C. §§ 30116 AND 30118

34. The available information provides reason to believe Better PAC has coordinated its expenditures with Phillips and his campaign, such that Better PAC has made, and the Phillips campaign has knowingly accepted, prohibited contributions in the form of coordinated communications.
35. The public record contains sufficient evidence to establish reason to believe Better PAC and the Phillips campaign violated the law under the Commission’s three-part test for coordinated communications.
36. Better PAC has reported spending over \$3.3 million on independent expenditures—*i.e.*, communications that expressly advocate for or against a clearly identified candidate⁶⁰—including public communications—*i.e.*, ads that have aired on broadcast, cable, satellite,

⁵⁷ *Id.*

⁵⁸ *See id.*

⁵⁹ 11 C.F.R. § 109.21(e).

⁶⁰ 52 U.S.C. § 30101(17); 11 C.F.R. §§ 100.16, 100.22; We Deserve Better, Inc., 24- and 48-Hour Reports (last visited Jan. 29, 2023).

or paid digital media⁶¹—thus satisfying the payment and content prongs of the coordinated communication test.⁶²

37. On the conduct prong of the test, at least some of Better PAC’s communications are the result of “substantial discussions” between the Phillips campaign and Better PAC advisors Matt and Scott Krisiloff.⁶³ For example, reporting based on campaign documents and interviews indicates that shortly before ending their tenure as campaign advisors, the Krisiloffs reviewed and marked up an internal campaign polling memo, which included a campaign staffer’s comment that the campaign should poll voters’ feelings on universal healthcare and assess whether calling the policy “Medicare for All” or something like “universal health insurance” or “national health insurance” made a difference in voter opinion.⁶⁴ This reporting supports the conclusion that the Krisiloffs were thus privy to and involved with internal campaign conversations about campaign messaging and strategy, shortly before leaving their roles with the campaign to establish Better PAC.
38. Indeed, the Krisiloffs left the Phillips campaign and established Better PAC just ten days later.⁶⁵ Then, within six weeks, Better PAC began running ads supporting Phillips, which may have been informed by the private campaign discussions that the Krisiloffs had recently been partaking in. For instance, one of Better PAC’s ads prominently featured the phrase “Medicare for All,” one of the slogans for universal healthcare that the campaign tested while the Krisiloffs were serving as advisers.⁶⁶

⁶¹ 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26.

⁶² 11 C.F.R. § 109.21(a)(1), (c)(3).

⁶³ *See id.* § 109.21(d)(3).

⁶⁴ Stuart, *supra* note 15.

⁶⁵ *Id.*

⁶⁶ *Id.*; *see, e.g.*, We Deserve Better, America is Not Affordable 15s, YouTube (Dec. 26, 2023), <https://www.youtube.com/watch?v=2P7gznSX05o>.

39. The temporal proximity of these events, combined with the demonstrated use of campaign-tested messaging in a Better PAC ad, and the facts that the Krisiloffs also conducted at least a dozen focus groups in early primary states, were part of a private Signal messaging group with campaign personnel and advisors, appear to have pulled the super PAC’s “We Deserve Better” name directly from campaign polling information, and appear to have had private campaign strategy conversations with the candidate,⁶⁷ collectively support the inference that Better PAC used internal campaign polling and information to develop the content of the super PAC’s spending in support of Phillips. As such, the Krisiloffs essentially acted as agents of the campaign as well as the super PAC, by virtue of their roles first as high-level advisers to the Phillips campaign and then, later, as the organizers of a pro-Phillips super PAC.
40. While available information does not reveal the extent to which Better PAC’s public communications supporting Phillips were informed by the Krisiloffs’ substantial discussions with the campaign during their tenure as campaign advisers, reporting clearly supports finding that Better PAC developed its messaging based on nonpublic information about the Phillips campaign’s “plans, projects, activities, and needs,” which was certainly “material” to the development of Better PAC’s communications—as illustrated by the “Medicare for All” ad. Viewed as a whole, the Krisiloffs’ central involvement with and activities on behalf of Phillips’s campaign shortly before setting up Better PAC and using it to run ads promoting Phillips supports finding reason to believe that “a discussion occurred, . . . certain information was conveyed, and . . . that information [was] material to” Better PAC’s communications.⁶⁸

⁶⁷ Stuart, *supra* note 15.

⁶⁸ E&J at 435.

41. Accordingly, there is reason to believe at least some of Better PAC’s expenditures for public communications supporting Phillips were unlawfully coordinated because they followed one or more “substantial discussions” with the campaign.
42. It is immaterial that the Krisiloffs contend that they were “unpaid volunteers” when serving as advisers to the Phillips campaign.⁶⁹ In a 2003 Explanation and Justification on coordination, the Commission noted the possibility of campaign “‘volunteers’ operat[ing] as highly placed consultants who might be given information about the plans, projects, activities, or needs of the candidate . . . with the expectation that the ‘volunteer’ will use or convey that information to effectively coordinate a communication paid for by that ‘volunteer’ or by a third-party spender.”⁷⁰ In other words, the Commission expressly contemplated the circumstance in which a third party (like a super PAC) coordinates its spending with a campaign through a campaign volunteer with access to confidential campaign information or strategies.⁷¹
43. The Commission should investigate the full extent to which the Krisiloffs used their insider knowledge to form a super PAC and craft its ads with material, nonpublic information from the Phillips campaign.
44. Accordingly, based on the foregoing, there is reason to believe that Better PAC, Phillips, and the Phillips campaign have violated 52 U.S.C. §§ 30116(a)(1)(A), 30116(f), and 30118(a) as a result of prohibited coordinated expenditures.

⁶⁹ *See id.*

⁷⁰ *Id.* at 439.

⁷¹ Notably, this E&J was issued in January 2003, seven years before *Citizens United* and the advent of the “super PAC,” an entity that—unlike certain other types of PACs—is legally prohibited from coordinating its spending with a candidate, campaign committee, or party committee.

COUNT II:

BETTER PAC HAS KNOWINGLY ACCEPTED EXCESSIVE AND PROHIBITED CONTRIBUTIONS IN VIOLATION OF 52 U.S.C. §§ 30116(F) AND/OR 30118(A)

45. Because Better PAC has made and continues to make prohibited contributions to Phillips and his campaign through coordinated communications, there is reason to believe Better PAC is engaging in ongoing violations of FECA by accepting excessive or prohibited contributions.
46. As outlined in the preceding section, there is ample evidence providing reason to believe Better PAC is coordinating expenditures with the Phillips campaign. In so doing, Better PAC is contravening the “independence” required for it to legally accept unlimited contributions and contributions from corporations under the decisions in *Citizens United v. FEC* and *SpeechNOW v. FEC*, as well as FEC Advisory Opinion 2010-11 (Commonsense Ten).⁷²
47. 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—and had, to that point justified prohibiting—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.” Yet Better PAC is not such a group, as the preceding discussion of its coordination with Phillips makes clear.

⁷² *Citizens United*, 558 U.S. 310; *SpeechNow*, 599 F.3d 686; Advisory Op. 2010-11 (Commonsense Ten).

48. Likewise, the Commission’s decision in Advisory Opinion 2010-11 (Commonsense Ten) also involved another organization that stipulated it would “make only independent expenditures,”⁷³ such that it too does not apply, on its face, to a group like Better PAC that makes contributions to, or coordinates its expenditures with, a candidate.
49. Because Better 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 source restrictions—do not apply.
50. As Better PAC is *not* a political committee that only makes independent expenditures, it remains subject to FECA’s contribution limits and the prohibition on corporate 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. Better PAC, however, has reportedly accepted a \$1 million pledge and its first disclosure report will almost certainly show additional high-dollar contributions and may show corporate contributions, in violation of the law.⁷⁴
51. Each corporate and excessive contribution that Better PAC accepts constitutes a separate violation of FECA’s limits and source prohibitions.⁷⁵

⁷³ Advisory Op. 2010-11 at 3 (Commonsense Ten).

⁷⁴ Revell, *supra* note 10. Based on reporting indicating that Better PAC only had 17 donors at its launch and immediately spent more than \$3.3 million on communications, it is clear that at least some of those donors must have contributed considerably more than the \$5,000 that FECA allows PACs to accept from a donor. *See* We Deserve Better, Inc., 24- and 48-Hour Reports (last visited Jan. 29, 2023); Kornfield and Dwoskin, *supra* note 11.

⁷⁵ 52 U.S.C. §§ 30116(a)(1)(C), (f), 30118(a).

PRAYER FOR RELIEF

52. Wherefore, the Commission should find reason to believe that Better PAC, Phillips, 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).
53. 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

January 29, 2024

VERIFICATION

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

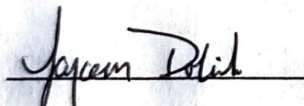
Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center



Saurav Ghosh, Esq.

Sworn to and subscribed before me this 29th day of January 2024.


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

State of Virginia County of King William

Sworn to and subscribed before me this 29th day of January 2024.



Notary Public

My Commission Number: 7899517

My Commission Expires: 10/31/2025

Notarized online using audio-video communication

