

August 5, 2011

Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General:

As detailed in the attached complaint, filed August 5, 2011 with the Federal Election Commission (FEC), the Campaign Legal Center and Democracy 21, have reason to believe, based on published reports, that W Spann LLC and any person(s) who created, operated and made contributions in the name of W Spann LLC may have violated 2 U.S.C. § 441f by making a contribution to the political committee Restore Our Future in the name of another person, namely W Spann LLC, and that W Spann LLC may have violated 2 U.S.C. § 441f by knowingly permitting its name to be used for the making of such contribution(s).

Further, the Campaign Legal Center and Democracy 21 have reason to believe, based on published reports, that W Spann LLC and the person(s) who created and operated W Spann LLC may have violated 2 U.S.C. §§ 432, 433 and 434 by failing to organize a political committee, register the political committee and file disclosure reports as a political committee, as defined at 2 U.S.C. § 431(4).

We are writing to urge the Department of Justice to exercise its authority to conduct criminal investigations of these potential violations of federal law by W Spann LLC and any person(s) who created, operated and made contributions in the name of W Spann LLC, and, if warranted, to bring criminal proceedings to enforce federal campaign finance laws as they apply to these groups.

Although the FEC has exclusive jurisdiction over civil enforcement of the Federal Election Campaign Act (FECA), 2 U.S.C. § 431 *et seq.*, the Department of Justice has its own independent and exclusive jurisdiction to bring criminal enforcement proceedings for violations of these laws. Specifically, FECA provides for criminal sanctions, enforced by the Department of Justice, in the case of “knowing and willful” violations of FECA that exceed specified monetary thresholds, which vary according to the specific statutory provision violated. *See* 2 U.S.C. § 437g(d).¹

¹ As explained in the Department of Justice handbook FEDERAL PROSECUTION OF ELECTION OFFENSES 198-99 (7th Ed. 2007):

The Federal Election Commission has exclusive authority to enforce FECA’s noncriminal penalties. . . . FECA violations that are committed knowingly and willfully and involve aggregate values that satisfy the monetary thresholds in the Act’s criminal provision, 2 U.S.C. § 437g(d),

The Department of Justice is responsible for ensuring that potential “knowing and willful” violations of FECA are investigated and that actual “knowing and willful” violations are prosecuted and punished—the integrity of U.S. elections depends on it.

Sincerely,

Campaign Legal Center, by
J. Gerald Hebert
215 E Street, NE
Washington, DC 20002
(202) 736-2200

Democracy 21, by
Fred Wertheimer
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600

Copy to: Mr. Lanny A. Breuer, Assistant Attorney General, Criminal Division
Mr. Jack Smith, Chief, Public Integrity Section

are also federal crimes. These cases are prosecuted by the Department of Justice.

....

In view of the enhanced criminal penalties for FECA crimes and the legislative history supporting their enactment, it is the Justice Department’s position that all knowing and willful FECA violations that exceed the applicable jurisdictional floor specified in the Act’s criminal provision should be considered for federal prosecution under one or more of the prosecutive theories presented above.

**BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION**

Campaign Legal Center
215 E Street, NE
Washington, DC 20002
(202) 736-2200

Democracy 21
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600

v.

MUR No. _____

W Spann LLC
590 Madison Avenue
New York, NY 10022

John Doe, Jane Doe and other
persons who created and operated W
Spann LLC and made contributions
to Restore Our Future in the name of
W Spann LLC

COMPLAINT

1. This complaint is filed pursuant to 2 U.S.C. § 437g(a)(1) and is based on information and belief that W Spann LLC and any person(s) who created, operated and made contributions in the name of W Spann LLC (John Doe, Jane Doe and other persons) may have violated provisions of the Federal Election Campaign Act (“FECA”), 2 U.S.C. § 431, *et seq.*
2. Specifically, based on published reports, complainants have reason to believe that the person(s) who created and operated W Spann LLC may have violated 2 U.S.C. § 441f by making a contribution(s) to the political committee Restore Our Future in the name of another person, namely W Spann LLC, and that W Spann LLC may have violated 2 U.S.C. § 441f by knowingly permitting its name to be used for the making of such contribution(s).

3. Further, based on published reports, complainants have reason to believe that W Spann LLC and the person(s) who created and operated W Spann LLC may have violated 2 U.S.C. §§ 432, 433 and 434 by failing to organize a political committee, as defined at 2 U.S.C. § 431(4), register the political committee and file disclosure reports as a political committee.
4. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission **shall** make an investigation of such alleged violation” 2 U.S.C. § 437g(a)(2); *see also* 11 C.F.R. § 111.4(a) (emphasis added).

BACKGROUND

5. On August 4, 2011, NBC News reported: “A mystery company that pumped \$1 million into a political committee backing Mitt Romney has been dissolved just months after it was formed, leaving few clues as to who was behind one of the biggest contributions yet of the 2012 presidential campaign.”¹
6. The political committee named in the article is Restore Our Future, FEC committee identification number C00490045, which reported receiving a \$1 million contribution from W Spann LLC on its mid-year report filed with the Commission on July 31, 2011.
7. According to the NBC News article, W Spann LLC’s “corporate records provide no information about the owner of the firm, its address or its type of business.”² The address included on Restore Our Future’s mid-year report for W Spann LLC is “a midtown Manhattan office building that has no record of such a tenant.”³ “A top executive of

¹ Michael Isikoff, *Firm gives \$1 million to pro-Romney group, then dissolves*, NBC NEWS, August 4, 2011, available at http://today.msnbc.msn.com/id/44011308/ns/politics-decision_2012/.

² *Id.*

³ *Id.*

Minskoff Equities, the firm that manages the building, told NBC News that he had ‘never heard of’ W Spann and that his management firm has no record of any such tenant.”⁴

8. The NBC News article explains that W Spann LLC was created March 15, 2011, when a “certificate of formation” was filed with the Delaware Secretary of State’s Office.⁵ W Spann LLC made a \$1 million contribution to Restore Our Future on April 28, 2011. W Spann LLC then “filed a ‘certificate of cancellation’ on July 11, effectively dissolving as a corporate entity, the records show.”⁶
9. According to the NBC News article, the “authorized person” that filed the W Spann LLC incorporation papers and then filed the certificate of cancellation was Cameron Casey, an attorney at the Boston law firm Ropes & Gray.⁷
10. This \$1 million contribution from W Spann LLC to Restore Our Future and related details have also been reported by other media outlets, including the *Washington Post*,⁸ *New York Times*,⁹ *International Business Times*¹⁰ and *Atlanta Journal Constitution*.¹¹

PROHIBITION ON CONTRIBUTIONS IN THE NAME OF ANOTHER

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

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Mystery company dissolves after giving \$1 million to PAC backing Mitt Romney*, WASHINGTON POST, August 4, 2011, available at http://www.washingtonpost.com/politics/mystery-company-dissolves-after-giving-1-million-to-pac-backing-mitt-romney/2011/08/04/gIQADONNuI_story.html.

⁹ Nicholas Confessore, *Donation to Romney-Tied Groups Draws Scrutiny*, N.Y. TIMES, August 4, 2011, available at <http://thecaucus.blogs.nytimes.com/2011/08/04/donation-to-romney-tied-group-draws-scrutiny/>.

¹⁰ *Phantom Company Donates \$1 Million to Romney Group*, INTERNATIONAL BUSINESS TIMES, August 4, 2011, available at <http://www.ibtimes.com/articles/192397/20110804/mitt-romney-w-spann-llc-presidential-campaign-restore-our-future-super-pac-cameron-casey.htm>.

¹¹ Ken Thomas, *Firm dissolves after giving pro-Romney PAC \$1M*, ATLANTA JOURNAL CONSTITUTION, August 4, 2011, available at <http://www.ajc.com/news/nation-world/firm-dissolves-after-giving-1075160.html>.

knowingly accept a contribution made by one person in the name of another person.” 2 U.S.C. § 441f.

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

- “Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made,” 11 C.F.R. § 110.4(b)(2)(i).
- “Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.” 11 C.F.R. § 110.4(b)(2)(ii).

13. Based on published reports, complainants have reason to believe that the person(s) who created, operated and contributed to W Spann LLC may have violated 2 U.S.C. § 441f by “[g]iving money . . . , all or part of which was provided to the contributor” W Spann LLC by the person(s) who created and operated W Spann LLC (*i.e.*, the true contributor(s)) without disclosing the source of money to Restore Our Future at the time the contribution was made. *See* 11 C.F.R. § 110.4(b)(2)(i).

14. Based on published reports, complainants have reason to believe that the person(s) who created and operated W Spann LLC may have violated 2 U.S.C. § 441f by “[m]aking a contribution of money . . . and attributing as the source of the money . . . another person [, namely, W Spann LLC,] when in fact the [person(s) who created and operated W Spann LLC was] the source.” *See* 11 C.F.R. § 110.4(b)(2)(ii).

15. Based on published reports, complainants have reason to believe that W Spann LLC may have violated 2 U.S.C. § 441f by “knowingly permit[ting its] name to be used to effect such a contribution.” 2 U.S.C. § 441f.

**POLITICAL COMMITTEE STATUS, REGISTRATION
AND REPORTING REQUIREMENTS**

16. FECA defines the term “political committee” to mean “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. § 431(4); *see also* 11 C.F.R. § 100.5(a). “Contribution,” in turn, is defined as “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” 2 U.S.C. § 431(8)(A). Similarly, “expenditure” is defined as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office” 2 U.S.C. § 431(9)(A).
17. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term “political committee” to “only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” 424 U.S. at 79 (emphasis added). Again, in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Court invoked the “major purpose” test and noted, in the context of analyzing the activities of a 501(c)(4) group, that if a group’s independent spending activities “become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.” *Id.* at 262 (emphasis added). In that instance, the Court continued, it would become subject to the “obligations and

restrictions applicable to those groups whose primary objective is to influence political campaigns.” *Id.* (emphasis added). The Court in *McConnell* restated the “major purpose” test for political committee status as iterated in *Buckley*. *McConnell v. FEC*, 540 U.S. 93, 170 n.64 (2003).

18. The Commission has explained:

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

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

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

20. Any entity that meets the definition of a “political committee” must file a “statement of organization” with the Federal Election Commission, 2 U.S.C. § 433, must comply with the organizational and recordkeeping requirements of 2 U.S.C. § 432, and must file periodic disclosure reports of its receipts and disbursements, 2 U.S.C. § 434.¹²

¹² In addition, a “political committee” that does not confine its activities to “independent expenditures” is subject to contribution limits, 2 U.S.C. §§ 441a(a)(1), 441a(a)(2), and source prohibitions, 2 U.S.C. § 441b(a), on the contributions it may receive. 2 U.S.C. § 441a(f); *see also* FEC Ad. Op. 2010-11 at 2 (Commonsense Ten) (A committee that “intends to make only independent expenditures” and “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is not subject to contribution limits.)

21. The political committee disclosure reports required by FECA must disclose to the Commission and the public, including complainants, comprehensive information regarding such committee's financial activities, including the identity of any donor who has contributed \$200 or more to the committee within the calendar year. *See* 2 U.S.C. § 434(b). The Supreme Court has repeatedly recognized the importance of campaign finance disclosure to informing the electorate. *See, e.g., Citizens United v. FEC*, 130 S. Ct. 876, 915 (“[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.”).
22. Based on published reports, complainants have reason to believe that W Spann LLC may have met the two-prong test for political committee status by (1) being an entity or group of persons with the “major purpose” of influencing the “nomination or election of a candidate” and (2) by receiving “contributions” of \$1,000 or more in a calendar year. Consequently, complainants have reason to believe that W Spann LLC and the person(s) who created and operated W Spann LLC may have violated 2 U.S.C. §§ 432, 433 and 434 by failing to organize W Spann LLC as a political committee, as defined at 2 U.S.C. § 431(4), register the political committee and file disclosure reports as a political committee.

PRAYER FOR RELIEF

23. Wherefore, the Commission should find reason to believe that W Spann LLC and any person(s) who created, operated and made contributions in the name of W Spann LLC (John Doe, Jane Doe and other persons), have violated 2 U.S.C. § 431 *et seq.*, including 2 U.S.C. §§, 432, 433, 434 and 441f and conduct an immediate investigation under 2 U.S.C. § 437g(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the

future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

August 5, 2011

Respectfully submitted,

Campaign Legal Center, by
J. Gerald Hebert
215 E Street, NE
Washington, DC 20002
(202) 736-2200

Democracy 21, by
Fred Wertheimer
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600

Paul S. Ryan
The Campaign Legal Center
215 E Street, NE
Washington, DC 20002

Counsel to the Campaign Legal Center

Donald J. Simon
Sonosky, Chambers, Sachse
Endreson & Perry LLP
1425 K Street, NW – Suite 600
Washington, DC 20005

Counsel to Democracy 21

VERIFICATION

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

Sworn to pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

J. Gerald Hebert

Sworn to and subscribed before me this ____ day of August, 2011.

Notary Public

For Complainant Democracy 21

Fred Wertheimer

Sworn to and subscribed before me this ____ day of August, 2011.

Notary Public