

OCTOBER 30, 2020 12:30 PM

OFFICE OF GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION OF THE UNITED STATES OF
AMERICA

In the Matter of:

David Barrett
Expensify VenturesMUR No. **7852****COMPLAINT**

1. Complainant brings this complaint before the Federal Election Commission ("FEC" or "Commission") seeking an immediate investigation and enforcement action against David Barrett and Expensify, Inc., for failure to report an independent expenditure in violation of the Federal Election Campaign Act ("FECA" or "Act").
2. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that:
3. Respondents violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 109.10(d) by failing to file a timely report with regards to an independent expenditure in support of Biden for President.

STATEMENT OF THE LAW

4. 52 U.S.C. § 30101(17) and 11 C.F.R. § 100.16(a) defines an independent expenditure as an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.
5. 52 U.S.C. § 30104(g) and 11 C.F.R. § 109.10(d) requires persons who make independent expenditures aggregating \$1,000 or more with respect to a given election after the 20th day but more than 24 hours before the election to file 24-hour reports.
6. 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11 requires communications by any person that expressly advocate the election or defeat of a clearly identified candidate to include a disclaimer.

STATEMENT OF FACTS

7. Expensify, Inc. is a receipt and expense management company.¹
8. On October 22, 2020, the Founder and CEO of Expensify, David Barrett, sent an email to their 10 million customers who use Expensify software expressly advocating for the election of presidential candidate Joe Biden.²
9. The email, titled "Protect democracy, vote for Biden," states in part that, "anything less than a vote for Biden is a vote against democracy" and to "show up on November 3rd and vote for Biden."³

¹ Expensify, Press Kit.² Priya Anand, Expensify CEO Emails 10 Million Customers Urging Them to Vote for Biden, Bloomberg (Oct. 23, 2020).³ Expensify, Community, Protect democracy, vote for Biden (Oct. 22, 2020).

CAUSE OF ACTION

AGAINST RESPONDENTS DAVID BARRETT AND EXPENSIFY, INC.

Failure to Report an Independent Expenditure in Violation of 52 U.S.C. § 30104(g) and 11 C.F.R. § 109.10(d)

10. Mr. Barrett and Expensify have failed to timely file information as required by 52 U.S.C. § 30104(g) and 11 C.F.R. § 109.10(d). All independent expenditures made within 20 days of an election must file a Form 5 with the FEC within 24 hours of making the communication. In this instance, Mr. Barrett and Expensify made an independent expenditure when an email was sent to 10 million customers advocating for individuals to “show up on November 3rd and vote for Biden.” Mr. Barrett also sought Expensify staff time and feedback when he proposed sending the email, tweeting that “[b]efore sending [the email] we had a long discussion, designed to be as inclusive and respectful as possible. ... [T]hen a group of top employees votes on our official position.”⁴ Aggregating the staff time, corporate resources and significant corporate assets, including the substantial value of Expensify’s 10 million customer database, the preparation and dispatch of Mr. Barrett’s email communication meets and likely far exceeds the \$1,000 threshold. This email was sent less than 20 days before the election, necessitating the filing of a Form 5 with the FEC. Despite the fact that the independent expenditure was made, there has been no requisite filing to provide the voters with any transparency.
11. Additionally, independent expenditures must contain a disclaimer making clear that this communication was neither paid for nor authorized by the Biden campaign. This email fails to provide such assurances, running afoul of 52 U.S.C. § 30120(a)(3) and 11 C.F.R. § 110.11. As a result, Mr. Barrett and Expensify have not provided any legal or public assurances that this email is not a coordinated communication.

PRAYER FOR RELIEF

12. Wherefore, the Commission should find reason to believe that David Barrett and Expensify, Inc. have violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 109.10(d) and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should enjoin respondents from any future violations, and impose any necessary and appropriate remedies to ensure respondents future compliance with FECA. Serious questions arise when a corporation embraces activism but exempts itself from the transparency required by FECA. Therefore, the FEC should conduct an immediate and complete investigation to compel the reporting of this, and any other unreported independent expenditure, coordinated expenditure, or illegal solicitation of Expensify employees made by Mr. Barrett and Expensify, Inc.

⁴ Aimee Picchi, *CE● emails 10 million customers to tell them to vote for Biden*, *CBS News* (Oct. 24, 2020); Exhibit A.

October 29, 2020

Respectfully Submitted,

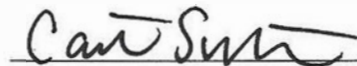
A handwritten signature in black ink, appearing to read "Caitlin Sutherland", written over a horizontal line.

Caitlin Sutherland, Executive Director
Americans for Public Trust
107 South West Street, Suite 442
Alexandria, VA 22314

VERIFICATION

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

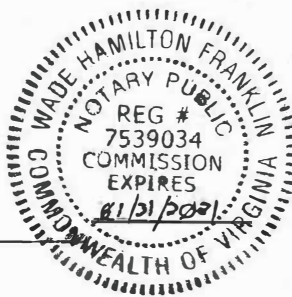
For Complainant "Americans for Public Trust"



Caitlin Sutherland

City of Alexandria
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn to before me this 29th day of October 2020 by Caitlin Sutherland.


Notary Public

Notary registration number: 7539034

My commission expires: 01/31/2021

Exhibit A

