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January 4, 2017

Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Frankie Hampton, Paralegal
999 E Street, NW
Washington, DC 20463

Re: MUR 6982

Dear Mr. Jordan:

We write as counsel to Hillary for America, the authorized campaign committee of Hillary Rodham Clinton, and Jose H. Villarreal, in his official capacity as Treasurer (collectively, "HFA"), and HFA's employee Molly Barker, in response to a complaint filed by the American Democracy Legal Fund on November 10, 2015 (the "Complaint"). The Complaint fails to even allege that either HFA or Ms. Barker committed any violation of the Federal Election Campaign Act of 1971, as amended (the "Act") or the regulations of the Federal Election Commission ("FEC" or "Commission"). The Complaint very clearly only alleges violations of the Act by Project Veritas; James O'Keefe, its Founder and President; and another unnamed Project Veritas employee. Specifically, the Complaint refers to an illegal and unsuccessful effort by Project Veritas to lure Ms. Barker into accepting \$35 from a foreign national to purchase campaign merchandise. It does not allege that HFA or Ms. Barker knowingly accepted, solicited, or received any such contribution, and indeed, the Complaint details how Ms. Barker and other HFA staff repeatedly refused to accept any prohibited contributions. The Commission should accordingly immediately dismiss the Complaint as to HFA and Ms. Barker.

Factual Background

The Complaint states that on September 1, 2015, James O'Keefe, President and Founder of Project Veritas, unveiled footage that he claimed would expose "illegal activity conducted by

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high-level employees within Hillary Clinton's presidential campaign."¹ However, the Complaint goes on to explain that what the video and Project Veritas' subsequent statements actually show are violations of the Act by Project Veritas and not HFA or Ms. Barker. The video depicts an attempt by a Canadian citizen to purchase fundraising merchandise at the June 13, 2015 launch of HFA.² A Project Veritas employee waiting in line to purchase merchandise had a conversation with a woman and was told by the woman that she was from Canada.³ The Canadian citizen asked if she could make a purchase. In response, HFA staff told the Canadian citizen that "we can't take contributions from anyone that is not a citizen of the United States."⁴ Even when the Project Veritas employee urged Ms. Barker, who was one of the HFA staff members selling the merchandise in the video, to accept the contribution, stating "[b]ut she traveled all the way from Canada to support Hillary, you could give her, she's paying cash," Ms. Barker did not accept it.⁵ Campaign staff continued to politely refuse the contribution, stating "[i]t's not my rule, I'm very sorry."⁶ The Canadian citizen then asked if she could provide funds to the Project Veritas staff member who, in turn, would purchase the merchandise for her.⁷ Ms. Barker shook her head "no" and told the Canadian citizen that only the Project Veritas employee, a U.S. citizen, "could make a donation".⁸ The Project Veritas employee then purchased the merchandise. As the Complaint states, at a subsequent press conference, both Mr. O'Keefe and the group's attorney claimed that some or all of the funds used by the Project Veritas employee to purchase the merchandise were reimbursed by the Canadian citizen, but there is no allegation that Ms. Barker or HFA knowingly accepted any such contribution.⁹

Legal Discussion

The complaint alleges that Project Veritas and its employee knowingly solicited and substantially assisted with the making of a contribution from a foreign national in violation of 52 U.S.C. § 30121 and Commission regulations and knowingly attempted to facilitate a contribution made in the name of another person in violation of 52 U.S.C. § 30122. It does not allege or put forward any facts that show that either HFA or Ms. Barker violated these provisions. In fact, the Complaint and the relevant video footage state the opposite: Ms. Barker correctly identified that

¹ Tierney Sneed, *Reporters Scoff at James O'Keefe's Big New Scoop to Destroy Hillary*, Talking Points Memo, Sept. 1, 2015, <http://talkingpointsmemo.com/dc/james-okeefe-hillary-video>.

² Project Veritas Action, *Hidden Cam: Hillary's National Marketing Director Illegally Accepting Foreign Contribution* (Sept. 1, 2015), <https://www.youtube.com/watch?v=-qxF7Z2N7Y4> (last visited Jan. 3, 2017).

³ *Id.* at 1:46-1:55.

⁴ *Id.* at 2:00-2:12.

⁵ *Id.* at 2:12-2:17.

⁶ *Id.* at 2:20.

⁷ *Id.* at 2:46.

⁸ *Id.* at 2:48-2:58.

⁹ Kira Lerner, *James O'Keefe Releases Video Attacking Clinton Campaign — For Letting A Canadian Buy A T-Shirt*, Think Progress, Sept. 1, 2015, <http://thinkprogress.org/politics/2015/09/01/3697540/okeefe-video-clinton-campaign/>.

the campaign is prohibited from accepting contributions from foreign nationals and refused to accept the intended contribution. When Ms. Barker accepted the payment from the Project Veritas employee, she had no knowledge that the employee might seek reimbursement from the Canadian citizen and told the donors that doing so was not permitted. It was the Project Veritas employee, not Ms. Barker, who violated federal law and must be held accountable and that is the Complaint's allegations.

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To violate either provision of the statute identified in the Complaint, an individual must "*knowingly* solicit, accept, or receive" the impermissible contribution.¹⁰ The term *knowingly* "requires proof of knowledge of the facts that constitute the offense."¹¹ It is inarguable that Ms. Barker made a good-faith effort to comply with the law and resisted multiple requests to accept a contribution from a foreign national or in the name of another. Upon learning that the prospective contributor was from Canada, Ms. Barker immediately sought the assistance of another staff member, alerting the second staff member that "she's Canadian and so we can't take . . ."¹² The second staffer confirmed that "we can't take contributions from anyone that is not a citizen of the United States."¹³ After the Project Veritas employee attempted to badger Ms. Barker into accepting the contribution,¹⁴ she once again politely refused to accept it.¹⁵ Then, in the campaign staff's fourth recitation of the restriction, Ms. Barker started to state that "the Federal Election Commission requires," before the Project Veritas employee interrupted.¹⁶ It is clear from the footage that Ms. Barker was aware of the rule, applied it properly, and acted in observance of the statute.

When Ms. Barker eventually accepted a contribution from the Project Veritas employee, Ms. Barker was accepting a contribution made by a U.S. citizen. After Ms. Barker refused to accept the contribution from the Canadian citizen, Ms. Barker stated, again correctly, that the (U.S. citizen) Project Veritas employee "could make a donation."¹⁷ While the video includes a side conversation between the Project Veritas employee and the Canadian citizen in which they discuss making an illegal transaction – with the Canadian citizen asking the Project Veritas employee "can you buy it for me?" and the Project Veritas employee responding "sure, I'll buy it"¹⁸ – there is no evidence, or even an allegation, that Ms. Barker heard this side conversation, that any money actually changed hands between the Canadian and the Project Veritas employee

¹⁰ 52 U.S.C. §§ 30121, 30122 (emphasis added).

¹¹ *Bryan v. United States*, 524 U.S. 184, 193 (1998).

¹² Project Veritas Action, *Hidden Cam: Hillary's National Marketing Director Illegally Accepting Foreign Contribution* at 2:02 (Sept. 1, 2015), <https://www.youtube.com/watch?v=-qx7Z2N7Y4> (last visited Jan. 3, 2017).

¹³ *Id.* at 2:08-2:14.

¹⁴ *Id.* at 2:15-2:19.

¹⁵ *Id.* at 2:21-2:26.

¹⁶ *Id.* at 2:42-2:47.

¹⁷ *Id.* at 2:47-2:49.

¹⁸ *Id.* at 2:49-2:51.

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at the time, or that Ms. Barker had any knowledge of any such exchange of money at any time.¹⁹ The audio of the undercover footage demonstrates that there was a lot of background noise surrounding the merchandise tent. The Complaint does not allege and the footage does not show Ms. Barker acting with knowledge that the contribution was being made by the Canadian citizen or in the name of another.

Conclusion

The Complaint at issue here does not even purport to allege a violation of the Act by HFA or Ms. Barker and indeed, the facts set forth in the Complaint show the opposite. While Project Veritas and its employees may have violated the law, HFA and Ms. Barker did not, and accordingly, they should both immediately be dismissed from this matter.

Very truly yours,



Marc E. Elias
Graham M. Wilson
Counsel to Hillary for America and Molly Barker

¹⁹ See *id.*