



September 23, 2015

Dear Mr. Jordan,

I am in receipt of your correspondence of September 8, 2015, with a response deadline of today, September 23, 2015, which now marks the fourth attempt of the Commission staff to force myself, this PAC, our many tens of thousands of contributors, and nearly 1 million supporters to abandon our right to free association and free speech. The Commission staff's ongoing efforts appear predicated on the utterly absurd notion that someone, somewhere might erroneously believe that STOP HILLARY PAC is the authorized committee of Hillary Clinton. STOP HILLARY PAC has never made even a single communication that could possibly be construed as endorsing, supporting, or attempting to assist Ms. Clinton. The Commission staff nevertheless has chosen to persevere in this violation of First and Fifth Amendment rights. Enough is enough.

On Tuesday, September 22nd, this Stop Hillary PAC and I filed suit against the FEC in the U.S. District Court for the Eastern District of Virginia (1:15-cv-01208-GBL-IDD). As service is underway, we provide the following by way of our response to the latest missive from the FEC.

When people join together to collectively engage in certain political activities relating to federal elections, such as making campaign contributions or calling for the election or defeat of a federal candidate, federal law requires them to create and act through entities called "political committees." Each political committee is required to file reports detailing its activities with the Federal Election Commission ("FEC"); such reports publicly associate a committee, under its legal name, with its contributors. Each such committee also must include disclaimers bearing its legal name on all public communications, bulk e-mails, and websites.

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Having mandated that nearly all collective political activity relating to federal elections occur through political committees, the Federal Election Campaign Act (the "FECA") goes on to restrict the ability of those committees to adopt names that reflect their true purpose or their supporters' beliefs. 52 U.S.C. § 30102(e)(4); *see also* 11 C.F.R. § 102.14. Federal law prohibits political committees that are not authorized by a particular candidate from including the name of a candidate in its name. Even when a committee is formed for the express, sole purpose of defeating a particular candidate, it is forbidden from referring to that candidate in its name.

Section 30102(e)(4)'s legislative history confirms the law's sole purpose is to prevent confusion, by helping to protect members of the public who wish to contribute to a candidate's official authorized committee from inadvertently contributing to a non-connected PAC. On its face, § 30102(e)(4) is a grossly overbroad and unnecessarily restrictive means of attempting to achieve that objective. Particularly as applied to committees that oppose candidates, such as "STOP HILLARY PAC," "STOP R.E.I.D.," and "STOP PELOSI," however, the law is completely indefensible.

The FEC has threatened Stop Hillary PAC and Dan Backer with a burdensome administrative process, substantial civil penalties, and even the threat of criminal prosecution, all because the FEC is concerned that someone, somewhere might believe that Stop Hillary PAC is candidate Hillary Rodham Clinton's official, authorized candidate committee. Such purely speculative, hypothetical—indeed, manufactured—concerns are a constitutionally invalid basis for restricting a political association's fundamental First Amendment right to adopt a name that reflects its important mission. There is not a shred of evidence to suggest that, during the two-plus years of Stop Hillary PAC's existence, even a single person has accidentally mistaken it for the official or authorized committee of either Hillary Clinton or any other federal candidate whose



first or last name is Hillary. Section 30102(e)(4) substantially burdens political expression in an unconstitutionally overbroad manner and, as applied to political committees that clearly and unambiguously oppose a candidate, is patently absurd.

FEDERAL RESTRICTIONS ON POLITICAL COMMITTEE NAMES

Individuals wishing to join together to participate in the political process generally must do so through a political committee. An association or group of persons must form a political committee if it receives more than \$1,000 in a year in contributions, or spends more than \$1,000 a year on election-related expenditures. 52 U.S.C. § 30101(4).

Federal law requires each political committee to have a treasurer. 52 U.S.C. § 30102(a). The treasurer is responsible for accepting all contribution to the committee, *id.* § 30102(b)(1)-(2), authorizing all expenditures, *id.* § 30102(a), maintaining the committee's records, *id.* § 30102(c)-(d), and filing all required reports with the FEC, *id.* § 30104(a). Each report must list the name

52 U.S.C. § 30102(e)(4) specifies if a political committee is not authorized by a federal candidate, "such political committee shall not include the name of any candidate in its name."

The FEC's regulations implementing § 30102(e)(4) create a few narrow exceptions:

1. A committee formed for the sole purpose of influencing the selection of one or more delegates to a national presidential nominating convention may include the name of the presidential candidate the delegate(s) support(s). 11 C.F.R. § 102.14(b)(1).
2. A committee formed to draft a person to become a candidate may include the candidate's name, so long as the committee specifies it is a draft committee. 11 C.F.R. § 102.14(b)(2).
3. A committee may use the name of a candidate in the title of a "special project name or other communication"—but not in the name of the committee itself—if the title clearly and unambiguously shows opposition to the candidate. 11 C.F.R. § 102.14(b)(3).



The FEC's Threats Against Respondents for Incorporating a Candidate's Name into the Name of Stop Hillary PAC

On May 16, 2013, Dan Backer ("Backer") filed a Statement of Organization with the FEC for Stop Hillary PAC which specified the PAC's name was "Stop Hillary PAC" and Backer was the treasurer. Backer remains treasurer and is both a member and supporter of the PAC.

At the time Backer prepared and filed the Statement of Organization for Stop Hillary PAC, he was aware that the PAC's name contained a reference to "Hillary," which was intended as a reference to then-Secretary of State Hillary Rodham Clinton. At that time, Backer also was aware of 52 U.S.C. § 30102(e)(4)'s prohibition on including candidate names in the names of PACs. He believed that Hillary Rodham Clinton was certain to seek the 2016 Democratic Party nomination for the office of President of the United States. Hillary Rodham Clinton officially became a candidate for the office of President of the United States on or about April 13, 2015.¹

On April 27, 2015, the FEC sent a "Request for Additional Information" ("RFAI") to "DAN BACKER, TREASURER[,] STOP HILLARY PAC" which stated, "Your committee's name includes the name of a candidate; however, your committee does not appear to be authorized by a candidate." The RFAI went on to direct that, if Stop Hillary PAC were not a candidate-authorized committee—the RFAI did not identify a particular candidate who would have to authorize it—Backer must amend its Statement of Organization to change its name "so that it does

¹ In January 2014, Stop Hillary PAC filed an administrative complaint with the FEC alleging that Clinton actually became a "candidate" more than a year earlier, by coordinating with and assisting Ready for Hillary, an ostensibly non-connected PAC. After the FEC failed to take action on the complaint for over a year, Stop Hillary sued in the U.S. District Court for the District of Columbia to challenge the agency's arbitrary and capricious refusal to act. *See Stop Hillary PAC v. FEC*, No. 1:14-CV-2080 (KBJ) (D.D.C. dismissed Feb. 17, 2015). Shortly thereafter, the FEC voted to refrain from commencing an investigation or administrative proceedings against Clinton and dismissed the administrative complaint, leading Stop Hillary PAC to withdraw its lawsuit.



not include the candidate's name and/or provide further clarification regarding the nature of your committee."

Backer, on behalf of Stop Hillary PAC, responded to the RFAI by declining to change the committee's name, asserting constitutional objections to the committee's demand, and vehemently expressing his policy objections to the regulations, pointing out several absurd implications and consequences.

The FEC subsequently contacted Backer by telephone to demand that he change Stop Hillary PAC's name by June 11, 2015, or else face "referral for enforcement." Backer again, both orally and in writing, declined to change the committee's name. The FEC subsequently threatened an audit and attempted to commence Alternate Dispute Resolution procedures against Stop Hilary PAC and/or Backer to attempt to induce the committee to change its name, but Backer declined to participate, providing additional clarification on the public record to the Commission of its unconstitutional over-reach.

On September 8, 2015, the FEC sent a letter to Stop Hillary PAC and Dan Backer, declaring that they "may have violated" FECA, and that the matter has been referred to the FEC's Office of General Counsel for "possible enforcement action."

The letter states that Stop Hillary PAC and Backer have failed to remove the name of a federal candidate, Hillary Rodham Clinton, from the name of Stop Hillary PAC, in violation of 52 U.S.C. § 30102(e)(4).

The letter further states that the FEC was giving Stop Hillary PAC and Backer the opportunity to "demonstrate in writing that no action should be taken." It specified that if they failed to file a response, the FEC "may take further action."



The letter further threatens that the FEC “has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution” under 52 U.S.C. § 30109(a)(5)(C). Thus, the FEC has threatened Stop Hillary PAC and Backer with criminal prosecution for engaging in constitutionally protected conduct, and the FEC is attempting to leverage the threat of such prosecution to attempt to coerce Stop Hillary PAC into changing its name into something that does not clearly convey the committee’s mission.

Stop Hillary PAC and Backer face the prospect of a lengthy administrative process, as well as civil penalties, for their decision to exercise their fundamental First Amendment rights by adopting a political committee name that reflects the committee’s true purpose. 52 U.S.C. § 30109(a)(6)(C). The FEC also believes that, despite statutory restrictions on its power to refer matters for criminal prosecution, *see* 52 U.S.C. § 30109(a)(5)(C) (specifying that the FEC may refer intentional and knowing violations of campaign finance law to the Department of Justice only for matters subject to 52 U.S.C. § 30109(d), which does not mention § 30102(e)(4)), it has discretion to refer Stop Hillary PAC’s and Backer’s knowing and willful violation of the statute to the Department of Justice for criminal prosecution. *See* Compl. Ex. 3, at 1 n.2.

52 U.S.C. § 30102(e)(4) Facially Violates the First Amendment

Stop Hillary PAC is a non-connected political committee that incorporates the name of a candidate, Hillary Clinton, in its name.

Backer is counsel and treasurer to Stop Hillary PAC, as well as an ardent supporter of both the PAC and its (presently self-evident) objective.

52 U.S.C. § 30102(e)(4) prohibits non-connected political committees from adopting names that incorporate the name of a candidate.



52 U.S.C. § 30102(e)(4), as interpreted and applied by the FEC, requires a political committee to change its name, even if that name were permissible at the time of the committee's creation, if it contains the name of a person who later decides to become a candidate (regardless of whether the committee even intended its name to constitute a reference to that person).

The name of a political committee is a constitutionally protected form of political speech entitled to maximum protection under the First Amendment. The committee name must appear on all statutorily required FEC filings and disclaimers on political communications.

Political committees also are constitutionally protected forms of political association entitled to maximum protection under the First Amendment. A committee's name reflects its purpose, mission, and values, and helps shape the nature of the entity. A committee's name also is an important factor in attracting public support.

Stop Hillary PAC incorporates the first name of Hillary Rodham Clinton, a candidate for federal office. The mission and objective of Stop Hillary PAC is to engage in political advocacy, make political contributions and expenditures, and organize supporters to help stop Hillary Rodham Clinton from becoming President of the United States.

No reasonable person could believe that Stop Hillary PAC is Hillary Rodham Clinton's official campaign committee, candidate committee, or other authorized committee.

Neither the FEC, Clinton herself, her authorized committee(s), nor the Clinton campaign has identified a single person who mistakenly believed that Stop Hillary PAC was Clinton's authorized candidate committee, or that Stop Hillary PAC was in any way attempting to facilitate her selection as the Democratic nominee for President or ultimate election as President.

The FEC cannot point to a single example where a candidate ("Smith") for federal office adopted a clear, unambiguously negative name such as "Stop Smith," "Fire Smith," "Americans



in Opposition to Smith,” “Committee to Un-Elect Smith,” “We Hate Smith PAC,” “Smith is Evil PAC,” or “Citizens United Against Smith,” for his or her authorized candidate committee.

The name Stop Hillary PAC clearly, succinctly, and accurately reflects the committee’s mission, purpose, and values. The name of Stop Hillary PAC reflects Backer’s staunch opposition to candidate Hillary Rodham Clinton, is the banner under which he wishes to associate with like-minded individuals, and clearly conveys the values of the organization he wishes to assist. No other name would have a comparable effect. Any other name would be either vaguer or less accurate.

The FEC has threatened Stop Hillary PAC with adverse administrative and civil action, and the threat of criminal prosecution, for adopting and refusing to change its name in violation of 52 U.S.C. § 30102(e)(4), and the PAC already has incurred substantial costs in opposing the FEC’s actions and attempting to retain its name. The FEC has threatened Backer with burdensome administrative proceedings, the possibility of substantial civil penalties, and even criminal prosecution, which might result in imprisonment, probation, the loss of his law license, pervasive monitoring, and other harsh sanctions.

52 U.S.C. § 30102(e)(4) imposes a substantial burden on Stop Hillary PAC and Backer’s fundamental First Amendment rights, does not further an important or compelling governmental interest, is not closely or narrowly tailored to achieving any such interests, and is facially unconstitutional under the First Amendment.

**52 U.S.C. § 30102(e)(4) Violates the First Amendment as Applied to Political Committees
With Names That Unambiguously Oppose a Federal Candidate, as well as Such
Committees’ Treasurers and Other Officers**



The stated purpose of 52 U.S.C. § 30102(e)(4) is to prevent voter confusion. The statute purportedly ensures that voters are not misled into believing that a committee that bears a candidate's name is an official, authorized committee of that candidate.

No reasonable person could believe that a committee with a clear, unambiguously negative name such as Stop Hillary PAC might be Hillary Rodham Clinton's principal campaign committee or other authorized committee.

Backer faces the prospect of burdensome administrative proceedings, substantial civil penalties, and criminal prosecution for his knowing, intentional, and willful defense of his (and others') constitutional rights to speech and association through his refusal to change Stop Hillary PAC's name. 52 U.S.C. § 30102(e)(4) imposes a substantial burden on Backer's fundamental First Amendment rights, does not further an important or compelling governmental interest, is not closely or narrowly tailored to achieving any such interests, and is unconstitutional under the First Amendment as applied to the formation or maintenance of non-connected political committees with names that contain clear, unambiguously negative references to the names of federal candidates.

52 U.S.C. § 30102(e)(4) is unconstitutional as applied to non-connected political committees that bear a clear, unambiguously negative name, including but not limited to "Stop X," "Fire X," or "Boot X."

11 C.F.R. § 102.14(b) Facially Violates the First Amendment

11 C.F.R. § 102.14, the FEC's implementing regulations for 52 U.S.C. § 30102(e)(4), create speaker- and content-based exceptions to § 30102(e)(4)'s categorical prohibition on non-connected committees' use of candidate names. The FEC's regulations provide:



(b)(1) A delegate committee, as defined at 11 CFR 100.5(e)(5), shall include the word delegate(s) in its name and may also include in its name the name of the presidential candidate which the delegate committee supports.

(2) A political committee established solely to draft an individual or to encourage him or her to become a candidate may include the name of such individual in the name of the committee provided the committee's name clearly indicates that it is a draft committee.

(3) An unauthorized political committee may include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate.

11 C.F.R. § 102.14.

The FEC's decision to selectively allow only certain non-connected committees to use candidates' names, while refusing to permit other non-connected committees to do so, is unconstitutional speaker- and content-based discrimination in violation of the First Amendment.

**11 C.F.R. § 102.14(b) Violates the First Amendment as Applied to Political Committees
With Names That Unambiguously Oppose a Federal Candidate**

The FEC's decision to selectively allow certain non-connected committees to use candidates' names when there is little or no possibility of public confusion, while refusing to permit other non-connected committees to do so, despite the same absence of a possibility of confusion, is unconstitutional speaker- and content-based discrimination. Thus, 11 C.F.R. § 102.14(b) violates the First Amendment as applied to non-connected committees that wish to adopt names which include clear, unambiguously negative references to federal candidates.

11 C.F.R. § 102.14(b) Violates the Equal Protection Component of the Due Process Clause

The Fifth Amendment's Due Process Clause conveys protections against discrimination by the federal government co-extensive with those that the Fourteenth Amendment's Equal Protection Clause imposes against action by state and local governments.

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Restrictions on the names of political committees abridge fundamental rights to freedom of speech and association protected by the First Amendment. Such restrictions trigger heightened or strict scrutiny under the Equal Protection Clause and Equal Protection component of the Fifth Amendment Due Process Clause.

11 C.F.R. § 102.14 violates the Fifth Amendment's Equal Protection guarantees by allowing some non-connected political committees to adopt names including the name of federal candidates, while allowing civil and criminal penalties against other committees that do so.

11 C.F.R. § 102.14(b) Violates the Equal Protection Component of the Due Process Clause as Applied to Committees With Names That Unambiguously Oppose a Federal Candidate

A non-connected political committee whose name clearly and unambiguously opposes a candidate poses no risk that the public will believe that the candidate authorized that committee to act on its behalf.

11 C.F.R. § 102.14 violates the Fifth Amendment's Equal Protection guarantees by allowing only some non-connected political committees to adopt names that include the names of federal candidates on the grounds that they do not pose a risk of public confusion, while prohibiting committees that wish to adopt names that clearly and unambiguously oppose particular candidates from doing so, despite the same absence of confusion.

11 C.F.R. § 102.14 therefore violates the Equal Protection Clause as applied to non-connected political committees that wish to adopt and maintain names that clearly and unambiguously oppose federal candidates.

Regards,

/s/ Dan Backer

Dan Backer, Esq.
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Stop Hillary PAC