

*Holding Power Accountable*

May 15, 2019

Hon. William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington DC 20530-0001

Re: Additional Facts Relevant to March 5, 2018 Complaint

Dear Attorney General Barr:

Common Cause writes to supplement its March 5, 2018 complaint<sup>1</sup> sent to the attention of Deputy Attorney General Rod, J. Rosenstein, then-Acting Assistant Attorney General, Criminal Division, John P. Cronan, and Acting Chief, Public Integrity Section, AnnaLou Tirol, requesting that the Department of Justice exercise its authority to investigate whether President Donald J. Trump, Donald J. Trump for President, Inc., America First Action, Inc., America First Policies, et al. violated the “soft money” restrictions, contribution limits and restrictions, and disclosure requirements of the Federal Election Campaign Act (FECA), 52 U.S.C. § 30101, *et seq.*

Count one of our 2018 complaint alleges, with strong basis in facts, that America First Action and America First Policies were established by and are acting on behalf of President Trump and his principal campaign committee, Donald J. Trump for President, and are raising and spending “soft money” (*i.e.*, funds raised outside of FECA contribution amount limits and source prohibitions) in connection with federal elections in violation of federal campaign finance laws.

Similarly, count two of our 2018 complaint alleges that President Trump and the Donald J. Trump for President committee are raising and spending “soft money” in connection with federal elections in violation of federal campaign finance laws.

The simple fact that President Trump established America First Policies and America First Action renders all of the groups’ election-related “soft money” fundraising and spending illegal under FECA. Now the Trump campaign has provided more evidence of this illegal activity—in the form of a public statement.

---

<sup>1</sup> Common Cause, DOJ Complaint Against President Donald J. Trump, et al., March 5, 2018, *available at* [https://www.commoncause.org/wp-content/uploads/2018/11/CC-v.-Trump\\_DOJ-Complaint\\_3.5.18\\_signed\\_without-Appendix.pdf](https://www.commoncause.org/wp-content/uploads/2018/11/CC-v.-Trump_DOJ-Complaint_3.5.18_signed_without-Appendix.pdf).

On May 7, 2019, the Donald J. Trump for President committee issued a statement<sup>2</sup> soliciting and/or directing “soft money” to America First Action in violation of federal campaign finance laws. The statement read:

#### Trump Campaign Statement on Dishonest Fundraising Groups

The following is a statement from the Donald J. Trump for President campaign:

President Trump’s campaign condemns any organization that deceptively uses the President’s name, likeness, trademarks, or branding and confuses voters. There is no excuse for any group, including ones run by people who claim to be part of our ‘coalition,’ to suggest they directly support President Trump’s reelection or any other candidates, when in fact their actions show they are interested in filling their own pockets with money from innocent Americans’ paychecks, and sadly, retirements. We encourage the appropriate authorities to investigate all alleged scam groups for potential illegal activities.

There are only four official fundraising organizations authorized by President Trump or the RNC: Donald J. Trump for President, the Republican National Committee, and two joint fundraising committees with the RNC, The Trump Make American Great Again Committee (TMAGAC) and Trump Victory. ***In addition, there is one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump’s policies and agendas.***<sup>3</sup>

The Federal Election Commission (FEC) has defined “to solicit” to mean:

[T]o ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.<sup>4</sup>

The following statement, according to FEC regulation, constitutes a solicitation: “Group X has always helped me financially in my elections. Keep them in mind this fall.”<sup>5</sup>

---

<sup>2</sup> Donald J. Trump for President, Inc., Trump Campaign Statement on Dishonest Fundraising Groups, May 7, 2019, available at <https://www.politico.com/f/?id=0000016a-9418-dca8-a1ff-fdb841f10001>.

<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> 11 C.F.R. § 300.2(m).

<sup>5</sup> *Id.* at 300.2(m)(2)(iii).



The FEC has defined “to direct” to mean:

[T]o guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value.<sup>6</sup>

When a federal candidate solicits funds for a super PAC such as America First Action, such candidate must explicitly limit the solicitation to funds compliant with FECA amount limits and source prohibitions. The FEC made clear in Advisory Opinion 2011-12 (Majority PAC, House Majority PAC) that federal candidates may not solicit unlimited contributions on behalf of super PACs, but “may solicit up to \$5000 from individuals (and any other source not prohibited by the Act from making a contribution to a political committee) on behalf of [a super PAC], because those funds are subject to the Act’s amount limitations and source prohibitions.”<sup>7</sup> Candidates soliciting funds for super PACs must “restrict any solicitations they make to funds subject to the limitations, prohibitions, and reporting requirements” of FECA.<sup>8</sup>

The Donald J. Trump for President committee’s May 7 statement solicited and/or directed funds for the super PAC America First Action by identifying America First Action as the “one approved” outside group that is “run by allies of the President and is a trusted supporter of President Trump’s policies and agendas.” This statement by the Trump campaign implicitly recommends that President Trump’s supporters contribute to America First Action, meeting the regulatory definition of “to solicit” at 11 C.F.R. § 300.2(m). This Trump campaign statement is analogous to the example of a solicitation given in the FEC’s regulation: “Group X has always helped me financially in my elections. Keep them in mind this fall.”<sup>9</sup> This statement by the Trump campaign also guides President Trump’s supporters to contribute to America First Action, meeting the regulatory definition of “to direct” at 11 C.F.R. § 300.2(n).

The Trump campaign’s May 7 statement failed to explicitly limit the solicitation and/or direction to funds permissible under FECA—*i.e.*, no more than \$5,000 per individual donor, no corporate or labor union funds.

---

<sup>6</sup> 11 C.F.R. § 300.2(n).

<sup>7</sup> FEC, Ad. Op. 2011-12 at 3, June 30, 2011, available at <https://www.fec.gov/files/legal/aos/2011-12/AO-2011-12.pdf>.

<sup>8</sup> *Id.* at 4; see also 11 C.F.R. § 300.64(b)(2)(i) (“A Federal candidate or officeholder may limit such a solicitation by displaying at the fundraising event a clear and conspicuous written notice . . . that the solicitation is not for Levin funds (when applicable), does not seek funds in excess of \$[Federally permissible amount], and does not seek funds from corporations, labor organizations, national banks, federal government contractors, or foreign nationals.”).

<sup>9</sup> *Id.* at 300.2(m)(2)(iii).

Consequently, the Donald J. Trump for President committee's May 7 statement is additional evidence that President Trump and his campaign committee have violated FECA's "soft money" prohibition at 52 U.S.C. 30125(e) and other FECA provisions, as alleged in counts one and two of our 2018 complaint.

Respectfully submitted,



---

Common Cause, by  
Paul S. Ryan  
Vice President, Policy and Litigation  
805 Fifteenth Street, NW, Suite 800  
Washington, DC 20005  
(202) 833-1200

Copy to:

Brian A. Benczkowski, Assistant Attorney General, Criminal Division  
AnnaLou Tirol, Acting Chief, Public Integrity Section

