

BEFORE THE FEDERAL ELECTION COMMISSION

COMMON CAUSE

805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

KAREN HOBERT FLYNN

805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

v.

MUR No. _____

MICHAEL WADDELL

c/o Bone Collector
5157 GA Highway 219
Fortson, GA 31808

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1), based on information and belief that Michael Waddell made undisclosed independent expenditures in connection with the 2016 presidential election, made an excessive in-kind contribution to presidential candidate Donald Trump, and failed to identify the funding and authorizing source of his public communications in violation of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.* and Commission regulations.
2. Specifically, based on published reports, complainants have reason to believe that Mr. Waddell made undisclosed independent expenditures in connection with the 2016 presidential election in the form of public communications—specifically, communications placed for a fee on Facebook—expressly advocating the election of Donald Trump, in violation of 52 U.S.C. § 30104(c), and failed to identify the funding and authorizing source of the public communications, in violation of 52 U.S.C. § 30120.

3. Additionally, complainants have reason to believe Waddell may have made an excessive contribution to Donald Trump by financing the dissemination, distribution, or republication of campaign materials prepared by candidate Donald Trump or his campaign. Under Commission regulations, such republication “shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.” 11 CFR § 109.23.
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” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

5. Michael Waddell is the founder of Bone Collector, a company dedicated to “standing up for the hunting culture” and host of a program on the Outdoor Channel. He promotes his products and program on a Facebook page called “Michael Waddell’s Bone Collector,” which currently has 909,917 “likes.”¹ The Michael Waddell’s Bone Collector Facebook page does not identify its funding and authorizing sources.
6. On September 27, 2016, Waddell posted the following message on his Facebook page: “There’s only one presidential candidate in this election that believes in, and will fight for, our God given right to protect and provide for our families and enjoy the great outdoors... #BoneCollector #Trump2016.”² The post included a link to a video featuring

¹ <https://www.facebook.com/officialbonecollector/>.

² <https://www.facebook.com/officialbonecollector/posts/10155210022799409>.

several outdoorsmen, including Waddell, explaining their support for the presidential campaign of Donald Trump and opposition to that of Hillary Clinton.³

7. The linked video, entitled #HEARTLANDFORTRUMP was produced by the Trump campaign, featured a clip of Donald Trump, and included the message “Paid for by Donald J. Trump for President, Inc.”⁴
8. On September 25, 2017, relying upon the Facebook-owned service CrowdTangle, a report from *VICE News* revealed that Waddell paid Facebook to promote his express advocacy post, which was shared more than 4,500 times.⁵
9. Waddell reported no independent expenditures in support of Donald Trump or in opposition to Hillary Clinton in connection with the 2016 presidential election.

SUMMARY OF THE LAW

10. FECA requires that every person who “makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year” shall file a statement with the Commission containing information about the expenditure. 52 U.S.C. § 30104(c)(1).
11. That statement must include information indicating whether the expenditure is in support of or opposition to the candidate involved, certifying whether or not it was made in cooperation with any candidate, and identifying any person who contributed in excess of \$200 to further the expenditure. 52 U.S.C. § 30104(c)(2).

³ *Id.*

⁴ <http://www.bonecollector.com/video-outdoorsmen-women-consider-voting-trump/>.

⁵ Alex Thompson and Noah Kulwin, “No one is tracking the illegal political ads in your Facebook feed,” *VICE NEWS*, September 25, 2017, *available at* <https://news.vice.com/story/facebook-political-ads>.

12. FECA defines “expenditure” to include “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[.]” 52 U.S.C. § 30101(9)(A)(i).
13. FECA defines “independent expenditure” to mean an expenditure by a person “expressly advocating the election or defeat of a clearly identified candidate; and . . . that is not made in concert or cooperation with or at the request or suggestion” of a candidate or party committee. 52 U.S.C. § 30101(17).
14. Commission regulation defines “expressly advocating” to include any communication that uses phrases such as “support the Democratic nominee,” “Smith for Congress,” “defeat” accompanied by a picture of a candidate, or communications that “in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say ‘Nixon’s the One,’ ‘Carter ‘76,’ ‘Reagan/Bush’ or ‘Mondale!’” 11 C.F.R. § 100.22(a). Commission regulation further defines “expressly advocating” to include any communication when:

[T]aken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because . . . [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and . . . [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

Id. at § 100.22(b).

15. FECA defines “person” to include an “individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons[.]” 52 U.S.C. § 30101(11).

16. Commission regulation provides that “financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate’s authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.” 11 CFR § 109.23(a).
17. FECA and Commission regulation prohibit any person from making contributions exceeding \$2,700 to a candidate’s authorized political committee. 52 U.S.C. § 30116(a)(1)(A); 11 CFR § 110.1(b).
18. Commission regulation defines “disbursement” to include “any purchase or payment” made by any person that is subject to FECA. 11 C.F.R. § 300.2(d).
19. FECA requires that when any person “makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate,” and the communication is not authorized by a candidate or authorized candidate committee, that person “shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate’s committee.” 52 U.S.C. § 30120.
20. Commission regulation requires public communications by any person that expressly advocate the election or defeat of a clearly identified candidate to include disclaimers. 11 C.F.R. § 110.11.
21. Commission regulation defines “public communication” as:

[C]ommunication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass

mailing, or telephone bank to the general public, or any other form of general public political advertising. The term *general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person's Web site.

11 C.F.R. § 100.26 (emphasis added).

CAUSES OF ACTION

COUNT I:

MICHAEL WADDELL FAILED TO DISCLOSE INDEPENDENT EXPENDITURES IN CONNECTION WITH THE 2016 PRESIDENTIAL ELECTION IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

22. Federal law requires every person who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year to file a disclosure statement with the Commission including information regarding contributions received by such person, information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved and a certification whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate. 52 U.S.C. § 30104(c).
23. Based on published reports, there is reason to believe that Waddell made independent expenditures in excess of \$250 in connection with the 2016 presidential election by paying Facebook to distribute his September 2016 public communications expressly advocating the election of 2016 presidential candidate Donald Trump and did not file required disclosure statements for such independent expenditures, in violation of 52 U.S.C. § 30104(c).

COUNT II:

MICHAEL WADDELL MADE AN IN-KIND CONTRIBUTION TO 2016 PRESIDENTIAL CANDIDATE DONALD TRUMP IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

24. Commission regulation provides that financing the “dissemination, distribution, or republication” of candidate campaign materials shall be considered “a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.” 11 CFR § 109.23(a)
25. Federal law and Commission regulation prohibit any person from making contributions exceeding \$2,700 to a candidate’s authorized political committee. 52 U.S.C. § 30116(a)(1)(A); 11 CFR § 110.1(b).
26. Based on published reports, there is reason to believe Michael Waddell made expenditures in excess of \$2700 to republish candidate Donald Trump’s campaign materials. Because this expenditure is considered an in-kind contribution by Waddell to Trump, there is further reason to believe Waddell made an excessive contribution in violation of 52 U.S.C. § 30116(a)(1)(A).

COUNT III:

MICHAEL WADDELL FAILED TO IDENTIFY THE FUNDING AND AUTHORIZING SOURCE OF HIS EXPRESS ADVOCACY PUBLIC COMMUNICATIONS IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

27. Federal law requires that when any public communication expressly advocating the election or defeat of a clearly identified candidate and not authorized by a candidate or authorized candidate committee must be accompanied by a disclaimer that “shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate’s committee.” 52 U.S.C. § 30120.

28. Based on published reports and the available evidence, there is reason to believe that Michael Waddell failed to include a disclaimer in his express advocacy public communications identifying their funding and authorizing sources, in violation of 52 U.S.C. § 30120.

PRAYER FOR RELIEF

29. Wherefore, the Commission should find reason to believe Michael Waddell violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. §§ 30104(c), 30116(a)(1)(A), and 30120, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin respondent(s) 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.

September 26, 2017

Respectfully submitted,

Common Cause, by
Karen Hobert Flynn
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

Karen Hobert Flynn
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

**For Complainants Common Cause and Karen
Hobert Flynn**

Karen Hobert Flynn

Sworn to and subscribed before me this ____ day of September 2017.

Notary Public