

January 22, 2018

Hon. Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530-0001

Dear Deputy Attorney General Rosenstein:

Common Cause requests that the Department of Justice exercise its authority to investigate whether Donald J. Trump's campaign committee, Donald J. Trump for President, Inc., the Trump Organization, and/or unknown persons ("John Doe") violated reporting requirements and contribution limits and restrictions of the Federal Election Campaign Act (FECA), 52 U.S.C. § 30101, *et seq.*

Given Attorney General Sessions' recusal from any investigations of any matters related in any way to the 2016 campaigns for President of the United States, we have not addressed this letter to the Attorney General.

The attached complaint, filed on this date with the Federal Election Commission (FEC), details the relevant facts establishing a reason to believe that a payment of \$130,000 from Essential Consultants LLC to Ms. Stephanie Clifford in October 2016 was an unreported in-kind contribution to Donald J. Trump for President, Inc., and an unreported expenditure by the committee—because the funds were paid for the purpose of influencing the 2016 presidential general election—in violation of the campaign finance reporting requirements established by 52 U.S.C. § 30104(b).

If the Trump organization was the source of the \$130,000 payment, then the Trump Organization made, and Donald J. Trump for President, Inc. received, a corporate contribution in violation of 52 U.S.C. § 30118(a). If John Doe was the source of the \$130,000 payment, then John Doe made, and Donald J. Trump for President, Inc. received, an excessive in-kind contribution in violation of 52 U.S.C. § 30116(a)(1)(A) or a corporate contribution in violation of 52 U.S.C. § 30118(a).

Although the Federal Election Commission (FEC) has exclusive jurisdiction over civil enforcement of the campaign finance laws, 52 U.S.C. § 30109(a), the Department of Justice has its own separate responsibility to enforce the campaign finance laws against "knowing and willful" violations. 52 U.S.C. § 30109(d); see *generally* FEDERAL PROSECUTION OF ELECTION OFFENSES (7th ed. May 2007) (DOJ HANDBOOK).

The DOJ HANDBOOK takes particular note of the fact that Congress increased criminal penalties for campaign finance violations as part of the Bipartisan Campaign Reform Act of 2002 (BCRA). As the Handbook states, at pp. 198-99:

BCRA significantly enhanced the criminal penalties for knowing and willful violations of the Federal Election Campaign Act. BCRA did so in response to identified anti-social consequences, namely, corruption and the appearance of corruption arising from FECA violations, and their adverse effect on the proper functioning of American democracy....

In view of the enhanced criminal penalties for FECA crimes and the legislative history supporting their enactment, it is the Justice Department's position that all knowing and willful FECA violations that exceed the applicable jurisdictional floor specified in the Act's criminal provision should be considered for federal prosecution....

The violations of federal campaign finance law alleged in the attached complaint undermine the integrity of democracy in the United States.

In addition to the violations of the Federal Election Campaign Act alleged in the attached complaint, the Department of Justice is responsible for enforcing 18 U.S.C. § 1001, which prohibits anyone in any matter within the jurisdiction of the executive branch of government from knowingly and willfully falsifying, concealing or covering up any material fact—*i.e.*, prohibits a candidate for federal office from causing an incomplete or incorrect disclosure report to be filed with the FEC in order to cover up a material fact.

We urge the Department of Justice to investigate all possible violations of the Federal Election Campaign Act and other federal laws in this matter.

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:

John P. Cronan, Acting Assistant Attorney General, Criminal Division
AnnaLou Tirol, Acting Chief, Public Integrity Section



BEFORE THE FEDERAL ELECTION COMMISSION

COMMON CAUSE

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

PAUL S. RYAN

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

v.

MUR No. _____

DONALD J. TRUMP FOR PRESIDENT, INC.

725 Fifth Avenue
New York, NY 10022

THE TRUMP ORGANIZATION

725 Fifth Avenue
New York, NY 10022

JOHN DOE, unknown source of funds paid by Essential Consultants LLC

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that Donald J. Trump's campaign committee, Donald J. Trump for President, Inc. (FEC I.D.#C00580100), the Trump Organization, and/or unknown persons ("John Doe") violated reporting requirements and contribution limits and restrictions of the Federal Election Campaign Act (FECA), 52 U.S.C. § 30101, *et seq.* and Commission regulations.
2. Specifically, based on publicly available data and published reports, complainants have reason to believe that the payment of \$130,000 from Essential Consultants LLC to Ms. Stephanie Clifford was an unreported in-kind contribution to President Trump's 2016 presidential campaign committee, Donald J. Trump for President, Inc., and an unreported

expenditure by the committee—because the funds were paid for the purpose of influencing the 2016 presidential general election. *See* 52 U.S.C. §§ 30101(8)(A) (defining “contribution”) and 30101(9)(A) (defining “expenditure”); *see also* 52 U.S.C. § 30104(b) (requiring reporting of “contributions” and “expenditures” by political committees).

3. Regardless of the source of the funds paid to Ms. Stephanie Clifford (including, *e.g.*, if Donald J. Trump provided the funds), complainants have reason to believe that Donald J. Trump for President, Inc. failed to report its receipt of the \$130,000 in-kind contribution and failed to report its \$130,000 expenditure to Ms. Stephanie Clifford in violation of 52 U.S.C. § 30104(b).
4. Complainants have reason to believe that the Trump Organization made, and Donald J. Trump for President, Inc. received, a corporate contribution in violation of 52 U.S.C. § 30118(a).
5. Complainants have reason to believe that John Doe made, and Donald J. Trump for President, Inc. received, an excessive in-kind contribution in violation of 52 U.S.C. § 30116(a)(1)(A) or a corporate contribution in violation of 52 U.S.C. § 30118(a).
6. “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).
7. “A ‘reason to believe’ finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its

exact scope.” FEC, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (March 16, 2007).

FACTS

8. On January 12, 2018, the *Wall Street Journal* reported that Michael Cohen arranged for the payment of \$130,000 to adult film actress Stephanie Clifford, known professionally as “Stormy Daniels.”¹
9. Mr. Cohen worked as “top attorney” at the Trump Organization “from 2007 until after the election,” serves as Donald J. Trump’s personal attorney, and referred to himself in a January 2017 interview as the “fix-it guy.”² Mr. Cohen was an agent of Mr. Trump and the Trump Organization in October 2016.
10. According to the *Wall Street Journal*, Ms. Clifford has alleged that she had a sexual encounter with Mr. Trump in 2006 and “had been in talks with ABC’s ‘Good Morning America’ in the fall of 2016 about an appearance to discuss Mr. Trump.”³
11. Mr. Cohen created Essential Consultants LLC on October 17, 2016 and used a bank account linked to the entity to pay Ms. Clifford.
12. This payment of \$130,000 was part of an agreement by which Ms. Clifford would be precluded from publicly discussing alleged sexual encounters between her and Mr. Trump.

¹ Michael Rothfeld and Joe Palazzolo, “Trump Lawyer Arranged \$130,000 Payment for Adult-Film Star’s Silence,” THE WALL STREET JOURNAL, January 12, 2018, *available at* <https://www.wsj.com/articles/trump-lawyer-arranged-130-000-payment-for-adult-film-stars-silence-1515787678> .

² *Id.*

³ *Id.*

13. Although the alleged sexual affair between Mr. Trump and Ms. Clifford occurred in 2006, the nondisclosure agreement was reached less than one month before the 2016 Presidential election.
14. The source of the \$130,000 paid from Essential Consultants LLC to Ms. Clifford is currently unknown.

SUMMARY OF THE LAW

15. The term “contribution” is defined in FECA to mean “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i) (emphasis added); *see also* 11 C.F.R. §§ 100.51–100.56.
16. As used in the definition of “contribution,” the phrase “anything of value” includes “all in-kind contributions.” The “provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution.” 11 C.F.R. § 100.52(d)(1).
17. The term “expenditure” is defined in FECA to mean “any purchase, payment, distribution, loan, advance, deposit, or gift or money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i) (emphasis added); *see also* 11 C.F.R. §§ 100.110–100.114.
18. As used in the definition of “expenditure,” the phrase “anything of value” includes “all in-kind contributions.” The “provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an expenditure.” 11 C.F.R. § 100.111(e)(1).
19. Any expenditure that is “coordinated” with a candidate is an in-kind contribution to the candidate and must be reported as a contribution to and expenditure by that candidate’s

authorized committee. “Coordinated” means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or an agent thereof. 11 C.F.R. § 109.20.

20. Commission regulations provide that “agent” means “any person who has actual authority, either express or implied,” to engage in campaign spending and other specified campaign-related activities. *See* 11 C.F.R. §§ 109.3 and 300.2(b).
21. The authorized committee of a candidate for federal office must report to the Commission the identification of each person who makes a contribution to the committee with an aggregate value in excess of \$200 within an election cycle. 52 U.S.C. § 30104(b)(3)(A).
22. The authorized committee of a candidate for federal office must report as a designated category of receipt “contributions from the candidate.” 11 C.F.R. § 104.3(a)(3)(ii).
23. The authorized committee of a candidate for federal office must report to the Commission the name and address of each person to whom an expenditure in an aggregate amount in excess of \$200 within the calendar year is made by the committee. 52 U.S.C. § 30104(b)(5)(A).
24. Generally, federal candidates may make “unlimited expenditures from personal funds.” 11 C.F.R. §100.10.
25. Expenditures of a candidate’s personal funds must be reported to the Commission as in-kind contributions to the candidate’s campaign. *See, e.g.*, FEC Advisory Opinion 1990-09.

26. Corporations and labor organizations may not make contributions to federal candidates, and federal candidates may not accept contributions from corporations or labor organizations. 52 U.S.C. § 30118(a).
27. No individual may make contributions to federal candidates that, in the aggregate, exceed \$2,700 per election. 52 U.S.C. § 30116(a)(1)(A).⁴

CAUSES OF ACTION

COUNT I:

DONALD J. TRUMP FOR PRESIDENT, INC. FAILED TO REPORT RECEIPT OF A \$130,000 IN-KIND CONTRIBUTION AS WELL AS A \$130,000 EXPENDITURE IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

28. In October 2016, Michael Cohen was an agent of Donald J. Trump. Based on published reports, there is reason to believe that Mr. Cohen’s payment of \$130,000 to Ms. Stephanie Clifford was for the purpose of influencing the 2016 presidential election and, therefore, constituted an “expenditure” by Mr. Trump or an “expenditure” coordinated with Mr. Trump—and, therefore, constituted an in-kind “contribution” to and an “expenditure” by Mr. Trump’s authorized campaign committee, Donald J. Trump for President, Inc.
29. Under FECA, Donald J. Trump for President, Inc. was required to report to the Commission the identification of each person who makes a contribution to the committee with an aggregate value in excess of \$200 within an election cycle. 52 U.S.C. § 30104(b)(3)(A).

⁴ As prescribed by statute under 52 U.S.C. § 30116(c), the \$2,000 limit has been adjusted for changes in the cost of living at the beginning of every odd-numbered year since 2002, most recently in February 2017. *See* FEC, Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10904, 10906 (Feb. 16, 2017).

30. Under FECA, Donald J. Trump for President, Inc. was required to report to the Commission the name and address of each person to whom an expenditure in an aggregate amount in excess of \$200 within the calendar year is made by the committee. 52 U.S.C. § 30104(b)(5)(A).
31. Based on published reports and review of FEC records, there is reason to believe that Donald J. Trump for President, Inc. failed to report its receipt of this \$130,000 contribution in violation of 52 U.S.C. § 30104(b)(3)(A).
32. Based on published reports and review of FEC records, there is reason to believe that Donald J. Trump for President, Inc. failed to report this \$130,000 expenditure in violation of 52 U.S.C. § 30104(b)(5)(A).

COUNT II:

THE TRUMP ORGANIZATION MADE, AND DONALD J. TRUMP FOR PRESIDENT, INC. RECEIVED, A CORPORATE CONTRIBUTION IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

33. In October 2016, Michael Cohen was an agent of Donald J. Trump. Based on published reports, there is reason to believe that Mr. Cohen's payment of \$130,000 to Ms. Stephanie Clifford was for the purpose of influencing the 2016 presidential election and, therefore, constituted an "expenditure" by Mr. Trump or an "expenditure" coordinated with Mr. Trump—and, therefore, constituted an in-kind "contribution" to and an "expenditure" by Mr. Trump's authorized campaign committee, Donald J. Trump for President, Inc.
34. In October 2016, Michael Cohen was an agent of the Trump Organization. Based on published reports, there is reason to believe that the Trump Organization was the source of the \$130,000 paid to Ms. Clifford.
35. Federal law prohibits corporations from making contributions to federal candidates. 52 U.S.C. § 30118(a).

36. If the Trump Organization was the source of the \$130,000 paid to Ms. Clifford, the Trump Organization made, and Donald J. Trump for President, Inc. received, a corporate contribution in violation of 52 U.S.C. § 30118(a).

COUNT III:

JOHN DOE MADE, AND DONALD J. TRUMP FOR PRESIDENT, INC. RECEIVED, AN EXCESSIVE OR CORPORATE CONTRIBUTION IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

37. In October 2016, Michael Cohen was an agent of Donald J. Trump. Based on published reports, there is reason to believe that Mr. Cohen’s payment of \$130,000 to Ms. Stephanie Clifford was for the purpose of influencing the 2016 presidential election and, therefore, constituted an “expenditure” by Mr. Trump or an “expenditure” coordinated with Mr. Trump—and, therefore, constituted an in-kind “contribution” to and an “expenditure” by Mr. Trump’s authorized campaign committee, Donald J. Trump for President, Inc.
38. Federal law prohibits individuals from making contributions to federal candidates in excess of \$2,700 per election. 52 U.S.C. § 30116(a)(1)(A).
39. Federal law prohibits corporations from making contributions to federal candidates. 52 U.S.C. § 30118(a).
40. Based on published reports, there is reason to believe that John Doe was the source of the \$130,000 paid to Ms. Clifford.
41. If John Doe was the source of the \$130,000 paid to Ms. Clifford and John Doe is an individual, then John Doe made, and Donald J. Trump for President, Inc. received, a contribution in violation of the \$2,700 limit established by 52 U.S.C. § 30116(a)(1)(A).
42. If John Doe was the source of the \$130,000 paid to Ms. Clifford and John Doe is a corporation, then John Doe made, and Donald J. Trump for President, Inc. received, a corporate contribution in violation of 52 U.S.C. § 30118(a).

PRAYER FOR RELIEF

43. Wherefore, the Commission should find reason to believe that Donald J. Trump for President, Inc., the Trump Organization, and/or John Doe violated 52 U.S.C. § 30101, *et seq.*, 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.

January 22, 2018

Respectfully submitted,



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



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

VERIFICATION

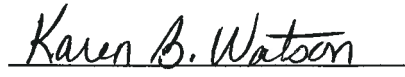
The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

For Complainants Common Cause and Paul S. Ryan



Paul S. Ryan

Sworn to and subscribed before me this 22nd day of January 2018.



Notary Public

