

**BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION**

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v.

MUR No. _____

DE First Holdings
2711 Centerville Road
Suite 210
Wilmington, DE 19808

John Doe, Jane Doe and other
persons who created and operated
DE First Holdings and made
contributions to Coalition for
Progress in the name of DE First
Holdings

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that DE First Holdings and any person(s) who created, operated and made contributions to or in the name of DE First Holdings (John Doe, Jane Doe and other persons) may have violated provisions of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. Specifically, based on published reports, complainants have reason to believe that the person(s) who created, operated and/or contributed to DE First Holdings may have violated 52 U.S.C. § 30122 by making a contribution to the political committee Coalition for Progress (I.D. C00582841) in the name of another person, namely DE First Holdings, and that DE First Holdings may have violated 52 U.S.C. § 30122 by knowingly permitting its name to be used for the making of such contribution.
3. Further, based on published reports, complainants have reason to believe that DE First Holdings and the person(s) who created and operated DE First Holdings may have violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to organize DE First Holdings as a political committee, as defined at 52 U.S.C. § 30101(4), register the political committee and file disclosure reports as a political committee.
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); *see also* 11 C.F.R. § 111.4(a) (emphasis added).

BACKGROUND

5. POLITICO New Jersey reported earlier this month: “On Dec. 23, a trust called DE First Holdings was established in Wilmington, Delaware . . . [the next day] it gave \$1 million to Coalition for Progress.”¹
6. Delaware Trust Company, located at 2711 Centerville Road, Suite 210, Wilmington, DE 19808, is the registered agent of DE First Holdings.²
7. The political committee named in the POLITICO New Jersey article is Coalition for Progress, which reported receiving a \$1 million contribution from DE First Holdings, with the same Delaware address as the Delaware Trust Company, on its year-end report filed with the Commission on January 29, 2016.
8. The POLITICO New Jersey news article quoted Sheila Krumholz of the Center for Responsive Politics as stating that “it defies common sense, or at least it challenges belief, that a company would register or organize on one day and already be actively involved in political campaigns the following day.”³
9. The name of the principles of DE First Holding are not publicly available and Laura Crozier, spokesperson for DE First Holdings’ registered agent, Delaware Trust Company,

¹ Max Friedman, *Dark money fuels pro-Fulop super PAC*, POLITICO NEW JERSEY, February 1, 2016 available at <http://www.capitalnewyork.com/article/new-jersey/2016/02/8589739/dark-money-fuels-pro-fulop-super-pac>.

² See Delaware Division of Corporations website database, available at <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>.

³ Max Friedman, *Dark money fuels pro-Fulop super PAC*, POLITICO NEW JERSEY, February 1, 2016 available at <http://www.capitalnewyork.com/article/new-jersey/2016/02/8589739/dark-money-fuels-pro-fulop-super-pac>.

stated that “[a]s a service provider, we do not publicly share customer information, unless required by law or to cooperate with law enforcement.”⁴

PROHIBITION ON CONTRIBUTIONS IN THE NAME OF ANOTHER

10. FECA provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.”
52 U.S.C. § 30122.
11. The Commission regulation implementing the statutory prohibition on “contributions in the name of another” provides the following examples of “contributions in the name of another”:
 - “Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made,” 11 C.F.R. § 110.4(b)(2)(i).
 - “Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.” 11 C.F.R. § 110.4(b)(2)(ii).
12. Based on published reports, complainants have reason to believe that DE First Holdings may have violated 52 U.S.C. § 30122 by “[g]iving money . . . , all or part of which was provided to” DE First Holdings by the person(s) who created, operated and/or contributed to DE First Holdings (*i.e.*, the true contributor(s)) without disclosing the source of money to Coalition for Progress at the time the contribution was made. *See* 11 C.F.R. § 110.4(b)(2)(i).

⁴ *Id.*

- 13. Based on published reports, complainants have reason to believe that the person(s) who created, operated and/or contributed to DE First Holdings may have violated 52 U.S.C. § 30122 by “[m]aking a contribution of money . . . and attributing as the source of the money . . . another person[, namely, DE First Holdings,] when in fact [the person(s) who created, operated and/or contributed to DE First Holdings was] the source.” See 11 C.F.R. § 110.4(b)(2)(ii).
- 14. Based on published reports, complainants have reason to believe that DE First Holdings may have violated 52 U.S.C. § 30122 by “knowingly permit[ting its] name to be used to effect such a contribution.” 52 U.S.C. § 30122.

**POLITICAL COMMITTEE STATUS, REGISTRATION
AND REPORTING REQUIREMENTS**

- 15. FECA defines the term “political committee” to mean “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A); see also 11 C.F.R. § 100.5(a). “Contribution,” in turn, is defined as “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). Similarly, “expenditure” is defined as “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 for Federal office[.]” 52 U.S.C. § 30101(9)(A)(i).
- 16. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term “political committee” to “only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *Id.* at 79

(emphasis added). Again, in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Court invoked the “major purpose” test and noted, in the context of analyzing the activities of a 501(c)(4) group, that if a group’s independent spending activities “become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.” *Id.* at 262 (emphasis added). In that instance, the Court continued, it would become subject to the “obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns.” *Id.* (emphasis added). The Court in *McConnell v. FEC*, 540 U.S. 93 (2003), restated the “major purpose” test for political committee status as iterated in *Buckley*. *Id.* at 170 n.64.

17. The Commission has explained:

[D]etermining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).

Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007).

18. For the reasons set forth above, there is a two prong test for “political committee” status under federal law: (1) whether an entity or other group of persons has a “major purpose” of influencing the “nomination or election of a candidate,” as stated by *Buckley*, and if so, (2) whether the entity or other group of persons receives “contributions” or makes “expenditures” of \$1,000 or more in a calendar year.

19. Any entity that meets the definition of a “political committee” must file a “statement of organization” with the Federal Election Commission, 52 U.S.C. § 30103, must comply

with the organizational and recordkeeping requirements of 52 U.S.C. § 30102, and must file periodic disclosure reports of its receipts and disbursements, 52 U.S.C. § 30104.⁵

20. The political committee disclosure reports required by FECA must disclose to the Commission and the public, including complainants, comprehensive information regarding such committee's financial activities, including the identity of any donor who has contributed \$200 or more to the committee within the calendar year. *See* 52 U.S.C. § 30104(b). The Supreme Court has repeatedly recognized the importance of campaign finance disclosure to informing the electorate. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 369 (2010) (“[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.”).
21. Based on published reports, complainants have reason to believe that DE First Holdings may have met the two-prong test for political committee status by (1) being an entity or group of persons with the “major purpose” of influencing the “nomination or election of a candidate”⁶ and (2) by receiving “contributions” of \$1,000 or more in a calendar year. Consequently, complainants have reason to believe that DE First Holdings and the person(s) who created and operated DE First Holdings may have violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to organize DE First Holdings as a political committee, as defined at 52 U.S.C. § 30101(4), register the political committee and file disclosure reports as a political committee.

⁵ In addition, a “political committee” that does not confine its activities to “independent expenditures” is subject to contribution limits, 52 U.S.C. §§ 30116(a)(1), 30116(a)(2), and source prohibitions, 52 U.S.C. § 30118(a), on the contributions it may receive. 52 U.S.C. § 30116 (f); *see also* FEC Ad. Op. 2010-11 at 2 (Commonsense Ten) (A committee that “intends to make only independent expenditures” and “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is not subject to contribution limits.)

⁶ *See Massachusetts Citizens for Life*, 479 U.S. at 262 (If a group’s political activities “become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.”)

PRAYER FOR RELIEF

22. Wherefore, the Commission should find reason to believe that DE First Holdings and the person(s) who created, operated and/or contributed to DE First Holdings have violated 52 U.S.C. § 30101 *et seq.*, including 52 U.S.C. §§ 30102, 30103, 30104 and 30122 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 the respondents 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.

February 23, 2016

Respectfully submitted,



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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 Complainant Campaign Legal Center



Paul S. Ryan


Sworn to and subscribed before me this 23 day of February 2016.



Notary Public



For Complainant Democracy 21



Fred Wertheimer

Sworn to and subscribed before me this 23 day of February 2016.



Notary Public

