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Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR 6939

DATE OF COMPLAINT: May 19, 2015

DATES OF NOTIFICATION: May 26, 2015

DATE OF LAST RESPONSE: June 17, 2015

DATE ACTIVATED: June 24, 2015

ELECTION CYCLE: 2016

EXPIRATION OF SOL: May 5, 2020

COMPLAINANTS:

Brad Woodhouse

American Democracy Legal Fund

RESPONDENTS:

Mike Huckabee

Pursuing America's Greatness and

Bryan Jeffrey in his official
capacity as treasurer

RELEVANT STATUTES
AND REGULATIONS:

52 U.S.C. § 30116(a)¹

52 U.S.C. § 30125(e)(1)(A)

11 C.F.R. § 300.2(m)

11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves an allegation that former Arkansas Governor Mike Huckabee solicited excessive contributions for an independent-expenditure-only committee when, during the announcement of his candidacy for the 2016 Republican presidential nomination, he stated, "[i]f you want to give a million dollars, please do it." Huckabee asserts that his statement was a joke, not an actual solicitation of a million-dollar contribution. Although Huckabee's remarks

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, was transferred from Title 2 to new Title 52 of the United States Code.

1 literally called for a listener to make a contribution in an amount outside of the limits of the
2 Federal Election Campaign Act of 1971, as amended ("the Act"), taken in context, we conclude
3 that Huckabee made his remark in jest and that an objectively reasonable observer would have
4 understood as much. We, therefore, recommend that the Commission dismiss the allegations
5 that Mike Huckabee violated 52 U.S.C. § 30125(e)(1)(A) or 11 C.F.R. § 300.61 and find no
6 reason to believe that Pursuing America's Greatness violated the Act in connection with the
7 challenged statement.

8 **II. FACTS**

9 On May 5, 2015, Huckabee announced his candidacy for President in the 2016 election in
10 a speech in his hometown of Hope, Arkansas.² During that speech, Huckabee stated:

11 I'm going to let you in on a little secret: I never have been, and I'm not going
12 to be the favorite candidate of those in the Washington-to-Wall Street corridor
13 of power. [Applause]

14
15 I will be funded and fueled not by the billionaires, but by working people
16 across America who will find out that \$15 and \$25 a month contributions can
17 take us from Hope to higher ground. [Applause]

18
19 Now, rest assured, if you want to give a million dollars, please do it.
20 [Laughter]. But I know most of you can't. I'm just going to ask you to give
21 something in the name of your children and grandchildren.³

22
23 After making the announcement, Huckabee timely registered his presidential campaign
24 committee, Huckabee for President, Inc.⁴

25

² See, e.g., Trip Gabriel, *Mike Huckabee Joins Republican Presidential Race*, The New York Times, May 5, 2015, http://www.nytimes.com/2015/05/06/us/politics/mike-huckabee-running-in-republican-presidential-primary.html?_r=0.

³ A video of the relevant portion of Huckabee's candidacy announcement is available in Voting Ballot Matters in the "Complaints and Responses" subfolder for this case.

⁴ FEC Form 1, Statement of Organization (May 8, 2015).

1 Pursuing America's Greatness ("PAG") registered with the Commission as an
2 independent-expenditure-only political committee ("IEOPC")⁵ on March 11, 2015.⁶ The press
3 reported that PAG was formed by Huckabee supporters to assist his anticipated 2016 presidential
4 campaign.⁷ Huckabee did not mention PAG during his speech.

5 Complainant alleges that Huckabee's statement was a solicitation of a million-dollar
6 contribution. Further, Complainant alleges that while Huckabee's own campaign could not
7 accept a million-dollar contribution, the solicitation actually was for PAG, an entity which could
8 accept unlimited contributions.⁸ Complainant alleges that Huckabee knew about PAG and its
9 ability to accept unlimited contributions because his campaign committee, his leadership PAC,
10 and PAG all had the same treasurer, and that Huckabee's audience would have understood his
11 statement as a clear reference to PAG.⁹ Complainant alleges that the Commission's regulations
12 provide that a statement need not be explicit to be a solicitation.¹⁰

13 Huckabee asserts that his statement was a joke and not a solicitation under the Act or the
14 Commission's regulations.¹¹ He notes that he was speaking to longtime friends and supporters in

⁵ IEOPCs, such as PAG, may solicit and accept unlimited contributions, but may not make any contributions. See Advisory Op. 2010-11 (Commonsense Ten) at 3; Advisory Op. 2011-11 at 4-5 (Colbert for President Inc.)

⁶ FEC Form 1, Statement of Organization (March 11, 2015). PAG's treasurer, Bryan Jeffrey, is also the treasurer of Huckabee's leadership PAC, HUCK PAC, and is now also the treasurer of Huckabee for President Inc.

⁷ See, e.g., Maggie Haberman, *Iowa Operative Will Run Mike Huckabee Super PAC*, The New York Times, Apr. 2, 2015, <http://www.nytimes.com/politics/first-draft/2015/04/02/iowa-operative-will-run-mike-huckabee-super-pac/>; Serafin Gomez, *Huckabee supporters launch super PAC*, FoxNews.com, Apr. 2, 2015, <http://www.foxnews.com/politics/2015/04/02/huckabee-supporters-launch-super-pac/>.

⁸ Compl. at 3-4.

⁹ Compl. at 1-2.

¹⁰ Compl. at 3, citing to 11 C.F.R. § 300.2(m)(2).

¹¹ Huckabee Resp. at 2.

HIGHEST PRIORITY

1 his hometown.¹² Huckabee further maintains that his audience recognized his comment as a joke
2 and immediately laughed, since many of them could likely not afford to give the permissible
3 \$2,700 maximum contribution.¹³

4 Huckabee argues that an alleged solicitation must be considered in the context that it was
5 made and that the Commission specifically advised that jokes and statements made in parody
6 may not constitute a solicitation.¹⁴ Huckabee argues that no objective observer would have
7 reasonably considered his statement an actual solicitation for million-dollar contributions, and
8 that the laughter from the audience shows that they understood his comment to be a joke.¹⁵

9 Finally, Huckabee argues that Complainants' allegation that the comment was a
10 solicitation for contributions to PAG is baseless because Huckabee did not directly or indirectly
11 refer to or mention PAG during his announcement and Complainant has not provided any
12 information showing that he did.¹⁶ PAG asserts that neither it, nor any of its representatives,
13 including its treasurer Jeffrey, had any involvement in Huckabee's campaign announcement.¹⁷

14 III. ANALYSIS

15 The Act and the Commission's regulations prohibit federal candidates and their agents
16 from soliciting funds that do not comply with the Act's prohibitions, limitations, and reporting

¹² *Id.* at 1-2. Huckabee described Hope, Arkansas, as a small rural town with a median household income of roughly \$25,000.

¹³ Huckabee Resp. at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ PAG Resp. PAG claims that Jeffrey does not serve as a political strategist or political consultant to either PAG or HUCK PAC. *Id.*

1 requirements to political committees or candidates.¹⁸ Huckabee did not mention or refer to PAG
2 during his speech, and despite Complainant's speculation as to what Huckabee or members of
3 the audience may have known about PAG, there is no basis for construing his statement as a
4 solicitation for PAG.

5 The remaining question is whether Huckabee was actually soliciting million dollar
6 contributions to his own campaign. The Commission's regulations define "solicit" broadly as
7 "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution,
8 donation, transfer of funds, or otherwise provide anything of value."¹⁹ The regulation states that
9 the communication should be "construed as reasonably understood in the context in which it is
10 made...."²⁰ This test is objective and does not turn on the subjective interpretations of the
11 speaker or the recipients.²¹ The speaker's conduct may also be relevant to the meaning of a
12 statement.²² The Commission explained that its objective standard "hinges on whether the
13 recipient should have reasonably understood that a solicitation was made."²³

¹⁸ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61. For the 2016 election cycle, a person may contribute a total of \$2,700 per election to a candidate's authorized committee. 52 U.S.C. § 30116(a)(1)(A). A multi-candidate political action committee may contribute a total of \$5,000 to a candidate's authorized committee. 52 U.S.C. § 30116(a)(2)(C).

¹⁹ 11 C.F.R. § 300.2(m).

²⁰ *Id.*

²¹ 300.2(m), *see also* Definitions of "Solicit" and "Direct"; Final Rule; 71 Fed. Reg. 13926-02, 13928 (March 20, 2006).

²² *Id.*

²³ 71 Fed. Reg. 13929

1 The Commission further explained that “words that would by their plain meaning
2 normally be understood as a solicitation, may not be a solicitation when considered in context,
3 such as when the words are used as part of a joke or parody.”²⁴

4 Given the record here, we conclude that an objective listener would not reasonably have
5 understood that Huckabee in fact solicited million-dollar contributions. Rather, he appeared to
6 be making a humorous aside in the course of his speech.²⁵ Immediately before saying “if you
7 want to give a million dollars, please do it,” Huckabee stated that his campaign would not be
8 funded by “Wall Street” or “billionaires” but would instead be funded by working people.
9 Huckabee expressly dismissed the idea that members of his audience would provide large
10 contributions and instead encouraged his listeners to consider contributing \$15 or \$25 a month.
11 Huckabee then visibly altered his facial expression and tone and added that, “[i]f you want to
12 give a million dollars, please do it.” Indeed, while making the aside, his demeanor changed in a
13 way that further would have reasonably evidenced to his audience that his remarks were not
14 serious or intended to be taken literally — he closes his eyes, pauses, shrugs, and smiles — and
15 many in the audience laughed.

16 Consequently, given the context in which Huckabee made his statement, a reasonable
17 person would have believed that Huckabee was not in earnest when he stated that “[i]f you want
18 to give a million dollars, please do it.” Therefore, we recommend that the Commission dismiss
19 the allegation that Mike Huckabee violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61

²⁴ *Id.* (citing *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 727 (1st Cir. 1992) (concluding that no reasonable listener would understand that a theater critic who wrote “[t]he producer who decided to charge admission for that show is committing highway robbery” was accusing the producer of the actual crime of robbery).

²⁵ *Id.*

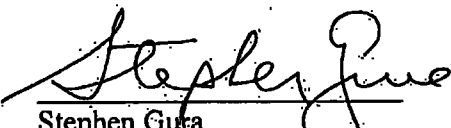
1 and find no reason to believe that Pursuing America's Greatness and Bryan Jeffrey in his official
2 capacity as treasurer violated the Act.

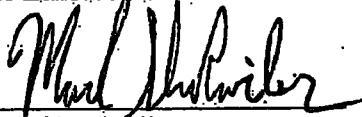
3 **IV. RECOMMENDATIONS**

- 4 1. Dismiss the allegation that Mike Huckabee violated 52 U.S.C. § 30125(e)(1)(A)
5 or 11 C.F.R. § 300.61.
6
7 2. Find no reason to believe that Pursuing America's Greatness and Bryan Jeffrey in
8 his official capacity as treasurer violated the Act.
9
10 3. Approve the attached Factual and Legal Analysis.
11
12 4. Approve the appropriate letters.
13
14 5. Close the file.

15
16
17 Daniel A. Petalas
18 Acting General Counsel

19
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21 9.22.15
22 _____
23 Date

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26 
27 Stephen Gura
28 Deputy Associate General Counsel
29 for Enforcement

30
31 
32 Mark Shonkwiler
33 Assistant General Counsel

34
35 
36 Kamau Philbert
37 Attorney
38
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