

MUR # 7139

BEFORE THE
FEDERAL ELECTION COMMISSION

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Mr. John K. Delaney
P.O. Box 60320
Potomac, MD 20859

Friends of John Delaney
P.O. Box 70835
Bethesda, MD 20813

Complainants,

v.

Maryland USA and Joel Ritter, Treasurer
P.O. Box 75650
Washington, DC 20013

Mr. Mark Epstein

Potomac, MD 20854

Ms. Amie Hoeber

Potomac, MD 20854

Amie Hoeber for Congress and Chris Marston, Treasurer
P.O. Box 61438
Potomac, MD 20859

Respondents.

COMPLAINT

Mr. John K. Delaney and Friends of John Delaney, by and through Mr. Delaney as the candidate,¹ file this complaint under 52 U.S.C. § 30109(a)(1) against Ms. Amie Hoeber; Mr. Mark Epstein; Maryland USA and Joel Ritter, Treasurer; and Amie Hoeber for Congress and

¹ Mr. Delaney and Ms. Hoeber are each a “candidate” for the United States House of Representatives in Maryland’s Sixth Congressional District as that term is defined and used by 52 U.S.C. § 30101(2). Friends of John Delaney and Amie Hoeber for Congress are the “authorized committee” of Mr. Delaney and Ms. Hoeber, respectively, as that term is defined and used by 52 U.S.C. § 30101(6).

OFFICE OF GENERAL
COUNSEL

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FEDERAL ELECTION
COMMISSION

Chris Marston, Treasurer, for violating the Federal Election Campaign Act of 1971, as amended (the Act), and Federal Election Commission (FEC) regulations, as described below.

This Complaint arises from flagrant violations of core campaign finance requirements. As discussed below, it concerns the wealthy spouse of a candidate pouring significant funds into a single-candidate, single-donor Super PAC engaged in advocacy for his spouse's election while at the same time serving as an officer of his spouse's campaign committee. Perhaps recognizing the inherent coordination issues this relationship created, the paperwork was amended to modify the titular roles of the players on the chess board midway through the campaign. The Complaint also clearly demonstrates that the Super PAC republished substantial portions of campaign materials produced by the principal campaign committee, including candidate statements made directly to the camera. And, it shows the Super PAC and principal campaign committee engaged multiple common vendors to perform similar campaign tasks. The incontrovertible facts unmistakably show two committees coordinating expenditures and structuring their operations to undermine key pillars of the campaign finance architecture resulting in excessive and forbidden campaign contributions.

The alleged violations of the Act and FEC regulations have caused significant harm to Complainants. In particular, the alleged misconduct has caused concrete injury to Complainants' efforts to be elected to federal office by introducing campaign expenditures and contributions into the race that have exceeded contribution limits and evaded campaign finance disclosure requirements. As a result, Complainants face a significant competitive harm. Complainants also have suffered harm as a result of the absence of disclosure related to particular campaign activities. The harm also stems from the unequal regulatory burden faced by Complainants relative to Respondents stemming from their violations of the Act and FEC regulations. The injury suffered is directly traceable to the misconduct of Respondents. Further, the harm would

be redressed by the various enforcement mechanisms at the FEC's disposal, including the power to enjoin illegal conduct, levy civil penalties, and refer willful violations to the Department of Justice. The controversy is undoubtedly ripe for adjudication, given the current participation of Complainants and Respondents in the current election cycle. Further, the various Parties may participate in future contests, giving rise to similar disputes. Last, Complainants retain an interest in the FEC's enforcement of campaign finance violations, and would suffer an independent harm were the Commission to abstain from ensuring compliance with the Act and regulations by failing to exercise its well-established enforcement powers.

A. FACTS

1. The official website for Maryland USA is marylandusapac.com. The website homepage features content exclusively in support of Ms. Hoeber.²
2. Maryland USA has reported spending \$1,338,758.32 supporting Hoeber's candidacy. Maryland USA has not made independent expenditures on behalf of any other candidate.³
3. The principal candidate committee for Ms. Hoeber's campaign is Amie Hoeber for Congress.⁴ The official website for Amie Hoeber for Congress is amieforcongress.com. WHOIS records provided by the Internet Corporation for Assigned Names and Numbers ("ICANN") show that the website was registered on June 30, 2015.⁵
4. On July 22, 2015, Maryland USA filed a Statement of Organization with the FEC.⁶
5. On July 29, 2015, Amie Hoeber for Congress filed a Statement of Organization with the FEC. Epstein was named as the Committee's Assistant Treasurer and Custodian of Records.⁷
6. On October 19, 2015, Amie Hoeber for Congress filed an amended Statement of Organization removing Epstein from any listed positions.⁸

² See, e.g., Maryland USA PAC, *Why Amie?*, <http://marylandusapac.com/why-amie/>.

³ See generally FEC Current Committee Information, *Maryland USA*.

⁴ See FEC Form 1, *Amie Hoeber for Congress*.

⁵ ICANN, *amieforcongress.com*, <https://whois.icann.org/en/lookup?name=amieforcongress.com>.

⁶ FEC Form 1, *Maryland USA*, <http://docquery.fec.gov/pdf/008/201507229000355008/201507229000355008.pdf>.

⁷ FEC Form 1, *Amie Hoeber for Congress*, July 29, 2015, <http://docquery.fec.gov/pdf/050/201507299000439050/201507299000439050.pdf>.

⁸ FEC Form 1 (Amended), *Amie Hoeber for Congress*, Oct. 19, 2015, <http://docquery.fec.gov/pdf/763/201510199003104763/201510199003104763.pdf>.

7. On October 26, 2015, Epstein contributed \$300,000 to Maryland USA. He was Maryland USA's only donor in 2015.⁹ In 2016, Epstein has contributed an additional \$1,800,000, for a total of \$2,100,100. Excluding Michael J. Hopmeier, who contributed \$1,000 in February 2016, Epstein has been Maryland USA's only donor.¹⁰
8. On November 30, 2015, Bethesda Magazine published an article on Maryland USA's independent expenditures in support of Ms. Hoeber's candidacy. The author wrote that "sources told Bethesda Beat in early September that the major source of funding for Maryland USA is expected to be Hoeber's husband, Mark Epstein. A multimillionaire who is a former executive of Qualcomm, a San Diego-based technology firm, Epstein is said to be prepared to contribute as much as \$1 million to Maryland USA to boost Hoeber's congressional bid."¹¹
9. Mr. Epstein has also contributed more than \$3000 to Amie Hoeber for Congress.¹²
10. On October 15, 2015, Amie Hoeber for Congress released an online video ("the Announcement Video") announcing Hoeber's candidacy. The Announcement Video featured Hoeber speaking directly to camera in front of a building.¹³
11. On November 18, 2015, Jamie Pound uploaded a thirty-second YouTube video on behalf of Maryland USA. The video, titled "Declaration 30 HD 2", used eighteen seconds of content from the Announcement Video, including a number of shots of Ms. Hoeber speaking directly to camera.¹⁴
12. On November 18, 2015, Jamie Pound uploaded a fifteen-second YouTube video on behalf of Maryland USA. The video, titled "Declaration 15 HD", used nine seconds of content from the Announcement Video, including several seconds of Ms. Hoeber speaking directly to camera.¹⁵
13. On November 19, 2015, Jamie Pound uploaded a thirty-second YouTube video on behalf of Maryland USA. The video, titled "StrongerAmerica HD 30 1119", used nine seconds

⁹ FEC Form 3X, *Maryland USA*, Jan. 28, 2016,

<http://docquery.fec.gov/pdf/911/201601289004686911/201601289004686911.pdf>.

¹⁰ FEC Form 3X, *Maryland USA*, Apr. 14, 2016,

<http://docquery.fec.gov/pdf/629/201604149012402629/201604149012402629.pdf>.

¹¹ Louis Peck, *Super PAC Spends \$200,000 to Boost Candidate In Crowded Dist. 6 GOP Contest*, Bethesda Beat, <http://www.bethesdamagazine.com/Bethesda-Beat/2015/Super-PAC-Spends-200000-to-Boost-Candidate-In-Crowded-Dist-6-GOP-Contest/>.

¹² See FEC Form 3, *Amie Hoeber for Congress*, Jan. 28, 2016,

<http://www.fec.gov/fecviewer/CandCmteFilingsPDFDownload.do?imageNumber=201601289004671570&pdfURL=docquery.fec.gov/pdf/570/201601289004671570/201601289004671570.pdf>; FEC Form 3, *Amie Hoeber for Congress*, Oct. 15, 2015,

<http://www.fec.gov/fecviewer/CandCmteFilingsPDFDownload.do?imageNumber=201510159002947352&pdfURL=docquery.fec.gov/pdf/352/201510159002947352/201510159002947352.pdf>.

¹³ YouTube, *Amie Hoeber Announces her Candidacy for Congress*, Oct. 15, 2015,

<https://www.youtube.com/watch?v=fWcbjFER9D8>.

¹⁴ YouTube, *Declaration 30 HD 2*, Nov. 18, 2015, <https://www.youtube.com/watch?v=UrO1OeCjPfU>.

¹⁵ YouTube, *Declaration 15 HD*, Nov. 18, 2015, <https://www.youtube.com/watch?v=huaVuhg91FA>.

of content from the Announcement Video, including several seconds of Ms. Hoeber speaking directly to camera.¹⁶

14. According to publicly available reports of media expenditures, which are attached to this Complaint for reference, and Independent Expenditure reports filed with the FEC, Maryland USA spent significantly to air broadcast, radio, and cable advertisements advocating for Ms. Hoeber's election, including in the weeks preceding Ms. Hoeber's primary election in Maryland in media markets targeting the electorate for the office she was seeking.
15. In November and December 2015, Maryland USA spent a combined \$28,300 for "Polling Services" from Wilson Perkins Allen Opinion Research, located at 1319 Classen Drive, Oklahoma City, OK. The last of these payments took place on December 4, 2015.¹⁷
16. On February 14, 2016, Amie Hoeber for Congress spent \$25,200 for "Public Opinion Research" from Wilson Perkins Allen, also located at 1319 Classen Drive.¹⁸
17. In March 2016, Amie Hoeber for Congress spent a combined \$2,144.59 for "Voter Telephone Contact" from i360 LLC, whose address is a PO Box in Baltimore, Maryland. The last payment occurred on March 31, 2016.¹⁹
18. On April 1, 2016, Maryland USA paid i360 LLC \$2,500 for "Database services."²⁰
19. In March 2016, Ms. Hoeber, discussing the manner in which she and her husband would be supporting her candidacy, stated that "we are to some extent self-funding my candidacy," and that she and her husband were putting "our money into this race, because we intend to win it."²¹

B. LEGAL ARGUMENT

By engaging in coordinated communications, Maryland USA made, and Ms. Hoeber and Amie Hoeber for Congress accepted, in-kind contributions in the form of coordinated

¹⁶ YouTube, *StrongerAmerica HD 30 1119*, Nov. 19, 2015, <https://www.youtube.com/watch?v=ISXv8NNICII>.

¹⁷ FEC Form 3X, *Maryland USA*, Jan. 28, 2016, <http://www.fec.gov/fecviewer/CandCmteFilingsPDFDownload.do?imageNumber=201601289004686911&pdfURL=docquery.fec.gov/pdf/911/201601289004686911/201601289004686911.pdf>.

¹⁸ FEC Form 3, *Amie Hoeber for Congress*, Apr. 14, 2016, <http://www.fec.gov/fecviewer/CandCmteFilingsPDFDownload.do?imageNumber=201604149012329713&pdfURL=docquery.fec.gov/pdf/713/201604149012329713/201604149012329713.pdf>.

¹⁹ *Id.*

²⁰ FEC Form 3X, *Maryland USA*, Apr. 14, 2016, <http://www.fec.gov/fecviewer/CandCmteFilingsPDFDownload.do?imageNumber=201604149012402629&pdfURL=docquery.fec.gov/pdf/629/201604149012402629/201604149012402629.pdf>.

²¹ YouTube, *Amie Hoeber's PWRC speech*, March 18, 2016, <https://www.youtube.com/watch?v=6Du33EMXz7o&feature=youtu.be&t=11m46s>.

communications. These contributions exceed contribution limits and violated the Act. In addition, Maryland USA clearly republished Amie Hoeber for Congress campaign materials, resulting in an excessive contribution in excess of the Act's limits.

1. Coordinated communications are considered an in-kind contribution subject to the FECA's contribution limits and source prohibitions.²²
2. FEC regulations establish a three-prong test to determine whether a communication is coordinated. All three prongs of the test—payment, content and conduct—must be met for a communication to be deemed coordinated and thus an in-kind contribution.²³ Maryland USA's advertisements meet the criteria for coordinated communications under this test.
3. Maryland USA's advertisements satisfy the payment prong.²⁴ The committee has reported numerous expenses in support of Hoeber.²⁵
4. Maryland USA's advertisements satisfy the content prong.²⁶ The committee has produced numerous ads expressly advocating the election of Hoeber. The advertisements, as described in Maryland USA's FEC filings, were placed on television and radio, thus constituting public communications that expressly advocate a clearly identified candidate for federal office.²⁷ The advertisements also qualify as public communications that refer to a clearly identified House candidate distributed in the candidate's jurisdiction within 90 days of the candidate's primary election.²⁸ Lastly, the advertisements also qualify as the functional equivalent of express advocacy.²⁹
5. The available evidence indicates that Maryland USA's advertisements satisfy the conduct prong based on communication between Maryland USA, Mr. Epstein, Amie Hoeber for Congress, and Ms. Hoeber. In particular, the position of Mr. Epstein as Assistant Treasurer for Amie Hoeber for Congress and the funder of Maryland USA, as well as his status as the spouse of Ms. Hoeber, strongly suggests that the public communications sponsored by Maryland USA were created at the request of Ms. Hoeber, Amie Hoeber for Congress, or her agent, Mr. Epstein.³⁰ The multiple roles played by Mr. Epstein ALSO

²² See generally 52 U.S.C. § 30116(a)(7); 11 C.F.R. § 109.21.

²³ 11 C.F.R. § 109.21.

²⁴ *Id.* § (a)(1).

²⁵ See, e.g., FEC Form 3X, *Maryland USA*, Apr. 14, 2016,

<http://www.fec.gov/fecviewer/CandCmteFilingsPDFDownload.do?imageNumber=201604149012402629&pdfURL=docquery.fec.gov/pdf/629/201604149012402629/201604149012402629.pdf>; FEC 24/48 Hour Report, *Maryland USA*, March 30, 2016,

<http://www.fec.gov/fecviewer/CandCmteFilingsPDFDownload.do?imageNumber=201603309012199613&pdfURL=docquery.fec.gov/pdf/PAPER/201603309012199613.pdf#navpanes=0>.

²⁶ 11 C.F.R. § 109.21(c).

²⁷ See *id.* § (c)(3).

²⁸ *Id.* § (c)(4).

²⁹ *Id.* § (c)(5).

³⁰ *Id.* § (d)(1); see also *id.* §§ 109.1, 109.3 (defining the term "agent" and explaining that Section 109 applies to expenditures made independently from candidates' agents).

strongly suggest that the public communications resulted from substantial discussion between Amie Hoeber for Congress and its agents and Maryland USA, or that Ms. Hoeber, her campaign, or her agents were materially involved in decisions related to the public communications.³¹

- a. Amie Hoeber for Congress began laying groundwork for Ms. Hoeber's candidacy in June, before Maryland USA registered with the FEC in July. Maryland USA has not supported any candidate besides Hoeber and the organization's website exclusively features pro-Hoeber content. The implication is that Maryland USA was created with the single purpose of supporting Hoeber, and that any money received or spent by Maryland USA is for the purpose of supporting Hoeber.
 - b. Maryland USA did not have a website, make public statements, or report any of its activities until November 2015, meaning that there was no public indication that the group would be supporting Ms. Hoeber or even conducting activities at all. However, press reports indicate that Epstein was Maryland USA's expected financial backer as early as September 2015. Maryland USA also began its activities in August 2015, months before officially receiving any contributions; the committee was either operating without knowing how it would pay for its activities, or it was operating with the knowledge that current activities would be paid for in the future by Mr. Epstein.
 - c. Mr. Epstein appears to have been aware of Maryland USA's intention to support Ms. Hoeber, and Maryland USA appears to have been aware of Mr. Epstein's intention to fund their operations. None of these intentions were public and indicate that Mr. Epstein and Maryland USA engaged in substantial discussion about Maryland USA's decisions to spend funds on public communications in support of Ms. Hoeber.
 - d. From July through October 19, 2015, Mr. Epstein was indisputably an agent of both Ms. Hoeber (as her spouse) and Amie Hoeber for Congress (as Assistant Treasurer), meaning that substantial discussions about public communications would satisfy the conduct prong.
6. Maryland USA's advertisements may also satisfy the conduct prong based on shared vendors between Maryland USA and the Campaign.³²
- a. Maryland USA and Amie Hoeber for Congress each paid Wilson Perkins Allen Opinion Research for polling services within 120 days of each other. There is no indication that Wilson Perkins Allen Opinion Research has established a firewall to keep information about Amie Hoeber for Congress' plans or needs from being conveyed to Maryland USA.

³¹ 11 C.F.R. §§ 109.21(d)(2)-(3).

³² *Id.* § (d)(4).

- b. Maryland USA and Amie Hoeber for Congress each paid i360 LLC for services within 120 days of each other. There is no indication that i360 LLC has established a firewall to keep information about the Campaign's plans or needs from being conveyed to Maryland USA.
7. Maryland USA's advertisements also qualify as an in-kind contribution based on the republication of footage prepared by Amie Hoeber for Congress.³³ The republication of campaign materials in whole or in part shall be considered a contribution for the purpose of contribution limits and reporting responsibilities of the person making the expenditure.³⁴
 - a. Maryland USA has created and distributed multiple ads consisting largely of material already produced and distributed by Amie Hoeber for Congress, including multiple advertisements featuring footage of Ms. Hoeber speaking to camera.
 - b. If the expenditures on these communications republishing the footage produced by Amie Hoeber for Congress exceeded relevant contribution limits, Maryland USA made an excessive campaign contribution. Further, if the republished advertisements were coordinated with Amie Hoeber for Congress, the communications may have resulted in Amie Hoeber for Congress also receiving an excessive contribution under the Act.
8. If Mr. Epstein or Maryland USA engaged in sufficient campaign activity prior to registering as a political committee, the Respondents may have failed to comply with the disclosure requirements in the FEC regulations.³⁵
9. The totality of the facts indicate that Maryland USA has no genuine existence apart from Amie Hoever for Congress; that it is an authorized committee of Ms. Hoeber that she has failed to designate as such on her Statement of Candidacy; that it is an affiliated committee of Amie Hoever for Congress; that it has failed to designate as such on its Statement of Organization; that it is directly or indirectly established, financed, or controlled by Ms. Hoever, Amie Hoeber for Congress and their agents, including Mr. Epstein; and that it is nonetheless raising and spending funds outside the limits of the Federal Election Campaign Act, all in violation of that Act and the Bipartisan Campaign Reform Act of 2002.

C. REQUESTED ACTION

As shown, the Commission should find reason to believe that the respondents have violated the Act and FEC regulations. We respectfully request that the Commission conduct an

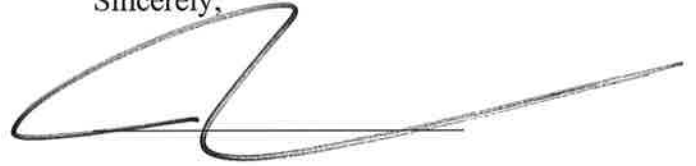
³³ *Id.* § 109.23.

³⁴ *Id.*

³⁵ *See id.* § 100.5 (defining political committee as an group that receives contributions in excess of \$1,000 or makes expenditures in excess of \$1,000 in a calendar year).

immediate investigation of these violations. Further, the Commission should impose appropriate sanctions for any and all violations, enjoin the respondents from any and all violations in the future, and impose such additional remedies as are necessary and appropriate to ensure compliance with the Act.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a long horizontal stroke.

SUBSCRIBED AND SWORN to before me this 21 day of September, 2016.

Molly Sullivan
Notary Public

A handwritten signature in black ink, appearing to read 'Molly Sullivan' with a stylized flourish at the end.

My Commission Expires:

October 31, 2020

