

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT**

MUR 7140

DATE COMPLAINT FILED: Sept. 22, 2016

DATE OF NOTIFICATION: Sept. 27, 2016

LAST RESPONSE RECEIVED: None

DATE ACTIVATED: Feb. 9, 2017

EXPIRATION OF SOL: Earliest: May 3, 2021

Latest: ongoing

ELECTION CYCLE: 2016

COMPLAINANT:

Huizenga for Congress and James Barry in his
official capacity as campaign manager

RESPONDENT:

Americans for Sensible Solutions PAC and
David Garrett in his official capacity as treasurerRELEVANT STATUTES AND
REGULATIONS:

52 U.S.C. § 30124(b)(1)

52 U.S.C. § 30104(a),(b)

11 C.F.R. § 110.16(b)

11 C.F.R. § 104.1

11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter concerns allegations that an independent-expenditure-only political committee (“IEOPC”), Americans for Sensible Solutions PAC and David Garrett in his official capacity as treasurer (“Committee”), solicited contributions by fraudulently misrepresenting that it was acting on behalf of congressional candidate Bill Huizenga and his authorized committee, Huizenga for Congress (“HFC”). The Complainant, HFC’s Campaign Manager, alleges that the Committee misled contributors by soliciting donations through a Twitter account named “@HuizengaTrump16” and by selling unauthorized “Huizenga Trump 2016 Unity Gifts” such as

1 mugs, shirts, and buttons online, in violation of the Federal Election Campaign Act of 1971, as
2 amended (the “Act”). The Committee did not respond to the Complaint.

3 As set forth below, the Committee appears to have solicited contributions through online
4 media that fraudulently represented that the Committee was acting for or on behalf of Huizenga.
5 In addition, the Committee failed to report its receipts, disbursements, and cash-on-hand balance
6 from 2016 to the present. Therefore, we recommend that the Commission find reason to believe
7 that the Committee violated 52 U.S.C. §§ 30124(b)(1), 30104(a) and (b), and authorize an
8 investigation.

9 **II. FACTUAL BACKGROUND**

10 The Committee registered with the Commission on May 3, 2016, as an IEOPC.¹ David
11 Garrett is its treasurer.² Since registering with the Commission, the Committee filed only one
12 disclosure report, the 2016 July Quarterly Report,³ which it filed in response to a Request for
13 Additional Information (“RFAI”) from the Commission’s Reports Analysis Division (“RAD”)
14 based on the Committee’s failure to file reports.⁴ The Committee submitted a handwritten 2016
15 July Quarterly Report by regular mail, and the report disclosed no receipts, disbursements, and
16 cash-on-hand.⁵ RAD notified the Committee of its obligation to file electronically; however, the

¹ See Statement of Organization (May 3, 2016). A similarly-named IEOPC, Americans For Sensible Solutions, filed a Statement of Organization on the same day, but has filed no disclosure reports.

² *Id.*

³ See 2016 July Quarterly (Aug. 8, 2016).

⁴ See RFAI – Failure to File – July Quarterly (Aug. 2, 2016).

⁵ See 2016 July Quarterly (Aug. 8, 2016).

1 Committee did not resubmit the report electronically.⁶ In addition, RAD notified the Committee
2 of its failure to file its 2016 October Quarterly, Post-General, and Year-End Reports, but the
3 Committee did not respond or file the reports.⁷

4 The Complainant alleges that beginning in May 2016, the Committee used Huizenga's
5 name and likeness to "mislead Americans and sell merchandise" without permission.⁸
6 Specifically, the Complaint alleges that the Committee established a Twitter account named
7 " , " which solicits donations via PayPal.⁹ The Twitter account also directs
8 visitors to a page on Zazzle¹⁰ selling " , " including mugs,
9 shirts, buttons, key chains, hats, and sweatshirts.¹¹ According to the Complaint, the Zazzle page
10 states: "This website is managed by the Americans for Sensible Solutions Political Action
11 Committee along with the Republican Organization for Legislative Loyalty,¹² and is intended to
12 encourage unity between these two tremendous candidates and highlight the overwhelming
13 similarity between their respective agendas and policy positions."

14 The Complaint did not provide copies of either the Twitter account or Zazzle page. The
15 available information indicates that during 2016, the Committee established accounts on Twitter,

⁶ See Notice of Paper Filing (Sept. 13, 2016).

⁷ See RFAI – Failure to File – October Quarterly (Oct. 31, 2016); RFAI – Failure to File – Post-General (Dec. 28, 2016); RFAI – Failure to File – Year-End Report (Feb. 16, 2017).

⁸ Compl. at 1 (Sept. 22, 2016).

⁹ *Id.*

¹⁰ "Zazzle" is an electronic commerce website that sells customizable products to customers. See <https://www.zazzle.com/about>.

¹¹ *Id.*

¹² The Republican Organization for Legislative Loyalty is not registered with the Commission as a political committee. At this time, we have no information regarding this entity.

1 Zazzle, Imgur,¹³ Pinterest, and Facebook using Huizenga's name and likeness, and that it has
 2 conducted similar unauthorized activity regarding many other federal candidates.

3 **A. @HuizengaTrump16 Twitter account**

4 The @HuizengaTrump16 Twitter account was suspended shortly after the Complaint was
 5 filed. A copy of the account as it appeared in September 2016 is attached as Attachment 1. The word
 6 "unofficial" appears in the account heading, but not in the tweets themselves. The account contains tweets
 7 from "Unity: Bill Huizenga@HuizengaTrump16" soliciting donations to the Committee's PayPal account
 8 and containing links to a Zazzle page selling merchandise. Each tweet contains a "TrumpHuizenga
 9 2016" campaign logo; a slogan, "Make the Michigan 2nd Great Again!;" and the web address,
 10 "www.HuizengaTrump2016.org."¹⁴ The tweet soliciting donations states: "Please donate \$64 to
 11 the Huizenga Trump Unity 2016 Campaign today!" A copy of the tweet is shown below.

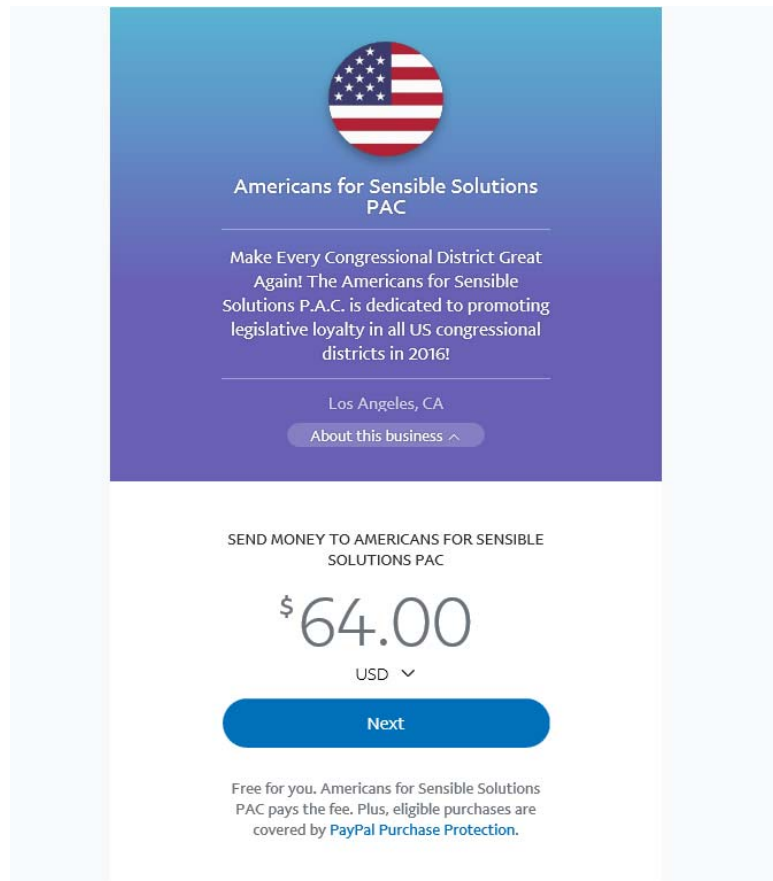


12

¹³ Imgur is an online image sharing website. See <http://imgur.com/about>.

¹⁴ The website, "www.HuizengaTrump2016.org," is no longer functioning.

- 1 The first page of the Committee's PayPal account is also shown below.



- 2 There are several other @HuizengaTrump16 tweets linking to the Zazzle page, and each
3 separately displays a hat, campaign button, mug, shirt, sweatshirt, or keychain with the "Trump
4 Huizenga 2016" campaign logo, slogan, and website address. An example of a tweet linking to
5 the Zazzle page selling the campaign button is shown below.



UNITY: Bill Huizenga @HuizengaTrump16 · Jul 16
zazzle.com/huizenga_trump...



👤 1 ❤️ 2 ⋮

1
 2 Information on Twitter @HuizengaTrump16 shows that several people saw and
 3 commented on the Twitter page. See Attachment 2. One tweet asks: “Where are u?
 4 @HuizengaTrump16” while referring to his government representatives. Another tweet asks:
 5 “@HuizengaTrump16 You’re for Trump?...Trump is on you, Congressman.” Copies of those
 6 tweets are shown below.



Andrew Hall @andrewchall13 · 9 Oct 2016

Still waiting for all of my govt representatives to release statements on Trump.
 Where are u? @HuizengaTrump16

👤 🔄 ❤️



pdot pushkin @pdotpushkin · 14 Sep 2016

@HuizengaTrump16 You're for Trump? At least @RepFredUpton got his mind
 right on that question. Trump is on you, Congressman

👤 🔄 ❤️

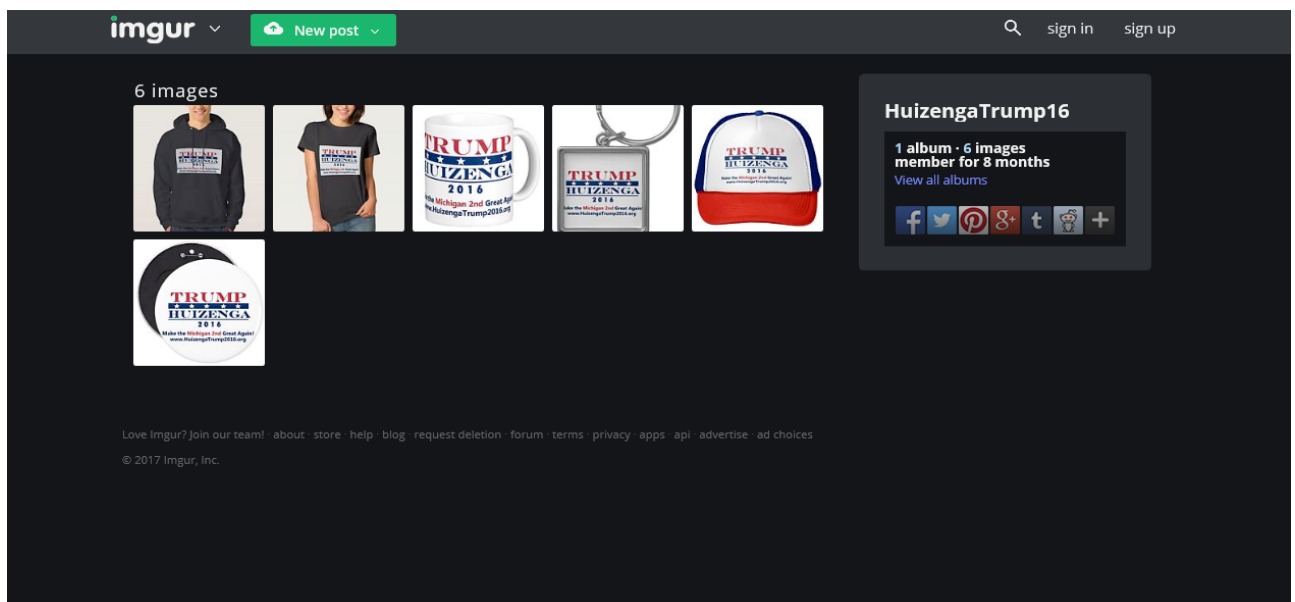
8

1 **B. Zazzle page**

2 The Zazzle page selling Huizenga Trump 2016 Unity merchandise is no longer
 3 functioning.¹⁵ Photographs of the merchandise for sale on that page appear in the
 4 @HuizengaTrump16 Twitter account, as well as in other social media accounts discussed below.

5 **C. Imgur Account**

6 The Committee also established a “HuizengaTrump16” Imgur account with images of the
 7 Huizenga Trump 2016 Unity merchandise sold on Zazzle. A copy of the Imgur account is
 8 shown below.¹⁶



9

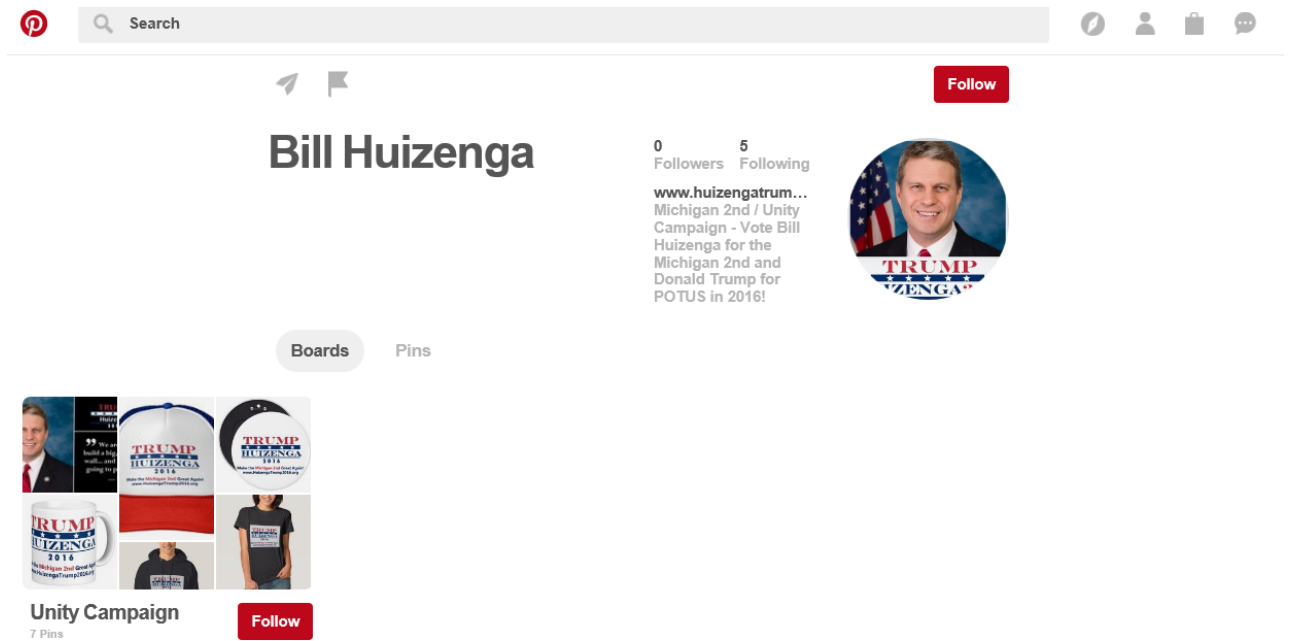
10 **D. Pinterest**

11 Similarly, the Committee created a Pinterest page saving images of the Huizenga Trump
 12 2016 Unity merchandise sold on Zazzle. A copy of the Pinterest page is shown below.¹⁷

¹⁵ See e.g., http://www.zazzle.com/huizenga_trump_2016_unity_button-145054775072021025 (broken link).

¹⁶ See <http://huizengatrump16.imgur.com/all/>.

¹⁷ See <https://www.pinterest.com/billhuizenga/>.



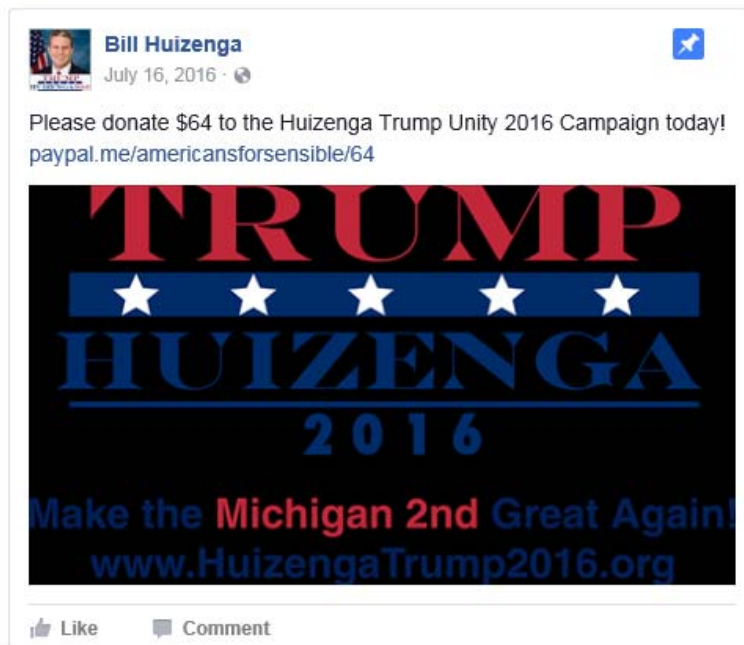
- 1 Clicking on the photographs of the merchandise shows that the Committee used
- 2 Huizenga's name (and picture) as the person "saving" the photographs to Pinterest. For
- 3 example:¹⁸

¹⁸ See <https://www.pinterest.com/pin/135319163783754045/>.



1
2 **E. “Trump Huizenga 2016 Unity Campaign” Facebook page**
3 In addition, the Committee created a “Trump Huizenga 2016 Unity Campaign” Facebook
4 page, which solicits donations to its PayPal account, and it also sells merchandise with
5 Huizenga’s name.
6 The posts on the Facebook page are similar to those on the Twitter account, and display a
7 Trump Huizenga 2016 campaign logo, slogan, and website address. A copy of the Facebook
8 page in its entirety is attached as Attachment 3. A copy of one post soliciting donations is shown
9 below.

Posts



1

2 **F. Unauthorized activity with respect to other federal candidates**

3 It appears that the Committee created at least thirty-three (33) “unofficial” “Unity
 4 Trump16” Facebook accounts naming various House and Senate candidates, soliciting donations
 5 to its PayPal account, and selling merchandise with the candidates’ names.¹⁹ One such example
 6 is the “Unofficial: Adam Kinzinger 2016 Unity Campaign” Facebook page.²⁰ A post on that
 7 page displays a Trump Kinzinger 2016 campaign logo and solicits donations as follows: “Please
 8 donate \$64 to the Kinzinger Trump Unity 2016 Campaign today!” and links to the Committee’s
 9 PayPal account. The post is shown below.

¹⁹ Copies of the 33 “Unity Trump16” Facebook accounts are available in the Voting Ballot Matters folder.

²⁰ Available at <https://facebook.com/Unofficial-Adam-Kinzinger-2016-Unity-Campaign-1734617503493915/>.

Posts



1
 2 In addition, the Committee marketed “unity gifts” on Zazzle using other candidates’
 3 names. For example, the Committee offered a “Kinzinger Trump 2016 Unity Sweatshirt” for
 4 sale that contained a campaign logo, slogan, and website similar to that of the Committee’s
 5 Huizenga Trump 2016 Unity merchandise, as shown below.²¹



6

²¹ See https://www.zazzle.com/kinzinger_trump_2016_unity_sweatshirt-235489038152365133.

1 The Zazzle page also states in pertinent part:

2 This website is managed by the Americans for Sensible
3 Solutions Political Action Committee along with The
4 Republican Organization for Legislative Loyalty, and is
5 intended to encourage unity between these two tremendous
6 candidates and highlight the overwhelming similarity between
7 their respective agendas and policy positions. By law, the
8 Americans for Sensible Solutions P.A.C. may not collaborate,
9 collude or coordinate with either the campaigns of either Adam
10 Kinzinger or Donald Trump. Please support a unified
11 Republican Party in the November Elections by donating to our
12 Political Action Committee or purchasing Unity items below.²²

13 In addition, in August 2016, Rep. Carlos Curbelo of Florida's 26th Congressional District
14 reportedly sent a cease-and-desist letter to the Committee for creating a series of unauthorized
15 social media accounts and e-commerce websites unlawfully using Curbelo's name and likeness
16 for commercial purposes and soliciting contributions.²³ In pertinent part, the letter reportedly
17 states that the Committee created a fraudulent Twitter account named @CurbeloTrump16, and
18 Facebook, Pinterest, and Imgur accounts each containing a "fraudulent 'Trump Curbelo 2016'
19 campaign logo" and that the Committee uses "the accounts to sell t-shirts, buttons and other
20 merchandise donning the fake logo on e-commerce site, Zazzle."²⁴ The cease-and-desist letter
21 also asserts that, among other violations of state and federal law, the Committee "engaged in an
22 intentional effort to raise political contributions using Mr. Curbelo's name" in violation of the

²² *See id.*

²³ *See* Matt Dixon, *Curbelo sends cease-and-desist to new PAC tying him to Trump*, POLITICO.COM, <http://www.politico.com/states/florida/story/2016/08/curbelo-sends-cease-and-deist-to-new-pac-tying-him-to-trump-104606>.

²⁴ *See id.*; letter from Charles R. Spies, Counsel to Carlos Curbelo and Carlos Curbelo Congress, to David Garrett, Treasurer (Aug. 8, 2016) available at <http://www.politico.com/states/f/?id=00000156-705f-d872-ad77-f47f1c410000>.

1 Act.²⁵ According to the letter, the social media accounts include links to “donate \$64 to the
 2 Curbelo Trump Unity 2016 Campaign today!” directing users to a PayPal account for the
 3 Committee.²⁶ The alleged fake campaign logo on a button described in the Curbelo cease-and-
 4 desist letter is shown below.²⁷



5
 6 Finally, a local news broadcast in New Hampshire reported that the Committee was using
 7 then-U.S. Senator Kelly Ayotte's name without permission on social media accounts, soliciting
 8 donations of \$64 to an unauthorized “Trump Ayotte Unity” campaign through a PayPal account,
 9 and selling unauthorized “Trump Ayotte 2016” merchandise on Zazzle.²⁸

10 **III. LEGAL ANALYSIS**

11 **A. Fraudulent Misrepresentation**

12 The Act and Commission regulations prohibit persons from fraudulently misrepresenting
 13 themselves as speaking, writing, or otherwise acting for or on behalf of any candidate or agent

²⁵ *Id.*

²⁶ *Id.*

²⁷ Curbelo cease-and-desist letter at n.3 citing <http://curbelotrump16.imgur.com/all/>

²⁸ See Deane, Kevin, A ‘PAC’ is asking for your \$64 to support Trump/Ayotte,” NH1.COM, <http://www.nh1.com/news/a-pac-is-asking-for-your-64-to-support-trump-ayotte/>.

1 thereof for the purpose of soliciting contributions or donations.²⁹ Even absent express
2 misrepresentation, a representation is considered fraudulent “if it was reasonably calculated to
3 deceive persons of ordinary prudence and comprehension.”³⁰ Based on the factual record
4 described above, the Committee appears to have misrepresented that it was acting on behalf of
5 Huizenga’s official campaign for the purpose of soliciting contributions.

6 First, the Committee does not clearly identify itself as distinct from Huizenga and HFC,
7 thus implying that Huizenga and HFC authorized the activity, when they did not.³¹ The use of
8 Huizenga’s name in the Twitter address @HuizengaTrump16 and each tweet, and on the
9 Facebook page “Trump Huizenga 2016 Unity Campaign” and in Facebook posts, while soliciting
10 contributions via the Committee’s PayPal account, misleads the ordinary reader into believing
11 that Huizenga is making or endorsing the solicitation. These accounts and messages also appear

²⁹ 52 U.S.C. § 30124(b)(1); 11 C.F.R. § 110.16(b). The Commission has previously identified various types of conduct that may support finding reason to believe that a respondent violated this provision. *See, e.g.*, Factual & Legal Analysis (“F&LA”) at 5-6, MUR 6531 (Obama-Biden 2012) (operating under the name “Obama-Biden 2012” and placing the candidate’s official logo on respondent’s website and on merchandise advertised on its website; F&LA at 2-4, MUR 5495 (johnkerry-edwards.org) (use of a false disclaimer and fake email address, and statements “designed to confuse recipients” that the respondent acted with the authority of a candidate); F&LA at 5, MUR 5472 (Republican Victory 2004 Committee) (statements using the word “Republican” that implied contributions would directly support the Republican Party); F&LA at 5-6, MUR 6893 (Winning the Senate) (finding an email solicitation that displayed the names of candidates as the senders was designed to mislead recipients).

³⁰ *See FEC v. Jody L. Novacek, Republican Victory Committee, Inc., et al.*, 739 F. Supp. 2d 957, 961 (N.D. Texas Apr. 14, 2010) (“*Novacek*”) (citing, *inter alia*, *Silverman v. United States*, 213 F.2d 405 (5th Cir. 1954) (holding that, if the mails are used in a scheme devised with the intent to defraud, the fact that there is no misrepresentation of a single existing fact makes no difference in the fraudulent nature of the scheme)).

³¹ *See, e.g.*, F&LA at 5-9, MUR 6893 (Winning the Senate) (finding reason to believe a violation of section 30124 occurred when a series of fundraising email solicitations expressly represented that four U.S. Senators sent the message, thereby reasonably suggesting that the senators endorsed the solicitation when in fact they did not).

1 designed to create the impression that funds contributed would support Huizenga's campaign.³²
2 The corroborative evidence supports a reasonable inference that the Committee intended to cause
3 such confusion. The statements on Twitter and Facebook suggest that the contributions directly
4 benefit Huizenga, rather than the Committee. For example, the solicitation: "Donate \$64 to the
5 Trump Huizenga Unity 2016 Campaign today!" suggests that a contribution to the Committee is
6 essentially a donation to Huizenga's campaign.³³

7 Second, the Committee styled the "Trump Huizenga 2016" logo to look like an official
8 campaign logo, and the name "www.HuizengaTrump2016.org" looks like an official website of
9 an authorized committee. They both appear designed to deceive a person of ordinary prudence
10 and comprehension into believing that the Committee is acting for or on behalf of Huizenga.³⁴

11 Third, even though proof of reliance is not necessary, the fact that viewers of the Twitter
12 account expressly referred to "Congressman" and "representatives" when referring to
13 @HuizengaTrump16 suggests that they believed Huizenga endorsed the Twitter account, when
14 in fact he did not.³⁵

³² *See id.*

³³ Compare, e.g., General Counsel's Brief, MUR 5472 at 8 (recommending probable cause in part on the basis of the statement, "Contributions or gifts to the *Republican Party* are not deductible as charitable contributions") (emphasis in original) with F&LA at 9-11, MUR 6641 (finding no reason to believe statements such as "Help CAPE PAC re-elect Allen West to Congress" led to fraudulent misrepresentation).

³⁴ *See Novacek*, 739 F. Supp. 2d at 961.

³⁵ *See* General Counsel's Brief at 14-16, MUR 5951 (recommending probable cause to believe Californians for Obama violated [section 30124] in part on the basis that multiple members of the public were in fact misled and contributed money to the respondents under the belief it would be contributed to then-Senator Barack Obama). The Commission found probable cause to believe a violation occurred. *See* Certification, MUR 5951 (Aug. 2, 2011).

1 Finally, the Committee's repeated failures to file required disclosure reports with the
 2 Commission, is "probative of the Committee's intent to misrepresent itself to the public."³⁶ In
 3 the one disclosure report filed with the Commission, the Committee discloses no receipts,
 4 disbursements, or contributions made to Huizenga or any other federal candidate.³⁷ Based on the
 5 numerous social media accounts soliciting donations and e-commerce pages selling merchandise,
 6 it is reasonable to assume that the Committee had some reportable financial activity.³⁸

7 The Committee's communications contain some features that try to distance the
 8 Committee from the Huizenga campaign, but these few features do not cure the communications'
 9 misleading nature.³⁹ These features suggest the Committee would receive the funds, and
 10 Huizenga did not "authorize" the solicitation.⁴⁰ However, they are not as prominent as, and are

³⁶ F&LA at 8, MUR 5472 (Republican Victory 2004 Committee) ("failure to file reports with the Commission indicating on what, if anything the money raised has been spent may be probative of the Committee's intent to misrepresent itself to the public."). See also Factual & Legal Analysis at 10, MUR 6633 (Republican Majority Campaign) (Mar. 7, 2014) ("[w]eighing against a finding of reason to believe that the Respondent violated [52 U.S.C. § 30124(b)] is the fact that [the respondent] is registered with the Commission and complies with its reporting requirements.").

³⁷ See 2016 July Quarterly Report (Aug. 8, 2016).

³⁸ See *Novacek*, 739 F. Supp. 2d at 965 (finding defendant's action constituted fraudulent misrepresentation where none of the funds she collected were ever contributed to any political candidate or committee, among other factors); F&LA at 4, MUR 5495 (www.johnkerry-edwards.org) (finding reason to believe that respondents fraudulently misrepresented themselves where no funds received allegedly benefited the candidate).

³⁹ These features are (1) the word "unofficial" appearing at the top of the Twitter accounts; (2) the statement "Send Money to Americans for Sensible Solutions PAC" on the Committee's PayPal account; and (3) the statement "Americans for Sensible Solutions P.A.C. may not collaborate, collude or coordinate with either [] campaigns" appearing the Kinzinger Trump 2016 Zazzle page.

⁴⁰ See F&LA at 6-7, MUR 6893 (Winning the Senate) (finding that the effectiveness of a disclaimer in the body of a solicitation e-mail was negated where other features of the communication were "written in a voice designed to perpetuate the belief that [the candidates] personally supported its message"); F&LA at 4 n.2, MUR 5472 (Republican Victory 2004 Committee); Statement of Reasons of Vice Chair Weintraub and Commissioners McDonald, Thomas, and Toner at 2, MUR 5089 (Apr. 2, 2004) (Matta Tuchman for Congress) (finding reason to believe as to fraudulent misrepresentation allegation where disclaimer was obscure).

1 outweighed by the use of, Huizenga's name and photograph throughout the solicitation.⁴¹
2 Further, the use of Huizenga's name and likeness as the person "saving" photographs of the
3 merchandise on Pinterest suggests his direct involvement in the "unity" campaign. Signs that
4 Huizenga endorsed the political fundraising solicitation may be particularly material to potential
5 contributors.⁴² A statement that the Committee would receive the funds does little or nothing to
6 lessen the false representation that Huizenga had endorsed the solicitation.⁴³

7 Viewed as a whole, the available record amply supports the conclusion that the
8 Committee fraudulently misrepresented itself as acting on behalf of Huizenga for the purpose of
9 soliciting contributions. Accordingly, we recommend that the Commission find reason to
10 believe that the Americans for Sensible Solutions PAC and David Garrett in his official capacity
11 as treasurer violated 52 U.S.C. § 30124(b)(1).⁴⁴

⁴¹ See F&LA at 6, MUR 6893 (Winning the Senate) (

⁴² The Supreme Court has held that a statement is material if it has "a natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it was addressed." *United States v. Gaudin*, 515 U.S. 506, 509 (1995). See F&LA at 6 MUR 6893 (Winning the Senate PAC) (

⁴³ See F&LA at 9, MUR 6893 (Winning the Senate) (

⁴⁴ By naming its Twitter account "@HuizengaTrump16," the Committee used the name of a candidate in a special project without showing opposition to that candidate, in violation of the Act and Commission regulations. 52 U.S.C. § 30102(e)(4); 11 C.F.R. § 102.14(a). An unauthorized committee may only include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(3); see also Advisory Op. 1995-09 at 6 (NewtWatch PAC) ("The operation of a World Wide Web site would be considered a project of the Committee"); Advisory Op. 2015-04 at 3-4 (Collective Actions PAC) (determining that a committee's "online activities are 'projects' that fall within the scope of 11 C.F.R. § 102.14"). These restrictions on the use of a candidate's name, however, have recently been the subject of litigation. In August 2016, the D.C. Circuit ruled that the Plaintiff committee was entitled to a preliminary injunction enjoining the application of 11 C.F.R. § 102.14(a) against its website and social media pages as a possible content-based ban on speech. See *Pursuing America's Greatness v. FEC*, 831 F. Supp. 3d 500 (D.C. Cir. Aug. 2, 2016). In light of this ongoing litigation, we do not make any recommendations as to the Committee's possible violation of 11 C.F.R. § 102.14(a) at this time.

1 **B. Failure to File Disclosure Reports**

2 Each treasurer of a political committee is required to file reports of receipts and
3 disbursements in accordance with 52 U.S.C. § 30104(a). Each report shall disclose the amount
4 of cash-on-hand at the beginning and end of the reporting period, the total amount of receipts for
5 the reporting period and for the calendar year, and the total amount of disbursements for the
6 reporting period for the calendar year.⁴⁵

7 The Committee failed to file its 2016 July Quarterly Report properly, and it failed to file
8 its 2016 October Quarterly, Post-General, Year-End Report, and its 2017 April Quarterly Report.
9 Accordingly, we recommend that the Commission find reason to believe that the Committee
10 violated 52 U.S.C. § 30104(a) and (b) by failing to properly report its receipts and disbursements
11 as required by the Act.

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⁴⁵ 52 U.S.C. § 30104(b)(1), (2), (4).

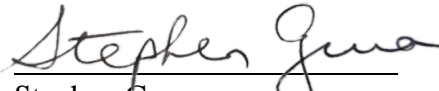
1 **V. RECOMMENDATIONS**


- 2 1. Find reason to believe that the Americans for Sensible Solutions PAC and David
 3 Garrett in his official capacity as treasurer violated 52 U.S.C. § 30124(b)(1).
 4
 5 2. Find reason to believe that the Americans for Sensible Solutions PAC and David
 6 Garrett in his official capacity as treasurer violated 52 U.S.C. § 30104(a) and (b).
 7
 8 3. Approve the attached Factual and Legal Analysis.
 9
 10 4. Authorize the use of compulsory process.
 11
 12 5. Approve the appropriate letter.
 13


14 Lisa J. Stevenson
 15 Acting General Counsel

16 Kathleen M. Guith
 17 Associate General Counsel for Enforcement

18
 19
 20 5.10.17
 21 Date

22 
 23 Stephen Gura
 24 Deputy Associate General Counsel
 25 for Enforcement

26 
 27 Mark Allen
 28 Assistant General Counsel

29 
 30 Christine C. Gallagher
 31 Attorney

32 Attachments:

- 33 1. @HuizengaTrump16 Twitter Account
 34 2. Twitter Search Results for @HuizingaTrump16
 35 3. Trump Huizenga 2016 Unity Campaign Facebook Account
 36 4. Factual and Legal Analysis



TRUMP
HUIZENGA2016

TWEETS 8 FOLLOWING 753 FOLLOWERS 52 LIKES 3 LISTS 2

UNITY: Bill Huizenga

@HuizengaTrump16

Unofficial Unity Campaign - Vote Bill Huizenga for the Michigan 2nd and Donald Trump for POTUS in 2016!

Michigan 2nd

facebook.com/Bill-Huizenga-...

Joined June 2016

Tweets Tweets & replies Media



UNITY: Bill Huizenga @HuizengaTrump16 · Jul 16
Please donate \$64 to the Huizenga Trump Unity 2016 Campaign today!

paypal.me/americansforse...



Make the Michigan 2nd Great Again!
www.HuizengaTrump2016.org

1 retweet 1 like



UNITY: Bill Huizenga @HuizengaTrump16 · Jul 16

zazzle.com/huizenga_trump...



1 retweet 1 like



UNITY: Bill Huizenga @HuizengaTrump16 · Jul 16

zazzle.com/huizenga_trump...

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Worldwide Trends

- #3AlbumsThatChangedMy 20.9K Tweets
- #FelizLunes 42.7K Tweets
- #HardCarry 242K Tweets
- #mondaymotivation 80.3K Tweets
- #debatenight 12.4K Tweets
- Paul Pierce 18.1K Tweets
- Palocci 31.6K Tweets
- マジック1 18.8K Tweets
- MARILENE NÃO SE METE 6,363 Tweets
- 매우 위험한 수준 2,129 Tweets



1 2

UNITY: Bill Huizenga @HuizengaTrump16 · Jul 16
zazzle.com/huizenga_trump...



1 1

UNITY: Bill Huizenga @HuizengaTrump16 · Jul 16
zazzle.com/huizenga_trump...





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New to Twitter?

Sign up now to get your own personalized timeline!

Sign up

Worldwide Trends

#themarksinger
1.34M Tweets

#FelizJueves
31.6K Tweets

#ナもフ
23.9K Tweets

#ThursdayThoughts
39.2K Tweets

#NationalDoctorsDay
6,682 Tweets

Luciano Huck
1.693 Tweets



Andrew Hall @andrewchall13 · 9 Oct 2016

Still waiting for all of my govt representatives to release statements on Trump. Where are u? @HuizengaTrump16



The Wholly C @ShuffleHappens · 21 Nov 2016

Added to super creepy list by @HuizengaTrump16 because my state rep is ignoring science. Might be a little premature on the list making guys



Karen Leidy @keladyleidy · 23 Sep 2016

@HuizengaTrump16 remove my name from your list!!! No permission given!!! Trump is evil, vile, and ignorant!!!!!!



pdot pushkin @pdotpushkin · 14 Sep 2016

@HuizengaTrump16 You're for Trump? At least @RepFredUpton got his mind right on that question. Trump is on you, Congressman



#Tennessee for Trump @ForTennessee · 23 Oct 2016

@RealStrategyFan @ScottPresler @gqforbes4 @TEN_GOP @DRUDGE_REPORT @LawlessPirate @HuizengaTrump16

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Worldwide Trends

#NotToday

205K Tweets

#DebatFinalPilkadaJKT

75.6K Tweets

#HappyDINoday

64.2K Tweets

#ساعة استجابة

54.2K Tweets

#MyValentineIn4Words

21K Tweets

JB FEAT ONED

140K Tweets

Death to America

26.4K Tweets

Pak Anies

8,458 Tweets

Djarot

34.4K Tweets

Bu Cecep

2,555 Tweets

Where are u? @HuizengaTrump16


The•Wholly•C @ShuffleHappens · 21 Nov 2016
Added to super creepy list by @HuizengaTrump16 because my state rep is ignoring science. Might be a little premature on the list making guys

Holland Hospital @HollandHospital · 6 Sep 2016
Thank you for following us! @CrazyHorse_MI @HuizengaTrump16 @Alison_Morsink @leonie26604899 @MichiganDOs

Karen Leidy @ladyleidy_karen · 23 Sep 2016
@HuizengaTrump16 remove my name from your list!!! No permission given!!! Trump is evil, vile, and ignorant!!!!!!

#Tennessee for Trump @ForTennessee · 23 Oct 2016
@RealStrategyFan @ScottPresler @gqforbes4 @TEN_GOP @DRUDGE_REPORT @LawlessPirate @HuizengaTrump16

James Corley @NavyVets4Trump
Gonna be a #TrumpLandslide



Dominic Pacheco @DominicPacheco · 20 Sep 2016
Thanks for the recent follow @SALT26250070 @HuizengaTrump16 Happy to connect :) have a great Tuesday. >> Get FREE? commun.it/?aid=thankyou1...

pdot pushkin @pdotpushkin · 14 Sep 2016
@HuizengaTrump16 You're for Trump? At least @RepFredUpton got his mind right on that question. Trump is on you, Congressman

robert reed @hollandguy · 1 Sep 2016
@HuizengaTrump16 but, I thought Trump was self funding?

Nothing came up for that search, which is a little weird. Maybe check what you searched for and try again.

Back to top ↑

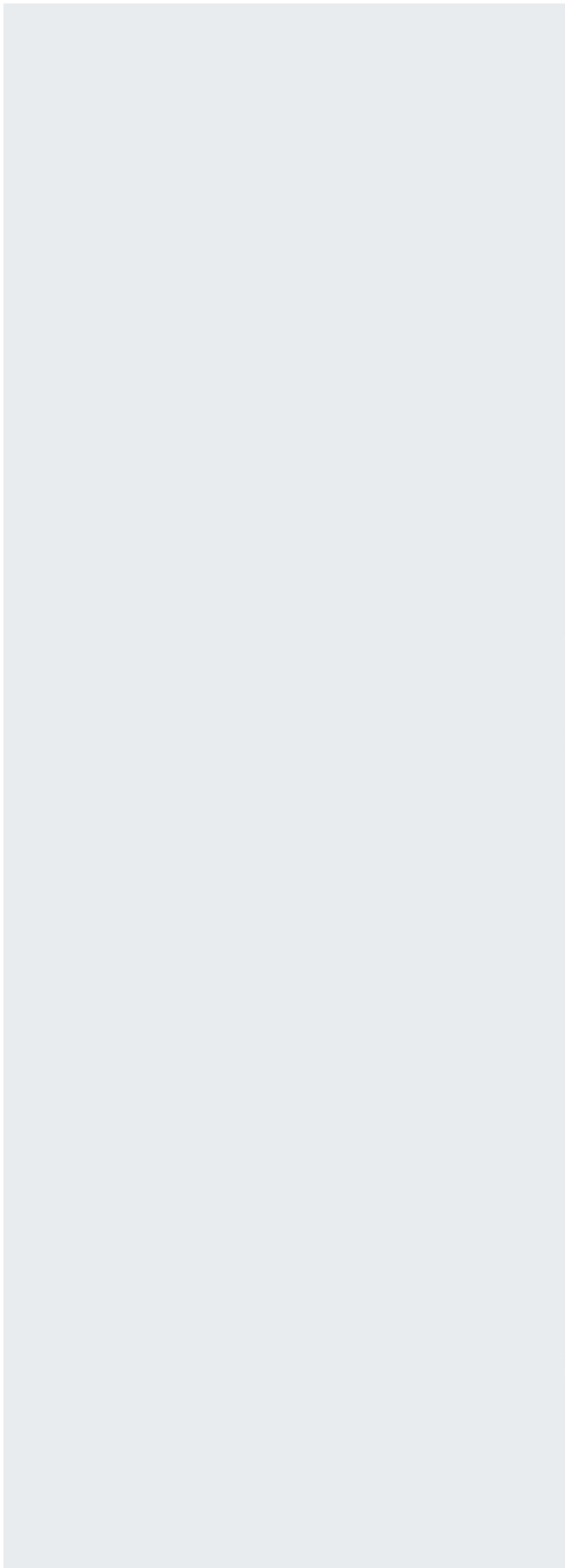
Facebook profile page for Bill Huizenga. The page header shows the name "Bill Huizenga" and a search icon. The profile picture is a portrait of Bill Huizenga with a banner that reads "TRUMP HUIZENGA 2016". The cover photo is a large American flag with gold stars.

Navigation menu on the left includes: Home, About, Photos, Likes, Videos, Posts, and a green "Create a Page" button.

Interaction buttons below the cover photo include: Like, Message, Save, and More.

Post 1: Bill Huizenga, July 16. Text: "Please donate \$64 to the Huizenga Trump Unity 2016 Campaign today paypal.me/americansforsensible/64". The post includes a large graphic with the text "TRUMP HUIZENGA 2016" and "Make the Michigan 2nd Great Again" with the website "www.HuizengaTrump2016.org". Interaction buttons: Like, Comment, Share.

Post 2: Bill Huizenga shared a link, September 23 at 11:49am. Title: "Huizenga Trump 2016 Unity Hat". Text: "Make the Michigan 2nd Great Again! Bill Huizenga is a Republican Member of Congress serving the Michigan 2nd Congressional District. Donald Trump is the Republican nominee for President of the United States. This website is managed by the American for Sensible Solutions Political Action Committee a...". Source: ZAZZLE.COM. Interaction buttons: Like, Comment, Share.



Bill Huizenga shared a link.

July 16 · 🌐



Huizenga Trump 2016 Unity Hat

Make the Michigan 2nd Great Again! Bill Huizenga is a Republican Member of Cong serving the Michigan 2nd Congressional District. Donald Trump is the Republican nominee for President of the United States. This website is managed by the...

ZAZZLE.COM

👍 Like

💬 Comment

➦ Share

1 share

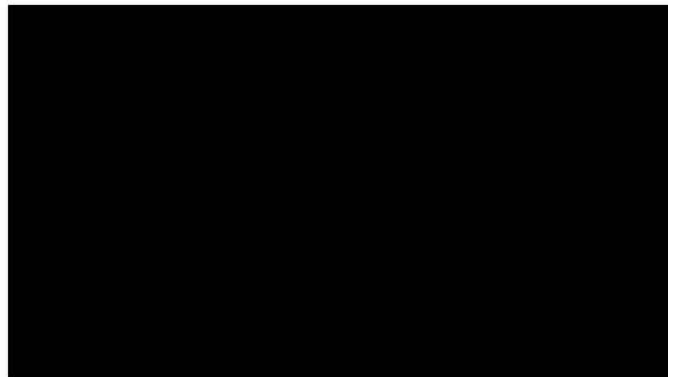


Write a comment...



Bill Huizenga shared a link.

July 16 · 🌐



Huizenga Trump 2016 Unity Button

Make the Michigan 2nd Great Again! Bill Huizenga is a Republican Member of Cong serving the Michigan 2nd Congressional District. Donald Trump is the Republican nominee for President of the United States. This website is managed by the...

ZAZZLE.COM

👍 Like

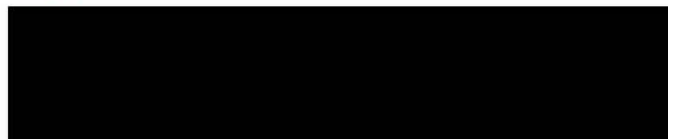
💬 Comment

➦ Share



Bill Huizenga shared a link.

July 16 · 🌐





Huizenga Trump 2016 Unity Mug

Make the Michigan 2nd Great Again! Bill Huizenga is a Republican Member of Cong serving the Michigan 2nd Congressional District. Donald Trump is the Republican nominee for President of the United States. This website is managed by the...

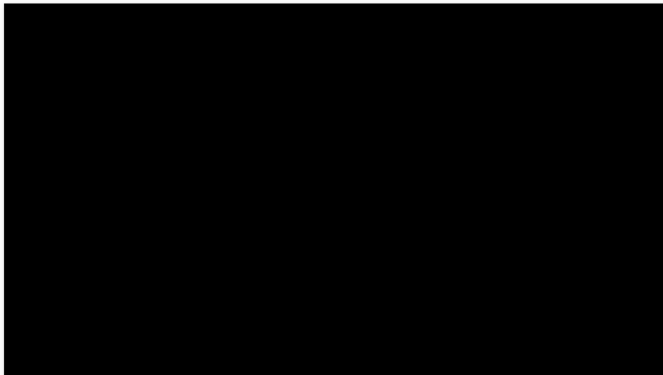
ZAZZLE.COM

Like Comment Share



Bill Huizenga shared a link.

July 16 · 🌐



Huizenga Trump 2016 Unity Shirt

Make the Michigan 2nd Great Again! Bill Huizenga is a Republican Member of Cong serving the Michigan 2nd Congressional District. Donald Trump is the Republican nominee for President of the United States. This website is managed by the...

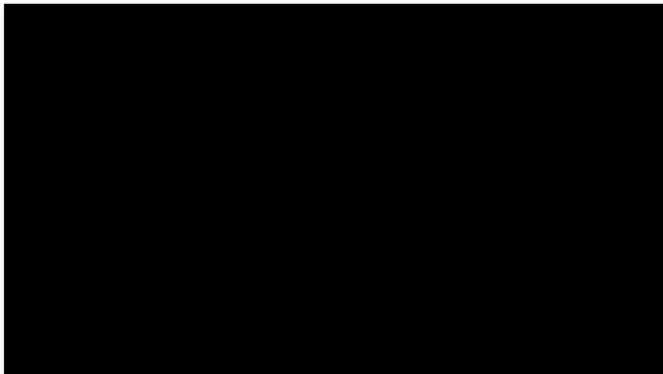
ZAZZLE.COM

Like Comment Share



Bill Huizenga shared a link.

July 16 · 🌐



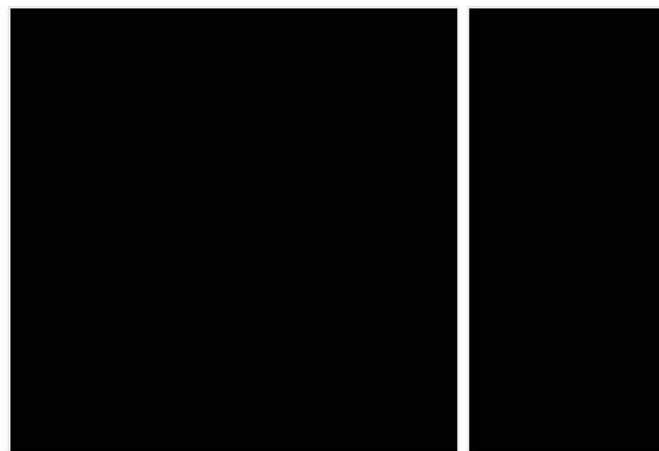
Huizenga Trump 2016 Unity Sweatshirt

Make the Michigan 2nd Great Again! Bill Huizenga is a Republican Member of Cong serving the Michigan 2nd Congressional District. Donald Trump is the Republican nominee for President of the United States. This website is managed by the...

ZAZZLE.COM

Like Comment Share

Bill Huizenga shared a link.
July 16 -



Huizenga Trump 2016 Unity Keychain

Huizenga Trump 2016

Like Comment Share

Bill Huizenga added a new photo.
July 5 -



Like Comment Share

Bill Huizenga updated their cover photo.
July 4 -



Like Comment Share



Bill Huizenga updated their profile picture.

July 4 · 🌐



Like Comment Share

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Americans for Sensible Solutions PAC and MUR: 7140
David Garrett in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by James Barry, Campaign Manager for Huizenga for Congress (“HFC”), alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), by Americans for Sensible Solutions PAC and David Garrett in his official capacity as treasurer (the “Committee”).

The Complaint alleges that the Committee, an independent-expenditure-only political committee (“IEOPC”), solicited contributions by fraudulently misrepresenting that it was acting on behalf of congressional candidate Bill Huizenga and HFC through a Twitter account named “@HuizengaTrump16” and by selling unauthorized “Huizenga Trump 2016 Unity Gifts” such as mugs, shirts, and buttons online. The Committee did not respond to the Complaint.

As set forth below, the Committee appears to have solicited contributions through online media with solicitations that fraudulently represented the Committee was acting for or on behalf of Huizenga. In addition, the Committee failed to report its receipts, disbursements, and cash-on-hand balance to the Commission from 2016 to the present. Accordingly, there is reason to believe that the Committee violated 52 U.S.C. §§ 30124(b)(1) and 30104(a) and (b).

1 **II. FACTUAL BACKGROUND**

2 The Committee registered with the Commission on May 3, 2016, as an IEOPC.¹ David
3 Garrett is its treasurer.² Since registering with the Commission, the Committee filed only one
4 disclosure report, the 2016 July Quarterly Report,³ which it filed in response to a Request for
5 Additional Information (“RFAI”) from the Commission’s Reports Analysis Division (“RAD”)
6 based on the Committee’s failure to file reports.⁴ The Committee submitted a handwritten 2016
7 July Quarterly Report by regular mail, and the report disclosed no receipts, disbursements, and
8 cash-on-hand.⁵ RAD notified the Committee of its obligation to file electronically; however, the
9 Committee did not resubmit the report electronically.⁶ In addition, RAD notified the Committee
10 of its failure to file its 2016 October Quarterly, Post-General, and Year-End Reports, but the
11 Committee did not respond or file the reports.⁷

12 The Complainant alleges that beginning in May 2016, the Committee used Huizenga’s
13 name and likeness to “mislead Americans and sell merchandise” without Huizenga’s
14 permission.⁸ Specifically, the Complaint alleges that the Committee established a Twitter

1 ¹ See Statement of Organization (May 3, 2016).

2 ² *Id.*

3 ³ See 2016 July Quarterly (Aug. 8, 2016).

4 ⁴ See RFAI – Failure to File – July Quarterly (Aug. 2, 2016).

5 ⁵ See 2016 July Quarterly (Aug. 8, 2016).

6 ⁶ See Notice of Paper Filing (Sept. 13, 2016).

7 ⁷ See RFAI – Failure to File – October Quarterly (Oct. 31, 2016); RFAI – Failure to File – Post-General (Dec. 28, 2016); RFAI – Failure to File – Year-End Report (Feb. 16, 2017).

8 ⁸ Compl. at 1 (Sept. 22, 2016).

1 account named “@HuizengaTrump16,” which solicits donations via PayPal.⁹ The Twitter
2 account also directs visitors to a page on Zazzle¹⁰ selling “Huizenga Trump 2016 Unity Gifts,”
3 including mugs, shirts, buttons, key chains, hats, and sweatshirts.¹¹ According to the Complaint,
4 the Zazzle page states: “This website is managed by the Americans for Sensible Solutions
5 Political Action Committee along with the Republican Organization for Legislative Loyalty,¹²
6 and is intended to encourage unity between these two tremendous candidates and highlight the
7 overwhelming similarity between their respective agendas and policy positions.”

8 The Complaint did not provide copies of either the Twitter account or Zazzle page. The
9 available information indicates that during 2016, the Committee established accounts on Twitter,
10 Zazzle, Imgur,¹³ Pinterest, and Facebook using Huizenga’s name and likeness, and that it has
11 conducted similar activity regarding other federal candidates.

12 **A. @HuizengaTrump16 Twitter account**

13 The @HuizengaTrump16 Twitter account was suspended shortly after the Complaint was
14 filed. The word “unofficial” appears in the account heading, but not in the tweets themselves.
15 The account contains tweets from “Unity: Bill Huizenga@HuizengaTrump16” soliciting
16 donations to the Committee’s PayPal account and containing links to a Zazzle page selling
17 merchandise. Each tweet contains a “TrumpHuizenga 2016” campaign logo; a slogan, “Make

⁹ *Id.*

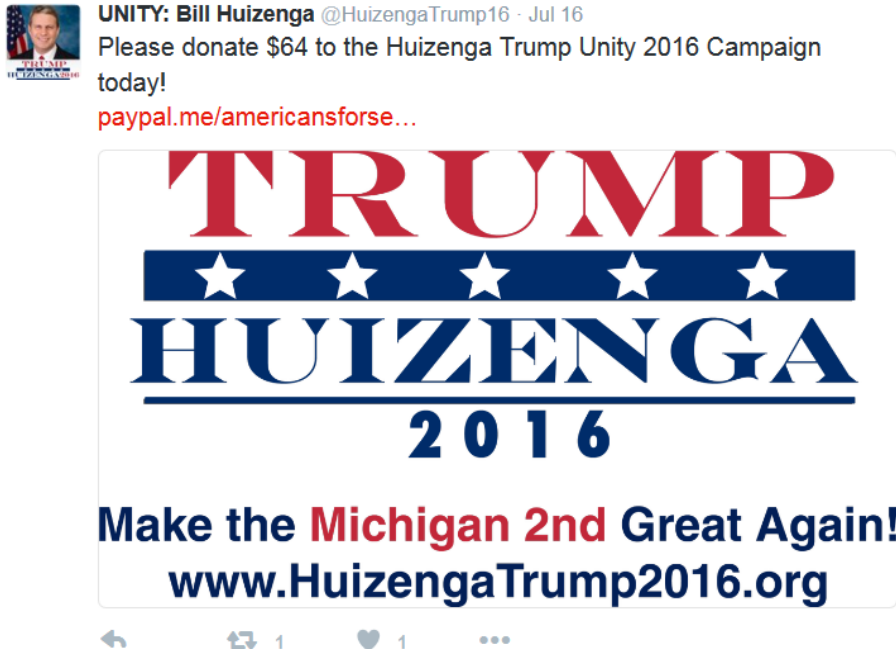
¹⁰ “Zazzle” is an electronic commerce website that sells customizable products to customers. *See* www.zazzle.com/about.

¹¹ *Id.*

¹² The Republican Organization for Legislative Loyalty is not registered with the Commission as a political committee. At this time, we have no information regarding this entity.

¹³ Imgur is an online image sharing website. *See* <http://imgur.com/about>.

- 1 the Michigan 2nd Great Again!;" and the web address, "www.HuizengaTrump2016.org."¹⁴ The
 2 tweet soliciting donations states: "Please donate \$64 to the Huizenga Trump Unity 2016
 3 Campaign today!" A copy of the tweet is shown below.



- 4
 5 There are several other @HuizengaTrump16 tweets linking to the Zazzle page, and each
 6 separately displays a hat, campaign button, mug, shirt, sweatshirt, or keychain with the "Trump
 7 Huizenga 2016" campaign logo, slogan, and website address. An example of a tweet linking to
 8 the Zazzle page selling the campaign button is shown below.

¹⁴ The website, "www.HuizengaTrump2016.org," is no longer functioning.



1

2

3

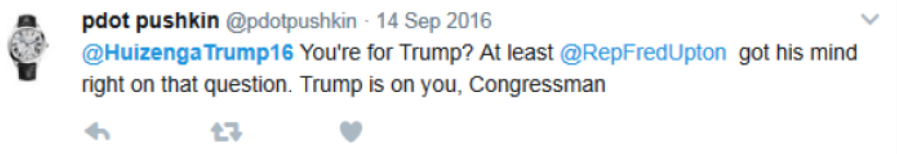
4

5

Information on Twitter @HuizengaTrump16 shows that several people saw and commented on the Twitter page. One tweet asks: “Where are u? @HuizengaTrump16” while referring to his government representatives. Another tweet asks: “@HuizengaTrump16 You’re for Trump?...Trump is on you, Congressman.” Copies of those tweets are shown below.



6



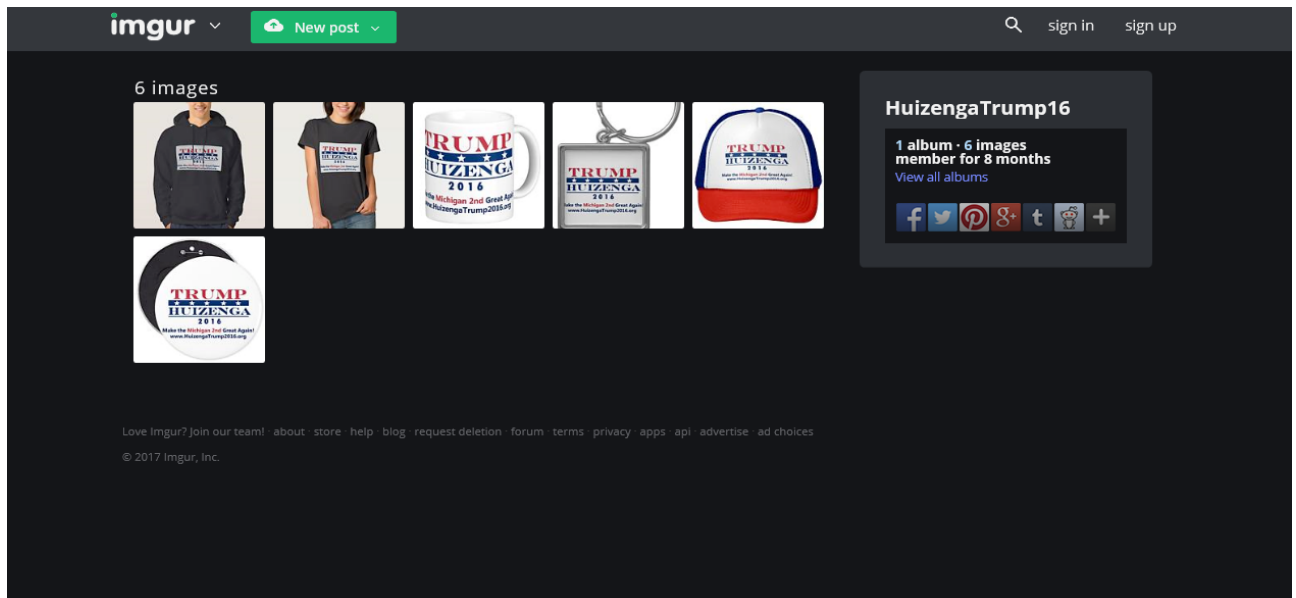
7

1 **B. Zazzle page**

2 The Zazzle page selling Huizenga Trump 2016 Unity merchandise is no longer
 3 functioning.¹⁵ Photographs of the merchandise for sale on that page appear in the
 4 @HuizengaTrump16 Twitter account, as well as in other social media accounts discussed below.

5 **C. Imgur Account**

6 The Committee also established a “HuizengaTrump16” Imgur account with images of the
 7 Huizenga Trump 2016 Unity merchandise sold on Zazzle. A copy of the Imgur account is shown
 8 below.¹⁶



9
 10 **D. Pinterest**

11 Similarly, the Committee created a Pinterest page saving images of the Huizenga Trump
 12 2016 Unity merchandise sold on Zazzle. A copy of the Pinterest page is shown below.¹⁷

¹⁵ See e.g., http://www.zazzle.com/huizenga_trump_2016_unity_button-145054775072021025 (broken link).

¹⁶ See <http://huizengatrup16.imgur.com/all/>.

¹⁷ See <https://www.pinterest.com/billhuizenga/>.

MUR 7140 (Americans for Sensible Solutions PAC)

Factual and Legal Analysis

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Search

Bill Huizenga

0 Followers 5 Following

www.huizengatrum...
Michigan 2nd / Unity
Campaign - Vote Bill
Huizenga for the
Michigan 2nd and
Donald Trump for
POTUS in 2016!

Follow

Boards Pins

Unity Campaign
7 Pins

Follow

- 1 Clicking on the photographs of the merchandise shows that the Committee used
- 2 Huizenga's name (and picture) as the person "saving" the photographs to Pinterest. For
- 3 example:¹⁸

¹⁸ See <https://www.pinterest.com/pin/135319163783754045/>.

MUR 7140 (Americans for Sensible Solutions PAC)

Factual and Legal Analysis

Page 8 of 21



1

2

E. “Trump Huizenga 2016 Unity Campaign” Facebook page

3

In addition, the Committee created a “Trump Huizenga 2016 Unity Campaign” Facebook

4

page, which solicits donations to its PayPal account, and it also sells merchandise with

5

Huizenga’s name.

6

The posts on the Facebook page are similar to those on the Twitter account, and display a

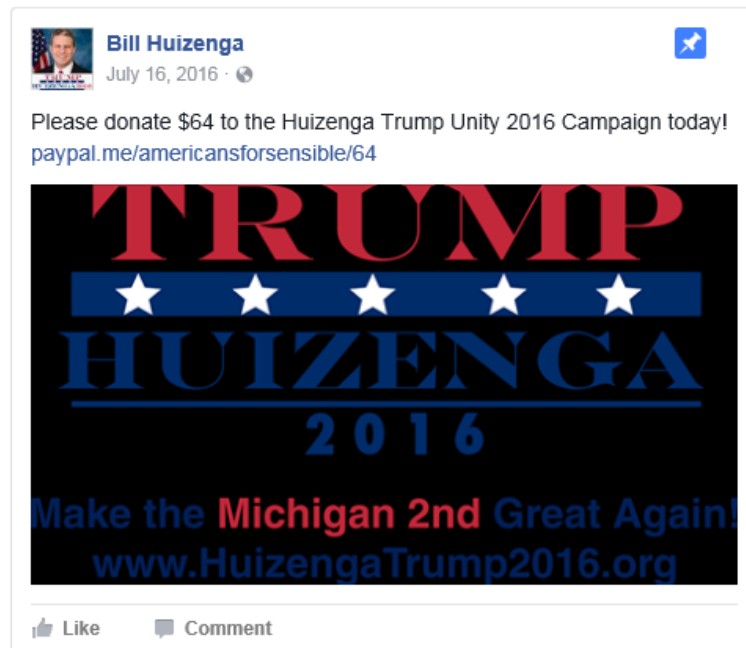
7

Trump Huizenga 2016 campaign logo, slogan, and website address. A copy of one post

8

soliciting donations is shown below.

Posts



1

2

3 **III. LEGAL ANALYSIS**

4 **A. Fraudulent Misrepresentation**

5 The Act and Commission regulations set forth two prohibitions with respect to fraudulent
 6 misrepresentation. The first prohibits *a candidate* or his or her employees or agents from
 7 speaking, writing or otherwise acting on behalf of *another candidate* or political party committee
 8 on a matter which is damaging to such other candidate or political party.¹⁹ The second prohibits
 9 *other persons* from misrepresenting themselves as speaking, writing, or otherwise acting for or
 10 on behalf of *any candidate* or political party for the purpose of soliciting contributions.²⁰ The
 11 Act further provides that no person shall willfully and knowingly participate in or conspire to

¹⁹ 52 U.S.C. § 30124(a); 11 C.F.R. § 110.16(a)(1).

²⁰ 52 U.S.C. § 30124(b); 11 C.F.R. § 110.16(b).

1 participate in any plan or scheme to engage in such behavior.²¹ The prohibition against other
 2 persons misrepresenting candidates to solicit contributions is at issue in this matter.

3 Of course, because an individual’s or group’s solicitation of contributions constitutes core
 4 First Amendment protected activity, the Commission must implement the Act’s prohibition
 5 against “fraudulent misrepresentation” with clarity and precision.²² The Commission cannot
 6 prohibit solicitations under a vague or overbroad concept of the language that constitutes a
 7 “fraudulent misrepresentation.”²³ Nor can the definition of “misrepresentation” turn on the
 8 subjective perceptions of listeners.²⁴ The public must have objective standards delineating what

²¹ 52 U.S.C. § 30124 (a)(2), (b)(2); *see also* 11 C.F.R. § 110.16 (a)(2), (b)(2).

²² *Van Hollen v. FEC*, 811 F.3d 486, 499 (D.C. Cir. 2016) (noting FEC’s unique constitutional prerogative “to safeguard the First Amendment when implementing its congressional directives”) (citing *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003); *see also Arizona v. Inter. Tribal Council of Ariz., Inc.*, 570 U.S. 1, 18-19 (2013) (“[B]y analogy to the rule of statutory interpretation that avoids questionable constitutionality— validly conferred discretionary executive authority is properly exercised . . . to avoid serious constitutional doubt.”)).

²³ *Citizens United v. FEC*, 558 U.S. 310, 324 (2010) (“The First Amendment does not permit laws that force speakers to retain a campaign finance attorney . . . before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: People ‘of common intelligence must necessarily guess at [the law’s] meaning and differ as to its application.’”); *id.* at 329 (“We decline to adopt an interpretation that requires intricate case-by-case determinations to verify whether political speech is banned”) (internal quotations omitted); *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012) (“[L]aws . . . must give fair notice of conduct that is forbidden or required . . . [T]wo connected but discrete due process concerns [are]: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.” (citations omitted)); *Buckley v. Valeo*, 424 U.S. 1, 41 n.48 (“[V]ague laws may not only trap the innocent by not providing fair warning or foster arbitrary and discriminatory application but also operate to inhibit protected expression by inducing citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.”) (internal quotations omitted); *id.* at 41 (requiring “precision . . . in an area so closely touching our most precious freedoms.”) (internal quotations omitted).

²⁴ In *Buckley*, the Supreme Court observed that restrictions placing a speaker “wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning . . . ‘offers no security for free discussion.’” 424 U.S. at 43 (1976) (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)). The Court again emphasized this principle in *FEC v. Wisconsin Right to Life, Inc.*, holding that “the proper standard for [evaluating political speech] must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect.” 551 U.S. 449, 469 (2007).

1 constitutes a prohibited “misrepresentation” under the Act in order to avoid chilling political
2 solicitations at the core of the First Amendment protection.

3 Ambiguous or even confusing solicitations must be judged with First Amendment
4 sensitivity so as not to chill vast realms of legitimate solicitation. Many solicitors feature the
5 names, photographs, and biographies of the candidates they support. They often use red, white
6 and blue logos that may vaguely resemble the red, white and blue logos of other campaigns. If
7 every use of a candidate’s photograph and name on a website were deemed to misrepresent the
8 identity of the solicitor, otherwise identified accurately in a disclaimer, then many organizations’
9 websites would be at risk of violating the Act. At some level, citizens must assume
10 responsibility for reading and understanding FEC-compliant disclaimers and, for those donating
11 on websites, performing rudimentary online searches to identify the sponsor of a website. This is
12 one of the purposes of the www.fec.gov website.

13 Finally, the Commission’s judgment of which solicitations constitute “fraudulent
14 misrepresentations” is informed by the Commission’s experience and expertise in the field of
15 political discourse and solicitation.

16 1. “Misrepresentation”

17 a. *Presence of An Adequate Disclaimer*

18 The Act requires solicitations by federal political committees made through any
19 broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other
20 type of general public political advertising to include disclaimers identifying the person
21 responsible for the communication.²⁵ For communications that are not authorized by a

²⁵ 52 U.S.C. § 30120(a)(3).

1 candidate, the candidate’s authorized committee, or an agent of either, the disclaimers must
2 clearly state: (1) the name and permanent street address, telephone number, or website of the
3 committee and (2) that the communication is not authorized by a candidate or candidate’s
4 committee.²⁶ Disclaimers “must be presented in a clear and conspicuous manner.”²⁷ Internet
5 websites of political committees that are available to the general public must include
6 disclaimers.²⁸

7 Because a disclaimer identifies the person paying for a communication and informs the
8 reader whether or not a communication is authorized by a candidate, no misrepresentation can be
9 presumed when an adequate disclaimer is present.²⁹ The Commission has a long history of
10 finding no misrepresentation where communications contain disclaimers accurately identifying
11 the true sponsor.³⁰ The Commission has even concluded that disclaimers with technical
12 deficiencies nonetheless controvert allegations of misrepresentation so long as they accurately

²⁶ *Id.*; 11 C.F.R. § 110.11(b)(3).

²⁷ 11 C.F.R. § 110.11(c)(1). A disclaimer is not considered “clear and conspicuous” if it is difficult to read or if the placement is easily overlooked. *Id.*; *see also* Communications Disclaimer Requirements, 60 Fed. Reg. 52,069, 52,070-71 (Oct. 5, 1995).

²⁸ 11 C.F.R. § 110(a)(1); *see* U.S.C. § 30120(a).

²⁹ *See* F&LA at 9, MUR 6645 (Conservative Strikeforce, *et al.*) (finding website statements were not made on candidate’s behalf despite use of candidate’s image and name because disclaimers “give the reader . . . adequate notice of the identity of the person or political committee that paid for and, where required, authorized the communication”).

³⁰ *See, e.g.*, F&LA at 9, MUR 6645 (Conservative Strikeforce); F&LA at 3, MUR 3690 (National Republican Congressional Committee) (determining satirical representation by respondent as speaking on behalf of their opponents coupled with disclaimer identifying the speaker was not a prohibited misrepresentation under Section 30124(a)); Certification (Sept. 12, 1986), MUR 2205 (Foglietta) (agreeing with OGC’s recommendation in the First General Counsel’s Report to find no reason to believe a violation of Section 30124 occurred when advertising material at issue was “clearly printed” as respondent’s material, containing the committee’s name, address and picture).

1 identify of the solicitor.³¹ By contrast, a disclaimer that explicitly misrepresents the identity of
 2 the actual sponsor as the candidate is almost always a misrepresentation under the Act.³²

3 b. *Misrepresentation Despite Adequate Disclaimer*

4 A proper disclaimer clearly and accurately identifies the person responsible for the
 5 solicitation. Therefore, it affords a strong presumption against finding misrepresentation. That
 6 presumption may nonetheless be defeated where an *explicit* misrepresentation in the text of a
 7 solicitation countermands an otherwise accurate disclaimer.³³

8 c. *Absence of Adequate Disclaimer*

9 In the absence of an adequate disclaimer or other sufficiently identifying information,
 10 however, the Commission has not required the misrepresentation to be explicit to violate the

³¹ See F&LA at 7, MUR 7004 (The 2016 Committee, *et al.*) (dismissing, in part, because deficient email disclaimer contained “sufficient information for recipients to understand that the Committee paid for the emails and was not authorized by any candidate or candidate’s committee”); F&LA at 11, MUR 6633 (Republican Majority Campaign PAC, *et al.*) (disclaimers, although technically deficient, “nonetheless contained sufficient information for [] recipients to identify Republican Majority as the sender or webhost and payor”); F&LA at 4-5, MUR 3690 (National Republican Congressional Committee) (concluding that a small, inconspicuous disclaimer that violated the Act’s requirements for disclaimers nonetheless accurately identified the true sponsor of a postcard sufficient to avoid violation of section 30214); *id.* at n.1 (noting the post cards at issue “display the NRCC post mark and the return address on their face” and that such information “dispel[s] any theory of fraudulent misrepresentation . . . because they notify the readers of the true identity of the senders”).

³² See F&LA at 5, MUR 5443 (www.johnfkerry-2004.com); F&LA at 3, MUR 5505 (<http://testhost.yahoogoogole.biz>); F&LA at 4, MUR 5495 (www.johnkerry-edwards.org).

³³ See F&LA at 7, MUR 6893 (Winning the Senate PAC) () (noting an express misrepresentation in first-person voice, signed by the candidate, is “not cured” by disclaimer indicating candidate did not authorize the solicitation); Statement of Reasons of Commissioners Weintraub, McDonald, Thomas and Toner at 1-2, MUR 5089 (Matta Tuchman for Congress) (fictitious letterhead, return address, and letter purporting to speak for the Orange County Democrats countermanded a small disclaimer inconspicuously placed on the flap of an envelope in small letters).

1 Act’s prohibition. The Commission has, in those cases, considered less explicit
 2 misrepresentations sufficient to satisfy the misrepresentation element.³⁴

3 d. *False Disclaimer Constitutes Misrepresentation*

4 A disclaimer that falsely claims the solicitation is paid for and/or authorized by a
 5 candidate or political party constitutes *per se* misrepresentation under section 30124(b). For
 6 example, in a series of matters involving a website that mimicked presidential candidate John
 7 Kerry’s official website, the Commission found that the use of the disclaimer “Paid for and
 8 authorized by John Kerry for President, Inc. 2004” on the website and in solicitation emails
 9 patently misrepresented the identity of the website’s sponsor in violation of section 30124(b).³⁵

10 B. “For Or On Behalf Of”

11 Section 30124(b) prohibits misrepresentations about one subject: the identity of the
 12 solicitor. The solicitor cannot misrepresent himself “as speaking, writing, or otherwise acting for
 13 or on behalf of any candidate or political party or employee or agent thereof.”³⁶

14 This prohibition was enacted as Section 309 of the Bipartisan Campaign Reform Act of
 15 2002.³⁷ The amendment’s sponsor, Senator Bill Nelson, stated that the provision “makes it
 16 illegal to fraudulently misrepresent any candidate or political party employee or party employee

³⁴ See F&LA at 10, MUR 5951 (Californians for Change) (finding that, in the absence of appropriate disclaimers, a series of implicit misrepresentations “when taken together . . . likely led reasonable people to believe [respondent] was acting on behalf of Sen. Obama”).

³⁵ See F&LA at 5, MUR 5543 (www.johnfkerry-2004.com) (determining there is a “prima facie case for reason to believe” when unauthorized website claimed it was “[p]aid for and authorized by John Kerry for President, Inc.” and copies multiple pages from the campaign’s legitimate website); see also F&LA at 4, MUR 5495 (www.johnkerry-edwards.org) (finding reason to believe where email stated it was “[p]aid for by John Kerry for President, Inc.”); F&LA at 3, MUR 5505 (<http://testhost.yahoogoogle.biz>) (explicit misrepresentation in email solicitation “[p]aid for by John Kerry for President, Inc.” presented “prima facie case for reason to believe”).

³⁶ 52 U.S.C. § 30124(b)(1).

³⁷ Pub. L. No. 107-155, § 309(b), 116 Stat. 81, 104 (2002).

1 in soliciting contributions” in response to complaints that people had “fraudulently raised
2 donations by posing as political committees or candidates.”³⁸

3 The Commission has enforced section 30124(b) consistent with its legislative focus on
4 posing as a candidate.³⁹ For example, in MUR 6641 (CAPE PAC), the Commission found that
5 the third-person statement “Help CAPE PAC re-election Allen West to Congress” did not
6 pretend to be Allen West.⁴⁰ Therefore, the Commission found no violation of the Act.

7 Thus, the subject of a misrepresentation prohibited under section 30124(b)(1) must be the
8 identity of the solicitor as the candidate or agent of the candidate or political party and the proper
9 focus of the Commission’s misrepresentation inquiry must be the misrepresentation of *identity* of
10 the person soliciting the funds, not the use to which the funds are put.⁴¹

11 C. “For The Purpose of Soliciting Contributions”

12 The object of a misrepresentation under section 30124(b)(1) targets one purpose of the
13 misrepresentation: soliciting contributions or donations. The solicitor must misrepresent his
14 identity for the purpose of soliciting contributions or donations. Misrepresentations for other
15 purposes are not prohibited by Section 30124(b).⁴²

³⁸ 148 CONG. REC. S3122 (daily ed. March 29, 2001) (statement of Sen. Nelson) (offering amendment to the Bipartisan Campaign Reform Act).

³⁹ See generally, Matthew S. Raymer, *Fraudulent Political Fundraising in The Age of Super PACs*, 66 SYRACUSE L. REV. 239, 257-58 (2016).

⁴⁰ F&LA at 9, MUR 6641 (CAPE PAC).

⁴¹ The Commission has unanimously recommended that Congress consider amending Section 30124 to cover fraudulent misrepresentations regarding the ultimate use to which the solicitor will put the funds. See *Legislative Recommendations of the Federal Election Commission 2016* at 7, (Dec. 1, 2016), available at <https://transition.fec.gov/pdf/legrec2016.pdf>.

⁴² Compare 52 U.S.C. § 30124(a)(1) (prohibiting misrepresentations for the purpose of damaging an opposing candidate or political party in any way).

1 By the same token, Section 30124(b) does not encompass other transactions that may
 2 cause injury or otherwise result in unfairness to contributors.⁴³ In certain instances, a
 3 respondent’s alleged injury may be more appropriately addressed through other federal or state
 4 anti-fraud statutes.⁴⁴

5 D. “Fraudulent” Intent

6 The Act also requires that the misrepresentation of identity be “fraudulent.” As the
 7 Commission observed in MUR 3690,

8 A violation of Section [30124] requires *fraudulent*
 9 misrepresentation. Key elements of fraud are the maker’s intent
 10 that the misrepresentation be relied on by the person and in a
 11 manner reasonably contemplated, the person’s ignorance of the
 12 falsity of the representation, and the person’s rightful or justified
 13 reliance. More significantly, a fraudulent misrepresentation
 14 requires intent to deceive.⁴⁵

15
 16 According to one federal court interpreting Section 30124, a misrepresentation can be deemed
 17 fraudulent “if it was reasonably calculated to deceive persons of ordinary prudence and
 18 comprehension.”⁴⁶

⁴³ Cf. *Schmuck v. United States*, 489 U.S. 705, 710 (1989) (“The federal mail fraud statute does not purport to reach all frauds, but only those limited instances in which the use of the mails is a part of the execution of the fraud.”) (internal quotations omitted); *id.* at 723 (“It is mail fraud, not mail and fraud, that incurs liability . . . [t]he mailing must be in furtherance of the fraud.”) (Scalia, J., dissenting).

⁴⁴ See, e.g. 18 U.S.C. § 1341 (prohibiting use of mails to further a “scheme or artifice to defraud”); 18 U.S.C. § 1343 (prohibiting use of interstate wire communications to further a “scheme or artifice to defraud”). In *Friends of Phil Gramm v. Americans for Phil Gramm In ’84*, the U.S. District Court for the Eastern District of Virginia concluded the pre-BCRA Act does not “categorically preclude a state law cause of action for fraud.” 587 F. Supp. 769, 776 (E.D. Va. 1984) (denying injunction where defendant’s fundraising efforts were “circular”); see also *Galliano v. U.S. Postal Service*, 836 F.2d 1362, 1371 (D.C. Cir. 1988) (Bader Ginsburg, J.) (noting Congress intended other statutory provisions to protect the public from fraud) (citing *Friends of Phil Gramm*, 587 F. Supp. 769).

⁴⁵ F&LA at 3-4, MUR 3690 (National Republican Congressional Committee) (emphasis in original).

⁴⁶ See *FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Texas Apr. 14, 2010) (“*Novacek*”). The court in *Novacek* and prior Commission legal analyses have defined “fraudulent” by looking to decisions interpreting the federal mail fraud statute, which does not require a misrepresentation of identity. *Id.* (citing *Silverman v. United*

1 Proving a respondent's subjective intent can be difficult to prove with direct evidence. At
2 the reason to believe stage, the Commission has been willing, on appropriate facts, to make an
3 inference that a respondent acted with the requisite intent to deceive. However, in making the
4 determination, the Commission considers whether some facts that could lead to an inference of
5 fraudulent intent may be negated by other reasonable inferences. In other words, the facts
6 supporting an inference of fraudulent intent must be *more reasonable* than competing reasonable
7 inferences that could be drawn.

8 Since section 30124(b)'s passage, the Commission has considered certain evidence that
9 can, in proper circumstances, evince the fraudulent nature of a misrepresentation. Such evidence
10 includes (1) whether the respondent was properly registered and reporting to the Commission, if
11 required;⁴⁷ (2) whether respondent had knowledge that contributors believed they were
12 contributing to a candidate or party;⁴⁸ (3) the solicitor's acceptance of contributions clearly
13 intended for a candidate or party;⁴⁹ (4) false statements that contributions to the respondent

States, 213 F.2d 405, 407 (5th Cir. 1954) (“*Silverman*”) (“[T]he fact that there is no misrepresentation of a single existing fact makes no difference in the fraudulent nature of the [mail fraud] scheme.”); *see also* F&LA at 8, MUR 6645 (Conservative Strikeforce, *et al.*); F&LA at 9, MUR 6643 (Patriot Super PAC, *et al.*); F&LA at 9, MUR 6641 (CAPE PAC, *et al.*); F&LA at 9, MUR 6633 (Republican Majority Campaign PAC, *et al.*). A *misrepresentation of identity* is the required actus reus under 52 U.S.C. § 30124 and that misrepresentation must be made with *fraudulent* intent. By comparison, the actus reus which the federal mail fraud statute, 18 U.S.C. § 1341, is any use of the mails, and that use must be fraudulent, regardless whether there is a misrepresentation. This distinction is significant to applying Section 30124(b): the statute prohibits misrepresentations that are fraudulent.

⁴⁷ F&LA at 10, MUR 6633 (Republican Majority Campaign) (“Weighing against a finding of reason to believe that the Respondent violated [52 U.S.C. § 30124(b)] is the fact that [the Respondent] is registered with the Commission and complies with its reporting requirements . . .”).

⁴⁸ *See Novacek*, 739 F. Supp. 2d at 962 (“Novacek admits that she knew solicitees were confused as to the entities calling, because they would ask for information about the RNC or the Bush-Cheney '04 campaign, or would send checks made out to those entities.”).

⁴⁹ F&LA at 5, MUR 5444 (National Democratic Congressional Committee) (solicitor endorsed and deposited a check made payable to a party committee and diverted the funds to his personal use).

1 would go directly to the represented candidate or party;⁵⁰ (5) the presence of a false disclaimer;⁵¹
2 and (6) whether the solicitor made other false statements regarding its identity.⁵² Such evidence
3 is probative of whether a respondent's conduct was reasonably calculated to deceive people into
4 believing they were giving to a candidate or party.

5 The Commission has found that the inclusion of an adequate disclaimer, absent a
6 countermanding explicit misrepresentation of identity, can negate any inference arising from
7 other evidence indicating a respondent maintained the requisite intent to deceive for purposes of
8 a section 30124 violation.⁵³

9 Significantly, however, not all misrepresentations are fraudulent. In MUR 3690, the
10 Commission found that a flyer sponsored by a national political party committee purporting
11 (falsely) to be written by a candidate informing constituents of his profligate spending ways in
12 Washington, D.C. – although a misrepresentation – was satire and lacked the requisite fraudulent
13 intent to violate Section 30124.⁵⁴

⁵⁰ Compare, e.g., Gen. Counsel's Brief at 8, MUR 5472 (RVC) (recommending probable cause in part on the basis of the statement "Contributions or gifts to the *Republican Party* are not deductible as charitable contributions") (emphasis in original), with F&LA at 10, MUR 6641 (CAPE PAC) (finding no reason to believe statements such as "Help CAPE PAC re-elect Allen West to Congress" indicated fraudulent intent).

⁵¹ See F&LA at 5, MUR 5543 (www.johnfkerry-2004.com); F&LA at 3, MUR 5505(<http://testhost.yahoogoogle.biz>); F&LA at 4, MUR 5495 (www.johnkerry-edwards.org).

⁵² See F&LA at 8, MUR 5385 (Groundswell Voters PAC) (finding "circumstances present a classic case of fraud because respondents claimed to be a PAC, used a false address, and false IRS registration number). The focus of the fraudulent misrepresentation inquiry must be the representation of *identity* of the person soliciting the funds, not the use to which the funds are put.

⁵³ F&LA at 10, MUR 6641 (CAPE PAC, *et al.*) ("The Commission has previously held that the presence of an adequate disclaimer identifying the person or entity that paid for and authorized a communication can defeat an inference that a respondent maintained the requisite intent to deceive for purposes of a section [30124] violation.") (citing MUR 2205 (Foglietta) and MURs 3690, 3700 (National Republican Congressional Committee)).

⁵⁴ F&LA at 3-4, MUR 3690 (National Republican Congressional Committee) (applying the "fraudulent misrepresentation" prohibition under 52 U.S.C. § 30124(a)(1)).

1 **B. Application to the Committee’s Solicitations**

2 The legal analysis of the Committee’s solicitations focuses on two key issues: whether
3 the Committee misrepresented its identity as acting on behalf of congressional candidate Bill
4 Huizenga and HFC and, if so, whether the Committee’s conduct and solicitations evince the
5 requisite fraudulent intent. The other elements of fraudulent misrepresentation – the allegation
6 that the Committee purported to act for or on behalf of HFC and solicited contributions – are
7 clear from the Committee’s online communications, noted above.

8 1. The Committee’s Solicitations Misrepresented the Committee as Acting on Behalf of
9 Huizenga

10
11 Here, the Committee maintained a “Trump Huizenga 2016” Facebook title page and
12 “@HuizengaTrump16” Twitter address without an adequate disclaimer;⁵⁵ the Committee’s
13 Twitter and Facebook posts requesting individuals “[d]onate \$64 to the Trump Huizenga Unity
14 2016 Campaign today!” indicated that the contributions directly benefited Huizenga, rather than
15 the Committee; the Twitter and Facebook posts containing Huizenga’s name and photograph
16 gave the impression Huizenga himself is tweeting and posting; the use of Huizenga’s name and
17 photograph on Pinterest as the person “saving” photographs of the merchandise photograph gives
18 the impression Huizenga himself is acting; and the Zazzle page exhorting visitors to “[p]lease

⁵⁵ Disclaimers are not legally required for internet solicitations which are not also “public communications.” See 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a)(1). However, in the absence of an express misrepresentation, an adequate disclaimer or other sufficiently identifying information may serve as a safe-harbor to a claim of misrepresentation. Although the Twitter, Paypal, and Zazzle pages contain some features that attempt to distance the Committee from the Huizenga campaign, they are not sufficiently informative to avoid confusion as to the identity of the solicitor. These features are (1) the word “unofficial” appearing at the top of the Twitter account and individual Facebook posts; (2) the statement “Send Money to Americans for Sensible Solutions PAC” on the Committee’s PayPal account; and (3) the statement “Americans for Sensible Solutions P.A.C. may not collaborate, collude or coordinate with either [] campaigns” appearing the Kinzinger Trump 2016 Zazzle page. See F&LA at 9-10, MUR 5951 (Californians for Change) (committee’s claim that it was an “independent committee to elect Obama” deemed insufficient to cure multiple statements implying committee was acting on behalf of candidate Barack Obama).

1 support a unified Republican Party in the November Elections by donating to our Political Action
2 Committee” indicated the speaker was doing so on behalf of the Republican party. Thus, the
3 Commission finds there is a sufficient basis find that the Committee misrepresented itself as
4 acting on behalf of congressional candidate Bill Huizenga and HFC.

5 2. There is Sufficient Evidence of the Committee’s “Fraudulent” Intent
6

7 Here, the evidence in the record before the Commission regarding the Committee’s intent
8 is sufficient to permit a reason to believe finding. Facts supporting an inference of fraudulent
9 intent include the following:

- 10 • The Committee repeatedly failed to file required disclosure reports with the
11 Commission;
- 12 • In the one disclosure report filed with the Commission, the Committee
13 discloses no receipts or disbursements despite numerous social media
14 accounts soliciting donations and e-commerce pages selling merchandise;
- 15 • The Committee had knowledge its Twitter account @HuizengaTrump16, led
16 people to believe Huizenga endorsed the Twitter account, when in fact he did
17 not; and
- 18 • The Committee falsely gave the impression that Huizenga himself was
19 speaking on Facebook and Pinterest.
20

21 Facts supporting an alternative inference include the following:
22

- 23 • The Committee appears to have properly registered with the Commission as
24 an unauthorized political action committee;
25

26 In weighing these facts, and applying the Commission’s experience and expertise in
27 political solicitations, the Commission concludes that there is sufficient evidence that the
28 Committee’s solicitations objectively were “reasonably calculated to deceive persons of ordinary
29 prudence and comprehension.”

30 * * *

1 In sum, because the Committee’s solicitations did not sufficiently inform contributors that
2 the Committee was not speaking or acting on behalf of Huizenga, and because the record
3 indicates the Committee acted with fraudulent intent, the Commission finds reason to believe the
4 Committee violated 52 U.S.C. § 30124(b) and 11 C.F.R. § 110.16(b).⁵⁶

5 **C. Failure to File Disclosure Reports**

6 Each treasurer of a political committee is required to file reports of receipts and
7 disbursements in accordance with 52 U.S.C. § 30104(a). Each report shall disclose the amount
8 of cash-on-hand at the beginning and end of the reporting period, the total amount of receipts for
9 the reporting period and for the calendar year, and the total amount of disbursements for the
10 reporting period for the calendar year.⁵⁷

11 The Committee failed to file its 2016 July Quarterly Report properly, and it failed to file
12 its 2016 October Quarterly, Post-General, Year-End Report, and its 2017 April Quarterly Report.
13 Therefore, there is reason to believe that the Committee violated 52 U.S.C. § 30104(a) and (b) by
14 failing to properly report its receipts and disbursements as required by the Act.

⁵⁶ By naming its Twitter account “@HuizengaTrump16,” the Committee used the name of a candidate in a special project without showing opposition to that candidate, potentially violating the Act and Commission regulations. 52 U.S.C. § 30102(e)(4); 11 C.F.R. § 102.14(a). An unauthorized committee may only include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(3); *see also* Advisory Op. 1995-09 at 6 (NewtWatch PAC) (“The operation of a World Wide Web site would be considered a project of the Committee”); Advisory Op. 2015-04 at 3-4 (Collective Actions PAC) (determining that a committee’s “online activities are ‘projects’ that fall within the scope of 11 C.F.R. § 102.14”). These restrictions on the use of a candidate’s name, however, have recently been the subject of litigation. In August 2016, the D.C. Circuit ruled that the Plaintiff committee was entitled to a preliminary injunction enjoining the application of 11 C.F.R. § 102.14(a) against its website and social media pages as a possible content-based ban on speech. *See Pursuing America's Greatness v. FEC*, 831 F. Supp. 3d 500 (D.C. Cir. Aug. 2, 2016). In light of this ongoing litigation, the Commission makes no findings as to the Committee’s possible violation of 11 C.F.R. § 102.14(a) at this time.

⁵⁷ 52 U.S.C. § 30104(b)(1), (2), (4).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Americans for Sensible Solutions PAC and MUR: 7140
David Garrett in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by James Barry, Campaign Manager for Huizenga for Congress (“HFC”), alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), by Americans for Sensible Solutions PAC and David Garrett in his official capacity as treasurer (the “Committee”).

The Complaint alleges that the Committee, an independent-expenditure-only political committee (“IEOPC”), solicited contributions by fraudulently misrepresenting that it was acting on behalf of congressional candidate Bill Huizenga and HFC through a Twitter account named “@HuizengaTrump16” and by selling unauthorized “Huizenga Trump 2016 Unity Gifts” such as mugs, shirts, and buttons online. The Committee did not respond to the Complaint.

As set forth below, the Committee appears to have solicited contributions through online media with solicitations that fraudulently represented the Committee was acting for or on behalf of Huizenga. In addition, the Committee failed to report its receipts, disbursements, and cash-on-hand balance to the Commission from 2016 to the present. Accordingly, there is reason to believe that the Committee violated 52 U.S.C. §§ 30124(b)(1) and 30104(a) and (b).

1 **II. FACTUAL BACKGROUND**

2 The Committee registered with the Commission on May 3, 2016, as an IEOPC.¹ David
3 Garrett is its treasurer.² Since registering with the Commission, the Committee filed only one
4 disclosure report, the 2016 July Quarterly Report,³ which it filed in response to a Request for
5 Additional Information (“RFAI”) from the Commission’s Reports Analysis Division (“RAD”)
6 based on the Committee’s failure to file reports.⁴ The Committee submitted a handwritten 2016
7 July Quarterly Report by regular mail, and the report disclosed no receipts, disbursements, and
8 cash-on-hand.⁵ RAD notified the Committee of its obligation to file electronically; however, the
9 Committee did not resubmit the report electronically.⁶ In addition, RAD notified the Committee
10 of its failure to file its 2016 October Quarterly, Post-General, and Year-End Reports, but the
11 Committee did not respond or file the reports.⁷

12 The Complainant alleges that beginning in May 2016, the Committee used Huizenga’s
13 name and likeness to “mislead Americans and sell merchandise” without Huizenga’s
14 permission.⁸ Specifically, the Complaint alleges that the Committee established a Twitter

1 ¹ See Statement of Organization (May 3, 2016).

2 ² *Id.*

3 ³ See 2016 July Quarterly (Aug. 8, 2016).

4 ⁴ See RFAI – Failure to File – July Quarterly (Aug. 2, 2016).

5 ⁵ See 2016 July Quarterly (Aug. 8, 2016).

6 ⁶ See Notice of Paper Filing (Sept. 13, 2016).

7 ⁷ See RFAI – Failure to File – October Quarterly (Oct. 31, 2016); RFAI – Failure to File – Post-General (Dec. 28, 2016); RFAI – Failure to File – Year-End Report (Feb. 16, 2017).

8 ⁸ Compl. at 1 (Sept. 22, 2016).

1 account named “@HuizengaTrump16,” which solicits donations via PayPal.⁹ The Twitter
2 account also directs visitors to a page on Zazzle¹⁰ selling “Huizenga Trump 2016 Unity Gifts,”
3 including mugs, shirts, buttons, key chains, hats, and sweatshirts.¹¹ According to the Complaint,
4 the Zazzle page states: “This website is managed by the Americans for Sensible Solutions
5 Political Action Committee along with the Republican Organization for Legislative Loyalty,¹²
6 and is intended to encourage unity between these two tremendous candidates and highlight the
7 overwhelming similarity between their respective agendas and policy positions.”

8 The Complaint did not provide copies of either the Twitter account or Zazzle page. The
9 available information indicates that during 2016, the Committee established accounts on Twitter,
10 Zazzle, Imgur,¹³ Pinterest, and Facebook using Huizenga’s name and likeness, and that it has
11 conducted similar activity regarding other federal candidates.

12 **A. @HuizengaTrump16 Twitter account**

13 The @HuizengaTrump16 Twitter account was suspended shortly after the Complaint was
14 filed. The word “unofficial” appears in the account heading, but not in the tweets themselves.
15 The account contains tweets from “Unity: Bill Huizenga@HuizengaTrump16” soliciting
16 donations to the Committee’s PayPal account and containing links to a Zazzle page selling
17 merchandise. Each tweet contains a “TrumpHuizenga 2016” campaign logo; a slogan, “Make

⁹ *Id.*

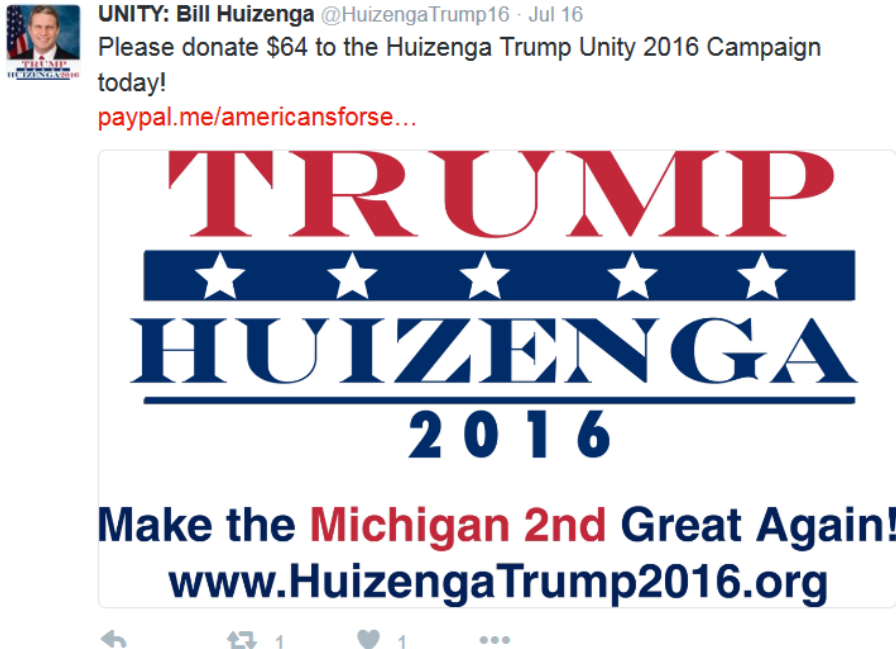
¹⁰ “Zazzle” is an electronic commerce website that sells customizable products to customers. *See* www.zazzle.com/about.

¹¹ *Id.*

¹² The Republican Organization for Legislative Loyalty is not registered with the Commission as a political committee. At this time, we have no information regarding this entity.

¹³ Imgur is an online image sharing website. *See* <http://imgur.com/about>.

- 1 the Michigan 2nd Great Again!;" and the web address, "www.HuizengaTrump2016.org."¹⁴ The
 2 tweet soliciting donations states: "Please donate \$64 to the Huizenga Trump Unity 2016
 3 Campaign today!" A copy of the tweet is shown below.



- 4
 5 There are several other @HuizengaTrump16 tweets linking to the Zazzle page, and each
 6 separately displays a hat, campaign button, mug, shirt, sweatshirt, or keychain with the "Trump
 7 Huizenga 2016" campaign logo, slogan, and website address. An example of a tweet linking to
 8 the Zazzle page selling the campaign button is shown below.

¹⁴ The website, "www.HuizengaTrump2016.org," is no longer functioning.



1

2

Information on Twitter @HuizengaTrump16 shows that several people saw and commented on the Twitter page. One tweet asks: “Where are u? @HuizengaTrump16” while referring to his government representatives. Another tweet asks: “@HuizengaTrump16 You’re for Trump?...Trump is on you, Congressman.” Copies of those tweets are shown below.

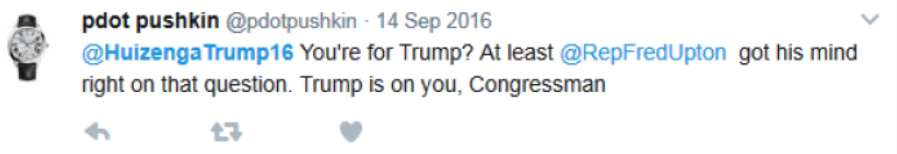
3

4

6



7

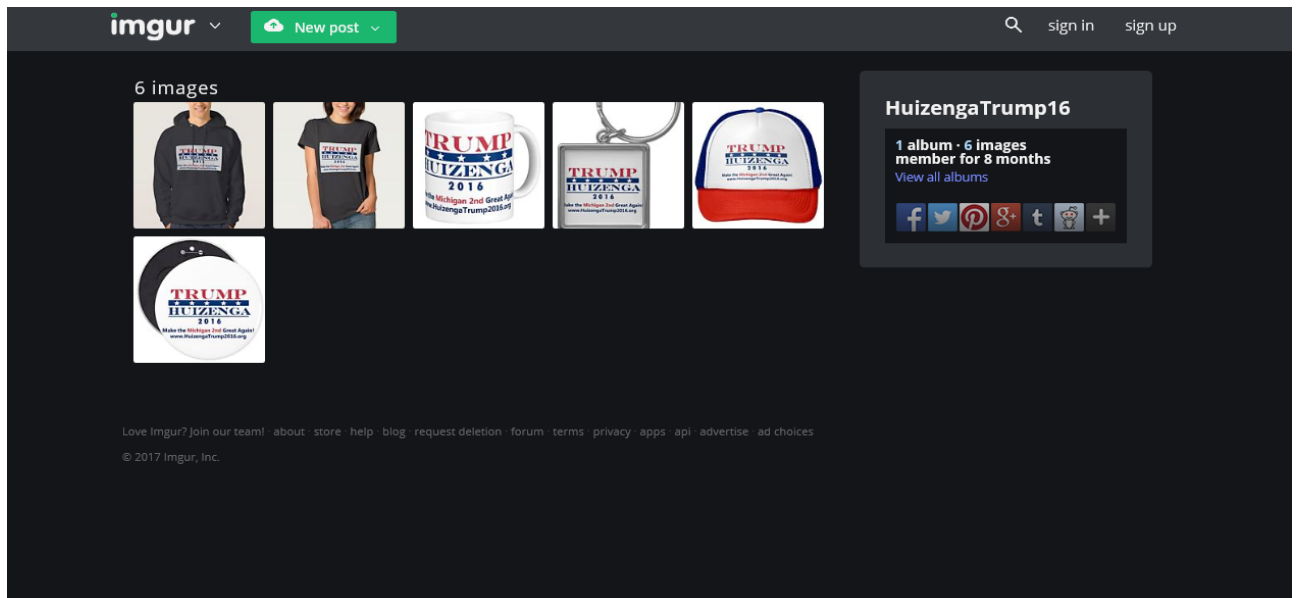


1 **B. Zazzle page**

2 The Zazzle page selling Huizenga Trump 2016 Unity merchandize is no longer
 3 functioning.¹⁵ Photographs of the merchandise for sale on that page appear in the
 4 @HuizengaTrump16 Twitter account, as well as in other social media accounts discussed below.

5 **C. Imgur Account**

6 The Committee also established a “HuizengaTrump16” Imgur account with images of the
 7 Huizenga Trump 2016 Unity merchandise sold on Zazzle. A copy of the Imgur account is shown
 8 below.¹⁶



9

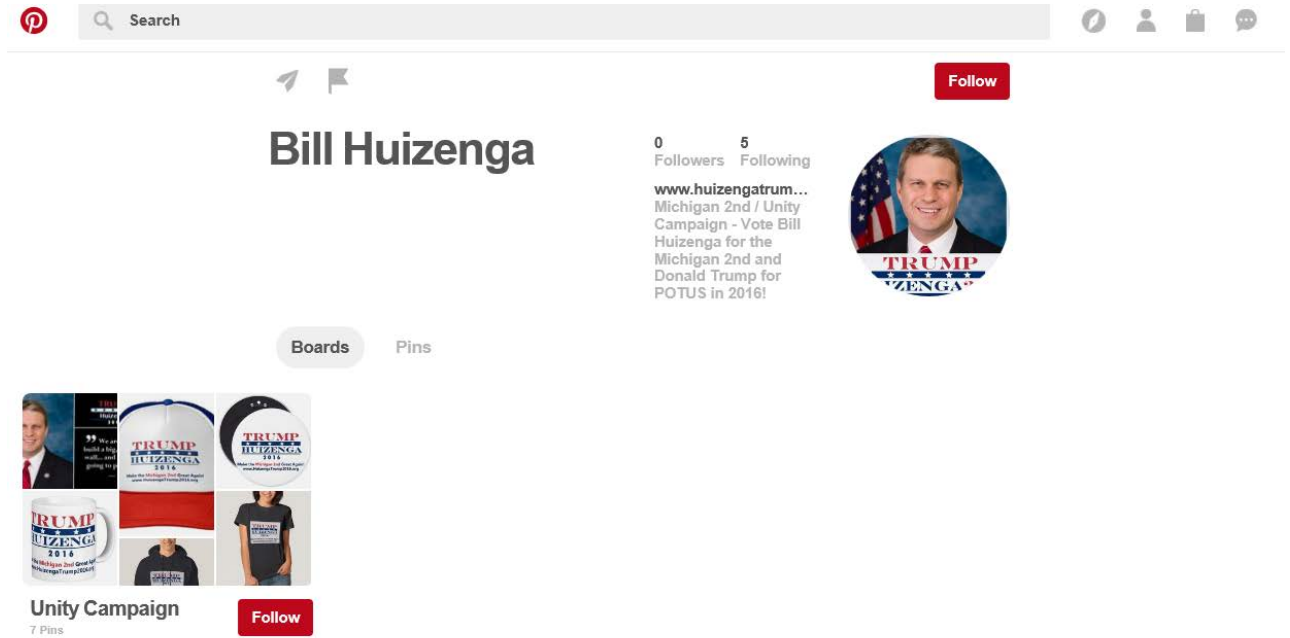
10 **D. Pinterest**

11 Similarly, the Committee created a Pinterest page saving images of the Huizenga Trump
 12 2016 Unity merchandise sold on Zazzle. A copy of the Pinterest page is shown below.¹⁷

¹⁵ See e.g., http://www.zazzle.com/huizenga_trump_2016_unity_button-145054775072021025 (broken link).

¹⁶ See <http://huizengatump16.imgur.com/all/>.

¹⁷ See <https://www.pinterest.com/billhuizenga/>.



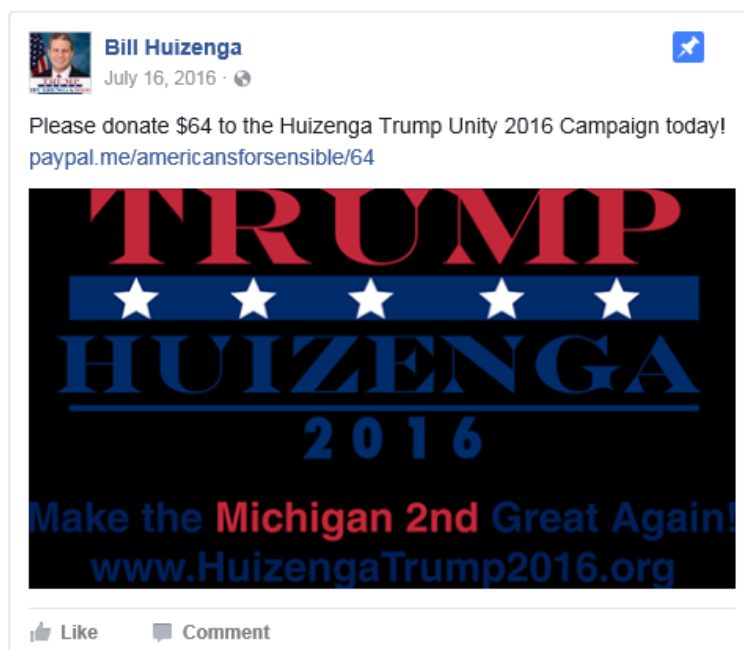
1 Clicking on the photographs of the merchandise shows that the Committee used
2 Huizenga’s name (and picture) as the person “saving” the photographs to Pinterest. For
3 example:¹⁸

¹⁸ See <https://www.pinterest.com/pin/135319163783754045/>.



1
 2 **E. “Trump Huizenga 2016 Unity Campaign” Facebook page**
 3 In addition, the Committee created a “Trump Huizenga 2016 Unity Campaign” Facebook
 4 page, which solicits donations to its PayPal account, and it also sells merchandise with
 5 Huizenga’s name.
 6 The posts on the Facebook page are similar to those on the Twitter account, and display a
 7 Trump Huizenga 2016 campaign logo, slogan, and website address. A copy of one post
 8 soliciting donations is shown below.

Posts



1

2

3 **III. LEGAL ANALYSIS**

4 **A. Fraudulent Misrepresentation**

5 The Act and Commission regulations set forth two prohibitions with respect to fraudulent
 6 misrepresentation. The first prohibits *a candidate* or his or her employees or agents from
 7 speaking, writing or otherwise acting on behalf of *another candidate* or political party committee
 8 on a matter which is damaging to such other candidate or political party.¹⁹ The second prohibits
 9 *other persons* from misrepresenting themselves as speaking, writing, or otherwise acting for or
 10 on behalf of *any candidate* or political party for the purpose of soliciting contributions.²⁰ The
 11 Act further provides that no person shall willfully and knowingly participate in or conspire to

¹⁹ 52 U.S.C. § 30124(a); 11 C.F.R. § 110.16(a)(1).

²⁰ 52 U.S.C. § 30124(b); 11 C.F.R. § 110.16(b).

1 participate in any plan or scheme to engage in such behavior.²¹ The prohibition against other
 2 persons misrepresenting candidates to solicit contributions is at issue in this matter.

3 Of course, because an individual’s or group’s solicitation of contributions constitutes core
 4 First Amendment protected activity, the Commission must implement the Act’s prohibition
 5 against “fraudulent misrepresentation” with clarity and precision.²² The Commission cannot
 6 prohibit solicitations under a vague or overbroad concept of the language that constitutes a
 7 “fraudulent misrepresentation.”²³ Nor can the definition of “misrepresentation” turn on the
 8 subjective perceptions of listeners.²⁴ The public must have objective standards delineating what

²¹ 52 U.S.C. § 30124 (a)(2), (b)(2); *see also* 11 C.F.R. § 110.16 (a)(2), (b)(2).

²² *Van Hollen v. FEC*, 811 F.3d 486, 499 (D.C. Cir. 2016) (noting FEC’s unique constitutional prerogative “to safeguard the First Amendment when implementing its congressional directives”) (citing *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003); *see also Arizona v. Inter. Tribal Council of Ariz., Inc.*, 570 U.S. 1, 18-19 (2013) (“[B]y analogy to the rule of statutory interpretation that avoids questionable constitutionality— validly conferred discretionary executive authority is properly exercised . . . to avoid serious constitutional doubt.”)).

²³ *Citizens United v. FEC*, 558 U.S. 310, 324 (2010) (“The First Amendment does not permit laws that force speakers to retain a campaign finance attorney . . . before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: People ‘of common intelligence must necessarily guess at [the law’s] meaning and differ as to its application.’”); *id.* at 329 (“We decline to adopt an interpretation that requires intricate case-by-case determinations to verify whether political speech is banned”) (internal quotations omitted); *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012) (“[L]aws . . . must give fair notice of conduct that is forbidden or required . . . [T]wo connected but discrete due process concerns [are]: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.” (citations omitted)); *Buckley v. Valeo*, 424 U.S. 1, 41 n.48 (“[V]ague laws may not only trap the innocent by not providing fair warning or foster arbitrary and discriminatory application but also operate to inhibit protected expression by inducing citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.”) (internal quotations omitted); *id.* at 41 (requiring “precision . . . in an area so closely touching our most precious freedoms.”) (internal quotations omitted).

²⁴ In *Buckley*, the Supreme Court observed that restrictions placing a speaker “wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning . . . ‘offers no security for free discussion.’” 424 U.S. at 43 (1976) (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)). The Court again emphasized this principle in *FEC v. Wisconsin Right to Life, Inc.*, holding that “the proper standard for [evaluating political speech] must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect.” 551 U.S. 449, 469 (2007).

1 constitutes a prohibited “misrepresentation” under the Act in order to avoid chilling political
2 solicitations at the core of the First Amendment protection.

3 Ambiguous or even confusing solicitations must be judged with First Amendment
4 sensitivity so as not to chill vast realms of legitimate solicitation. Many solicitors feature the
5 names, photographs, and biographies of the candidates they support. They often use red, white
6 and blue logos that may vaguely resemble the red, white and blue logos of other campaigns. If
7 every use of a candidate’s photograph and name on a website were deemed to misrepresent the
8 identity of the solicitor, otherwise identified accurately in a disclaimer, then many organizations’
9 websites would be at risk of violating the Act. At some level, citizens must assume
10 responsibility for reading and understanding FEC-compliant disclaimers and, for those donating
11 on websites, performing rudimentary online searches to identify the sponsor of a website. This is
12 one of the purposes of the www.fec.gov website.

13 Finally, the Commission’s judgment of which solicitations constitute “fraudulent
14 misrepresentations” is informed by the Commission’s experience and expertise in the field of
15 political discourse and solicitation.

16 1. “Misrepresentation”

17 a. *Presence of An Adequate Disclaimer*

18 The Act requires solicitations by federal political committees made through any
19 broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other
20 type of general public political advertising to include disclaimers identifying the person
21 responsible for the communication.²⁵ For communications that are not authorized by a

²⁵ 52 U.S.C. § 30120(a)(3).

1 candidate, the candidate's authorized committee, or an agent of either, the disclaimers must
2 clearly state: (1) the name and permanent street address, telephone number, or website of the
3 committee and (2) that the communication is not authorized by a candidate or candidate's
4 committee.²⁶ Disclaimers "must be presented in a clear and conspicuous manner."²⁷ Internet
5 websites of political committees that are available to the general public must include
6 disclaimers.²⁸

7 Because a disclaimer identifies the person paying for a communication and informs the
8 reader whether or not a communication is authorized by a candidate, no misrepresentation can be
9 presumed when an adequate disclaimer is present.²⁹ The Commission has a long history of
10 finding no misrepresentation where communications contain disclaimers accurately identifying
11 the true sponsor.³⁰ The Commission has even concluded that disclaimers with technical
12 deficiencies nonetheless controvert allegations of misrepresentation so long as they accurately

²⁶ *Id.*; 11 C.F.R. § 110.11(b)(3).

²⁷ 11 C.F.R. § 110.11(c)(1). A disclaimer is not considered "clear and conspicuous" if it is difficult to read or if the placement is easily overlooked. *Id.*; *see also* Communications Disclaimer Requirements, 60 Fed. Reg. 52,069, 52,070-71 (Oct. 5, 1995).

²⁸ 11 C.F.R. § 110(a)(1); *see* U.S.C. § 30120(a).

²⁹ *See* F&LA at 9, MUR 6645 (Conservative Strikeforce, *et al.*) (finding website statements were not made on candidate's behalf despite use of candidate's image and name because disclaimers "give the reader . . . adequate notice of the identity of the person or political committee that paid for and, where required, authorized the communication").

³⁰ *See, e.g.*, F&LA at 9, MUR 6645 (Conservative Strikeforce); F&LA at 3, MUR 3690 (National Republican Congressional Committee) (determining satirical representation by respondent as speaking on behalf of their opponents coupled with disclaimer identifying the speaker was not a prohibited misrepresentation under Section 30124(a)); Certification (Sept. 12, 1986), MUR 2205 (Foglietta) (agreeing with OGC's recommendation in the First General Counsel's Report to find no reason to believe a violation of Section 30124 occurred when advertising material at issue was "clearly printed" as respondent's material, containing the committee's name, address and picture).

1 identify of the solicitor.³¹ By contrast, a disclaimer that explicitly misrepresents the identity of
 2 the actual sponsor as the candidate is almost always a misrepresentation under the Act.³²

3 b. *Misrepresentation Despite Adequate Disclaimer*

4 A proper disclaimer clearly and accurately identifies the person responsible for the
 5 solicitation. Therefore, it affords a strong presumption against finding misrepresentation. That
 6 presumption may nonetheless be defeated where an *explicit* misrepresentation in the text of a
 7 solicitation countermands an otherwise accurate disclaimer.³³

8 c. *Absence of Adequate Disclaimer*

9 In the absence of an adequate disclaimer or other sufficiently identifying information,
 10 however, the Commission has not required the misrepresentation to be explicit to violate the

³¹ See F&LA at 7, MUR 7004 (The 2016 Committee, *et al.*) (dismissing, in part, because deficient email disclaimer contained “sufficient information for recipients to understand that the Committee paid for the emails and was not authorized by any candidate or candidate’s committee”); F&LA at 11, MUR 6633 (Republican Majority Campaign PAC, *et al.*) (disclaimers, although technically deficient, “nonetheless contained sufficient information for [] recipients to identify Republican Majority as the sender or webhost and payor”); F&LA at 4-5, MUR 3690 (National Republican Congressional Committee) (concluding that a small, inconspicuous disclaimer that violated the Act’s requirements for disclaimers nonetheless accurately identified the true sponsor of a postcard sufficient to avoid violation of section 30214); *id.* at n.1 (noting the post cards at issue “display the NRCC post mark and the return address on their face” and that such information “dispel[s] any theory of fraudulent misrepresentation . . . because they notify the readers of the true identity of the senders”).

³² See F&LA at 5, MUR 5443 (www.johnfkerry-2004.com); F&LA at 3, MUR 5505 (<http://testhost.yahoogoogole.biz>); F&LA at 4, MUR 5495 (www.johnkerry-edwards.org).

³³ See F&LA at 7, MUR 6893 (Winning the Senate PAC) (open matter) (noting an express misrepresentation in first-person voice, signed by the candidate, is “not cured” by disclaimer indicating candidate did not authorize the solicitation); Statement of Reasons of Commissioners Weintraub, McDonald, Thomas and Toner at 1-2, MUR 5089 (Matta Tuchman for Congress) (fictitious letterhead, return address, and letter purporting to speak for the Orange County Democrats countermanded a small disclaimer inconspicuously placed on the flap of an envelope in small letters).

1 Act’s prohibition. The Commission has, in those cases, considered less explicit
2 misrepresentations sufficient to satisfy the misrepresentation element.³⁴

3 d. *False Disclaimer Constitutes Misrepresentation*

4 A disclaimer that falsely claims the solicitation is paid for and/or authorized by a
5 candidate or political party constitutes *per se* misrepresentation under section 30124(b). For
6 example, in a series of matters involving a website that mimicked presidential candidate John
7 Kerry’s official website, the Commission found that the use of the disclaimer “Paid for and
8 authorized by John Kerry for President, Inc. 2004” on the website and in solicitation emails
9 patently misrepresented the identity of the website’s sponsor in violation of section 30124(b).³⁵

10 B. “For Or On Behalf Of”

11 Section 30124(b) prohibits misrepresentations about one subject: the identity of the
12 solicitor. The solicitor cannot misrepresent himself “as speaking, writing, or otherwise acting for
13 or on behalf of any candidate or political party or employee or agent thereof.”³⁶

14 This prohibition was enacted as Section 309 of the Bipartisan Campaign Reform Act of
15 2002.³⁷ The amendment’s sponsor, Senator Bill Nelson, stated that the provision “makes it
16 illegal to fraudulently misrepresent any candidate or political party employee or party employee

³⁴ See F&LA at 10, MUR 5951 (Californians for Change) (finding that, in the absence of appropriate disclaimers, a series of implicit misrepresentations “when taken together . . . likely led reasonable people to believe [respondent] was acting on behalf of Sen. Obama”).

³⁵ See F&LA at 5, MUR 5543 (www.johnfkerry-2004.com) (determining there is a “prima facie case for reason to believe” when unauthorized website claimed it was “[p]aid for and authorized by John Kerry for President, Inc.” and copies multiple pages from the campaign’s legitimate website); see also F&LA at 4, MUR 5495 (www.johnkerry-edwards.org) (finding reason to believe where email stated it was “[p]aid for by John Kerry for President, Inc.”); F&LA at 3, MUR 5505 (<http://testhost.yahoogoogle.biz>) (explicit misrepresentation in email solicitation “[p]aid for by John Kerry for President, Inc.” presented “prima facie case for reason to believe”).

³⁶ 52 U.S.C. § 30124(b)(1).

³⁷ Pub. L. No. 107-155, § 309(b), 116 Stat. 81, 104 (2002).

1 in soliciting contributions” in response to complaints that people had “fraudulently raised
2 donations by posing as political committees or candidates.”³⁸

3 The Commission has enforced section 30124(b) consistent with its legislative focus on
4 posing as a candidate.³⁹ For example, in MUR 6641 (CAPE PAC), the Commission found that
5 the third-person statement “Help CAPE PAC re-election Allen West to Congress” did not
6 pretend to be Allen West.⁴⁰ Therefore, the Commission found no violation of the Act.

7 Thus, the subject of a misrepresentation prohibited under section 30124(b)(1) must be the
8 identity of the solicitor as the candidate or agent of the candidate or political party and the proper
9 focus of the Commission’s misrepresentation inquiry must be the misrepresentation of *identity* of
10 the person soliciting the funds, not the use to which the funds are put.⁴¹

11 C. “For The Purpose of Soliciting Contributions”

12 The object of a misrepresentation under section 30124(b)(1) targets one purpose of the
13 misrepresentation: soliciting contributions or donations. The solicitor must misrepresent his
14 identity for the purpose of soliciting contributions or donations. Misrepresentations for other
15 purposes are not prohibited by Section 30124(b).⁴²

³⁸ 148 CONG. REC. S3122 (daily ed. March 29, 2001) (statement of Sen. Nelson) (offering amendment to the Bipartisan Campaign Reform Act).

³⁹ See generally, Matthew S. Raymer, *Fraudulent Political Fundraising in The Age of Super PACs*, 66 SYRACUSE L. REV. 239, 257-58 (2016).

⁴⁰ F&LA at 9, MUR 6641 (CAPE PAC).

⁴¹ The Commission has unanimously recommended that Congress consider amending Section 30124 to cover fraudulent misrepresentations regarding the ultimate use to which the solicitor will put the funds. See *Legislative Recommendations of the Federal Election Commission 2016* at 7, (Dec. 1, 2016), available at <https://transition.fec.gov/pdf/legrec2016.pdf>.

⁴² Compare 52 U.S.C. § 30124(a)(1) (prohibiting misrepresentations for the purpose of damaging an opposing candidate or political party in any way).

1 By the same token, Section 30124(b) does not encompass other transactions that may
 2 cause injury or otherwise result in unfairness to contributors.⁴³ In certain instances, a
 3 respondent’s alleged injury may be more appropriately addressed through other federal or state
 4 anti-fraud statutes.⁴⁴

5 D. “Fraudulent” Intent

6 The Act also requires that the misrepresentation of identity be “fraudulent.” As the
 7 Commission observed in MUR 3690,

8 A violation of Section [30124] requires *fraudulent*
 9 misrepresentation. Key elements of fraud are the maker’s intent
 10 that the misrepresentation be relied on by the person and in a
 11 manner reasonably contemplated, the person’s ignorance of the
 12 falsity of the representation, and the person’s rightful or justified
 13 reliance. More significantly, a fraudulent misrepresentation
 14 requires intent to deceive.⁴⁵

15
 16 According to one federal court interpreting Section 30124, a misrepresentation can be deemed
 17 fraudulent “if it was reasonably calculated to deceive persons of ordinary prudence and
 18 comprehension.”⁴⁶

⁴³ Cf. *Schmuck v. United States*, 489 U.S. 705, 710 (1989) (“The federal mail fraud statute does not purport to reach all frauds, but only those limited instances in which the use of the mails is a part of the execution of the fraud.”) (internal quotations omitted); *id.* at 723 (“It is mail fraud, not mail and fraud, that incurs liability . . . [t]he mailing must be in furtherance of the fraud.”) (Scalia, J., dissenting).

⁴⁴ See, e.g. 18 U.S.C. § 1341 (prohibiting use of mails to further a “scheme or artifice to defraud”); 18 U.S.C. § 1343 (prohibiting use of interstate wire communications to further a “scheme or artifice to defraud”). In *Friends of Phil Gramm v. Americans for Phil Gramm In ’84*, the U.S. District Court for the Eastern District of Virginia concluded the pre-BCRA Act does not “categorically preclude a state law cause of action for fraud.” 587 F. Supp. 769, 776 (E.D. Va. 1984) (denying injunction where defendant’s fundraising efforts were “circular”); see also *Galliano v. U.S. Postal Service*, 836 F.2d 1362, 1371 (D.C. Cir. 1988) (Bader Ginsburg, J.) (noting Congress intended other statutory provisions to protect the public from fraud) (citing *Friends of Phil Gramm*, 587 F. Supp. 769).

⁴⁵ F&LA at 3-4, MUR 3690 (National Republican Congressional Committee) (emphasis in original).

⁴⁶ See *FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Texas Apr. 14, 2010) (“*Novacek*”). The court in *Novacek* and prior Commission legal analyses have defined “fraudulent” by looking to decisions interpreting the federal mail fraud statute, which does not require a misrepresentation of identity. *Id.* (citing *Silverman v. United*

1 Proving a respondent's subjective intent can be difficult to prove with direct evidence. At
2 the reason to believe stage, the Commission has been willing, on appropriate facts, to make an
3 inference that a respondent acted with the requisite intent to deceive. However, in making the
4 determination, the Commission considers whether some facts that could lead to an inference of
5 fraudulent intent may be negated by other reasonable inferences. In other words, the facts
6 supporting an inference of fraudulent intent must be *more reasonable* than competing reasonable
7 inferences that could be drawn.

8 Since section 30124(b)'s passage, the Commission has considered certain evidence that
9 can, in proper circumstances, evince the fraudulent nature of a misrepresentation. Such evidence
10 includes (1) whether the respondent was properly registered and reporting to the Commission, if
11 required;⁴⁷ (2) whether respondent had knowledge that contributors believed they were
12 contributing to a candidate or party;⁴⁸ (3) the solicitor's acceptance of contributions clearly
13 intended for a candidate or party;⁴⁹ (4) false statements that contributions to the respondent

States, 213 F.2d 405, 407 (5th Cir. 1954) (“*Silverman*”) (“[T]he fact that there is no misrepresentation of a single existing fact makes no difference in the fraudulent nature of the [mail fraud] scheme.”); *see also* F&LA at 8, MUR 6645 (Conservative Strikeforce, *et al.*); F&LA at 9, MUR 6643 (Patriot Super PAC, *et al.*); F&LA at 9, MUR 6641 (CAPE PAC, *et al.*); F&LA at 9, MUR 6633 (Republican Majority Campaign PAC, *et al.*). A *misrepresentation of identity* is the required actus reus under 52 U.S.C. § 30124 and that misrepresentation must be made with *fraudulent* intent. By comparison, the actus reus which the federal mail fraud statute, 18 U.S.C. § 1341, is any use of the mails, and that use must be fraudulent, regardless whether there is a misrepresentation. This distinction is significant to applying Section 30124(b): the statute prohibits misrepresentations that are fraudulent.

⁴⁷ F&LA at 10, MUR 6633 (Republican Majority Campaign) (“Weighing against a finding of reason to believe that the Respondent violated [52 U.S.C. § 30124(b)] is the fact that [the Respondent] is registered with the Commission and complies with its reporting requirements . . .”).

⁴⁸ *See Novacek*, 739 F. Supp. 2d at 962 (“Novacek admits that she knew solicitees were confused as to the entities calling, because they would ask for information about the RNC or the Bush-Cheney '04 campaign, or would send checks made out to those entities.”).

⁴⁹ F&LA at 5, MUR 5444 (National Democratic Congressional Committee) (solicitor endorsed and deposited a check made payable to a party committee and diverted the funds to his personal use).

1 would go directly to the represented candidate or party;⁵⁰ (5) the presence of a false disclaimer;⁵¹
2 and (6) whether the solicitor made other false statements regarding its identity.⁵² Such evidence
3 is probative of whether a respondent's conduct was reasonably calculated to deceive people into
4 believing they were giving to a candidate or party.

5 The Commission has found that the inclusion of an adequate disclaimer, absent a
6 countermanding explicit misrepresentation of identity, can negate any inference arising from
7 other evidence indicating a respondent maintained the requisite intent to deceive for purposes of
8 a section 30124 violation.⁵³

9 Significantly, however, not all misrepresentations are fraudulent. In MUR 3690, the
10 Commission found that a flyer sponsored by a national political party committee purporting
11 (falsely) to be written by a candidate informing constituents of his profligate spending ways in
12 Washington, D.C. – although a misrepresentation – was satire and lacked the requisite fraudulent
13 intent to violate Section 30124.⁵⁴

⁵⁰ Compare, e.g., Gen. Counsel's Brief at 8, MUR 5472 (RVC) (recommending probable cause in part on the basis of the statement "Contributions or gifts to the *Republican Party* are not deductible as charitable contributions") (emphasis in original), with F&LA at 10, MUR 6641 (CAPE PAC) (finding no reason to believe statements such as "Help CAPE PAC re-elect Allen West to Congress" indicated fraudulent intent).

⁵¹ See F&LA at 5, MUR 5543 (www.johnfkerry-2004.com); F&LA at 3, MUR 5505(<http://testhost.yahoogoogle.biz>); F&LA at 4, MUR 5495 (www.johnkerry-edwards.org).

⁵² See F&LA at 8, MUR 5385 (Groundswell Voters PAC) (finding "circumstances present a classic case of fraud because respondents claimed to be a PAC, used a false address, and false IRS registration number). The focus of the fraudulent misrepresentation inquiry must be the representation of *identity* of the person soliciting the funds, not the use to which the funds are put.

⁵³ F&LA at 10, MUR 6641 (CAPE PAC, *et al.*) ("The Commission has previously held that the presence of an adequate disclaimer identifying the person or entity that paid for and authorized a communication can defeat an inference that a respondent maintained the requisite intent to deceive for purposes of a section [30124] violation.") (citing MUR 2205 (Foglietta) and MURs 3690, 3700 (National Republican Congressional Committee)).

⁵⁴ F&LA at 3-4, MUR 3690 (National Republican Congressional Committee) (applying the "fraudulent misrepresentation" prohibition under 52 U.S.C. § 30124(a)(1)).

1 **B. Application to the Committee’s Solicitations**

2 The legal analysis of the Committee’s solicitations focuses on two key issues: whether
 3 the Committee misrepresented its identity as acting on behalf of congressional candidate Bill
 4 Huizenga and HFC and, if so, whether the Committee’s conduct and solicitations evince the
 5 requisite fraudulent intent. The other elements of fraudulent misrepresentation – the allegation
 6 that the Committee purported to act for or on behalf of HFC and solicited contributions – are
 7 clear from the Committee’s online communications, noted above.

8 1. The Committee’s Solicitations Misrepresented the Committee as Acting on Behalf of 9 Huizenga

10
 11 Here, the Committee maintained a “Trump Huizenga 2016” Facebook title page and
 12 “@HuizengaTrump16” Twitter address without an adequate disclaimer;⁵⁵ the Committee’s
 13 Twitter and Facebook posts requesting individuals “[d]onate \$64 to the Trump Huizenga Unity
 14 2016 Campaign today!” indicated that the contributions directly benefited Huizenga, rather than
 15 the Committee; the Twitter and Facebook posts containing Huizenga’s name and photograph
 16 gave the impression Huizenga himself is tweeting and posting; the use of Huizenga’s name and
 17 photograph on Pinterest as the person “saving” photographs of the merchandise photograph gives
 18 the impression Huizenga himself is acting; and the Zazzle page exhorting visitors to “[p]lease

⁵⁵ Disclaimers are not legally required for internet solicitations which are not also “public communications.” See 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a)(1). However, in the absence of an express misrepresentation, an adequate disclaimer or other sufficiently identifying information may serve as a safe-harbor to a claim of misrepresentation. Although the Twitter, Paypal, and Zazzle pages contain some features that attempt to distance the Committee from the Huizenga campaign, they are not sufficiently informative to avoid confusion as to the identity of the solicitor. These features are (1) the word “unofficial” appearing at the top of the Twitter account and individual Facebook posts; (2) the statement “Send Money to Americans for Sensible Solutions PAC” on the Committee’s PayPal account; and (3) the statement “Americans for Sensible Solutions P.A.C. may not collaborate, collude or coordinate with either [] campaigns” appearing the Kinzinger Trump 2016 Zazzle page. See F&LA at 9-10, MUR 5951 (Californians for Change) (committee’s claim that it was an “independent committee to elect Obama” deemed insufficient to cure multiple statements implying committee was acting on behalf of candidate Barack Obama).

1 support a unified Republican Party in the November Elections by donating to our Political Action
2 Committee” indicated the speaker was doing so on behalf of the Republican party. Thus, the
3 Commission finds there is a sufficient basis find that the Committee misrepresented itself as
4 acting on behalf of congressional candidate Bill Huizenga and HFC.

5 2. There is Sufficient Evidence of the Committee’s “Fraudulent” Intent
6

7 Here, the evidence in the record before the Commission regarding the Committee’s intent
8 is sufficient to permit a reason to believe finding. Facts supporting an inference of fraudulent
9 intent include the following:

- 10 • The Committee repeatedly failed to file required disclosure reports with the
11 Commission;
- 12 • In the one disclosure report filed with the Commission, the Committee
13 discloses no receipts or disbursements despite numerous social media
14 accounts soliciting donations and e-commerce pages selling merchandise;
- 15 • The Committee had knowledge its Twitter account @HuizengaTrump16, led
16 people to believe Huizenga endorsed the Twitter account, when in fact he did
17 not; and
- 18 • The Committee falsely gave the impression that Huizenga himself was
19 speaking on Facebook and Pinterest.
20

21 Facts supporting an alternative inference include the following:
22

- 23 • The Committee appears to have properly registered with the Commission as
24 an unauthorized political action committee;
25

26 In weighing these facts, and applying the Commission’s experience and expertise in
27 political solicitations, the Commission concludes that there is sufficient evidence that the
28 Committee’s solicitations objectively were “reasonably calculated to deceive persons of ordinary
29 prudence and comprehension.”

30 * * *

1 In sum, because the Committee’s solicitations did not sufficiently inform contributors that
2 the Committee was not speaking or acting on behalf of Huizenga, and because the record
3 indicates the Committee acted with fraudulent intent, the Commission finds reason to believe the
4 Committee violated 52 U.S.C. § 30124(b) and 11 C.F.R. § 110.16(b).⁵⁶

5 **C. Failure to File Disclosure Reports**

6 Each treasurer of a political committee is required to file reports of receipts and
7 disbursements in accordance with 52 U.S.C. § 30104(a). Each report shall disclose the amount
8 of cash-on-hand at the beginning and end of the reporting period, the total amount of receipts for
9 the reporting period and for the calendar year, and the total amount of disbursements for the
10 reporting period for the calendar year.⁵⁷

11 The Committee failed to file its 2016 July Quarterly Report properly, and it failed to file
12 its 2016 October Quarterly, Post-General, Year-End Report, and its 2017 April Quarterly Report.
13 Therefore, there is reason to believe that the Committee violated 52 U.S.C. § 30104(a) and (b) by
14 failing to properly report its receipts and disbursements as required by the Act.

⁵⁶ By naming its Twitter account “@HuizengaTrump16,” the Committee used the name of a candidate in a special project without showing opposition to that candidate, potentially violating the Act and Commission regulations. 52 U.S.C. § 30102(e)(4); 11 C.F.R. § 102.14(a). An unauthorized committee may only include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(3); *see also* Advisory Op. 1995-09 at 6 (NewtWatch PAC) (“The operation of a World Wide Web site would be considered a project of the Committee”); Advisory Op. 2015-04 at 3-4 (Collective Actions PAC) (determining that a committee’s “online activities are ‘projects’ that fall within the scope of 11 C.F.R. § 102.14”). These restrictions on the use of a candidate’s name, however, have recently been the subject of litigation. In August 2016, the D.C. Circuit ruled that the Plaintiff committee was entitled to a preliminary injunction enjoining the application of 11 C.F.R. § 102.14(a) against its website and social media pages as a possible content-based ban on speech. *See Pursuing America's Greatness v. FEC*, 831 F. Supp. 3d 500 (D.C. Cir. Aug. 2, 2016). In light of this ongoing litigation, the Commission makes no findings as to the Committee’s possible violation of 11 C.F.R. § 102.14(a) at this time.

⁵⁷ 52 U.S.C. § 30104(b)(1), (2), (4).