




Laurence Levy  
Tel 212.801.6796  
Fax 212.801.9369  
levyl@gtlaw.com

 Digitally signed  
by Kathryn Ross  
Date: 2017.05.19  
10:15:41 -04'00'

**MUR 7147**

May 17, 2017

Paralegal  
Federal Election Commission,  
Office of Complaints Examination and Legal Administration  
Attn: Kathryn Ross, Paralegal  
9998 Street, NW  
Washington, DC 20463

Re: MUR 7174 Supplemental Complaint

Dear Ms. Ross:

We submit this supplemental response to the supplement filed by the Campaign Legal Center (“Complainant”) in the matter under review designated as MUR 7147, on behalf of our clients, Make America Number 1, Jacquelyn James, treasurer, and Stephen K. Bannon.

Complainant’s supplemental filings merely repeat the assertions in their initial complaint; all their new allegations add are additional spurious and conspiratorial assertions that any ties between various conservative donors and activists must be indicative of some grand coordination scheme. For each of these allegations, they do not provide a scintilla of relevant evidence to back up their assumptions, relying instead on third-party accounts, hyperbolic journalistic assertions, assumptions, and logical leaps that would put Oliver Stone to shame. By asking the Commission to find a reasonable basis to investigate on the basis of these conclusory allegations, Complainants are requesting that the Commission shift the burden of proof to the respondents,

May 17, 2017

Page 2

entirely in opposition to well-established FEC and court precedent<sup>1</sup>. Moreover, as addressed in the initial filings of Make America Number 1 PAC (the “PAC”) and further described below, no such coordination occurred.

**MAKE AMERICA NUMBER ONE’S PAYMENTS TO GLITTERING  
STEEL AND CAMBRIDGE ANALYTICA WERE FOR SERVICES  
RENDERED TO THE PAC**

Contrary to Complainants’ assertions, the payments made to both Glittering Steel (“GS”) and Cambridge Analytica (“CA”) represented fair market payment for services rendered to the PAC, rather than some elaborate scheme to remunerate one shareholder and board member for services rendered to the Campaign. As detailed in both the PAC’s initial response and its accompanying affidavits, the PAC regularly utilized both GS and CA for numerous services during the primary election campaign, when the PAC was actively supporting the candidacy of Senator Ted Cruz. The PAC continued using the services of both GS and CA in a similar fashion after the PAC began supporting President Trump. Moreover, as stated in the PAC’s initial filings and the accompanying affidavits of Mr. Bannon, Mr. Wheatland, and Mr. Fluette, Mr. Bannon ceased receiving any financial benefit or payments from either GS or CA at the time he began working for the Trump campaign. Moreover, as previously stated, Mr. Bannon continued to maintain a financial stake in both entities, pending first the election and then the approval of the terms of divestment by the Office of Government Ethics (“OGE”), at the time of the PAC’s initial response. Mr. Bannon has since ceased any relationship with either company. Indeed, our

---

<sup>1</sup> See MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (July 20, 2000) (“[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents”); *Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations.”)

May 17, 2017

Page 3

prior submission readily acknowledged Mr. Bannon's ownership interest in each entity, something Complainants would have you believe is a startling new revelation.

In relation to GS, it is well documented that the PAC utilized GS to produce numerous video advertisements on behalf of the PAC and establish a media silo that could be regularly utilized to produce on point videos.<sup>2</sup> During the primary campaign, payments to GS were for the production of communications that either supported Senator Cruz or opposed the candidacy of Senator Marco Rubio, or other candidates to a lesser extent; during the general election, GS was paid for services rendered, assisting with the production of over fifty published communications and numerous "rough cut" ads between July and November.<sup>3</sup> As attested to in the Fleurette affidavit and confirmed by the PAC 24/48 hour reports, GS billed the PAC at standard market rates on a per-video basis.<sup>4</sup> After Mr. Bannon joined the Trump campaign, Glittering Steel "ceased providing any financial remuneration to him; this included any compensation as a board member, a consultant providing strategic business guidance, or as a writer or producer for movies such as Clinton Cash."<sup>5</sup> While he continued to hold an ownership interest in Glittering Steel, Mr. Bannon began the processes of divesting from his ownership of GS on August 16, 2016 when he began working for the Trump campaign; shortly after the OGE approved the terms of the agreement and issued a certificate of divestiture on April 12, 2017, Mr. Bannon fully divested from GS. It should be noted that OGE advises that new employees must maintain any

---

<sup>2</sup> Fleurette Aff. at 3.

<sup>3</sup> See, e.g. Make America Number 1, 48 Hour Report of Independent Expenditures (Aug. 5, 2015) Image No. 201508059000802154 (Ad produced in support of Rafael "Ted" Cruz); Make America Number 1, 24 Hour Report of Independent Expenditures (Mar. 3, 2016) Image No. 201603079009662071 (Video production in opposition to Marco Rubio).

<sup>4</sup> See, e.g. Make America Number 1, 48 Hour Report of Independent Expenditures (Sept. 22, 2016) Image No. 201609229032101607 (Ad produced in opposition to Hillary Rodham Clinton); Fleurette Aff. at 12 ("All payments for the work we performed was invoiced at standard market rates.").

<sup>5</sup> Fleurette Aff. at 5.

May 17, 2017

Page 4

investment they own for which they seek a certificate of divestiture until such time as OGE issues or declines to issue such certificate.<sup>6</sup>

The PAC likewise regularly utilized the services of CA during both the primary and general election campaigns. During the primary campaign, the PAC made \$483,020 in disbursements to CA for media and strategic services, at a time when the PAC supported Senator Cruz and Mr. Bannon remained uninvolved with the Trump campaign. As the PAC transitioned to support the candidacy of President Trump, the PAC continued to pay CA *quantum meruit* for “survey research” and media purchasing. Like with GS, Mr. Bannon stopped receiving financial remuneration from Cambridge for any purpose when he began working for the Trump campaign. As attested to by Mr. Wheatland after joining the campaign, Mr. Bannon “ceased engaging with board decision making and began the process of divesting his interest in Cambridge; he has also received no compensation for his position on the board or for consulting services since that time.”<sup>7</sup> Shortly after the Office of Government Ethics approved the terms of the agreement and issued a certificate of divestiture on April 12, 2017, Mr. Bannon fully divested from CA.

None of the information contained in Complainant’s supplemental filing provides any additional evidence of some grand scheme to fraudulently pay Mr. Bannon for services he rendered to the campaign; in fact, the copies of Mr. Bannon’s financial disclosure forms annexed to the supplemental complaint demonstrate that Mr. Bannon ceased receiving any compensation from GS or CA when he joined the Trump campaign. As readily demonstrated by the PAC’s initial filings, it is clear that all payments made by the PAC to both GS and CA were made,

---

<sup>6</sup> *Certificate of Divestiture Fact Sheet*, OFFICE OF GOV. ETHICS, [https://www2.oge.gov/Web/OGE.nsf/0/CB13B398F168EC5E85258026004CE9B3/\\$FILE/Certificate%20of%20Divestiture%20Fact%20Sheet.pdf](https://www2.oge.gov/Web/OGE.nsf/0/CB13B398F168EC5E85258026004CE9B3/$FILE/Certificate%20of%20Divestiture%20Fact%20Sheet.pdf) (last accessed May 15, 2017) (annexed hereto as Exhibit A).

<sup>7</sup> Wheatland Aff. at 3.

May 17, 2017

Page 5

*quantum meruit*, for services rendered to the PAC, and none of those funds were paid to Mr. Bannon. Rather than displaying a smoking gun, the supplemental filings are merely blowing smoke.

**THE PAC DID NOT IMPROPERLY COORDINATE WITH THE  
CAMPAIGN THROUGH THE USE OF A COMMON VENDOR**

As with their allegations regarding alleged payments for services rendered to the campaign, Complainant's allegation concerning the use of CA as a common vendor falls flat, as CA's activities fall within the safe harbor for vendors that have established firewalls. As a provider of services to both political candidates, independent committees, and corporation, CA maintains a written firewall policy, which requires delineation of all staff working for each individual client and prohibits any sharing of information between the delineated teams. Upon implementation of the firewall, a copy of the policy is sent to each affected employee and the clients in question.

As attested to by Julian Wheatland, CA utilized a firewall to ensure that no information was shared between the PAC and campaign teams. CA delineated which team members were assigned to perform PAC work and those individuals were subsequently prevented from accessing any information from or data used for the Trump campaign. In fact, there were numerous times when CA would purchase the same data set separately for both clients in order to maintain the integrity of the data segregation required by the firewall.<sup>8</sup> As the affidavits of Mr. Bannon, Ms. Mercer, and Mr. Wheatland indicate, CA followed their firewall policy in all interactions with the campaign and PAC, and all attest to the fact that no non-public proprietary campaign information was received by the PAC, nor was any such non-public proprietary

---

<sup>8</sup> Wheatland Aff. at 12.

May 17, 2017

Page 6

information provided to the trump campaign.<sup>9</sup> Moreover, as indicated by Mr. Wheatland, not only did CA require data segregation, it also ensured that the employees working for the campaign operated out of offices in San Antonio, Texas, while the PAC team operated out of offices in Washington, D.C.<sup>10</sup> Finally, Mr. Bannon, as a board member of CA, was covered by the firewall policy at all times and subsequently never had access to any non-public proprietary information of either the PAC or the campaign.<sup>11</sup>

As the complaint lacks any evidence to contradict these facts, the Commission should find that the PAC did not coordinate with the campaign through CA as a common vendor.

### **NO QUID PRO QUO OCCURRED.**

The final section of the supplemental complaint contains additional allegations of quid pro quo based on the connections between two PAC donors, Rebekah Mercer and Erik Prince, and the Trump transition. Pulling from third-hand published accounts riddled with innuendo and supposition, they argue that Ms. Mercer, a well-established conservative activist, was only granted an advisory position with the Trump transition team in exchange for the PAC's support. They further point to statements made by Mr. Prince, an executive who has been integrally involved with both conservative politics and military policy, that claimed a connection to the Trump administration.

In spite of their creative attempts to imply *quid pro quo*, nothing in the conduct of either Mr. Prince or Ms. Mercer would provide a sufficient reason to believe that quid pro quo occurred. Both Ms. Mercer and Mr. Prince are private citizens who are actively involved in conservative politics and policy, who are simply exercising their constitutionally protected right

---

<sup>9</sup> Wheatland Aff. at 12; Bannon Aff. at 4; Mercer Aff. at 9.

<sup>10</sup> Wheatland Aff. at 11.

<sup>11</sup> Bannon Aff. at 6; Wheatland Aff. at 3.

May 17, 2017

Page 7

to free speech in the form of political spending; the in the absence of a more specific factual showing, “[t]he fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt.”<sup>12</sup> Nothing within the FECA prohibits PAC donors from eventual serving in an administration or maintaining connections with elected officials.

Mr. Prince was simply a donor to the PAC who had no role on the PAC board or any influence over PAC activities. Moreover, as is well documented, he is a member of an extended family of wealthy individuals who have a history of supporting political candidates.<sup>13</sup> Indeed, his sister, Mrs. Betsy DeVos, a person who did not donate to or play any role with the PAC, is currently the Secretary of Education in the Trump Administration.<sup>14</sup> Given this widely reported and very public information, Complainant’s allegations—bolstered only by the record of Mr. Prince’s donation and a Washington Post article alleging that, post-election, he improperly attempted to establish a back-channel between Trump transition officials and Russia—that the PAC, in effect, operated as a mass influence peddling conspiracy is likely actionable libel. Such defamatory and meritless claims demonstrate the depths to which Complainant will sink to tarnish the reputation of individuals whose political views they detest.

Ms. Mercer’s relationship with both the PAC and the Trump campaign and transition were addressed fully in the initial submission of the PAC. As a major conservative activist, respected civic leader, and New York City resident, Ms. Mercer maintained a personal

---

<sup>12</sup> *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 359 (2010).

<sup>13</sup> Over the 2016 election cycle, the extended DeVos family, including Mr. Prince, donated over \$5.1 million. Anu Narayanswamy, Aaron Williams & Matea Gold, *Meet The Wealthy Donors Who Are Pouring Millions Into The 2016 Elections*, WASH. POST, Nov. 2, 2016, <https://www.washingtonpost.com/graphics/politics/superpac-donors-2016> (annexed hereto as Exhibit B).

<sup>14</sup> Richard Pérez-Peña, *Betsy DeVos is Publicly Polite, but a Political Fighter*, N.Y. Times, Feb. 23, 2017, [https://www.nytimes.com/2017/02/23/us/politics/education-secretary-betsy-devos-donald-trump.html?\\_r=0](https://www.nytimes.com/2017/02/23/us/politics/education-secretary-betsy-devos-donald-trump.html?_r=0); Haley Sweetland Edwards, *Donald Trump’s Schoolyard Rebel*, Dec. 19, 2016, <http://time.com/4606096/betsy-devos-schoolyard-rebel/>.

May 17, 2017

Page 8

relationship with the Trump family and numerous high-level conservative thought leaders. During the election, her hiring recommendations were instrumental in the ultimate success of the Trump campaign; it is therefore unsurprising that the President sought her expertise and advice during the transition period. There is nothing untoward or unusual about such a practice, as evidenced by the significant position given to prominent donors like Donald Gips during President Obama's transition. In the face of such a common and innocuous post-election advisory appointment, Complainants request that the Commission investigate on the basis of their hunch, shifting the burden to the Respondents in direct contravention of established FEC precedent, a course of action that should not be countenanced.<sup>15</sup>

---

<sup>15</sup> See MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (July 20, 2000) (“[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents”); *Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations.”)



May 17, 2017  
Page 9

**CONCLUSION**

For each of the foregoing reasons, the Commission should find no reason to believe a violation of FECA occurred.

Best regards,

A handwritten signature in blue ink, appearing to read 'Laurence Levy', is written over the typed name and title.

Laurence Levy  
Shareholder

LL:ep

**Exhibit A**  
**Office of Government Ethics**  
**Certificate of Divestiture**  
**Guidance**

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**

— ★ —  
 Preventing Conflicts of Interest  
 in the Executive Branch

## CERTIFICATES OF DIVESTITURE

As an executive branch employee, your agency or the Office of Government Ethics (OGE) can direct you to sell, or otherwise divest, an asset in order to avoid a conflict of interest or the appearance of one. If selling the asset will result in a capital gain, you may be eligible for a Certificate of Divestiture to offset the tax burden of complying with the government's conflict of interest requirements. (Note, however, that a special government employee is not eligible.)

You, your spouse, and your dependent or minor child are eligible to request a Certificate of Divestiture. A trustee is also eligible when the asset is held in a trust, except in certain cases in which ineligible persons are also beneficiaries of the trust. The person requesting a Certificate of Divestiture (*i.e.*, you, your spouse, your dependent or minor child, or a trustee) must commit in writing to divesting the asset even if a Certificate of Divestiture is not issued.

*A Certificate of Divestiture allows you to defer the payment of capital gains tax by reinvesting the proceeds of a sale into "permitted property."*

To request a Certificate of Divestiture, contact your agency ethics official. If your agency supports the request, your agency ethics official will assemble the necessary documents and submit the request to OGE. OGE will then review the submission to determine whether (1) the request meets applicable procedural requirements and (2) whether divestiture is reasonably necessary to avoid a conflict of interest. OGE will either issue a Certificate of Divestiture to you through your agency ethics official or notify your agency ethics official that your request has been denied.

Do not sell the asset until your agency ethics official provides you with the Certificate of Divestiture or notifies you that OGE has denied your request. A Certificate of Divestiture is valid only if obtained

*A Certificate of Divestiture is valid only if obtained **before** selling an asset.*

*before* selling an asset. Within 60 days of the sale, you must reinvest the proceeds of the sale in "permitted property." Permitted property is limited to U.S. government obligations (*i.e.*, Treasuries), diversified mutual funds, and diversified exchange-traded funds.

For this purpose, "diversified" means the fund does not have a stated policy of concentrating in any industry, business, single country other than the U.S., or the bonds of a single state within the U.S.

When you file your taxes, complete part IV of IRS Form 8824 to defer payment of capital gains on the sale of the asset pursuant to a Certificate of Divestiture. You will need to pay the deferred capital gains later when you sell the permitted property.

Contact your agency ethics official for more information about Certificates of Divestiture. Note that OGE and your agency ethics official are not able to provide tax advice. Please consult your own tax advisor instead if you need guidance as to tax matters. Your tax advisor should consult 26 U.S.C. § 1043 and 5 C.F.R. part 2634, subpart J.

*A Certificate of Divestiture is not an employee benefit; it is designed to reduce the financial burden of complying with ethics laws.*

## **Exhibit B**

# Meet the wealthy donors who are pouring millions into the 2016 elections

[washingtonpost.com/graphics/politics/superpac-donors-2016/](http://washingtonpost.com/graphics/politics/superpac-donors-2016/)

## Big givers drive super PAC fundraising

By the end of September, super PACs had raised \$1.5 billion and had spent \$791.5 million on ads and other forms of voter outreach. Including expenditures through Nov. 1, super PACs had spent a total of \$968 million.

The top 50 donors have together supplied \$571.1 million—37 percent of the money raised to date.

[\[GOP donors, fearful of Trump-fueled electoral rout, direct big money down-ballot\]](#)

23 donors gave more than \$10 million. Donors in this range gave a total of \$468.7 million, or 30 percent of total donations.



Each rectangle is a donor and is sized by the donation amount. The larger the rectangle, the larger the donation.

## The top 50 donors and “ghost” corporations

Many of the biggest super PAC donors have spread around their money, financing multiple super PACs that back presidential hopefuls and congressional candidates. They hail from various sectors, fueled by fortunes made in the energy industry, on Wall Street and in health care.

The Washington Post is also tracking donations made through “ghost corporations” whose backers cannot be identified.

[\[How ‘ghost corporations’ are funding the 2016 election\]](#)

[Individual donors/corporations](#) [Ghost corporations](#)

Name	About	Party Leaning	Donation
Tom Steyer	Hedge fund founder	Democratic	\$66.3 million
Miriam & Sheldon Adelson	Medical professional; Casino magnate	Republican	\$52.7 million
S. Donald Sussman	Hedge fund manager	Democratic	\$36.8 million
Fred Eychaner	Media company owner	Democratic	\$33.1 million

<b>Name</b>	<b>About</b>	<b>Party Leaning</b>	<b>Donation</b>
Robert Mercer	Technologist and hedge fund manager	Republican	\$21.2 million
Michael Bloomberg	Former New York City mayor	Independent	\$20.1 million
Paul Singer	Hedge fund executive	Republican	\$19.8 million
Marilyn & James Simons	Hedge fund manager	Democratic	\$18.5 million
George Soros	Hedge fund founder	Democratic	\$17.5 million
Dustin Moskovitz & Cari Tuna	Philanthropist; Facebook co-founder	Democratic	\$17.3 million
M.K. & J.B.Pritzker	Investor; philanthropist	Democratic	\$16.4 million
Maurice "Hank" Greenberg	Former chairman of AIG	Republican	\$15.3 million
Elizabeth & Richard Uihlein	Founders of Wisconsin-based packaging company	Republican	\$14.9 million
Marlene & Joe Ricketts	Philanthropist; TD Ameritrade founder	Republican	\$14.4 million
Ronald Cameron	Arkansas-based poultry company owner	Republican	\$13.9 million
Kenneth C. Griffin	Hedge fund manager	Republican	\$11.6 million
Warren Stephens	Arkansas-based investment banker	Republican	\$11.2 million
Cheryl & Haim Saban	Women's advocate/author; Univision chairman	Democratic	\$11.1 million
Daniel Abraham	Slim-Fast founder	Democratic	\$10 million
Diane Hendricks	Roofing company co-founder	Republican	\$9.1 million
Bernard Marcus	Home Depot co-founder	Republican	\$8.4 million
Laure Woods	Retired medical consultant; philanthropist	Democratic	\$7.9 million
Environment America	Environmental advocacy group	Democratic	\$7.7 million
Norman Braman	Auto dealership owner/former Philadelphia Eagles owner	Republican	\$7.3 million
The Wilks family	Energy and real estate magnates	Republican	\$7 million
Marsha & Henry Laufer	Speech pathologist; former hedge fund scientist	Democratic	\$6.7 million
Alexandra & Steven Cohen	Philanthropist; hedge fund manager	Republican	\$6.3 million
Robert McNair	Energy company founder	Republican	\$6.1 million
Charles Koch	Koch Industries chief executive	Republican	\$6 million
The Devos family	Amway co-founder and family	Republican	\$5.1 million
Jerrold Perenchio	Former Univision chief executive	Republican	\$5.1 million
Lawrence Ellison	Oracle co-founder	Republican	\$5.1 million
Jeffrey Yass	Founder of investment company	Republican	\$4.7 million
Bernard Schwartz	Former head of Loral Space & Communications	Democratic	\$4.3 million
Michael Vlock	Investor/husband of billionaire Karen Pritzker	Republican	\$4.3 million
Jon Stryker	Philanthropist/architect	Democratic	\$4.2 million

<b>Name</b>	<b>About</b>	<b>Party Leaning</b>	<b>Donation</b>
Leonard Blavatnik	Russian-born investor/owner of Warner Music Group	Republican	\$3.8 million
William Obernorf	San Francisco investment manager	Republican	\$3.7 million
Benjamin Leon Jr.	Founder of health-care company	Republican	\$3.5 million
David E. Shaw	Hedge fund founder	Democratic	\$3.5 million
Alexander Soros	Philanthropist; son of George Soros	Democratic	\$3.3 million
Jackson Stephens Jr.	Biotech investor	Republican	\$3.3 million
Cliff Asness	Hedge fund co-founder	Republican	\$3.2 million
Linda McMahon	Co-founder of wrestling franchise WWE	Republican	\$3.2 million
Julian Robertson	Former hedge fund manager	Republican	\$3.1 million
Miguel Fernandez	Health-care business owner	Republican	\$3.1 million
Chevron	Multinational oil corporation		\$3 million
Herbert Sandler	Savings and loan co-founder	Democratic	\$3 million
Amy Goldman Fowler	Philanthropist; Author	Democratic	\$3 million
Seth Klarman	Hedge fund manager	Republican	\$2.9 million