

OFFICE OF
GENERAL COUNSEL

October 1, 2018

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Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, DC 20002
Attn: Office of Complaints Examination

MUR # 7508

Re: Complaint Against Friends of Sherrod Brown filed pursuant to 52 U.S.C. § 30109(a)(1)

To the Federal Election Commission,

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Friends of Sherrod Brown has violated the Federal Election Campaign Act ("FECA" or "the Act"), as amended, 52 U.S.C. § 30101 *et seq.* As detailed below, we bring to the Commission's attention instances of illegal and/or unreported corporate contributions accepted by Sherrod Brown and Friends of Sherrod Brown.

Sherrod Brown is the senior U.S. Senator representing the state of Ohio, and is running for re-election in 2018. Brown's principal campaign committee is Friends of Sherrod Brown (C00264697).

1. Background

On September 25, 2018, Friends of Sherrod Brown released a campaign advertisement featuring Whirlpool Corporation employees voicing their support of Sherrod Brown while wearing clothing featuring the Whirlpool Corporation logo and talking about Whirlpool Corporation's business ("the Advertisement). While standing in front of a Whirlpool Corporation sign, a Whirlpool Corporation employee says to camera: "we make washing machines, and Sherrod Brown looks great to us." Brown himself closes out the Advertisement standing in front of the Whirlpool Corporation's sign while various Whirlpool Corporation employees and agents walk behind him and compliment him. The Advertisement also includes footage of a Whirlpool Corporation factory in operation.

An article published online on September 27, 2018 and available at <https://www.whio.com/news/local-govt--politics/whirlpool-asks-sen-sherrod-brown-change-new/ZjXr8JOfmptb240Case7EN/> references a statement made on behalf of Whirlpool Corporation confirming that "the individuals in the ad are indeed employees". The article also reports that Whirlpool Corporation asked Friends of Sherrod Brown to add a disclaimer to the Advertisement confirming that Whirlpool Corporation is not endorsing Sherrod Brown. Friends of Sherrod Brown reportedly added a disclaimer along those lines to the Advertisement on September 26, 2018.

2. Application of Law

In releasing an advertisement containing corporate logos and resources, Friends of Sherrod Brown has accepted an illegal corporate contribution from Whirlpool Corporation in violation of the FECA and Federal Election Commission ("FEC" or "the Commission") regulations.

The FECA prohibits "any national bank, or any corporation organized by authority of any law of Congress, [from making] a contribution of expenditure in connection with any election" and further prohibit "any candidate, political committee, or other person knowingly [from accepting or receiving] any contribution prohibited" by the FEC. *See* 52 U.S.C. §30118(a).

As outlined by the FECA, "the term 'contribution or expenditure' includes a contribution or expenditure, as those terms are defined in section 30101 of this title, and also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value... to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section." *See* 52 U.S.C. §30118(b)(2). Further, Commission Regulations specify that "the term anything of value includes all in-kind contributions." 11 CFR §100.52(d)(1).

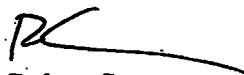
The Advertisement, taken as a whole, is intended to imply that Whirlpool Corporation endorsed and supported Sherrod Brown. To wit, a Whirlpool Corporation employee says exactly that to camera – that "Sherrod Brown looks great to us." The late inclusion of a disclaimer does nothing to correct for the Advertisement's repeated use of a valuable corporate trademark, including the mark's visibility on the employees' shirts and on the sign featured multiple times throughout the ad. In Advisory Opinion 2007-10, the FEC concluded that the names, trademarks, and service marks of corporations are considered to be valuable corporate resources. Friends of Sherrod Brown's use of these corporate resources constitutes an impermissible in-kind contribution from a prohibited source, a serious violation of FECA and Commission regulations.

3. Conclusion

In producing and distributing an advertisement containing corporate resources and overtly intended to convey corporate support and endorsement, Friends of Sherrod Brown accepted a contribution from Whirlpool Corporation, receipt of which is clearly prohibited by the FECA.

We request that the Commission find reason to believe that Sherrod Brown and Friends of Sherrod Brown have violated FECA and conduct an immediate investigation pursuant to 52 U.S.C. § 30109(a)(2), and thereafter impose appropriate penalties and sanctions for all violations.

Sincerely,



Robert Secaur

VERIFICATION

The complainant named below hereby verifies that the statements made in the attached complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.



Robert Secaur

Sworn to and subscribed before me this 1st day of October 2018.



Notary



Erik Mickelson, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.