

*Holding Power Accountable*

March 5, 2018

Hon. Rod J. Rosenstein  
Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington DC 20530-0001

Dear Deputy Attorney General Rosenstein:

Common Cause requests that the Department of Justice exercise its authority to investigate whether President Donald J. Trump, Donald J. Trump for President, Inc., Vice President Michael R. Pence, Great America Committee, the Republican National Committee, America First Action, Inc., America First Policies, Bradley J. Parscale and Marty Obst violated the “soft money” restrictions, contribution limits and restrictions, and disclosure requirements of the Federal Election Campaign Act (FECA), 52 U.S.C. § 30101, *et seq.*

Given Attorney General Sessions’ recusal from any investigations of any matters related in any way to the campaigns for President of the United States, we have not addressed this letter to the Attorney General.

The attached complaint, filed on this date with the Federal Election Commission (FEC), details the relevant facts establishing reason to believe that:

1. America First Policies and America First Action, Inc. were established by and are acting on behalf of President Donald J. Trump and Donald J. Trump for President, Inc. and have solicited, received, and spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA (*i.e.*, “soft money”) in connection with an election for Federal office in violation of 52 U.S.C. §§ 30125(e) (“soft money” prohibition), 30104 (reporting requirements), 30116 (contribution amount limits) and 30118 (corporate contribution prohibition);
2. President Donald J. Trump, Donald J. Trump for President, Inc. and an agent acting on behalf of President Donald J. Trump and Donald J. Trump for President, Inc., Bradley J. Parscale, have solicited, received, directed, transferred, or spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA (*i.e.*, “soft money”) in connection with an election for Federal office in violation of 52 U.S.C. §§ 30125(e) (“soft money” prohibition), 30104 (reporting requirements), 30116 (contribution amount limits) and 30118 (corporate contribution prohibition);

3. Vice President Michael R. Pence, Great America Committee and an agent acting on behalf of Vice President Michael R. Pence and Great America Committee, Marty Obst, have solicited, received, directed, transferred, or spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA (*i.e.*, “soft money”) in connection with an election for Federal office in violation of 52 U.S.C. §§ 30125(e) (“soft money” prohibition), 30104 (reporting requirements), 30116 (contribution amount limits) and 30118 (corporate contribution prohibition);
4. The Republican National Committee and an agent acting on behalf of the Republican National Committee, Bradley J. Parscale, have solicited, received, directed, transferred, or spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA (*i.e.*, “soft money”) in violation of 52 U.S.C. §§ 30125(a) (“soft money” prohibition), 30104 (reporting requirements), 30116 (contribution amount limits) and 30118 (corporate contribution prohibition); and
5. America First Policies has made and Donald J. Trump for President, Inc. has received unreported contributions, in the form of coordinated expenditures, in violation of 52 U.S.C. §§ 30104(b) (reporting requirements) and 30118 (corporate contribution prohibition).

Although the Federal Election Commission (FEC) has exclusive jurisdiction over civil enforcement of the campaign finance laws, 52 U.S.C. § 30109(a), the Department of Justice has its own separate responsibility to enforce the campaign finance laws against “knowing and willful” violations. 52 U.S.C. § 30109(d); see *generally* FEDERAL PROSECUTION OF ELECTION OFFENSES (7<sup>th</sup> ed. May 2007) (DOJ HANDBOOK). The DOJ HANDBOOK takes particular note of the fact that Congress increased criminal penalties for campaign finance violations as part of the Bipartisan Campaign Reform Act of 2002 (BCRA). As the Handbook states, at pp. 198-99:

BCRA significantly enhanced the criminal penalties for knowing and willful violations of the Federal Election Campaign Act. BCRA did so in response to identified anti-social consequences, namely, corruption and the appearance of corruption arising from FECA violations, and their adverse effect on the proper functioning of American democracy . . . .

In view of the enhanced criminal penalties for FECA crimes and the legislative history supporting their enactment, it is the Justice Department’s position that all knowing and willful FECA violations that exceed the applicable jurisdictional floor specified in the Act’s criminal provision should be considered for federal prosecution . . . .

In addition to the violations of the Federal Election Campaign Act alleged in the attached complaint, the Department of Justice is responsible for enforcing 18 U.S.C. § 1001, which prohibits anyone in any matter within the jurisdiction of the executive branch of government from knowingly and willfully falsifying, concealing or covering up any material fact—*i.e.*, prohibits a federal candidate or other

person from causing an incomplete or incorrect disclosure report to be filed with the FEC in order to cover up a material fact.

We urge the Department of Justice to investigate all possible violations of the Federal Election Campaign Act and other federal laws in this matter.

Respectfully submitted,



Common Cause, by

Paul S. Ryan

Vice President, Policy and Litigation

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(202) 833-1200

Copy to:

John P. Cronan, Acting Assistant Attorney General, Criminal Division

AnnaLou Tirol, Acting Chief, Public Integrity Section



**BEFORE THE FEDERAL ELECTION COMMISSION**

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v.

MUR No. \_\_\_\_\_

PRESIDENT DONALD J. TRUMP  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

DONALD J. TRUMP FOR PRESIDENT, INC.  
725 Fifth Avenue  
New York, NY 10022

VICE PRESIDENT MICHAEL R. PENCE  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

GREAT AMERICA COMMITTEE  
PO Box 28022  
Washington, DC 20038

REPUBLICAN NATIONAL COMMITTEE  
310 First Street SE  
Washington, DC 20003

AMERICA FIRST ACTION, INC.  
1400 Crystal Drive, Suite 850

Arlington, VA 22202

AMERICA FIRST POLICIES  
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Arlington, VA 22202

BRADLEY J. PARSCALE  
2637 E. Atlantic Boulevard, #42471  
Pompano Beach, FL 33062

MARTY OBST  
c/o Mo Strategies  
PO Box 4  
Westfield, IN 46074

## COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that President Donald J. Trump, Donald J. Trump for President, Inc. (FEC I.D.#C00580100), Vice President Michael R. Pence, Great America Committee (FEC I.D.#C00640664), the Republican National Committee (FEC I.D.#C00003418), America First Action, Inc. (FEC I.D.#C00637512), America First Policies (FEC I.D.#C90017302), Bradley J. Parscale and Marty Obst violated the “soft money” restrictions, contribution limits and restrictions, and disclosure requirements of the Federal Election Campaign Act (FECA), 52 U.S.C. § 30101, *et seq.* and Commission regulations.
2. Specifically, based on publicly available data and published reports, complainants have reason to believe that:
  - i. America First Policies and America First Action, Inc. were established by and are acting on behalf of President Donald J. Trump and Donald J. Trump for President, Inc. and

- have solicited, received, and spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA (*i.e.*, “soft money”) in connection with an election for Federal office in violation of 52 U.S.C. §§ 30125(e) (“soft money” prohibition), 30104 (reporting requirements), 30116 (contribution amount limits) and 30118 (corporate contribution prohibition);
- ii. President Donald J. Trump, Donald J. Trump for President, Inc. and an agent acting on behalf of President Donald J. Trump and Donald J. Trump for President, Inc., Bradley J. Parscale, have solicited, received, directed, transferred, or spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA (*i.e.*, “soft money”) in connection with an election for Federal office in violation of 52 U.S.C. §§ 30125(e) (“soft money” prohibition), 30104 (reporting requirements), 30116 (contribution amount limits) and 30118 (corporate contribution prohibition);
  - iii. Vice President Michael R. Pence, Great America Committee and an agent acting on behalf of Vice President Michael R. Pence and Great America Committee, Marty Obst, have solicited, received, directed, transferred, or spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA (*i.e.*, “soft money”) in connection with an election for Federal office in violation of 52 U.S.C. §§ 30125(e) (“soft money” prohibition), 30104 (reporting requirements), 30116 (contribution amount limits) and 30118 (corporate contribution prohibition);
  - iv. The Republican National Committee and an agent acting on behalf of the Republican National Committee, Bradley J. Parscale, have solicited, received, directed, transferred,

or spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA (*i.e.*, “soft money”) in violation of 52 U.S.C. §§ 30125(a) (“soft money” prohibition), 30104 (reporting requirements), 30116 (contribution amount limits) and 30118 (corporate contribution prohibition); and

- v. America First Policies has made and Donald J. Trump for President, Inc. has received unreported contributions, in the form of coordinated expenditures, in violation of 52 U.S.C. §§ 30104(b) (reporting requirements) and 30118 (corporate contribution prohibition).

3. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation . . . .” 52 U.S.C. § 30109(a)(2) (emphasis added); see *also* 11 C.F.R. § 111.4(a).
4. “A ‘reason to believe’ finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.” FEC, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (March 16, 2007).



## FACTS

5. President Donald J. Trump is a federal officeholder and candidate for reelection to the office of President in the 2020 election.<sup>1</sup>
6. Donald J. Trump for President, Inc. is the principal campaign committee of candidate Donald J. Trump in the 2020 presidential election.<sup>2</sup>
7. Vice President Michael R. Pence is a federal officeholder.
8. Great America Committee is a leadership PAC established by Vice President Michael R. Pence.<sup>3</sup>
9. The Republican National Committee is a national party committee of the Republican Party.<sup>4</sup>
10. America First Action, Inc. is an independent expenditure-only political committee originally registered with the FEC on April 12, 2017.<sup>5</sup>
11. America First Policies is reportedly a nonprofit corporation claiming federal tax-exempt status under section 501(c)(4) of the Internal Revenue Code.<sup>6</sup>

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<sup>1</sup> Donald J. Trump, FEC Form 99 Miscellaneous Text, filed January 20, 2017 (“[B]ecause I have reached the legal threshold for filing FEC Form 2, please accept this letter as my Form 2 for the 2020 election in order to ensure compliance with the Federal Election Campaign Act.”), *available at* <http://docquery.fec.gov/pdf/569/201701209041436569/201701209041436569.pdf>.

<sup>2</sup> Donald J. Trump for President, Inc., FEC Form 1 Statement of Organization, amended January 20, 2017, *available at* <http://docquery.fec.gov/pdf/839/201701209041435839/201701209041435839.pdf>.

<sup>3</sup> Great America Committee, Statement of Organization, May 17, 2017, *available at* <http://docquery.fec.gov/pdf/592/201705179053899592/201705179053899592.pdf>.

<sup>4</sup> Republican National Committee, FEC Form 1 Statement of Organization, amended December 19, 2017, *available at* <http://docquery.fec.gov/pdf/323/201712199089257323/201712199089257323.pdf>.

<sup>5</sup> America First Action, Inc., FEC Form 1 Statement of Organization, filed April 12, 2017, (“This committee intends to make independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees (other than independent expenditure committees).”), *available at* <http://docquery.fec.gov/pdf/743/201704129052084743/201704129052084743.pdf>.

<sup>6</sup> See, e.g., Kenneth P. Vogel and Rachel Shorey, “Trump Groups Raised Millions, Then Paid It Out to Loyalists and a Trump Hotel,” January 24, 2018 (noting that America First Policies is registered under section 501(c)(4) of the



12. Brad Parscale was digital and data director of the 2016 Trump campaign, founder of America First Policies,<sup>7</sup> and presently serving as Campaign Manager for President Trump's 2020 reelection campaign.<sup>8</sup>
13. Marty Obst was a campaign advisor to the 2016 Trump campaign, a founder of America First Policies who spearheaded fundraising for the organization in 2017, while serving as a top aide to Vice President Michael R. Pence and being paid as a political consultant by America First Action, Inc.<sup>9</sup>
14. On December 5, 2016, the *Washington Post* reported the pending formation of a nonprofit "'surround-sound super structure' to bolster the new [Trump] administration's political and policy goals."<sup>10</sup> According to the *Washington Post*, Senior Trump campaign adviser Kellyanne Conway explained that "it will be important for the organization to be run by someone 'close to

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tax code), available at <https://www.nytimes.com/2018/01/24/us/politics/pro-trump-fundraising-trump-hotel.html>.

<sup>7</sup> See Julie Bykowicz and Julie Pace, "Top Trump aide forming group to back White House agenda," AP News, December 16, 2016, available at <https://apnews.com/Oe35b955c9c94c7bbdb7f4c0e370db2e/top-trump-aide-forming-group-back-white-house-agenda>.

<sup>8</sup> See "President Trump Announces 2020 Campaign Manager," Donald J. Trump for President, Inc., February 27, 2018, available at <http://www.donaldjtrump.com/media/president-trump-announces-2020-campaign-manager/>.

<sup>9</sup> See Julie Bykowicz, "Trump advisers start 'America First Policies' nonprofit," AP NEWS, January 30, 2017, available at <https://apnews.com/77133d470c634a458b3198063af4a14b>; see also Shane Goldmacher, "Trump's political group plagued by power struggle," POLITICO, March 13, 2017, available at <https://www.politico.com/story/2017/03/trump-agenda-america-first-235983>.

<sup>10</sup> Matea Gold and Ed O'Keefe, "New pro-Trump group takes form, with Kellyanne Conway possibly at the helm," WASHINGTON POST, December 5, 2016, available at [https://www.washingtonpost.com/news/post-politics/wp/2016/12/05/new-pro-trump-group-takes-form-with-kellyanne-conway-possibly-at-the-helm/?utm\\_term=.60d708c76224](https://www.washingtonpost.com/news/post-politics/wp/2016/12/05/new-pro-trump-group-takes-form-with-kellyanne-conway-possibly-at-the-helm/?utm_term=.60d708c76224).

the president' who understands Trump's priorities," and that she was "still deciding whether to join Trump at the White House or run the [new] organization."<sup>11</sup>

15. *POLITICO* reported on the founding of America First Priorities, describing a meeting at Trump Tower and the fact that Jared Kushner had given Parscale his blessing to lead the organization:

Even before its launch, the nonprofit was riven with tensions as Parscale aggressively sought to lead the group, confronting Rebekah Mercer at a meeting in Trump Tower in December about who would be in charge. ***With the blessing of Jared Kushner***, Trump's influential son-in-law, Parscale had taken charge of the still-unformed group by January.<sup>12</sup>

16. On December 16, 2016, the *Associated Press* reported that Brad Parscale was "moving forward with plans to form a nonprofit group that will support the Republican's agenda in the White House" and that the group was "being formed with the backing of Trump and his family."<sup>13</sup>
17. On January 30, 2017, the *Associated Press* reported that "[s]ix of President Donald Trump's top campaign aides have banded together to start a nonprofit called 'America First Policies' to back the White House agenda."<sup>14</sup> The six Trump campaign aides listed as founders of America First Policies are the 2016 Trump campaign's digital and data director Brad Parscale, deputy campaign manager Rick Gates, deputy campaign manager David Bossie, campaign advisers Nick Ayers and Marty Obst, and senior advisor on the campaign communications team Katrina

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<sup>11</sup> *Id.*

<sup>12</sup> Shane Golcmacher, "Trump's political group plagued by power struggle," *POLITICO*, March 13, 2017, available at <https://www.politico.com/story/2017/03/trump-agenda-america-first-235983>.

<sup>13</sup> Julie Bykowicz and Julie Pace, "Top Trump aide forming group to back White House agenda," AP News, December 16, 2016, available at <https://apnews.com/Oe35b955c9c94c7bbdb7f4c0e370db2e/top-trump-aide-forming-group-back-white-house-agenda>.

<sup>14</sup> Julie Bykowicz, "Trump advisers start 'America First Policies' nonprofit," AP NEWS, January 30, 2017, available at <https://apnews.com/77133d470c634a458b3198063af4a14b>.

Pierson.<sup>15</sup> According to Parscale: “Some of the same like-minded individuals who put their energy into getting Mr. Trump elected are now going to be part of a grassroots group to go out there and help with the agenda, help the White House be successful[.]”<sup>16</sup>

18. In March 2017, *POLITICO* reported that “Marty Obst, a former Pence adviser who is spearheading fundraising for America First Policies, told *POLITICO* they [had] already amassed \$25 million in commitments and banked more than half that.”<sup>17</sup> *POLITICO* also noted that “Nick Ayers, a senior adviser to Mike Pence on the campaign, is serving as chairman of the group. Rick Gates, a former Trump aide who served as Paul Manafort’s deputy, is increasingly involved day-to-day.”<sup>18</sup> Additionally, “America First Policies also recently brought in Alex Stroman, a former Republican National Committee official, and the group has been quietly been receiving unpaid advice from Mike Shields, who previously served as chief of staff to Reince Priebus at the RNC . . . .”<sup>19</sup>

19. *POLITICO* also reported that America First Policies was “undergoing an organizational shakeup” with “Brad Parscale, who ran the Trump campaign’s digital program,” taking on a reduced role “as one of several leaders instead of his originally planned position as president of the nonprofit . . . .”<sup>20</sup> Regarding his changed role at the group, “Parscale said simply ‘I’m

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Shane Goldmacher, “Trump’s political group plagued by power struggle,” *POLITICO*, March 13, 2017, available at <https://www.politico.com/story/2017/03/trump-agenda-america-first-235983>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

happy to be founder’ and that he wanted to maintain his digital consultancy based in San Antonio, Giles-Parscale, rather than run the day-to-day operations.”<sup>21</sup>

20. On April 12, 2017 the super PAC America First Action, Inc. was registered with the FEC.<sup>22</sup>

21. On April 18, 2017, *POLITICO* reported that America First Policies had “tapped veteran Republican strategist Brian O. Walsh to help oversee its day-to-day operations” as the organization’s president<sup>23</sup> and made clear in a later article that Walsh would also serve as president to America First Action, Inc.<sup>24</sup>

22. On May 17, 2017, Vice President Michael R. Pence took the unprecedented step for a Vice President of establishing a leadership PAC, Great America Committee.<sup>25</sup> According to the *New*

*York Times*:

In May, Mr. [Marty] Obst and Mr. [Nick] Ayers founded Great America Committee, a political action committee to fund Mr. Pence’s political operation—an unusual step for a sitting vice president. Typically, vice presidents rely on their respective party committees for such functions. This past Thursday Great America Committee held a

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<sup>21</sup> *Id.*

<sup>22</sup> America First Action, Inc., Statement of Organization, April 12, 2017, available at <http://docquery.fec.gov/cgi-bin/forms/C00637512/1156458/>.

<sup>23</sup> Alex Isenstadt and Shane Goldmacher, “Pro-Trump outside group taps veteran GOP strategist for day-to-day operations,” *POLITICO*, April 18, 2017, available at <https://www.politico.com/story/2017/04/brian-walsh-america-first-237330>. See also Justin Green, “Outside Trump group hires Brian Walsh,” *AXIOS*, April 18, 2017 (“America First Policies has named Brian O. Walsh . . . as its new president.”), available at <https://www.axios.com/outside-trump-group-hires-brian-walsh-1513301681-9003ba7e-7338-4fb8-97c2-e327feb8462a.html>.

<sup>24</sup> Alex Isenstadt, “Trump-backed super PAC to hold fundraising meeting in Texas Tuesday,” *POLITICO*, October 22, 2017, available at <https://www.politico.com/story/2017/10/22/trump-texas-fundraising-244047>.

<sup>25</sup> Great America Committee, Statement of Organization, May 17, 2017, available at <http://docquery.fec.gov/pdf/592/201705179053899592/201705179053899592.pdf>.

reception for prospective donors at the Washington offices of the powerful lobbying firm BGR.<sup>26</sup>

23. In August 2017 the “ties between President Donald Trump and outside organizations looking to aid his political agenda grew tighter” when America First Action, Inc. announced it was hiring President Trump’s former campaign manager, Corey Lewandowski, as a senior adviser and spokesman.<sup>27</sup> CNN also reported at the time that Katie Walsh, who had served as President Trump’s deputy chief of staff before joining America First Policies earlier in 2017, had left the group and joined the Republican National Committee as a senior adviser.<sup>28</sup>
24. The FEC’s financial summary for America First Policies indicates that the organization made more than \$1.9 million in independent expenditures, opposing Georgia Congressional candidate Jonathan Ossoff and supporting Alabama Senate candidate Luther Strange, between April 1 and September 30, 2017.<sup>29</sup>
25. On October 3, 2017, *POLITICO* reported that Vice President Michael R. Pence’s chief of staff Nick Ayers had attended and spoke at a closed-door meeting of Republican National Committee donors, urging them to “purge” members of Congress who do not rally behind

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<sup>26</sup> Kenneth P. Vogel, “At Private Dinners, Pence Quietly Courts Big Donors and Corporate Executives,” *NEW YORK TIMES*, July 9, 2017, available at <https://www.nytimes.com/2017/07/09/us/politics/at-private-dinners-pence-quietly-courts-big-donors-and-corporate-executives.html>.

<sup>27</sup> Dan Merica, “Ex-Trump campaign chief Lewandowski joins pro-Trump super PAC,” CNN, August 17, 2017, available at <https://www.cnn.com/2017/08/17/politics/corey-lewandowski-trump-super-pac/index.html>.

<sup>28</sup> *Id.*

<sup>29</sup> America First Policies, Financial Summary 2017-2018, accessed February 11, 2018, available at <https://www.fec.gov/data/committee/C90017302/?tab=summary>.

President Trump—recruiting opponents and “maxing out to their campaigns and . . . funding super PACs” to defeat the President’s Congressional opponents.<sup>30</sup>

26. On October 19, 2017, *Bloomberg Politics* reported that the White House had “waived ethics rules for Vice President Mike Pence’s chief of staff [Nick Ayers], allowing him to meet with political organizations he worked with previously . . . .”<sup>31</sup> “The undated, unsigned ‘limited waiver’” permits Nick Ayers, who worked for President Trump’s 2016 campaign and then co-founded America First Policies, to “participate in meetings and make decisions on specific matters with former clients and employers, but doesn’t name them.”<sup>32</sup>
27. Also in October 2017, according to *CNBC*, “a group of senior advisors to America First Policies, including Lewandowski, Parscale and Executive Director Brian O. Walsh huddled with top Trump administration officials in the White House . . . plotting strategies to push tax reform.”<sup>33</sup>
28. *POLITICO* likewise reported the October White House meeting between “top strategists for the pro-Trump nonprofit America First Policies” and members of the Trump Administration, noting that the “gathering included Trump’s son-in-law and senior adviser Jared Kushner and Vice

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<sup>30</sup> Andrew Restuccia and Matthew Nussbaum, “Pence’s chief of staff floats ‘purge’ of anti-Trump Republicans to wealthy donors,” *POLITICO*, October 3, 2017, available at <https://www.politico.com/story/2017/10/03/purge-anti-trump-republicans-nick-ayers-243416>.

<sup>31</sup> Bill Allison, “Trump Waives Ethics Rules for Top Pence Aide to Meet With PAC,” October 19, 2017, available at <https://www.bloomberg.com/news/articles/2017-10-19/trump-waives-ethics-rules-for-top-pence-aide-to-meet-with-pac>.

<sup>32</sup> *Id.*

<sup>33</sup> Christina Wilkie, “Dark money group America First Policies is running a pro-Trump polling operation. Here is an inside look at its secretive work,” *CNBC*, March 1, 2018, available at <https://www.cnbc.com/2018/03/01/america-first-policies-dark-money-polling-for-trump.html>.

President Mike Pence’s chief of staff, Nick Ayers,” as well as Brian Walsh, Brad Parscale, Katie Walsh and Corey Lewandowski.<sup>34</sup>

29. According to *POLITICO*, in late October 2017 America First Action, Inc. began ramping up its fundraising for the 2018 and 2020 elections, reporting:

President Donald Trump’s political operation will accelerate its planning for the 2018 and 2020 elections this week, with a group of deep-pocketed donors gathering in Texas to plot the path forward, according to four people involved in planning the event.

Oilman T. Boone Pickens will host Trump’s financial backers at his Mesa Vista ranch on Tuesday. The group of two dozen contributors, which will include Republican businessmen Roy Bailey and Tommy Hicks, will lay out plans to raise money for the Trump-aligned America First Action super PAC. The organization, which is the primary Trump-backed outside group, is expected to play a role in a number of 2018 midterm races.<sup>35</sup>

The *POLITICO* article further noted that Donald Trump Jr. would be speaking at the meeting and “[w]hile much of the focus will be on 2018, there is also expected to be discussion of 2020. Many of the people raising money for the group are likely to be part of the fundraising team on Trump’s reelection campaign.”<sup>36</sup>

campaign.

30. America First Policies and America First Action, Inc. not only were founded by President Trump and his campaign committee—but ***continued to work in cooperation, consultation, and concert with*** President Trump, his campaign committee, and their agents. In December 2017,

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<sup>34</sup> Alex Isenstadt, “Senior White House aides plot multimillion-dollar campaign for tax reform,” *POLITICO*, October 23, 2017, available at <https://www.politico.com/story/2017/10/23/trump-tax-overhaul-white-house-244095>.

<sup>35</sup> Alex Isenstadt, “Trump-backed super PAC to hold fundraising meeting in Texas Tuesday,” *POLITICO*, October 22, 2017, available at <https://www.politico.com/story/2017/10/22/trump-texas-fundraising-244047>.

<sup>36</sup> *Id.*

the *Washington Post* reported on a meeting held at the White House to discuss electoral defeats in 2017 and “concerns about the 2018 political map.”

The late-afternoon meeting—attended by White House Chief of Staff John F. Kelly, counselor Kellyanne Conway, political director Bill Stepien, marketing and data specialist Brad Parscale, communications director Hope Hicks and political consultant and confidant Corey Lewandowski, among others—quickly became a griping session for Lewandowski and others about the way the White House manages the GOP and handles its planning for what is sure to be a hotly contested campaign season, people familiar with the meeting said.<sup>37</sup>

President Trump “made clear to his advisers that he wants to be heavily involved in the upcoming [2018] elections.”<sup>38</sup> The article also noted that Lewandowski “continue[s] to talk to the president” and noted “strains inside the White House among the political affairs team, the RNC and some of Trump’s closest counselors on the outside” as they all “compet[e] for Trump’s ear.”<sup>39</sup>

31. The *New York Times* also reported on the December 20, 2017, White House meeting to discuss the 2018 midterm elections, confirming that “in attendance were Corey Lewandowski . . . and Brad Parscale, both of whom are advisers to America First Policies.” The *New York Times* further reported that on the morning following the White House Meeting, White House political director Bill Stepien called a “leading official at America First Policies, Brian O. Walsh, and said its counsel needed to be present for future meetings . . .” Walsh reportedly replied: “America

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<sup>37</sup> Josh Dawsey and Robert Costa, “Trump advisers vent frustrations about 2018 strategy as president listens,” WASHINGTON POST, December 21, 2017, available at [https://www.washingtonpost.com/politics/trump-advisers-vent-frustrations-about-2018-strategy-as-president-listens/2017/12/21/a7555788-e6a8-11e7-ab50-621fe0588340\\_story.html?utm\\_term=.2edfdff070de](https://www.washingtonpost.com/politics/trump-advisers-vent-frustrations-about-2018-strategy-as-president-listens/2017/12/21/a7555788-e6a8-11e7-ab50-621fe0588340_story.html?utm_term=.2edfdff070de).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*



First Policies exists for one reason: to support the president of the United States and his agenda[.] . . . Everything else is just noise.”<sup>40</sup>

32. On January 23, 2018, *Axios* reported that America First Policies had raised \$26 million and spent \$14 million in 2017, while America First Action, Inc. raised \$4 million and spent about \$2 million—leaving about \$14 million heading into 2018. *Axios* also quoted Brian O. Walsh stating: “This is just the beginning for America First. We expect to be more aggressive in 2018 to ensure that those candidates who embrace President Trump’s agenda have the outside support they need to be successful as we work to grow our majorities in the House and Senate.”<sup>41</sup>
33. On January 24, 2018, *BuzzFeed News* reported that just-filed year-end disclosure reports revealed:

Two firms led by Brad Parscale, formerly the Trump campaign's digital director, made at least \$5.1 million from Trump's reelection campaign, the Republican National Committee, and a pro-Trump super PAC called America First Action last year. Parscale himself also earned an additional \$15,000 from the reelection campaign in January of 2017.<sup>42</sup>

34. And *BuzzFeed News* reported that America First Action, Inc.’s year-end filing also disclosed “\$55,000 in payments to a firm associated with Corey Lewandowski,” Green Monster

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<sup>40</sup> Maggie Haberman, “Dispute Over Political Strategy Erupts Inside the White House,” *NEW YORK TIMES*, December 21, 2017, available at <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>. See also, John Santucci, “Trump held Oval Office meeting with aides about 2018 midterm elections,” *ABC NEWS*, December 21, 2017, available at <http://abcnews.go.com/Politics/trump-held-oval-office-meeting-aides-2018-midterm/story?id=51945498>.

<sup>41</sup> Jonathan Swan, “Pro-Trump outside group raised \$30 million in 2017,” *AXIOS*, January 23, 2018, available at <https://www.axios.com/pro-trump-outside-group-raised-30-million-in-2017-1516759350-449ae7d0-deb8-431f-8912-bc4677761abf.html>.

<sup>42</sup> Tarini Parti and Henry J. Gomez, “Multiple Trump Groups, Testing Campaign Finance Laws,” *BuzzFeed News*, January 24, 2018, available at [https://www.buzzfeed.com/tariniparti/trump-allies-are-profiting-from-multiple-trump-groups?utm\\_term=.heJOOP6P5#.alebbwIwB](https://www.buzzfeed.com/tariniparti/trump-allies-are-profiting-from-multiple-trump-groups?utm_term=.heJOOP6P5#.alebbwIwB).

Consulting, LLC, and “\$60,000 to a firm run by Marty Obst, Vice President Mike Pence’s top political aide” and founder of Pence’s leadership PAC Great America Committee.<sup>43</sup>

35. On its 2017 year-end disclosure report filed with the Commission January 23, 2018, America First Action, Inc., reported total receipts of more than \$3.7 million, including a \$1 million contribution from Murray Energy Corporation and a \$2 million contribution from Geoffrey H. Palmer, and total disbursements of more than \$2 million.<sup>44</sup>
36. America First Action, Inc. reported that between August 11, 2017 and February 28, 2018 it made independent expenditures supporting Luther Strange and opposing Doug Jones and Conor Lamb totaling more than \$1.2 million.<sup>45</sup>
37. America First Action, Inc. reported that between August 8, 2017 and December 22, 2017, it made total disbursements to Brad Parscale’s consulting firm, Parscale Strategy, LLC, of more than \$137,000 for “digital fundraising consulting,” “design and printing,” “web design and development,” “digital issue advocacy” and “digital design development.”<sup>46</sup>

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<sup>43</sup> *Id.*

<sup>44</sup> America First Action, Inc., Year-End Report, January 23, 2018, available at <http://docquery.fec.gov/cgi-bin/forms/C00637512/1199534/>.

<sup>45</sup> See [https://www.fec.gov/data/independent-expenditures/?committee\\_id=C00637512&two\\_year\\_transaction\\_period=2018&cycle=2018&data\\_type=processed&is\\_notice=true](https://www.fec.gov/data/independent-expenditures/?committee_id=C00637512&two_year_transaction_period=2018&cycle=2018&data_type=processed&is_notice=true).

<sup>46</sup> See [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00637512&recipient\\_name=parscale&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00637512&recipient_name=parscale&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

38. America First Action, Inc. reported that between August 15, 2017 and December 27, 2017, it made total disbursements to Corey Lewandowski’s consulting firm, Green Monster Consulting, LLC, of \$55,000 for “strategy consulting.”<sup>47</sup>
39. The Republican National Committee reported that between April 6, 2017 and January 31, 2018, it made total disbursements to Brad Parscale’s consulting firm, Parscale Strategy, LLC, of more than \$2 million for “management consulting.”<sup>48</sup>
40. Donald J. Trump for President, Inc. reported that between January 1, 2017 and August 10, 2017, it made disbursements to Brad Parscale’s consulting firm Giles-Parscale of more than \$4 million for “digital consulting / online advertising.”<sup>49</sup>
41. Donald J. Trump for President, Inc. reported that between August 16, 2017 and December 13, 2017, it made disbursements to Brad Parscale’s consulting firm Parscale Strategy, LLC, of more than \$1.5 million for “digital consulting / online advertising.”<sup>50</sup>

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<sup>47</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00003418&committee\\_id=C00637512&recipient\\_name=green+monster&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00003418&committee_id=C00637512&recipient_name=green+monster&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

<sup>48</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00003418&recipient\\_name=parscale+strategy&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00003418&recipient_name=parscale+strategy&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

<sup>49</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00003418&committee\\_id=C00580100&committee\\_id=C00637512&recipient\\_name=Giles-Parscale&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00003418&committee_id=C00580100&committee_id=C00637512&recipient_name=Giles-Parscale&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

<sup>50</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00580100&recipient\\_name=parscale+strategy&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00580100&recipient_name=parscale+strategy&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

42. Vice President Michael R. Pence’s leadership PAC, Great America Committee, reported that between June 30, 2017 and January 4, 2018, it made disbursements to Marty Obst’s consulting firm, Mo Strategies Inc., of more than \$220,000, primarily for “finance/political strategy consulting.”<sup>51</sup>
43. America First Action, Inc. reported that between August 9, 2017 and December 27, 2017, it made disbursements to Marty Obst’s consulting firm, Mo Strategies Inc., of \$60,000 for “fundraising consulting.”<sup>52</sup>
44. On February 27, 2018, Donald J. Trump for President, Inc. announced the “appointment of Brad Parscale as the Campaign Manager” for President Trump’s 2020 reelection campaign, noting that Parscale was a digital marketing strategist for President Trump’s 2016 campaign and “*has continued to lead digital strategies for the campaign and the Republican National Committee.*”<sup>53</sup>
45. On March 1, 2018, *CNBC* reported that “[o]ver the past six months” it had “obtained more than 50 documents through an obscure portal on the America First Policies website”— polling and research memos mostly focused on President Trump that would be “standard work for a

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<sup>51</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00640664&recipient\\_name=Mo+Strategies+Inc&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00640664&recipient_name=Mo+Strategies+Inc&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

<sup>52</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00637512&recipient\\_name=Mo+Strategies+Inc.&min\\_date=01%2F01%2F2017&max\\_date=03%2F04%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00637512&recipient_name=Mo+Strategies+Inc.&min_date=01%2F01%2F2017&max_date=03%2F04%2F2018).

<sup>53</sup> “President Trump Announces 2020 Campaign Manager,” Donald J. Trump for President, Inc., February 27, 2018, available at <http://www.donaldjtrump.com/media/president-trump-announces-2020-campaign-manager/> (emphasis added).

presidential campaign or a major political party,” but ***not for a 501(c)(4) “social welfare organization” like America First Policies.***<sup>54</sup> CNBC explained:

Last summer, America First Policies took an unprecedented step for a politically allied nonprofit: It started using three top polling firms from Trump's 2016 presidential campaign to produce a steady stream of Trump-focused polls, strategy memos and reports that continue to this day. The three firms initially put their own logos on the polling they did for the group, but over time the America First Policies logo gradually replaced theirs on some of the documents.

....

In January alone, this data included more than a dozen surveys and memos on topics that ranged from marijuana legalization to how the White House handled the release of "Fire and Fury," a tell-all book about the Trump administration. Some of these documents were posted online and then removed, while others remained posted.<sup>55</sup>

46. According to *CNBC*, one of the polling companies was owned by Kellyanne Conway, senior campaign adviser to the 2016 Trump campaign and currently Counselor to the President, until she sold the firm in September 2017, at which point “The Polling Company had already been working for America First Policies for more than two months, judging from the company's logo on polls that it conducted for the group in June and July.”<sup>56</sup>

47. After *CNBC* questioned America First Policies President Brian O. Walsh about the documents:

[S]everal of the research documents from January appeared to have been removed from the site . . . , including the results of polling on marijuana, analysis of how women view Trump, and January's polling results.

Dozens of other documents have also been removed from the site but left up on the web, apparently by accident. Walsh was under the impression that they had all been permanently deleted, and he accused *CNBC* of acquiring the reports from someone

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<sup>54</sup> Christina Wilkie, “Dark money group America First Policies is running a pro-Trump polling operation. Here is an inside look at its secretive work,” *CNBC*, March 1, 2018, *available at* <https://www.cnbc.com/2018/03/01/america-first-policies-dark-money-polling-for-trump.html>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

inside the group's network. Walsh also refused to share several additional documents that CNBC requested.<sup>57</sup>

48. CNBC notes the following “key details spread throughout the group's research and polling:”
- Building a wall along the southern border is not only unpopular with Democrats and independents. Even Trump's base voters ranked the construction of a wall as their least important policy issue in a January survey.
  - A September poll showed that America First Policies was exploring ways to defeat Arizona Republican Sen. Jeff Flake in a primary, a month before Flake, a Trump critic, announced his retirement.
  - When "Fire and Fury" came out in January, an America First Policies social media report noted that few people seemed to notice that the White House banned personal cell phones in the West Wing that same week.
  - According to the group's February polling, the largest percentage of voters agreed with Nancy Pelosi's comment that worker bonuses stemming from the GOP tax bill were "crumbs" compared with corporate windfalls.
  - The February survey also found that only half of respondents agreed with Trump's plan for a military parade, while voters disagreed with the way he handled a scandal involving a senior White House aide accused of domestic abuse.<sup>58</sup>

49. CNBC also reported a drop-off in RNC polling that coincided with America First Policies' extensive polling focused on President Trump:

For decades, White House pollsters for Republican presidents have been paid by the RNC, while the Democratic National Committee has paid for presidential polling during Democratic administrations.

But the prolific output of polling data from America First Policies has coincided with a steep drop in the amount of money the RNC spends on presidential pollsters, as compared with the first 12 months of previous Republican administrations dating back to the Reagan White House.

According to FEC reports, the total amount that the RNC spent on Trump's campaign pollsters in 2017 amounts to just 5 percent of what the committee spent on Ronald

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

Reagan's White House polling in 1981, adjusted for inflation, and around 12 percent of what it spent for President George W. Bush's pollsters in 2001.<sup>59</sup>

50. Similarly, *CNBC* reported that though President Trump filed his Statement of Candidacy as 2020 presidential election candidate in January 2017, “the rebooted Trump 2020 campaign has not spent any money on polling, despite raising \$17 million last year.”<sup>60</sup>
51. On March 2, 2018, *CNBC* published a follow-up article to its March 1 article regarding America First Policies’ polling and research, noting that “after *CNBC*'s [March 1] story ran, America First Policies removed all but three of the 14 reports that had previously been hidden in plain sight, behind an inconspicuous button at the bottom of America First Policies' website.”<sup>61</sup> The March 2 *CNBC* article summarized and linked to 24 of America First Policies’ polling and research reports dating back to June 2017, explaining that “[t]aken together, they offer a unique window into what this shadowy pro-Trump group knows about the president's priorities, about voters like you, and about the long-term direction of the Trump agenda.”<sup>62</sup> These reports are included as APPENDIX to this complaint.

## SUMMARY OF THE LAW

### “CONTRIBUTION” AND “EXPENDITURE” DEFINITIONS AND RESTRICTIONS

52. The term “contribution” is defined in FECA to mean “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person *for the purpose of influencing any*

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Christina Wilkie, “Trump-allied America First Policies spends big on polling. Here are 24 of their internal reports,” *CNBC*, March 2, 2018, available at <https://www.cnbc.com/2018/03/02/trump-ally-america-first-policies-key-research-polls-reports.html>.

<sup>62</sup> *Id.*

***election for Federal office.***” 52 U.S.C. § 30101(8)(A)(i) (emphasis added); see also 11 C.F.R. §§ 100.51–100.56.

53. As used in the definition of “contribution,” the phrase “anything of value” includes “all in-kind contributions.” The “provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution.” 11 C.F.R. § 100.52(d)(1).
54. The term “expenditure” is defined in FECA to mean “any purchase, payment, distribution, loan, advance, deposit, or gift or money or anything of value, made by any person ***for the purpose of influencing any election for Federal office.***” 52 U.S.C. § 30101(9)(A)(i) (emphasis added); see also 11 C.F.R. §§ 100.110–100.114.
55. As used in the definition of “expenditure,” the phrase “anything of value” includes “all in-kind contributions.” The “provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an expenditure.” 11 C.F.R. § 100.111(e)(1).
56. FECA limits to \$2,700 per election the amount of a contribution that a person can make to a federal candidate, and limits to \$33,900 per calendar year the amount of a contribution that a person can make to a national party committee. 52 U.S.C § 30116(a)(1).<sup>63</sup>

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<sup>63</sup> The statutory limits are \$2,000 and \$25,000, respectively, and are indexed for inflation in odd-numbered years. See 52 U.S.C. § 30116(c); see also FEC, “Contribution Limits for 2017-2018 Federal Elections,” available at <https://transition.fec.gov/info/contriblimitschart1718.pdf>.



57. FECA prohibits a corporation or labor union from making a contribution to a federal candidate or national party committee and prohibits a candidate or national party committee from accepting or receiving a contribution from a corporation or labor union. 52 U.S.C. § 30118(a).
58. Generally, contributions from a person to political committees other than candidate and party committees may not exceed, in the aggregate, \$5,000 per calendar year and candidates cannot accept contributions from a non-multicandidate political committee in excess of \$2,700. 52 U.S.C. § 30116(a)(1).
59. However, the Commission in Advisory Opinion 2010-11 (Commonsense Ten) interpreted and applied court decisions in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Citizens United v. FEC*, 558 U.S. 310 (2010), and opined that a committee that “intends to make only independent expenditures” and that “will not make any monetary or in-kind contributions (including coordinated expenditures) to any other political committee or organization”—*i.e.* a so-called “independent expenditure-only political committee,” a.k.a. “super PAC”—is permitted to solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees. AO 2010-11 at 2-3. A committee that accepts contributions in excess of the limits from individuals and other political committees, or any contributions from corporations or labor organizations, is prohibited from contributing to candidates.
60. Candidates and political committees are prohibited from knowingly accepting any contribution or making any expenditure in violation of federal law. 11 C.F.R. § 110.9. Similarly, officers and employees of political committees are prohibited from knowingly accepting a

contribution made for the benefit or use of a candidate, or making any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. 11 C.F.R. § 110.9.

### **“SOFT MONEY” PROHIBITION**

61. The FECA “soft money” prohibition provides that a “candidate, individual holding Federal office, *agent* of a candidate or an individual holding Federal office, or an *entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office*” shall not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements” of FECA. 52 U.S.C. § 30125(e)(1)(A) (emphasis added).
62. The FECA “soft money” prohibition also provides that a “national committee of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements” of FECA, and makes clear that this prohibition “applies to any such national committee, any officer or *agent* acting on behalf of such a national committee, *and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.*” 52 U.S.C. § 30125(a) (emphasis added).
63. The U.S. Supreme Court upheld the “soft money” prohibition against constitutional challenge in *McConnell v. FEC*, 540 U.S. 93 (2003). At the time the Court decided *McConnell*, *all funds*

*raised by federal political committees* were subject to contribution amount limits and the FECA prohibition on corporate and labor organization contributions. The Court explained that such funds were “known as ‘federal’ or ‘hard’ money.” *Id.* at 122. However, the Court explained, over the course of decades the FEC had permitted federal candidates, officeholders and political party officials to raise funds not compliant with FECA’s contribution amount limits and source prohibitions—initially under the auspices that the funds would be used to influence state or local elections, but eventually allowing such funds to be used for any activities not expressly advocating the election or defeat of a federal candidate. This unlimited political money raised by federal candidates, officeholders and party officials, the Court explained, “was known as ‘soft money.’” *Id.* at 123.

64. The *McConnell* Court observed: “The solicitation, transfer, and use of soft money thus enabled parties and candidates to circumvent FECA’s limitations on the source and amount of contributions in connection with federal elections.” *Id.* at 126. The Court further explained:

No party seriously questions the constitutionality of [the] general ban on donations of soft money made directly to federal candidates and officeholders, *their agents, or entities established or controlled by them*. Even on the narrowest reading of *Buckley*, a regulation restricting donations to a federal candidate, *regardless of the ends to which those funds are ultimately put*, qualifies as a contribution limit subject to less rigorous scrutiny. Such donations have only marginal speech and associational value, but at the same time pose a substantial threat of corruption. By severing the most direct link between the soft-money donor and the federal candidate, [the] ban on donations of soft money is closely drawn to prevent the corruption or the appearance of corruption of federal candidates and officeholders.

[The] restrictions on solicitations are justified as valid anticircumvention measures. Large soft-money donations at a candidate’s or officeholder’s behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. Though the candidate may not ultimately control how the funds are spent, the value of the donation to the candidate or officeholder is evident from the fact of the

solicitation itself. Without some restriction on solicitations, ***federal candidates and officeholders could easily avoid FECA's contribution limits by soliciting funds from large donors and restricted sources to like-minded organizations engaging in federal election activities.***

*Id.* at 182-83 (emphasis added). Given the “substantial threat of corruption or its appearance posed by donations to or at the behest of federal candidates and officeholders,” the Court held that the “soft money” prohibition is “clearly constitutional.” *Id.* at 183-84.

65. For the purpose of FECA’s “soft money” prohibition, in determining whether a candidate, officeholder, national party committee or agent of the foregoing (*i.e.*, “sponsors”) has “directly or indirectly established, financed, maintained or controlled” an entity, the Commission examines factors including, but not limited to, the following:

- “Whether a sponsor, directly or through its agent, has the authority or ability ***to direct or participate in the governance of the entity through*** provisions of constitutions, bylaws, contracts, or other rules, or through formal or ***informal practices or procedures;***”
- “Whether a sponsor, directly or through its agent, has the authority or ability ***to hire, appoint, demote, or otherwise control the officers, or other decision-making employees*** or members of the entity;”
- “Whether a sponsor has common or ***overlapping officers or employees*** with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;”
- “Whether a sponsor has any members, officers, or employees ***who were members, officers or employees of the entity*** that indicates a formal or ongoing relationship between the sponsor and the entity, ***or that indicates the creation of a successor entity;***”
- “Whether a sponsor, directly or through its agent, had an ***active or significant role in the formation of the entity***.”

11 C.F.R. § 300.2(c)(2) (emphasis added). The factors are “examined in the context of the overall relationship between sponsor and the entity to determine whether the presence of any

factor or factors is evidence that the sponsor directly or indirectly established, finances, maintains, or controls the entity.” 11 C.F.R. § 300.2(c).

66. For the purpose of FECA’s “soft money” restrictions applicable to ***national party committees***, Commission regulations provide that “agent” includes “any person who has actual authority, either express or implied,” to “solicit, direct, or receive any contribution, donation, or transfer of funds” or “[t]o solicit any funds for, or make or direct any donations to, an organization that is described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a) . . . .” 11 C.F.R. §300.2(b)(1) (emphasis added).
67. For the purpose of the “soft money” restrictions applicable to a ***federal candidate or officeholder***, Commission regulations provide that “agent” means “any person who has actual authority, either express or implied,” to “solicit, receive, direct, transfer, or spend funds in connection with any election.” 11 C.F.R. § 300.2(b)(3) (emphasis added).
68. The Commission explained that, under its regulatory definition of “agent”:

[A] principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals. . . . This additional requirement ensures that liability will not attach due solely to the agency relationship, but only to the agent’s performance of prohibited acts for the principal. In light of the foregoing, it is clear that individuals, such as State party chairmen and chairwomen, who also serve as members of their national party committees, can, consistent with BCRA, wear multiple hats, and ***can raise non-Federal funds for their State party organizations*** without violating the prohibition against non-Federal fundraising by national parties.<sup>64</sup>

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<sup>64</sup> FEC, *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, Final Rules and Explanation and Justification, 67 Fed. Reg. 49064, 49083 (July 29, 2002) (emphasis added); see also FEC, *Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures*, Final Rules and Explanation and Justification, 71 Fed. Reg. 4975, 4979 (Jan. 31, 2006).

69. In two Advisory Opinions, the Commission has reiterated that, notwithstanding the “soft money” prohibition, an individual who is an agent of a federal candidate, officeholder or national party committee can raise **“non-federal funds” (i.e., funds that are not spent in federal elections)** so long as the individual does so on behalf of principals that are not federal candidates, officeholders or national party committees.
70. In Advisory Opinion 2003-10, Rory Reid, son of former U.S. Senator Harry Reid, asked the Commission whether he could raise non-federal funds for the Nevada State Democratic Party if Senator Reid also gave him actual authority to raise federal funds for the Senator’s campaign. AO 2003-10 at 2. Mr. Reid had an organizational role in the Nevada State Democratic Party as a former Party Chair, and was also a state government official, Commissioner of Clark County. The non-federal funds he planned to raise funds for the state party committee could not, under federal law, benefit his father’s re-election effort. See 11 C.F.R. §§ 300.32 and 300.33. The Commission advised Reid that “[i]f his fundraising is ‘**exclusively on behalf of the [state] Party**’ and not on the authority of Senator Reid, Commissioner **Reid may raise non-federal funds** for the State Party.” AO 2003-10 at 5 (emphasis added).
71. Similarly, in Advisory Opinion 2007-05, Erik Iverson, Chief of Staff to Congressman Dennis Rehberg and Chairman of the Montana Republican State Central Committee, asked the Commission whether he could raise both federal funds as an agent of Congressman Rehberg and non-federal funds as an agent for the state party. The Commission opined:

Mr. Iverson, as Chairman of the State Committee, may continue to solicit, direct, and spend non-Federal funds on behalf of the State Committee, even if he becomes an agent of Congressman Rehberg for fundraising purposes, as long as Mr. Iverson **solicits**

***non-federal funds in his own capacity and exclusively on behalf of the State Committee, and not on the authority of any Federal candidate or officeholder, including Congressman Rehberg.***

AO 2007-05 at 4 (emphasis added).

72. Most recently, in Advisory Opinion 2015-09, the Commission went a step further and permitted individuals who are agents of federal candidates, officeholders and party committees to nevertheless raise “soft money” that ***could be spent in federal elections under certain limited, specified circumstances.***
73. In AO 2015-09, two federal super PACs (Senate Majority PAC and House Majority PAC) asked whether individuals who are “agents” of hypothetical Senate and House candidates can “solicit soft money” for the requestor super PACs and additional hypothetical new single-candidate super PACs so long as specified steps are taken “to ensure that the fundraising is not undertaken in [the individuals’] capacity as ‘agents’” of the candidates. Advisory Opinion Request (AOR) 2015-09 at 16. The proposed steps to ensure that the individuals were not raising “soft money” in their capacity as “agents” of the candidates included:
- The super PACs would contact the individual fundraisers “on their own, not at the request or suggestion of” the candidates for whom the individuals are agents.
  - “If a request or suggestion came from” a candidate or their agents “that a particular individual solicit funds for” the super PACs, then the super PACs would deem the individuals ineligible to solicit soft money for the super PACs.
  - The super PACs would “confirm with the individual, prior to any soft money solicitation, that the individual had not been asked to solicit soft money” by the candidates or their agents.
  - “The individual would inform the [prospective super PAC] donor that he or she was making the solicitation on his or her own and not at the direction of” the candidates or their agents.

AOR 2015-09 at 18.

74. The Commission in AO 2015-09 opined that “[i]ndividuals who are agents of federal candidates may solicit nonfederal<sup>65</sup> funds to Requestors *as proposed*.”<sup>66</sup> AO 2015-09 at 7 (emphasis added). The Commission explained that the requestors’ “proposal is consistent with those found to be permissible in prior advisory opinions” and that the individuals who are agents of federal candidates would solicit funds “*not at the request or suggestion*” of federal candidates. AO 2015-09 at 7.

75. Taken together, the Commission’s Advisory Opinions 2003-10, 2007-5 and 2015-09 stand for the proposition that an individual who is a fundraising agent of a federal candidate, officeholder or national party committee may also serve as a fundraising agent of an entity that raises “soft money” *only if*

- the “soft money” entity contacts the individual on their own and not at the request or suggestion of the candidate or federal party committee for whom the individual is an agent; and
- the individual solicits “soft money” exclusively on behalf of the “soft money” entity—not on the authority of any federal candidate, officeholder or national party committee.

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<sup>65</sup> While the requestor federal super PACs characterize the unlimited funds they intend to raise for federal elections as “soft money,” the Commission oddly refers to this unlimited federal election funding as “nonfederal funds” throughout the advisory opinion.

<sup>66</sup> In a footnote, the Commission explained that it “could not approve a response by the required four affirmative votes to the question of whether the individuals would be permitted to raise nonfederal funds on behalf of the Single-Candidate Committees (as defined above).” AO 2015-09 at 7 n.4. Earlier in the opinion the Commission had described “Single-Candidate Committees” as super PACs that would support only one candidate—committees of the type that requestors contemplated creating, referred to in the request as “New Super PACs.” The Commission in AO 2015-09 cited no legal basis for treating single-candidate super PACs differently from super PACs that support multiple candidates.



## COORDINATED SPENDING

76. Any expenditure “made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents” is considered a contribution to such candidate. 52 U.S.C. 30116(a)(7)(B)(i).
77. Similarly, any expenditure made by any person, other than a candidate or candidate's committee, “in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party” is considered a contribution to such party committee. 52 U.S.C. 30116(a)(7)(B)(ii).
78. “Coordinated” means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or an agent thereof. 11 C.F.R. § 109.20(a). Any expenditure that is “coordinated” with a candidate or political party committee, but that is not made for a “coordinated communication” under 11 C.F.R. § 109.21, is an in-kind contribution to the “candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee” unless otherwise exempted. 11 C.F.R. § 109.20(b).
79. In its 2003 *Explanation and Justification* for 11 C.F.R. § 109.20, the Commission made clear that, whereas coordinated expenditures for communications—*i.e.*, political ads—are regulated by 11 C.F.R. § 109.21, coordinated expenditures for things other than political ads are regulated by 11 C.F.R. § 109.20. The Commission explained:

One commenter asserted that only express advocacy communications can constitute coordination, and urged the Commission to provide explicitly that non-communication expenditures will not be considered to be coordination. The Commission disagrees with

the commenter's assertion because Congress has not so limited the statutory provisions relating to coordination.<sup>67</sup>

## **REPORTING AND DISCLOSURE REQUIREMENTS**

80. A federal political committee must report to the Commission the identification of each person other than a political committee that makes a contribution to the committee with an aggregate value in excess of \$200 within an election cycle. 52 U.S.C. § 30104(b)(3)(A).
81. A federal political committee must report to the Commission the identification of each political committee that makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution. 52 U.S.C. § 30104(b)(3)(B).
82. A federal political committee must report to the Commission its total amount of receipts and disbursements for the reporting period and its total amount of receipts and disbursements in specified categories. 52 U.S.C. §§ 30104(b)(2) and (b)(4).
83. A candidate or political party committee with whom or with which an expenditure was coordinated must be reported as an expenditure made by that candidate or political party committee unless otherwise exempted. 11 C.F.R. § 109.20(b).

## **CAUSES OF ACTION**

### **COUNT ONE**

**AMERICA FIRST POLICIES AND AMERICA FIRST ACTION, INC. WERE ESTABLISHED BY AND ARE ACTING ON BEHALF OF PRESIDENT DONALD J. TRUMP AND DONALD J. TRUMP FOR PRESIDENT, INC. AND HAVE SOLICITED, RECEIVED, AND SPENT "SOFT MONEY" IN**

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<sup>67</sup> FEC, *Coordinated and Independent Expenditures*, Final Rules and Explanation and Justification, 68 Fed. Reg. 421, 425-26 (January 3, 2003).

**CONNECTION WITH FEDERAL ELECTIONS IN VIOLATION OF 52 U.S.C. §§ 30125(e), 30104, 30116 and 30118.**

84. Paragraphs 1 through 83 are incorporated herein.
85. Under FECA, the “soft money” prohibition applies to any entity directly or indirectly established, financed, maintained or controlled by, or acting on behalf of, one or more candidates or individuals holding federal office. 52 U.S.C. § 30125(e).
86. Under FECA and Commission regulations, in order to determine whether a candidate or officeholder or agent thereof (*i.e.*, “sponsors”) has “directly or indirectly established, financed, maintained or controlled” an entity, the Commission examines factors including, but not limited to, the following:
- “Whether a sponsor, directly or through its agent, has the authority or ability ***to direct or participate in the governance of the entity through*** provisions of constitutions, bylaws, contracts, or other rules, or through formal or ***informal practices or procedures;***”
  - “Whether a sponsor, directly or through its agent, has the authority or ability ***to hire, appoint, demote, or otherwise control the officers, or other decision-making employees*** or members of the entity;”
  - “Whether a sponsor has common or ***overlapping officers or employees*** with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;”
  - “Whether a sponsor has any members, officers, or employees ***who were members, officers or employees of the entity*** that indicates a formal or ongoing relationship between the sponsor and the entity, ***or that indicates the creation of a successor entity;***”
  - “Whether a sponsor, directly or through its agent, had an ***active or significant role in the formation of the entity***.”

11 C.F.R. § 300.2(c)(2) (emphasis added).

87. Based on published reports, there is reason to believe that America First Policies and America First Action, Inc. were directly or indirectly established by, and are acting on behalf of, President Donald J. Trump and Donald J. Trump for President, Inc. 52 U.S.C. § 30125(e).
88. Based on published reports, in December 2016 Kellyanne Conway, senior advisor to the Trump 2016 campaign made public the Trump campaign’s plan to form a nonprofit “‘surround-sound super structure’ to bolster the new [Trump] administration’s political and policy goals,” explaining that “it will be important for the organization to be run by someone ‘close to the president’ who understands Trump’s priorities,” and that she was “still deciding whether to join Trump at the White House or run the [new] organization.”<sup>68</sup>
89. Based on published reports, America First Policies was founded at a meeting at Trump Tower. Jared Kushner, President Trump’s son-in-law and member of the 2016 Trump campaign leadership team, gave his “blessing” to Brad Parscale to lead the new organization<sup>69</sup> and the organization was “being formed with the backing of Trump and his family.”<sup>70</sup>
90. Based on published reports, the full founding leadership team of America First Policies was made public in January 2017, consisting of “[s]ix of President Donald Trump’s top campaign aides”: 2016 Trump campaign digital and data director Brad Parscale, deputy campaign

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<sup>68</sup> Matea Gold and Ed O’Keefe, “New pro-Trump group takes form, with Kellyanne Conway possibly at the helm,” WASHINGTON POST, December 5, 2016, available at [https://www.washingtonpost.com/news/post-politics/wp/2016/12/05/new-pro-trump-group-takes-form-with-kellyanne-conway-possibly-at-the-helm/?utm\\_term=.60d708c76224](https://www.washingtonpost.com/news/post-politics/wp/2016/12/05/new-pro-trump-group-takes-form-with-kellyanne-conway-possibly-at-the-helm/?utm_term=.60d708c76224).

<sup>69</sup> Shane Goldmacher, “Trump’s political group plagued by power struggle,” POLITICO, March 13, 2017, available at <https://www.politico.com/story/2017/03/trump-agenda-america-first-235983>.

<sup>70</sup> Julie Bykowicz and Julie Pace, “Top Trump aide forming group to back White House agenda,” AP News, December 16, 2016, available at <https://apnews.com/Oe35b955c9c94c7bbdb7f4c0e370db2e/top-trump-aide-forming-group-back-white-house-agenda>.

manager Rick Gates, deputy campaign manager David Bossie, campaign advisers Nick Ayers and Marty Obst, and senior advisor on the campaign communications team Katrina Pierson.<sup>71</sup>

91. Based on published reports, Brian O. Walsh, who became president of America First Policies and America First Action, Inc. in April 2017, stated: “America First Policies exists for one reason: to support the president of the United States and his agenda[.]”<sup>72</sup>
92. Based on published reports, America First Action, Inc. hired President Trump’s former campaign manager, Corey Lewandowski, as a senior adviser and spokesman in August 2017.<sup>73</sup>
93. Based on published reports, in February 2018 Donald J. Trump for President, Inc. appointed Brad Parscale as the Campaign Manager for President Trump’s 2020 reelection campaign, noting that Parscale “has continued to lead digital strategies for the campaign and the Republican National Committee.”<sup>74</sup>
94. Based on published reports, there is reason to believe that America First Policies and America First Action, Inc. staff, paid consultants and agents meet with and otherwise communicate regularly with President Trump, Donald J. Trump for President, Inc. and agents thereof to plan

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<sup>71</sup> Julie Bykowicz, “Trump advisers start ‘America First Policies’ nonprofit,” AP NEWS, January 30, 2017, available at <https://apnews.com/77133d470c634a458b3198063af4a14b>.

<sup>72</sup> Maggie Haberman, “Dispute Over Political Strategy Erupts Inside the White House,” NEW YORK TIMES, December 21, 2017, available at <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>. See also, John Santucci, “Trump held Oval Office meeting with aides about 2018 midterm elections,” ABC NEWS, December 21, 2017, available at <http://abcnews.go.com/Politics/trump-held-oval-office-meeting-aides-2018-midterm/story?id=51945498>.

<sup>73</sup> Dan Merica, “Ex-Trump campaign chief Lewandowski joins pro-Trump super PAC,” CNN, August 17, 2017, available at <https://www.cnn.com/2017/08/17/politics/corey-lewandowski-trump-super-pac/index.html>.

<sup>74</sup> “President Trump Announces 2020 Campaign Manager,” Donald J. Trump for President, Inc., February 27, 2018, available at <http://www.donaldjtrump.com/media/president-trump-announces-2020-campaign-manager/>.

electoral activities and spending on behalf of President Trump. For example, in December 2017 a meeting was held at the White House to discuss electoral defeats in 2017 and “concerns about the 2018 political map,” attended by White House Chief of Staff John F. Kelly, Kellyanne Conway, White House political director Bill Stepien, Brad Parscale, Hope Hicks and Corey Lewandowski, among others. President Trump “made clear to his advisers that he wants to be heavily involved in the upcoming [2018] elections.”<sup>75</sup>

95. Based on published reports, America First Policies made more than \$1.9 million in independent expenditures, opposing Georgia Congressional candidate Jonathan Ossoff and supporting Alabama Senate candidate Luther Strange, between April 1 and September 30, 2017.<sup>76</sup>
96. Based on published reports, between August 11, 2017 and February 28, 2018 America First Action, Inc. made independent expenditures supporting Luther Strange and opposing Doug Jones and Conor Lamb totaling more than \$1.2 million.<sup>77</sup>

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<sup>75</sup> Josh Dawsey and Robert Costa, “Trump advisers vent frustrations about 2018 strategy as president listens,” WASHINGTON POST, December 21, 2017, available at [https://www.washingtonpost.com/politics/trump-advisers-vent-frustrations-about-2018-strategy-as-president-listens/2017/12/21/a7555788-e6a8-11e7-ab50-621fe0588340\\_story.html?utm\\_term=.2edfdff070de](https://www.washingtonpost.com/politics/trump-advisers-vent-frustrations-about-2018-strategy-as-president-listens/2017/12/21/a7555788-e6a8-11e7-ab50-621fe0588340_story.html?utm_term=.2edfdff070de). See also Maggie Haberman, “Dispute Over Political Strategy Erupts Inside the White House,” NEW YORK TIMES, December 21, 2017, available at <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowki.html>; John Santucci, “Trump held Oval Office meeting with aides about 2018 midterm elections,” ABC NEWS, December 21, 2017, available at <http://abcnews.go.com/Politics/trump-held-oval-office-meeting-aides-2018-midterm/story?id=51945498>.

<sup>76</sup> America First Policies, Financial Summary 2017-2018, accessed February 11, 2018, available at <https://www.fec.gov/data/committee/C90017302/?tab=summary>.

<sup>77</sup> See [https://www.fec.gov/data/independent-expenditures/?committee\\_id=C00637512&two\\_year\\_transaction\\_period=2018&cycle=2018&data\\_type=processed&is\\_notice=true](https://www.fec.gov/data/independent-expenditures/?committee_id=C00637512&two_year_transaction_period=2018&cycle=2018&data_type=processed&is_notice=true).

97. Based on published reports, America First Action, Inc. has received contributions not subject to the limits and prohibitions of FECA, including a \$1 million contribution from Murray Energy Corporation and a \$2 million contribution from Geoffrey H. Palmer.<sup>78</sup>
98. Based on published reports, there is reason to believe America First Policies has received contributions not subject to the limits, prohibitions and reporting requirements of FECA.
99. Under FECA, a “candidate, individual holding Federal office . . . or an *entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office*” shall not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements” of FECA. 52 U.S.C. § 30125(e)(1)(A) (emphasis added).
100. Based on published reports, there is reason to believe that America First Policies and America First Action, Inc. were directly or indirectly established by, and are acting on behalf of, President Donald J. Trump and Donald J. Trump for President, Inc. and have solicited, received and spent funds not subject to the limitations, prohibitions, and reporting requirements of FECA in connection with an election for federal office in violation of 52 U.S.C. §§ 30125(e), 30104, 30116 and 30118.

## COUNT TWO

### **PRESIDENT DONALD J. TRUMP, DONALD J. TRUMP FOR PRESIDENT, INC. AND AN AGENT ACTING ON BEHALF OF PRESIDENT DONALD J. TRUMP AND DONALD J. TRUMP FOR**

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<sup>78</sup> America First Action, Inc., Year-End Report, January 23, 2018, available at <http://docquery.fec.gov/cgi-bin/forms/C00637512/1199534/>.

**PRESIDENT, INC., BRADLEY J. PARSCALE, HAVE SOLICITED, RECEIVED AND SPENT “SOFT MONEY” IN VIOLATION OF 52 U.S.C. §§ 30125(e), 30104, 30116 and 30118.**

101. Paragraphs 1 through 83 and 85 through 100 are incorporated herein.
102. Under FECA “soft money” prohibition, a “candidate, individual holding Federal office, [or] agent of a candidate or individual holding federal office” shall not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements” of FECA. 52 U.S.C. § 30125(e)(1)(A) (emphasis added).
103. Under FECA, for the purpose of the “soft money” restrictions applicable to a federal candidate or officeholder, “agent” means “any person who has actual authority, either express or implied,” to “solicit, receive, direct, transfer, or spend funds in connection with any election.” 11 C.F.R. § 300.2(b)(3).
104. Under FECA and Commission Advisory Opinions, an individual who is a fundraising agent of a federal candidate, officeholder or national party committee may also serve as a fundraising agent of an entity that raises “soft money” ***only if***:
- the “soft money” entity contacts the individual on their own and not at the request or suggestion of the candidate or federal party committee for whom the individual is an agent; and
  - the individual solicits “soft money” exclusively on behalf of the “soft money” entity—not on the authority of any federal candidate, officeholder or national party committee.



105. Based on published reports, Donald J. Trump for President, Inc. paid Brad Parscale’s consulting firms Giles-Parscale and Parscale Strategy, LLC a total of more than \$5.5 million for “digital consulting / online advertising.”<sup>79</sup>
106. Based on published reports, there is reason to believe that Brad Parscale is a fundraising “agent” of Donald J. Trump for President, Inc. for the purpose of FECA’s “soft money” prohibition.
107. Based on published reports, America First Action, Inc. paid Brad Parscale’s consulting firm, Parscale Strategy, LLC, of more than \$137,000 in 2017 for “digital fundraising consulting,” “design and printing,” “web design and development,” “digital issue advocacy” and “digital design development.”<sup>80</sup>
108. Based on published reports, there is reason to believe that America First Policies has paid Brad Parscale for his services as a founder and consultant.
109. Based on published reports, there is reason to believe that Brad Parscale is a fundraising “agent” of America First Policies and America First Action, Inc. for the purpose of FECA’s “soft

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<sup>79</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00003418&committee\\_id=C00580100&committee\\_id=C00637512&recipient\\_name=Giles-Parscale&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00003418&committee_id=C00580100&committee_id=C00637512&recipient_name=Giles-Parscale&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018); see also

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00580100&recipient\\_name=parscale+strategy&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00580100&recipient_name=parscale+strategy&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

<sup>80</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00637512&recipient\\_name=parscale&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00637512&recipient_name=parscale&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

money” prohibition and has solicited “soft money” for America First Policies and America First Action, Inc.

110. Based on published reports, there is reason to believe that America First Policies and America First Action, Inc. did not contact Brad Parscale on their own but, instead, contacted him at the request or suggestion of President Trump, Donald J. Trump for President, Inc., or agents thereof.
111. Based on published reports, there is reason to believe that Brad Parscale did not solicit “soft money” exclusively on behalf of America First Policies and America First Action, Inc.—and did solicit “soft money” on the authority of President Trump, Donald J. Trump for President, Inc., or agents thereof.
112. Based on published reports, there is reason to believe that President Donald J. Trump, Donald J. Trump for President, Inc. and Brad Parscale, an agent of President Donald J. Trump and Donald J. Trump for President, Inc., solicited, received and spent funds not subject to the limitations, prohibitions, and reporting requirements in connection with an election in violation of 52 U.S.C. §§ 30125(e), 30104, 30116 and 30118.

### **COUNT THREE**

**VICE PRESIDENT MICHAEL R. PENCE, GREAT AMERICA COMMITTEE, AND AN AGENT ACTING ON BEHALF OF VICE PRESIDENT MICHAEL R. PENCE AND GREAT AMERICA COMMITTEE, MARTY OBST, HAVE SOLICITED, RECEIVED AND SPENT “SOFT MONEY” IN VIOLATION OF 52 U.S.C. §§ 30125(e), 30104, 30116 and 30118.**

113. Paragraphs 1 through 83, 85 through 100 and 102 through 112 are incorporated herein.

114. Under FECA “soft money” prohibition, a “candidate, individual holding Federal office, [or] agent of a candidate or individual holding federal office” shall not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements” of FECA. 52 U.S.C. § 30125(e)(1)(A) (emphasis added).
115. Under FECA, for the purpose of the “soft money” restrictions applicable to a federal candidate or officeholder, “agent” means “any person who has actual authority, either express or implied,” to “solicit, receive, direct, transfer, or spend funds in connection with any election.” 11 C.F.R. § 300.2(b)(3).
116. Under FECA and Commission Advisory Opinions, an individual who is a fundraising agent of a federal candidate, officeholder or national party committee may also serve as a fundraising agent of an entity that raises “soft money” *only if*:
- the “soft money” entity contacts the individual on their own and not at the request or suggestion of the candidate or federal party committee for whom the individual is an agent; and
  - the individual solicits “soft money” exclusively on behalf of the “soft money” entity—not on the authority of any federal candidate, officeholder or national party committee.
117. Based on published reports, Vice President Michael R. Pence’s leadership PAC, Great America Committee, paid Marty Obst’s consulting firm, Mo Strategies Inc., more than \$220,000,

primarily for “finance/political strategy consulting” between June 30, 2017 and January 4, 2018.<sup>81</sup>

118. Based on published reports, there is reason to believe that Marty Obst is a fundraising “agent” of Vice President Michael R. Pence for the purpose of FECA’s “soft money” prohibition.
119. Based on published reports, America First Action, Inc. paid Marty Obst’s consulting firm, Mo Strategies Inc., \$60,000 for “fundraising consulting” between August 9, 2017 and December 27, 2017.<sup>82</sup>
120. Based on published reports, there is reason to believe that America First Policies has paid Marty Obst for his services as a founder and consultant.
121. Based on published reports, there is reason to believe that Marty Obst is a fundraising “agent” of America First Policies and America First Action, Inc. for the purpose of FECA’s “soft money” prohibition and has solicited “soft money” for America First Policies and America First Action, Inc.
122. Based on published reports, there is reason to believe that America First Policies and America First Action, Inc. did not contact Marty Obst on their own but, instead, contacted him at the

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<sup>81</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00640664&recipient\\_name=Mo+Strategies+Inc&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00640664&recipient_name=Mo+Strategies+Inc&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

<sup>82</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00637512&recipient\\_name=Mo+Strategies+Inc.&min\\_date=01%2F01%2F2017&max\\_date=03%2F04%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00637512&recipient_name=Mo+Strategies+Inc.&min_date=01%2F01%2F2017&max_date=03%2F04%2F2018).

request or suggestion of President Trump, Donald J. Trump for President, Inc., or agents thereof.

123. Based on published reports, there is reason to believe that Marty Obst did not solicit “soft money” exclusively on behalf of America First Policies and America First Action, Inc.—and did solicit “soft money” on the authority of Vice President Michael R. Pence or agents thereof.
124. Based on published reports, there is reason to believe that Vice President Michael R. Pence and Marty Obst, an agent of Vice President Michael R. Pence, solicited, received and spent funds not subject to the limitations, prohibitions, and reporting requirements in connection with an election in violation of 52 U.S.C. §§ 30125(e), 30104, 30116 and 30118.

#### **COUNT FOUR**

#### **THE REPUBLICAN NATIONAL COMMITTEE AND AN AGENT ACTING ON BEHALF OF THE REPUBLICAN NATIONAL COMMITTEE, BRADLEY J. PARSCALE, HAVE SOLICITED, RECEIVED AND SPENT “SOFT MONEY” IN VIOLATION OF 52 U.S.C. §§ 30125(a), 30104, 30116 and 30118.**

125. Paragraphs 1 through 83, 85 through 100, 102 through 112 and 114 through 124 are incorporated herein.
126. Under the FECA “soft money” prohibition, a “national committee of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements” of FECA, and makes clear that this prohibition “applies to any such national committee, any officer or agent acting on behalf of such a national committee.” 52 U.S.C. § 30125(a).

127. Under FECA, for the purpose of the “soft money” restrictions applicable to national party committees, Commission regulations provide that “agent” includes “any person who has actual authority, either express or implied,” to “solicit, direct, or receive any contribution, donation, or transfer of funds” or “[t]o solicit any funds for, or make or direct any donations to, an organization that is described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a) . . . .” 11 C.F.R. §300.2(b)(1) (emphasis added).
128. Under FECA and Commission Advisory Opinions, an individual who is a fundraising agent of a federal candidate, officeholder or national party committee may also serve as a fundraising agent of an entity that raises “soft money” *only if*:
- the “soft money” entity contacts the individual on their own and not at the request or suggestion of the candidate or federal party committee for whom the individual is an agent; and
  - the individual solicits “soft money” exclusively on behalf of the “soft money” entity—not on the authority of any federal candidate, officeholder or national party committee.
129. Based on published reports, the Republican National Committee paid Brad Parscale’s consulting firm, Parscale Strategy, LLC, more than \$2 million for “management consulting” April 6, 2017 and January 31, 2018.<sup>83</sup>

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<sup>83</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00003418&recipient\\_name=parscale+strategy&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00003418&recipient_name=parscale+strategy&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

130. Based on published reports, there is reason to believe that Brad Parscale is a fundraising “agent” of the Republican National Committee for the purpose of FECA’s “soft money” prohibition.
131. Based on published reports, America First Action, Inc. paid Brad Parscale’s consulting firm, Parscale Strategy, LLC, of more than \$137,000 in 2017 for “digital fundraising consulting,” “design and printing,” “web design and development,” “digital issue advocacy” and “digital design development.”<sup>84</sup>
132. Based on published reports, there is reason to believe that America First Policies has paid Brad Parscale for his services as a founder and consultant.
133. Based on published reports, there is reason to believe that Brad Parscale is a fundraising “agent” of America First Policies and America First Action, Inc. for the purpose of FECA’s “soft money” prohibition and has solicited “soft money” for America First Policies and America First Action, Inc.
134. Based on published reports, there is reason to believe that America First Policies and America First Action, Inc. did not contact Brad Parscale on their own but, instead, contacted him at the request or suggestion of President Trump, Donald J. Trump for President, Inc., the Republican National Committee or agents thereof.

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<sup>84</sup> See

[https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00637512&recipient\\_name=parscale&min\\_date=01%2F01%2F2017&max\\_date=03%2F03%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00637512&recipient_name=parscale&min_date=01%2F01%2F2017&max_date=03%2F03%2F2018).

135. Based on published reports, there is reason to believe that Brad Parscale did not solicit “soft money” exclusively on behalf of America First Policies and America First Action, Inc.—and did solicit “soft money” on the authority of the Republican National Committee or agents thereof.
136. Based on published reports, there is reason to believe that the Republican National Committee and Brad Parscale, an agent of the Republican National Committee solicited, received and spent funds not subject to the limitations, prohibitions, and reporting requirements in connection with an election in violation of 52 U.S.C. §§ 30125(a), 30104, 30116 and 30118.

### **COUNT FIVE**

#### **AMERICA FIRST POLICIES MADE AND DONALD J. TRUMP FOR PRESIDENT, INC. RECEIVED UNREPORTED CONTRIBUTIONS, IN THE FORM OF COORDINATED EXPENDITURES, IN VIOLATION OF 52 U.S.C. §§ 30104(B) AND 30118.**

137. Paragraphs 1 through 83, 85 through 100, 102 through 112, 114 through 124 and 126 through 136 are incorporated herein.
138. Based on published reports, there is reason to believe that America First Policies’ payments for polling and other research focused on voter perceptions and opinions of President Trump and his policy priorities, see APPENDIX,<sup>85</sup> were for the purpose of influencing the 2018 midterm elections and 2020 presidential election and, therefore, “expenditures” under FECA, 52 U.S.C. § 30101(9)(A)(i).

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<sup>85</sup> See, e.g., Christina Wilkie, “Dark money group America First Policies is running a pro-Trump polling operation. Here is an inside look at its secretive work,” CNBC, March 1, 2018, *available at* <https://www.cnbc.com/2018/03/01/america-first-policies-dark-money-polling-for-trump.html>; see also Christina Wilkie, “Trump-allied America First Policies spends big on polling. Here are 24 of their internal reports,” CNBC, March 2, 2018, *available at* <https://www.cnbc.com/2018/03/02/trump-ally-america-first-policies-key-research-polls-reports.html>.



139. Based on published reports, there is reason to believe that America First Policies' staff, paid consultants and agents met with and otherwise communicated regularly with President Trump, Donald J. Trump for President, Inc. and agents thereof to plan electoral activities and spending. For example, in December 2017 a meeting was held at the White House to discuss electoral defeats in 2017 and "concerns about the 2018 political map," attended by White House Chief of Staff John F. Kelly, Kellyanne Conway, White House political director Bill Stepien, Brad Parscale, Hope Hicks and Corey Lewandowski, among others. President Trump "made clear to his advisers that he wants to be heavily involved in the upcoming [2018] elections."<sup>86</sup>
140. Based on published reports, there is reason to believe that believe that America First Policies made its payments for polling and other research focused on voter perceptions and opinions of President Trump and his policy priorities "in cooperation, consultation, or concert, with, or at the request or suggestion of" President Trump, Donald J. Trump for President, Inc. and agents thereof, therefore rendering America First Policies' payments coordinated expenditures and an in-kind contributions to Donald J. Trump and Donald J. Trump for President, Inc. under 52 U.S.C. § 30116(a)(7)(B)(i). See also 11 C.F.R. § 109.20(a).

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<sup>86</sup> Josh Dawsey and Robert Costa, "Trump advisers vent frustrations about 2018 strategy as president listens," WASHINGTON POST, December 21, 2017, available at [https://www.washingtonpost.com/politics/trump-advisers-vent-frustrations-about-2018-strategy-as-president-listens/2017/12/21/a7555788-e6a8-11e7-ab50-621fe0588340\\_story.html?utm\\_term=.2edfdff070de](https://www.washingtonpost.com/politics/trump-advisers-vent-frustrations-about-2018-strategy-as-president-listens/2017/12/21/a7555788-e6a8-11e7-ab50-621fe0588340_story.html?utm_term=.2edfdff070de). See also Maggie Haberman, "Dispute Over Political Strategy Erupts Inside the White House," NEW YORK TIMES, December 21, 2017, available at <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowki.html>; John Santucci, "Trump held Oval Office meeting with aides about 2018 midterm elections," ABC NEWS, December 21, 2017, available at <http://abcnews.go.com/Politics/trump-held-oval-office-meeting-aides-2018-midterm/story?id=51945498>.

141. Under FECA, it is unlawful for the corporation America First Policies, to make a contribution to Donald J. Trump for President, Inc., and for Donald J. Trump for President, Inc. to accept or receive any contribution from the corporation America First Policies. 52 U.S.C. § 30118(a).
142. Under FECA, Donald J. Trump for President, Inc. was required to report to the Commission the identification of each person who makes a contribution to the committee with an aggregate value in excess of \$200 within an election cycle. 52 U.S.C. § 30104(b)(3)(A).
143. Under FECA, Donald J. Trump for President, Inc. was required to report to the Commission the name and address of each person to whom an expenditure in an aggregate amount in excess of \$200 within the calendar year is made by the committee. 52 U.S.C. § 30104(b)(5)(A).
144. Based on published reports and review of FEC records, there is reason to believe that Donald J. Trump for President, Inc. failed to report its receipt of contributions from America First Policies, in violation of 52 U.S.C. § 30104(b)(3)(A).
145. Based on published reports and review of FEC records, there is reason to believe that Donald J. Trump for President, Inc. failed to report its expenditures to polling and research firms that conducted the above-described polling and research in violation of 52 U.S.C. § 30104(b)(5)(A).

### **PRAYER FOR RELIEF**

146. Wherefore, the Commission should find reason to believe that Donald J. Trump, Donald J. Trump for President, Inc., Vice President Michael R. Pence, Great America Committee, the Republican National Committee, America First Action, Inc., America First Policies, Bradley J. Parscale and Marty Obst violated 52 U.S.C. § 30101, *et seq.*, and conduct an immediate

investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin respondent(s) from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

March 5, 2018

Respectfully submitted,



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Common Cause, by  
Paul S. Ryan  
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Washington, DC 20005  
(202) 833-1200



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**VERIFICATION**

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

**For Complainants Common Cause and Paul S. Ryan**

  
\_\_\_\_\_  
Paul S. Ryan

Sworn to and subscribed before me this 5<sup>th</sup> day of March 2018.

  
\_\_\_\_\_  
Notary Public

