

FEDERAL ELECTION COMMISSION

In the matter of:

60 Plus Association

MUR No. _____

COMPLAINT FOR ENFORCEMENT OF CONCILIATION AGREEMENT

1. Citizens for Responsibility and Ethics in Washington (“CREW”) and Noah Bookbinder bring this Complaint before the Federal Election Commission (“FEC”) seeking action to enforce the terms of the conciliation agreement between the FEC and the 60 Plus Association (“60 Plus”).

Summary

2. After the FEC found that there was reason to believe that 60 Plus had violated the Federal Election Campaign Act (“FECA”), 60 Plus entered into a conciliation agreement with the FEC in which it agreed to pay fines totaling \$50,000 within 90 days. While the deadline to pay has long passed, 60 Plus has paid only 10% of the fine. Moreover, 60 Plus’s chairman has publicly stated that the group will not pay the remainder of the fine. 60 Plus is in clear, knowing, and willful violation of the conciliation agreement, and the FEC should act to enforce the conciliation agreement.

Complainants

3. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

4. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and those who make expenditures to influence federal elections, and publicizes those who violate federal campaign finance laws through its website, press releases, and other methods of distribution. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing campaign finance violations and filing complaints with the FEC serves CREW's mission of keeping the public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance law.

5. In order to assess whether an individual or entity is complying with federal campaign finance law, CREW needs the information contained in disclosure reports political committees must file pursuant to the FECA, 52 U.S.C. §§ 30104(a), (b); 11 C.F.R. §§ 104.1, 104.3. CREW is hindered in its programmatic activity when an individual or entity fails to disclose campaign finance information in reports required by the FECA.

6. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated disclosure reports are the only source of information CREW can use to determine if an individual or entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all disclosure reports required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

7. Complainant Noah Bookbinder is the executive director of Citizens for Responsibility and Ethics in Washington. At all times relevant to the complaint, he has been and remains a citizen of the United States and a registered voter and resident of Maryland. As a registered voter, Mr. Bookbinder is entitled to receive information contained in disclosure reports required by the FECA, 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1, 104.3. Mr. Bookbinder is harmed when an individual, candidate, political committee, or other entity fails to report campaign finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998), quoting *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Mr. Bookbinder is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

Respondent

8. The 60 Plus Association is a tax-exempt organization established in 1992, organized under section 501(c)(4) of the Internal Revenue Code. 60 Plus is based in Alexandria, Virginia.

Legal Framework

9. The FECA provides that any person who believes a violation of the FECA has occurred may file a complaint with the FEC. 52 U.S.C. § 30109(a)(1). Following receipt of a complaint, if the FEC finds reason to believe that a violation has been committed, then the FEC must attempt to correct the violation by, among other things, "enter[ing] into a conciliation agreement with any person involved." 52 U.S.C. § 30109(a)(4)(A)(i).

10. Pursuant to 52 U.S.C. § 30109(a)(5)(D), when the FEC believes that a conciliation agreement has been violated it may institute a civil action for relief in federal district

court. In such an action, the merits of the underlying FECA violations that led to the conciliation agreement are not relevant. Rather, to prevail, the FEC “need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.” 52 U.S.C. § 30109(a)(5)(D); *see also Federal Election Comm’n v. Comm. of 100 Democrats*, 844 F. Supp. 1, 5 (D.D.C. 1993) (“[T]he merits of the underlying violations resolved by the conciliation agreements are irrelevant to this proceeding [to enforce the terms of the conciliation agreement] as a matter of law.”).

11. In an action instituted to enforce a conciliation agreement, the FEC may seek additional civil penalties for knowing and willful violations of the FECA’s requirement to comply with the terms of a conciliation agreement. 52 U.S.C. § 30109(a)(6)(C).

Factual Allegations

12. On May 7, 2014, CREW filed a complaint with the FEC against 60 Plus, among others, alleging that 60 Plus violated the Federal Election Campaign Act (FECA).¹ *In the matter of American Future Fund, et al.*, Complaint, MUR 6816 (May 7, 2014), available at <http://bit.ly/2A9bXxS>.

13. CREW’s complaint asserted that 60 Plus, among other entities, knowingly and willfully failed to identify Center to Protect Patient Rights (“CPPR”) or any other persons who made contributions to further 60 Plus’s independent expenditures and electioneering communications targeting House races in 2010. In response to the FEC’s requests for information, 60 Plus asserted that it was not required to identify contributors because no contributions were solicited or received for the purpose of furthering the reported independent

¹ On November 18, 2015, CREW Amended its Complaint to substitute CREW’s current executive director, Noah Bookbinder, as a complainant for CREW’s previous executive director, Melanie Sloan. The Amended Complaint was otherwise identical to the original Complaint and is available at <http://bit.ly/2iqUSVE>.

expenditures and electioneering communications. The veracity of this claim, however, was called into question by the statements of CPPR's President Sean Noble. In an extensive interview, Mr. Noble told reporters that CPPR produced dozens of ads targeting candidates in the 2010 House races, carefully selected the political races in which the ads would be broadcast, and controlled the timing of those ads. Instead of purchasing broadcast time to air these ads directly, CPPR disbursed millions of dollars to groups like 60 Plus in contributions earmarked for the purchase of airtime for the ads that CPPR created.

14. Following an investigation during which 60 Plus had reasonable opportunity to demonstrate that no action should be taken, the FEC found that 60 Plus, among other entities, violated 52 U.S.C. §§ 30104(c)(2)(C) and (f)(2) and 11 C.F.R. §§ 109.10(e)(1)(vi) and 104.20(c)(9) by failing to disclose CPPR as a donor who contributed for the purpose of furthering its independent expenditures and electioneering communications.

15. Following the FEC's finding of wrongdoing, 60 Plus voluntarily entered into a conciliation agreement with the FEC. The conciliation agreement is available at <http://bit.ly/2A8HxvH>. This conciliation agreement resolved the FEC's finding of "reason to believe" that 60 Plus had violated the FECA and acts as a "complete bar to any further action by the Commission" with respect to the FECA violations at issue. 52 U.S.C. § 30109(a)(4)(A)(i).

16. On June 6, 2016, 60 Plus President Amy Frederick signed the conciliation agreement on behalf of 60 Plus. In the agreement, 60 Plus pledged to, among other things, pay a civil penalty to the FEC in the amount of \$50,000 within 90 days from the effective date of the conciliation agreement.

17. The deadline for 60 Plus to fulfill the terms of the conciliation agreement, including payment of the \$50,000 fine to the FEC, has passed.

18. The agreement also provided that “the Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement.” It further provides that “if the Commission believes that [the] agreement or any requirement thereof has been violated,” it may institute a civil action for relief in federal court.

19. A review of the FEC’s Enforcement Query System for MUR 6816 shows only a single payment from 60 Plus in the amount of \$5,000, dated October 7, 2016. *See Civil Penalties, MUR 6816 (Oct. 7, 2016), available at <http://bit.ly/2yU6U02>.*

20. According to public statements by 60 Plus Chairman Jim Martin, 60 Plus has not complied with the conciliation agreement and has no plans to come into voluntary compliance. In a recent news report, 60 Plus Chairman Jim Martin publicly confirmed that 60 Plus paid only \$5,000 of the \$50,000 fine and has “decided to contest” the remainder of the fine. Dave Levinthal, *Scofflaw Political Groups Are Ignoring FEC Fines*, POLITICO MAGAZINE, Oct. 30, 2017, *available at <http://politi.co/2iJ0XhX>.*

21. 60 Plus is in clear violation of the terms of the conciliation agreement. *See id.*

22. Furthermore, 60 Plus appears to be knowingly and willfully violating the terms of the agreement, as the public statements of 60 Plus’s chairman confirm that it is aware of its failure to comply with the terms of the conciliation agreement. *Id.*

WHEREFORE, Citizens for Responsibility and Ethics in Washington and Noah Bookbinder request that the FEC conduct an investigation into these allegations and declare that 60 Plus has violated the FECA by knowingly and willfully failing to fulfill the terms of its conciliation agreement. Following that declaration, CREW further requests that the FEC bring

suit in federal court enforcing the conciliation agreement and seeking additional penalties for 60 Plus's knowing and willful failure to comply with it.

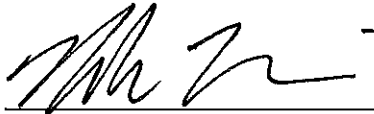


ON BEHALF OF COMPLAINANTS

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VERIFICATION

Citizens for Responsibility and Ethics in Washington and Noah Bookbinder hereby verify that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.



Noah Bookbinder

Sworn and subscribed before me this 5 day of December, 2017.

DISTRICT OF COLUMBIA: SS
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 5th DAY OF December, 2017

NOTARY PUBLIC
My Commission Expires Nov. 14, 2021

