

FEDERAL ELECTION COMMISSION

In the matter of:

Andrew Tobias, individually
and in his capacity as
Treasurer of the Democratic
National Committee; the
Democratic National
Committee; and the DNC
Services Corporation

MUR No. _____

COMPLAINT

1. Cause of Action and its Executive Director, Daniel Epstein, bring this complaint before the Federal Election Commission (“FEC”), requesting an immediate investigation and enforcement action against Andrew Tobias, both individually and in his capacity as Treasurer of the Democratic National Committee, the Democratic National Committee and the DNC Services Corporation (“DNC Services” and collectively with the Democratic National Committee, the “DNC”), for violations of the Federal Election Campaign Act of 1971 (“FECA”) as amended, 2 U.S.C. §§ 431-442, and FEC regulations thereunder.

Complainants

2. Complainant CAUSE OF ACTION is a nonprofit, nonpartisan organization that uses investigative, legal and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity. In furtherance of its mission, Cause of Action investigates and exposes federal government corruption, waste, cronyism and fraud. These investigations fuel strategic legal efforts to restrict federal government overreach, ensure government accountability and prevent the fraudulent use of American taxpayer money.

3. Campaign contributions are a necessary feature of political life and without private contributions to political committees, civic discourse would be impeded. The objective of campaign finance laws is to regulate the influence of money on politics. *See McConnell v. FEC*, 540 U.S. 93, 115 (2003). When federal campaign finance turns from a private civic act to public corruption, however, federal enforcement of criminal and civil sanctions is necessary. *See, e.g., McCormick v. United States*, 500 U.S. 257 (1991); *Evans v. United States*, 504 U.S. 255 (1992).

4. In order to assess whether a candidate committee, political committee or other FEC-regulated entity is in compliance with federal campaign finance law and FEC regulations, Cause of Action depends upon the availability of information contained in the mandatory receipt and disbursement reports filed by regulated entities with the FEC pursuant to FECA. 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. Cause of Action is hindered in its programmatic activity when a political committee such as the DNC fails to properly disclose receipts and disbursements in the mandatory disclosure reports required by FECA.

5. Cause of Action relies on the FEC's proper administration of FECA's reporting requirements to determine if a candidate, political committee or other regulated entity is complying with FECA. The proper administration of FECA's reporting requirements includes mandating that all reports of receipts and disbursements required by FECA are properly and timely filed with the FEC. Cause of Action is hindered in its programmatic activity when the FEC fails to properly administer FECA's reporting requirements.

6. Complainant DANIEL EPSTEIN is the Executive Director of Cause of Action, a citizen of the United States and a registered voter and resident of the District of Columbia. As a registered voter, Mr. Epstein is entitled to receive information contained in reports of receipts

and disbursements required by FECA. 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. Mr. Epstein is harmed when a candidate, political committee or other regulated entity fails to report campaign finance activity as required by FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998), *quoting Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (holding that political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Mr. Epstein is further harmed when the FEC fails to properly administer FECA's reporting requirements, limiting his ability to review campaign finance information.

Respondents

7. Respondent ANDREW TOBIAS is the Treasurer of Respondent Democratic National Committee and, upon information and belief, the individual authorized to file FEC reports on its behalf and to make discretionary judgments about its compliance with FEC reporting and disclosure regulations pursuant to FECA. *See Ex. 1 (Andrew Tobias, Treasurer, Democratic National Committee, http://www.democrats.org/about/bio/andrew_tobias (last visited Jan. 17, 2013))*.

8. Respondent DEMOCRATIC NATIONAL COMMITTEE is the governing body of the Democratic Party of the United States, and is an unincorporated association with its principal place of business in Washington, D.C. The principal purpose of the Democratic National Committee's organizational mission is to promote the election of Democratic political candidates at the national, state and local levels. *See Ex. 2 (Compl. at 5, Democratic National Committee v. FEC, No. 08-1083 (D.D.C. June 24, 2008))*.

9. Respondent DNC SERVICES is a nonprofit corporation registered in the District of Columbia and controlled by the elected national officers of the Democratic National Committee, with its principal place of business in Washington, D.C. DNC Services owns the

assets, employs the staff and possesses the contractual rights and obligations of the Democratic National Committee. The Democratic National Committee undertakes most of its business and financial activities through DNC Services. *See* Ex. 2, at 5.

10. Respondents Democratic National Committee and DNC Services are jointly registered with the FEC as a “national committee” within the meaning of FECA, 2 U.S.C. § 431(14), and FEC regulations, 11 C.F.R. § 100.13, and as such are required to comply with the FEC’s public reporting and disclosure requirements pursuant to FECA, 2 U.S.C. § 434.

Factual Allegations

11. On February 25, 2012, U.S. Department of Health and Human Services (“HHS”) Secretary Kathleen Sebelius (Secretary Sebelius) spoke at a Human Rights Campaign (“HRC”) gala in her official capacity in Charlotte, North Carolina. *See* Ex. 3 (Tim Funk, *Sebelius: No endorsement of Dalton intended at Charlotte event*, Charlotte Observer, Mar. 2, 2012, at 1). At the HRC gala, Secretary Sebelius made several statements in support of Walter Dalton’s candidacy for Governor of North Carolina and in support of Barack Obama’s candidacy for President of the United States. *Id.* The U.S. Office of Special Counsel (“OSC”) subsequently launched an investigation into Secretary Sebelius’s appearance at the HRC gala after receiving complaints that she had engaged in prohibited political activity in her official capacity. *See* Ex. 4 (Press Release, U.S. Office of Special Counsel, *OSC Concludes Hatch Act Investigation of Secretary Sebelius* (Sept. 12, 2012)).

12. On September 12, 2012, OSC wrote a letter to President Obama attaching a final report concluding that Secretary Sebelius had made several extemporaneous political remarks during her appearance at the HRC gala in violation of 5 U.S.C. § 7323(a)(1) (the “Hatch Act”). *See* Ex. 5 (U.S. Office of Special Counsel, No. HA-12-1989, Report of Prohibited Political

Activity under the Hatch Act 6-7 (2012)). The report further concluded that HHS used funds derived from the U.S. Treasury to pay for Secretary Sebelius and one of her aides to travel to and from the HRC gala, in violation of 5 U.S.C. § 7324(b), but that HHS had since reclassified the appearance from official to political and had been reimbursed for those expenses. *See id.* at 4.

13. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, Cause of Action submitted a request to HHS, dated September 27, 2012, and obtained documents indicating that HHS spent \$1,003.69 in travel costs for Secretary Sebelius's appearance at the HRC gala and \$1,510.81 in travel costs for AJ Pearlman, the aide who accompanied her. Exs. 6 & 7 (E-mail from Kate Wolff, Dir., Scheduling and Advance, Office of the Sec'y, Dep't of Health and Human Servs., to Chris Canning *et al.* (Mar. 9, 2012, 9:35 EST) (on file with author)); (E-mail from Kate Wolff, Dir., Scheduling and Advance, Office of the Sec'y, Dep't of Health and Human Servs., to Chris Canning (July 23, 2012, 12:05 EDT) (on file with author)). HHS documents demonstrate that DNC employees consulted the Obama for America Campaign Committee to determine which organization would reimburse HHS, and that the two organizations agreed that reimbursement would come solely from the DNC. *See* Ex. 6 (E-mail from Grace Strome, Obama for Am. Campaign Comm., to Kate Wolff, Dir., Scheduling and Advance, Office of the Sec'y, Dep't of Health and Human Servs., et al. (Mar. 28, 2012, 10:51 EDT) (on file with author)).

14. HHS documents further reveal that on April 12, 2012, the DNC issued a check to HHS for \$1,003.69. Ex. 8 (Check No. 49707 from Democratic National Committee to "Dept of Health & Human Svcs"). Cause of Action reviewed the DNC's monthly Form 3X for the reporting period at issue, publicly available on the FEC website, and found that the DNC reported the April 12, 2012 payment to HHS on Schedule B, placing it within the category of

“Other Federal Operating Expenditures.” *See* Ex. 9 (May 20, 2012 FEC Form 3X, at 2660, Disbursement to “Dept of Health & Human Svcs”). The DNC described the purpose of the expenditure simply as “travel,” thereby avoiding any acknowledgment that the purpose of the expenditure was to reimburse the federal government for Secretary Sebelius’s Hatch Act violation. *Id.*

15. 11 C.F.R. §§ 109.10 and 104.4 require that political party committees, such as the DNC, regularly report independent expenditures on Schedule E in accordance with 11 C.F.R. § 104.3(b)(3)(viii), while 11 C.F.R. § 100.16(a) defines an “independent expenditure” as an expenditure for a communication “expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party or its agents.” Since OSC concluded that Secretary Sebelius’s comments were extemporaneous, they were therefore *not* made in cooperation with the DNC or the candidates’ campaigns. Ex. 5, at 1. Thus, the DNC’s reimbursements of the federal government for the travel costs of Sebelius and her aide are properly classified as independent expenditures within the meaning of 11 C.F.R. § 100.16(a).

16. Cause of Action further reviewed the DNC’s monthly Form 3X dated May 20, 2012, and found that the DNC failed to report the April 12, 2012 payment to HHS on a Schedule E itemized independent expenditure report, despite this expenditure arising from a communication expressly advocating the election of Walter Dalton for Governor of North Carolina and of Barack Obama for President of the United States. In fact, the DNC has not reported any independent expenditures for the relevant reporting period. Ex. 10 (May 20, 2012 FEC Form 3X, at 4).

17. HHS documents further reveal that on or about July 23, 2012, HHS requested reimbursement from the DNC for the additional \$1,510.81 in travel costs for Secretary Sebelius's aide. Ex. 11 (E-mail from Kate Wolff, Dir., Scheduling and Advance, Office of the Sec'y, Dep't of Health and Human Servs., to Chris Canning (July 23, 2012, 12:05 EDT) (on file with author); E-mail from Chris Canning to Kate Wolff, Dir., Scheduling and Advance, Office of the Sec'y, Dep't of Health and Human Servs. (July 23, 2012, 12:12 EDT) (on file with author)). Cause of Action reviewed the DNC's publicly available Form 3X for the monthly reporting period at issue, and found that the DNC reported the August 2, 2012 payment on Schedule B, placing it within the category of "Other Federal Operating Expenditures." See Ex. 12 (Sept. 20, 2012 FEC Form 3X, at 3027, Disbursement to "Department of Health and Human Services"). As with the April 2012 payment, the DNC described the purpose of the expenditure as "travel," thereby avoiding any acknowledgment that the purpose of the expenditure was to reimburse the federal government for Secretary Sebelius's Hatch Act violation. *Id.*

18. Cause of Action reviewed the DNC's monthly Form 3X dated September 20, 2012, and found that the DNC failed to report the August 2, 2012 payment to HHS on a Schedule E itemized independent expenditure report, despite this expenditure arising from a communication expressly advocating the election of Walter Dalton for Governor of North Carolina and of Barack Obama for President of the United States. In fact, the DNC has not reported any independent expenditures for the relevant reporting period. Ex. 13 (Sept. 20, 2012 FEC Form 3X, at 4).

19. Cause of Action reviewed the DNC's monthly Form 3X dated March 20, 2012, and the monthly Form 3X for every subsequent reporting period through September of 2012 and found that the DNC failed to report any debt or obligation to HHS on Schedule D (reserved for

debts and obligations excluding loans) for any of the relevant reporting periods. *See* Ex. 14 (Mar. 2012 through Sept. 2012 FEC Form 3X, Schedule D). Similarly, Cause of Action reviewed the DNC's monthly Form 3X dated March 20, 2012, and found that the DNC failed to report any contribution from HHS on Schedule A, the itemized receipts report, for the relevant reporting period. *See* Ex. 15 (Mar. 20, 2012 FEC Form 3X, Schedule A).

COUNT I

20. National political party committees, including the DNC, are required to report all contributions under Schedule A of FEC Form 3X, in accordance with 11 C.F.R. § 104.3(a)(2).

21. FEC regulations define "contribution" to include a loan, advance or "anything of value" made by any person for the purpose of influencing any election for federal office. 11 C.F.R. § 100.52(a). The regulations further define "anything of value" to include all in-kind contributions for goods or services provided without charge. 11 C.F.R. § 100.52(d)(1).

22. HHS advanced the travel costs for Secretary Sebelius and her aide to attend the HRC gala in North Carolina and was not fully reimbursed until August 2012, and thereby made a contribution of travel services to the DNC without charge in February 2012, as described by 11 C.F.R. §100.52(a).

23. The DNC failed to report the travel services advanced by HHS in February 2012 as a contribution on Schedule A of its monthly Form 3X dated March 20, 2012, thereby violating 11 C.F.R. § 104.3(a)(2)(i).

COUNT II

24. 11 C.F.R. § 104.11(a) and 11 C.F.R. § 104.3(d) require that outstanding debts and other obligations owed by a political party committee such as the DNC be reported as of the date on which the debt or obligation is incurred, and shall be continuously reported until extinguished.

Such debts and obligations are to be “reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished.” 11 C.F.R. § 104.11(a).

25. OSC’s determination that Secretary Sebelius’s comments at the HRC gala violated the Hatch Act confirms that the DNC incurred a liability to HHS, as of February 25, 2012, for the cost of travel to and from the HRC gala for Secretary Sebelius and her aide.

26. As discussed above, on or about April 12, 2012, the DNC reimbursed HHS for the travel services advanced for Secretary Sebelius’s trip in February 2012, and on or about August 2, 2012, the DNC reimbursed HHS for the travel services advanced for Secretary Sebelius’s aide’s trip in February 2012. Thus, the DNC knew of its liability to pay for these expenses even before the OSC concluded its investigation in September 2012, yet failed to properly or timely amend the relevant FEC filings to reflect its obligation to reimburse HHS.

27. The DNC’s failure to report its obligation to reimburse HHS on Schedule D of Form 3X dated March 20, 2012, and its failure to report the outstanding amount of its obligation to reimburse HHS on Schedule D of Form 3X for each subsequent reporting period up until the period in which the debt was repaid in August 2012, are each separate and distinct violations of 11 C.F.R. § 104.11(a) and 11 C.F.R. § 104.3(d).

COUNT III

28. 11 C.F.R. §§ 109.10 and 104.4 require that political party committees, such as the DNC, regularly report independent expenditures on Schedule E in accordance with 11 C.F.R. § 104.3(b)(3)(vii).

29. At the HRC gala, Secretary Sebelius made several statements in support of Walter Dalton’s candidacy for Governor of North Carolina and in support of Barack Obama’s candidacy

for President of the United States, thereby “expressly advocating the election or defeat of a clearly identified candidate for office” as described by 11 C.F.R. § 100.16(a). *See* Exs. 4 & 5.

30. 11 C.F.R. § 100.16(a) defines an “independent expenditure” as an expenditure for a communication “expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party or its agents.”

31. OSC concluded that Secretary Sebelius’s comments were extemporaneous and therefore *not* made “in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party or its agents.” Ex. 5, at 1. The DNC’s expenditures in support of Secretary Sebelius’s and her aide’s attendance at the February 25, 2012 HRC gala are therefore independent expenditures within the meaning of 11 C.F.R. §§ 100.16(a) and 109.1.

32. The DNC violated 11 C.F.R. § 104.3(b)(1)(vii) and 11 C.F.R. § 104.3(b)(3)(vii)(A) by failing to report the April 12, 2012 and August 2, 2012 payments to HHS on Schedule E of Form 3X for the relevant reporting periods, improperly classifying each payment as an operating expenditure and thereby avoiding the more explicit disclosure requirements for independent expenditures. Additionally, the DNC violated 11 C.F.R. § 104.3(b)(3)(vii) by failing to disclose that the expenditures were in support of particular candidates, the names of the candidates and the office sought by each and by failing to file the appropriate certification required by 11 C.F.R. § 104.3(b)(3)(vii)(B).

COUNT IV

33. In the alternative, should the FEC determine that the DNC properly classified the April 12, 2012 and August 2, 2012 payments to HHS under the category of “Other Federal

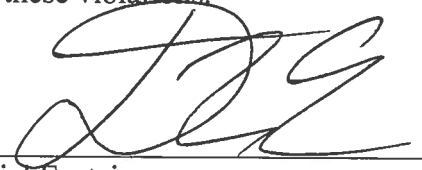
Operating Expenditures,” then Cause of Action alleges that the DNC nevertheless violated 11 C.F.R. § 104.3(b)(3) in that the DNC insufficiently described the purpose of each payment as a generic expenditure for “travel.” *See Exs. 9 & 11.*

34. 11 C.F.R. § 104.3(b)(3) requires that political committees describe the purpose for each itemized operating expenditure. 11 C.F.R. § 104.3(b)(3)(i)(A) defines “purpose” as “a brief statement or description of why the disbursement was made.” The FEC has further defined the level of specificity required by 11 C.F.R. § 104.3(b)(3) in a Statement of Policy entitled “*Purpose of Disbursement*” *Entries for Filings with the Commission*: “The ‘purpose of disbursement’ entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear.” 72 Fed. Reg. 887 (Jan. 9, 2007).

35. In failing to adequately explain with sufficient specificity that the purpose of the April 12, 2012 and August 2, 2012 payments to HHS were to reimburse HHS for Secretary Sebelius’s violation of the Hatch Act, the DNC has thereby frustrated the public’s right to know whether such reimbursement was in fact made and has therefore violated 11 C.F.R. § 104.3(b)(3).

CONCLUSION

WHEREFORE, Cause of Action and Daniel Epstein request that the FEC conduct an investigation into these allegations, declare the respondents to have violated FECA and applicable FEC regulations and impose sanctions appropriate to these violations.

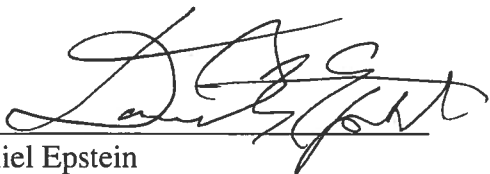


Daniel Epstein
Executive Director
Cause of Action
1919 Pennsylvania Avenue N.W.
Suite 650
Washington, D.C. 20006
(202) 499-4232
(202) 330-5842

Verification

Cause of Action, through its Executive Director Daniel Epstein, hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.



Daniel Epstein

Sworn to and subscribed before me this 29th day of January, 2013.



Notary Public

