

August 2, 2019

Hon. William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530-0001

Dear Attorney General Barr:

Common Cause requests that the Department of Justice exercise its authority to investigate whether Kris Kobach, Kobach for Senate and We Build the Wall, Inc. have violated provisions of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101 *et seq.*

Specifically, the attached complaint, filed on this date with the Federal Election Commission (FEC), details the relevant facts establishing reason to believe that Kris Kobach, Kobach for Senate, and We Build the Wall, Inc. have violated 52 U.S.C. § 30118, which prohibits corporate contributions to federal candidates, 52 U.S.C. § 30125(e), which prohibits federal candidates from spending so-called “soft money” in connection with their election, and 52 U.S.C. § 30120(a), which requires certain email communications by political committees to include a “paid for by” disclaimer.

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 (8th ed. December 2017) (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. 151-52:

The BCRA amendments to FECA in 2002 significantly enhanced the criminal penalties for willful violations of FECA. BCRA did so in response to identified anti-social consequences, namely, corruption and the appearance of corruption arising from FECA violations, and the consequent adverse effect on the proper functioning of American democracy.

These issues are addressed comprehensively in the Supreme Court’s decision in *McConnell v. Fed. Election Comm’n*, 540 U.S. 93 (2003). Accordingly, all willful FECA violations that exceed the applicable jurisdictional floor specified in the Act’s criminal

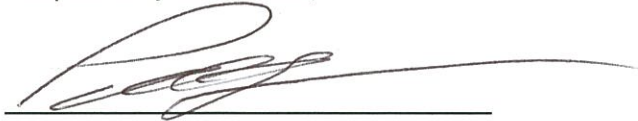
provision should be considered for federal prosecution under one or more of the prosecutive theories presented above.

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

The Department of Justice is likewise responsible for enforcing criminal code provisions that prohibit aiding and abetting offenses against the United States, 18 U.S.C. § 2, conspiring to commit offenses against the United States, 18 U.S.C. § 371, and attempting to conspire to commit offenses against the United States, 18 U.S.C. § 1349.

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
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

Copy to:

Brian A. Benczkowski, Assistant Attorney General, Criminal Division
AnnaLou Tirol, Acting Chief, Public Integrity Section



BEFORE THE FEDERAL ELECTION COMMISSION

COMMON CAUSE
805 Fifteenth Street NW, Suite 800
Washington, DC 20005
(202) 833-1200

PAUL S. RYAN
805 Fifteenth Street NW, Suite 800
Washington, DC 20005
(202) 833-1200

v.

MUR No. _____

KOBACH FOR SENATE
PO Box 1111
Louisburg, KS 66053

KRIS KOBACH
c/o Kobach for Senate
PO Box 1111
Louisburg, KS 66053

WE BUILD THE WALL, INC.
PO Box 131567
Houston, TX 77219-1567

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 Kris Kobach (FEC ID# SOKS00257), Kobach for Senate (FEC ID# C00711325), and We Build the Wall, Inc. have violated provisions of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101 *et seq.*, and Commission regulations.

2. Specifically, based on the fundraising email attached to this complaint as an exhibit and other publicly-available information described herein, complainants have reason to believe that Kobach for Senate, Kris Kobach and We Build the Wall, Inc. have violated 52 U.S.C. § 30118, which prohibits corporate contributions to federal candidates, 52 U.S.C. § 30125(e), which prohibits federal candidates from spending so-called “soft money” in connection with their election, and 52 U.S.C. § 30120(a), which requires certain email communications by political committees to include a “paid for by” disclaimer.
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); see *also* 11 C.F.R. § 111.4(a) (emphasis added).
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. Kris Kobach (FEC ID# SOKS00257) is a Republican candidate seeking election to the U.S. Senate from the state of Kansas.¹

¹ See Chris [*sic*] Kobach, Statement of Candidacy—July 8, 2019, *available at* <https://docquery.fec.gov/cgi-bin/forms/SOKS00257/1337002>.



6. Kobach for Senate (FEC ID# C00711325) is Kris Kobach's principal campaign committee for his 2020 U.S. Senate candidacy.²
7. We Build the Wall, Inc. is a Florida corporation that claims tax-exempt status under Section 501(c)(4) of the Internal Revenue Code.³
8. We Build the Wall, Inc. has raised more than \$25 million.⁴
9. On August 1, 2019, the *Daily Beast* reported that earlier that day Kris Kobach "sent a fundraising appeal to an email list maintained by We Build The Wall, a 501(c)(4) advocacy group currently attempting to build a wall on the southern border using private funds. Kobach is on the group's advisory board and serves as its general counsel."⁵
10. The fundraising appeal, attached to this complaint as an exhibit, indicates it was "From: Kris Kobach - WeBuildTheWall, Inc. info@webuildthewall.us" and read in operative part:

As you may have heard, **I've decided to run for the United States Senate in 2020.** I'm working hard to earn the support I need to win and frankly, I need to get you on my team.

As a donor to WeBuildTheWall, I humbly ask you to support my run for the Senate.

As a United States Senator I will fight to make sure that **the federal government completes the entire wall with the speed and quality that we are implementing with WeBuildTheWall!**

Kobach For Senate

² See Kobach for Senate, Statement of Organization—July 8, 2019, *available at* <https://docquery.fec.gov/pdf/474/201907089150453474/201907089150453474.pdf>.

³ See We Build the Wall, Inc., "About," <https://webuildthewall.us/about/> (visited August 2, 2019).

⁴ *Id.*

⁵ Lachlan Markay, "Kris Kobach Uses Border Wall Group to Fund Senate Bid, Likely Illegally," DAILY BEAST, August 1, 2019 (updated August 2, 2019), <https://www.thedailybeast.com/kris-kobach-uses-border-wall-group-to-fund-senate-bid-likely-illegally?ref=wrap>.

I'm making calls to potential donors and would be happy to answer any questions you might have. You can schedule your call with me by emailing Jen@KrisKobach.com

If you don't want to talk on the phone but want to support my campaign with a financial contribution of \$50, \$100, \$250, \$500, or any amount up to the maximum of \$2800 per individual, you can do so by clicking [this link](#).

I want to represent you in the United States the same way I'm going to continue to represent WeBuildTheWall as General Counsel. With your support I know we are going to get the job done!

Kobach For Senate

Sincerely,
Kris Kobach
General Counsel, WeBuildTheWall

11. The We Build the Wall, Inc. email links to the contribution page of the Kobach for Senate website: <https://secure.anedot.com/kobach-for-senate/c6e6579cd0793311e21bf>.
12. The We Build the Wall, Inc. email indicates at the end that it was "[s]ent by info@webuildthewall.us in collaboration with Constant Contact."
13. Kris Kobach is identified in the email as "General Counsel" of We Build the Wall, Inc.

SUMMARY OF THE LAW

"CONTRIBUTION" AND "EXPENDITURE" DEFINITIONS AND RESTRICTIONS

14. 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 election for Federal office." 52 U.S.C. § 30101(8)(A)(i); see *also* 11 C.F.R. §§ 100.51–100.56.
15. 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).

16. 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); see *also*

11 C.F.R. §§ 100.110–100.114.

17. 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).

18. FECA provides that “[i]t is unlawful ... for any corporation whatever ... to make a contribution or expenditure in connection with any [federal] election ... or for any candidate, political committee, or other person knowingly to accept or receive” any such contribution.

52 U.S.C. § 30118(a).

19. 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

20. The FECA so-called “soft money” prohibition provides that a “candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity ... acting on behalf of 1 or more candidates or individuals holding Federal office” shall not “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).
21. 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).

COORDINATED SPENDING

22. 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); *see also* 11 C.F.R. § 109.20(a).
23. Any expenditure that is “coordinated” with a candidate, 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).



DISCLAIMER REQUIREMENTS

24. FECA provides:

Whenever a political committee makes a disbursement for the purpose of financing any communication through any ... mailing, or any other type of general public political advertising, or whenever any person ... solicits any contribution through any ... mailing, or any other type of general public political advertising ..., such communication-

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee; 1

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

52 U.S.C. § 30120(a).

25. “[E]lectronic mail of more than 500 substantially similar communications” must contain a disclaimer “when sent by a political committee.” 11 C.F.R. § 110.11(a)(1).

CAUSES OF ACTION

COUNT I:

Reason to believe that We Build the Wall, Inc. made a contribution to Kris Kobach and Kobach for Senate in violation of 52 U.S.C. § 30118, which prohibits corporate contributions to federal candidates.

26. Paragraphs 1 through 25 are incorporated herein.



27. A mass email soliciting contributions to the Kobach for Senate committee is a “thing of value” “for the purpose of influencing” a federal election, meeting the statutory definitions of “contribution” and “expenditure” at 52 U.S.C. §§ 30101(8)(A)(i) and 30101(9)(A)(i).
28. Based on the fundraising email attached to this complaint as an exhibit, which does not indicate that the email was paid for by Kobach for Senate, complainants have reason to believe that the production and dissemination of the email (e.g., staff compensation, computer server expenses, website hosting expenses, email list building/acquisition expenses) was paid for by We Build the Wall, Inc.
29. Based on the fundraising email attached to this complaint as an exhibit and other publicly-available information, complainants have reason to believe that We Build the Wall, Inc. paid for the production and dissemination of the email (e.g., staff compensation, computer server expenses, website hosting expenses, email list building/acquisition expenses) in cooperation, consultation, or concert, with, or at the request or suggestion of candidate Kris Kobach and/or his principal campaign committee Kobach for Senate—rendering the costs of producing and disseminating the email a “contribution” to Kris Kobach and Kobach for Senate under 52 U.S.C. 30116(a)(7)(B)(i).
30. Based on the fundraising email attached to this complaint as an exhibit and other publicly-available information, complainants have reason to believe that We Build the Wall, Inc. made a contribution to candidate Kris Kobach and Kobach for Senate in an amount equal to the cost of producing and disseminating the fundraising email in violation of 52 U.S.C. § 30118(a).



COUNT II:

Reason to believe that Kris Kobach, through his agent We Build the Wall, Inc., spent “soft money” in connection with an election for federal office in violation of 52 U.S.C. § 30125(e).

31. Paragraphs 1 through 30 are incorporated herein.
32. As a Florida corporation claiming tax-exempt status under section 501(c)(4) of the Internal Revenue Code—an entity not registered with the FEC as a political committee—complainants have reason to believe that We Build the Wall, Inc. has accepted funding not subject to the limitations, prohibitions and reporting requirements of FECA—*i.e.*, “soft money.”
33. Based on the fundraising email attached to this complaint as an exhibit and other publicly-available information, complainants have reason to believe that We Build the Wall, Inc. is an “agent” of Kris Kobach for the purpose of the FECA “soft money” restrictions—*i.e.*, We Build the Wall, Inc. is a “person who has actual authority, either express or implied,” to “solicit, receive, direct, transfer, or spend funds” on behalf of Kris Kobach in connection with Kobach’s Senate campaign. See 11 C.F.R. § 300.2(b)(3).
34. Based on the fundraising email attached to this complaint as an exhibit and other publicly-available information, complainants have reason to believe that Kris Kobach, through his agent We Build the Wall, Inc., spent funds raised by We Build the Wall, Inc. not subject to the limitations, prohibitions and reporting requirements of FECA—*i.e.*, soft money—in connection with an election for federal office, to produce and disseminate the fundraising email (e.g., staff compensation, computer server expenses, website hosting expenses, email list building/acquisition expenses), in violation of 52 U.S.C. § 30125(e).



COUNT III:

Reason to believe that Kobach for Senate violated the “paid for by” disclaimer requirement of 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11.

35. Paragraphs 1 through 34 are incorporated herein.
36. The email attached as an exhibit to this complaint—communication by Kris Kobach soliciting contributions for his Kobach for Senate political committee—does not indicate that the communication was paid for and authorized by Kobach for Senate.
37. Based on the fundraising email attached to this complaint as an exhibit and other publicly-available information, complainants have reason to believe that the email was a communication by candidate Kris Kobach and his Kobach for Senate committee and, thus, Kobach for Senate violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1) by failing to include the required disclaimer.

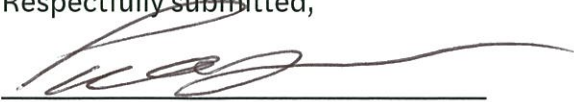
PRAYER FOR RELIEF

38. Wherefore, the Commission should find reason to believe that We Build the Wall, Inc., Kris Kobach, and Kobach for Senate have violated 52 U.S.C. § 30101 *et seq.*, including 52 U.S.C. §§ 30118, 30120 and 30125, 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 the respondents 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.

August 2, 2019



Respectfully submitted,



COMMON CAUSE, by

Paul S. Ryan

805 Fifteenth Street NW, Suite 800

Washington, DC 20005

(202) 833-1200



PAUL S. RYAN

805 Fifteenth Street NW, Suite 800

Washington, DC 20005

(202) 833-1200

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

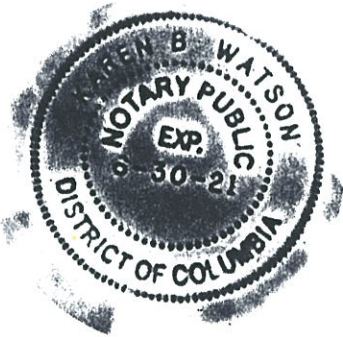
Sworn to pursuant to 18 U.S.C. § 1001.

For Complainants COMMON CAUSE and PAUL S. RYAN


Paul S. Ryan

Sworn to and subscribed before me this 2nd day of August, 2019.


Notary Public



EXHIBIT

----- Forwarded message -----

From: **Kris Kobach - WeBuildTheWall, Inc.** <info@webuildthewall.us>

Date: Thu, Aug 1, 2019 at 2:13 PM

Subject: It's not over

To: [REDACTED]



Dear [REDACTED],

The "Wall Symposium" was a huge success, and President Trump scored a huge win for the wall at the Supreme Court. For those of us who are working to secure our border and keep Americans safe, things are finally getting done.

I was excited to welcome dozens of conservative leaders and media influencers like Donald Trump Jr, Michelle Malkin, Candace Owens, and Congressmen Louis Gohmert to the wall that we were only able to build because of your generous support. I got to show off what we accomplished together and it was incredible.

Our work to secure our border and protect the constitution is far from over.





As you may have heard, **I've decided to run for the United States Senate in 2020.** I'm working hard to earn the support I need to win and frankly, I need to get you on my team.

As a donor to WeBuildTheWall, I humbly ask you to support my run for the Senate.

As a United States Senator I will fight to make sure that **the federal government completes the entire wall with the speed and quality that we are implementing with WeBuildTheWall!**

Kobach For Senate



I'm making calls to potential donors and would be happy to answer any questions you might have. You can schedule your call with me by emailing Jen@KrisKobach.com

If you don't want to talk on the phone but want to support my campaign with a financial contribution of \$50, \$100, \$250, \$500, or any amount up to the maximum of \$2800 per individual, you can do so by clicking [this link](#).

I'm want to represent you in the United States States the same way I'm going to continue to represent WeBuildTheWall as General Counsel. With your support I know we are going to get the job done!

Kobach For Senate

Sincerely,
Kris Kobach
General Counsel, WeBuildTheWall

WeBuildTheWall, Inc. | PO Box 131567, Houston, TX 77219-1567

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