

**BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION**

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v.

MUR No. _____

IGX, LLC
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Andrew Duncan
71 Willow Street
Brooklyn, NY 11201-1618

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Andrew Duncan and IGX, LLC,¹ may have violated provisions of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. Specifically, based on published reports, complainants have reason to believe that Andrew Duncan may have violated 52 U.S.C. § 30122 by making a contribution to the political committee Conservative Solutions PAC (I.D. C00541292) in the name of another person, namely IGX, LLC, and that IGX, LLC may have violated 52 U.S.C. § 30122 by knowingly permitting its name to be used for the making of such contribution.
3. Further, based on published reports, complainants have reason to believe that Andrew Duncan and IGX, LLC may have violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to organize IGX, LLC as a political committee, as defined at 52 U.S.C. § 30101(4), register the political committee and file disclosure reports as a political committee.
4. “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).

BACKGROUND

¹ Andrew Duncan acknowledged that he used IGX, LLC to “mask” his donations to Conservative Solutions PAC. *See* Libby Watson, *How super PAC donors hide behind shady LLCs*, SUNLIGHT FOUNDATION, February 3, 2016, available at <http://sunlightfoundation.com/blog/2016/02/03/how-super-pac-donors-hide-behind-shady-llcs/>; *see also* Jack Gillum, Chad Day & Stephen Braun, *Big Bucks, shadowy companies: Election mystery money returns*, AP, February 3, 2016, available at <http://bigstory.ap.org/article/3143e929c77641438e8163d1d19c2/shadowy-companies-big-bucks-election-mystery-money-returns>.

5. On February 3, 2015, the Sunlight Foundation reported: “The super PAC supporting Marco Rubio[, Conservative Solutions PAC,] had several untraceable LLC donors. The biggest was a \$500,000 donation from IGX, LLC, with an address in Delaware.”²
6. The Sunlight Foundation article reported that there are three registered companies named IGX, LLC in Delaware, but only one at the address listed on the FEC filing.³ The address is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.⁴
7. The political committee named in the Sunlight Foundation article is Conservative Solutions PAC, which reported receiving a \$500,000 contribution from IGX, LLC, with the same Delaware address, on its year-end report filed with the Commission on January 31, 2016.
8. The Sunlight Foundation article referred to an AP article published on the same day identifying Andrew Duncan as the owner of IGX, LLC.⁵ Indeed, when Andrew Duncan

² Libby Watson, *How super PAC donors hide behind shady LLCs*, SUNLIGHT FOUNDATION, February 3, 2016, available at <http://sunlightfoundation.com/blog/2016/02/03/how-super-pac-donors-hide-behind-shady-llcs/>.

³ *Id.* The IGX, LLC with the same address as the one listed on the FEC filing can be found on the official website of the State of Delaware. Its Delaware file number is 5746471, available at <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>. See also Paul Blumenthal, *Hedge Fund Billionaires and Untraceable Money Fill Rubio Super PAC Coffers*, HUFFINGTON POST, January 31, 2016, available at http://www.huffingtonpost.com/entry/marco-rubio-super-pac_us_56ae761be4b00b033aaf8f7d.

⁴ *Id.*

⁵ Libby Watson, *How super PAC donors hide behind shady LLCs*, SUNLIGHT FOUNDATION, February 3, 2016, available at <http://sunlightfoundation.com/blog/2016/02/03/how-super-pac-donors-hide-behind-shady-llcs/> (citing Jack Gillum, Chad Day & Stephen Braun, *Big Bucks, shadowy companies: Election mystery money returns*, AP, February 3, 2016, available at <http://bigstory.ap.org/article/3143e929c77641438e8163d1d19c2/shadowy-companies-big-bucks-election-mystery-money-returns>.) The Delaware state corporation registry, however, does not list Andrew Duncan as its registered agent. It lists, instead, Corporation Service Company, a company that sets up companies. Julie Bykowicz & Chad Day, *Presidential super PACs lost steam in second half of 2015*, GETTYSBURG TIMES, February 1, 2016, available at http://www.gettyburgtimes.com/article_46b9a5e3-ca70-59c1-ab02-7949242e3d46.html?mode=jqm.

donated to Marco Rubio for President on July 21, 2015, he noted “IGX LLC” as the name of his employer.⁶

9. According to the AP article, “Duncan, who said he worked as a technology executive and has invested in several film productions, acknowledged he was the source of the super PAC donation in emails Tuesday to the AP. Duncan, who funds human-rights efforts in China, said he admired Rubio’s work on the issue and had used IGX to mask the donation because he was worried about reprisals.”⁷

PROHIBITION ON CONTRIBUTIONS IN THE NAME OF ANOTHER

10. FECA provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.”

52 U.S.C. § 30122.

11. The Commission regulation implementing the statutory prohibition on “contributions in the name of another” provides the following examples of “contributions in the name of another”:

- “Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made,” 11 C.F.R. § 110.4(b)(2)(i).

⁶ Marco Rubio for President (I.D. C00458844) Quarterly Report (Q3) filed with the Commission on October 30, 2015, available at <http://docquery.fec.gov/pdf/880/201510159003031880/201510159003031880.pdf>.

⁷ Jack Gillum, Chad Day & Stephen Braun, *Big Bucks, shadowy companies: Election mystery money returns*, AP, February 3, 2015 (emphasis added), available at <http://bigstory.ap.org/article/3143e929c77641438e8ea8163d1d19c2/shadowy-companies-big-bucks-election-mystery-money-returns>.

- “Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.” 11 C.F.R. § 110.4(b)(2)(ii).
12. Based on published reports, complainants have reason to believe that IGX, LLC may have violated 52 U.S.C. § 30122 by “[g]iving money . . . , all or part of which was provided to” IGX, LLC by Andrew Duncan without disclosing the source of money to Conservative Solutions PAC at the time the contribution was made. *See* 11 C.F.R. § 110.4(b)(2)(i).
 13. Based on published reports, complainants have reason to believe that Andrew Duncan may have violated 52 U.S.C. § 30122 by “[m]aking a contribution of money . . . and attributing as the source of the money . . . another person [, namely, IGX, LLC,] when in fact [Andrew Duncan was] the source.” *See* 11 C.F.R. § 110.4(b)(2)(ii).
 14. Based on published reports, complainants have reason to believe that IGX, LLC may have violated 52 U.S.C. § 30122 by “knowingly permit[ting its] name to be used to effect such a contribution.” 52 U.S.C. § 30122.

**POLITICAL COMMITTEE STATUS, REGISTRATION
AND REPORTING REQUIREMENTS**

15. FECA defines the term “political committee” to mean “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year[.]” 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5(a). “Contribution,” in turn, is defined as “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). Similarly, “expenditure” is

defined as “any purchase, payment, distribution, loan, advance, deposit, or gift 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(9)(A)(i).

16. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term “political committee” to “only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *Id.* at 79 (emphasis added). Again, in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Court invoked the “major purpose” test and noted, in the context of analyzing the activities of a 501(c)(4) group, that if a group’s independent spending activities “become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.” *Id.* at 262 (emphasis added). In that instance, the Court continued, it would become subject to the “obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns.” *Id.* (emphasis added). The Court in *McConnell v. FEC*, 540 U.S. 93 (2003), restated the “major purpose” test for political committee status as iterated in *Buckley*. *Id.* at 170 n.64.

17. The Commission has explained:

[D]etermining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).

Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007).

18. For the reasons set forth above, there is a two prong test for “political committee” status under federal law: (1) whether an entity or other group of persons has a “major purpose” of influencing the “nomination or election of a candidate,” as stated by *Buckley*, and if so, (2) whether the entity or other group of persons receives “contributions” or makes “expenditures” of \$1,000 or more in a calendar year.
19. Any entity that meets the definition of a “political committee” must file a “statement of organization” with the Federal Election Commission, 52 U.S.C. § 30103, must comply with the organizational and recordkeeping requirements of 52 U.S.C. § 30102, and must file periodic disclosure reports of its receipts and disbursements, 52 U.S.C. § 30104.⁸
20. The political committee disclosure reports required by FECA must disclose to the Commission and the public, including complainants, comprehensive information regarding such committee’s financial activities, including the identity of any donor who has contributed \$200 or more to the committee within the calendar year. *See* 52 U.S.C. § 30104(b). The Supreme Court has repeatedly recognized the importance of campaign finance disclosure to informing the electorate. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 369 (2010) (“[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.”).
21. Based on published reports, complainants have reason to believe that IGX, LLC may have met the two-prong test for political committee status by (1) being an entity or group of persons with the “major purpose” of influencing the “nomination or election of a

⁸ In addition, a “political committee” that does not confine its activities to “independent expenditures” is subject to contribution limits, 52 U.S.C. §§ 30116(a)(1), 30116(a)(2), and source prohibitions, 52 U.S.C. § 30118(a), on the contributions it may receive. 52 U.S.C. § 30116 (f); *see also* FEC Ad. Op. 2010-11at 2 (Commonsense Ten) (A committee that “intends to make only independent expenditures” and “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is not subject to contribution limits.)

candidate”⁹ and (2) by receiving “contributions” of \$1,000 or more in a calendar year. Consequently, complainants have reason to believe that IGX, LLC and Andrew Duncan may have violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to organize IGX, LLC as a political committee, as defined at 52 U.S.C. § 30101(4), register the political committee and file disclosure reports as a political committee.

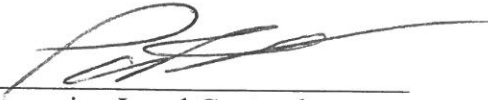
PRAYER FOR RELIEF

22. Wherefore, the Commission should find reason to believe that Andrew Duncan and IGX, LLC have violated 52 U.S.C. § 30101 *et seq.*, including 52 U.S.C. §§ 30102, 30103, 30104 and 30122 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.

February 23, 2016

⁹ See *Massachusetts Citizens for Life*, 479 U.S. at 262 (If a group’s political activities “become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.”)

Respectfully submitted,



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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 to pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

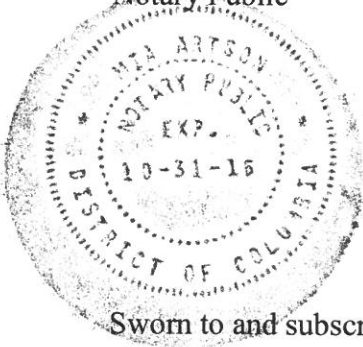


Paul S. Ryan

Sworn to and subscribed before me this 23 day of February 2016.



Notary Public

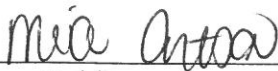


For Complainant Democracy 21



Fred Wertheimer

Sworn to and subscribed before me this 23 day of February 2016.



Notary Public

