BEFORE THE FEDERAL ELECTION COMMISSION

Foundation for Accountability and Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

v.

MUR No. _____

Take Back the 9th
321 N Chestnut St #104
Lutheran Lake, IN 47274
legal@takebackthe9th.com

COMPLAINT

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. This complaint is submitted, upon information and belief, to request the Federal Election Commission (FEC) immediately investigate and take appropriate enforcement actions to address apparent violations of the Federal Election Campaign Act by Take Back the 9th Inc.[1]

Federal law requires individuals, groups, and organizations to disclose spending made to influence elections. One regulation requires any person or entity to report "independent expenditures." An "independent expenditure" is 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 committee or its agents."[2] Specifically, an organization (which is not a political party) that "makes independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year shall file a verified statement

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[1] This complaint is submitted pursuant to 52 U.S.C. § 30109(a)(1).

[2] 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16. See also 11 C.F.R. § 100.17 (defining "clearly identified" to "mean the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia."); 11 C.F.R. § 100.111 (defining expenditure to include "anything of value, made by any person for the purpose of influencing any election for Federal office").

or report on FEC Form 5."[3] In addition to the quarterly report required, during an election period the organization may also need to file 24-Hour or 48-Hour reports.[4] These reports must include:

i. The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;
ii. The identification (name and mailing address) of the person to whom the expenditure was made;
iii. The amount, date, and purpose of each expenditure;
iv. A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought . . .
v. A verified certification under penalty of perjury as to whether such expenditure was 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 committee or its agents; and
vi. The identification of each person who made a contribution in excess of $200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.[5]

In this case, Take Back the 9th Inc. was formed as a 501(c)(4) organization in Indiana on October 1, 2020.[6] The only identifying information available about the organization was its office address and registered agent information.[7] The organization created a website, which sought contributions,[8] and put up several billboards, all with the same political message that advocated for the defeat of a candidate identified by name. This is an example of one of the billboards[9]:

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[3] 11 C.F.R. § 109.10(b). An organization that is a political committee is required to report independent expenditures that exceeds $200 with respect to a particular election using Form 3X and Schedule E or 24 and 48-hour reports. 11 C.F.R. § 104.4.

[4] 11 C.F.R. § 109.10(d).

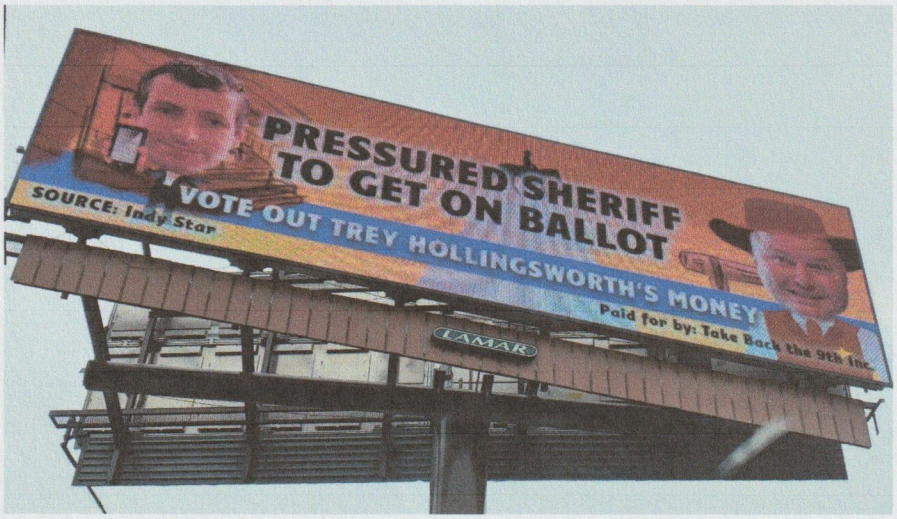
[5] 11 C.F.R. § 109.10(e).

[6] See Exhibit A. The organization's Articles of Incorporation stated, "The purpose for which the corporation is organized is to promote social welfare within the meaning of section 501(c) of the Internal Revenue Code." *Id.* "Social welfare" organizations are created under section 501(c)(4) of the Internal Revenue Code.

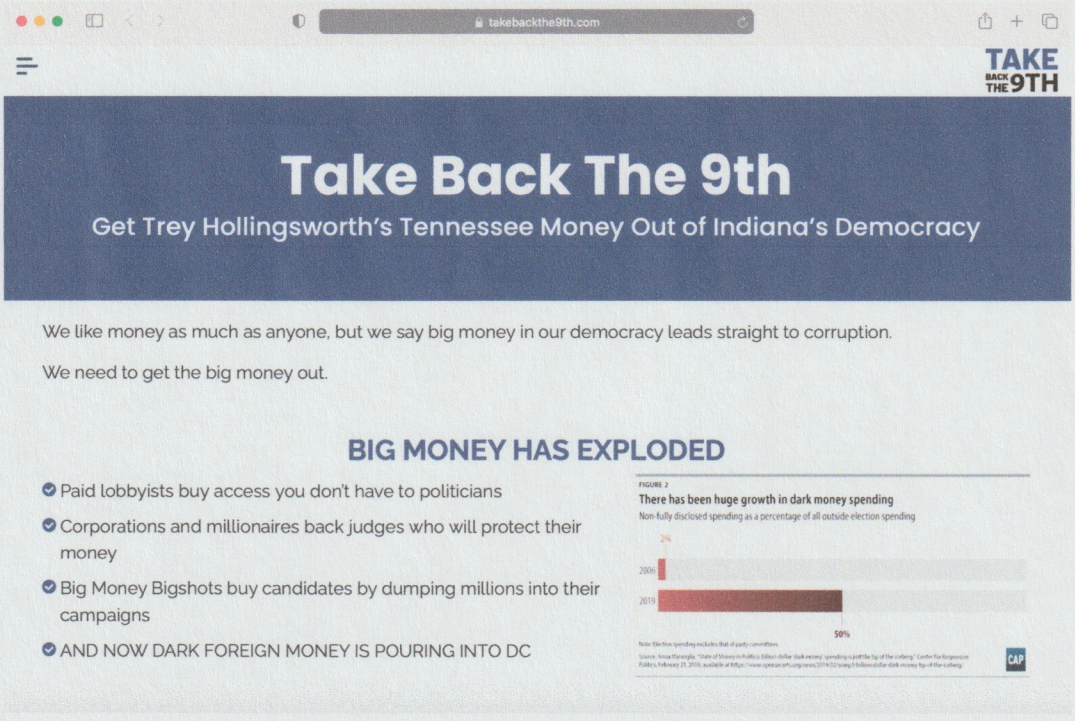
[7] See Exhibit A.

[8] The website takebackthe9th.com also sought contributions that it disclosed were not tax-deductible.

[9] Additional photos of the billboards are included in Exhibit B.



This is an image of the website identifying a candidate by name:



Take Back the 9th Inc.'s political spending apparently was done in the month prior to the November 2020 election, all without any public disclosure.[10] Although Take Back the 9th Inc.

[10] Take Back the 9th does not appear as an organization that engaged in independent expenditures on the FEC's race page for Indiana's 9th District. Federal Election Commission, accessed Jan. 15, 2021, available at https://www.fec.gov/data/elections/house/IN/09/2020/#independent-expenditures.

paid for prominent political advertising, voters were unable to assess any information about the organization and its expenditures, whether the advertisements were made in cooperation with a candidate, and the identity of the contributors to the organization.

Moreover, this organization was formed as a "social welfare" organization a month before a general election and immediately engaged in political activity. A "social welfare" organization is organized "exclusively for the promotion of social welfare,"[11] which "does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[12] Although some political activity may be permitted, it cannot be the organization's primary activity.[13] In this case, not only did the organization form immediately before an election, but its only known public activity was direct opposition to a named candidate. The formation of the organization as a "social welfare" organization and the failure to disclose any information about its political spending with the FEC indicates its primary motivation was to engage in political activity without disclosing required information. We request the FEC investigate and take appropriate enforcement actions.

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[11] 26 U.S.C. §§ 501(a) and 501(c)(4).

[12] *See* Internal Revenue Service, Political Activity and Social Welfare, available at: https://www.irs.gov/charities-non-profits/other-non-profits/political-activity-and-social-welfare.

[13] *Id.*

Respectfully submitted,

_____

Kendra Arnold, Executive Director
Foundation for Accountability & Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

STATE OF IOWA)
) ss.
COUNTY OF POLK)

Subscribed and sworn to before me on January _____, 2021.

_____

Notary Public in and for the State of Iowa

Copy To:

IRS EO Classification
Mail Code 4910DAL
1100 Commerce St.
Dallas, TX 75242-1198

Email: eoclass@irs.gov

Exhibit A

State of Indiana
Office of the Secretary of State

Certificate of Incorporation
of
TAKE BACK THE 9TH INC.

I, CONNIE LAWSON, Secretary of State, hereby certify that Articles of Incorporation of the above Domestic Nonprofit Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Code.

NOW, THEREFORE, with this document I certify that said transaction will become effective Thursday, October 01, 2020.

In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, October 01, 2020.

Connie Lawson

CONNIE LAWSON
SECRETARY OF STATE

202010011427065 / 8738189

To ensure the certificate's validity, go to https://bsd.sos.in.gov/PublicBusinessSearch

APPROVED AND FILED
CONNIE LAWSON
INDIANA SECRETARY OF STATE
10/01/2020 12:34 PM

ARTICLES OF INCORPORATION

Formed pursuant to the provisions of the Indiana Code.

ARTICLE I - NAME AND PRINCIPAL OFFICE ADDRESS

BUSINESS ID	202010011427065
BUSINESS TYPE	Domestic Nonprofit Corporation
BUSINESS NAME	TAKE BACK THE 9TH INC.
PRINCIPAL OFFICE ADDRESS	321 N Chestnut #104, Lutheran Lake, IN, 47274, USA

ARTICLE II - REGISTERED OFFICE AND ADDRESS

REGISTERED AGENT TYPE	Individual
NAME	Mimi Oluwafemi
ADDRESS	321 N Chestnut St #104, Lutheran Lake, IN, 47274, USA
SERVICE OF PROCESS EMAIL	legal@takebackthe9th.com

I acknowledge that the Service of Process email provided above is the email address at which electronic service of process may be accepted.

ARTICLE III - PERIOD OF DURATION AND EFFECTIVE DATE

PERIOD OF DURATION	Perpetual
EFFECTIVE DATE	10/01/2020
EFFECTIVE TIME	11:02AM

ARTICLE IV - PRINCIPAL(S)

No Principal on record.

ARTICLE V - INCORPORATOR(S)

NAME	Mimi Oluwafemi
ADDRESS	321 N Chestnut #104, Lutheran Lake, IN, 47274, USA

APPROVED AND FILED
CONNIE LAWSON
INDIANA SECRETARY OF STATE
10/01/2020 12:34 PM

ARTICLE VI - GENERAL INFORMATION

STATEMENT OF PURPOSE

The purpose for which the corporation is organized is to promote social welfare within the meaning of section 501(c) of the Internal Revenue Code.

TYPE OF CORPORATION Public benefit corporation, which is organized for a public or charitable purpose

WILL THE CORPORATION HAVE MEMBERS? No

DISTRIBUTION OF ASSETS

Upon the dissolution of this corporation, the remaining assets shall be distributed to, and only to, one or more charitable or social welfare organizations.

SIGNATURE

THE SIGNATOR(S) REPRESENTS THAT THE REGISTERED AGENT NAMED IN THE APPLICATION HAS CONSENTED TO THE APPOINTMENT OF REGISTERED AGENT.

THE UNDERSIGNED, DESIRING TO FORM A CORPORATION PURSUANT TO THE PROVISIONS OF THE INDIANA NONPROFIT CORPORATION ACT, EXECUTE THESE ARTICLES OF INCORPORATION.

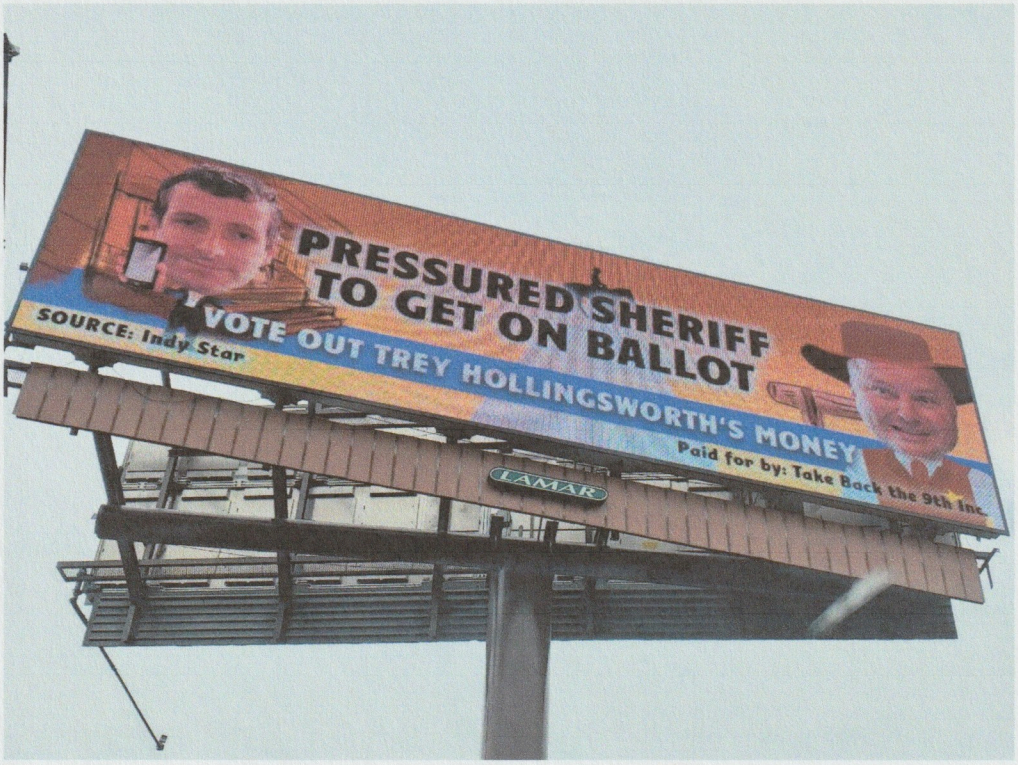
IN WITNESS WHEREOF, THE UNDERSIGNED HEREBY VERIFIES, SUBJECT TO THE PENALTIES OF PERJURY, THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE, THIS DAY **October 1, 2020**.

SIGNATURE Mimi Oluwafemi

TITLE Legal Representative

Business ID : 202010011427065
Filing No : 8738189

Exhibit B: Take Back The 9th Inc. Billboards



HOLLINGSWORTH
TENNESSEE
TAILGATE
MY DADDY OWNS YOU
VOTE OUT TREY HOLLINGSWORTH'S MONEY
SOURCE: Indy Star
Paid for by: Take Back the 9th Inc.
LAMAR

LIGHT BEER
Am I Cool Or What!?
I'm the
YOUNGEST POLITICIAN
IN WEALTHIEST 1%
VOTE OUT TREY HOLLINGSWORTH'S MONEY
SOURCE: ROLL CALL, 11/19
Paid for by: Take Back the 9th Inc.
LAMAR

LIGHT BEER
TREY LIED
ABOUT WHERE HE LIVED
SOURCE: AP
VOTE OUT TREY HOLLINGSWORTH'S MONEY
Paid for by: Take Back the 9th Inc.
LAMAR