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October 6, 2020

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: John Crump and Gun Owners of America, Inc.
Federal Election Commission Complaint Against:
Facebook, AFP Fact Check, and Kamala Harris for Vice President

Dear Sirs:

This complaint is filed on behalf of: (i) John Crump, a journalist, political activist, and Virginia State Director for Gun Owners of America, Inc., who resides in northern Virginia; and (ii) Gun Owners of America, Inc., located in Springfield, Virginia, which is one of the nation's largest citizen lobbies working in defense of the Second Amendment (hereinafter "Complainants"). This complaint is filed against: Facebook, AFP Fact Check, and Kamala Harris for Vice President (hereinafter "Respondents") for violation of various provisions of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. §§ 30101, *et seq.* (also referred to as "FECA" or "the Act"), and the implementing regulations adopted by the Federal Election Commission ("Commission" or "FEC") and published at 11 CFR §§ 100.1, *et seq.*

SUMMARY OF COMPLAINT

This Complaint and its exhibits set out the basis for Complainants' belief that the Respondents, separately and/or jointly, have violated the Federal Election Campaign Act.

Specifically, Complainants charge that, based on the facts set out below, one or more

Respondents violated the following:

1. the prohibition on corporations making in-kind contributions (*see* 52 U.S.C. §§ 30101(8), 30118);
2. the limitations on making coordinated expenditures (52 U.S.C. § 30116(a)(7));
3. the prohibition on making Independent Expenditures without disclaimers and reporting (52 U.S.C. §§ 30104(g) and 30120(a)); and
4. the prohibition on foreign nationals making in-kind contributions for the purpose of influencing a federal election (52 U.S.C. § 30121).

FECA provides that if the Commission, upon receiving a complaint, has reason to believe that a person has committed a violation of the Act, it shall make an investigation of the alleged violation. *See* 52 U.S.C. § 30109(a)(2). This Complaint is filed pursuant to 52 U.S.C. § 30109(a)(1), with the request that the FEC conduct such investigation into whether the Respondents' conduct violated federal campaign finance laws during the time in question, and if so, that it impose appropriate sanctions, as well as take whatever further action is appropriate and in accordance with the law.

This Complaint is verified by John Crump, both in his individual capacity and as a representative of Gun Owners of America, Inc., and is based upon such knowledge, information, and belief of the facts as stated below and as contained in the identified exhibits. The relevant facts and alleged offenses are summarized as follows:

IDENTITY OF RESPONDENTS

Facebook (<https://www.facebook.com/>) is a Delaware corporation, headquartered at 1 Hacker Way, Menlo Park, California 94025.¹

AFP Fact Check (<https://factcheck.afp.com/>) describes itself on the “About Us” page of its website as follows:

AFP launched its digital verification service in France in 2017 and has grown to become the leading global fact-checking organisation, with dedicated journalists in countries from the United States to Myanmar. ... They take into account local cultures, languages and politics and work with AFP’s bureaus worldwide to investigate and disprove false information, focusing on items which can be harmful, impactful and manipulative.

Their stories are edited in regional hubs and the global team is managed from AFP’s Paris headquarters. [Emphasis added.]

AFP’s webpage entitled “Fact-checking at AFP” states the following:

Fact-checking has been a core element of AFP’s work as a global news agency for more than 180 years.

The company itself has a unique status under a French law. AFP resources are both commercial (around two thirds) and from a French government subsidy to support impartial, public interest journalism in France and abroad.

Our work follows the mission of the AFP charter to provide accurate, balanced and impartial coverage of news “with an independent voice free of political, commercial or ideological influence.”

AFP is part of Facebook’s third-party fact-checking programme. We consider stories flagged on Facebook as part of the material we investigate. Content rated “false” by fact-checkers is downgraded in news feeds so fewer people will see it. The content is however not deleted as a result of the rating. AFP’s fact-checking operations receive direct support through Facebook’s programme.

AFP is a signatory of the IFCN code of principles. These include a commitment to: nonpartisanship and fairness, transparency of sources, transparency of funding and organisation, transparency of methodology and an open and honest corrections policy. [Emphasis added.]

¹ <https://about.fb.com/company-info/>.

Kamala Harris is a candidate for Vice President of the United States, nominated at the Democrat National Convention on August 19, 2020.

**BACKGROUND OF RESPONDENTS' ACTIONS
IN VIOLATION OF FEDERAL ELECTION LAW**

1. The Cam Edwards Article.

On August 11, 2020, the website BearingArms.com published an article written by a journalist named Cam Edwards, entitled “Kamala Harris Doesn’t Think You Have The Right To Own A Gun” (“Edwards Article”).² The Edwards Article concluded that “Harris may own a gun, but that doesn’t mean she believes that you have a right to own one too.” As support for this conclusion, the Edwards Article relied on a January 11, 2008 *amicus* brief³ that was filed by Kamala Harris (“Harris *Amicus* Brief”) in the United States Supreme Court in the landmark case *District of Columbia v. Heller*, 554 U.S. 570 (2008). Actually, Kamala Harris was listed twice on that brief: both as one of the *amici* on whose behalf the brief was being submitted, and in her capacity as District Attorney of San Francisco (*see id.* at 3) as counsel for *amici*, being identified to the Court as one of the brief’s primary authors (*see cover*).

According to the Harris *Amicus* Brief, “the Second Amendment provides only a militia-related right to bear arms....” *Id.* at 5, 10 (citing a case for the proposition that the “Second Amendment does not provide a private right to keep and bear arms....”). The Harris *Amicus* Brief faulted the decision issued by the U.S. Court of Appeals for the D.C. Circuit under

² C. Edwards, “[Kamala Harris Doesn’t Think You Have The Right To Own A Gun](#),” *Bearing Arms* (Aug. 11, 2020).

³ *District of Columbia v. Heller*, No. 07-290, [Amicus Curiae Brief of District Attorneys in Support of Petitioners](#) (Jan. 11, 2008).

review in *Heller* for its having concluded that “the Constitution protects a broad ‘individual’ constitutional right, one that is not militia-related, to possess firearms.” *Id.* at 13.

The Harris *Amicus* Brief then goes on to “respectfully join in the arguments set forth in Petitioners’ brief.” *Id.* at 7. That petitioners’ brief,⁴ in turn, unequivocally claimed that “[t]he text and history of the Second Amendment conclusively refute the notion that it entitles individuals to have guns for their own private purposes.” *Id.* at 8 (emphasis added).

Thus, statements in the Harris *Amicus* Brief fully support the headline of the Edwards Article — “Kamala Harris Doesn’t Think You Have The Right To Own A Gun.” **Indeed, Kamala Harris has expressly, directly, and unambiguously asserted her view that there is no individual right to keep and bear arms under the Second Amendment.** Of course, the U.S. Supreme Court rejected the position set out in the Harris *Amicus* Brief, as the *Heller* decision made clear that “the Second Amendment right is exercised *individually and belongs to all Americans.*” *Id.* at 581 (emphasis added). It is these clear and unambiguous statements by Kamala Harris on which the Edwards Article relied.

2. The AFP Fact Check Article.

On August 19, 2020, in response to the Edwards Article, an organization headquartered in France and calling itself “AFP Fact Check” published an article (“AFP Fact Check Article”) entitled “Kamala Harris does not oppose gun ownership or the Second

⁴ *District of Columbia v. Heller*, No. 07-290, [Brief for Petitioners](#) (Jan. 4, 2008).

Amendment.”⁵ Whereas the Edwards Article is solidly grounded on direct statements made by Kamala Harris, the AFP Fact Check Article is based on conjecture, distortion, and misdirection.

The AFP Fact Check Article, referring to the Edwards Article, claimed that:

[a]n article and Facebook post claim Democratic vice presidential candidate Kamala Harris **opposes the right to own a gun** and has plans with running mate Joe Biden to “dismantle” the Second Amendment to the U.S. Constitution. **These claims are false**; although Harris supports gun safety laws, she says these can co-exist with the Second Amendment, and **she is not against gun ownership**.⁶

The AFP Fact Check Article then continued to editorialize and distort, claiming that “[r]ather than outright opposition to gun ownership, Harris has supported legislation aimed at increasing safety.”

The AFP Fact Check Article then specifically addresses the Harris *Amicus* Brief in *Heller*, on which the Edwards Article had relied, distorting the nature of that brief.

First, the AFP Fact Check Article **seeks to downplay** Harris’s prominent role in the Harris *Amicus* Brief, claiming that she merely “join[ed] 17 other district attorneys — including at least one Republican — in an amicus brief more than a decade ago.” In reality, Harris played a leading role in the brief, appearing not only as a party *amici*, but also as counsel and author. And the *amicus* brief she helped write and file in the *Heller* case was not just some

⁵ I. Timberlake, “[Kamala Harris does not oppose gun ownership or the Second Amendment](#),” *AFP Fact Check* (Aug. 18, 2020) (emphasis added).

⁶ In response to the AFP Fact Check, on August 19, 2020, Bearing Arms modified the title of its article to “Kamala Harris Says She Supports Your Second Amendment Rights. Her Record Proves Otherwise,” and, in response, the AFP updated its counter article.

random thoughts, but rather her personal legal view of the scope of the Second Amendment which, as a member of the Bar of the U.S. Supreme Court, she urged the Court to adopt.

Second, the AFP Fact Check Article **seeks to redirect and recast** the Harris *Amicus* Brief, claiming that it merely “expressed concern that the case could unleash further court challenges to existing criminal firearms laws.” To be sure, the Harris *Amicus* Brief made that point, but it also made many other statements about the Second Amendment which the AFP Fact Check Article ignores. For example, the AFP Fact Check Article never mentions the quotations above, in which Kamala Harris explicitly argued that there is no individual right to keep and bear arms.

Third, the AFP Fact Check Article **seeks to paper over** the facts of the Harris *Amicus* Brief with unsupported statements from supporters of Kamala Harris who insist that she is not anti-gun. Outrageously, one of these sources even admits that Kamala Harris opposed private gun ownership in the Harris *Amicus* Brief, yet opines that “I’m not sure it’s fair to claim that as her **current position** given that the Supreme Court decided in *Heller* that people do have that right, and I haven’t seen her questioning the *Heller* decision.” Emphasis added. In other words, according to the AFP, it is “**false**” to point to **specific evidence** of Kamala Harris’s writings opposing private gun ownership, while it is “**true**” to **speculate** that she may no longer hold such views.

In spite of the best efforts of the AFP Fact Check Article, the Harris *Amicus* Brief clearly sets out Kamala Harris’s view — soundly-refuted by the U.S. Supreme Court in *Heller* — that Americans possess no individual right to keep and bear arms under the Second Amendment.

The AFP Fact Check Article itself is highly misleading, seeking to obscure unfortunate statements made by its favored candidate. Yet, rather than admitting to its blatant prejudice, the AFP Fact Check Article claims the moral high ground, declaring its statements to be “true” and statements from the Edwards Article to be “false.” In doing so, AFP Fact Check seeks to act as a 1984-style Ministry of Truth, imposing its views on the American public as to what is true and should be believed about candidates for federal office, versus what is false and should be rejected — thereby meddling in the upcoming U.S. election from its headquarters in France.

3. AFP Fact Check’s Partnership with Facebook, Inc.

Facebook, Inc. has selected AFP Fact Check to participate in what it calls its “Third-Party Fact-Checking Program.”⁷ The mission of that Program is to “reduce the spread of misinformation on [its] platforms.” Claiming to enforce its “Community Standards,”⁸ including Section 21 on “False News,” Facebook admits that “[t]here is also a fine line between false news and satire or opinion. For these reasons, **we don’t remove** false news from Facebook but instead, significantly **reduce its distribution** by showing it lower in the News Feed.”⁹ Emphasis added.

Rather than deleting content it has arbitrarily deemed to be “False News,” Facebook instead claims that it will: (1) “reduce the spread” of the information (essentially electronic

⁷ [“Facebook’s Third-Party Fact-Checking Program,”](#) *Facebook*.

⁸ [“Community Standards,”](#) *Facebook*.

⁹ Elsewhere, Facebook claims that “false news does not violate our Community Standards....” See T. Lyons, [“Hard Questions: What’s Facebook’s Strategy for Stopping False News?”](#) *Facebook* (May 23, 2018).

book burning) by hampering its users from seeking out and finding information that has been declared “false”; (2) de-monetize the accounts of those who share information Facebook has deemed “false”¹⁰; and (3) “[i]nform[] our community with additional context,” meaning superimposing Facebook’s favored information over top of the disfavored information, imparting the message to readers that they should believe Facebook’s information and reject the disfavored information. Additionally, as happened to Complainant Crump, Facebook has also engaged in the more nefarious and surreptitious activity of deleting the accounts of users who share information Facebook deems to be false, or who question Facebook’s wholesale whitewashing of the public square to fit its political agenda.

Although Facebook’s rules and policies repeatedly state that “we” (meaning Facebook) take the above steps, in reality Facebook has out-sourced (indeed, foreign-sourced) this role to third parties to determine what information should be declared to be “false” and what actions should be taken in response. Facebook describes that its “Approach to Misinformation” is “Partnering with Third-Party Fact-Checkers.”¹¹ Attempting to provide this process with the cover of legitimacy, Facebook claims that these third-party fact-checkers are “certified through the non-partisan International Fact-Checking Network (IFCN).” This group is “a unit of the

¹⁰ See T. Lyons (“And since we don’t want to make money off of misinformation or help those who create it profit, these publishers are not allowed to run ads or use our monetization features like Instant Articles.”).

¹¹ See [“Partnering with Third-Party Fact-Checkers.”](#)

Poynter Institute,”¹² which recently was forced to recant its political targeting of conservative media outlets as “unreliable” news sources after widespread backlash.¹³

4. AFP Fact Check’s Relationship to AFP.

One of Facebook’s fact-checking partners is AFP Fact Check.¹⁴ As the Facebook AFP Fact Check page explains, “[c]ontent rated ‘false’ by fact-checkers is **downgraded** in News Feeds so fewer people will see it. AFP’s fact-checking operations receive **direct support** through Facebook’s programme, which has helped us to expand our fact-checking team worldwide.” Emphasis added. It is unclear whether “direct support” means financial payments or simply access to Facebook resources, but regardless, Facebook permits AFP Fact Check to evaluate content — including content bearing on federal candidates — and, based on AFP Fact Check’s evaluation, will suppress certain statements about federal candidates, as it did with the Edwards Article.

AFP Fact Check boasts that it is certified by the International Fact-Checking Network (“IFCN”)¹⁵ in an effort to demonstrate its legitimacy as a modern day Bebelplatz.¹⁶ AFP Fact

¹² See the Poynter Institute, “[The International Fact-Checking Network](#).”

¹³ J. Concha, “[Poynter pulls blacklist of ‘unreliable’ news websites after backlash](#),” *The Hill* (May 3, 2019).

¹⁴ K. Goldshlager, “[How AFP Has Built a Global Fact-Checking Operation](#),” *Facebook* (Sept. 11, 2019).

¹⁵ As part of the IFCN’s certification approval, it concluded that “AFP Factual do[es] not seem to support a candidate in any elections nor to advocate or take policy positions on any issues not strictly related to fact-checking.” “[AFP fact checking](#),” *IFCN Code of Principles*.

¹⁶ <https://en.wikipedia.org/wiki/Bebelplatz>.

Checking certification is set to expire on February 22, 2021.¹⁷ AFP Fact Check’s international credentials are highly problematic when it comes to U.S. elections, where FECA is designed to ensure that American elections are decided by Americans — not foreigners.

AFP Fact Check,¹⁸ a/k/a AFP Factuel,¹⁹ describes itself as “a distinct fact-checking site linked to the website of Agence France Presse. AFP is a legally registered press agency which has a unique status of autonomous organization under French law.”²⁰ In other words, AFP Fact Check is a division of the AFP. AFP, in turn, has a long and storied history as a quasi-governmental entity. In 1957, the French Parliament through legislation purported to establish AFP as an “autonomous civil entity,” yet its mission statement has been established by law, it is funded in part by the French government, and the composition of its 8-member “higher council” (something of an advisory board) is comprised of a majority (5 of 8) of French government agents, including “[a] member of the Council of State in active service,” “[a] judge in active service on the supreme appeals court,” “[a] representative of French national television and radio services,” and “[t]wo members of Parliament.”²¹ Likewise, AFP’s 18-member “board of governors” (something of a board of directors) also includes numerous government representatives. In other words, AFP Fact Check operates not only as an organization in the private sector, but also as an arm of the French state.

¹⁷ “[AFP fact checking: organization details](#),” *IFCN Code of Principles*.

¹⁸ See generally “[AFP Fact Check](#).”

¹⁹ See generally “[AFP Factuel](#).”

²⁰ See “[AFP fact checking](#),” *IFCN Code of Principles*.

²¹ “[Full Text of AFP’s Statutes in English](#),” *SOS AFP* (June 12, 2017).

Thus, Facebook has recruited an agent of a European government to control which messages about U.S. elections may be heard, and which should be suppressed. Based on its favored status within Facebook, AFP Fact Check has been given access to the Facebook site, along with the unilateral powers to declare information it opposes to be “False News”; to censor, diminish, or even remove opposing views that are posted on Facebook; and to superimpose AFP’s own version of the alleged “truth” in its place.

The United States recently went through a multi-year investigation of phony charges that agents of the Russian government were colluding with members of the Trump campaign to illegally influence the outcome of the 2016 presidential election. Now it is time for a complete investigation into concrete proof that agents of the French government and a French corporation are illegally influencing the outcome of the 2020 presidential election. Indeed, Facebook and AFP are illegally expending corporate funds to sanitize the Internet of statements critical of their favored candidates, or even statements that question those candidates’ positions on the issues.

5. Facebook/AFP Censorship of Complainant John Crump.

Complainant John Crump is a journalist and author whose work includes a focus on Second Amendment issues and the right to keep and bear arms in the United States. He is also the Virginia State Director of Gun Owners of America, Inc. He is also, by coincidence, a former employee of Facebook. He has had an account with Facebook for many years. On August 19, 2020, Complainant became aware that Facebook had been censoring posts discussing the Democrat Vice Presidential nominee Kamala Harris and her positions on the Second Amendment and the right to keep and bear arms. Specifically, Complainant

determined that Facebook was censoring users who shared the Edwards Article through their Facebook accounts. Complainant viewed several of these Facebook posts, which had been censored and removed, only to have the AFP Fact Check Article posted in their place.

Contrary to Facebook's claims above that "we don't remove false news from Facebook," these censored Facebook posts had been both visually and functionally superimposed with the AFP Fact Check Article. This means that, while a user could see that the Edwards Article had been posted, it was impossible to click on that article (or the original post) without being redirected to the AFP Fact Check Article.

Also on August 19, 2020, Complainant reviewed both the Edwards Article and the AFP Fact Check Article, finding the former to be accurately stated and well-sourced, while finding the latter to be both deceptive and misleading.

On the same date, Complainant Crump accessed a private "group" on Facebook entitled "guns," made up of current and former Facebook employees. Complainant then made a post in the "guns" group, opining that AFP Fact Check had incorrectly "fact checked" the Edwards Article and informing the group that Complainant would be investigating the issue and writing an article on the subject. Complainant Crump's post was quickly deleted and rendered inaccessible to the group by Facebook. Thereafter, some of the other users of the private group (current Facebook employees) commented that they would raise the issue internally within Facebook.

Additionally, Complainant Crump posted on his public Facebook account a link to the Harris *Amicus* Brief. That post, which **simply contained a link** to the Harris *Amicus* Brief, was deemed "fake news" by Facebook and superimposed with the AFP Fact Check Article.

That post has since been deleted and rendered inaccessible by Facebook.

On the same date, Complainant sent the following message to press@fb.com:

I am writing in article for AmmoLand News and under deadline. The AFP have been marking accurate articles on firearms as false. For example any article the talks about Kamala Harris's amicus brief in the Heller SCOTUS case is being marked as false, yet these articles are easily verifiable. This leads me to my question. Why does Facebook allow the AFP to keep marking articles as false when a quick Google search would turn up the amicus brief? Attached are some examples.²²

Complainant Crump did not receive a response to this inquiry. Rather, when he later attempted to log into his Facebook account, he was greeted with the following message:

Your Account Has Been Disabled. For more information, or if you think your account was disabled by mistake, please visit the Help Center.²³

In response to clicking “for more information,” the following message then appeared:

Why was my account disabled? We've determined that you are not eligible to use Facebook. This decision is final. Unfortunately, for safety and security reasons, we can't give you any additional information as to why your account was disabled. For more information about our policies, please review the Facebook Terms.²⁴

On the same date, Complainant contacted various person(s) who are current Facebook employees and, on Complainant's behalf, these person(s) opened what is called an internal Facebook “opps” report (basically, an internal appeal). This internal appeal was quickly

²² Exhibit 1.

²³ Exhibit 2.

²⁴ Exhibit 3.

denied by Facebook, and no reason was given other than that the decision to lock Complainant's Facebook account was final and not subject to further review.

Prior to August 19, 2020, Complainant had never experienced any other objection from Facebook about his Facebook account. The account has always been in good standing, and there has never been any warning, admonition, or any other action by Facebook against Complainant or his account. Thus, there is no activity other than that outlined above which could have led to the disabling of Complainant's Facebook account.

On the contrary, the Facebook decision to disable Complainant's account and the AFP Fact Check action — literally to declare a **URL link** to be “false news” — together represent nothing more than a thin cover for censorship and political action. Indeed, as supported by additional evidence below, Facebook and AFP Fact Check have engaged in a pattern and conspiracy to expend corporate funds in support of the election of certain candidates to political office, and to oppose the election of other candidates, by suppressing contrary viewpoints, and subsequently have sought to cover up and hide those activities from a journalist who was investigating those activities in order to inform the public.

6. Facebook/AFP Fact Check Removes Gun Owners of America Postings.

Unfortunately, the Edwards Article and Facebook/AFP Fact Check actions against Complainant are only the tip of the iceberg in the conspiracy to support the positions of Vice Presidential Candidate Kamala Harris and to sanitize the public square to eliminate any criticism of her record.

For example, on August 15, 2020, the *Houston Courant* published an article²⁵ by Rachel Malone (“Malone Article”), a pro-gun activist, columnist, and Texas Director for Complainant Gun Owners of America, Inc. The article was entitled “Kamala Harris is the Gun Owner’s Worst Nightmare.” Like the Edwards Article, the Malone Article criticized Kamala Harris’s record on guns point by point, in each case providing a specific link to Kamala Harris’s record on guns and the Second Amendment. And, like the Edwards Article, the Malone Article was distributed widely on Facebook.

Soon after it began appearing on Facebook, AFP Fact Check decreed that the Malone Article was “false news” and began removing it from Facebook. However, rather than issue a specific rebuttal to the Malone Article, AFP Fact Check instead replaced the Malone Article with the AFP Fact Check Article criticizing the Edwards Article. Complainant Crump posted the Malone Article on August 19, 2020, and it was marked by AFP Fact Check as “false news” and overlaid with the AFP Fact Check Article supporting Kamala Harris.²⁶

Likewise, the Facebook page “Pennsylvania Second Amendment Sanctuary Ordinance” (“PA SASO”), operated by Complainant Gun Owners of America staff, posted the Malone Article, and it was flagged as “false news.” The PA SASO page later received a warning from Facebook as follows:

Page Restrictions. Your Page has reduced distribution and other restrictions because of repeated sharing of **false news**. People

²⁵ R. Malone, “[Kamala Harris is the Gun Owner’s Worst Nightmare](#),” *Houston Courant* (Aug. 15, 2020).

²⁶ Exhibit 4.

will also be able to see if a Page has a history of sharing false news.²⁷

The Facebook group “GOA-Pennsylvania,” operated by Complainant Gun Owners of America staff, also had shared the Malone Article. Again, AFP Fact Check flagged it as “false news,” and Facebook sent a warning to the group as follows:

Restrictions. Your group’s distribution is reduced due to false information. Your group’s posts are appearing lower in members’ News Feeds, and we’ve stopped suggesting that people join your group. **What you can do.** You can help resolve this by removing false information from your group.²⁸

On or about the same date, Gun Owners of California, affiliated with Complainant Gun Owners of America, also posted the Malone Article to Facebook, but it was declared “false information” and overlaid with the AFP Fact Check Article.²⁹

After Facebook received much criticism for its removal of the Malone Article, that article apparently was reviewed internally within Facebook, and the AFP Fact Check designation as “false news” was reversed. Both the PA SASO page and the “GOA-Pennsylvania” group then had their designations as sharers of “false news” removed, and presumably their Facebook distribution restored. However, Facebook did this quietly, behind the scenes, and never informed anyone of its decision.³⁰

²⁷ Exhibit 5.

²⁸ Exhibit 6.

²⁹ Exhibit 7.

³⁰ It is often of little consolation to have a designation of “fake news” reversed at a later date because, by that point, the damage has been done. The information has been suppressed, the message has been thwarted and, by the time the decision is undone, the “news” is no longer “news” at all, having accomplished Facebook’s plan to undermine anyone critical

7. Facebook is Staffed by Liberal Democrats.

In 2016, during the Trump-Clinton Presidential election, Facebook employees contributed \$2,305,755 to Democrat candidates, but only \$160,490 to Republican candidates.

See "[Political Contributions by Facebook Employees](#)," *GovPredict*. In 2019, Facebook employees contributed \$646,420 to Democrat candidates, but only \$42,260 to Republicans.

See J. Pearlstein, "[Tech workers lean left, but their companies' PACs play both sides](#)," *Protocol* (Feb. 25, 2020).

It can be reasonably concluded that the conspiracy undertaken by Facebook and AFP is not intended to protect the public against "false news," but rather to ensure that the public is not exposed to information critical of the Democratic political candidates favored by Facebook and the French company AFP.

RESPONDENTS' ACTIONS VIOLATE THE FEDERAL ELECTION CAMPAIGN ACT

Complainants believe that Respondents, both individually and in concert with one another, violated the following provisions of the Federal Election Campaign Act.

1. the prohibition on corporations making in-kind contributions (*see* 52 U.S.C. §§ 30101(8) and 30118);
2. the limitation on making coordinated expenditures (52 U.S.C. § 30116(a)(7));
3. the prohibition on making Independent Expenditures without disclaimers or reporting (52 U.S.C. §§ 30104(g) and 30120(a)); and

of its favored federal candidates.

4. the prohibition on foreign nationals making in-kind contributions for the purpose of influencing a federal election (52 U.S.C. § 30121).

I. Corporate Contributions Prohibited.

The Federal Election Campaign Act (“FECA”) prohibits any and all contributions from corporations to candidates or their committees. *See* 52 U.S.C. § 30118(a). The definition of contribution includes a “gift, subscription, loan ..., advance, or deposit of money or **anything of value** made ... for the purpose of influencing any election for Federal office....” 11 CFR § 100.52(a).

“Anything of value,” as used in the context of defining a contribution, “includes all **in-kind** contributions,” which is a non-monetary contribution that also encompasses “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.” 11 CFR § 100.52(d)(1) (emphasis added). Thus, when a corporation pays its employees to perform services for a candidate or campaign to influence an election but does not charge the campaign or charges less than a normal charge, the provision of those services constitutes an illegal corporate contribution.³¹ This conclusion was confirmed by the FEC in [Advisory Opinion 1984-24](#) (Sierra Club):

The Act and regulations prohibit a **corporation** from using its general treasury funds to provide goods and services at no charge to candidates in any Federal election. A corporation’s donation of **the services of its employees** and the use of its facilities incident to its employees’ services qualifies as a gift of [something of value](#) to the candidate. Thus, the expenditure of corporate treasury funds to provide such services and facilities **falls squarely within the prohibition** of [52

³¹ *See also* 52 U.S.C. § 30101(8)(A)(ii) (“The term ‘contribution’ includes ... the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.”).

U.S.C. § 30118.] Nothing in the Act or regulations excludes such corporate disbursements from the Act's prohibition. [AO 1984-24 at 4 (emphasis added).]

Here, Respondents Facebook and AFP Fact Check have provided valuable services to the political campaign of Vice Presidential candidate Kamala Harris. Respondents' employees have used corporate time and resources to target and remove political speech critical of their favored candidate, because such speech has been deemed harmful to that candidate, all for the purpose of influencing the 2020 Presidential Election. When AFP Fact Check and Facebook substituted articles supportive of candidate Harris for those which were critical of her record, these corporations made public communications paid for with corporate funds. Because Respondents are corporations, they are prohibited from providing this service to the campaign free of charge, or for less than they should normally charge. Therefore, these services constitute a prohibited corporate in-kind contribution to the Harris campaign.

II. Corporate Coordination with Political Campaigns.

While Complainants know of no direct evidence, there is at least circumstantial evidence that Respondents have coordinated their activities with federal political candidates. While Facebook has been censoring anti-Biden postings, the Biden campaign has worked hard to give the appearance that it is highly critical of Facebook.³² One indication that this open hostility is cover for coordination just became public, as on September 30, 2020, the Biden Campaign announced that it had hired Jessica Hertz as General Counsel of its transition-in-waiting. Jessica Hertz had just left Facebook, where she served both as a

³² See, e.g., D. Cooper, "[Biden Campaign Says Facebook Is Failing to Tackle Election Lies](#)," Engadget (Sept. 29, 2020).

director, and associate general counsel, handling “a wide range of government inquiries and regulatory investigations.” And, before that, she was principal deputy counsel to Biden during his vice presidency. The sequence of her employment, thus, was 1. principal deputy counsel to Vice President Biden, 2. director and associate general counsel of Facebook, 3. general counsel of Biden Transition. This hiring was criticized as being “deeply disappointing” by Jeff Hauser, the director of the liberal Revolving Door Project, which focuses on executive branch personnel and transitions. *See* A. Thompson and T. Meyer, “[Biden transition elevates former Facebook exec as ethics arbiter](#),” Politico (Sept. 30, 2020). Based on circumstantial evidence, these Complainants urge the Commission to undertake an investigation to identify illegal coordination. “Coordination” means activity “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.” 11 CFR § 109.20(a).

Any corporate expenditure that is coordinated with a candidate or committee cannot be considered a lawful independent expenditure. *See* 11 CFR § 109.20(b). Thus, any coordinated corporate expenditure is a prohibited corporate contribution. Even if Respondents were to defend their action in removing postings as being something other than a communication (*i.e.*, the opposite of a communication — the suppression of a communication critical of a candidate for federal office), this would not provide any defense if Facebook or AFP Fact Check coordinated with Kamala Harris or the Harris campaign in any way.

III. Independent Expenditures Require Disclaimers and Reporting.

Even if Facebook took the position that it was conducting an Independent Expenditure in support of Kamala Harris for Vice President by removing anti-Harris posts or posting favorable articles about candidate Harris, and thus its expenditure of corporate funds was lawful, such a defense would be unavailing, as Facebook provided no required disclaimer and failed to file the FEC required reports.

IV. Foreign Contributions are Illegal.

FECA broadly prohibits foreign nationals from making contributions, donations, expenditures, or other disbursements in connection with federal candidate elections. *See* 52 U.S.C. § 30121(a)(1)(A), (a)(2). “[T]he United States has a compelling interest ... in limiting the participation of foreign citizens in activities of democratic self-government, and in thereby preventing foreign influence over the U.S. political process.” *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J., for three-judge court, *aff’d*, 565 U.S. 1104 (2012)).

The Special Counsel’s office has concluded that the receipt of information for free from a foreign national “would constitute a ‘thing of value’ within the meaning” of the foreign contributions ban. *See* Mueller Report at 186. Furthermore, the U.S. Attorney’s office for the Southern District of New York has taken the position that payments for the suppression of derogatory information of a federal candidate is an electoral expenditure. *See United States v. Cohen* (S.D. N.Y., Docket No. 18-cr-602), Criminal Information at 11-17.

In this case, Respondent AFP Fact Check, a foreign corporation, both provided information in the form of the AFP Fact Check Article and also suppressed information,

including the Edwards Article, the Malone Article, and Complainants' posts, to prevent the online distribution of what AFP Fact Check and Facebook consider to be derogatory information regarding Harris, all for the purpose of influencing an election. Ironically, Facebook in the past has pretended to care about foreign powers influencing U.S. elections — but, of course, only when such outside influence allegedly supports candidates whose election Facebook opposes.³³

On April 10, 2018, before a joint hearing of the U.S. Senate Committees on the Judiciary and Commerce, Science and Transportation, Facebook President Mark Zuckerberg was asked by Senator Diane Feinstein (D-CA) what Facebook is doing to prevent foreign actors from interfering in U.S. elections. Mr. Zuckerberg responded:

This is one of my top priorities in 2018 — is to get this right. I — one of my greatest regrets in running the company is that we were slow in identifying the Russian information operations in 2016. We expected them to do a number of more traditional cyber attacks, which we did identify and notify the campaigns that they were trying to hack into them.³⁴

While Mr. Zuckerberg said he was slow to identify alleged Russian interference in the 2016 elections, his company has been quick to facilitate interference in the 2020 elections by the government of France.

³³ See, e.g., S. Frenkel & J.E. Barnes, "[Russians Again Targeting Americans with Disinformation, Facebook and Twitter Say](#)," *New York Times* (Sept. 1, 2020).

³⁴ See "[Transcript of Mark Zuckerberg's Senate hearing](#)," *The Washington Post* (Apr. 10, 2018).

CONCLUSION

Wherefore, Complainants pray that the Commission investigate these matters under 52 U.S.C. § 30109(a)(2), and find reason to believe that violations of the Act and the FEC regulations may have occurred, as set forth above. In addition, the Commission should determine and impose appropriate sanctions for any and all violations committed by Respondents, and should order such additional remedies as are appropriate and in accordance with law.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "R. Olson".

Robert J. Olson

Exhibits (as stated)

VERIFICATION

I hereby verify that the foregoing statements and allegations made in the attached complaint, are true to the best of my knowledge, information, and belief.

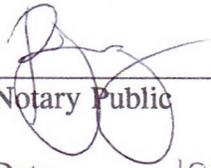
Sworn pursuant to 18 U.S.C. § 1001.

Executed on October 6, 2020.



John Crump

Signed and sworn to before me in my District:



Notary Public

Date: 10/06/2020

My Commission Expires 09/30/2023

