

BEFORE THE OHIO ELECTIONS COMMISSION

SHARI OBRENSKI
1228 Euclid Avenue
Cleveland, Ohio 44115

Case No. _____

Complainant,

v.

CLEVELAND’S FUTURE FUND, LLC
Attn: Kimberly M. Land, Statutory Agent
40 N. Main St., Suite 1250
Dayton, Ohio 45423

Respondent.

COMPLAINT

Cuyahoga County
/ss
State of Ohio

I, Shari Obrenski (“Complainant”), having been duly sworn according to law hereby file this Complaint based on my personal knowledge as defined by the Commission and my review of the attached exhibits, and state:

1. This is a Complaint filed pursuant to R.C. 3517.153 alleging that Cleveland’s Future Fund, LLC (“Respondent”), which is a “dark money” group that has raised and spent tens of thousands of dollars opposing a Cleveland City Schools levy on the 2020 General Election ballot, is a political action committee (PAC) and failed to register as such with the Cuyahoga County Board of Elections or the Ohio Secretary of State as required by Ohio law. Respondent further violated Ohio law by failing to disclose its contributions and expenditures on a pre-election campaign finance report, which was required to have been filed by October 22, 2020.

FACTS

2. Complainant is the President of the Cleveland Teachers Union, which supports the passage of Issue 68, a tax levy to support the Cleveland City School District in Cuyahoga County

at the 2020 General Election.

3. Respondent is an Ohio non-profit limited liability entity that filed Articles of Organization with the Ohio Secretary of State's office on September 17, 2020. *See* Exhibit A.

4. Since its creation, Respondent has paid for numerous political communications expressly opposing Issue 68.

5. Respondent has paid for approximately nine separate mailings sent to voters within the Cleveland City School District urging voters to vote "no" on Issue 68, the first of which arrived on approximately September 30, 2020. Copies of five of these mailers are attached as Exhibits B, C, D, E, and F—each indicates that they were "paid for by" Respondent.

6. The mail permit on the mailings indicates that they were sent by BMST, Inc., which is a Virginia-based production firm and mail house doing business as "Think." *See* Think, <http://thinkprinting.us/> (a copyright at the bottom of the website states "BMST, Inc. dba Think").

7. A recent Cleveland.com editorial from Brent Larkin discussing Respondent's mailings puts the total cost of preparation, printing and mailing the flyers "at a minimum of \$500,000." Brent Larkin, *The despicable secretive attempt to torpedo Cleveland schools levy: Brent Larkin*, Cleveland.com, Oct. 25, 2020, available at <https://www.cleveland.com/opinion/2020/10/the-despicable-secretive-attempt-to-torpedo-cleveland-schools-levy-brent-larkin.html>; a copy is attached as Exhibit G.

8. Respondent has also paid for numerous Facebook ads urging readers to vote "no" on Issue 68. Facebook's Political Ad Library, which archives all political ads run on Facebook, indicates that Respondent spent a range of approximately \$27,000 to \$31,000 on several different ads in opposition to Issue 68 beginning on October 9, 2020. The public archive of Respondent's Facebook ads can be viewed at

[https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&page_ids\[0\]=116995463493833&q=cleveland%20issue%2068&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&page_ids[0]=116995463493833&q=cleveland%20issue%2068&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped).

9. Respondent has also paid for robocalls to voters. In one robocall, a recording of which is available at <http://bit.ly/CFFrobo>, a male speaker identifies himself as “John from Cleveland’s Future Fund,” urges the listener to vote “no” on Issue 68, attacks against Issue 68, and states the robocall was “paid for by Cleveland’s Future Fund, LLC” and that it was not authorized by any ballot issue committee.¹

10. Respondent has also paid for a website located at clevelandsfuturefund.com, the content of which urges readers to vote “no” on Issue 68. A screenshot of the website taken on October 28, 2020 is attached as Exhibit H—it, too, indicates that it was “paid for by” Respondent.

11. The security certificate for Respondent’s website, attached as Exhibit I, indicates that it was created by Majority Strategies, which is a Florida-based company that describes itself as a “full-service data, digital and print firm with over 125 years of collective experience solving problems and influencing public opinion and behavior to create a desired action and outcome.” See Majority Strategies’ website located at <https://majoritystrategies.com/>.

12. Respondent’s website contains a 15-second video advertisement urging viewers to vote “no” on Issue 68; the video was uploaded to Respondent’s YouTube account on October 1, 2020. See YouTube, “Devastating (old),” Cleveland’s Future Fund, available at <https://www.youtube.com/watch?v=uv5jFXAjMcw>. A frame of the video is attached as Exhibit J—it indicates that the ad was “paid for by” Respondent.

¹ The message in the robocall restarts on three occasions. This is how the message was received—it is not an error on Complainant’s part. An uninterrupted version of the message starts at approximately 0:48.

13. Respondent’s website also solicits contributions from the public at large. At the top of the website is a “DONATE” button, and clicking it takes readers to <https://politics.raisethemoney.com/cleveland-s-future-fund-llc> which gives viewers the ability to make a one-time contribution or monthly contributions in the amounts of \$25, \$50, \$100, \$250, \$500, \$1,000, \$2,000, \$2,600 or in a custom amount. A screenshot of Respondent’s “DONATE” page is attached as Exhibit K.

14. While many real estate investors and developers are rumored to be contributing to Respondent, at least one individual, Doug Price of the K&D Group, has publicly confirmed that he contributed funds to Respondent; Mr. Price suggested that there were other contributors but he declined to identify any of them. *See* Stan Bullard and Michelle Jarboe, *Cleveland school levy draws well-funded—and mysterious—opposition*, Crain’s Cleveland Business, Sep. 30, 2020, available at <https://www.crainscleveland.com/real-estate/cleveland-school-levy-draws-well-funded-and-mysterious-opposition> (a copy is attached as Exhibit L); Michelle Jarboe, *Opposition to Cleveland school levy becomes slightly less cloaked, illustrates spread of ‘dark money’ tactics to local elections*, Crain’s Cleveland Business, October 22, 2020, available at <https://www.crainscleveland.com/real-estate/opposition-cleveland-school-levy-becomes-slightly-less-cloaked-illustrates-spread-dark> (a copy is attached as Exhibit M).

15. Despite having received contributions and spent tens of thousands—if not hundreds of thousands (*see* Larkin, *supra*, Exhibit G)—of dollars on political communications in opposition to Issue 68, Respondent has not registered, nor disclosed any of its contributions or expenditures, with the Cuyahoga County Board of Elections or the Ohio Secretary of State’s office. *See* Affidavit of Derek S. Clinger, ¶ 3-5, attached hereto as Exhibit N.

SUMMARY OF LAW

16. Ohio law defines a political action committee as “a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a campaign committee, a political contributing entity, or a legislative campaign fund.” R.C. 3517.01(C)(8).

17. To determine whether a purpose is a “primary or major purpose” as used in the Ohio Revised Code’s definition of “political action committee,” O.A.C. 111:2-1-02(K)(1) provides that the following should be considered:

- (a) Whether the combination of two or more persons receives money or any other thing of value in a common account for the specific purpose of supporting or opposing any candidate, political party, legislative campaign fund, political action committee, political contributing entity, or ballot issue;
- (b) Whether the combination of two or more persons has or will make a continuing pattern of expenditures from a common account to support or oppose any candidate, political party, legislative campaign fund, political action committee, political contributing entity, or ballot issue;
- (c) Whether the combination of two or more persons constitutes an entity that was not in existence prior to supporting or opposing any candidate, political party, legislative campaign fund, political action committee, political contributing entity, or ballot issue;
- (d) Whether the total dollar value of the combination of two or more persons' activity described in paragraphs (K)(1)(a), (K)(1)(b) and (K)(1)(c) of this rule during a calendar year exceeds one hundred dollars.

18. A political action committee must file a Form 30-D Designation of Treasurer prior to receiving any contributions or making any expenditures. R.C. 3517.10(D).

19. A committee formed to support or oppose an issue or question that is submitted only to the electors within one county must register and filed with the board of elections in that county. *See* Ohio Secretary of State, Ohio Campaign Finance Handbook, at *8-3.

20. Political action committees that spend or receive \$1,000 or more to influence a ballot issue election prior to the 20th day before the election must file a pre-election report disclosing any contributions received and expenditures made by 4:00 p.m. 12 days before the election. R.C. 3517.10(A)(1).

COUNT 1

Respondent is a PAC and failed to register as such with the Cuyahoga County Board of Elections or the Ohio Secretary of State before receiving contributions and making expenditures in violation of R.C. 3517.10(D).

21. The preceding and subsequent allegations are incorporated into Count 1 as though fully set forth herein.

22. The facts indicate that “two or more persons” are involved with Respondent.

23. Each of the factors set forth in O.A.C. 111:2-1-02(K)(1) indicate that Respondent’s “purpose or major purpose” is to influence an election through express advocacy by opposing Issue 68. For instance, Respondent’s website and the public statement of Mr. Price both demonstrate that Respondent is actively soliciting contributions for its efforts. *See* O.A.C. 111:2-1-02(K)(1)(a). Additionally, the tens of thousands of dollars spent by Respondent on mailings, Facebook ads, and its website demonstrate that it is making a “continuing pattern of expenditures” in opposition to Issue 68 and that such activities are well in excess of \$100. *See* O.A.C. 111:2-1-02(K)(1)(b), (d). Finally, Respondent was not formed until September 17, 2020, after Issue 68 was certified for placement on the 2020 General Election ballot, and shortly after its formation, Respondent began making expenditures in opposition to Issue 68. *See* O.A.C. 111:2-1-02(K)(1)(c).

24. Moreover, Respondent is not a political party, campaign committee, political contributing entity, or legislative campaign fund.

25. Accordingly, Respondent is a PAC, and it was therefore required to register as such with the Cuyahoga County Board of Elections by filing a designation of treasurer prior to receiving contributions and making expenditures pursuant to R.C. 3517.10(D).

26. Respondent failed to file the designation of treasurer required by R.C. 3517.10(D).

27. A person or entity that fails to file or is late to filing a designation of treasurer may be fined up to \$500 for each day of violation. O.A.C. 3517-1-14(B)(1)(b).

28. Respondent, therefore, should be fined \$500 for each day it has failed to file a designation of treasurer in violation of R.C. 3517.10(D).

COUNT 2

Respondent is a PAC and knowingly failed to file the required pre-election campaign finance report disclosing its contributions and expenditures in violation of R.C. 3517.10(A)(1) and R.C. 3517.13(E).

29. The preceding and subsequent allegations are incorporated into Count 2 as though fully set forth herein.

30. The facts demonstrate that Respondent spent and/or received at least \$1,000 to influence the election on Issue 68 prior to the 20th day before the 2020 General Election (October 14, 2020). And Because Respondent is a PAC, it was therefore required to file a pre-election report disclosing any contributions received and expenditures made pursuant to R.C. 3517.10(A)(1).

31. Respondent knowingly failed to file the pre-election report required by R.C. 3517.10(A)(1).

32. R.C. 3517.13(E) provides that “[n]o person other than a campaign committee shall knowingly fail to file a statement required under [R.C. 3517.10].”

33. Any person or entity who violates R.C. 3517.13(E) may be fined up to \$100 for each day of violation. R.C. 3517.992(A)(2).

34. Respondent, therefore, should be fined \$100 for each day since October 22, 2020 it has violated R.C. 3517.10(A)(1) and R.C. 3517.13(E).

COUNT 3

Respondent is a PAC and failed to disclose the independent expenditures it made in opposition to Issue 68 in a pre-election report in violation of R.C. 3517.105(C)(2)(a).

35. The preceding and subsequent allegations are incorporated into Count 3 as though fully set forth herein.

36. An independent expenditure is one that is made in support of or in opposition to either a candidate or a ballot issue without the consent of, and not in coordination, cooperation or consultation with, or at the request or suggestion of the candidate or ballot issue committee. *See* R.C. 3517.01(B)(17); R.C. 3517.105; O.A.C. 111:2-2-01.

37. Whenever a PAC makes an independent expenditure, in any amount, in opposition to a ballot issue or question, the PAC is required to report the independent expenditure and identify the ballot issue or question on a statement prescribed by the Secretary of State as part of its statement of contributions and expenditures required by R.C. 3517.10(A). R.C. 3517.105(C)(2)(a).

38. Each of Respondent's expenditures in opposition to Issue 68 constitute an independent expenditure as they were not made with the consent of, in coordination, cooperation or consultation with, or at the request or suggestion of another ballot issue committee.

39. Indeed, each of Respondent's expenditures contain the required disclaimer for independent expenditures made by a PAC that indicates that the communication was not authorized by any ballot issue committees. *See* Exhibits B, C, D, E, F, H, and J.

40. Accordingly, Respondent was required—but failed—to disclose the independent expenditures it made in opposition to Issue 68 on its pre-election report in violation of R.C. 3517.105(C)(2)(a).

41. R.C. 3517.992(L) provides that whoever violates R.C. 3517.105 “shall” be fined one thousand dollars.

42. Respondent, therefore, must be fined \$1,000 for violating R.C. 3517.105.

COUNT 4

Alternatively, Respondent’s expenditures made in opposition to Issue 68 constitute independent expenditures made by a corporation, and Respondent failed to disclose such expenditures on the required pre-election independent expenditure report.

43. The preceding and subsequent allegations are incorporated into Count 4 as though fully set forth herein.

44. Whenever any individual, partnership, or other entity, other than a corporation, labor organization, campaign committee, legislative campaign fund, political action committee, or political party, makes one or more independent expenditures in excess of \$100 in opposition to a local ballot issue or question, the individual, partnership, or other entity shall file with the local board of elections a statement itemizing all independent expenditures made during the relevant campaign finance reporting. R.C. 3517.105(C)(2)(b); *see also* O.A.C. 111:2-2-02.

45. The statement required by R.C. 3517.105(C)(2)(b) shall indicate the date and the amount of each independent expenditure and the ballot issue or question in support of or opposition to which it was made and shall be made under penalty of election falsification. *Id.*

46. If an “individual, partnership, or other entity,” as defined in R.C. 3517.105(C)(2)(b), spends \$1,000 or more in independent expenditures by the 20th day before the election (October 14, 2020), then the individual, partnership, or other entity is required to file a pre-election independent expenditure report by 4:00 p.m. on the 12th day before an election

(October 22, 2020). *See* R.C. 3517.105(C)(2)(b); R.C. 3517.10(A)(1); Ohio Secretary of State Form 30-E Instructions.

47. If it is determined that Respondent is not a PAC, then Respondent is an “individual, partnership, or other entity” for purposes of R.C. 3517.105(C).

48. As set forth above in Count 3, Respondent’s expenditures in opposition to Issue 68 constitute independent expenditures.

49. Additionally, the facts demonstrate that Respondent spent at least \$1,000 on political communications to influence the election on Issue 68 prior to the 20th day before the 2020 General Election.

50. Accordingly, and in alternative to Counts 1-3, Respondent was required by R.C. 3517.105(C)(2)(b) to have disclosed its independent expenditures made in opposition to Issue 68 through October 14, 2020 on a pre-election independent expenditure report filed with the Cuyahoga County Board of Elections by 4:00 p.m. on October 22, 2020.

51. Respondent failed to file a pre-election independent expenditure report disclosing its independent expenditures in opposition to Issue 68 in violation of R.C. 3517.105(C)(2)(b).

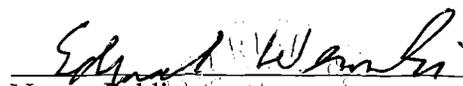
52. R.C. 3517.992(L) provides that whoever violates R.C. 3517.105 “shall” be fined one thousand dollars.

53. Respondent, therefore, must be fined \$1,000 for violating R.C. 3517.105.

FURTHER SAYETH AFFIANT NAUGHT.


SHARI OBRENSKI

Sworn to and signed before me this 30th day of October 2020.


Notary Public

EDWARD A WEGRZYNSKI
NOTARY PUBLIC - OHIO
Recorded in Cuyahoga County
My Commission Expires July 5, 2022