

American Democracy Legal Fund
455 Massachusetts Avenue, N.W.
Washington, DC 20001

November 20, 2014

IRS EO Classification
Mail Code 4910DAL
1100 Commerce Street Dallas, TX 75242-1198
eoclass@irs.gov

On behalf of the American Democracy Legal Fund, I request that the Internal Revenue Service ("IRS") investigate America Takes ACTION, Inc. ("ATA"), EIN 26-2720173. We have reason to believe that ATA is not properly described in section 501(c)(4) of the Internal Revenue Code because its primary purpose is to aid Mike Huckabee's exploratory efforts for a 2016 presidential campaign, and not the promotion of social welfare.

A. Description of ATA's Political Purpose

ATA is organized under section 501(c)(4) of the Internal Revenue Code, and the organization claims to be a social advocacy organization. However, the facts indicate otherwise. Publicly available news reports and facts surrounding the creation and operation of ATA strongly suggest that Mike Huckabee, a candidate for the Republican nomination for president in 2008, created ATA as a way to explore and plan for his presidential campaign, not as a social welfare organization. A November 12, 2014 *Washington Post* article examines in detail how Mr. Huckabee is beginning to organize for a presidential run by "reconnecting with activists and enlisting staff to position himself in a growing field of potential Republican presidential candidates."¹ In addition to chronicling the steps Mr. Huckabee is taking to solicit financial support by building relationships with donors, the *Washington Post* article also documents how it appears that Mr. Huckabee created ATA as a way to formally organize money and staff in preparation for his candidacy.

The *Washington Post* reported that ATA serves as an "employment perch" for Mr. Huckabee's political team, and that ATA was formed to "serve as a landing spot for staff and money."² Indeed, ATA employs and compensates many of Mr. Huckabee's closest advisors who will largely comprise his campaign staff once he announces his candidacy. ATA employees include Chip Saltsman, Mr. Huckabee's campaign manager from his 2008 campaign; Bob Wickers, a

¹ Tom Hamburger & Robert Costa, "Mike Huckabee Rebuilds Political Team with Eye on Another Presidential Run," *Washington Post*, Nov. 12, 2014, available at http://www.washingtonpost.com/politics/mike-huckabee-rebuilds-political-team-with-eye-on-another-presidential-run/2014/11/12/8cb28ccc-69b3-11e4-b053-65cea7903f2e_story.html.

² *Id.*

political strategist; Sarah Huckabee, Mr. Huckabee's daughter and political confidante; and Alice Stewart, a communications director who also worked on Mr. Huckabee's 2008 campaign staff.³ These employees are engaged in political work, not social welfare work: news reports suggest that they are primarily engaged in exploratory efforts on behalf of Mr. Huckabee's candidacy for president, including looking for a possible campaign headquarters in Little Rock, Arkansas.⁴

B. ATA Is Not a Valid Section 501(c)(4) Organization

A section 501(c)(4) organization must be "operated exclusively for the promotion of social welfare."⁵ To meet this standard, it must be "primarily engaged in promoting in some way the common good and general welfare of the people of the community."⁶ This standard "does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."⁷ Nor may a section 501(c)(4) exist for the primary purpose of privately benefitting political parties or candidates.⁸ ATA is not a valid section 501(c)(4) organization because its primary purpose is to aid Mr. Huckabee's presidential campaign, and not the promotion of social welfare.

Mr. Huckabee is currently the host of a weekly show on the Fox News Channel that bears his name. Publicly available news reports indicate that Mr. Huckabee created ATA to engage in organizing and planning for his 2016 presidential campaign without running afoul of the terms of his employment contract with Fox News, which prohibit him from staying on air if he shows serious intent to run for office.⁹ If Mr. Huckabee had created an exploratory committee or a section 527 organization, for example, he would have violated the terms of his contract and lost his television platform. The facts indicate that Mr. Huckabee created ATA so that he could engage in political exploratory efforts and skirt Fox News' rules on political activity, since the group is technically classified as a social welfare organization, and not a political committee or other type of political organization.¹⁰

In other words, ATA is a social welfare organization in name only. ATA is functioning as Mr. Huckabee's campaign exploratory committee in disguise. ATA employs and compensates Mr. Huckabee's political operatives for their exploratory efforts in preparation for his 2016 campaign. As a result, ATA is making in-kind contributions in the form of staff time for Mr. Huckabee's exploratory efforts. This is *per se* political campaign intervention, and there is no evidence that this type of political activity is not ATA's primary purpose. To the contrary, political activity appears to be the only type of activity associated with ATA.

³ *Id.*

⁴ *Id.*

⁵ Treas. Reg. § 1.501(c)(4)-1(a)(1)(ii).

⁶ *Id.* § 1.501(c)(4)-1(a)(2)(i).

⁷ *Id.* § 1.501(c)(4)-1(a)(2)(ii).

⁸ See *Contracting Plumbers Coop. Restoration Corp. v. United States*, 488 F.2d 684, 687 (2d Cir. 1973).

⁹ Hamburger & Costra, *supra* note 1.

¹⁰ *Id.* "Republicans familiar with Huckabee's efforts said the new advocacy group is designed to allow him to retain his Fox News contract, since the group is not overtly political."

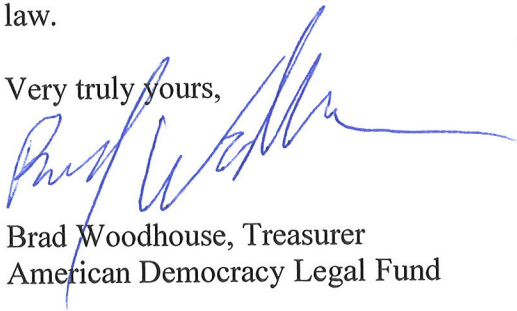
C. ATA is Mr. Huckabee's Exploratory Committee

All the evidence indicates that ATA was organized, and is operated, for the primary purpose of aiding Mr. Huckabee's 2016 presidential run. As a result, ATA is not properly described under section 501(c)(4) of the Internal Revenue Code, but as an exploratory committee regulated by the Federal Elections Commission. ATA has deliberately chosen to organize under section 501(c)(4) instead of as an exploratory committee so that it may hide its donors from public scrutiny, and so that it may hide its political purpose in an effort to maintain Mr. Huckabee's employment as a host on Fox News. By operating as a section 501(c)(4) organization, however, it has willfully and flagrantly violated the registration and reporting requirements required of political committees and it has hidden its purpose from the public.

D. Conclusion

Because ATA's primary purpose is not the promotion of social welfare, it can no longer be classified as a section 501(c)(4) organization. I urge you to take immediate action to investigate ATA for political activity in excess of that permitted by a section 501(c)(4) social welfare organization, revoke ATA's tax-exempt status, and fine ATA the maximum amount permitted by law.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Brad Woodhouse", with a long horizontal flourish extending to the right.

Brad Woodhouse, Treasurer
American Democracy Legal Fund

**BEFORE THE
FEDERAL ELECTION COMMISSION**

American Democracy Legal Fund
455 Massachusetts Avenue, N.W.
Washington, DC 20001

Complainant,

v.

Mr. Mike Huckabee
P.O. Box 2008
Little Rock, AR 72203

Respondent.

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against Mike Huckabee ("Respondent") for violating the Federal Election Campaign Act of 1971, as amended ("the Act") and Federal Election Commission Regulations, as described below.

Respondent recently created America Takes ACTION, Inc. ("ATA"), a nonprofit corporation organized under section 501(c)(4) under the Internal Revenue Code. As discussed below, ATA's veiled purpose is to plan Respondent's 2016 presidential run. ATA employs Respondent's political advisors and aides, including his chief political consultant and former campaign manager, all of whom are currently being compensated by ATA to explore the feasibility of Respondent's candidacy for president. Accordingly, Respondent is using corporate money to fund his "testing the waters" activities in violation of 11 C.F.R. § 100.72.

A. FACTS

According to publicly available news reports, it has become increasingly likely that Respondent, a candidate for the Republican nomination for president in 2008 and current Fox

News Channel commentator, is planning to run for president in 2016.¹ A November 12, 2014 *Washington Post* article examines in detail how Respondent is "reconnecting with activists and enlisting staff to position himself in a growing field of potential Republican presidential candidates."² Respondent's daughter and political confidante told the *Washington Post* that Respondent's "heart is into [running for president again]," he is being more aggressive in taking on meetings, and he "can't wait to get back to South Carolina and Iowa."³

Indeed, since July 2013 when Respondent reportedly told his former campaign manager that he wanted to start mapping out a 2016 presidential run, Respondent and his staff have taken several measures to explore and plan for his candidacy.⁴ Respondent's advisors, including ATA employees, are reportedly currently looking for a space in Little Rock, Arkansas to serve as campaign headquarters.⁵ Respondent is scheduled to spend much of November 2014 holding private meetings with wealthy Republican donors in Las Vegas, New York and California to gauge their interests in his candidacy and to ask for pledges to ATA and Huck PAC, Respondent's political action committee. And, Respondent recently embarked on an international trip with more than 100 pastors and religious leaders from early primary states including Iowa, New Hampshire, South Carolina, and Nevada.⁶

In preparation for his candidacy, Respondent also created ATA, a nonprofit corporation organized under section 501(c)(4) of the Internal Revenue Code. Publicly available news reports

¹ Tom Hamburger & Robert Costa, "Mike Huckabee Rebuilds Political Team with Eye on Another Presidential Run," *Washington Post*, Nov. 12, 2014, available at http://www.washingtonpost.com/politics/mike-huckabee-rebuilds-political-team-with-eye-on-another-presidential-run/2014/11/12/8cb28ccc-69b3-11e4-b053-65cea7903f2e_story.html; John McCormick, "Mike Huckabee May Be Planning an Iowa Encore," Bloomberg Politics, Nov. 2, 2014, available at <http://www.bloomberg.com/politics/articles/2014-11-02/mike-huckabee-may-be-planning-an-iowa-encore>; Ben Dimiero, "Mike Huckabee: My Fox News Show Helps Me for 2016," *Real Clear Politics*, Oct. 24, 2014, available at <http://mediamatters.org/blog/2014/10/24/mike-huckabee-my-fox-news-show-helps-me-for-201/201305>.

² Hamburger & Costa, *supra* note 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

indicate that instead of forming an exploratory committee, Respondent created ATA as a way to explore his presidential run without running afoul of the terms of his employment contract with the Fox News Channel, which prohibit Respondent from staying on air if he shows serious intent to run for office. In fact, the *Washington Post* reported that Republicans familiar with Respondent's exploratory efforts have said that ATA was "designed to allow [Respondent] to retain his Fox News Channel contract, since the group is not overtly political."⁷ Fox News has signaled that it is reviewing Respondent's recent political activity, including his creation of ATA, to determine whether his show will be allowed to remain on the air.⁸

The *Washington Post* reported that ATA serves as an "employment perch" for Respondent's political team, and that ATA was formed to "serve as a landing spot for staff and money."⁹ Indeed, ATA employs many of Respondent's closest advisors who will likely comprise his campaign staff once he announces his candidacy. ATA employees include Chip Saltsman, Respondent's campaign manager from his 2008 campaign; Bob Wickers, a political strategist; Sarah Huckabee, Respondent's daughter and political confidante; and Alice Stewart, a communications director who also worked on Respondent's 2008 campaign staff.

B. LEGAL ARGUMENT

Commission regulations provide that "only funds permissible under the Act" may be used for testing the waters activities.¹⁰ Accordingly, an individual who undertakes such activities may not do so using funds accepted from prohibited sources. Corporations, including nonprofit corporations, are strictly prohibited from making political contributions under the Act.¹¹ As such, an individual may not use corporate money to fund "testing the waters" activities. Further,

⁷ *Id.*

⁸ Howard Kurtz, "Fox News Weighing Decision on Keeping Mike Huckabee," Nov. 12, 2014, *available at* <http://www.foxnews.com/politics/2014/11/12/fox-news-weighing-decision-on-keeping-mike-huckabee/>.

⁹ Hamburger & Costa, *supra* note 1.

¹⁰ 11 C.F.R. §§ 100.72(a), 100.131(a).

¹¹ 52 U.S.C. § 30118(a).

even though funds received for testing the waters activities are not initially considered contributions, such funds become contributions if the individual subsequently becomes a candidate.¹² Thus, a candidate who accepted corporate funds for testing the waters activities has accepted corporate contributions in violation of the Act.¹³

Publicly available reports indicate that ATA is merely a precursor to Respondent's principal campaign committee. ATA was created to allow Respondent to engage in political exploratory efforts and at the same time, skirt Fox News' rules on political activity since the group is technically classified as a social welfare organization, not as a political committee or other type of political organization.¹⁴ In other words, ATA is a social welfare organization in name only. It is functioning as Respondent's exploratory committee in disguise.

As stated *supra* Part A, the *Washington Post* reported that ATA serves as an "employment perch" for Respondent's political team, and that ATA was formed to "serve as a landing spot for staff and money."¹⁵ ATA employs many of Respondent's closest advisors who will comprise his campaign staff when he announces his candidacy. These ATA employees include Chip Saltsman, Respondent's campaign manager from his 2008 campaign, Bob Wickers, a political strategist, Sarah Huckabee, Respondent's daughter and political confidante, and Alice Stewart, a communications director who also worked on Respondent's 2008 campaign staff. These employees are engaged in political work, namely exploratory efforts on behalf of Respondent's candidacy for president, including looking for a possible campaign headquarters.¹⁶

It appears that ATA is compensating these employees for engaging in exploratory efforts and other political activities on behalf of Respondent. This arrangement is a plain violation of 11

¹² 11 C.F.R. § 100.72.

¹³ See 52 U.S.C. § 30118(a).

¹⁴ Hamburger & Costa, *supra* note 1.

¹⁵ *Id.*

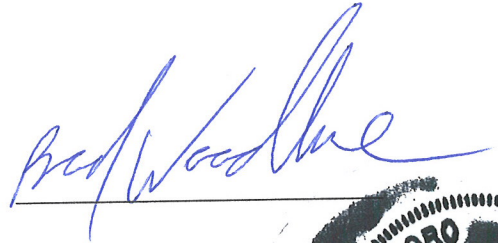
¹⁶ *Id.*

C.F.R. § 100.72(a), as Respondent is using prohibited corporate money in the form of salary payments to fund his exploratory efforts. Furthermore, because funds used to "test the waters" will become contributions when Respondent officially becomes a candidate, the salary payments will constitute corporate in-kind contributions to his principal campaign committee in violation of 52 U.S.C. § 30118(a).

C. REQUESTED ACTION

As we have shown, Respondent has violated the Act and Commission regulations by accepting funds from a prohibited source to pay for testing the waters activities. We respectfully request that the Commission promptly investigate this violation, and that Respondent be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 19 day of November, 2018



Ashley D. Roseboro (Ashley D. Roseboro)

Notary Public

My Commission Expires:

Feb 28, 2019

Form **13909**
(August 2007)**Tax-Exempt Organization Complaint (Referral) Form**1. NAME OF REFERRED ORGANIZATION: America Takes ACTION, Inc.

Street Address: _____

City/State/Zip Code: Little Rock, Arkansas 72212Date of Referral: November 17, 20142. ORGANIZATION'S EMPLOYER IDENTIFICATION NUMBER (EIN): 26-2720173

3. NATURE OF VIOLATION:

- Directors/officers/persons are using income/assets for personal gain
- Organization is engaged in commercial, for-profit business activities
- Income/assets are being used to support illegal or terrorist activities
- Organization is involved in a political campaign
- Organization is engaged in excessive lobbying activities
- Organization refused to disclose or provide a copy of Form 990
- Organization failed to report employment, income, or excise tax liability properly
- Organization failed to file required federal tax returns and forms
- Organization engaged in deceptive or improper fundraising practices
- Other (describe): _____

4. DETAILS OF VIOLATION:

Name(s) of Person(s) Involved: Mr. Mike HuckabeeOrganizational Title(s): FounderDate(s): N/ADollar Amount(s) (if known): N/ADescription of activities: America Takes ACTION, Inc.'s ("ATA") primary purpose is to aid Mike Huckabee's exploratory efforts for a 2016 presidential campaign, and not the promotion of social welfare. We urge the IRS to investigate ATA, revoke ATA's tax-exempt status, and fine ATA the maximum amount permitted by law.

5. SUBMITTER INFORMATION:

Name: American Legal Democracy FundOccupation or Business: Legal AdvocacyStreet Address: 455 MASSACHUSETTS AVENUE, NWCity/State/Zip Code: Washington, DC 20001Telephone: 202-461-2059 I am concerned that I might face retaliation or retribution if my identity is disclosed.6. SUBMISSION AND DOCUMENTATION: The completed form, along with any supporting documentation, may be mailed to IRS EO Classification, Mail Code 4910DAL, 1100 Commerce Street Dallas, TX 75242-1198, faxed to 214-413-5415 or emailed to eoclass@irs.gov.