

BEFORE THE FEDERAL ELECTION COMMISSION

Foundation for Accountability and Civic Trust
1717 K. Street, Suite 900
Washington DC 20006

Complainant,

v.

NextGen Climate Action Committee
700 13th Street, NW, Suite 600
Washington, DC 20005

Respondents.

COMPLAINT

Pursuant to 52 U.S.C. § 30109(a)(1), the Foundation for Accountability and Civic Trust (FACT) files this complaint with the Federal Election Commission (FEC or Commission) against NextGen Climate Action Committee (NextGen) to determine if the following activities constitute a serious violation of the Federal Election Campaign Act of 1971 as amended (Act) and Commission regulations. The information contained in this complaint is based on media reports, public records, and information and belief. According to its FEC filings, NextGen made a payment in the amount of \$177,817.60 to a federal candidate's campaign committee. While the purpose of the payment was described as list acquisition, the circumstances surrounding the payment indicate otherwise. Under the Act, if the payment was in excess of the market value of the list, it would be a prohibited contribution to a candidate. The Commission must conduct an immediate and thorough investigation into this action. *See* 52 U.S.C. § 30109(a)(2); 11 C.F.R. § 111.4(a).

NextGen is a super PAC, i.e. an independent expenditure-only committee registered with the Federal Election Commission. *See SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686,

696 (D.C. Cir. 2010). The Federal Election Campaign Act regulates the types of actions in which a super PAC may engage. *See* 52 U.S.C. §§ 30101, 30118. A super PAC may make unlimited expenditures advocating for the election or defeat of a clearly identified federal candidate, but those expenditures cannot be made in concert or cooperation with a candidate, a candidate's campaign, or a political party. *Id.* § 30101(17). Additionally, a super PAC cannot make contributions to a candidate, which includes the payment of money or providing in-kind contributions. *See id.* § 30101(8)(A). If a payment is made to a candidate in exchange for goods, the goods must be valued at their "usual and normal charge," i.e. "the price of the goods in the market from which they ordinarily would have been purchased at the time of the contribution." *See* 100 C.F.R. § 100.52(d). The term goods includes a mailing list. *Id.* § 100.52(d)(1).

Media reports and public filings identify action by NextGen that appears to be contrary to the Federal Election Campaign Act. On February 12, 2015, NextGen made a payment in the amount of \$177,817.60 to a federal candidate committee for what it described as "list acquisition." NextGen Climate Action Committee, Report of Receipts & Disbursements, filed Mar. 20, 2015, pg. 7; *see* Craig Robinson, *Braley's \$177,000 Bailout Courtesy of Tom Steyer*, The Iowa Republican, April 22, 2015 (hereinafter *Braley's Bailout*) (attached as Exhibit A). The circumstances surrounding and the amount of the payment indicate the payment may have been in excess of the market value of the list. NextGen's payment was made to a candidate that ran for U.S. Senate in 2014, for whom NextGen had advocated in the election. *See* Robinson, *Braley's Bailout* (explaining NextGen spent \$781,326 supporting the candidate and \$4.3 million attacking the candidate's opponent). The payment was made over three months after the candidate lost the general election, but continued to have substantial campaign debt remaining. *See* Braley for Iowa, Reports of Receipt and Disbursement, filed on Apr. 13, 2015. Media reports described the effect

of the payment, “The massive infusion of funds by [NextGen] allowed Braley to pay off all of his campaign debts, which eventually will allow Braley to close down his campaign.” Robinson, *Braley’s Bailout*. Presumably the list purchased would have primarily included voter data for a single state. However, in another case, the FEC has approved the lease of a nationwide voter list for a lesser amount of \$133,841.70. Hillary Clinton, FEC Decision, MUR 6775 (Feb. 12, 2015). Thus, the large amount paid for a smaller list also indicates that it may be above market value.

All of these facts indicate that NextGen’s payment to the candidate was in excess of the fair market value of the list, which would be a prohibited donation to a candidate. A super PAC should not be permitted to make a donation to a candidate under the guise of purchasing a voter list. If this type of behavior were permitted, the rule prohibiting super PACs from donating to candidates would be eviscerated. A candidate could simply incur large amounts of campaign debt leading up to an election, with the expectation that months later a super PAC would ultimately pay off the candidate’s campaign debt.

The public filings and media reports identify evidence that NextGen may have made a prohibited donation to a federal candidate. As such, there is reason to believe NextGen has not complied with the Act’s prohibitions on donations to candidates. The Commission should conduct an immediate and thorough investigation into these allegations to determine if a violation occurred. If it should find violations of the Act, the Commission must then hold the Respondent accountable.

Respectfully submitted,



Matthew G. Whitaker, Executive Director
Foundation for Accountability & Civic Trust
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STATE OF IOWA

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Subscribed and sworn to before me on April 27, 2015.



Notary Public in and for the State of Iowa



News Center

April 22nd, 2015

Braley's \$177,000 Bailout Courtesy of Tom Steyer

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Written by: Craig Robinson

Tags: Bruce Braley, Climate change, Dirty Democrats, Drake University, Ernst, Fox News, Gardner, Homepage Spotlight, Iowa, NextGen Climate Action, Tom Steyer



Billionaire hedge fund manager Tom Steyer has bailed former Congressman Bruce Braley out of the remaining debt from his failed 2014 U.S. Senate campaign.

On February 18, 2015, NextGen Climate Action Committee, a Washington D.C. political group funded by Steyer, purchased a list from the Braley campaign for \$177,817.60. The massive infusion of funds by Steyer allowed Braley to pay off all of his campaign debts, which eventually will allow Braley to close down his campaign.

It's also odd that the only list that NextGen has acquired following the 2014 elections is Braley's. NextGen also spent massive amounts of money in Colorado in an effort to help re-elect Senator Mark Udall, but the group has not purchased Udall's list after his defeat in November. One would think that if NextGen were in the business of buying the lists of their candidates they backed after their defeat, they would do so in all of

the races they participated in. Thus far, only the Braley campaign has been paid a handsome sum for their data.

NextGen spent \$781,326.00 promoting Braley in the 2014 Iowa U.S. Senate race. The group spent over \$4.3 million attacking Braley's opponent, Joni Ernst. In the 2014 election cycle, Steyer's NextGen Climate Action spent nearly \$20 million on U.S. Senate races in Iowa, Colorado, Michigan, and New Hampshire. Over \$18 million was used to attack Republican candidates seeking U.S. Senate seats.

In November of 2013, Braley's campaign emailed its supporters a memo stating "secret money" was flooding into Iowa to pay for political attacks. Apparently Braley doesn't have a problem with third party groups spending millions of dollars so long as they are attacking his opponent or helping his campaign get out of debt.

Since losing his 2014 U.S. Senate race to Ernst, Braley has put his Iowa property up for sale and is moving to Denver, Colorado to join the law firm of Leventhal & Puga. While Braley is moving out of Iowa, Steyer continues to make himself at home.

Steyer is in Iowa today speaking at Drake University asking students to "stand up for clean energy" on Earth Day. Steyer's, "The Frontier of Climate Change," address is being sponsored by The New Republic, Drake University, and the League of Women Voters. Speaking about the environment makes sense for someone who has poured over \$73.7 million into his group called NextGen Climate Action, but Steyer's focuses was overtly political and often times not factual in 2014.

In Colorado, NextGen ran ads that attacked Republican U.S. Senate Candidate Cory Gardner for allegedly wanting to outlaw birth control. In Florida, NextGen accused Gov. Rick Scott of colluding with the sugar industry and scheming with the power company to overcharge consumers. A Spanish-language ad accused Scott of fraud. Steyer's group sometimes raised environmental concerns without ever mentioning climate change. Another attacked oil companies regarding jobs while yet another raised the specter of the Koch brothers – again, free of any climate change references.

Perhaps the most bizarre ad that Steyer's millions went to fund was titled "Joni Ernst's Pledge."



PolitiFact.com found that ad to be false. Aaron Blake of The Washington Post wrote, “Liberal environmentalist Tom Steyer’s new group just dropped some serious coin on what is surely one of the most bizarre political ads of the 2014 election — and not really bizarre in a good way.”

Pete Snyder, the former head of New Media Strategies and current CEO of Northern Virginia-based venture capital firm, Disruptor Capital, told Fox News, “These ads are the political equivalent of Miley Cyrus’ ‘twerking.’ Light on substance, heavy on camp and self-indulgence. Kind of what you’d expect from a ‘look at me’ billionaire like Steyer,”

Mr. Steyer may be coming back to Iowa to talk about the environment, but we all know what his real passion is — partisan politics.