

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** : **CRIMINAL NO. 17-CR-00563-JD**

**v.** : **Date Filed: March 20, 2018**

**KENNETH SMUKLER** : **VIOLATIONS:**

: **18 U.S.C. § 371 (conspiracy—1**

: **count)**

: **52 U.S.C. §§ 30109(d)(1)(A)(i) &**

: **30116(f), 18 U.S.C. § 2 (causing**

: **unlawful campaign**

: **contributions—2 counts)**

: **52 U.S.C. §§ 30104(a)(1),**

: **30104(b)(5)(A), &**

: **30109(d)(1)(A)(i), and 18 U.S.C. §**

: **2 (causing false campaign**

: **expenditure reports—3 counts)**

: **18 U.S.C. §§ 2 & 1001(a)(1)**

: **(causing false statements—2**

: **counts)**

: **52 U.S.C. §§ 30109(d)(1), 30116(f),**

: **30122, 18 U.S.C. § 2 (making**

: **contributions in the name of**

: **another—2 counts)**

: **18 U.S.C. §§ 2 & 1505**

: **(obstruction—1 count)**

**SUPERSEDING INDICTMENT**

**COUNT ONE**

**THE GRAND JURY CHARGES THAT:**

All dates and times in this indictment are alleged to be “on or about” the specific date stated.

At all times material to this indictment:

1. Candidate A was a candidate for the Democratic Party's nomination for Member of the United States House of Representatives ("House") in the 2012 primary election, which was held on or about April 24, 2012.

2. "Candidate A for Congress" was Candidate A's authorized campaign committee for the Office of Member of the United States House of Representatives.

3. Jimmie Moore, charged elsewhere, was Candidate A's opponent in the 2012 Democratic primary.

4. "Jimmie Moore for Congress" was Jimmie Moore's authorized campaign committee for the Office of Member of the United States House of Representatives.

5. Carolyn Cavaness, charged elsewhere, was a member of Moore's campaign staff in the 2012 race for the House.

6. Defendant KENNETH SMUKLER was a political analyst, consultant, and close associate of Candidate A. SMUKLER was also a political analyst and consultant for Candidate C, who was a candidate for the Democratic Party's nomination for Member of the United States House of Representatives in the 2014 primary election. Defendant SMUKLER owned and operated several companies including Black and Blue Media, Inc. ("Black and Blue"), InfoVoter Technologies, Inc. ("InfoVoter"), and Voter Link Data Systems ("VLDS"), which purported to provide political campaign services including consulting, analysis, and public relations. SMUKLER's companies were paid by Candidate A for Congress and by Candidate C 2014, which was Candidate C's authorized campaign committee for the Office of Member of the United States House of Representatives.

7. Donald ("D.A.") Jones, charged elsewhere, was a political analyst, consultant, and close associate of Candidate A. Jones owned and operated D. Jones &

Associates, also known as D.A. Jones & Associates, which purported to provide political services including consulting, analysis, and public relations. Jones and his firm were compensated by Candidate A for Congress and by Candidate C 2014.

8. Campaign committees raise and spend money for the candidate the campaign committee represents. Money is raised from contributions, and spent on expenditures for the campaign.

9. The Federal Election Campaign Act of 1971, as amended, Title 52, United States Code, Sections 30101, et seq. (“Election Act”), limited financial influence in the election of candidates for federal office, including the office of Member of the United States House of Representatives, and provided for public disclosure of the financing of federal election campaigns, as follows:

a. The Election Act limited the amount and source of money that may be contributed to a federal candidate or that candidate’s authorized campaign committee (“contributions”).

b. In 2012, the Election Act limited both primary and general election campaign contributions to \$2,500, for a total of \$5,000 from any individual to any one candidate in an election cycle.

c. In 2012, the Election Act limited contributions from one federal candidate’s authorized committee to another federal candidate’s authorized committee to \$2,000 per candidate for both the primary and general elections, for a combined total of \$4,000 in an election cycle.



d. In 2014, the Election Act limited both primary and general election campaign contributions to \$2,600, for a total of \$5,200 from any individual to any one candidate in an election cycle.

e. The Election Act expressly states that contributions made through an intermediary are treated as contributions from the original payor. The Act also states that “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate...shall be considered to be a contribution to such candidate.”

f. The Election Act prohibited campaigns from spending contributions raised for the general election on primary election expenses. A candidate who did not prevail in a primary election was required to refund any contributions raised for the general election.

10. The Federal Election Commission (“FEC”) was an agency and department of the United States with jurisdiction to enforce the limits and prohibitions of the Election Act, and to compile and publicly report accurate information about the source and amounts of contributions. The Election Act requires campaign committees to file quarterly campaign finance reports accurately disclosing activity related to contributions, expenditures, debts, and loans of the committee.

11. From in or about February 2012 to in or about June 2013, in the Eastern District of Pennsylvania and elsewhere, defendant,

**KENNETH SMUKLER**

conspired and agreed with Carolyn Cavaness, with Jimmie Moore, with D.A. Jones, and with others known and unknown to the Grand Jury, to:



a. Willfully cause contributions to a campaign committee in excess of the limits of the Election Act, which aggregated \$25,000 and more in calendar year 2012 (in violation of 52 U.S.C. §§ 30109(d)(1)(A)(i) & 30116(f), and 18 U.S.C. § 2);

b. Willfully cause the submission of false expenditure reports of one or more authorized campaign committees to the FEC, which concerned no less than \$25,000 in calendar year 2012 (in violation of 52 U.S.C. §§ 30104(a)(1), 30104(b)(5)(A), & 30109(d)(1)(A)(i), and 18 U.S.C. § 2);

c. Knowingly and willfully falsify, conceal, and cover up by a trick, scheme, and device a material fact in a matter within the jurisdiction of the executive branch of the government of the United States (in violation of 18 U.S.C. §§ 2 and 1001(a)(1)); and

d. Knowingly cause the concealing, covering up, falsification, and making of false entries in records, documents, and tangible objects, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, and in relation to and contemplation of such matter and case (in violation of 18 U.S.C. §§ 2 and 1519).

#### **PURPOSES OF THE CONSPIRACY**

12. It was a purpose of the conspiracy to facilitate unlawful campaign contributions from Candidate A for Congress to Jimmie Moore for Congress by using Candidate A for Congress campaign funds to pay Jimmie Moore for Congress campaign debts in exchange for Jimmie Moore's agreement to withdraw as Candidate A's opponent in the 2012 Democratic House primary election.

13. It was a purpose of the conspiracy to conceal these unlawful campaign contributions from the FEC and the public by causing Candidate A for Congress and Jimmie Moore for Congress to file false campaign finance reports.

14. It was a purpose of the conspiracy to conceal these unlawful campaign contributions from the FEC and the public by routing the payments through intermediary companies and by generating false invoices to disguise the true nature of the payments.

#### **MANNER AND MEANS**

15. The manner and means included the following:

a. The conspirators caused payments from Candidate A for Congress to pay off debts of Jimmie Moore for Congress totaling \$90,000, including debts owed to Jimmie Moore himself, in exchange for Jimmie Moore's agreement to withdraw from the primary election.

b. The conspirators used intermediary companies—VLDS, D. Jones & Associates, and CavaSense—to conceal the payments.

c. The conspirators concealed the payments by creating false invoices stating that the payments were made for the purpose of purchasing a poll from CavaSense that was already in the possession of Candidate A, KENNETH SMUKLER, and D.A. Jones, and for the purpose of compensation for consulting services that were never actually performed.

d. The conspirators caused Candidate A for Congress to submit reports to the FEC falsely listing the recipients of the campaign expenditures as VLDS and D. Jones & Associates and describing the purpose of the expenditures as payments for consulting and polling.

e. The conspirators caused Jimmie Moore for Congress to submit reports to the FEC falsely omitting any mention of the excessive contributions from Candidate A for Congress, VLDS, or D. Jones & Associates and falsely omitting any mention of the payments on the campaign debts using the funds from Candidate A for Congress.



**OVERT ACTS**

16. In furtherance of the conspiracy, and to accomplish its purpose, the defendant,

**KENNETH SMUKLER,**

and Carolyn Cavaness, Jimmie Moore, D.A. Jones, and others known and unknown to the Grand Jury, committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere.

a. In or about February 2012, Candidate A and Jimmie Moore agreed that Candidate A would use Candidate A for Congress campaign funds to pay off some Jimmie Moore for Congress campaign debts in exchange for Moore's agreement to withdraw from the primary election.

b. In that conversation, Candidate A and Jimmie Moore agreed and understood that the payment from Candidate A for Congress to Jimmie Moore for Congress would be disguised, and the deception would include hiding at least some of the Candidate A for Congress campaign funds as the purchase of a poll analyzing the primary matchup between Candidate A and Moore, notwithstanding the fact that Candidate A was already in possession of this same poll.

c. On or about February 29, 2012, Jimmie Moore announced his withdrawal from the Democratic primary.

d. In or about March 2012, Carolyn Cavaness and Jimmie Moore prepared a list of debts owed by the Jimmie Moore for Congress campaign, including nearly \$90,000 owed to Moore himself and nearly \$35,000 owed to Cavaness, for the purpose of providing Candidate A with an estimate of those debts.

e. Between in or about March 2012 and in or about June 2012, Candidate A confirmed with Moore through an intermediary that the specific amount of money that Candidate A was willing to provide in Candidate A for Congress campaign funds to help pay campaign debts of the Jimmie Moore for Congress campaign was \$90,000.

f. Between in or about March 2012 and in or about June 2012, defendant KENNETH SMUKLER told Jimmie Moore that Candidate A for Congress would make three payments to help repay the campaign debts of Jimmie Moore for Congress, that the first two payments would be justified by the purported purchase of a poll, as agreed in the February 2012 conversation between Candidate A and Jimmie Moore, and that the third payment would be justified by a purported consulting contract with D. Jones & Associates, the consulting company of D.A. Jones. To effectuate the scheme, defendant SMUCKLER instructed Moore to create a shell company to receive the funds from Candidate A for Congress.

g. In or about May 2012, Jimmie Moore directed Carolyn Cavaness to create a company, CavaSense, for the sole purpose of receiving the promised Candidate A for Congress campaign funds, using a false address for the company on the incorporation documents.

h. In or about May 2012, Carolyn Cavaness was contacted by defendant KENNETH SMUKLER, who told Cavaness to create false invoices stating that CavaSense was selling a poll to defendant SMUKLER's company VLDS in order to provide a justification for the first two payments of campaign funds from Candidate A for Congress, one in the amount of \$40,000 and one in the amount of \$25,000.

i. Between in or about May 2012 and in or about June 2012, Carolyn Cavaness, at Jimmie Moore's direction, created the invoices requested by defendant KENNETH

SMUKLER, notwithstanding the facts that: (1) the poll in question was owned by Moore and not by CavaSense; (2) the poll in question was over a year old; (3) the poll in question analyzed Candidate A's chances in a primary election that had already ended against an opponent who had already withdrawn; (4) Candidate A was already in possession of a nearly identical version of the poll; and (5) the actual cost of the poll was less than the total amount inserted into the fake invoices at defendant SMUKLER's direction.

j. On or about May 30, 2012, Carolyn Cavaness, at Jimmie Moore's direction, emailed defendant KENNETH SMUKLER an agreement between CavaSense and VLDS stating that: (1) CavaSense would deliver a "poll memo" to VLDS by June 12, 2012; (2) VLDS would pay CavaSense \$40,000 by June 15, 2012; (3) CavaSense would deliver "cross tabs" to VLDS by June 26, 2012; (4) VLDS would pay CavaSense \$25,000 by July 2, 2012; and (5) "[u]pon receipt of the full proposed fee agreement, CavaSense and Associates, LLC, will cease distribution of said poll memo and cross tabs."

k. On or about June 4, 2012, Carolyn Cavaness, at Jimmie Moore's direction, emailed defendant KENNETH SMUKLER two invoices from CavaSense to VLDS, requesting two payments—one for \$40,000 and one for \$25,000—in exchange for the poll.

l. On or about June 11, 2012, the conspirators caused Candidate A for Congress to send check number 1358 in the amount of \$40,000 to VLDS.

m. On or about June 13, 2012, defendant KENNETH SMUKLER caused VLDS to send check number 6689 in the amount of \$40,000 to Carolyn Cavaness with the memo line, "Poll."



n. On or about June 18, 2012, Carolyn Cavaness, at Jimmie Moore's direction, emailed defendant KENNETH SMUKLER a copy of the poll memo that was already in the possession of Candidate A, D.A. Jones, and SMUKLER.

o. On or about July 13, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$40,000 expenditure as a payment to VLDS for "Survey and Polling Services," omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

p. On or about July 24, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$40,000 expenditure as a payment to VLDS for "Survey and Polling Services," omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

q. On or about December 11, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$40,000 expenditure as a payment to VLDS for "Survey and Polling Services," omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

r. On or about July 10, 2012, the conspirators caused Candidate A for Congress to send check number 1367 in the amount of \$25,000 to VLDS.

s. On or about July 17, 2012, defendant KENNETH SMUKLER caused VLDS to send check number 6688 in the amount of \$25,000 to Cavaness with the memo line, "Poll."

t. On or about August 6, 2012, Carolyn Cavaness, at Jimmie Moore's direction, emailed defendant KENNETH SMUKLER the data associated with the poll, the majority of which was already in the possession of Candidate A, D.A. Jones, and SMUKLER.

u. On or about October 15, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$25,000 expenditure as a payment to VLDS for "Acquisition of Cross Tabs," omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

v. On or about December 11, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$25,000 expenditure as a payment to VLDS for "Acquisition of Cross Tabs," omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

w. On or about June 20, 2012, Carolyn Cavaness, at Jimmie Moore's direction, emailed D.A. Jones an invoice stating that D. Jones & Associates would pay CavaSense \$25,000 for "consulting services."

x. On or about August 23, 2012, the conspirators caused Candidate A for Congress to write check number 1386 to D. Jones & Associates in the amount of \$25,000.

y. On or about August 30, 2012, D.A. Jones caused D. Jones and Associates to send check number 3327 to CavaSense in the amount of \$25,000 with the memo line, "Consulting," notwithstanding that neither Cavaness nor CavaSense did any work of any kind for Jones, his company, or Candidate A for Congress.

z. On or about October 15, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$25,000 expenditure as a payment to Jones & Associates for "Political Consulting," omitting any mention of Carolyn Cavaness, CavaSense, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

aa. On or about December 11, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$25,000 expenditure as a payment to Jones & Associates for "Political Consulting," omitting any mention of Carolyn Cavaness, CavaSense, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

bb. Between June 2012 and September 2012, Carolyn Cavaness, at Jimmie Moore's direction, used \$21,000 of the money provided by Candidate A for Congress through VLDS and D. Jones & Associates to pay vendors who were owed money by Jimmie Moore for Congress.

cc. Between June 2012 and August 2012, Carolyn Cavaness, at Jimmie Moore's direction, gave \$19,500 of the money provided by Candidate A for Congress through VLDS and D. Jones & Associates to Moore via checks with the memo line, "Reimbursement."

dd. Carolyn Cavaness and Jimmie Moore kept the remainder of the money provided by Candidate A for Congress through VLDS and D. Jones & Associates in Cavaness's personal bank account.

ee. On or about October 9, 2012, the conspirators caused Jimmie Moore for Congress to file a campaign finance report with the FEC falsely omitting any mention



of the payments to the campaign vendors, to Jimmie Moore, or to Carolyn Cavaness, instead listing all of those debts as they had appeared on earlier campaign finance reports notwithstanding that those debts had been paid in full or in part with Candidate A for Congress campaign funds.

ff. On or about June 6, 2013, the conspirators caused Jimmie Moore for Congress to file a campaign finance report with the FEC falsely omitting any mention of the payments to the campaign vendors, to Jimmie Moore, or to Carolyn Cavaness, instead listing all of those debts as they had appeared on earlier campaign finance reports notwithstanding that those debts had been paid in full or in part with Candidate A for Congress campaign funds.

gg. On or about October 9, 2012, the conspirators caused Jimmie Moore for Congress to file a campaign finance report with the FEC falsely omitting any mention of the \$40,000 payment received by Carolyn Cavaness on June 13, 2012; the \$25,000 payment received by Cavaness on July 17, 2012; or the \$25,000 payment received by CavaSense on August 30, 2012, notwithstanding that those funds had been provided for the express purpose of paying debts owed by Jimmie Moore for Congress.

hh. On or about June 6, 2013, the conspirators caused Jimmie Moore for Congress to file a campaign finance report with the FEC falsely omitting any mention of the \$40,000 payment received by Carolyn Cavaness on June 13, 2012; the \$25,000 payment received by Cavaness on July 17, 2012; or the \$25,000 payment received by CavaSense on August 30, 2012, notwithstanding that those funds had been provided for the express purpose of paying debts owed by Jimmie Moore for Congress.

ii. In an effort to conceal the illicit nature of the \$25,000 payment from D. Jones & Associates to CavaSense, on or about May 5, 2017, Jones falsely told Special

Agents of the FBI that Carolyn Cavaness performed work for D. Jones & Associates and Candidate A for Congress in exchange for the \$25,000 payment from D. Jones & Associates to CavaSense on or about August 30, 2012.

In violation of Title 18, United States Code, Section 371.

**COUNT TWO**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 15 and the Overt Acts of Count One are incorporated here.
2. From in or about February 2012 to in or about August 2012, in the Eastern District of Pennsylvania and elsewhere, the defendant,

**KENNETH SMUKLER,**

aided and abetted by Carolyn Cavaness, charged elsewhere, by Jimmie Moore, charged elsewhere, by D.A. Jones, charged elsewhere, and by others known and unknown to the Grand Jury, willfully caused contributions to the Jimmie Moore for Congress campaign in excess of the limits of the Election Act, which aggregated \$25,000 and more in calendar year 2012, and did so by causing Candidate A for Congress to make contributions to Jimmie Moore for Congress in the form of payments of debts owed by Jimmie Moore for Congress to vendors, to Cavaness, and to Moore.

In violation of Title 52, United States Code, Sections 30109(d)(1)(A)(i) & 30116(f), and Title 18, United States Code, Section 2.



**COUNT THREE**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 15 and the Overt Acts of Count One are incorporated here.
2. From in or about February 2012 to in or about December 2012, in the Eastern District of Pennsylvania and elsewhere, the defendant,

**KENNETH SMUKLER,**

aided and abetted by Carolyn Cavaness, charged elsewhere, by Jimmie Moore, charged elsewhere, by D.A. Jones, charged elsewhere, and by others known and unknown to the Grand Jury, willfully caused the authorized campaign committee of a candidate for the United States House of Representatives to falsely report to the FEC disbursements made by that committee over \$200, to wit causing Candidate A for Congress to report to the FEC disbursements to VLDS for “Survey and Polling Services” and “Acquisition of Cross Tabs” and a disbursement to D. Jones & Associates for “Political Consulting” that were in fact contributions to the Jimmie Moore for Congress campaign aggregating \$25,000 and more in calendar year 2012.

In violation of Title 52, United States Code, Sections 30104(a)(1), 30104(b)(5)(A), & 30109(d)(1)(A)(i), and Title 18, United States Code, Section 2.

**COUNT FOUR**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 15 and the Overt Acts of Count One are incorporated here.
2. From in or about February 2012 to in or about June 2013, in the Eastern District of Pennsylvania and elsewhere, the defendant,

**KENNETH SMUKLER,**

aided and abetted by Carolyn Cavaness, charged elsewhere, by Jimmie Moore, charged elsewhere, by D.A. Jones, charged elsewhere, and by others known and unknown to the Grand Jury, willfully caused the authorized campaign committee of a candidate for the United States House of Representatives to falsely omit from reports to the FEC the receipt of contributions over \$200, to wit causing the Jimmie Moore for Congress campaign to fail to report to the FEC contributions from the Candidate A for Congress campaign in the form of payment of debts owed by Jimmie Moore for Congress aggregating \$25,000 and more in calendar year 2012.

In violation of Title 52, United States Code, Sections 30104(a)(1), 30104(b)(5)(A), & 30109(d)(1)(A)(i), and Title 18, United States Code, Section 2.

**COUNT FIVE**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 15 and the Overt Acts of Count One are incorporated here.
2. From in or about February 2012 to in or about June 2013, in the Eastern District of Pennsylvania and elsewhere, the defendant,

**KENNETH SMUKLER,**

aided and abetted by Carolyn Cavaness, charged elsewhere, by Jimmie Moore, charged elsewhere, by D.A. Jones, charged elsewhere, and by others known and unknown to the Grand Jury, knowingly and willfully falsified, concealed, and covered up by a trick, scheme, and device a material fact in a matter within the jurisdiction of the executive branch of the government of the United States, to wit causing Candidate A for Congress to report to the FEC disbursements to VLDS for "Survey and Polling Services" and "Acquisition of Cross Tabs" and a disbursement to D. Jones & Associates for "Political Consulting" that were in fact contributions to the Jimmie Moore for Congress campaign, and causing the Jimmie Moore for Congress campaign to fail to report to the FEC contributions from Candidate A for Congress in the form of payment of debts owed by Jimmie Moore for Congress.

In violation of Title 18, United States Code, Sections 2 and 1001(a)(1).



**COUNT SIX**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 6 through 10 of Count One are incorporated here.
2. From in or about April 2014 to in or about October 2015, in the

Eastern District of Pennsylvania and elsewhere, the defendant

**KENNETH SMUKLER,**

knowingly and willfully falsified, concealed, and covered up by a trick, scheme, and device a material fact in a matter within the jurisdiction of the executive branch of the government of the United States, to wit causing Candidate C 2014 to report to the FEC that certain payments from Black and Blue and InfoVoter were “refunds” of money advanced to those companies for general election expenses, when those payments were in fact unlawful campaign contributions funneled through the companies.

**PURPOSES OF THE SCHEME**

3. It was a purpose of the scheme to facilitate unlawful campaign contributions to Candidate C 2014, the authorized campaign committee for Candidate C in the 2014 Democratic Party primary election for Member of the United States House of Representatives, in order to conceal the fact that Candidate C 2014 had impermissibly spent contributions raised for the general election on primary election expenses.

4. It was a purpose of the scheme to conceal these unlawful campaign contributions from the FEC and the public by causing Candidate C 2014 to file false campaign finance reports.

5. It was a purpose of the scheme to conceal these unlawful campaign contributions from the FEC and the public by routing the payments through intermediary companies.

6. It was a purpose of the scheme to make conduit campaign contributions, that is, contributions in the name of another, to Candidate C 2014.

7. It was a purpose of the scheme to procure the dismissal of a complaint filed with the FEC against Candidate C 2014 by causing the campaign to make false statements to the FEC about the unlawful campaign contributions.

#### **MANNER AND MEANS**

8. The manner and means included the following:

a. SMUKLER made and caused to be made unlawful campaign contributions to Candidate C 2014 in order to conceal the fact that SMUKLER had caused the campaign impermissibly to spend general election funds in the primary election.

b. SMUKLER used intermediary companies—Black and Blue and InfoVoter—to conceal the payments.

c. SMUKLER received personal funds from two of his associates to fund these unlawful campaign contributions.

d. SMUKLER concealed the payments by causing Candidate C 2014 to falsely state to the FEC that the unlawful campaign contributions were “refunds” of money advanced by the campaign to SMUKLER’s companies to be set aside for the general election, notwithstanding that: (1) the amount of money “refunded” by SMUKLER’s companies exceeded the total amount of money paid by the campaign to the companies in the first place; (2) SMUKLER had already caused his companies to spend a significant portion of the funds they

had received from the campaign on primary expenses, and therefore those funds could not be “refunded” to the campaign; and (3) the money used to fund the payments from SMUKLER’s companies to the campaign came, not from funds that the campaign had advanced to the companies, but rather from associates of SMUKLER.

### **OVERT ACTS**

9. In furtherance of the scheme, and to accomplish its purpose, the defendant,

#### **KENNETH SMUKLER,**

committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere.

a. Between in or about June 2013 and in or about April 2014, SMUKLER’s companies Black and Blue and InfoVoter received approximately \$210,750 from Candidate C 2014 for expenses associated with the primary election.

b. Between in or about June 2013 and in or about April 2014, SMUKLER’s companies Black and Blue and InfoVoter paid other companies and individuals at least \$99,951 for goods and services associated with the primary campaign of Candidate C, including direct mailings, get-out-the-vote efforts, and consulting work.

c. Between in or about April 2014 and in or about May 2014, SMUKLER directed the treasurer of Candidate C 2014 (“the Treasurer”) to continue spending the campaign funds of Candidate C 2014 notwithstanding the warnings of the Treasurer that the campaign had run out of funds that it could permissibly spend on primary election expenses, thereby causing Candidate C 2014 to spend funds raised for the general election on primary election expenses in violation of FEC regulations.



d. On or about April 29, 2014, SMUKLER emailed the Treasurer to advise her that he would “be wiring \$78,750 of the segregated media account funds in the campaign media account” and instructing her to use those funds to pay for advertising for the primary campaign of Candidate C.

e. Rather than wire the funds from a “segregated media account” as SMUKLER told the Treasurer, on or about May 2, 2014, SMUKLER wired \$78,750 from his own brokerage account to the bank account of Black and Blue.

f. On or about May 5, 2014, SMUKLER wired \$78,750 from the bank account of Black and Blue to a bank account associated with Candidate C 2014.

g. On or about May 7, 2014, SMUKLER caused Person 1, a close associate of SMUKLER, to wire \$75,000 to SMUKLER’s brokerage account.

h. By means of the April 29, 2014 email to the Treasurer stating that the \$78,750 payment came from “segregated media account funds,” SMUKLER caused Candidate C 2014 to file a report with the FEC on or about July 15, 2014 falsely describing the \$78,750 payment from Black and Blue to the campaign as a “Refund of Media Account,” when in fact that payment was an unlawful campaign contribution funneled through Black and Blue.

i. In or about July 2014, after Candidate C had lost the primary election, SMUKLER was advised by the Treasurer that Candidate C 2014 did not have sufficient funds to refund general election contributions as required by law because the campaign had impermissibly spent funds designated for the general election on primary election expenses.

j. On or about July 9, 2014, SMUKLER emailed the Treasurer that funds raised through general election contributions had been “escrowed in [I]nfo[V]oter” and would be “refunded by [I]nfo[V]oter to the campaign.”



k. On or about July 9, 2014, SMUKLER caused Person 2, a close associate of SMUKLER, to wire \$150,000 to SMUKLER's brokerage account.

l. On or about July 11, 2014, SMUKLER wired \$40,000 from his brokerage account to the Black and Blue bank account.

m. On or about July 11, 2014, SMUKLER wired \$110,000 from his brokerage account to the InfoVoter bank account.

n. On or about July 14, 2014, SMUKLER wired \$40,000 from the Black and Blue account to a bank account associated with Candidate C 2014.

o. On or about July 14, 2014, SMUKLER wired \$110,000 from the InfoVoter account to a bank account associated with Candidate C 2014.

p. By means of the July 9, 2014 email to the Treasurer describing the payments from his companies as "refund[s]" of money that was "escrowed," and similar communications, SMUKLER caused Candidate C 2014 to file a report with the FEC falsely describing the \$40,000 payment from Black and Blue as a "Refund of Media Account" on or about October 15, 2014, when in fact the payment was an unlawful campaign contribution funneled through Black and Blue, which could not "refund" the money it received from the campaign as SMUKLER had already spent that money on expenses associated with the primary campaign of Candidate C.

q. By means of the July 9, 2014 email to the Treasurer describing the payments from his companies as "refund[s]" of money that was "escrowed," and similar communications, SMUKLER caused Candidate C 2014 to file a report with the FEC falsely describing the \$110,000 payment from InfoVoter as a "Refund" on or about October 15, 2014, when in fact the payment was an unlawful campaign contribution funneled through InfoVoter,

which could not “refund” the money it received from the campaign as SMUKLER had already spent a portion of that money on expenses associated with the primary campaign of Candidate C.

r. On or about July 22, 2014, SMUKLER caused an attorney for Candidate C 2014 to send a letter to the FEC successfully urging the FEC to dismiss a complaint against Candidate C 2014 based on the false representation that the payments from Black and Blue and InfoVoter were “refund[s]” of “advanced funds...to pay for general election media and consulting expenses” that were “advanced on the condition that they would be refunded to the committee if the candidate did not secure the nomination.”

s. On or about July 15, 2014, SMUKLER caused Candidate C 2014 to file a report with the FEC falsely representing that the campaign would soon be receiving “the refund of the advanced payment of general election consulting and media expenses,” a reference to the payments from Black and Blue and InfoVoter to the campaign made on July 14, 2014.

t. In or about June 2015, after the FEC realized that Smukler’s company InfoVoter had “refunded” to Candidate C 2014 approximately \$18,000 more than the campaign had paid InfoVoter in the first place, SMUKLER caused Candidate C to make a conduit contribution of funds from Black and Blue to the campaign so that the campaign could afford to repay InfoVoter the excess “refund” of \$18,000.

u. On or about June 30, 2015, SMUKLER caused Black and Blue to send a check to Candidate C in the amount of \$25,000.

v. On or about June 30, 2015, SMUKLER instructed Candidate C to use the \$25,000 check from Black and Blue to fund a transfer of \$23,750 from her personal bank account to an account associated with Candidate C 2014, a transfer that erased a negative balance

in the campaign's account caused by the \$18,000 repayment of the excess "refund" to InfoVoter shortly before Candidate C 2014 was required to file a report with the FEC.

w. On or about October 15, 2015, SMUKLER caused Candidate C 2014 to file a report with the FEC falsely stating that the \$23,750 payment was a loan from Candidate C when in fact the payment was an unlawful campaign contribution from Black and Blue funneled through Candidate C.

x. Between in or about December 2013 and in or about May 2014, SMUKLER caused D.A. Jones, charged elsewhere, to make a conduit contribution to Candidate C 2014 from InfoVoter of at least \$2,000 by instructing Jones to make a contribution to the campaign on the promise that SMUKLER would refund the amount of the contribution to Jones, which SMUKLER did on or about May 16, 2014.

In violation of Title 18, United States Code, Sections 2 and 1001(a)(1).

**COUNT SEVEN**

1. Paragraphs 6 through 10 of Count One and Paragraphs 1 through 8 and the Overt Acts of Count Six are incorporated here.

2. From in or about April 2014 to in or about July 2014, in the Eastern District of Pennsylvania and elsewhere, the defendant,

**KENNETH SMUKLER,**

willfully caused contributions to Candidate C 2014 in excess of the limits of the Election Act, which aggregated \$25,000 and more in calendar year 2014, and did so by making and causing unlawful excess contributions to Candidate C 2014 through Black and Blue and InfoVoter that were concealed as refunds of money advanced to the companies for general election expenses.

In violation of Title 52, United States Code, Sections 30109(d)(1)(A)(i) & 30116(f), and Title 18, United States Code, Section 2.



**COUNT EIGHT**

1. Paragraphs 6 through 10 of Count One and Paragraphs 1 through 8 and the Overt Acts of Count Six are incorporated here.

2. In or about May 2014, in the Eastern District of Pennsylvania and elsewhere, the defendant

**KENNETH SMUKLER,**

willfully made and caused to be made a contribution to Candidate C 2014, which aggregated \$2,000 and more in calendar year 2014, in the name of another.

In violation of Title 52, United States Code, Sections 30109(d)(1)(A)(ii), 30116(f), & 30122 and Title 18, United States Code, Section 2.

**COUNT NINE**

1. Paragraphs 6 through 10 of Count One and Paragraphs 1 through 8 and the Overt Acts of Count Six are incorporated here.

2. From in or about June 2015 to in or about July 2015, in the Eastern District of Pennsylvania and elsewhere, the defendant

**KENNETH SMUKLER,**

willfully made and caused to be made a contribution to Candidate C 2014 aggregating more than \$10,000 in calendar year 2015, in the name of another.

In violation of Title 52, United States Code, Sections 30109(d)(1)(D), 30116(f), & 30122, and Title 18, United States Code, Section 2.

**COUNT TEN**

1. Paragraphs 6 through 10 of Count One and Paragraphs 1 through 8 and the Overt Acts of Count Six are incorporated here.

2. From in or about April 2014 to in or about October 2015, in the Eastern District of Pennsylvania and elsewhere, the defendant,

**KENNETH SMUKLER,**

willfully caused the authorized campaign committee of a candidate for the United States House of Representatives to falsely report to the FEC contributions received by that committee over \$200, to wit causing Candidate C 2014 to report to the FEC payments from Black and Blue and InfoVoter as refunds when in fact those payments were unlawful contributions routed through those companies aggregating \$25,000 and more in calendar year 2014, and causing Candidate C 2014 to report contributions from SMUKLER in the names of others.

In violation of Title 52, United States Code, Section 30104(a)(1), 30104(b)(5)(A), & 30109(d)(1)(A)(i), and Title 18, United States Code, Section 2.

**COUNT ELEVEN**

1. Paragraphs 6 through 10 of Count One and Paragraphs 1 through 8 and the Overt Acts of Count Six are incorporated here.

2. From in or about April 2014 to in or about August 2015, in the Eastern District of Pennsylvania and elsewhere, the defendant,

**KENNETH SMUKLER,**

corruptly influenced, obstructed, and impeded, and endeavored to influence, obstruct, and impede, the due and proper administration of the law, under a pending proceeding before a department or agency of the United States, that is, a matter under review by the Federal Election Commission, by causing an attorney for Candidate C 2014 to send a letter to the FEC containing false information about payments from Smukler's companies to Candidate C 2014.

In violation of Title 18, United States Code, Sections 2 and 1505.

**A TRUE BILL:**

**GRAND JURY FOREPERSON**

  
**LOUIS D. LAPPEN**  
United States Attorney