



August 15, 2024

Jaime Esparza
U.S. Attorney
601 NW Loop 410, Suite 600
San Antonio, TX 78216

Corey Amundson
Chief, Public Integrity Section
U.S. Department of Justice, Criminal Division
1301 New York Avenue, 10th Floor
Washington, DC 20005

Re: Request for Investigation into America PAC, Elon Musk, et al.

Dear Mr. Esparza and Mr. Amundson:

I am the Executive Director of Defend the Vote, a nonprofit organization dedicated to preserving American democracy through ensuring voting access, education and protection. I am writing to request that the United States Department of Justice (DOJ) investigate whether America PAC and its leadership, including co-founder Elon Musk, violated federal law by conspiring to interfere with the constitutional right to vote of certain visitors to the PAC's website. Recent news reports indicate that the site purported to offer visitors assistance in registering to vote. However, according to that reporting, only people from certain states were directed to an actual voter registration page, while others were asked to fill out a web form that provided detailed personal information to the PAC but were not actually registered to vote.¹ Those individuals, in effect, were led to believe that they had been duly registered to vote, when they were not – and when they attempt to vote in the upcoming November election, they will not be permitted to. If this reporting is accurate, this conduct would likely violate 18 U.S.C. § 241, the conspiracy against rights statute.²

¹ See Brian Schwartz, *How an Elon Musk PAC is using voter data to help Trump beat Harris in 2024 election*, CNBC (Aug. 2, 2024, 9:56 AM), <https://www.cnbc.com/2024/08/02/elon-musk-pac-voter-data-trump-harris.html>.

² Additionally, the North Carolina Attorney General's Office, North Carolina Board of Elections, and Michigan Secretary of State are reportedly looking into whether this conduct violated state law. See Brian Schwartz, *North*

America PAC is an independent expenditure-only political committee that was registered with the Federal Election Commission (FEC) in May of 2024.³ America PAC was reportedly created by Tesla CEO Elon Musk; political strategists Phil Cox, Generra Peck and Dave Rexrode are also involved in the PAC.⁴ On August 2, 2024, CNBC reported that the PAC has been sponsoring an advertising campaign to direct traffic to its website, theamericapac.org. When visitors to the PAC's website clicked the "Register to Vote" button and entered their ZIP code, the page they were taken to next depended on where they lived.⁵ Voters in states not considered to be competitive in the 2024 election, such as California or Wyoming, were directed to their state's voter registration site or back to the original sign up page.⁶ Voters from some battleground states, such as Michigan, on the other hand, were reportedly directed to a page on the PAC's website that prompted them to enter detailed personal information including their address, phone number, and age.⁷ After submitting that information, users were reportedly shown a "thank you" page, but were not directed to an actual voter registration site.⁸ Since America PAC's scheme was uncovered and reported by CNBC, it appears as if the offending content has been removed from the America PAC website.

Federal law makes it a felony for "two or more persons [to] conspire to injure, oppress, threaten, or intimidate any person in any State . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States[.]"⁹ This includes the right to vote.¹⁰

For decades the DOJ has relied on this statute to prosecute a wide range of conduct designed to interfere with the right to vote.¹¹ This has included the prosecution of voter suppression schemes, which are schemes "designed to ensure the election of a favored candidate by blocking or impeding voters believed to oppose that candidate from getting to the polls . . . includ[ing by] providing false information to the public – or a particular segment of the public – regarding the qualifications to vote[.]"¹² Among other voter suppression activities, Section 241 has been used

Carolina election board investigates Elon Musk's pro-Trump PAC after voter data complaint, CNBC (Aug. 5, 2024, 1:51 PM), <https://www.cnbc.com/2024/08/05/trump-elon-musk-pac-election-north-carolina.html>.

³ *FEC Form 1*, FED. ELECTION COMM'N (May 22, 2024), <https://docquery.fec.gov/cgi-bin/forms/C00879510/1785640/>.

⁴ *See* Schwartz, *supra* note 1.

⁵ *See id.* Though the website has since been modified, the archived website can be viewed at <https://web.archive.org/web/20240803005823/https://theamericapac.org/voter-registration/>. A screen shot of the page requesting users' ZIP code is also attached as Exhibit A.

⁶ *See id.*

⁷ *See id.* A screen shot of this page is attached as Exhibit B. This image was obtained from Gizmodo and is available at <https://gizmodo.com/elon-musks-pro-trump-website-accused-of-shady-data-collection-2000482608>.

⁸ *See id.* A screen shot of this page is attached as Exhibit C. This image was obtained from Gizmodo and is available at <https://gizmodo.com/elon-musks-pro-trump-website-accused-of-shady-data-collection-2000482608>.

⁹ 18 U.S.C. § 241.

¹⁰ *See* U.S. DEP'T OF JUSTICE, FEDERAL PROSECUTION OF ELECTION OFFENSES 33-34 (Richard C. Pilger ed., 8th ed. 2017).

¹¹ *See id.* at 34-35.

¹² *Id.* at 56.

to prosecute conspiracies to destroy ballots,¹³ prevent valid voter registration forms for members of a particular political party from being submitted,¹⁴ and jam phone lines in order to prevent voters from requesting rides to the polls.¹⁵

Use of the internet to create public confusion about how to vote in an election has also been found to amount to a conspiracy against rights. In March of 2023, social media influencer Douglass Mackey was convicted of conspiracy to violate rights under 18 U.S.C. § 241 for participating in a scheme to create and disseminate online misinformation intended to suppress Democratic voter turnout in the 2016 election.¹⁶ Specifically, Mackey and his co-conspirators created and shared content designed to trick supporters of Hillary Clinton into believing that they could cast their ballots by posting particular hashtags on social media, or by texting Clinton's name to a particular phone number.¹⁷ According to the Government, at least 4,900 people texted that number.¹⁸

If the news reports regarding the voter registration interface on America PAC's website are accurate, America PAC's scheme to deceive voters in battleground states would appear to violate 18 U.S.C. § 241. Voters in these states who visited the America PAC website were told that they could click on a link to "Register to Vote"; once they did so, they were then prompted to enter detailed personal information about themselves, as one would provide on a voter registration form. Once they completed the form, they were told "thank you." An unknowing individual, having filled out the form, would be led to believe that they had successfully registered to vote. However, in reality, all they appear to have done is hand over detailed personal information to an organization that has been reported to be "in conversations with the Trump campaign about a data-sharing agreement."¹⁹ A scheme to trick people into believing that they have successfully registered to vote would put those individuals at risk of being unable to exercise their constitutional right to vote in future elections; when those individuals attempt to vote this fall, they will not be duly registered voters, and, unless their state offers same-day voter registration, they will not be able to vote. The net effect is the same as in the *Mackey* and *Haynes* cases – individuals who wish to vote will be unable to because of the trickery of America PAC and its personnel. Such a scheme would appear to fall within the type of criminal conduct contemplated by 18 U.S.C. § 241.

¹³ *United States v. Townsley*, 843 F.2d 1070 (8th Cir. 1988).

¹⁴ *United States v. Haynes*, Nos. 91-5979, 6076, 1992 U.S. App. LEXIS 27176, at *1 (6th Cir. Oct. 15, 1992) (affirming conviction for violation of section 241).

¹⁵ *United States v. Tobin*, No. 04-cr-216-01-SM, 2005 U.S. Dist. LEXIS 31116, at *2-3 (D.N.H. Nov. 30, 2005) (denying motion to dismiss).

¹⁶ Press Release, U.S. Att'y's Off., E. Dist. of N.Y., Social Media Influencer Douglass Mackey Convicted of Election Interference in 2016 Presidential Race (Mar. 31, 2023), <https://www.justice.gov/usao-edny/pr/social-media-influencer-douglass-mackey-convicted-election-interference-2016>.

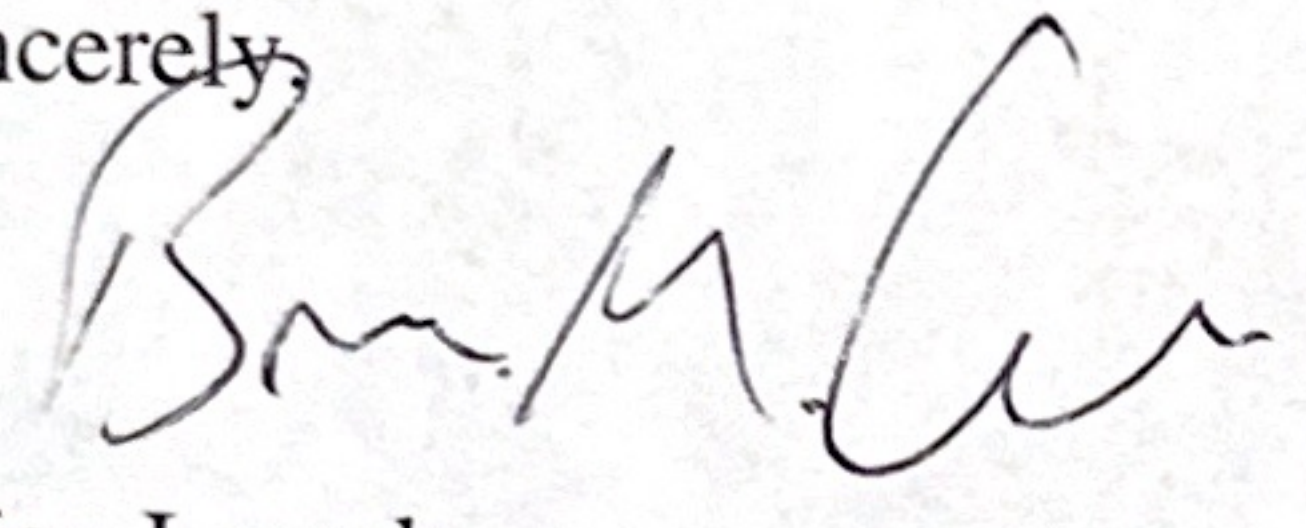
¹⁷ *United States v. Mackey*, No. 21-CR-80, 2023 U.S. Dist. LEXIS 11335, at *4 (E.D.N.Y. Jan. 23, 2023).

¹⁸ *Id.* at *7.

¹⁹ See Kenneth P. Vogel & Theodore Schleifer, *Facing Harris's Momentum, Trump Allies Plan \$45 Million Ground Game*, N.Y. TIMES (July 30, 2024), <https://www.nytimes.com/2024/07/30/us/politics/trump-super-pac-voter-turnout.html>.

Accordingly, I urge your office to investigate whether Elon Musk and the other individuals affiliated with America PAC have engaged in a criminal conspiracy to violate the voting rights of those who unsuccessfully attempted to register to vote using the PAC's website. It is my hope that you will address this matter promptly so as to minimize potential obstacles to voting and deter similar conduct by other organizations.

Sincerely,


A handwritten signature in black ink, appearing to read "Brian Lemek". The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

Brian Lemek
Executive Director, Defend the Vote

Exhibit A

Wayback Machine | <https://theamericapac.org/voter-registration/> | 15 captures | 8 Jul 2024 - 16 Aug 2024 | AUG 03 2024 | About this capture

AMERICA **REGISTER TO VOTE** VOTE EARLY PLEDGE TO VOTE CONTACT US



Voter Registration

It takes less than two minutes to register!

Email

Postal Code

Please enter your 5-digit zip code. Ex: 20002

Next Step

By continuing, you accept America PAC's [Privacy Policy](#).

<https://web.archive.org/web/20240803005823/https://theamericapac.org/voter-registration/>

Exhibit B

Voter Registration

It takes less than two minutes to register!

ADDITIONAL INFORMATION

First Name

Last Name

Email

Cell Phone

Address

Suite / Apt #

City

State

Postal Code

Date of Birth

Yes! I would like to receive text and email updates.

By providing your telephone number and email, you consent to receive emails, calls, and text messages from America PAC, including pre-recorded messages and via automated methods. Msg & data rates may apply. Msg frequency may vary. Reply STOP to opt-out and HELP for help. View [Privacy Policy](#), [Terms & Conditions](#) for more info. Message & Data Rates May Apply. Reply HELP for help. Reply STOP to opt out.

Proceed

By continuing, you accept America PAC's [Privacy Policy](#).

Exhibit C

Voter Registration

It takes less than two minutes to register!

THANK YOU

Thank you for taking the first step to register to vote in WISCONSIN. Please complete the form below and we will help you complete your registration.



[PRIVACY POLICY](#) [TERMS & CONDITIONS](#) [OPT IN](#)