

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL’S REPORT

MUR 7422

COMPLAINT: July 2, 2018

NOTIFICATION DATE: July 6, 2018

AMENDED COMPLAINT: Aug. 8, 2018

NOTIFICATION DATE: Aug. 15, 2018

SECOND AMENDED COMPLAINT: Nov. 20, 2018

NOTIFICATION DATE: Nov. 29, 2018

LAST RESPONSE: Dec. 22, 2018

ACTIVATION DATE: Mar. 22, 2019

STATUTE OF LIMITATIONS DATES:

June 1, 2021 (earliest) – October 5, 2021 (latest)

ELECTION CYCLE: 2016

COMPLAINANT:

Citizens for Responsibility and Ethics in
Washington

RESPONDENTS:

Greitens for Missouri
American Policy Coalition, Inc.
SEALs for Truth and Nicholas Britt in his official
capacity as treasurer
Freedom Frontier
LG PAC and Richard Monsees in his official
capacity as treasurer
Eric R. Greitens
Michael Hafner
Nicholas Ayers
Monu Joseph
Austin Chambers
Target Enterprises, LLC
C5 Creative Consulting, Inc.

RELEVANT AUTHORITY:

52 U.S.C. § 30104

52 U.S.C. § 30122

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that unknown persons made \$6.37 million in contributions to two federal independent expenditure-only political committees (“IEOPCs”),

1 Seals for Truth and Nicholas Britt in his official capacity as treasurer (“SFT”) and LG PAC and
2 Richard Monsees in his official capacity as treasurer (“LG PAC”), without publicly disclosing
3 their identities, by using two 501(c)(4) nonprofit organizations (“501(c)(4)s”), American Policy
4 Coalition, Inc. (“APC”) and Freedom Frontier, as intermediaries to conceal the true sources of
5 the contributions. The IEOPCs allegedly then used these funds to make a donation and
6 disbursements supporting Eric Greitens’s 2016 Missouri gubernatorial campaign, Greitens for
7 Missouri.

8 Neither SFT nor LG PAC — the recipient IEOPCs — filed a Response to the Complaint.
9 APC and Freedom Frontier — the 501(c)(4)s allegedly used as conduits — contend that the
10 allegations are unsupported by the record, but they do not specifically rebut the alleged facts.
11 They also argue that even if, *arguendo*, the allegations were true, the activity at issue did not
12 result in any federal contributions or expenditures because the funds were provided to the
13 IEOPCs with the intent to influence a state, rather than a federal, election. Greitens did not file a
14 Response, but his nonfederal committee, Greitens for Missouri, and various individuals allegedly
15 associated with that committee, including consultant Nick Ayers, campaign manager Austin
16 Chambers, and donor Monu Joseph, contend that the Complaint raises no credible allegations
17 that they violated the law in connection with these alleged conduit contributions.

18 As explained below, we recommend that the Commission find reason to believe that
19 unknown persons, APC, Freedom Frontier, SFT, and LG PAC violated 52 U.S.C. § 30122 based
20 on their respective conduct pertaining to the alleged contributions in the name of another; find
21 reason to believe that SFT and LG PAC violated 52 U.S.C. § 30104(b) by failing to report the
22 true sources of these contributions; and authorize the use of compulsory process. We also

recommend that the Commission take no action at this time as to the remaining Respondents, pending an investigation.

II. FACTS

A. Background

Eric R. Greitens was a candidate for Missouri governor during the 2016 election cycle.¹ Greitens's nonfederal campaign committee, Greitens for Missouri, registered with the Missouri Ethics Commission on February 24, 2015.²

APC was organized as a corporation in Kentucky in 2011, and is a tax-exempt organization under section 501(c)(4) of the Internal Revenue Code.³

SFT is an IEOPC that registered with the Commission on June 15, 2016.⁴ SFT reported receiving a \$2 million contribution from APC on July 18, 2016, and reported making a \$1,975,000 donation to Greitens for Missouri on that same day.⁵ SFT reported no other itemized receipts during the 2016 election cycle, and it has not reported receiving an itemized contribution

¹ The Missouri primary election was held on August 2, 2016, and the general election was held on November 8, 2016. Greitens won both elections and served as Governor of Missouri until he resigned on June 1, 2018.

² Greitens for Missouri, Statement of Comm. Org., Missouri Ethics Comm'n (Feb. 24, 2015), *available at* <https://www.mec.mo.gov/Scanned/PDF/2015/110894.pdf>.

³ APC, 2015 IRS Form 990, *available at* https://apps.irs.gov/pub/epostcard/cor/453213088_201609_9900_2018090415650699.pdf ("APC 990").

⁴ SFT Statement of Org. (June 15, 2016).

⁵ SFT 2016 Oct. Quarterly Report at 6, 8 (Oct. 14, 2016); *see* Greitens for Missouri, 2016 8 Days Before Primary Election Report at 20 (July 25, 2016), *available at* <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2Gatv0Pkn%2bUkdbB855Bp0yeiBbLMDMAB5lo c%2fEKCjLMP2kD9wjdB9F35%2fNJHivqBWH>. Aside from the contribution to Greitens for Missouri, SFT disbursed a total of \$24,938.50 during the 2016 election cycle, which it spent on legal fees, bank fees, and research consulting services — *i.e.*, operating expenditures. All Disbursements, SFT, 2015–2016, *available at* https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00619973&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

1 or making a disbursement since the 2016 election cycle.⁶ Greitens publicly acknowledged that
 2 he and SFT's treasurer, Britt, "went through Navy SEAL training" together.⁷ The Complaint
 3 contends that because SFT is a federal committee, it was not required to file a pre-primary
 4 election disclosure report in Missouri, and APC's \$2 million contribution to SFT was not
 5 disclosed until SFT filed its 2016 October Quarterly Report with the Commission — after the
 6 August 2, 2016, Missouri primary election.⁸

7 Freedom Frontier was organized as a corporation in Texas in 2011 and is also a tax-
 8 exempt organization under section 501(c)(4) of the Internal Revenue Code.⁹ A financial
 9 disclosure form submitted by Nick Ayers disclosed that Freedom Frontier paid Ayers through his
 10 consulting firm, C5 Creative Consulting, Inc., between 2015 and 2017, a period in which Ayers
 11 was also a consultant to Greitens's campaign.¹⁰ In addition, the two 501(c)(4)s, APC and
 12 Freedom Frontier, have several officers in common: John Jude served as treasurer for both

⁶ All Receipts, SFT, 2015–2016, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00619973&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁷ Second Amend. Compl. ¶ 46 (Nov. 20, 2018) (hereinafter, "Compl.") (citing Lucas Geisler, *Missouri Governor Candidate Addresses \$1.9M Donation*, KMIZ ABC 17 NEWS (Oct. 22, 2016), *available at* <https://www.abc17news.com/news/governor-candidate-discuss-19-million-donation/129452585>).

⁸ Compl. ¶ 34.

⁹ Freedom Frontier, 2016 IRS Form 990, *available at* https://apps.irs.gov/pub/epostcard/cor/451582354_201612_990O_2018082215608722.pdf ("Freedom Frontier 990").

¹⁰ Compl. ¶ 43 (citing Executive Branch Personnel Public Financial Disclosure Report, James N. Ayers, Part 4, Line 18 (Oct. 18, 2017), *available at* <https://assets.documentcloud.org/documents/4326994/Nick-Ayers-278.pdf>). Ayers filed this disclosure in connection with his appointment as Chief of Staff to the Vice President on July 26, 2017. The reporting period for sources of compensation includes the preceding two calendar years, which means that Ayers was paid by Freedom Frontier between January 1, 2015, and the date of his appointment, July 26, 2017.

501(c)(4)s, and Jim Robey served as APC's Chairman/President and Freedom Frontier's Secretary.¹¹

LG PAC is an IEOPC that registered with the Commission on May 16, 2016.¹² LG PAC reported receiving an aggregate total of \$4.395 million in contributions from Freedom Frontier during the 2016 election cycle.¹³ LG PAC reported no other itemized receipts during the 2016 election cycle,¹⁴ and it has not reported receiving any other contributions since the 2016 election cycle. LG PAC reported spending \$4.36 million during the 2016 election cycle for disbursements whose purpose it disclosed as "Media Buy for State Race," "Media Buy," or "Media Production for State Race."¹⁵ Moreover, LG PAC's treasurer, Richard "Hank" Monsees, was photographed speaking to Greitens and making phone calls for the campaign at a Greitens for Missouri campaign event held at one of the campaign's offices.¹⁶

¹¹ Compl. ¶ 47 (citing Freedom Frontier 990 at Part VII, Section A, Lines 1 and 3; APC 990 at Part VII, Schedule A, Lines 2 and 3).

¹² LG PAC, Statement of Org. (May 16, 2016).

¹³ Specifically, LG PAC reported receiving the following contributions from Freedom Frontier: \$1.5 million (June 1, 2016); \$300,000 (June 22, 2016); \$500,000 (June 29, 2016); \$250,000 (July 7, 2016); \$1,005,000 (July 13, 2016); \$210,000 (July 20, 2016); \$155,000 (July 28, 2016); \$450,000 (July 28, 2016); \$25,000 (Oct. 5, 2016). *See* LG PAC 2016 July Quarterly Rpt. at 6 (July 15, 2016); LG PAC Oct. Quarterly Rpt. at 6–7 (Oct. 14, 2016); LG PAC 12-Day Pre-General Election Rpt. at 6 (Oct. 27, 2016).

¹⁴ All Receipts, LG PAC, 2015–2016, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00617340&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

¹⁵ Specifically, LG PAC reported making the following such disbursements during the 2016 election cycle: \$964,964 to Main Street Media Group ("MSMG") on June 2, 2016; \$375,552.50 to MSMG on June 15, 2016; \$414,681.50 to MSMG on June 23, 2016; \$459,336.50 to MSMG on June 30, 2016; \$301,110 to MSMG on July 7, 2016; \$1,003,623 to MSMG on July 14, 2016; \$200,550 to MSMG on July 20, 2016; \$30,500 to Outlaw Media on July 25, 2016; \$150,110 to MSMG on July 28, 2016; \$11,000 to Outlaw Media on July 29, 2016; and \$450,400 to MSMG on July 29, 2016. *See* LG PAC 2016 July Quarterly Rpt. at 7–8 (July 15, 2016); LG PAC Oct. Quarterly Rpt. at 11–13 (Oct. 14, 2016). LG PAC's only other disbursements during the 2016 cycle were \$32,969.50 for bank and legal fees — *i.e.*, operating expenditures.

¹⁶ Compl. ¶ 45 (citing Micheal Mahoney, *Man Tied to Anti-Brunner Ad Appears at Event with Brunner Rival*, KMBC ABC 9 NEWS (June 17, 2016), *available at* <https://www.kmbc.com/article/man-tied-to-anti-brunner-ad-appears-at-event-with-brunner-rival/3588295> (including a photograph of Monsees talking to Greitens at the event);

The Complaint contends that if LG PAC had been registered as a state committee in Missouri, it would have been required to publicly disclose which Missouri candidates its disbursements supported or opposed, but because LG PAC is registered as a federal committee and made no independent expenditures relating to a federal candidate, it was not required to make any such disclosure.¹⁷ Moreover, the Complaint also contends that because LG PAC is a federal, rather than a state, political committee, it was not required to file a pre-primary election report in Missouri, and thus at the time of the August 2, 2016, primary election in Missouri, it had publicly disclosed in its Commission reports \$2.3 million in contributions — or approximately only 52% of its total receipts — and \$2,214,533 in media disbursements — or approximately only 50% of its total media-related disbursements.¹⁸

B. Missouri State Investigation

The Complaint cites and relies on the investigative work of the Missouri House of Representatives Special Investigative Committee on Oversight (“SICO”),¹⁹ which investigated

Tim Curtis, *New Information Links LG PAC and Greitens*, MISSOURI TIMES (June 18, 2016), available at <https://the.missouritimes.com/30720/new-information-links-lg-pac-greitens>).

¹⁷ Compl. ¶ 37.

¹⁸ See Compl. ¶¶ 34, 37; LG PAC 2016 July Quarterly Rpt. at 6–8 (July 15, 2016). If LG PAC’s activity had started on or after July 1, 2016, it would not have been required to disclose any of its receipts or disbursements prior to the August 2, 2016, Missouri primary election.

¹⁹ SICO was established on February 27, 2018, to investigate a number of other allegations made against Greitens, including allegations of blackmail and the misuse of a donor list owned by a charitable group that Greitens founded. SICO ceased investigating Greitens for lack of jurisdiction when he resigned the office of Governor on June 1, 2018, but it issued a final report of its findings on December 31, 2018. See Final Report of the Special Investigative Committee on Oversight, In Re: Governor Eric R. Greitens, available at <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Final%20Report%20and%20Appendix%20A.pdf> (Dec. 31, 2018). Based on the information that SICO obtained through its investigation, its Chair, Rep. Jay Barnes, filed a complaint before the Missouri Ethics Commission (“MEC”) alleging a variety of state campaign finance violations against Greitens for Missouri. See “Complaint Against Greitens for Missouri, and A New Missouri, Inc., For Violations of Missouri Campaign Finance Law,” (July 10, 2018), available at <https://assets.documentcloud.org/documents/4594091/071018-Complaint-Against-Greitens-for-Missouri.pdf> (“SICO Compl.”). That complaint appears to be pending before the MEC.

1 allegations that Greitens directed his political consultants to “have conversations with donors
 2 who intended to raise significant amounts of money and conceal the . . . identity of those
 3 donors.”²⁰ One of those consultants, Michael Hafner, represented that Greitens connected him
 4 with donors who discussed establishing nonprofit entities “to accept bundled contributions while
 5 concealing the identity of the donors.”²¹ According to Hafner, one such donor, Monu Joseph,
 6 “wanted to discuss . . . how the campaign was going to bundle contributions and conceal the
 7 identity of donors,” and asked about using nonprofit organizations or 501(c)(4)s for that
 8 purpose.²²

²⁰ Compl. ¶ 24 (citing Transcript of Testimony by Michael Hafner, Missouri House of Representatives Special Investigative Committee on Oversight at 40:22-25 (Mar. 14, 2018), *available at* <https://house.mo.gov/Bill/tracking/bills181/commit/rpt1840/Hafner,%20Michael%20Transcript.pdf> (“Hafner Testimony”)). Hafner asserts that he stopped working for Greitens in March 2015 to work for one of his opponents in the primary, John Brunner, when it became clear that Greitens would pursue the Republican Party nomination for governor, rather than a lower office such as lieutenant governor. He maintained, however, that the separation “was as amicable [a] separation as it could have been.” Hafner Testimony at 46:9-22.

²¹ Hearing Video of Michael Hafner Before the Missouri House of Representatives Special Investigative Committee on Oversight at 1:53:57 – 1:54:20 (May 29, 2018), *available at* http://mohouse.granicus.com/Media/Player.php?view_id=1&clip_id=758 (“Hafner Video”). Hafner testified that he believed concealing donors was part of the Greitens campaign’s strategy from an early stage, and that the campaign continued carrying out efforts to conceal donors after he left, contrary to Greitens’s pledge to run a “clean” and “fully transparent” campaign. Hafner Testimony at 45:1-7; *see* Compl. ¶ 22. Hafner asserted that he “had conversations with people associated with [Greitens] in January and February and March [2015] when I was employed and working out of that office that I knew[,] that I was led to believe that they were planning . . . on concealing donors in some way or having people associated with . . . their campaign reach out and coordinate donors who would be operating to the contrary of what Mr. Greitens told [the radio host] on his show.” Hafner Testimony at 115:23 and 116:3-12. Hafner also explained that efforts to conceal donors might work as “a group of people that didn’t want to disclose who they were” to “individually or through their companies [] give directly to a certain entity like . . . a freedom group.” Hafner Testimony at 62:22-25, 63:1-13, 63:14-15. Hafner also explained that from “a candidate’s perspective[,] . . . they don’t want to be seen as being purchased by a particular donor if they’re giving mass amounts of money” and that donors generally “don’t want to be seen as influencing a certain candidate [because] [t]hey might have business before the state[, or] [t]here might be a legitimate conflict [of interest].” Hafner Testimony at 48:7-18.

²² Compl. ¶ 24 (citing Hafner Testimony at 41:9-11 and Hafner Video at 1:58:40 – 1:59:35). Hafner said that Joseph knew Greitens from their time at Oxford University, and that Joseph told him that other friends from Oxford, some of whom might be foreign nationals, would also be interested in contributing to Greitens’s campaign. Hafner Testimony at 44:8-13. Hafner also said that he believed Joseph would be “a major connector and bundler for the campaign” and that Joseph “wanted to know if there were avenues set up where, that were nonprofits or C4s, that they could bring money in and not disclose the source of those contributions.” Hafner Video at 1:58:40 – 1:59:35 (cited in Compl. ¶ 24).

1 The Complaint cites additional information uncovered by SICO's investigation that
 2 suggests Greitens for Missouri attempted to conceal donors using 501(c)(4)s. SICO obtained an
 3 email conversation between Greitens for Missouri's campaign manager, Austin Chambers, its
 4 finance director, Meredith Gibbons, and Greitens's personal assistant, Krystal Taylor, in which
 5 Taylor wrote on November 17, 2015: "[Redacted] were donors to [Greitens-founded charity]
 6 The Mission Continues (I believe or maybe they were just prospects). [Redacted] Eric's good
 7 friend is meeting with them on Sunday. I know they are Democrats, but they're Jewish. Not
 8 sure if they give at all to republican [sic] candidates." Chambers responded: "If they want to
 9 give, C4 would probably be better so that they don't appear on our reports."²³

10 Other emails that SICO obtained suggest that Greitens's agents may have used 501(c)(4)s
 11 to funnel money to the campaign from people in the financial services industry, whom Hafner
 12 testified are "sometimes referred to as restricted donors due to Securities and Exchange
 13 Commission regulations."²⁴ In a December 4, 2015, email exchange, Gibbons wrote to Nick
 14 Ayers, a consultant to Greitens for Missouri, "[T]here is a restricted donor that we'd like for you
 15 to reach out to when you have time. I can explain more over the phone." Ayers responded,
 16 "Will buzz you soon re: restricted donor."²⁵ In another email from June 2016, "an early
 17 supporter and fundraiser of Greitens' emailed Meredith Gibbons" regarding a donor that the

²³ Compl. ¶ 29 (citing SICO Compl. ¶ 19). Hafner explained that Greitens, who sought the Republican nomination for Governor, had few contacts among traditional Republican operatives, which posed a potential fundraising problem for him and an optics problems for his supporters, some of whom did not typically support Republican candidates: "[H]e had built relationships with a lot of Democratic donors. Everything that we had heard up until the time I started working with Mr. Greitens was that he was a solid Democrat. . . . The running joke . . . was that [Greitens] didn't have two sentences where he could tell you why he was Republican. That's a major issue when you're going out to solicit donors[.]" Hafner Testimony at 29:14-25 and 30:1-2.

²⁴ Compl. ¶ 25 (citing Hafner Video at 1:08:16).

²⁵ SICO Compl. ¶ 20.

1 supporter believed could be “restricted” from donating to Greitens’s campaign: “Eric absolutely
 2 can call him [redacted] as he’s a great guy [redacted] but due to compliance reasons, I’m pretty
 3 sure he’s not allowed to give[.] [Redacted] managed money for the state of Missouri. . . . Eric
 4 can mention the 501(c)(4) if applicable, but no idea how [redacted] will react to that.”²⁶

5 **C. The Complaint and Responses**

6 Based on publicly available sources and the information provided by SICO’s
 7 investigation, the Complaint alleges that unknown individuals made, APC knowingly
 8 transmitted, and SFT knowingly accepted a \$2 million contribution in the name of another on
 9 July 18, 2016, thereby violating 52 U.S.C. § 30122, and that SFT then used those funds to make
 10 a \$1.975 million donation, that same day, to Greitens for Missouri.²⁷ The Complaint further
 11 alleges that unknown individuals made, Freedom Frontier knowingly transmitted, and LG PAC
 12 knowingly accepted \$4.37 million in contributions made in the name of another between June 1,
 13 2016, and July 29, 2016, thereby violating 52 U.S.C. § 30122, and that LG PAC, in turn, used
 14 those funds to make \$4.361 million in nonfederal media disbursements over the same time
 15 period, which led up to the August 2, 2016, Missouri gubernatorial primary.²⁸ In addition, the
 16 Complaint alleges that both SFT and LG PAC failed to properly report this activity in their
 17 disclosure reports filed with the Commission.²⁹

²⁶ SICO Compl. ¶ 21 (cited in Compl. ¶ 29).

²⁷ Compl. ¶¶ 53–54, 62–63, 68.

²⁸ *Id.* ¶¶ 56–57, 64–65, 69.

²⁹ *Id.* ¶¶ 55, 58.

Neither SFT nor LG PAC filed a Response to the Complaint. Both APC and Freedom Frontier filed Responses arguing that the allegations raised in the Complaint are unsupported by the record, and, even if the allegations were true, the activity did not result in any federal contributions or expenditures because the funds were provided with the intent of influencing a state, rather than a federal, election.³⁰ Greitens for Missouri, Ayers, Chambers, and Joseph each filed a Response denying that their alleged conduct violated the law, and Joseph provided a sworn affidavit acknowledging that he made donations to Greitens's campaign from personal and business accounts, but denying that he solicited prohibited contributions.³¹

III. LEGAL ANALYSIS

A. Contributions in the Name of Another

1. No Person May Provide Another With Funds to Make a Contribution

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”³² The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”³³ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or

³⁰ APC Resp. at 2 (Oct. 4, 2018); Freedom Frontier Resp. at 2 (Oct. 4, 2018).

³¹ Greitens for Missouri Resp. at 1 (Sept. 11, 2018); Nick Ayers Resp. at 1 (Aug. 9, 2018); Austin Chambers Resp. at 1 (Oct. 4, 2018); Monu Joseph Resp. at 1 (Oct. 10, 2018).

³² 52 U.S.C. § 30101(8)(A).

³³ *Id.* § 30101(11); 11 C.F.R. § 100.10.

1 knowingly accepting such a contribution.³⁴ The Commission has included in its regulations
 2 illustrations of activities that constitute making a contribution in the name of another:

- 3 (i) Giving money or anything of value, all or part of which was provided to
 4 the contributor by another person (the true contributor) without disclosing
 5 the source of money or the thing of value to the recipient candidate or
 6 committee at the time the contribution is made; or
- 7 (ii) Making a contribution of money or anything of value and attributing as the
 8 source of the money or thing of value another person when in fact the
 9 contributor is the source.³⁵

10 The requirement that a contribution be made in the name of its true source promotes
 11 Congress's objective of ensuring the complete and accurate disclosure by candidates and
 12 committees of the political contributions they receive.³⁶ Courts therefore have uniformly
 13 rejected the assertion that "only the person who actually transmits funds . . . makes the
 14 contribution,"³⁷ recognizing that "it is implausible that Congress, in seeking to promote
 15 transparency, would have understood the relevant contributor to be [an] intermediary who
 16 merely transmitted the campaign gift."³⁸ Consequently, both the Act and the Commission's
 17 implementing regulations provide that a person who furnishes another with funds for the purpose

³⁴ 52 U.S.C. § 30122.

³⁵ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³⁶ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain." (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³⁷ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁸ *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

1 of contributing to a candidate or committee “makes” the resulting contribution.³⁹ This is true
 2 whether funds are advanced to another person to make a contribution in that person’s name or
 3 promised as reimbursement of a solicited contribution.⁴⁰ Because the concern of the law is the
 4 true source from which a contribution to a candidate or committee originates, we look to the
 5 structure of the transaction itself and the arrangement between the parties to determine who, in
 6 fact, “made” a given contribution.

7 2. There is Reason to Believe that Unknown Persons Made, APC Knowingly
 8 Permitted Its Name to Be Used to Effect, and SFT Knowingly Accepted, a
 9 Contribution in the Name of Another

10 The available information supports a reason to believe finding that unknown persons
 11 made a contribution in the name of another to an IEOPC, SFT, through a 501(c)(4), APC, thus
 12 concealing their identities from the public, that APC knowingly permitted its name to be used to
 13 effect that contribution, and that SFT knowingly accepted this contribution in the name of
 14 another. Specifically, the information provided by Michael Hafner to SICO indicates that
 15 between January and March of 2015, Greitens asked Hafner to speak to donors and fundraisers,
 16 including Joseph, who discussed ways to provide funds to Greitens’s campaign without
 17 disclosing the identities of the donors.⁴¹ Hafner recounted that he discussed funneling money

³⁹ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

⁴⁰ *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

⁴¹ See *supra* notes 20–21 and associated text.

1 through 501(c)(4)s to accomplish that goal, and that potential donors to Greitens's campaign may
2 have had personal reasons to make donations without disclosing their identities or were
3 themselves legally precluded from making donations to Greitens.⁴² Emails also indicate that
4 Greitens's agents Austin Chambers, Meredith Gibbons, Krystal Taylor, and Nick Ayers appear
5 to have discussed soliciting restricted donors or proposing to use 501(c)(4)s to obtain campaign
6 donations without publicly disclosing the donors' identities.⁴³ There is no information
7 indicating, and Respondents do not assert, that this approach was rejected or discontinued at any
8 point before SFT made a contribution to Greitens's campaign using funds nominally provided to
9 it by a 501(c)(4), in exactly the manner described by Hafner.

10 The available information also specifically links SFT to Greitens, who acknowledged that
11 he went through Navy SEAL training with SFT's treasurer, Nicholas Britt.⁴⁴ SFT was formed
12 on June 15, 2016, approximately four weeks before it received a \$2 million contribution from
13 APC on July 18, 2016, and SFT made a \$1.975 donation to Greitens for Missouri the same day.
14 SFT never received any other itemized contributions, *i.e.*, contributions in excess of \$200, and its
15 only other disbursements were \$24,938.50 in operating expenses for bank and legal fees —
16 virtually the exact amount of the difference between the \$2 million that SFT received from APC
17 and the \$1.975 million donation it made to Greitens's campaign. APC's contribution of others'
18 funds to a federal committee also allowed APC to delay the public disclosure of its name until
19 after the August 2, 2016, gubernatorial primary election because, unlike state outside groups,
20 SFT, due to its status as a federal committee, was apparently not required to file a pre-primary

⁴² See *supra* notes 22–24 and associated text.

⁴³ See *supra* notes 25–26 and associated text.

⁴⁴ See *supra* note 7 and associated text.

election report with the Missouri Ethics Commission.⁴⁵ These facts, viewed as a whole, support a finding that APC was used to conceal the true identity (or identities) of the contributors providing funds that were deposited in SFT's account, which SFT subsequently reported as federal contributions in the disclosure reports it filed with the Commission.

Moreover, the information regarding the Greitens campaign's early effort to cultivate donors through 501(c)(4)s, and the personal connection between Greitens and SFT's treasurer, Britt, viewed in conjunction with the timing of SFT's receipt of funds from APC and its donation of funds to Greitens's campaign, indicates that SFT was aware of the scheme to funnel money to Greitens's campaign from donors through 501(c)(4)s to groups like SFT.

APC does not dispute the facts in the record but contends that they are too speculative to support the alleged violations of the Act, and, even if true, would not constitute a violation of the Act because the "underlying purpose of the donation" was "to influence an election for a *state*, rather than a *federal* office."⁴⁶ That argument, premised on the idea that SFT's donation to the Greitens committee was not a contribution under the Act, is misconceived. SFT registered with the Commission as a federal political committee and itself reported the receipt of \$2 million from APC as a federal contribution under the Act.⁴⁷ Moreover, SFT did not indicate in any of its

⁴⁵ Compl. ¶ 34 (citing Missouri Ethics Comm'n 2016 Campaign Finance Filing Requirements and Dates (June 2015), *available at* <https://www.mec.mo.gov/WebDocs/PDF/CampaignFinance/2016CampaignFinanceFilingCalendar.pdf>)).

⁴⁶ APC Resp. at 2 (emphasis in original).

⁴⁷ SFT Statement of Org. at 1; SFT 2016 Oct. Quarterly Report at 6, 8. If SFT had not registered with the Commission as a political committee beforehand, it may have been required to do so within ten days of receiving what both SFT, in its 2016 October Quarterly Report, and APC, in its Response in this matter, characterize as a contribution. *See* 52 U.S.C. §§ 30101(4)(A) (defining contribution threshold for "political committee"), 30103 (governing registration of political committees); APC Resp. at 2 (referring to "the contribution from APC to Seals for Truth").

disclosure reports — and does not assert in a Response to the Complaint — that the funds APC provided were earmarked for state activity or encumbered such that they were unavailable for federal activity; the record also does not indicate that SFT established a separate nonfederal account or deposited the funds it received from APC into such an account, which would be consistent with receiving funds earmarked or encumbered for nonfederal activity.⁴⁸ Indeed, there is no dispute that SFT used a portion of the funds it received, \$24,938.50, to pay its operating expenses as a federal political committee. As such, irrespective of the fact that SFT donated \$1.975 million of its receipts to a state committee on the same day it received them, the \$2 million that it received from APC was a “contribution” under the Act and the prohibition on contributions in the name of another applies.

SFT’s federal registration and its reported receipt of a \$2 million federal contribution from APC appear to have allowed it to avoid registering as a state political committee and reporting the APC donation under Missouri law, but, by the same token, SFT opted into the Act’s federal regulatory regime, under which the funds it received and reported as federal contributions are treated as such. APC errs in arguing, after the fact, that SFT’s federal

⁴⁸ Cf. 11 C.F.R. § 102.5(a)(1) (providing that any “organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 C.F.R. § 100.5” must either establish a separate federal account that is treated as a federal political committee subject to the Act’s prohibitions, limitations, and reporting requirements, or establish a political committee that receives only funds that comply with the Act); *see also* Campaign Guide for Nonconnected Committees at 81 (May 2008), *available at* <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> (advising nonconnected committees supporting nonfederal candidates that they may either accept only funds that comply with the Act’s limitations, prohibitions, and reporting requirements, or maintain a separate account for funds that do not comply with the Act). SFT does not appear to have established or maintained a separate nonfederal account, and thus all funds it received had to comply with the Act’s prohibitions, limitations, and reporting requirements, include the prohibition of contributions made in the name of another at 52 U.S.C. § 30122. If an investigation were to establish that the money SFT received from APC was earmarked or designated exclusively for state, rather than federal, activity, we would make appropriate recommendations in a subsequent General Counsel’s Report based on the record established by the investigation.

1 registration and reporting of the APC funds as a “contribution” were actions inconsistent with the
 2 actual use SFT made of those funds.

3 Because the record indicates that unknown persons actually provided funds for APC to
 4 contribute in its name to SFT, and that SFT knowingly accepted a contribution in the name of
 5 another, we recommend that the Commission find reason to believe that unknown persons, APC,
 6 and SFT violated 52 U.S.C. § 30122.

7 3. There is Reason to Believe that Unknown Persons Made, Freedom
 8 Frontier Knowingly Permitted Its Name to Be Used to Effect, and LG
 9 PAC Knowingly Accepted, Contributions in the Name of Another

10 The available information supports a reason to believe finding that unknown persons
 11 made contributions in the name of another to LG PAC, a federal IEOPC, while concealing their
 12 identities from the public by making the contributions through Freedom Frontier, a 501(c)(4),
 13 that Freedom Frontier knowingly permitted its name to be used to effect those contributions, and
 14 that LG PAC knowingly accepted contributions in the name of another. As discussed above, the
 15 available information regarding the alleged scheme involving APC and SFT, including the
 16 discussions between Hafner and potential donors, and the email discussions amongst Greitens for
 17 Missouri staffers, also indicates that unknown persons used Freedom Frontier to provide funds to
 18 LG PAC, which then used those funds to make media disbursements supporting Greitens's
 19 campaign.⁴⁹ LG PAC's treasurer, Monsees, also appeared at a Greitens campaign event, where
 20 he was photographed speaking with Greitens and making phone calls for the campaign.⁵⁰

⁴⁹ As noted above, *see supra* note 11 and associated text, the fact that the two 501(c)(4)s shared officers suggests that there was a combined effort to support Greitens's candidacy in two ways: a direct donation to, and media disbursements supporting, Greitens's campaign.

⁵⁰ *See supra* note 16 and associated text.

Greitens for Missouri campaign consultant Nick Ayers was also paid by Freedom Frontier through his company, C5 Creative Consulting, between 2015 and 2017.⁵¹

The circumstantial information in the record supports a finding that funds provided by unknown persons were transmitted to LG PAC through Freedom Frontier. LG PAC was formed on May 16, 2016, and it received the first of nine contributions from Freedom Frontier, totaling \$4.395 million, on June 1, 2016.⁵² Aside from Freedom Frontier's contributions, LG PAC never received any other itemized contributions. Between June 2, 2016, and July 29, 2016, LG PAC disbursed \$4,361,827.50 for media buys and media production.⁵³ It disbursed only \$26,658 for federal operating expenditures, such as bank fees and legal fees, and reported making no federal independent expenditures.⁵⁴ Because LG PAC registered as a federal committee rather than a Missouri state committee, it appears to have been able to pay for advertisements criticizing Greitens's opponents in the 2016 Missouri gubernatorial primary under a federal, rather than state, reporting schedule, such that approximately half of its state election-related financial activity was publicly disclosed only after the Missouri primary election was over.⁵⁵

The available information also supports a finding that LG PAC was aware of the scheme to funnel money to it through Freedom Frontier, which it used to make disbursements supporting

⁵¹ See *supra* note 10 and associated text.

⁵² See *supra* note 13 and associated text.

⁵³ LG PAC 2016 July Quarterly Rpt.; LG PAC 2016 Oct. Quarterly Rpt.

⁵⁴ See *supra* note 15 and associated text.

⁵⁵ See Compl. ¶¶ 38–39 (citing Jo Mannies, *You Can't Find Out Who Paid for New Attack Ads on Missouri TV. Laws Keep Them Secret*, ST. LOUIS PUBLIC RADIO (June 8, 2016), available at <https://news.stlpublicradio.org/post/you-cant-find-out-who-paid-new-attack-ads-missouri-tv-lawskeep-them-secret#stream/0>; *Missouri Leads Nation in TV Ad Spending for Governor's Race*, ASSOC. PRESS (Oct. 13, 2016), available at <https://www.apnews.com/2cf396caa6614c8389e8e97fa47ac928>; Tim Curtis, *LG PAC Sets Sights on Hanaway*, MISSOURI TIMES (July 19, 2016), available at <https://themissouritimes.com/31798/lg-pac-sets-sights-on-hanaway/>).

Greitens's campaign. Specifically, as discussed above, the information regarding the Greitens campaign's strategy of approaching donors to provide support for Greitens's campaign through 501(c)(4)s, the personal interaction at a campaign event between Greitens and LG PAC's treasurer, Monsees, and Ayers's connection to Freedom Frontier during the same period he was working for Greitens's campaign, considered in view of the timing of LG PAC's receipt of funds from Freedom Frontier and its use of those funds to make disbursements supporting Greitens's campaign, supports a finding that LG PAC accepted the contributions knowing that Freedom Frontier was not, in fact, the true contributor.

Viewed as a whole, the available record sufficiently indicates that unknown persons provided funds to Freedom Frontier for it to make contributions totaling \$4,395,000 to LG PAC, while concealing their identities from the public. Freedom Frontier does not dispute the facts in the record but contends that they are too speculative to support the alleged violations of the Act, and, even if true, would not constitute a violation of the Act because the ultimate purpose was to influence a state, rather than a federal, election.⁵⁶ As discussed above in regard to the analogous argument raised by APC, this argument is flawed. Like SFT, LG PAC registered as a federal political committee and itself reported the receipt of \$4.395 million from Freedom Frontier as federal contributions.⁵⁷ As discussed above with respect to SFT, the disclosure reports that LG PAC filed with the Commission do not indicate — and LG PAC does not assert in a Response to the Complaint — that any of the funds it received were deposited in a nonfederal account

⁵⁶ Freedom Frontier Resp. at 2.

⁵⁷ See LG PAC Statement of Org.; LG PAC 2016 July Quarterly Rpt. at 6; LG PAC Oct. Quarterly Rpt. at 6–7; LG PAC 12-Day Pre-General Election Rpt. at 6; *see also* Freedom Frontier Resp. at 2 (referring to “the contribution from Freedom Frontier to LG PAC”).

1 because they were earmarked for state activity or otherwise encumbered such that they could not
2 have been used in connection with a federal election,⁵⁸ and LG PAC used \$26,658 of the funds
3 Freedom Frontier provided on its federal operating expenditures. Accordingly, the funds that LG
4 PAC received from Freedom Frontier were “contributions” under the Act such that the Act’s
5 prohibition on contributions in the name of another applies, regardless of the fact that the IEOPC
6 made no federal independent expenditures and opted instead to use most of its funds to make
7 disbursements supporting a nonfederal candidate.

8 As discussed above with respect to SFT, LG PAC’s federal registration and its reported
9 receipt of federal contributions from Freedom Frontier appear to have allowed it to avoid
10 registering as a state political committee and reporting its activity under Missouri law, but, by the
11 same token, LG PAC opted into the Act’s federal regulatory regime, under which the funds it
12 received and reported as federal contributions are treated as such. Freedom Frontier errs in
13 arguing, after the fact, that LG PAC’s federal registration and reporting of the Freedom Frontier
14 funds as “contributions” were inconsistent with the actual use LG PAC made of the funds.

15 Because the record indicates that unknown persons provided funds for Freedom Frontier
16 to contribute in its name to LG PAC, and that LG PAC knowingly accepted these contributions
17 in the names of others, we recommend that the Commission find reason to believe that unknown
18 persons, Freedom Frontier, and LG PAC violated 52 U.S.C. § 30122.

⁵⁸ See *supra* note 48 and associated text. The record includes no information that LG PAC established a nonfederal account.

4. The Commission Should Take No Action at this Time as to the Remaining Respondents Pending an Investigation

The information available at this time is less clear regarding the potential liability of the remaining Respondents. Although Greitens, Chambers, Ayers, Joseph, and Hafner all appear to have had some involvement with or knowledge of a scheme in which persons would make donations or contributions in the name of another to benefit Greitens, the record does not support a finding that these Respondents' conduct violated 52 U.S.C. § 30122 or the Commission's regulations with respect to the contributions to SFT or LG PAC.⁵⁹ There is also insufficient information specifically linking Ayers's consulting company, C5 Creative Consulting, Inc., or Target Enterprises, LLC, a media firm that Ayers is alleged to have connections with, to the allegations relating to the contributions made to SFT or LG PAC.

With respect to Greitens for Missouri, the record contains substantial information that the committee accepted \$1.975 million in nonfederal donations made in the name of SFT, a federal IEOPC, knowing that those funds were actually provided by other individuals seeking to conceal their identities from the public. However, Greitens for Missouri is a nonfederal committee, and unless additional fact-finding establishes otherwise, its conduct in this matter would not appear to constitute a violation of the Act or otherwise be subject to the Commission's jurisdiction.

While the available information is insufficient to support a reason to believe finding as to these Respondents, an investigation of the circumstances surrounding the use of these 501(c)(4)s and IEOPCs in making contributions in the name of another will likely uncover additional

⁵⁹ Although several of the individual Respondents in this matter may have knowingly assisted the unknown true contributors in making the contributions at issue, a federal district court has enjoined the Commission from enforcing its implementing regulation at 11 C.F.R. § 110.4(b)(1)(iii), which provides that no person shall "knowingly help or assist" another "in making a contribution in the name of another." See *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1119 (D. Utah 2018).

relevant information. We therefore recommend taking no action at this time as to these Respondents pending an investigation.

B. Reporting Violations

Under the Act, political committees must file periodic disclosure reports with the Commission, which accurately disclose all receipts and disbursements, including by identifying each “person” that makes aggregate contributions in excess of \$200.⁶⁰ The Complaint alleges that SFT and LG PAC violated these provisions of the Act by falsely reporting receipts from APC and Freedom Frontier, respectively, when in fact other persons were the true contributors.⁶¹

With respect to the APC-SFT transaction, for the reasons discussed above, the record supports a reason to believe finding that unknown persons provided funds to SFT through APC, and that SFT knew that APC was not the true contributor.⁶² However, on its 2016 October Quarterly Report, SFT reported receiving a \$2 million federal contribution from APC on July 18, 2016.⁶³ The available information thus supports a finding that SFT failed to file an accurate 2016 October Quarterly Report when it disclosed APC, rather than the true contributor(s), as the source of the contribution.

With respect to the Freedom Frontier-LG PAC transaction, the available information supports a finding that unknown persons provided LG PAC with multiple contributions in the name of a 501(c)(4), Freedom Frontier, and that LG PAC knew that Freedom Frontier was not

⁶⁰ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

⁶¹ Compl. ¶¶ 55, 58.

⁶² *See supra* Section III.A.2.

⁶³ SFT 2016 Oct. Quarterly Rpt. at 6, 8.

1 the true source of these contributions.⁶⁴ Nevertheless, LG PAC reported receiving nine
2 contributions from Freedom Frontier, totaling \$4,395,000, between June 1, 2016, and October 5,
3 2016.⁶⁵ As such, the record supports a finding that LG PAC filed three inaccurate disclosure
4 reports with the Commission when it reported that Freedom Frontier made these nine
5 contributions when, in fact, other persons were the true contributor(s).

6 Accordingly, we recommend that the Commission find reason to believe that SFT and
7 LG PAC violated 52 U.S.C. § 30104(b).

8 **IV. INVESTIGATION**

9 Our investigation will attempt to establish the true source or sources of the funds
10 provided as part of both transactions — the \$2 million provided to SFT and the series of nine
11 contributions to LG PAC totaling \$4.395 million — as well as the relevant parties' knowledge at
12 the time regarding the identities of the true contributors. We will also seek to ascertain whether
13 some or all of the funds provided to the federal committees were earmarked or exclusively
14 designated for nonfederal activity and deposited into a nonfederal account. All of this
15 information will clarify both the alleged contributions in the name of another and the alleged
16 reporting violations. We will attempt to obtain this information voluntarily, but recommend that
17 the Commission authorize the use of compulsory process, as needed.

⁶⁴ See *supra* Section III.A.3.

⁶⁵ LG PAC 2016 July Quarterly Rpt. at 6; LG PAC Oct. Quarterly Rpt. at 6–7; LG PAC 12-Day Pre-General Election Rpt. at 6.

V. RECOMMENDATIONS

1. Find reason to believe that American Policy Coalition, Inc. violated 52 U.S.C. § 30122;
2. Find reason to believe that SEALs for Truth and Nicholas Britt in his official capacity as treasurer violated 52 U.S.C. § 30122;
3. Find reason to believe that Freedom Frontier violated 52 U.S.C. § 30122;
4. Find reason to believe that LG PAC and Richard Monsees in his official capacity as treasurer violated 52 U.S.C. § 30122;
5. Find reason to believe that SEALs for Truth and Nicholas Britt in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
6. Find reason to believe that LG PAC and Richard Monsees in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
7. Take no action at this time as to Greitens for Missouri,⁶⁶ Eric R. Greitens, Michael Hafner, Nicholas Ayers, Monu Joseph, Austin Chambers, Target Enterprises, LLC, and C5 Creative Consulting, Inc.;
8. Authorize the use of compulsory process; and

⁶⁶ Greitens for Missouri's treasurer of record, Jeff Stuermer, was initially notified of the complaint in his official capacity; upon further review of the complaint, that notification was rescinded. *See* Letter from Jeff S. Jordan, Asst. Gen. Counsel, FEC, to Counsel for Jeff Stuermer (Oct. 21, 2019).

9. Approve the appropriate letters.

Lisa J. Stevenson
 Acting General Counsel

November 22, 2019
 Date

Charles Kitcher
 Charles Kitcher
 Acting Associate General Counsel
 for Enforcement

Mark Shonkwiler
 Mark Shonkwiler
 Assistant General Counsel for Enforcement

Saurav Ghosh
 Saurav Ghosh
 Attorney

Attachments:

- 1) Factual and Legal Analysis – APC
- 2) Factual and Legal Analysis – SFT
- 3) Factual and Legal Analysis – Freedom Frontier
- 4) Factual and Legal Analysis – LG PAC

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: American Policy Coalition, Inc.

MUR 7422

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Citizens for Responsibility and Ethics in Washington. *See* 52 U.S.C. § 30109(a)(1). Complainant alleges that unknown persons made \$6.37 million in contributions to two federal independent expenditure-only political committees (“IEOPCs”), Seals for Truth and Nicholas Britt in his official capacity as treasurer (“SFT”) and LG PAC and Richard Monsees in his official capacity as treasurer (“LG PAC”), without publicly disclosing their identities, by using two 501(c)(4) nonprofit organizations (“501(c)(4)s”), American Policy Coalition, Inc. (“APC”) and Freedom Frontier, as intermediaries to conceal the true sources of the contributions. The IEOPCs allegedly then used these funds to make a donation and disbursements supporting Eric Greitens’s 2016 Missouri gubernatorial campaign, Greitens for Missouri (“GFM”).

APC — one of the 501(c)(4)s allegedly used as conduits — contends that the allegations are unsupported by the record, but it does not specifically rebut the alleged facts. APC also argues that even if, *arguendo*, the allegations were true, the activity at issue did not result in any federal contributions or expenditures because the funds were provided to the IEOPCs with the intent to influence a state, rather than a federal, election. Based on the available information and for the reasons explained below, the Commission finds reason to believe APC violated 52 U.S.C. § 30122.

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II. FACTUAL AND LEGAL ANALYSIS

A. Background

Eric R. Greitens was a candidate for Missouri governor during the 2016 election cycle.¹

Greitens's nonfederal campaign committee, Greitens for Missouri, registered with the Missouri Ethics Commission on February 24, 2015.²

APC was organized as a corporation in Kentucky in 2011, and is a tax-exempt organization under section 501(c)(4) of the Internal Revenue Code.³

SFT is an IEOPC that registered with the Commission on June 15, 2016.⁴ SFT reported receiving a \$2 million contribution from APC on July 18, 2016, and reported making a \$1,975,000 donation to GFM on that same day.⁵ SFT reported no other itemized receipts during the 2016 election cycle, and it has not reported receiving an itemized contribution or making a disbursement since the 2016 election cycle.⁶ Greitens publicly acknowledged that he and SFT's

¹ The Missouri primary election was held on August 2, 2016, and the general election was held on November 8, 2016. Greitens won both elections and served as Governor of Missouri until he resigned on June 1, 2018.

² Greitens for Missouri, Statement of Comm. Org., Missouri Ethics Comm'n (Feb. 24, 2015), *available at* <https://www.mec.mo.gov/Scanned/PDF/2015/110894.pdf>.

³ APC, 2015 IRS Form 990, *available at* https://apps.irs.gov/pub/epostcard/cor/453213088_201609_9900_2018090415650699.pdf ("APC 990").

⁴ SFT Statement of Org. (June 15, 2016).

⁵ SFT 2016 Oct. Quarterly Report at 6, 8 (Oct. 14, 2016); *see* GFM, 2016 8 Days Before Primary Election Report at 20 (July 25, 2016), *available at* <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKGI8cDcdGFsgJsm99XwPL2Gatv0Pkn%2bUkdbB855Bp0yeiBbLMDMAB5lo c%2fEKCjLMP2kD9wjdB9F35%2fNJHivqBWH>. Aside from the contribution to GFM, SFT disbursed a total of \$24,938.50 during the 2016 election cycle, which it spent on legal fees, bank fees, and research consulting services — *i.e.*, operating expenditures. All Disbursements, SFT, 2015-2016, *available at* https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00619973&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁶ All Receipts, SFT, 2015-2016, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_per iod=2016&data_type=processed&committee_id=C00619973&min_date=01%2F01%2F2015&max_date=12%2F31 %2F2016.

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1 treasurer, Britt, “went through Navy SEAL training” together.⁷ The Complaint contends that
2 because SFT is a federal committee, it was not required to file a pre-primary election disclosure
3 report in Missouri, and APC’s \$2 million contribution to SFT was not disclosed until SFT filed
4 its 2016 October Quarterly Report with the Commission — after the August 2, 2016, Missouri
5 primary election.⁸

6 **B. Missouri State Investigations**

7 The Complaint cites and relies on the investigative work of the Missouri Special
8 Investigative Committee on Oversight (“SICO”),⁹ which in 2018 investigated allegations that
9 Greitens directed his political consultants to “have conversations with donors who intended to
10 raise significant amounts of money and conceal the . . . identity of those donors.”¹⁰ One of those
11 consultants, Michael Hafner, represented that Greitens connected him with donors who discussed
12 establishing nonprofit entities “to accept bundled contributions while concealing the identity of

⁷ Second Amend. Compl. ¶ 46 (Nov. 20, 2018) (hereinafter, “Compl.”) (citing Lucas Geisler, *Missouri Governor Candidate Addresses \$1.9M Donation*, KMIZ ABC 17 NEWS (Oct. 22, 2016), available at <https://www.abc17news.com/news/governor-candidate-discuss-19-million-donation/129452585>).

⁸ Compl. ¶ 34.

⁹ SICO was established on February 27, 2018, to investigate a number of other allegations made against Greitens, including allegations of blackmail and the misuse of a donor list owned by a charitable group that Greitens founded. SICO ceased investigating Greitens for lack of jurisdiction when he resigned the office of Governor on June 1, 2018, but it issued a final report of its findings on December 31, 2018. *See* Final Report of the Special Investigative Committee on Oversight, In Re: Governor Eric R. Greitens, available at <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Final%20Report%20and%20Appendix%20A.pdf> (Dec. 31, 2018).

¹⁰ Compl. ¶ 24 (citing Transcript of Testimony by Michael Hafner, Missouri House of Representatives Special Investigative Committee on Oversight at 40:22-25 (Mar. 14, 2018), available at <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Hafner,%20Michael%20Transcript.pdf> (“Hafner Testimony”)). Hafner asserts that he stopped working for Greitens in March 2015 to work for one of his primary opponents, John Brunner, when it became clear that Greitens would pursue the Republican party nomination for governor, rather than a lower office such as lieutenant governor. He maintained, however, that the separation “was as amicable [a] separation as it could have been.” Hafner Testimony at 46:9-22.

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the donors.”¹¹ According to Hafner, one such donor, Monu Joseph, “wanted to discuss . . . how the campaign was going to bundle contributions and conceal the identity of donors,” and asked about using nonprofit organizations or 501(c)(4)s for that purpose.¹²

The Complaint cites additional information uncovered by SICO’s investigation that suggests GFM attempted to conceal donors using 501(c)(4)s. SICO obtained an email conversation between GFM’s campaign manager, Austin Chambers, its finance director, Meredith Gibbons, and Greitens’s personal assistant, Krystal Taylor, in which Taylor wrote on November 17, 2015: “[Redacted] were donors to [Greitens-founded charity] The Mission Continues (I believe or maybe they were just prospects). [Redacted] Eric’s good friend is meeting with them on Sunday. I know they are Democrats, but they’re Jewish. Not sure if they

¹¹ Hearing Video of Michael Hafner Before the Missouri House of Representatives Special Investigative Committee on Oversight at 1:53:57 – 1:54:20 (May 29, 2018), *available at* http://mohouse.granicus.com/MediaPlayer.php?view_id=1&clip_id=758 (“Hafner Video”). Hafner testified that he believed concealing donors was part of the Greitens campaign’s strategy from an early stage, and that the campaign continued carrying out efforts to conceal donors after he left, contrary to Greitens’s pledge to run a “clean” and “fully transparent” campaign. Hafner Testimony at 45:1-7; *see* Compl. ¶ 22. Hafner asserted that he “had conversations with people associated with [Greitens] in January and February and March [2015] when I was employed and working out of that office that I knew[,] that I was led to believe that they were planning . . . on concealing donors in some way or having people associated with . . . their campaign reach out and coordinate donors who would be operating to the contrary of what Mr. Greitens told [the radio host] on his show.” Hafner Testimony at 115:23 and 116:3-12. Hafner also explained that efforts to conceal donors might work as “a group of people that didn’t want to disclose who they were” to “individually or through their companies [] give directly to a certain entity like . . . a freedom group.” Hafner Testimony at 62:22-25, 63:1-13, 63:14-15. Hafner also explained that from “a candidate’s perspective[,] . . . they don’t want to be seen as being purchased by a particular donor if they’re giving mass amounts of money” and that donors generally “don’t want to be seen as influencing a certain candidate [because] [t]hey might have business before the state[, or] [t]here might be a legitimate conflict [of interest].” Hafner Testimony at 48:7-18.

¹² Compl. ¶ 24 (citing Hafner Testimony at 41:9-11 and Hafner Video at 1:58:40 – 1:59:35). Hafner said that Joseph knew Greitens from their time at Oxford University, and that Joseph told him that other friends from Oxford, some of whom might be foreign nationals, would also be interested in contributing to Greitens’s campaign. Hafner Testimony at 44:8-13. Hafner also said that he believed Joseph would be “a major connector and bundler for the campaign” and that Joseph “wanted to know if there were avenues set up where, that were nonprofits or C4s, that they could bring money in and not disclose the source of those contributions.” Hafner Video at 1:58:40 – 1:59:35 (cited in Compl. ¶ 24).

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1 give at all to republican [sic] candidates.” Chambers responded: “If they want to give, C4
2 would probably be better so that they don’t appear on our reports.”¹³

3 Other emails that SICO obtained suggest that Greitens’s agents may have used 501(c)(4)s
4 to funnel money to the campaign from people in the financial services industry, whom Hafner
5 testified are “sometimes referred to as restricted donors due to Securities and Exchange
6 Commission regulations.”¹⁴ In a December 4, 2015, email exchange, Gibbons wrote to Nick
7 Ayers, a consultant to GFM, “[T]here is a restricted donor that we’d like for you to reach out to
8 when you have time. I can explain more over the phone.” Ayers responded, “Will buzz you
9 soon re: restricted donor.”¹⁵ In another email from June 2016, “an early supporter and fundraiser
10 of Greitens’ emailed Meredith Gibbons” regarding a donor that the supporter believed could be
11 “restricted” from donating to Greitens’s campaign: “Eric absolutely can call him [redacted] as
12 he’s a great guy [redacted] but due to compliance reasons, I’m pretty sure he’s not allowed to
13 give[.] [Redacted] managed money for the state of Missouri. . . . Eric can mention the 501(c)(4)
14 if applicable, but no idea how [redacted] will react to that.”¹⁶

15 Based on the information that SICO obtained through its investigation, its Chairman filed
16 a complaint with the Missouri Ethics Commission (“MEC”) alleging a variety of state campaign

¹³ Compl. ¶ 29 (citing SICO Compl. ¶ 19). Hafner explained that Greitens, who sought the Republican nomination for Governor, had few contacts among traditional Republican operatives, which posed a potential fundraising problem for him and an optics problems for his supporters, some of whom did not typically support Republican candidates: “[H]e had built relationships with a lot of Democratic donors. Everything that we had heard up until the time I started working with Mr. Greitens was that he was a solid Democrat. . . . The running joke . . . was that [Greitens] didn’t have two sentences where he could tell you why he was Republican. That’s a major issue when you’re going out to solicit donors[.]” Hafner Testimony at 29:14-25 and 30:1-2.

¹⁴ Compl. ¶ 25 (citing Hafner Video at 1:08:16).

¹⁵ SICO Compl. ¶ 20.

¹⁶ SICO Compl. ¶ 21 (cited in Compl. ¶ 29).

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1 finance violations by GFM.¹⁷ The MEC conducted an extensive factual inquiry of the matter,
2 after which, on February 13, 2020, the MEC and GFM entered into a Joint Stipulation of Facts
3 and a Consent Order setting forth uncontested facts and violations of Missouri law by GFM.¹⁸

4 The MEC's findings, which are uncontested by GFM, indicate that in the spring of 2015,
5 GFM began working with political consultants Ayers and Chambers of C5 Consulting, Inc.
6 Chambers left C5 Consulting in October 2015 to become GFM's campaign manager.¹⁹
7 Sometime in the latter half of 2015, GFM's finance director, Gibbons, and a national fundraising
8 consultant composed a list of potential donors that either could not or elected not to contribute
9 directly to GFM. In 2015 and 2016, Ayers directed Gibbons to refer those potential donors to
10 Tom Norris, who worked for Freedom Frontier.²⁰ Ayers also emailed Gibbons, Chambers, and
11 the national fundraising consultant a list of "donors who have an interest in an outside group"
12 and suggested getting on a conference call with Norris and David Langdon, an APC officer, to
13 discuss talking points to use "as we direct people their way."²¹

¹⁷ See "Complaint Against Greitens for Missouri, and A New Missouri, Inc., For Violations of Missouri Campaign Finance Law," (July 10, 2018), *available at* <https://assets.documentcloud.org/documents/4594091/071018-Complaint-Against-Greitens-for-Missouri.pdf> ("SICO Compl.").

¹⁸ Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Ethics Comm'n, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law, *MEC v. Greitens for Missouri* (Feb. 13, 2020), <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1474.pdf> ("MEC Findings"). The MEC found that GFM failed to timely report in-kind contributions from LG PAC in the form of expenditures for communications supporting Greitens's candidacy. These expenditures by LG PAC were in-kind contributions to GFM, the MEC concluded, because they "were express advocacy or its functional equivalent," and were "done in cooperation with the GFM committee." *Id.* ¶¶ 66–67. GFM admitted this violation, for which it agreed to pay a \$98,417 civil penalty and amend the relevant state disclosure reports. *Id.* at 16.

¹⁹ MEC Findings ¶¶ 10–11.

²⁰ *Id.* ¶¶ 13–14.

²¹ *Id.* ¶ 15.

C. The Complaint and Response

Based on publicly available sources and the information provided by SICO's investigation, the Complaint alleges that unknown individuals made, APC knowingly transmitted, and SFT knowingly accepted a \$2 million contribution in the name of another on July 18, 2016, thereby violating 52 U.S.C. § 30122, and that SFT then used those funds to make a \$1.975 million donation, that same day, to GFM.²²

APC filed a response arguing that the allegations raised in the Complaint are unsupported by the record, and, even if the allegations were true, the activity did not result in any federal contributions or expenditures because the funds were provided with the intent of influencing a state, rather than a federal, election.²³

D. Legal Analysis

1. The Act Prohibits any Person From Making, Knowingly Permitting their Name to be Used to Effect, or Knowingly Accepting a Contribution in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”²⁴ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”²⁵ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or

²² Compl. ¶¶ 53-54, 62-63, 68.

²³ APC Resp. at 2 (Oct. 4, 2018).

²⁴ 52 U.S.C. § 30101(8)(A).

²⁵ *Id.* § 30101(11); 11 C.F.R. § 100.10.

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1 knowingly accepting such a contribution.²⁶ The Commission has included in its regulations
2 illustrations of activities that constitute making a contribution in the name of another:

- 3 (i) Giving money or anything of value, all or part of which was provided to
4 the contributor by another person (the true contributor) without disclosing
5 the source of money or the thing of value to the recipient candidate or
6 committee at the time the contribution is made; or
- 7 (ii) Making a contribution of money or anything of value and attributing as the
8 source of the money or thing of value another person when in fact the
9 contributor is the source.²⁷

10 The requirement that a contribution be made in the name of its true source promotes
11 Congress's objective of ensuring the complete and accurate disclosure by candidates and
12 committees of the political contributions they receive.²⁸ Courts therefore have uniformly
13 rejected the assertion that "only the person who actually transmits funds . . . makes the
14 contribution,"²⁹ recognizing that "it is implausible that Congress, in seeking to promote
15 transparency, would have understood the relevant contributor to be [an] intermediary who
16 merely transmitted the campaign gift."³⁰ Consequently, both the Act and the Commission's
17 implementing regulations provide that a person who furnishes another with funds for the purpose

²⁶ 52 U.S.C. § 30122.

²⁷ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

²⁸ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain." (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

²⁹ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁰ *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

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of contributing to a candidate or committee “makes” the resulting contribution.³¹ This is true whether funds are advanced to another person to make a contribution in that person’s name or promised as reimbursement of a solicited contribution.³² Because the concern of the law is the true source from which a contribution to a candidate or committee originates, we look to the structure of the transaction itself and the arrangement between the parties to determine who, in fact, “made” a given contribution.

2. There is Reason to Believe APC Knowingly Permitted Its Name to Be Used to Effect Contributions in the Name of Another

The available information supports a reason to believe finding that unknown persons made a contribution in the name of another to an IEOPC, SFT, through a 501(c)(4), APC, thus concealing their identities from the public, that APC knowingly permitted its name to be used to effect that contribution in the name of another. Specifically, the information provided by Michael Hafner to SICO indicates that between January and March of 2015, Greitens asked Hafner to speak to donors and fundraisers, including Joseph, who discussed ways to provide funds to Greitens’s campaign without disclosing the identities of the donors.³³ Hafner recounted that he discussed funneling money through 501(c)(4)s to accomplish that goal, and that potential

³¹ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

³² *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³³ See *supra* notes 10–11 and associated text.

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1 donors to Greitens’s campaign may have had personal reasons to make donations without
2 disclosing their identities or were themselves legally precluded from making donations to
3 Greitens.³⁴

4 Emails also indicate that Greitens’s agents Austin Chambers, Meredith Gibbons, Krystal
5 Taylor, and Nick Ayers appear to have discussed soliciting restricted donors and using
6 501(c)(4)s to obtain campaign donations without publicly disclosing the donors’ identities.³⁵
7 There is no information indicating, and Respondents do not assert, that this approach was
8 rejected or discontinued at any point before SFT made a contribution to Greitens’s campaign
9 using funds nominally provided to it by a 501(c)(4), in exactly the manner described by Hafner.
10 To the contrary, per the MEC’s findings, Gibbons apparently helped compose a list of potential
11 donors that either could not or elected not to contribute directly to GFM, and Ayers directed
12 Gibbons to refer those potential donors to Tom Norris, who worked for Freedom Frontier.³⁶
13 Ayers also emailed Gibbons and Chambers a list of “donors who have an interest in an outside
14 group” and suggested getting on a conference call with Norris and David Langdon, an APC
15 officer, to discuss talking points to use “as we direct people their way.”³⁷

16 The available information also specifically links SFT, the recipient of APC’s purported
17 contribution, to Greitens, who acknowledged that he went through Navy SEAL training with
18 SFT’s treasurer, Nicholas Britt.³⁸ SFT was formed on June 15, 2016, approximately four weeks

³⁴ See *supra* notes 12–14 and associated text.

³⁵ See *supra* notes 15–16 and associated text.

³⁶ MEC Findings ¶¶ 13–14.

³⁷ *Id.* ¶ 15.

³⁸ See *supra* note 7 and associated text.

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1 before it received a \$2 million contribution from APC on July 18, 2016, and SFT made a \$1.975
2 donation to GFM the same day. SFT never received any other itemized contributions, *i.e.*,
3 contributions in excess of \$200, and its only other disbursements were \$24,938.50 in operating
4 expenses for bank and legal fees — virtually the exact amount of the difference between the \$2
5 million that SFT received from APC and the \$1.975 million donation it made to Greitens's
6 campaign.

7 APC's contribution of others' funds to a federal committee also allowed APC to delay the
8 public disclosure of its name until after the August 2, 2016, gubernatorial primary election
9 because, unlike state outside groups, SFT, due to its status as a federal committee, was
10 apparently not required to file a pre-primary election report with the Missouri Ethics
11 Commission.³⁹ These facts, viewed as a whole, support a finding that APC permitted its name to
12 be used to conceal the true identity (or identities) of the contributors providing funds that were
13 deposited in SFT's account, which SFT subsequently reported as federal contributions from APC
14 in the disclosure reports it filed with the Commission.

15 Moreover, the information regarding the Greitens campaign's early efforts to cultivate
16 donors through 501(c)(4)s, information indicating that GFM staffers and consultants carried out
17 those efforts by directing donors to support Greitens's campaign through 501(c)(4)s, and the
18 personal connection between Greitens and SFT's treasurer, Britt, viewed in conjunction with the
19 timing of SFT's receipt of funds from APC and its donation of funds to Greitens's campaign,

³⁹ Compl. ¶ 34 (citing Missouri Ethics Comm'n 2016 Campaign Finance Filing Requirements and Dates (June 2015), *available at* <https://www.mec.mo.gov/WebDocs/PDF/CampaignFinance/2016CampaignFinanceFilingCalendar.pdf>)).

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1 indicates that SFT was aware of the scheme to funnel money to Greitens’s campaign from
2 donors through 501(c)(4)s to groups like SFT.

3 APC does not dispute the facts in the record but contends that they are too speculative to
4 support the alleged violations of the Act, and, even if true, would not constitute a violation of the
5 Act because the “underlying purpose of the donation” was “to influence an election for a *state*,
6 rather than a *federal* office.”⁴⁰ That argument, premised on the idea that SFT’s donation to GFM
7 was not a contribution under the Act, is misconceived. SFT registered with the Commission as a
8 federal political committee and itself reported the receipt of \$2 million from APC as a federal
9 contribution under the Act.⁴¹ Moreover, there is no information indicating that the funds APC
10 provided were earmarked for state activity or encumbered such that they were unavailable for
11 federal activity; the record also does not indicate that SFT established a separate nonfederal
12 account or deposited the funds it received from APC into such an account, which would be
13 consistent with receiving funds earmarked or encumbered for nonfederal activity.⁴² Indeed,

⁴⁰ APC Resp. at 2 (emphasis in original).

⁴¹ SFT Statement of Org. at 1; SFT 2016 Oct. Quarterly Report at 6, 8. If SFT had not registered with the Commission as a political committee beforehand, it may have been required to do so within ten days of receiving what both SFT, in its 2016 October Quarterly Report, and APC, in its Response in this matter, characterize as a contribution. See 52 U.S.C. §§ 30101(4)(A) (defining contribution threshold for “political committee”), 30103 (governing registration of political committees); APC Resp. at 2 (referring to “the contribution from APC to Seals for Truth”).

⁴² Cf. 11 C.F.R. § 102.5(a)(1) (providing that any “organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 C.F.R. § 100.5” must either establish a separate federal account that is treated as a federal political committee subject to the Act’s prohibitions, limitations, and reporting requirements, or establish a political committee that receives only funds that comply with the Act); see also Campaign Guide for Nonconnected Committees at 81 (May 2008), available at <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> (advising nonconnected committees supporting nonfederal candidates that they may either accept only funds that comply with the Act’s limitations, prohibitions, and reporting requirements, or maintain a separate account for funds that do not comply with the Act). SFT does not appear to have established or maintained a separate nonfederal account, and thus all funds it received had to comply with the Act’s prohibitions, limitations,

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1 there is no dispute that SFT used a portion of the funds it received, \$24,938.50, to pay its
2 operating expenses as a federal political committee. As such, irrespective of the fact that SFT
3 donated \$1.975 million of its receipts to a state committee on the same day it received them, the
4 \$2 million that it received from APC was a “contribution” under the Act and the prohibition on
5 contributions in the name of another applies.

6 SFT’s federal registration and its reported receipt of a \$2 million federal contribution
7 from APC appear to have allowed it to avoid registering as a state political committee and
8 reporting the APC donation under Missouri law, but, by the same token, SFT opted into the
9 Act’s federal regulatory regime, under which the funds it received and reported as federal
10 contributions are treated as such. APC errs in arguing, after the fact, that SFT’s federal
11 registration and reporting of the APC funds as a “contribution” were actions inconsistent with the
12 actual use SFT made of those funds.

13 Because the record indicates that Unknown Persons provided funds for APC to contribute
14 in its name to SFT, and that APC did knowingly contribute those funds in its own name to SFT,
15 the Commission finds reason to believe that APC violated 52 U.S.C. § 30122.

and reporting requirements, include the prohibition of contributions made in the name of another at 52 U.S.C.
§ 30122.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Freedom Frontier MUR 7422

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Citizens for Responsibility and Ethics in Washington. *See* 52 U.S.C. § 30109(a)(1). Complainant alleges that unknown persons made \$6.37 million in contributions to two federal independent expenditure-only political committees (“IEOPCs”), Seals for Truth and Nicholas Britt in his official capacity as treasurer (“SFT”) and LG PAC and Richard Monsees in his official capacity as treasurer (“LG PAC”), without publicly disclosing their identities, by using two 501(c)(4) nonprofit organizations (“501(c)(4)s”), American Policy Coalition, Inc. (“APC”) and Freedom Frontier, as intermediaries to conceal the true sources of the contributions. The IEOPCs allegedly then used these funds to make a donation and disbursements supporting Eric Greitens’s 2016 Missouri gubernatorial campaign, Greitens for Missouri (“GFM”).

Freedom Frontier — one of the 501(c)(4)s allegedly used as conduits — contends that the allegations are unsupported by the record, but it does not specifically rebut the alleged facts. Freedom Frontier also argues that even if, *arguendo*, the allegations were true, the activity at issue did not result in any federal contributions or expenditures because the funds were provided to the IEOPCs with the intent to influence a state, rather than a federal, election. Based on the available information and for the reasons explained below, the Commission finds reason to believe Freedom Frontier violated 52 U.S.C. § 30122.

II. FACTUAL AND LEGAL ANALYSIS**A. Background**

Eric R. Greitens was a candidate for Missouri governor during the 2016 election cycle.¹ Greitens's nonfederal campaign committee, Greitens for Missouri, registered with the Missouri Ethics Commission on February 24, 2015.²

Freedom Frontier was organized as a corporation in Texas in 2011 and is also a tax-exempt organization under section 501(c)(4) of the Internal Revenue Code.³ A financial disclosure form submitted by Nick Ayers disclosed that Freedom Frontier paid Ayers through his consulting firm, C5 Creative Consulting, Inc., between 2015 and 2017, a period in which Ayers was also a consultant to Greitens's campaign.⁴

LG PAC is an IEOPC that registered with the Commission on May 16, 2016.⁵ LG PAC reported receiving an aggregate total of \$4.395 million in contributions from Freedom Frontier during the 2016 election cycle.⁶ LG PAC reported no other itemized receipts during the 2016

¹ The Missouri primary election was held on August 2, 2016, and the general election was held on November 8, 2016. Greitens won both elections and served as Governor of Missouri until he resigned on June 1, 2018.

² Greitens for Missouri, Statement of Comm. Org., Missouri Ethics Comm'n (Feb. 24, 2015), *available at* <https://www.mec.mo.gov/Scanned/PDF/2015/110894.pdf>.

³ Freedom Frontier, 2016 IRS Form 990, *available at* https://apps.irs.gov/pub/epostcard/cor/451582354_201612_990O_2018082215608722.pdf ("Freedom Frontier 990").

⁴ Compl. ¶ 43 (citing Executive Branch Personnel Public Financial Disclosure Report, James N. Ayers, Part 4, Line 18 (Oct. 18, 2017), *available at* <https://assets.documentcloud.org/documents/4326994/Nick-Ayers-278.pdf>). Ayers filed this disclosure in connection with his appointment as Chief of Staff to the Vice President on July 26, 2017. The reporting period for sources of compensation includes the preceding two calendar years, which means that Ayers was paid by Freedom Frontier between January 1, 2015, and the date of his appointment, July 26, 2017.

⁵ LG PAC, Statement of Org. (May 16, 2016).

⁶ Specifically, LG PAC reported receiving the following contributions from Freedom Frontier: \$1.5 million (June 1, 2016); \$300,000 (June 22, 2016); \$500,000 (June 29, 2016); \$250,000 (July 7, 2016); \$1,005,000 (July 13, 2016); \$210,000 (July 20, 2016); \$155,000 (July 28, 2016); \$450,000 (July 28, 2016); \$25,000 (Oct. 5, 2016). *See* LG PAC 2016 July Quarterly Rpt. at 6 (July 15, 2016); LG PAC Oct. Quarterly Rpt. at 6-7 (Oct. 14, 2016); LG PAC 12-Day Pre-General Election Rpt. at 6 (Oct. 27, 2016).

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election cycle,⁷ and it has not reported receiving any other contributions since the 2016 election cycle. LG PAC reported spending \$4.36 million during the 2016 election cycle for disbursements whose purpose it disclosed as “Media Buy for State Race,” “Media Buy,” or “Media Production for State Race.”⁸ Moreover, LG PAC’s treasurer, Richard “Hank” Monsees, was photographed speaking to Greitens and making phone calls for the campaign at a GFM campaign event held at one of the campaign’s offices.⁹

The Complaint contends that if LG PAC had been registered as a state committee in Missouri, it would have been required to publicly disclose which Missouri candidates its disbursements supported or opposed, but because LG PAC is registered as a federal committee and made no independent expenditures relating to a federal candidate, it was not required to make any such disclosure.¹⁰ Moreover, the Complaint also contends that because LG PAC is a federal, rather than a state, political committee, it was not required to file a pre-primary election report in Missouri, and thus at the time of the August 2, 2016, primary election in Missouri, it

⁷ All Receipts, LG PAC, 2015-2016, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00617340&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁸ Specifically, LG PAC reported making the following such disbursements during the 2016 election cycle: \$964,964 to Main Street Media Group (“MSMG”) on June 2, 2016; \$375,552.50 to MSMG on June 15, 2016; \$414,681.50 to MSMG on June 23, 2016; \$459,336.50 to MSMG on June 30, 2016; \$301,110 to MSMG on July 7, 2016; \$1,003,623 to MSMG on July 14, 2016; \$200,550 to MSMG on July 20, 2016; \$30,500 to Outlaw Media on July 25, 2016; \$150,110 to MSMG on July 28, 2016; \$11,000 to Outlaw Media on July 29, 2016; and \$450,400 to MSMG on July 29, 2016. *See* LG PAC 2016 July Quarterly Rpt. at 7-8 (July 15, 2016); LG PAC Oct. Quarterly Rpt. at 11-13 (Oct. 14, 2016). LG PAC’s only other disbursements during the 2016 cycle were \$32,969.50 for bank and legal fees — *i.e.*, operating expenditures.

⁹ Compl. ¶ 45 (citing Micheal Mahoney, *Man Tied to Anti-Brunner Ad Appears at Event with Brunner Rival*, KMBC ABC 9 NEWS (June 17, 2016), *available at* <https://www.kmbc.com/article/man-tied-to-anti-brunner-ad-appears-at-event-with-brunner-rival/3588295> (including a photograph of Monsees talking to Greitens at the event); Tim Curtis, *New Information Links LG PAC and Greitens*, MISSOURI TIMES (June 18, 2016), *available at* <https://the.missouritimes.com/30720/new-information-links-lg-pac-greitens>).

¹⁰ Compl. ¶ 37.

1 had publicly disclosed in its Commission reports \$2.3 million in contributions — or
2 approximately only 52% of its total receipts — and \$2,214,533 in media disbursements — or
3 approximately only 50% of its total media-related disbursements.¹¹

4 **B. Missouri State Investigations**

5 The Complaint cites and relies on the investigative work of the Missouri Special
6 Investigative Committee on Oversight (“SICO”),¹² which in 2018 investigated allegations that
7 Greitens directed his political consultants to “have conversations with donors who intended to
8 raise significant amounts of money and conceal the . . . identity of those donors.”¹³ One of those
9 consultants, Michael Hafner, represented that Greitens connected him with donors who discussed
10 establishing nonprofit entities “to accept bundled contributions while concealing the identity of
11 the donors.”¹⁴ According to Hafner, one such donor, Monu Joseph, “wanted to discuss . . . how

¹¹ See Compl. ¶¶ 34, 37; LG PAC 2016 July Quarterly Rpt. at 6-8 (July 15, 2016). If LG PAC’s activity had started on or after July 1, 2016, it would not have been required to disclose any of its receipts or disbursements prior to the August 2, 2016, Missouri primary election.

¹² SICO was established on February 27, 2018, to investigate a number of other allegations made against Greitens, including allegations of blackmail and the misuse of a donor list owned by a charitable group that Greitens founded. SICO ceased investigating Greitens for lack of jurisdiction when he resigned the office of Governor on June 1, 2018, but it issued a final report of its findings on December 31, 2018. See Final Report of the Special Investigative Committee on Oversight, In Re: Governor Eric R. Greitens, *available at* <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Final%20Report%20and%20Appendix%20A.pdf> (Dec. 31, 2018).

¹³ Compl. ¶ 24 (citing Transcript of Testimony by Michael Hafner, Missouri House of Representatives Special Investigative Committee on Oversight at 40:22-25 (Mar. 14, 2018), *available at* <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Hafner,%20Michael%20Transcript.pdf> (“Hafner Testimony”)). Hafner asserts that he stopped working for Greitens in March 2015 to work for one of his primary opponents, John Brunner, when it became clear that Greitens would pursue the Republican party nomination for governor, rather than a lower office such as lieutenant governor. He maintained, however, that the separation “was as amicable [a] separation as it could have been.” Hafner Testimony at 46:9-22.

¹⁴ Hearing Video of Michael Hafner Before the Missouri House of Representatives Special Investigative Committee on Oversight at 1:53:57 – 1:54:20 (May 29, 2018), *available at* http://mohouse.granicus.com/MediaPlayer.php?view_id=1&clip_id=758 (“Hafner Video”). Hafner testified that he believed concealing donors was part of the Greitens campaign’s strategy from an early stage, and that the campaign continued carrying out efforts to conceal donors after he left, contrary to Greitens’s pledge to run a “clean” and “fully transparent” campaign. Hafner Testimony at 45:1-7; see Compl. ¶ 22. Hafner asserted that he “had conversations with people associated with [Greitens] in January and February and March [2015] when I was employed and working out of that office that I knew[,] that I was led to believe that they were planning . . . on concealing donors in some way or having people

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the campaign was going to bundle contributions and conceal the identity of donors,” and asked about using nonprofit organizations or 501(c)(4)s for that purpose.¹⁵

The Complaint cites additional information uncovered by SICO’s investigation that suggests GFM attempted to conceal donors using 501(c)(4)s. SICO obtained an email conversation between GFM’s campaign manager, Austin Chambers, its finance director, Meredith Gibbons, and Greitens’s personal assistant, Krystal Taylor, in which Taylor wrote on November 17, 2015: “[Redacted] were donors to [Greitens-founded charity] The Mission Continues (I believe or maybe they were just prospects). [Redacted] Eric’s good friend is meeting with them on Sunday. I know they are Democrats, but they’re Jewish. Not sure if they give at all to republican [sic] candidates.” Chambers responded: “If they want to give, C4 would probably be better so that they don’t appear on our reports.”¹⁶

associated with . . . their campaign reach out and coordinate donors who would be operating to the contrary of what Mr. Greitens told [the radio host] on his show.” Hafner Testimony at 115:23 and 116:3-12. Hafner also explained that efforts to conceal donors might work as “a group of people that didn’t want to disclose who they were” to “individually or through their companies [] give directly to a certain entity like . . . a freedom group.” Hafner Testimony at 62:22-25, 63:1-13, 63:14-15. Hafner also explained that from “a candidate’s perspective[,] . . . they don’t want to be seen as being purchased by a particular donor if they’re giving mass amounts of money” and that donors generally “don’t want to be seen as influencing a certain candidate [because] [t]hey might have business before the state[, or] [t]here might be a legitimate conflict [of interest].” Hafner Testimony at 48:7-18.

¹⁵ Compl. ¶ 24 (citing Hafner Testimony at 41:9-11 and Hafner Video at 1:58:40 – 1:59:35). Hafner said that Joseph knew Greitens from their time at Oxford University, and that Joseph told him that other friends from Oxford, some of whom might be foreign nationals, would also be interested in contributing to Greitens’s campaign. Hafner Testimony at 44:8-13. Hafner also said that he believed Joseph would be “a major connector and bundler for the campaign” and that Joseph “wanted to know if there were avenues set up where, that were nonprofits or C4s, that they could bring money in and not disclose the source of those contributions.” Hafner Video at 1:58:40 – 1:59:35 (cited in Compl. ¶ 24).

¹⁶ Compl. ¶ 29 (citing SICO Compl. ¶ 19). Hafner explained that Greitens, who sought the Republican nomination for Governor, had few contacts among traditional Republican operatives, which posed a potential fundraising problem for him and an optics problems for his supporters, some of whom did not typically support Republican candidates: “[H]e had built relationships with a lot of Democratic donors. Everything that we had heard up until the time I started working with Mr. Greitens was that he was a solid Democrat. . . . The running joke . . . was that [Greitens] didn’t have two sentences where he could tell you why he was Republican. That’s a major issue when you’re going out to solicit donors[.]” Hafner Testimony at 29:14-25 and 30:1-2.

Other emails that SICO obtained suggest that Greitens’s agents may have used 501(c)(4)s to funnel money to the campaign from people in the financial services industry, whom Hafner testified are “sometimes referred to as restricted donors due to Securities and Exchange Commission regulations.”¹⁷ In a December 4, 2015, email exchange, Gibbons wrote to Nick Ayers, a consultant to GFM, “[T]here is a restricted donor that we’d like for you to reach out to when you have time. I can explain more over the phone.” Ayers responded, “Will buzz you soon re: restricted donor.”¹⁸ In another email from June 2016, “an early supporter and fundraiser of Greitens’ emailed Meredith Gibbons” regarding a donor that the supporter believed could be “restricted” from donating to Greitens’s campaign: “Eric absolutely can call him [redacted] as he’s a great guy [redacted] but due to compliance reasons, I’m pretty sure he’s not allowed to give[.] [Redacted] managed money for the state of Missouri. . . . Eric can mention the 501(c)(4) if applicable, but no idea how [redacted] will react to that.”¹⁹

Based on the information that SICO obtained through its investigation, its Chairman filed a complaint with the Missouri Ethics Commission (“MEC”) alleging a variety of state campaign finance violations by GFM.²⁰ The MEC conducted an extensive factual inquiry of the matter, after which, on February 13, 2020, the MEC and GFM entered into a Joint Stipulation of Facts and a Consent Order setting forth uncontested facts and violations of Missouri law by GFM.²¹

¹⁷ Compl. ¶ 25 (citing Hafner Video at 1:08:16).

¹⁸ SICO Compl. ¶ 20.

¹⁹ SICO Compl. ¶ 21 (cited in Compl. ¶ 29).

²⁰ See “Complaint Against Greitens for Missouri, and A New Missouri, Inc., For Violations of Missouri Campaign Finance Law,” (July 10, 2018), *available at* <https://assets.documentcloud.org/documents/4594091/071018-Complaint-Against-Greitens-for-Missouri.pdf> (“SICO Compl.”).

²¹ Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Ethics Comm’n, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law, *MEC v. Greitens for Missouri* (Feb. 13, 2020), <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1474.pdf> (“MEC Findings”). The MEC found that GFM failed to timely

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The MEC’s findings, which are uncontested by GFM, indicate that in the spring of 2015, GFM began working with political consultants Ayers and Chambers of C5 Consulting, Inc. Chambers left C5 Consulting in October 2015 to become GFM’s campaign manager.²² Sometime in the latter half of 2015, GFM’s finance director, Gibbons, and a national fundraising consultant composed a list of potential donors that either could not or elected not to contribute directly to GFM. In 2015 and 2016, Ayers directed Gibbons to refer those potential donors to Tom Norris, who worked for Freedom Frontier.²³ Ayers also emailed Gibbons, Chambers, and the national fundraising consultant a list of “donors who have an interest in an outside group” and suggested getting on a conference call with Norris and David Langdon, an APC officer, to discuss talking points to use “as we direct people their way.”²⁴

The MEC’s findings also indicate that Ayers terminated C5 Consulting’s contract to work for GFM in March or April of 2016, but remained in contact with Chambers regarding the Greitens campaign.²⁵ When LG PAC started making disbursements supporting Greitens’s campaign with media buys, Chambers was alerted by one of GFM’s vendors via email, and Chambers responded, “This should be them then.” Later that day, he wrote, “Hoping this is NA.” The latter comment was, according to the uncontested MEC findings, a specific reference

report in-kind contributions from LG PAC in the form of expenditures for communications supporting Greitens’s candidacy. These expenditures by LG PAC were in-kind contributions to GFM, the MEC concluded, because they “were express advocacy or its functional equivalent,” and were “done in cooperation with the GFM committee.” *Id.* ¶¶ 66–67. GFM admitted this violation, for which it agreed to pay a \$98,417 civil penalty and amend the relevant state disclosure reports. *Id.* at 16.

²² MEC Findings ¶¶ 10–11.

²³ *Id.* ¶¶ 13–14.

²⁴ *Id.* ¶ 15.

²⁵ *Id.* ¶¶ 37–38.

1 to Nick Ayers.²⁶ The following day, another GFM vendor on the same email thread wrote
2 “Pretty boy to the rescue” This was also a reference to Ayers.²⁷

3 In July 2016, Ayers and Chambers had a phone call in which Chambers expressed
4 concern about the Springfield, Missouri, market. LG PAC subsequently disbursed \$98,417 for
5 advertisements in that market. On July 28, 2016, a GFM vendor alerted Chambers to the LG
6 PAC disbursements and Chambers replied, “Well at least he listened when I told him we were
7 worried about Brunner in Springfield.”²⁸

8 **C. The Complaint and Response**

9 Based on publicly available sources and the information provided by SICO’s
10 investigation, the Complaint alleges that unknown individuals made, Freedom Frontier
11 knowingly transmitted, and LG PAC knowingly accepted \$4.37 million in contributions made in
12 the name of another between June 1, 2016, and July 29, 2016, thereby violating 52 U.S.C.
13 § 30122, and that LG PAC, in turn, used those funds to make \$4.361 million in nonfederal media
14 disbursements over the same time period, which led up to the August 2, 2016, Missouri
15 gubernatorial primary.²⁹

16 Freedom Frontier filed a response arguing that the allegations raised in the Complaint are
17 unsupported by the record, and, even if the allegations were true, the activity did not result in any

²⁶ *Id.* ¶ 35.

²⁷ *Id.* ¶ 36.

²⁸ *Id.* ¶¶ 37–40.

²⁹ Compl. ¶¶ 56-57, 64-65, 69.

federal contributions or expenditures because the funds were provided with the intent of influencing a state, rather than a federal, election.³⁰

D. Legal Analysis

1. The Act Prohibits any Person From Making, Knowingly Permitting their Name to be Used to Effect, or Knowingly Accepting a Contribution in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”³¹ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”³² The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.³³ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.³⁴

³⁰ Freedom Frontier Resp. at 2 (Oct. 4, 2018).

³¹ 52 U.S.C. § 30101(8)(A).

³² *Id.* § 30101(11); 11 C.F.R. § 100.10.

³³ 52 U.S.C. § 30122.

³⁴ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

1 The requirement that a contribution be made in the name of its true source promotes
2 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
3 committees of the political contributions they receive.³⁵ Courts therefore have uniformly
4 rejected the assertion that “only the person who actually transmits funds . . . makes the
5 contribution,”³⁶ recognizing that “it is implausible that Congress, in seeking to promote
6 transparency, would have understood the relevant contributor to be [an] intermediary who
7 merely transmitted the campaign gift.”³⁷ Consequently, both the Act and the Commission’s
8 implementing regulations provide that a person who furnishes another with funds for the purpose
9 of contributing to a candidate or committee “makes” the resulting contribution.³⁸ This is true
10 whether funds are advanced to another person to make a contribution in that person’s name or
11 promised as reimbursement of a solicited contribution.³⁹ Because the concern of the law is the
12 true source from which a contribution to a candidate or committee originates, we look to the

³⁵ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³⁶ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁷ *O’Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

³⁸ *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

³⁹ *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 structure of the transaction itself and the arrangement between the parties to determine who, in
2 fact, “made” a given contribution.

3 2. There is Reason to Believe that Freedom Frontier Knowingly Permitted Its
4 Name to Be Used to Effect Contributions in the Name of Another

5 The available information supports a reason to believe finding that unknown persons
6 made contributions in the name of another to LG PAC, a federal IEOPC, while concealing their
7 identities from the public by making the contributions through Freedom Frontier, a 501(c)(4),
8 that Freedom Frontier knowingly permitted its name to be used to effect those contributions, and
9 that LG PAC knowingly accepted contributions in the name of another. The available
10 information, including discussions between Hafner and potential donors and email discussions
11 amongst GFM staffers, indicates that unknown persons used Freedom Frontier to provide funds
12 to LG PAC, which then used those funds to make media disbursements supporting Greitens’s
13 campaign. LG PAC’s treasurer, Monsees, also appeared at a Greitens campaign event, where he
14 was photographed speaking with Greitens and making phone calls for the campaign.⁴⁰ GFM
15 campaign consultant Nick Ayers was also paid by Freedom Frontier through his company, C5
16 Creative Consulting, between 2015 and 2017.⁴¹

17 In addition, Greitens’s agents Austin Chambers, Meredith Gibbons, Krystal Taylor, and
18 Nick Ayers appear to have discussed soliciting restricted donors and using 501(c)(4)s to obtain
19 campaign donations without publicly disclosing the donors’ identities.⁴² There is no information
20 indicating, and Respondents do not assert, that this approach was rejected or discontinued at any

⁴⁰ See *supra* note 9 and associated text.

⁴¹ See *supra* note 4 and associated text.

⁴² See *supra* notes 15–16 and associated text.

1 point before LG PAC began making disbursements supporting Greitens’s campaign using funds
2 nominally provided to it by a 501(c)(4), Freedom Frontier, in exactly the manner described by
3 Hafner. To the contrary, per the MEC’s findings, Gibbons apparently helped compose a list of
4 potential donors that either could not or elected not to contribute directly to GFM, and Ayers
5 directed Gibbons to refer those potential donors to Tom Norris, who worked for Freedom
6 Frontier.⁴³ Ayers also emailed Gibbons and Chambers a list of “donors who have an interest in
7 an outside group” and suggested getting on a conference call with Norris and David Langdon, an
8 APC officer, to discuss talking points to use “as we direct people their way.”⁴⁴

9 Moreover, Chambers and Ayers remained in communication regarding LG PAC’s
10 nonfederal activity, even after Chambers had left his consulting position to become GFM’s
11 campaign manager and Ayers had terminated his consulting contract with GFM.⁴⁵ Chambers’s
12 emails with GFM vendors indicate that he credited LG PAC’s activity — which was funded
13 exclusively with funds provided by Freedom Frontier — to efforts by Ayers; in one instance,
14 Chambers discussed concerns about the Springfield, Missouri, market with Ayers shortly before
15 LG PAC disbursed \$98,417 for advertisements in that market, and Chambers later credited
16 Ayers’s efforts for that activity.⁴⁶

17 The circumstances of the purported contributions further support the inference that
18 Freedom Frontier knowing permitted its name to be used to funnel contributions made by others
19 to LG PAC. LG PAC was formed on May 16, 2016, and it received the first of nine

⁴³ MEC Findings ¶¶ 13–14.

⁴⁴ *Id.* ¶ 15.

⁴⁵ *Id.* ¶¶ 37–38.

⁴⁶ *Id.* ¶¶ 37–40.

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contributions from Freedom Frontier, totaling \$4.395 million, on June 1, 2016.⁴⁷ Aside from Freedom Frontier's contributions, LG PAC never received any other itemized contributions. Between June 2, 2016, and July 29, 2016, LG PAC disbursed \$4,361,827.50 for media buys and media production.⁴⁸ It disbursed only \$26,658 for federal operating expenditures, such as bank fees and legal fees, and reported making no federal independent expenditures.⁴⁹ Because LG PAC registered as a federal committee rather than a Missouri state committee, it appears to have been able to pay for advertisements criticizing Greitens's opponents in the 2016 Missouri gubernatorial primary under a federal, rather than state, reporting schedule, such that approximately half of its state election-related financial activity was publicly disclosed only after the Missouri primary election was over.⁵⁰

The available information also supports a finding that Freedom Frontier was aware of the scheme to funnel money to LG PAC, which was then used to make disbursements supporting Greitens's campaign. Specifically, the record includes information regarding the Greitens campaign's strategy of approaching donors to provide support for Greitens's campaign through 501(c)(4)s; information indicating that GFM staffers and consultants discussed directing potential donors to support Greitens's campaign through 501(c)(4)s, including Freedom Frontier; the personal interaction at a campaign event between Greitens and LG PAC's treasurer,

⁴⁷ See *supra* note 6 and associated text.

⁴⁸ LG PAC 2016 July Quarterly Rpt.; LG PAC 2016 Oct. Quarterly Rpt.

⁴⁹ See *supra* note 8 and associated text.

⁵⁰ See Compl. ¶¶ 38-39 (citing Jo Mannies, *You Can't Find Out Who Paid for New Attack Ads on Missouri TV. Laws Keep Them Secret*, ST. LOUIS PUBLIC RADIO (June 8, 2016), available at <https://news.stlpublicradio.org/post/you-cant-find-out-who-paid-new-attack-ads-missouri-tv-lawskeep-them-secret#stream/0>; *Missouri Leads Nation in TV Ad Spending for Governor's Race*, ASSOC. PRESS (Oct. 13, 2016), available at <https://www.apnews.com/2cf396caa6614c8389e8e97fa47ac928>; Tim Curtis, *LG PAC Sets Sights on Hanaway*, MISSOURI TIMES (July 19, 2016), available at <https://themissouritimes.com/31798/lg-pac-sets-sights-on-hanaway/>).

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Monsees; Ayers’s connection to Freedom Frontier during the same period he was working for Greitens’s campaign; the timing of LG PAC’s receipt of funds from Freedom Frontier and its use of those funds to make disbursements supporting Greitens’s campaign; and Chambers’s communications, while serving as GFM’s campaign manager, with Ayers regarding LG PAC’s activity. The overall record thus supports a finding that Freedom Frontier knowingly permitted its name to be used to effect contributions totaling \$4,395,000 made by another person or persons to LG PAC.

Viewed as a whole, the available record sufficiently indicates that unknown persons provided funds to Freedom Frontier for it to make contributions to LG PAC, while concealing their identities from the public. Freedom Frontier does not dispute the facts in the record but contends that they are too speculative to support the alleged violations of the Act, and, even if true, would not constitute a violation of the Act because the ultimate purpose was to influence a state, rather than a federal, election.⁵¹ This argument is flawed: LG PAC registered as a federal political committee and itself reported the receipt of \$4.395 million from Freedom Frontier as federal contributions.⁵² The available information does not indicate that any of the funds LG PAC received were deposited in a nonfederal account because they were earmarked for state activity or otherwise encumbered such that they could not have been used in connection with a federal election,⁵³ and LG PAC used \$26,658 of the funds Freedom Frontier provided on its

⁵¹ Freedom Frontier Resp. at 2.

⁵² See LG PAC Statement of Org.; LG PAC 2016 July Quarterly Rpt. at 6; LG PAC Oct. Quarterly Rpt. at 6-7; LG PAC 12-Day Pre-General Election Rpt. at 6; *see also* Freedom Frontier Resp. at 2 (referring to “the contribution from Freedom Frontier to LG PAC”).

⁵³ *Cf.* 11 C.F.R. § 102.5(a)(1) (providing that any “organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 C.F.R. § 100.5” must either establish a separate federal account that is treated as a federal political committee subject to the Act’s prohibitions, limitations, and reporting requirements, or

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1 federal operating expenditures. Accordingly, the funds that LG PAC received from Freedom
2 Frontier were “contributions” under the Act such that the Act’s prohibition on contributions in
3 the name of another applies, regardless of the fact that the IEOPC made no federal independent
4 expenditures and opted instead to use most of its funds to make disbursements supporting a
5 nonfederal candidate.

6 LG PAC’s federal registration and its reported receipt of federal contributions from
7 Freedom Frontier appear to have allowed it to avoid registering as a state political committee and
8 reporting its activity under Missouri law, but, by the same token, LG PAC opted into the Act’s
9 federal regulatory regime, under which the funds it received and reported as federal contributions
10 are treated as such. Freedom Frontier errs in arguing, after the fact, that LG PAC’s federal
11 registration and reporting of the Freedom Frontier funds as “contributions” were inconsistent
12 with the actual use LG PAC made of the funds.

13 Because the record indicates that Unknown Persons provided funds for Freedom Frontier
14 to contribute in its name to LG PAC, and that Freedom Frontier did knowingly contribute those
15 funds in its own name to LG PAC, the Commission finds reason to believe that Freedom Frontier
16 violated 52 U.S.C. § 30122.

establish a political committee that receives only funds that comply with the Act); *see also* Campaign Guide for Nonconnected Committees at 81 (May 2008), *available at* <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> (advising nonconnected committees supporting nonfederal candidates that they may either accept only funds that comply with the Act’s limitations, prohibitions, and reporting requirements, or maintain a separate account for funds that do not comply with the Act). LG PAC does not appear to have established or maintained a separate nonfederal account, and thus all funds it received had to comply with the Act’s prohibitions, limitations, and reporting requirements, include the prohibition of contributions made in the name of another at 52 U.S.C. § 30122.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: LG PAC and Richard Monsees MUR 7422
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Citizens for Responsibility and Ethics in Washington. *See* 52 U.S.C. § 30109(a)(1). Complainant alleges that unknown persons made \$6.37 million in contributions to two federal independent expenditure-only political committees (“IEOPCs”), Seals for Truth and Nicholas Britt in his official capacity as treasurer (“SFT”) and LG PAC and Richard Monsees in his official capacity as treasurer (“LG PAC”), without publicly disclosing their identities, by using two 501(c)(4) nonprofit organizations (“501(c)(4)s”), American Policy Coalition, Inc. (“APC”) and Freedom Frontier, as intermediaries to conceal the true sources of the contributions. The IEOPCs allegedly then used these funds to make a donation and disbursements supporting Eric Greitens’s 2016 Missouri gubernatorial campaign, Greitens for Missouri (“GFM”).

Based on the available information and for the reasons explained below, the Commission finds reason to believe LG PAC violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another, and violated 52 U.S.C. § 30104(b) by not accurately reporting the true contributor(s).

II. FACTUAL AND LEGAL ANALYSIS**A. Background**

Eric R. Greitens was a candidate for Missouri governor during the 2016 election cycle.¹ Greitens's nonfederal campaign committee, Greitens for Missouri, registered with the Missouri Ethics Commission on February 24, 2015.²

Freedom Frontier was organized as a corporation in Texas in 2011 and is also a tax-exempt organization under section 501(c)(4) of the Internal Revenue Code.³ A financial disclosure form submitted by Nick Ayers disclosed that Freedom Frontier paid Ayers through his consulting firm, C5 Creative Consulting, Inc., between 2015 and 2017, a period in which Ayers was also a consultant to Greitens's campaign.⁴

LG PAC is an IEOPC that registered with the Commission on May 16, 2016.⁵ LG PAC reported receiving an aggregate total of \$4.395 million in contributions from Freedom Frontier during the 2016 election cycle.⁶ LG PAC reported no other itemized receipts during the 2016

¹ The Missouri primary election was held on August 2, 2016, and the general election was held on November 8, 2016. Greitens won both elections and served as Governor of Missouri until he resigned on June 1, 2018.

² Greitens for Missouri, Statement of Comm. Org., Missouri Ethics Comm'n (Feb. 24, 2015), *available at* <https://www.mec.mo.gov/Scanned/PDF/2015/110894.pdf>.

³ Freedom Frontier, 2016 IRS Form 990, *available at* https://apps.irs.gov/pub/epostcard/cor/451582354_201612_990O_2018082215608722.pdf ("Freedom Frontier 990").

⁴ Compl. ¶ 43 (citing Executive Branch Personnel Public Financial Disclosure Report, James N. Ayers, Part 4, Line 18 (Oct. 18, 2017), *available at* <https://assets.documentcloud.org/documents/4326994/Nick-Ayers-278.pdf>). Ayers filed this disclosure in connection with his appointment as Chief of Staff to the Vice President on July 26, 2017. The reporting period for sources of compensation includes the preceding two calendar years, which means that Ayers was paid by Freedom Frontier between January 1, 2015, and the date of his appointment, July 26, 2017.

⁵ LG PAC, Statement of Org. (May 16, 2016).

⁶ Specifically, LG PAC reported receiving the following contributions from Freedom Frontier: \$1.5 million (June 1, 2016); \$300,000 (June 22, 2016); \$500,000 (June 29, 2016); \$250,000 (July 7, 2016); \$1,005,000 (July 13, 2016); \$210,000 (July 20, 2016); \$155,000 (July 28, 2016); \$450,000 (July 28, 2016); \$25,000 (Oct. 5, 2016). *See* LG PAC 2016 July Quarterly Rpt. at 6 (July 15, 2016); LG PAC Oct. Quarterly Rpt. at 6-7 (Oct. 14, 2016); LG PAC 12-Day Pre-General Election Rpt. at 6 (Oct. 27, 2016).

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election cycle,⁷ and it has not reported receiving any other contributions since the 2016 election cycle. LG PAC reported spending \$4.36 million during the 2016 election cycle for disbursements whose purpose it disclosed as “Media Buy for State Race,” “Media Buy,” or “Media Production for State Race.”⁸ Moreover, LG PAC’s treasurer, Richard “Hank” Monsees, was photographed speaking to Greitens and making phone calls for the campaign at a GFM campaign event held at one of the campaign’s offices.⁹

The Complaint contends that if LG PAC had been registered as a state committee in Missouri, it would have been required to publicly disclose which Missouri candidates its disbursements supported or opposed, but because LG PAC is registered as a federal committee and made no independent expenditures relating to a federal candidate, it was not required to make any such disclosure.¹⁰ Moreover, the Complaint also contends that because LG PAC is a federal, rather than a state, political committee, it was not required to file a pre-primary election report in Missouri, and thus at the time of the August 2, 2016, primary election in Missouri, it

⁷ All Receipts, LG PAC, 2015-2016, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00617340&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁸ Specifically, LG PAC reported making the following such disbursements during the 2016 election cycle: \$964,964 to Main Street Media Group (“MSMG”) on June 2, 2016; \$375,552.50 to MSMG on June 15, 2016; \$414,681.50 to MSMG on June 23, 2016; \$459,336.50 to MSMG on June 30, 2016; \$301,110 to MSMG on July 7, 2016; \$1,003,623 to MSMG on July 14, 2016; \$200,550 to MSMG on July 20, 2016; \$30,500 to Outlaw Media on July 25, 2016; \$150,110 to MSMG on July 28, 2016; \$11,000 to Outlaw Media on July 29, 2016; and \$450,400 to MSMG on July 29, 2016. *See* LG PAC 2016 July Quarterly Rpt. at 7-8 (July 15, 2016); LG PAC Oct. Quarterly Rpt. at 11-13 (Oct. 14, 2016). LG PAC’s only other disbursements during the 2016 cycle were \$32,969.50 for bank and legal fees — *i.e.*, operating expenditures.

⁹ Compl. ¶ 45 (citing Micheal Mahoney, *Man Tied to Anti-Brunner Ad Appears at Event with Brunner Rival*, KMBC ABC 9 NEWS (June 17, 2016), *available at* <https://www.kmbc.com/article/man-tied-to-anti-brunner-ad-appears-at-event-with-brunner-rival/3588295> (including a photograph of Monsees talking to Greitens at the event); Tim Curtis, *New Information Links LG PAC and Greitens*, MISSOURI TIMES (June 18, 2016), *available at* <https://the.missouritimes.com/30720/new-information-links-lg-pac-greitens>).

¹⁰ Compl. ¶ 37.

1 had publicly disclosed in its Commission reports \$2.3 million in contributions — or
2 approximately only 52% of its total receipts — and \$2,214,533 in media disbursements — or
3 approximately only 50% of its total media-related disbursements.¹¹

4 **B. Missouri State Investigations**

5 The Complaint cites and relies on the investigative work of the Missouri Special
6 Investigative Committee on Oversight (“SICO”),¹² which in 2018 investigated allegations that
7 Greitens directed his political consultants to “have conversations with donors who intended to
8 raise significant amounts of money and conceal the . . . identity of those donors.”¹³ One of those
9 consultants, Michael Hafner, represented that Greitens connected him with donors who discussed
10 establishing nonprofit entities “to accept bundled contributions while concealing the identity of
11 the donors.”¹⁴ According to Hafner, one such donor, Monu Joseph, “wanted to discuss . . . how

¹¹ See Compl. ¶¶ 34, 37; LG PAC 2016 July Quarterly Rpt. at 6-8 (July 15, 2016). If LG PAC’s activity had started on or after July 1, 2016, it would not have been required to disclose any of its receipts or disbursements prior to the August 2, 2016, Missouri primary election.

¹² SICO was established on February 27, 2018, to investigate a number of other allegations made against Greitens, including allegations of blackmail and the misuse of a donor list owned by a charitable group that Greitens founded. SICO ceased investigating Greitens for lack of jurisdiction when he resigned the office of Governor on June 1, 2018, but it issued a final report of its findings on December 31, 2018. See Final Report of the Special Investigative Committee on Oversight, In Re: Governor Eric R. Greitens, *available at* <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Final%20Report%20and%20Appendix%20A.pdf> (Dec. 31, 2018).

¹³ Compl. ¶ 24 (citing Transcript of Testimony by Michael Hafner, Missouri House of Representatives Special Investigative Committee on Oversight at 40:22-25 (Mar. 14, 2018), *available at* <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Hafner,%20Michael%20Transcript.pdf> (“Hafner Testimony”)). Hafner asserts that he stopped working for Greitens in March 2015 to work for one of his primary opponents, John Brunner, when it became clear that Greitens would pursue the Republican party nomination for governor, rather than a lower office such as lieutenant governor. He maintained, however, that the separation “was as amicable [a] separation as it could have been.” Hafner Testimony at 46:9-22.

¹⁴ Hearing Video of Michael Hafner Before the Missouri House of Representatives Special Investigative Committee on Oversight at 1:53:57 – 1:54:20 (May 29, 2018), *available at* http://mohouse.granicus.com/MediaPlayer.php?view_id=1&clip_id=758 (“Hafner Video”). Hafner testified that he believed concealing donors was part of the Greitens campaign’s strategy from an early stage, and that the campaign continued carrying out efforts to conceal donors after he left, contrary to Greitens’s pledge to run a “clean” and “fully transparent” campaign. Hafner Testimony at 45:1-7; see Compl. ¶ 22. Hafner asserted that he “had conversations with people associated with [Greitens] in January and February and March [2015] when I was employed and working out of that office that I knew[,] that I was led to believe that they were planning . . . on concealing donors in some way or having people

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the campaign was going to bundle contributions and conceal the identity of donors,” and asked about using nonprofit organizations or 501(c)(4)s for that purpose.¹⁵

The Complaint cites additional information uncovered by SICO’s investigation that suggests GFM attempted to conceal donors using 501(c)(4)s. SICO obtained an email conversation between GFM’s campaign manager, Austin Chambers, its finance director, Meredith Gibbons, and Greitens’s personal assistant, Krystal Taylor, in which Taylor wrote on November 17, 2015: “[Redacted] were donors to [Greitens-founded charity] The Mission Continues (I believe or maybe they were just prospects). [Redacted] Eric’s good friend is meeting with them on Sunday. I know they are Democrats, but they’re Jewish. Not sure if they give at all to republican [sic] candidates.” Chambers responded: “If they want to give, C4 would probably be better so that they don’t appear on our reports.”¹⁶

associated with . . . their campaign reach out and coordinate donors who would be operating to the contrary of what Mr. Greitens told [the radio host] on his show.” Hafner Testimony at 115:23 and 116:3-12. Hafner also explained that efforts to conceal donors might work as “a group of people that didn’t want to disclose who they were” to “individually or through their companies [] give directly to a certain entity like . . . a freedom group.” Hafner Testimony at 62:22-25, 63:1-13, 63:14-15. Hafner also explained that from “a candidate’s perspective[,] . . . they don’t want to be seen as being purchased by a particular donor if they’re giving mass amounts of money” and that donors generally “don’t want to be seen as influencing a certain candidate [because] [t]hey might have business before the state[, or] [t]here might be a legitimate conflict [of interest].” Hafner Testimony at 48:7-18.

¹⁵ Compl. ¶ 24 (citing Hafner Testimony at 41:9-11 and Hafner Video at 1:58:40 – 1:59:35). Hafner said that Joseph knew Greitens from their time at Oxford University, and that Joseph told him that other friends from Oxford, some of whom might be foreign nationals, would also be interested in contributing to Greitens’s campaign. Hafner Testimony at 44:8-13. Hafner also said that he believed Joseph would be “a major connector and bundler for the campaign” and that Joseph “wanted to know if there were avenues set up where, that were nonprofits or C4s, that they could bring money in and not disclose the source of those contributions.” Hafner Video at 1:58:40 – 1:59:35 (cited in Compl. ¶ 24).

¹⁶ Compl. ¶ 29 (citing SICO Compl. ¶ 19). Hafner explained that Greitens, who sought the Republican nomination for Governor, had few contacts among traditional Republican operatives, which posed a potential fundraising problem for him and an optics problems for his supporters, some of whom did not typically support Republican candidates: “[H]e had built relationships with a lot of Democratic donors. Everything that we had heard up until the time I started working with Mr. Greitens was that he was a solid Democrat. . . . The running joke . . . was that [Greitens] didn’t have two sentences where he could tell you why he was Republican. That’s a major issue when you’re going out to solicit donors[.]” Hafner Testimony at 29:14-25 and 30:1-2.

Other emails that SICO obtained suggest that Greitens’s agents may have used 501(c)(4)s to funnel money to the campaign from people in the financial services industry, whom Hafner testified are “sometimes referred to as restricted donors due to Securities and Exchange Commission regulations.”¹⁷ In a December 4, 2015, email exchange, Gibbons wrote to Nick Ayers, a consultant to GFM, “[T]here is a restricted donor that we’d like for you to reach out to when you have time. I can explain more over the phone.” Ayers responded, “Will buzz you soon re: restricted donor.”¹⁸ In another email from June 2016, “an early supporter and fundraiser of Greitens’ emailed Meredith Gibbons” regarding a donor that the supporter believed could be “restricted” from donating to Greitens’s campaign: “Eric absolutely can call him [redacted] as he’s a great guy [redacted] but due to compliance reasons, I’m pretty sure he’s not allowed to give[.] [Redacted] managed money for the state of Missouri. . . . Eric can mention the 501(c)(4) if applicable, but no idea how [redacted] will react to that.”¹⁹

Based on the information that SICO obtained through its investigation, its Chairman filed a complaint with the Missouri Ethics Commission (“MEC”) alleging a variety of state campaign finance violations by GFM.²⁰ The MEC conducted an extensive factual inquiry of the matter, after which, on February 13, 2020, the MEC and GFM entered into a Joint Stipulation of Facts and a Consent Order setting forth uncontested facts and violations of Missouri law by GFM.²¹

¹⁷ Compl. ¶ 25 (citing Hafner Video at 1:08:16).

¹⁸ SICO Compl. ¶ 20.

¹⁹ SICO Compl. ¶ 21 (cited in Compl. ¶ 29).

²⁰ See “Complaint Against Greitens for Missouri, and A New Missouri, Inc., For Violations of Missouri Campaign Finance Law,” (July 10, 2018), *available at* <https://assets.documentcloud.org/documents/4594091/071018-Complaint-Against-Greitens-for-Missouri.pdf> (“SICO Compl.”).

²¹ Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Ethics Comm’n, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law, *MEC v. Greitens for Missouri* (Feb. 13, 2020), <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1474.pdf> (“MEC Findings”). The MEC found that GFM failed to timely

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The MEC’s findings, which are uncontested by GFM, indicate that in the spring of 2015, GFM began working with political consultants Ayers and Chambers of C5 Consulting, Inc. Chambers left C5 Consulting in October 2015 to become GFM’s campaign manager.²² Sometime in the latter half of 2015, GFM’s finance director, Gibbons, and a national fundraising consultant composed a list of potential donors that either could not or elected not to contribute directly to GFM. In 2015 and 2016, Ayers directed Gibbons to refer those potential donors to Tom Norris, who worked for Freedom Frontier.²³ Ayers also emailed Gibbons, Chambers, and the national fundraising consultant a list of “donors who have an interest in an outside group” and suggested getting on a conference call with Norris and David Langdon, an APC officer, to discuss talking points to use “as we direct people their way.”²⁴

The MEC’s findings also indicate that Ayers terminated C5 Consulting’s contract to work for GFM in March or April of 2016, but remained in contact with Chambers regarding the Greitens campaign.²⁵ When LG PAC started making disbursements supporting Greitens’s campaign with media buys, Chambers was alerted by one of GFM’s vendors via email, and Chambers responded, “This should be them then.” Later that day, he wrote, “Hoping this is NA.” The latter comment was, according to the uncontested MEC findings, a specific reference

report in-kind contributions from LG PAC in the form of expenditures for communications supporting Greitens’s candidacy. These expenditures by LG PAC were in-kind contributions to GFM, the MEC concluded, because they “were express advocacy or its functional equivalent,” and were “done in cooperation with the GFM committee.” *Id.* ¶¶ 66–67. GFM admitted this violation, for which it agreed to pay a \$98,417 civil penalty and amend the relevant state disclosure reports. *Id.* at 16.

²² MEC Findings ¶¶ 10–11.

²³ *Id.* ¶¶ 13–14.

²⁴ *Id.* ¶ 15.

²⁵ *Id.* ¶¶ 37–38.

1 to Nick Ayers.²⁶ The following day, another GFM vendor on the same email thread wrote
2 “Pretty boy to the rescue” This was also a reference to Ayers.²⁷

3 In July 2016, Ayers and Chambers had a phone call in which Chambers expressed
4 concern about the Springfield, Missouri, market. LG PAC subsequently disbursed \$98,417 for
5 advertisements in that market. On July 28, 2016, a GFM vendor alerted Chambers to the LG
6 PAC disbursements and Chambers replied, “Well at least he listened when I told him we were
7 worried about Brunner in Springfield.”²⁸

8 **C. The Complaint and Response**

9 Based on publicly available sources and the information provided by SICO’s
10 investigation, the Complaint alleges that unknown individuals made, Freedom Frontier
11 knowingly transmitted, and LG PAC knowingly accepted \$4.37 million in contributions made in
12 the name of another between June 1, 2016, and July 29, 2016, thereby violating 52 U.S.C.
13 § 30122, and that LG PAC, in turn, used those funds to make \$4.361 million in nonfederal media
14 disbursements over the same time period, which led up to the August 2, 2016, Missouri
15 gubernatorial primary.²⁹ In addition, the Complaint alleges that LG PAC failed to properly
16 report this activity in their disclosure reports filed with the Commission.³⁰

17 LG PAC did not file a Response to the Complaint.

²⁶ *Id.* ¶ 35.

²⁷ *Id.* ¶ 36.

²⁸ *Id.* ¶¶ 37–40.

²⁹ Compl. ¶¶ 56-57, 64-65, 69.

³⁰ Compl. ¶¶ 55, 58.

D. Analysis**1. The Act Prohibits any Person From Making, Knowingly Permitting their Name to be Used to Effect, or Knowingly Accepting a Contribution in the Name of Another**

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”³¹ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”³² The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.³³ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.³⁴

The requirement that a contribution be made in the name of its true source promotes Congress’s objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.³⁵ Courts therefore have uniformly

³¹ 52 U.S.C. § 30101(8)(A).

³² *Id.* § 30101(11); 11 C.F.R. § 100.10.

³³ 52 U.S.C. § 30122.

³⁴ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³⁵ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections

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1 rejected the assertion that “only the person who actually transmits funds . . . makes the
2 contribution,”³⁶ recognizing that “it is implausible that Congress, in seeking to promote
3 transparency, would have understood the relevant contributor to be [an] intermediary who
4 merely transmitted the campaign gift.”³⁷ Consequently, both the Act and the Commission’s
5 implementing regulations provide that a person who furnishes another with funds for the purpose
6 of contributing to a candidate or committee “makes” the resulting contribution.³⁸ This is true
7 whether funds are advanced to another person to make a contribution in that person’s name or
8 promised as reimbursement of a solicited contribution.³⁹ Because the concern of the law is the
9 true source from which a contribution to a candidate or committee originates, we look to the
10 structure of the transaction itself and the arrangement between the parties to determine who, in
11 fact, “made” a given contribution.

— is plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³⁶ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁷ *O’Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

³⁸ *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

³⁹ *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

2. There is Reason to Believe that LG PAC Knowingly Accepted
Contributions in the Name of Another

The available information supports a reason to believe finding that unknown persons made contributions in the name of another to LG PAC, a federal IEOPC, while concealing their identities from the public by making the contributions through Freedom Frontier, a 501(c)(4), that Freedom Frontier knowingly permitted its name to be used to effect those contributions, and that LG PAC knowingly accepted contributions in the name of another. The available information, including discussions between Hafner and potential donors and email discussions amongst GFM staffers, indicates that unknown persons used Freedom Frontier to provide funds to LG PAC, which then used those funds to make media disbursements supporting Greitens's campaign. LG PAC's treasurer, Monsees, also appeared at a Greitens campaign event, where he was photographed speaking with Greitens and making phone calls for the campaign.⁴⁰ GFM campaign consultant Nick Ayers was also paid by Freedom Frontier through his company, C5 Creative Consulting, between 2015 and 2017.⁴¹

In addition, Greitens's agents Austin Chambers, Meredith Gibbons, Krystal Taylor, and Nick Ayers appear to have discussed soliciting restricted donors and using 501(c)(4)s to obtain campaign donations without publicly disclosing the donors' identities.⁴² There is no information indicating, and Respondents do not assert, that this approach was rejected or discontinued at any point before LG PAC began making disbursements supporting Greitens's campaign using funds nominally provided to it by a 501(c)(4), Freedom Frontier, in exactly the manner described by

⁴⁰ See *supra* note 9 and associated text.

⁴¹ See *supra* note 4 and associated text.

⁴² See *supra* notes 15–16 and associated text.

Hafner. To the contrary, per the MEC’s findings, Gibbons apparently helped compose a list of potential donors that either could not or elected not to contribute directly to GFM, and Ayers directed Gibbons to refer those potential donors to Tom Norris, who worked for Freedom Frontier.⁴³ Ayers also emailed Gibbons and Chambers a list of “donors who have an interest in an outside group” and suggested getting on a conference call with Norris and David Langdon, an APC officer, to discuss talking points to use “as we direct people their way.”⁴⁴

Moreover, Chambers and Ayers remained in communication regarding LG PAC’s nonfederal activity, even after Chambers had left his consulting position to become GFM’s campaign manager and Ayers had terminated his consulting contract with GFM.⁴⁵ Chambers’s emails with GFM vendors indicate that he credited LG PAC’s activity — which was funded exclusively with funds provided by Freedom Frontier — to efforts by Ayers; in one instance, Chambers discussed concerns about the Springfield, Missouri, market with Ayers shortly before LG PAC disbursed \$98,417 for advertisements in that market, and Chambers later credited Ayers’s efforts for that activity.⁴⁶

The circumstances of the purported contributions further support the inference that Freedom Frontier was used to funnel contributions made by others to LG PAC. LG PAC was formed on May 16, 2016, and it received the first of nine contributions from Freedom Frontier, totaling \$4.395 million, on June 1, 2016.⁴⁷ Aside from Freedom Frontier’s contributions, LG

⁴³ MEC Findings ¶¶ 13–14.

⁴⁴ *Id.* ¶ 15.

⁴⁵ *Id.* ¶¶ 37–38.

⁴⁶ *Id.* ¶¶ 37–40.

⁴⁷ *See supra* note 6 and associated text.

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PAC never received any other itemized contributions. Between June 2, 2016, and July 29, 2016, LG PAC disbursed \$4,361,827.50 for media buys and media production.⁴⁸ It disbursed only \$26,658 for federal operating expenditures, such as bank fees and legal fees, and reported making no federal independent expenditures.⁴⁹ Because LG PAC registered as a federal committee rather than a Missouri state committee, it appears to have been able to pay for advertisements criticizing Greitens's opponents in the 2016 Missouri gubernatorial primary under a federal, rather than state, reporting schedule, such that approximately half of its state election-related financial activity was publicly disclosed only after the Missouri primary election was over.⁵⁰

The available information also supports a finding that LG PAC, the recipient of Freedom Frontier's purported contributions, was aware of the scheme to funnel money to it through Freedom Frontier, which it used to make disbursements supporting Greitens's campaign. Specifically, the record includes information regarding the Greitens campaign's strategy of approaching donors to provide support for Greitens's campaign through 501(c)(4)s; information indicating that GFM staffers and consultants discussed directing potential donors to support Greitens's campaign through 501(c)(4)s, including Freedom Frontier; the personal interaction at a campaign event between Greitens and LG PAC's treasurer, Monsees; Ayers's connection to

⁴⁸ LG PAC 2016 July Quarterly Rpt.; LG PAC 2016 Oct. Quarterly Rpt.

⁴⁹ *See supra* note 8 and associated text.

⁵⁰ *See* Compl. ¶¶ 38-39 (citing Jo Mannies, *You Can't Find Out Who Paid for New Attack Ads on Missouri TV. Laws Keep Them Secret*, ST. LOUIS PUBLIC RADIO (June 8, 2016), available at <https://news.stlpublicradio.org/post/you-cant-find-out-who-paid-new-attack-ads-missouri-tv-lawskeep-them-secret#stream/0>; *Missouri Leads Nation in TV Ad Spending for Governor's Race*, ASSOC. PRESS (Oct. 13, 2016), available at <https://www.apnews.com/2cf396caa6614c8389e8e97fa47ac928>; Tim Curtis, *LG PAC Sets Sights on Hanaway*, MISSOURI TIMES (July 19, 2016), available at <https://themissouritimes.com/31798/lg-pac-sets-sights-on-hanaway/>).

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Freedom Frontier during the same period he was working for Greitens’s campaign; the timing of LG PAC’s receipt of funds from Freedom Frontier and its use of those funds to make disbursements supporting Greitens’s campaign; and Chambers’s communications, while serving as GFM’s campaign manager, with Ayers regarding LG PAC’s activity. The overall record thus supports a finding that LG PAC knowingly accepted contributions totaling \$4,395,000 made in the name of another.

Viewed as a whole, the available record sufficiently indicates that unknown persons provided funds to Freedom Frontier for it to make contributions to LG PAC, while concealing their identities from the public. LG PAC registered as a federal political committee and itself reported the receipt of \$4.395 million from Freedom Frontier as federal contributions.⁵¹ The available information does not indicate that any of the funds LG PAC received were deposited in a nonfederal account because they were earmarked for state activity or otherwise encumbered such that they could not have been used in connection with a federal election,⁵² and LG PAC used \$26,658 of the funds Freedom Frontier provided on its federal operating expenditures. Accordingly, the funds that LG PAC received from Freedom Frontier were “contributions” under

⁵¹ See LG PAC Statement of Org.; LG PAC 2016 July Quarterly Rpt. at 6; LG PAC Oct. Quarterly Rpt. at 6-7; LG PAC 12-Day Pre-General Election Rpt. at 6.

⁵² Cf. 11 C.F.R. § 102.5(a)(1) (providing that any “organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 C.F.R. § 100.5” must either establish a separate federal account that is treated as a federal political committee subject to the Act’s prohibitions, limitations, and reporting requirements, or establish a political committee that receives only funds that comply with the Act); see also Campaign Guide for Nonconnected Committees at 81 (May 2008), available at <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> (advising nonconnected committees supporting nonfederal candidates that they may either accept only funds that comply with the Act’s limitations, prohibitions, and reporting requirements, or maintain a separate account for funds that do not comply with the Act). LG PAC does not appear to have established or maintained a separate nonfederal account, and thus all funds it received had to comply with the Act’s prohibitions, limitations, and reporting requirements, include the prohibition of contributions made in the name of another at 52 U.S.C. § 30122.

the Act such that the Act's prohibition on contributions in the name of another applies, regardless of the fact that the IEOPC made no federal independent expenditures and opted instead to use most of its funds to make disbursements supporting a nonfederal candidate.

LG PAC's federal registration and its reported receipt of federal contributions from Freedom Frontier appear to have allowed it to avoid registering as a state political committee and reporting its activity under Missouri law, but, by the same token, LG PAC opted into the Act's federal regulatory regime, under which the funds it received and reported as federal contributions are treated as such.

Because the record indicates that Unknown Persons provided funds for Freedom Frontier to contribute in its name to LG PAC, and that LG PAC accepted Freedom Frontier's funds knowing that it was not, in fact, the true contributor, the Commission finds reason to believe that LG PAC violated 52 U.S.C. § 30122.

3. LG PAC Violated its Disclosure Obligations under the Act

Under the Act, political committees must file periodic disclosure reports with the Commission, which accurately disclose all receipts and disbursements, including by identifying each "person" that makes aggregate contributions in excess of \$200.⁵³ The Complaint alleges that SFT and LG PAC violated these provisions of the Act by falsely reporting receipts from APC and Freedom Frontier, respectively, when in fact other persons were the true contributors.⁵⁴

For the reasons discussed above, the available information supports a finding that unknown persons provided LG PAC with multiple contributions in the name of a 501(c)(4),

⁵³ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

⁵⁴ Compl. ¶¶ 55, 58.

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1 Freedom Frontier, and that LG PAC knew that Freedom Frontier was not the true source of these
2 contributions. Nevertheless, LG PAC reported receiving nine contributions from Freedom
3 Frontier, totaling \$4,395,000, between June 1, 2016, and October 5, 2016.⁵⁵ As such, the record
4 supports a finding that LG PAC filed three inaccurate disclosure reports with the Commission
5 when it reported that Freedom Frontier made these nine contributions when, in fact, it knew that
6 other persons were the true contributor(s).

7 Accordingly, the Commission finds reason to believe that LG PAC violated 52 U.S.C.
8 § 30104(b) by failing to report the names of the true contributors.

⁵⁵ LG PAC 2016 July Quarterly Rpt. at 6; LG PAC Oct. Quarterly Rpt. at 6-7; LG PAC 12-Day Pre-General Election Rpt. at 6.

FACTUAL AND LEGAL ANALYSIS

MUR 7422

This matter was generated by a complaint filed with the Federal Election Commission

§ 30109(a)(1). Complainant alleges that unknown persons made \$6.37 million in contributions

and Nicholas Britt in his official capacity as treasurer (“SFT”) and LG PAC and Richard

identities, by using two 501(c)(4) nonprofit organizations (“501(c)(4)s”), American Policy

the contributions. The IEOPCs allegedly then used these funds to make a donation and

Missouri (“GFM”).

finds reason to believe SFT violated 52 U.S.C. § 30122 by knowingly accepting a contribution in

the name of another, and violated 52 U.S.C. § 30104(b) by not accurately reporting the true

contributor(s).

II. FACTUAL AND LEGAL ANALYSIS**A. Background**

Eric R. Greitens was a candidate for Missouri governor during the 2016 election cycle.¹

Greitens's nonfederal campaign committee, Greitens for Missouri, registered with the Missouri Ethics Commission on February 24, 2015.²

APC was organized as a corporation in Kentucky in 2011, and is a tax-exempt organization under section 501(c)(4) of the Internal Revenue Code.³

SFT is an IEOPC that registered with the Commission on June 15, 2016.⁴ SFT reported receiving a \$2 million contribution from APC on July 18, 2016, and reported making a \$1,975,000 donation to GFM on that same day.⁵ SFT reported no other itemized receipts during the 2016 election cycle, and it has not reported receiving an itemized contribution or making a disbursement since the 2016 election cycle.⁶ Greitens publicly acknowledged that he and SFT's

¹ The Missouri primary election was held on August 2, 2016, and the general election was held on November 8, 2016. Greitens won both elections and served as Governor of Missouri until he resigned on June 1, 2018.

² Greitens for Missouri, Statement of Comm. Org., Missouri Ethics Comm'n (Feb. 24, 2015), *available at* <https://www.mec.mo.gov/Scanned/PDF/2015/110894.pdf>.

³ APC, 2015 IRS Form 990, *available at* https://apps.irs.gov/pub/epostcard/cor/453213088_201609_9900_2018090415650699.pdf ("APC 990").

⁴ SFT Statement of Org. (June 15, 2016).

⁵ SFT 2016 Oct. Quarterly Report at 6, 8 (Oct. 14, 2016); *see* GFM, 2016 8 Days Before Primary Election Report at 20 (July 25, 2016), *available at* <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2Gatv0Pkn%2bUkdbB855Bp0yeiBbLMDMAB5lo c%2fEKCjLMP2kD9wjdB9F35%2fNJHivqBWH>. Aside from the contribution to GFM, SFT disbursed a total of \$24,938.50 during the 2016 election cycle, which it spent on legal fees, bank fees, and research consulting services — *i.e.*, operating expenditures. All Disbursements, SFT, 2015-2016, *available at* https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00619973&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁶ All Receipts, SFT, 2015-2016, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_per iod=2016&data_type=processed&committee_id=C00619973&min_date=01%2F01%2F2015&max_date=12%2F31 %2F2016.

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1 treasurer, Britt, “went through Navy SEAL training” together.⁷ The Complaint contends that
2 because SFT is a federal committee, it was not required to file a pre-primary election disclosure
3 report in Missouri, and APC’s \$2 million contribution to SFT was not disclosed until SFT filed
4 its 2016 October Quarterly Report with the Commission — after the August 2, 2016, Missouri
5 primary election.⁸

6 **B. Missouri State Investigations**

7 The Complaint cites and relies on the investigative work of the Missouri Special
8 Investigative Committee on Oversight (“SICO”),⁹ which in 2018 investigated allegations that
9 Greitens directed his political consultants to “have conversations with donors who intended to
10 raise significant amounts of money and conceal the . . . identity of those donors.”¹⁰ One of those
11 consultants, Michael Hafner, represented that Greitens connected him with donors who discussed
12 establishing nonprofit entities “to accept bundled contributions while concealing the identity of
13 the donors.”¹¹ According to Hafner, one such donor, Monu Joseph, “wanted to discuss . . . how

⁷ Second Amend. Compl. ¶ 46 (Nov. 20, 2018) (hereinafter, “Compl.”) (citing Lucas Geisler, *Missouri Governor Candidate Addresses \$1.9M Donation*, KMIZ ABC 17 NEWS (Oct. 22, 2016), available at <https://www.abc17news.com/news/governor-candidate-discuss-19-million-donation/129452585>).

⁸ Compl. ¶ 34.

⁹ SICO was established on February 27, 2018, to investigate a number of other allegations made against Greitens, including allegations of blackmail and the misuse of a donor list owned by a charitable group that Greitens founded. SICO ceased investigating Greitens for lack of jurisdiction when he resigned the office of Governor on June 1, 2018, but it issued a final report of its findings on December 31, 2018. *See* Final Report of the Special Investigative Committee on Oversight, In Re: Governor Eric R. Greitens, available at <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Final%20Report%20and%20Appendix%20A.pdf> (Dec. 31, 2018).

¹⁰ Compl. ¶ 24 (citing Transcript of Testimony by Michael Hafner, Missouri House of Representatives Special Investigative Committee on Oversight at 40:22-25 (Mar. 14, 2018), available at <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Hafner,%20Michael%20Transcript.pdf> (“Hafner Testimony”)). Hafner asserts that he stopped working for Greitens in March 2015 to work for one of his primary opponents, John Brunner, when it became clear that Greitens would pursue the Republican party nomination for governor, rather than a lower office such as lieutenant governor. He maintained, however, that the separation “was as amicable [a] separation as it could have been.” Hafner Testimony at 46:9-22.

¹¹ Hearing Video of Michael Hafner Before the Missouri House of Representatives Special Investigative Committee on Oversight at 1:53:57 – 1:54:20 (May 29, 2018), available at <http://mohouse.granicus.com/Media>

1 the campaign was going to bundle contributions and conceal the identity of donors,” and asked
2 about using nonprofit organizations or 501(c)(4)s for that purpose.¹²

3 The Complaint cites additional information uncovered by SICO’s investigation that
4 suggests GFM attempted to conceal donors using 501(c)(4)s. SICO obtained an email
5 conversation between GFM’s campaign manager, Austin Chambers, its finance director,
6 Meredith Gibbons, and Greitens’s personal assistant, Krystal Taylor, in which Taylor wrote on
7 November 17, 2015: “[Redacted] were donors to [Greitens-founded charity] The Mission
8 Continues (I believe or maybe they were just prospects). [Redacted] Eric’s good friend is
9 meeting with them on Sunday. I know they are Democrats, but they’re Jewish. Not sure if they
10 give at all to republican [sic] candidates.” Chambers responded: “If they want to give, C4
11 would probably be better so that they don’t appear on our reports.”¹³

Player.php?view_id=1&clip_id=758 (“Hafner Video”). Hafner testified that he believed concealing donors was part of the Greitens campaign’s strategy from an early stage, and that the campaign continued carrying out efforts to conceal donors after he left, contrary to Greitens’s pledge to run a “clean” and “fully transparent” campaign. Hafner Testimony at 45:1-7; *see* Compl. ¶ 22. Hafner asserted that he “had conversations with people associated with [Greitens] in January and February and March [2015] when I was employed and working out of that office that I knew[,] that I was led to believe that they were planning . . . on concealing donors in some way or having people associated with . . . their campaign reach out and coordinate donors who would be operating to the contrary of what Mr. Greitens told [the radio host] on his show.” Hafner Testimony at 115:23 and 116:3-12. Hafner also explained that efforts to conceal donors might work as “a group of people that didn’t want to disclose who they were” to “individually or through their companies [] give directly to a certain entity like . . . a freedom group.” Hafner Testimony at 62:22-25, 63:1-13, 63:14-15. Hafner also explained that from “a candidate’s perspective[,] . . . they don’t want to be seen as being purchased by a particular donor if they’re giving mass amounts of money” and that donors generally “don’t want to be seen as influencing a certain candidate [because] [t]hey might have business before the state[, or] [t]here might be a legitimate conflict [of interest].” Hafner Testimony at 48:7-18.

¹² Compl. ¶ 24 (citing Hafner Testimony at 41:9-11 and Hafner Video at 1:58:40 – 1:59:35). Hafner said that Joseph knew Greitens from their time at Oxford University, and that Joseph told him that other friends from Oxford, some of whom might be foreign nationals, would also be interested in contributing to Greitens’s campaign. Hafner Testimony at 44:8-13. Hafner also said that he believed Joseph would be “a major connector and bundler for the campaign” and that Joseph “wanted to know if there were avenues set up where, that were nonprofits or C4s, that they could bring money in and not disclose the source of those contributions.” Hafner Video at 1:58:40 – 1:59:35 (cited in Compl. ¶ 24).

¹³ Compl. ¶ 29 (citing SICO Compl. ¶ 19). Hafner explained that Greitens, who sought the Republican nomination for Governor, had few contacts among traditional Republican operatives, which posed a potential fundraising problem for him and an optics problems for his supporters, some of whom did not typically support Republican candidates: “[H]e had built relationships with a lot of Democratic donors. Everything that we had heard

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Other emails that SICO obtained suggest that Greitens’s agents may have used 501(c)(4)s to funnel money to the campaign from people in the financial services industry, whom Hafner testified are “sometimes referred to as restricted donors due to Securities and Exchange Commission regulations.”¹⁴ In a December 4, 2015, email exchange, Gibbons wrote to Nick Ayers, a consultant to GFM, “[T]here is a restricted donor that we’d like for you to reach out to when you have time. I can explain more over the phone.” Ayers responded, “Will buzz you soon re: restricted donor.”¹⁵ In another email from June 2016, “an early supporter and fundraiser of Greitens’ emailed Meredith Gibbons” regarding a donor that the supporter believed could be “restricted” from donating to Greitens’s campaign: “Eric absolutely can call him [redacted] as he’s a great guy [redacted] but due to compliance reasons, I’m pretty sure he’s not allowed to give[.] [Redacted] managed money for the state of Missouri. . . . Eric can mention the 501(c)(4) if applicable, but no idea how [redacted] will react to that.”¹⁶

Based on the information that SICO obtained through its investigation, its Chairman filed a complaint with the Missouri Ethics Commission (“MEC”) alleging a variety of state campaign finance violations by GFM.¹⁷ The MEC conducted an extensive factual inquiry of the matter,

up until the time I started working with Mr. Greitens was that he was a solid Democrat. . . . The running joke . . . was that [Greitens] didn’t have two sentences where he could tell you why he was Republican. That’s a major issue when you’re going out to solicit donors[.]” Hafner Testimony at 29:14-25 and 30:1-2.

¹⁴ Compl. ¶ 25 (citing Hafner Video at 1:08:16).

¹⁵ SICO Compl. ¶ 20.

¹⁶ SICO Compl. ¶ 21 (cited in Compl. ¶ 29).

¹⁷ See “Complaint Against Greitens for Missouri, and A New Missouri, Inc., For Violations of Missouri Campaign Finance Law,” (July 10, 2018), *available at* <https://assets.documentcloud.org/documents/4594091/071018-Complaint-Against-Greitens-for-Missouri.pdf> (“SICO Compl.”).

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after which, on February 13, 2020, the MEC and GFM entered into a Joint Stipulation of Facts and a Consent Order setting forth uncontested facts and violations of Missouri law by GFM.¹⁸

The MEC’s findings, which are uncontested by GFM, indicate that in the spring of 2015, GFM began working with political consultants Ayers and Chambers of C5 Consulting, Inc. Chambers left C5 Consulting in October 2015 to become GFM’s campaign manager.¹⁹ Sometime in the latter half of 2015, GFM’s finance director, Gibbons, and a national fundraising consultant composed a list of potential donors that either could not or elected not to contribute directly to GFM. In 2015 and 2016, Ayers directed Gibbons to refer those potential donors to Tom Norris, who worked for Freedom Frontier.²⁰ Ayers also emailed Gibbons, Chambers, and the national fundraising consultant a list of “donors who have an interest in an outside group” and suggested getting on a conference call with Norris and David Langdon, an APC officer, to discuss talking points to use “as we direct people their way.”²¹

C. The Complaint and Response

Based on publicly available sources and the information provided by SICO’s investigation, the Complaint alleges that unknown individuals made, APC knowingly transmitted, and SFT knowingly accepted a \$2 million contribution in the name of another on

¹⁸ Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Ethics Comm’n, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law, *MEC v. Greitens for Missouri* (Feb. 13, 2020), <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1474.pdf> (“MEC Findings”). The MEC found that GFM failed to timely report in-kind contributions from LG PAC in the form of expenditures for communications supporting Greitens’s candidacy. These expenditures by LG PAC were in-kind contributions to GFM, the MEC concluded, because they “were express advocacy or its functional equivalent,” and were “done in cooperation with the GFM committee.” *Id.* ¶¶ 66–67. GFM admitted this violation, for which it agreed to pay a \$98,417 civil penalty and amend the relevant state disclosure reports. *Id.* at 16.

¹⁹ MEC Findings ¶¶ 10–11.

²⁰ *Id.* ¶¶ 13–14.

²¹ *Id.* ¶ 15.

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July 18, 2016, thereby violating 52 U.S.C. § 30122, and that SFT then used those funds to make a \$1.975 million donation, that same day, to GFM.²² In addition, the Complaint alleges that both SFT failed to properly report this activity in their disclosure reports filed with the Commission.²³ SFT did not file a Response to the Complaint.

D. Legal Analysis

1. The Act Prohibits any Person From Making, Knowingly Permitting their Name to be Used to Effect, or Knowingly Accepting a Contribution in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”²⁴ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”²⁵ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.²⁶ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or

²² Compl. ¶¶ 53-54, 62-63, 68.

²³ Compl. ¶¶ 55, 58.

²⁴ 52 U.S.C. § 30101(8)(A).

²⁵ *Id.* § 30101(11); 11 C.F.R. § 100.10.

²⁶ 52 U.S.C. § 30122.

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(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.²⁷

The requirement that a contribution be made in the name of its true source promotes Congress’s objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.²⁸ Courts therefore have uniformly rejected the assertion that “only the person who actually transmits funds . . . makes the contribution,”²⁹ recognizing that “it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift.”³⁰ Consequently, both the Act and the Commission’s implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee “makes” the resulting contribution.³¹ This is true whether funds are advanced to another person to make a contribution in that person’s name or promised as reimbursement of a solicited contribution.³² Because the concern of the law is the

²⁷ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

²⁸ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

²⁹ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁰ *O’Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

³¹ *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

³² *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074,

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true source from which a contribution to a candidate or committee originates, we look to the structure of the transaction itself and the arrangement between the parties to determine who, in fact, “made” a given contribution.

2. There is Reason to Believe that SFT Knowingly Accepted a Contribution in the Name of Another

The available information supports a reason to believe finding that unknown persons made a contribution in the name of another to an IEOPC, SFT, through a 501(c)(4), APC, thus concealing their identities from the public, that APC knowingly permitted its name to be used to effect that contribution, and that SFT knowingly accepted this contribution in the name of another. Specifically, the information provided by Michael Hafner to SICO indicates that between January and March of 2015, Greitens asked Hafner to speak to donors and fundraisers, including Joseph, who discussed ways to provide funds to Greitens’s campaign without disclosing the identities of the donors.³³ Hafner recounted that he discussed funneling money through 501(c)(4)s to accomplish that goal, and that potential donors to Greitens’s campaign may have had personal reasons to make donations without disclosing their identities or were themselves legally precluded from making donations to Greitens.³⁴

Emails also indicate that Greitens’s agents Austin Chambers, Meredith Gibbons, Krystal Taylor, and Nick Ayers appear to have discussed soliciting restricted donors and using 501(c)(4)s to obtain campaign donations without publicly disclosing the donors’ identities.³⁵

1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³³ See *supra* notes 10–11 and associated text.

³⁴ See *supra* notes 12–14 and associated text.

³⁵ See *supra* notes 15–16 and associated text.

1 There is no information indicating, and Respondents do not assert, that this approach was
2 rejected or discontinued at any point before SFT made a contribution to Greitens's campaign
3 using funds nominally provided to it by a 501(c)(4), in exactly the manner described by Hafner.
4 To the contrary, per the MEC's findings, Gibbons apparently helped compose a list of potential
5 donors that either could not or elected not to contribute directly to GFM, and Ayers directed
6 Gibbons to refer those potential donors to Tom Norris, who worked for Freedom Frontier.³⁶
7 Ayers also emailed Gibbons and Chambers a list of "donors who have an interest in an outside
8 group" and suggested getting on a conference call with Norris and David Langdon, an APC
9 officer, to discuss talking points to use "as we direct people their way."³⁷

10 The available information also specifically links SFT, the recipient of APC's purported
11 contribution, to Greitens, who acknowledged that he went through Navy SEAL training with
12 SFT's treasurer, Nicholas Britt.³⁸ SFT was formed on June 15, 2016, approximately four weeks
13 before it received a \$2 million contribution from APC on July 18, 2016, and SFT made a \$1.975
14 donation to GFM the same day. SFT never received any other itemized contributions, *i.e.*,
15 contributions in excess of \$200, and its only other disbursements were \$24,938.50 in operating
16 expenses for bank and legal fees — virtually the exact amount of the difference between the \$2
17 million that SFT received from APC and the \$1.975 million donation it made to Greitens's
18 campaign. APC's contribution of others' funds to a federal committee also allowed APC to
19 delay the public disclosure of its name until after the August 2, 2016, gubernatorial primary
20 election because, unlike state outside groups, SFT, due to its status as a federal committee, was

³⁶ MEC Findings ¶¶ 13–14.

³⁷ *Id.* ¶ 15.

³⁸ *See supra* note 7 and associated text.

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1 apparently not required to file a pre-primary election report with the Missouri Ethics
2 Commission.³⁹ These facts, viewed as a whole, support a finding that SFT concealed the true
3 identity (or identities) of the contributors providing funds to APC for transmission to SFT's
4 account, which SFT subsequently reported as federal contributions from APC in the disclosure
5 reports it filed with the Commission.

6 Moreover, the information regarding the Greitens campaign's early efforts to cultivate
7 donors through 501(c)(4)s, information indicating that GFM staffers and consultants carried out
8 those efforts by directing donors to support Greitens's campaign through 501(c)(4)s, and the
9 personal connection between Greitens and SFT's treasurer, Britt, viewed in conjunction with the
10 timing of SFT's receipt of funds from APC and its donation of funds to Greitens's campaign,
11 indicates that SFT was aware of the scheme to funnel money to Greitens's campaign from
12 donors through 501(c)(4)s to groups like SFT.

13 SFT registered with the Commission as a federal political committee and itself reported
14 the receipt of \$2 million from APC as a federal contribution under the Act.⁴⁰ Moreover, there is
15 no information indicating that the funds provided through APC were earmarked for state activity
16 or encumbered such that they were unavailable for federal activity; the record also does not
17 indicate that SFT established a separate nonfederal account or deposited the funds it received
18 through APC into such an account, which would be consistent with receiving funds earmarked or

³⁹ Compl. ¶ 34 (citing Missouri Ethics Comm'n 2016 Campaign Finance Filing Requirements and Dates (June 2015), *available at* <https://www.mec.mo.gov/WebDocs/PDF/CampaignFinance/2016CampaignFinanceFilingCalendar.pdf>)).

⁴⁰ SFT Statement of Org. at 1; SFT 2016 Oct. Quarterly Report at 6, 8. If SFT had not registered with the Commission as a political committee beforehand, it may have been required to do so within ten days of receiving what both SFT, in its 2016 October Quarterly Report, and APC, in its Response in this matter, characterize as a contribution. *See* 52 U.S.C. §§ 30101(4)(A) (defining contribution threshold for "political committee"), 30103 (governing registration of political committees).

1 encumbered for nonfederal activity.⁴¹ Indeed, there is no dispute that SFT used a portion of the
 2 funds it received, \$24,938.50, to pay its operating expenses as a federal political committee. As
 3 such, irrespective of the fact that SFT donated \$1.975 million of its receipts to a state committee
 4 on the same day it received them, the \$2 million that it received through APC was a
 5 “contribution” under the Act and the prohibition on contributions in the name of another applies.

6 SFT’s federal registration and its reported receipt of a \$2 million federal contribution
 7 from APC appear to have allowed it to avoid registering as a state political committee and
 8 reporting the APC as the source under Missouri law prior to the election, but, by the same token,
 9 SFT opted into the Act’s federal regulatory regime, under which the funds it received and
 10 reported as federal contributions are treated as such.

11 Because the record indicates that Unknown Persons provided funds for APC to contribute
 12 in its name to SFT, and that SFT accepted APC’s funds knowing that it was not, in fact, the true
 13 contributor, the Commission finds reason to believe that SFT violated 52 U.S.C. § 30122.

14 3. SFT Violated its Disclosure Obligations under the Act

15 Under the Act, political committees must file periodic disclosure reports with the
 16 Commission, which accurately disclose all receipts and disbursements, including by identifying

⁴¹ *Cf.* 11 C.F.R. § 102.5(a)(1) (providing that any “organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 C.F.R. § 100.5” must either establish a separate federal account that is treated as a federal political committee subject to the Act’s prohibitions, limitations, and reporting requirements, or establish a political committee that receives only funds that comply with the Act); *see also* Campaign Guide for Nonconnected Committees at 81 (May 2008), *available at* <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> (advising nonconnected committees supporting nonfederal candidates that they may either accept only funds that comply with the Act’s limitations, prohibitions, and reporting requirements, or maintain a separate account for funds that do not comply with the Act). SFT does not appear to have established or maintained a separate nonfederal account, and thus all funds it received had to comply with the Act’s prohibitions, limitations, and reporting requirements, include the prohibition of contributions made in the name of another at 52 U.S.C. § 30122.

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1 each “person” that makes aggregate contributions in excess of \$200.⁴² The Complaint alleges
2 that SFT and LG PAC violated these provisions of the Act by falsely reporting receipts from
3 APC and Freedom Frontier, respectively, when in fact other persons were the true contributors.⁴³

4 For the reasons discussed above, the record supports a reason to believe finding that
5 unknown persons provided funds to SFT through APC, and that SFT knew that APC was not the
6 true contributor. However, on its 2016 October Quarterly Report, SFT reported receiving a \$2
7 million federal contribution from APC on July 18, 2016.⁴⁴ The available information thus
8 supports a finding that SFT failed to file an accurate 2016 October Quarterly Report when it
9 disclosed APC, rather than the true contributor(s), as the source of the contribution.

10 Accordingly, the Commission finds reason to believe that SFT violated 52 U.S.C.
11 § 30104(b) by failing to report the names of the true contributors.

⁴² 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

⁴³ Compl. ¶¶ 55, 58.

⁴⁴ SFT 2016 Oct. Quarterly Rpt. at 6, 8.