

September 23, 2021

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Office of General Counsel  
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VIA EMAIL: [APena-Wallace@fec.gov](mailto:APena-Wallace@fec.gov)

**Re: MUR 7464; Response to Factual and Legal Analysis from Honor and Principles PAC**

Dear Ms. Peña-Wallace:

Honor and Principles PAC, and Lisa Lisker, in her official capacity as Treasurer (“HP PAC”) (collectively, the “Respondents”), hereby respond, by and through the undersigned counsel, to the Commission’s Reason to Believe (“RTB”) finding and Factual and Legal Analysis (“F&LA”) in the above-referenced matter. As explained below, HP PAC did not violate 52 U.S.C. § 30122, 52 U.S.C. § 30104(b), or 11 C.F.R. §§ 110.1(e) and (g)(2) when it accepted and reported contributions from LZP, LLC (“LZP”) in March, April and October of 2018. As stated in our response to the initial complaint, HP PAC deposited and reported the contributions at issue in full compliance with the Federal Election Campaign Act of 1971, as amended (the “Act”) and the Commission’s regulations. This matter should be dismissed.

We note at the outset that while HP PAC received and reported LZP’s contributions in full compliance with the law in 2018, HP PAC’s treasurer, Lisa Lisker, recently received correspondence from Raymond C. McVeigh, the former Director of a now dissolved 501(c)(4) organization called Independence and Freedom Network (“IFN”), requesting that HP PAC’s 2018 April, July and Post-General reports be amended to attribute LZP’s contributions to IFN.<sup>1</sup> Mr. McVeigh noted in his email to Ms. Lisker that the Commission issued guidance in 2018, after these transactions took place, suggesting that LZP’s contributions should be attributed to IFN, its sole nonprofit corporate member. Mr. McVeigh explained that while this guidance was not directly applicable to IFN and LZP due to its unique corporate structure, in an abundance of caution, he requested that Ms. Lisker file the amended reports. Accordingly, Ms. Lisker filed amended reports to that effect on August 25, 2021.<sup>2</sup>

<sup>1</sup> See Email from Raymond McVeigh to Lisa Lisker (Aug. 18, 2021) (attached as Exhibit A).

<sup>2</sup> See Honor and Principles PAC (C00674291), 2018 Amended April Quarterly Report, 2018 Amended July Quarterly Report, 2018 Amended Pre-General Report (filed Aug. 25, 2021).

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## **I. LEGAL ANALYSIS**

### ***A. HP PAC did not knowingly receive a contribution in the name of another in violation of 52 U.S.C. § 30122.***

The F&LA contends that the “record in this matter supports a finding that there is reason to believe that Honor PAC violated the Act when it knowingly accepted contributions in the name of another through LZP.”<sup>3</sup> As apparent support for this conclusion, the F&LA points to the “timing of Honor PAC’s formation and its first disbursement, in relation to LZP’s formation and first contribution,”<sup>4</sup> and that “all of Honor PAC’s receipts came exclusively from IFN, through LZP, and the political committee apparently failed to seek information from either entity for the proper attribution of any of the contributions on its disclosure reports.”<sup>5</sup> The F&LA adds that “these facts support an inference that Honor PAC was aware of the true purpose behind LZP’s creation, namely, concealing the identity of the true contributor.”<sup>6</sup>

Despite such conjecture, HP PAC did not knowingly receive a contribution in the name of another when it accepted LZP’s contributions in 2018. As we stated in our response to the initial complaint, there was nothing suspicious on the face of LZP’s contributions to HP PAC and the contributions were deposited and reported in full compliance with the Act—all of which is supported by the attached affidavit from HP PAC’s treasurer, Ms. Lisker.<sup>7</sup> Ms. Lisker reported LZP’s contributions as coming from LZP because that was the entity reflected on the written instrument through which the contributions were made, in this case through wire transfer.<sup>8</sup> There was simply no reason for Ms. Lisker to suspect that LZP’s contribution came from any entity other than that reflected on the wire transfer forms, and despite the Commission’s misapplication of the law explained below, Ms. Lisker had no statutory or regulatory obligation to obtain any additional information about LZP’s contributions.

The Commission appears to ignore this reality when it draws a negative inference against HP PAC for “fail[ing] to seek information from either entity for the proper attribution of any of the contributions on its disclosure reports”<sup>9</sup> and uses it as a basis for its RTB finding. As an initial matter, it is unclear how Ms. Lisker could be expected to seek information from “either” entity when she was unaware of any other entity besides LZP that was party to the transaction. Moreover, as explained more fully below, Ms. Lisker had no affirmative obligation to “seek

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<sup>3</sup> MUR 7464 (Honor and Principles PAC), F&LA at 9 (June 10, 2021).

<sup>4</sup> F&LA at 10.

<sup>5</sup> F&LA at 10-11.

<sup>6</sup> F&LA at 11.

<sup>7</sup> See Affidavit of Lisa Lisker ¶¶ 10-11 (hereinafter “Lisker Affidavit”) (attached as Exhibit B).

<sup>8</sup> See Lisker Affidavit ¶ 10.

<sup>9</sup> F&LA at 11.

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information” from LZP under 11 C.F.R. § 110.1(g)(5). If this regulation was even applicable to IE-Only Committees at the time, which is questionable at best, the obligation would have been on the donor to provide such information to the recipient committee, not the recipient committee’s obligation to affirmatively procure such information from the donor. The Commission’s drawing of a negative inference against HP PAC because it “failed to seek” such information when it was not required by law to do so in the first place is an improper basis for its RTB finding. The Commission should reconsider such finding and dismiss this matter.

***B. There was no evidence that LZP’s contributions were not from LZP at the time they were made or that HP PAC had any reason to report the contributions in some manner other than as being from LZP.***

The Commission found RTB that HP PAC “violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 110.1(e) and (g)(2) by failing to properly attribute LLC contributions” from LZP.<sup>10</sup> In reaching this conclusion, the F&LA reasons that “the available information indicates that Honor PAC did not seek attribution information at the time LZP made its contributions and, as a result, failed to properly attribute the contributions to LZP’s single nonprofit corporate member in order to accurately report all contributions received.”<sup>11</sup> The F&LA also takes issue with HP PAC “not explain[ing] why it did not seek attribution information for a contribution it received from an LLC, pursuant to Commission regulations, or after it received LZP’s subsequent contributions on April 6, 2018 and October 19, 2018.”<sup>12</sup>

However, in numerous instances throughout the F&LA, the Commission explains that the obligation to provide attribution information falls on the contributing LLC, not the recipient committee. The F&LA makes clear that “when such an LLC makes a contribution, it must affirm to the recipient, at the time the LLC makes a contribution that the LLC is eligible to make a contribution and indicate how the contribution is to be attributed.”<sup>13</sup> The F&LA adds that “in its explanation of the LLC rules, the Commission noted that an LLC’s provision of attribution information is necessary so that the recipient may make proper attribution of ‘a contribution made by an eligible multi-member or single member LLC.’”<sup>14</sup>

The provision of attribution information imposed on an LLC donor, and not an IE-Committee recipient, is buttressed by the very text of the regulation cited by the Commission and its Explanation and Justification. Section 110.1(g)(5) of the Commission’s regulations states that

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<sup>10</sup> F&LA at 1.

<sup>11</sup> F&LA at 14.

<sup>12</sup> F&LA at 14.

<sup>13</sup> F&LA at 12.

<sup>14</sup> F&LA at 13 (citing Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,399 (July 12, 1999) (hereinafter “LLC E&J”)).

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“an LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.”<sup>15</sup> The Explanation and Justification for the regulation states, in pertinent part:

One commenter pointed out that, if this approach were adopted, a recipient committee might inadvertently accept an illegal contribution, because the committee would have no way of knowing whether the LLC had opted for corporate tax treatment and was therefore prohibited from contributing to Federal campaigns. The Commission further notes that the recipient committee would have no way of knowing how to attribute a contribution made by an eligible multi-member or single member LLC, unless that information was provided. **Section 110.1(g)(5) accordingly states that an LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed,** and affirm to the recipient committee that the LLC is eligible to make the contribution.<sup>16</sup>

While, as explained below, this regulation was issued in 1999, long before the existence of IE-Only Committees, and has questionable applicability to contributions to IE-Only Committees, it is clear that the obligation to provide attribution information has always been the duty of a contributing LLC and not that of the committee receiving such contribution. Despite this reality, the Commission found RTB against a recipient IE-Only Committee in this matter even though it concedes that “LZP did not provide the required attribution information when it made three separate contributions to Honor PAC.”<sup>17</sup> The Commission cannot have it both ways.

In reality, HP PAC’s treasurer, Ms. Lisker, duly reported the contributions from LZP in the same manner she has reported every other LLC, corporate and partnership contribution for the multiple IE-Only Committees for which she has served as treasurer since 2010.<sup>18</sup> She has provided sworn testimony attached to this response that she had no reason to treat LZP’s contributions any differently from the countless LLC contributions she has reported for her

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<sup>15</sup> 11 C.F.R. § 110.1(g)(5).

<sup>16</sup> LLC E&J at

<sup>17</sup> F&LA at 13.

<sup>18</sup> See Lisker Affidavit ¶ 10.

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multiple IE-Only Committee clients since *Citizens United*.<sup>19</sup> The contributions were drawn on LZP's bank account and she reported them as such.<sup>20</sup> In the eleven years since IE-Only Committees have existed, RAD has never once communicated to Ms. Lisker that there are any issues or problems in the manner in which she reports LLC contributions to IE-Only Committees.<sup>21</sup>

In sum, the LZP contributions to HP PAC were legal contributions and properly reported at the time. There was no reason to suspect or believe otherwise, and no further obligation imposed on Ms. Lisker to affirmatively seek any additional information about the contributions. The controlling Statement of Reasons in MURs 6485, 6487, 6488, 6711 and 6930 notes that, absent some facts that give rise to a suspicion or concern that the contribution from an LLC or corporation is from a source other than the donor entity whose name appears on the contribution entity, there is no violation of the law.<sup>22</sup> In this case, there were no facts that would have given rise to any suspicion or concern from Ms. Lisker that LZP's contributions were from anyone or any entity other than LZP.<sup>23</sup> Accordingly, there was no violation of the law.

***C. If the Commission intends to apply Section 110.1(g)(5) to recipient IE-Only Committees, it should promulgate new regulations and apply the rule consistently to all IE-Only Committees.***

Notwithstanding the Commission's foregoing misapplication of the law against HP PAC, it should be noted that the regulations relied upon by the Commission in making its RTB determination were promulgated prior to the Supreme Court's decision in *Citizens United v FEC*<sup>24</sup> and *Speech Now v. FEC*,<sup>25</sup> the two judicial decisions that gave rise to IE-Only Committees. When adopted by the Commission, these regulations only contemplated political committees that are not *allowed* to receive contributions from corporations, may accept only certain LLC contributions, and must allocate a partnership contribution in such a manner as to clearly provide that the contribution is from a specific individual.<sup>26</sup> None of those premises or procedures are present when a corporation, partnership or LLC makes a contribution to an IE-Only Committee.

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<sup>19</sup> See Lisker Affidavit ¶ 11.

<sup>20</sup> See Lisker Affidavit ¶ 10.

<sup>21</sup> See Lisker Affidavit ¶ 9.

<sup>22</sup> See Statement of Reasons of Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Lee E. Goodman at 12-13, MURs 6485, 6487, 6711, and 6930 (April 1, 2016).

<sup>23</sup> See Lisker Affidavit ¶ 11.

<sup>24</sup> 558 U.S. 310 (2010).

<sup>25</sup> 599 F. 3d 686 (D.C. Cir. 2010).

<sup>26</sup> See 11 C.F.R. §§ 110.1(e) and (g); 11 C.F.R. § 114.2(b). These regulations are each premised upon the prohibition against corporate contributions to political committees, which is inaccurate when applied to IE-Only committees.

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Specifically, the F&LA pushes a theory that these attribution requirements were applicable “on their face” to contributions to IE-Only Committees by citing the Commission’s 1999 Rulemaking on the *Treatment of Limited Liability Companies Under the Federal Election Campaign Act*,<sup>27</sup> a regulation that was adopted more than ten years before the birth of IE-Only Committees. If it was so obvious to the regulated community that the 1999 LLC attribution rules applied “on their face” to LLC contributions to IE-Only Committees, it is a wonder why well-established IE-Only Committees continue to report contributions from LLCs as coming solely from those LLCs, without attribution to underlying partners or members. Surely, not all LLC donors to IE-Only Committees are taxed as corporations, so it strains credulity for the Commission to now maintain that such requirements apply “on their face.”

Indeed, a simple search of the FEC’s database renders countless examples of LLC contributions to IE-Only Committees where underlying partners or members are not attributed, even when it is clear that an LLC is taxed as a partnership. For example, one of the largest IE-Only Committees, Senate Majority PAC (“SMP”), which spent almost \$375 million last election cycle, recently received a \$250,000 contribution from an entity called the Zinc Collective LLC.<sup>28</sup> A quick Google search of Zinc Collective LLC results in a copy of its operating agreement, which makes clear that the entity is to “be treated as a partnership for federal, state, and local tax purposes.”<sup>29</sup> Yet, on its 2021 mid-year report, SMP lists only Zinc Collective LLC as the source of the \$250,000 contribution, and does not attribute the contribution to any underlying partners. This is just one of thousands of examples of LLC contributions to IE-Only Committees where there is no attribution to underlying partners or members.

SMP has been one of the most prominent IE-Only Committees since the *Citizens United* decision, and has been led by experienced, sophisticated staff for the last eleven years. This includes the period of time when the Commission grappled with its treatment of LLC contributions to IE-Only Committees stemming from the 2012 and 2016 election cycles and issued three separate LLC Statements of Reasons addressing the reporting for such entities.<sup>30</sup> If the highly experienced treasurer of SMP was not aware of such attribution rules and their applicability to contributions from groups like the Zinc Collective LLC, then surely such rules cannot be seen as applying “on their face” in that situation or to the contributions at issue in this matter.

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<sup>27</sup> LLC E&J at 37,398 – 37,399.

<sup>28</sup> See SMP (C00484642) Mid-Year Report at 4,156.

<sup>29</sup> See Zinc Collective, LLC Website, Operating Agreement, <https://www.zinc.coop/operating-agreement/>.

<sup>30</sup> See generally, MURs 6485 (W Spann LLC), 6487 & 6488 (F8, LLC), 6711 (Specialty Investments Group, Inc.), 6930 (SPM Holdings LLC), 6968 (Tread Standard LLC), 6995 (Right to Rise), 7014,7017,7019 & 7090 (DE First Holdings), 6969 (MMWP12 LLC), and 7031 & 7034 (Children of Israel, LLC).

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Furthermore, if the Commission was so concerned about uncovering unattributed LLC contributions to IE-Only Committees and was dedicated to imposing the same legal interpretation they appear to be applying in this matter, one would think it would issue a widespread agency directive to the Reports Analysis Division (“RAD”) to send out Requests for Additional Information to all IE-Only Committees receiving LLC contributions that are not attributed to any partners or members. To our knowledge, no such initiatives have been taken. Nevertheless, now that the Commission is on notice of SMP’s failure to attribute Zinc Collective LLC’s to its underlying partners, we look forward to seeing the Commission apply the same level of scrutiny and reading of the law to SMP in a future RAD-referred enforcement proceeding.

## **II. CONCLUSION**

In light of the foregoing, we respectfully request that the Commission promptly close this matter because HP PAC did not knowingly accept a contribution in the name of another, and LZP’s contributions were properly reported at the time.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 344-4522 with any questions.

Respectfully submitted,



James E. Tyrrell III  
*Counsel to Honor and Principles PAC,  
and Lisa Lisker as Treasurer*



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**From:** Raymond McVeigh  
**Sent:** Wednesday, August 18, 2021 3:06 PM  
**To:** llisker@hdafeec.com  
**Subject:** Independence and Freedom Network

Caution: External Email

Lisa,

I am the former Director of Independence and Freedom Network (&ldquo;IFN&rdquo;), a 501(c)(4) organization that was active in 2018 and recently dissolved. In 2018, IFN created and controlled a nonprofit limited liability company called LZP, LLC, which made several contributions to a federal Super PAC for which you are the Treasurer, Honor and Principles PAC. As you are aware, a complaint was filed with the Federal Election Commission related to LZP&rsquo;s contributions to HP PAC in 2018. Based on the counsel IFN and LZP received at the time, we provided to you what we believed to be all the necessary documentation you would need to properly report these contributions. However, FEC guidance that was released after these transactions were made and reported in 2018 suggests that LZP&rsquo;s contributions to HP PAC should have potentially been attributed to its sole nonprofit corporate member, IFN. While the FEC&rsquo;s guidance was not directly applicable to IFN and LZP&rsquo;s unique corporate structure, in an abundance of caution, I am requesting that you file amended reports attributing LZP&rsquo;s contributions to HP PAC to IFN for the following contributions.

3/28/18 \$175,000 (reflected on 2018 April Quarterly)  
4/6/18 \$50,000 (reflected on 2018 July Quarterly)  
4/18/18 \$10,000 (reflected on 2018 July Quarterly)  
10/19/18 \$35,000 (reflected on 2018 Post-General)

All of these contributions are currently reflected as coming solely from LZP, LLC.

The amended reports should still list LZP, LLC as the donor, but there should be memo items for each of these that attribute 100% of the contributions to:

Independence and Freedom Network, Inc.  
P.O. Box 25342  
Alexandria, VA 22313

Thank you for your assistance in this matter. I welcome any questions you may have.

Sincerely,

Raymond C. McVeigh



**Exhibit B****BEFORE THE FEDERAL ELECTION COMMISSION**

Affidavit of )  
 ) MUR 7464  
 Lisa Lisker )  
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**AFFIDAVIT OF LISA LISKER**

I, Lisa Lisker, of lawful age and a resident of the Commonwealth of Virginia, do hereby affirm and state:

1. I am the President of Huckaby Davis Lisker, Inc. ("HDL"), an Alexandria, VA based political compliance firm founded in 1973.
2. I am a professional compliance vendor for political committees, candidates and other entities with filing obligations in and before the Federal Election Commission ("FEC").
3. I have represented close to 400 committees reporting to the FEC over a period of approximately 33 years.
4. I have attended multiple training sessions sponsored by the FEC on proper reporting for political committees registered with the FEC.
5. I serve as Treasurer of Honor and Principles PAC, an Independent Expenditure-Only Committee.
6. Since the Supreme Court's decision in *Citizens United v. FEC* in 2010, I have served as treasurer of multiple Independent Expenditure-Only committees registered with the FEC (IE-Only Committees).
7. In the entire period since 2010, I have prepared and filed the required FEC reports of receipts and disbursements for numerous IE-Only Committees as specified in federal law.
8. Because *Citizens United* permits corporations and other entities to make contributions to IE-Only Committees, I have consistently reported the source of the contributions as the entity from whose bank account the contribution is drawn.
9. At no time since I began preparing and filing reports for IE-Only Committees has the Reports Analysis Division of the FEC ever contacted me or inquired as to any underlying source(s) of contributions from a corporation, LLC, partnership or other entity.

10. I have reported the contributions to Honor and Principles PAC in the same manner as for all contributions to IE-Only Committees; namely, I reported the donor as the entity identified on the bank account from which the contribution is drawn.
11. I had no reason to believe that the contributions from LZP, LLC to Honor and Principles PAC were from any source other than LZP, LLC and it is my belief, based on my experience, that the manner of reporting of the contribution from LZP, LLC to Honor and Principles PAC was accurate and proper at the time.

*Lisa R. Lisker*

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Lisa Lisker

Date: 8/25/2021

Sworn to and subscribed before me this 25 day of August, 2021

*Colin Stamper*

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: 4.30.22

