



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
Acting General Counsel

BY: Charles Kitcher *CK/ms*
Associate General Counsel for Enforcement

Mark Shonkwiler *MS*
Assistant General Counsel

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Attorney

SUBJECT: MUR 7464 (Independence and Freedom Network, Inc., *et al.*)

RE: Independence and Freedom Network, Inc. and LZP, LLC's Request for Pre-Probable Cause Conciliation *CK/ms*

On May 20, 2021, the Commission found reason to believe that Unknown Respondents violated 52 U.S.C. § 30122 by making contributions in the name of another, that Independence and Freedom Network, Inc. (“IFN”), Ray McVeigh, and LZP, LLC, violated 52 U.S.C. § 30122 by allowing LZP’s name to be used to make contributions in the name of another, and that Honor and Principles PAC and Lisa Lisker in her official capacity as treasurer (“Honor PAC”) violated 52 U.S.C. § 30122 by knowingly accepting contributions in the name of another.¹

IFN and LZP have requested pre-probable cause conciliation and have provided limited discovery, but have refused to identify the unknown persons that provided IFN with the funds that it transferred to LZP in order to make \$270,000 of contributions in the name of another to Honor PAC. As discussed below, we recommend that the Commission deny the request because we require information about the source of funds provided to IFN around the

¹ Certification (May 27, 2021). The Commission also found reason to believe that LZP violated 11 C.F.R. § 110.1(g)(5) by failing to provide attribution information for their contribution of \$35,000 made on October 19, 2018.

time of the contributions at issue to complete the investigation. Given Respondents' refusal to provide the requested information, we also are circulating, in a separate document, discovery materials that include a subpoena for IFN, a bank subpoena for IFN's financial institution, and a deposition subpoena for IFN director Raymond McVeigh.

On June 10, 2021, we notified counsel for IFN, LZP, and Honor PAC of the Commission's reason to believe findings.² On June 28, counsel for IFN, LZP, and Honor PAC requested an extension of time to respond to the reason to believe findings.³ On June 29, we spoke with counsel and agreed to grant a two-week extension to make a partial production of relevant documents, including bank records, and a further extension of up to 30 days from the original due date of June 25 to produce affidavits and submit complete responses.⁴ LZP agreed to a 30-day tolling agreement on July 1;⁵ IFN did the same on July 6;⁶ and LZP and IFN each provided a second 30-day tolling on August 17.⁷ On July 22, IFN and LZP provided partial initial discovery in the form of redacted bank statements for March, April, and October 2018.⁸ On August 26, 2021, IFN and LZP submitted a Response to the Commission's reason to believe finding and the Factual and Legal Analysis in which they also requested that the Commission enter into pre-probable cause conciliation.⁹ While further evaluating this matter, we asked Respondents follow up questions and requested unredacted copies of documents related to the contributions, but limited that request to contributions IFN received during March 2018.¹⁰ IFN declined to provide further information in its Response.¹¹

We recommend that the Commission decline to proceed to pre-probable cause conciliation at this time because the record does not identify the unknown persons who provided funds to IFN. Although IFN and LZP have produced limited discovery, as discussed in more detail in the accompanying memorandum circulating discovery documents, they have failed to provide key information concerning the original source or sources of the funds used to make the contributions at issue and whether one or more unknown persons directed the sequence of events resulting in the formation of LZP and Honor PAC and LZP's subsequent contributions to Honor PAC. The identity of the unknown persons providing the

² RTB Notif. Letters (June 10, 2021).

³ Email from James E. Tyrrell III, Counsel for IFN, to Ana Peña-Wallace, FEC (June 28, 2021).

⁴ Email from Ana Peña-Wallace, FEC, to James E. Tyrrell, III, Counsel for IFN (June 30, 2021).

⁵ Email from James E. Tyrrell III, Counsel for IFN, to Ana Peña-Wallace, FEC (July 1, 2021).

⁶ Email from James E. Tyrrell III, Counsel for IFN, to Ana Peña-Wallace, FEC (July 6, 2021).

⁷ Email from James E. Tyrrell III, Counsel for IFN, to Ana Peña-Wallace, FEC (Aug. 26, 2021).

⁸ Letter with IFN/LZP Document Production (July 22, 2021). Honor PAC also submitted a Response to the Commission's finding of reason to believe and Factual and Legal Analysis but did not request pre-probable cause conciliation. Honor PAC RTB Resp. (Sept. 23, 2021). IFN, LZP, and Honor PAC all share the same counsel.

⁹ IFN/LZP RTB Resp. (Aug. 26, 2021).

¹⁰ Letter from Ana Peña-Wallace, FEC, to James E. Tyrrell III, Counsel for IFN/LZP (Nov. 12, 2021). Discovery is discussed in more detail in a memorandum to the Commission regarding the circulation of discovery documents, which we are circulating contemporaneously.

¹¹ Letter from James E. Tyrrell III, Counsel for IFN/LZP, to Ana Peña-Wallace, FEC (Nov. 24, 2021).

funds is a specific fact that the First General Counsel’s Report listed as an objective of the investigation that the Commission authorized.¹²

The RTB Response requests pre-probable cause conciliation based on its contention that “all of the facts and information germane to the RTB finding and the F&LA are provided herein [and because] the Respondents have dissolved and no longer have bank accounts or any funds.”¹³ The RTB Response also attaches an affidavit from IFN’s sole director and officer, Raymond McVeigh, and makes several substantive arguments regarding the Commission’s finding of reason to believe.¹⁴ These arguments are premised on a misunderstanding of the Commission’s findings or on incorrect characterizations of past Commission precedent.

IFN and LZP argue that it is unnecessary to investigate the source of funds to IFN because the Commission only found reason to believe that LZP was used to make contributions in the name of another, not whether IFN was part of the same conduit scheme.¹⁵ Based on this assumption, they also contend that pre-probable cause conciliation is appropriate because IFN and LZP have dissolved and lack funds and because “IFN has publicly acknowledged its role here through public IRS filings, and by asking [Honor PAC] to amend its reports filed with the Commission.”¹⁶ This, however, is not an accurate characterization of the Commission’s findings. To the contrary, the Factual and Legal Analysis explains that the Commission has found reason to believe that IFN both “ma[de] and allow[ed] LZP’s name to be used to make[] contributions in the name of another.”¹⁷ In addition, the Commission has found reason to believe not only that IFN and LZP effectuated a contribution in the name of another but that Unknown Respondents “violated 52 U.S.C. § 30122 by making contributions in the name of another.”¹⁸

Moreover, a conduit contribution scheme may involve moving funds through numerous pass-through entities. Indeed, here the limited discovery IFN and LZP have provided so far indicated that on March 28, 2018, an unknown individual transferred \$200,000 into IFN’s bank account just before IFN transferred \$180,000 to LZP, which was then used to make a \$175,000 contribution to Honor PAC that same day. The identity of this individual, whose name IFN redacted from the bank records we have received, is crucial to completing the investigation in this matter. It is further worth noting that IFN and LZP

¹² First Gen. Counsel’s Rpt. at 20-21 (Apr. 23, 2021); Certification ¶ 1.a, f (May 27, 2021).

¹³ IFN/LZP RTB Resp. at 2.

¹⁴ IFN/LZP RTB Resp., Ex. A, Raymond McVeigh Aff. (Aug. 26, 2021) (“McVeigh Aff. IFN did not take the opportunity to substantively address the issues raised in the Amended Complaint, despite receiving notification of those allegations on December 15, 2020. Am. Compl. Notif. Letter (Dec. 15, 2020), MUR 7464 (IFN). Many of the arguments advanced here could have been addressed prior to the Commission’s finding of reason to believe.

¹⁵ IFN/LZP RTB Resp. at 16-17.

¹⁶ *Id.* at 2.

¹⁷ Factual & Legal Analysis (“F&LA”) at 1, MUR 7464 (IFN).

¹⁸ Certification ¶ 1.a (May 27, 2021).

dissolved in December 2020, while this matter was pending and after receiving the complaint notifications.¹⁹

IFN and LZP also argue that McVeigh's affidavit obviates the need for further investigation because he "makes clear through his affidavit that IFN's intent in creating LZP was to simplify and better organize IFN's various projects for accounting purposes."²⁰ However, it does not explain how creating LZP and making contributions through it simplified IFN's accounting. This explanation also appears to be contradicted by the fact that IFN made a \$850,000 contribution directly to another federal political action committee, Onward Ohio, three months before LZP's first contribution to Honor PAC.²¹

IFN and LZP also renew the argument advanced in LZP's Response to the Complaint that the attribution rules applicable at 11 C.F.R. § 110.1(e) are confusing or do not clearly apply, now arguing that the regulation does not apply because it states that attribution among partners is done proportionally based on their respective share of the partnerships profits and LZP is a nonprofit entity.²² This argument is not a basis to discontinue the investigation because: (1) the Commission already found that section 110.1(e) applies in its Factual and Legal Analysis;²³ (2) the argument only addresses attribution and not the making of contributions in the name of another; (3) under section 110.1(e), share of profits is used to determine the proportion of the partnership's contribution to apportion to each member,²⁴ whereas here IFN was LZP's only partnership member; and (4) despite the name, a nonprofit LLC can nevertheless generate taxable profit if it obtains revenue from activities unrelated to its nonprofit purpose.²⁵

IFN and LZP's request to proceed to pre-probable cause conciliation does not set out a valid basis to do so and instead appears to be an attempt to avoid a fulsome investigation into the source or sources of the funds used to make LZP's contributions to Honor PAC. Accordingly, we recommend that the Commission reject IFN and LZP's request to enter into pre-probable cause conciliation.

¹⁹ McVeigh Aff. ¶ 14.

²⁰ IFN/LZP RTB Resp. at 15; *see also* McVeigh Aff. ¶ 8.

²¹ *See FEC Receipts: Filtered Results*, FEC.GOV (reflecting two contributions by IFN), https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=independence+and+freedom+network (last visited Jan. 5, 2022).

²² IFN/LZP RTB Resp. at 11-12; LZP Resp. at 6-8 (Mar. 11, 2019).

²³ F&LA at 15, MUR 7464 (LZP, LLC).

²⁴ *See* 11 C.F.R. § 110.1(e) ("A contribution by a partnership shall be attributed to the partnership and to each partner - (1) In direct proportion to his or her share of the partnership profits.").

²⁵ *See* Internal Revenue Service, Pub. 598: Tax on Unrelated Business Income of Exempt Organizations (Mar. 2021), <https://www.irs.gov/pub/irs-pdf/p598.pdf>. IFN and LZP also renew the argument advanced in LZP's Response to the Complaint that they lacked notice because the Commission first addressed "contributions from disregarded entity and partnership LLCs" in MURs 6969, 7031, 7034, which were dismissed in September 2018 after the relevant activity here. IFN/LZP RTB Resp. at 7-11; *see also* LZP Compl. Resp. at 5-6. The Commission has already considered this issue in significant detail prior to finding reason to believe. Moreover, the RTB Response never explains why the distinction between corporate LLCs and disregarded entities is relevant to the legal analysis such that they were not on notice that the prohibition against making contributions in the name of another applied to them.

RECOMMENDATION:

1. Reject Independence and Freedom Network, Inc., and LZP, LLC's, request to enter into pre-probable cause conciliation; and
2. Approve the appropriate letter.