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March 16, 2023

Lisa A. Stevenson
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: **MUR 7464**

Dear Ms. Stevenson:

We write on behalf of our clients, Independence and Freedom Network, Inc. and LZP, LLC ("Respondents") in response to the March 1, 2023 letter from the Office of General Counsel ("OGC") informing Respondents that OGC is recommending that the Commission find probable cause to believe Respondents violated the Federal Election Campaign Act (the "Act"). Respondents request a hearing pursuant to 72 Fed. Reg. 64919 (Nov. 19, 2007) and 74 Fed. Reg. 5443 (Oct. 28, 2009) for an extended opportunity to contest the allegations and expand upon their arguments in the enclosed Reply Brief.

Respondents expect to address the following important issues raised in the attached reply to OGC's Brief, namely: (1) in order to put to light OGC's misrepresentations and false allegations concerning interviews it conducted that form the basis for its probable cause recommendation; (2) to emphasize that violations of 52 U.S.C. § 30122 require OGC to prove intent, which it has not; (3) to stress that OGC's conclusions and statements regarding corporate governance issues have no legal significance to its lone probable cause recommendation; and, (4) to underscore that this case amounts to nothing more than a reporting violation that was not a reporting violation at the time of the alleged activity due to lack of Commission guidance.

Please let us know if you have any questions or require more information.

Respectfully submitted,

James E. Tyrrell III

James E. Tyrrell III
Counsel to Independence and Freedom Network and LZP, LLC

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Independence and Freedom Network, Inc.	)	MUR 7464
LZP, LLC	)	
	)	

REPLY TO GENERAL COUNSEL'S BRIEF

This brief is submitted on behalf of Independence and Freedom Network, Inc. ("IFN") and LZP, LLC ("LZP") (collectively, the "Respondents") in response to the General Counsel's Brief in MUR 7464.

It has been 1,681 days since the Complaint was filed in this matter, and an even longer 1,815 days since the alleged activity triggering the Complaint occurred, and yet, we might as well be back in 2021 at the very start of the Office of General Counsel's ("OGC") post-RTB investigation. Despite this case languishing for five years, and OGC engaging in an almost two-year intrusive and extraneous fishing expedition that expanded well beyond the allegations in the Complaint, the only accurate conclusion OGC has come up with based on its extensive and resource-consuming enquiry is that no "Unknown Respondent" ever "intended to make a federal contribution under the Act"[1] to Respondents. Nevertheless, OGC now seeks to have the Commission make probable cause findings against two dissolved nonprofit organizations with no money and no prospect of collecting civil penalties when the statute of limitations is just weeks away and the public record was clarified two years ago.[2] At this point, it's difficult to imagine OGC's motivation being anything other than trying to extract a pound of flesh from Respondents after investing so much time, effort, and Commission resources.

Virtually all of OGC's brief focuses on issues and so-called "evidence" that have no factual or legal bearing on the limited, singular recommendation OGC is making to the Commission, i.e. that the Commission find probable cause to believe that IFN "made contributions in the name of another and that LZP, LLC, allowed its name to be used to make contributions in the name of another in violation of 52 U.S.C. § 30122."[3] The factual recitation in OGC's brief is predicated on allegations of facts and events immaterial to the narrow probable cause determination ultimately advanced and recommended by OGC. This is strategic and part of a failed effort to manufacture substance where none exists. Indeed, OGC's brief is filled with irrelevant narratives, conclusory statements, speculation, innuendo, and outright fabrications, all made in effort by OGC to cast an adverse inference against Respondents and make them look like unscrupulous "dark money" actors. OGC's assertions and characterizations concerning interviews with two consultants for IFN are particularly striking, so much so in fact that Respondents are providing the attached sworn declaration[4] from one of these consultants refuting OGC's assertions and characterizations in an

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[1] *See* MUR 7464 (LZP, LLC, et al), General Counsel's Brief at 20 ("[I]t does not appear that Ohio Works…intended to make a federal contribution under the Act.")
[2] *See* Honor and Principles PAC, 2018 Amended April Quarterly, July Quarterly, and Post-General Reports.
[3] General Counsel's Brief at 22.
[4] *See* Declaration of Tom Norris (attached as Exhibit A).

effort to correct the record. The OGC attorneys handling the case, Messrs. Rabinowitz and Shonkwiler, have engaged in similar deceitful tactics throughout their investigation, including making blatant misrepresentations to undersigned counsel about certain witness testimony in an attempt to induce Respondents to sign arbitrary tolling agreements in order to buy time to continue their *ultra vires* investigation. In short, to the extent OGC represents this was a legitimate fact-finding process, it cannot be further from the truth.

As to the only contention ultimately advanced, Respondents do not dispute and have never disputed that IFN transferred the funds to LZP that were used to make the contributions to Honor and Principles PAC ("Honor PAC"). We have consistently maintained that, with the guidance of advice from counsel, LZP was created as IFN's disregarded entity because IFN "sought to separate and organize its spending for purposes of simplifying its accounting procedures,"[5] and LZP believed, after consulting counsel, that it was required to convey its contribution to Honor PAC in its own name under Ohio corporate law.[6] There has not been a single witness interviewed or deposed by OGC during its marathon investigation who has stated anything other than LZP was established for accounting purposes—including a sworn affidavit[7] and deposition testimony from IFN's sole director[8] and numerous interviews with IFN's two primary consultants.[9] Yet, OGC has the audacity to maintain that with respect to Respondents' consistent justification for LZP's creation, "there is no evidence that this justification is anything but a post-hoc rationalization made after receiving the complaint and FLA in this matter."[10] Apparently, Messrs. Rabinowitz and Shonkwiler consider their own self-serving conclusions and inferences about what they would like the facts to be in this case to be *evidence*, whereas sworn affidavits and witness testimony are not.

Facing the prospect of coming up empty-handed following its intrusive "Russian Doll" investigation into IFN's donors and donors to IFN's donors, and ultimately concluding that no donors to IFN ever "intended to make a federal contribution under the Act,"[11] OGC now argues that "the key question under 52 U.S.C. § 30122…is who is the true source of the contribution and does not require proof on an intent to deceive." But this is a departure from the purpose and intent-driven analysis applied by OGC in similar matters.[12] Moreover, OGC's ad hoc position here ignores the fact that "the Commission's central inquiry in examining a potential conduit contribution is 'whether funds were intentionally funneled through a [conduit] for the purpose of making a contribution that evades the Act's reporting requirements.'"[13] Of course, it is obvious why OGC would insist that intent and purpose have no bearing on a Section 30122 violation—because its investigation only uncovered evidence that further bolstered Respondents' long-held position that LZP was established for accounting purposes and that Respondents believed at the

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[5] MUR 7464, IFN and LZP Response to Factual and Legal Analysis at 4 (Aug. 26, 2021).

[6] MUR 7464, Response to Complaint from LZP, LLC at 3 (Mar. 11, 2019).

[7] *See* Affidavit of Raymond McVeigh ¶¶ 7-9 (Aug. 23, 2021).

[8] *See* Raymond McVeigh Dep. at 47:7-14; 48:9-15; 49:14-17; 50:1-5; 56:12-15.

[9] *see also* Declaration of Tom Norris.

[10] General Counsel's Brief at 21.

[11] *See* General Counsel's Brief at 20.

[12] *See* MUR 6930 (SPM Holdings, LLC), First General Counsel's Report (Nov. 19, 2015).

[13] Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 4-5 (Dec. 1, 2021), MUR 7754 (Pacific Environmental Coalition) (citing Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman at 12 (Apr. 1, 2016), MUR 6485 (W Spann LLC, et al.), MURs 6487/6488 (F8, LLC, et al.), MUR 6711 (Specialty Investment Group, Inc., et al.), MUR 6930 (SPM Holdings LLC, et al.)

time, after consulting counsel, that it was required to reflect LZP as the donor on Honor PAC's reports.[14] However, it also begs the question why OGC would spend the majority of its brief making bogus assertions about what was said in interviews and depositions, all in an apparent attempt to show that IFN created LZP "for the specific purpose of transferring funds into LZP to be transferred to Honor PAC."[15]

At the end of the day, despite all of noise and fluff created by OGC in its brief, the issue presented in this matter is narrow, framed by a set of facts never contested by Respondents, and one previously resolved by the Commission—albeit after the date of the subject transactions. At most, this case amounts to a reporting violation that was not a reporting violation at the time. Indeed, had the Commission's reporting guidance with respect to partnership LLC and disregarded entity contributions to Super PACs[16] been applicable at the time of the subject transactions, LZP would have undoubtedly provided IFN's attribution information to Honor PAC. But as explained further below, that was not the Commission's guidance at the time.

As explained in more detail below, IFN never intentionally funneled money through LZP for the purpose of making a contribution to Honor PAC or to disguise its own identity. OGC's arguments in their brief not only ignore the actual *evidence* in this matter, but are based purely on OGC's own inferences drawn out of thin air. To the contrary, the actual evidence uncovered in this investigation further bolsters IFN and LZP's longstanding position that LZP was established for accounting purposes and as a means for IFN to separate out projects to easier track its political versus social welfare activity. In light of this reality, combined with the imminent expiration of the statute of limitations and the dissolved and insolvent financial state of Respondents, we urge the Commission to close this matter.

I. OGC Misquotes, Misrepresents and Mischaracterizes Key Witness Testimony that Forms the Basis for its Probable Cause Recommendation

Over the last two years, OGC conducted an extensive, wide-ranging, and burdensome investigation[17] in an obsessive search for a violation it never found. However, the extent to which OGC has misquoted, misrepresented, and mischaracterized its interviews with IFN consultants, Tom Norris and Joel Riter, and deposition with IFN's sole director, Ray McVeigh is nothing short of breathtaking. In late 2022, OGC sought to speak with Norris and Riter about their involvement with IFN and LZP. Norris and Riter's counsel, Marion Little of Zeiger, Tigges & Little LLP in Columbus, OH, arranged for Riter and Norris to speak with Messrs. Rabinowitz and Shonkwiler in informal, non-transcribed interviews through Zoom. Riter's interview with Rabinowitz and

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[14] *See* LZP Response to Complaint at 3; *see also* IFN and LZP Response to F&LA at 21; McVeigh Affidavit at ¶¶ 7-9.

[15] *See* General Counsel's Brief at 22.

[16] Statement of Reasons of Chair Dickerson, Vice Chair Walther, and Commissioners Broussard and Weintraub, MUR 7454 (Blue Magnolia Investments, LLC) (Apr. 15, 2022).

[17] To be clear, OGC conducted only two depositions, electing to conduct informal interviews of numerous other witnesses. Even then, the hallmark of OGC's interviews were scripted points and only superficial inquiries as to the subject witnesses' actual knowledge of activity that occurred five years ago. In its brief, OGC then offers the Commission their own impressions, inferences, and deductions recast as statements purportedly made by the witnesses themselves.

Shonkwiler took place on Nov. 16, 2022, with a follow-up interview on Feb. 10, 2023. Norris' interview took place on February 6, 2023. OGC deposed McVeigh on January 6, 2023.

These interviews and deposition are relied upon heavily by OGC in its brief, as OGC's assertions concerning what they claim Norris, Riter and McVeigh said form a critical basis for its probable cause recommendation. However, virtually everything alleged to have been stated by Norris and Riter in their interviews has either been twisted to conform to OGC's false narrative and theory of the case, or is an outright fabrication. McVeigh's testimony is similarly mischaracterized. In an effort to correct the record, we have provided a sworn declaration from Norris that refutes OGC's assertions about what was said in his interview. With that said, considering OGC did not take it upon itself to obtain transcribed interviews from Norris and Riter, we not only urge the Commission to pay particular attention to the and in particular Messrs. Rabinowitz and Shonkwiler's contemporaneous notes of the interviews, but also to focus carefully on the attached Declaration and the inconsistencies contained in OGC's statements highlighted below.

- On p. 2-3, OGC states that Norris "acknowledged that he and an associate, Joel Riter, formed LZP and Honor PAC for the specific purpose of having IFN transfer funds to LZP to be thereafter transferred to Honor PAC so that those funds could be used to pay for certain independent expenditures in an Ohio state race." This is false. Norris never stated that LZP was formed for the specific purpose of having IFN transfer funds to it, so it could in turn transfer funds to Honor PAC. In fact, Norris never stated that there was a "specific purpose" of either group during his interview. To the contrary, Norris stated that for accounting reasons and to separate this particular project, IFN created LZP and he believed IFN was legally able to do so.

- On p. 5, after asking Norris about an email produced by IFN's sole director, Ray McVeigh,[18] that made reference to the "dark side," OGC correctly notes that "Norris explained that his comment to McVeigh that he would be joining the 'dark side' was meant as a joke that referenced a segment by Rachel Maddow accusing Norris of running a 'dark money' operation." However, despite Norris' statement in his interview that it was indeed a joke, and OGC's acknowledgment that it was a joke on page 5 of the brief, OGC then uses the reference as evidence to cast a negative inference against IFN, stating on page 20 of the brief that "Norris's comment to McVeigh that in forming the organization with them he would be 'joining the 'dark side'' further supports this understanding of IFN's purpose." This is just another example of OGC employing deceitful tactics in its quest for a probable cause finding.

[18] It should be noted that this email produced by McVeigh was not responsive to the Commission's March 18, 2022 subpoena for documents or any of OGC's other informal document requests throughout this process, as it was sent almost a year before the time period targeted by the subpoena and informal requests. It is unclear why McVeigh's counsel would have produced this email other than pressure exerted by OGC during his deposition, which once again shows that Messrs. Rabinowitz and Shonkwiler sought information well outside the time period and scope of the Commission-approved subpoena.

- On p. 6, OGC claims that "Norris stated that he directed that LZP and Honor PAC be formed for the purpose of paying to create and distribute advertisements in connection with the Ohio State Representative race between Ohio State Representative Larry Householder and Kevin Black." But Norris never stated anything of the sort. Norris never said he "directed" anyone to do anything, and just two lines earlier, OGC stated that it was Riter who "hired Lisa Lisker to serve as [Honor PAC's] treasurer," so it strains credibility for OGC to claim Norris directed the creation of Honor PAC. Moreover, Norris only used the word "project" with respect to the purpose of creating LZP—he did not make reference to specific candidates in Ohio.

- On p. 7, OGC makes reference to "an interview," but does not state with whom. Assuming they are referring to their interview with Norris, he never stated that "LZP was created for the specific purpose of transferring funds from IFN to it and then to Honor PAC." These are OGC's words. Rather, Norris stated that he believed LZP would engage in more activities when it was first created, and made clear that LZP was not formed for the purpose of hiding IFN from public disclosure.

- On p. 8, OGC claims that Norris "stated that he wanted to create LZP based on his understanding of how another organization, Arabella Advisors, was reported to have operated under multiple organization names around that time." While Norris did bring up his research into the operations of Arabella Advisors around the time of LZP's creation, it is a gross mischaracterization that Norris only sought information on Arabella because, as OGC puts it, "around the period in question, various articles appear to have alleged that Arabella Advisors was a 'dark money' organization that formed subsidiaries to hide the sources of funds used for advocacy work." However, the vast majority of articles about Arabella Advisors during the period in question were positive and Arabella did not become controversial as it pertained to its donor disclosure until 2019 through 2021. It is therefore utterly inaccurate to suggest Norris sought out information on Arabella for the purpose of structuring a "dark money" operation.[19]

- On p. 8, OGC casually states as if it was fact that "IFN thereafter received specific funds that were used to pay for the advertisements in the Householder/Black race from an entity called Ohio Works." Neither Norris nor Riter, or any witness for that matter, ever said that IFN received "specific funds" used in support or opposition to specific candidates. These are OGC's words, and their suggestion that IFN received earmarked funds for specific candidates is contradicted by their conclusion that "it does not appear that Ohio Works — the source of funds into IFN that were used for the transfers into Honor PAC — intended to make a federal contribution under the Act."[20]

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[19] It should be noted that during Norris' interview, Rabinowitz claimed to not be familiar at all with Arabella Advisors despite associated entities being involved in numerous enforcement matters with the Commission over the years. Shonkwiler, on the other hand, was not only familiar with Arabella Advisors but spoke favorably about them and how they managed their various projects and groups by geographic or regional affiliation.

[20] General Counsel's Brief at 20.

- On p. 14, OGC misconstrues McVeigh's testimony from his deposition, stating that McVeigh "further testified that during the conversation Norris and Riter stated that they would not have made the contributions if they had been aware of the Commission's guidance regarding the requirement that LLCs that are taxed as partnerships must attribute their contributions to IEOPCs." To be clear, nowhere in McVeigh's deposition transcript does McVeigh testify that Norris and Riter "stated" these words. As an initial matter, the current LLC to IEOPC reporting regime was not a "requirement" until the Statement of Reasons in MUR 7454[21] was issued. Moreover, the footnote attributed to this line makes clear that Norris and Riter never told or suggested to McVeigh that they did not want it to be publicly disclosed that IFN was contributing to Honor PAC.[22] OGC's line in the body of the brief, however, was clearly meant to deceptively infer that Norris and Riter's intent was to disguise IFN.

- On p. 18, OGC claims that "Norris acknowledged that LZP was set up specifically to act as a conduit between IFN and Honor PAC and that he caused IFN to transfer funds to LZP with the specific intent of thereafter transferring them to Honor PAC." This is false, as Norris never stated or acknowledged that LZP "was set up specifically to act as a conduit between IFN and Honor PAC." If anything, Norris acknowledged that LZP was set up for a "project," which would have been in line with his and Riter's desire to separate spending on the project for accounting purposes.

- On p. 21, OGC again asserts that "McVeigh testified that Norris and Riter stated that they would not have had IFN make these contributions if they had known at the time that FEC regulations required that IFN's name would have to be disclosed." Once again, this is a not true, as Norris and Riter never said this to McVeigh and McVeigh never stated this in his deposition testimony. As explained above, Norris and Riter never "stated" to McVeigh that they did not want it to be publicly disclosed that IFN was contributing to Honor PAC.[23]

- On p. 21, OGC declares that "while Norris stated that IFN was created for tax and accounting purposes, he contradictorily also stated that it was created as part of an effort to model IFN's activity on an organization that at the time was publicly alleged to have operated in a manner designed to conceal the true source of funds used for various activities." First, no one ever stated that IFN was created for tax and accounting purposes, as OGC likely meant "LZP" instead of "IFN" in this line. In any event, Norris simply never stated that IFN or LZP was created as part of an effort to model activity on an organization that was alleged to have operated in a manner to conceal the true source of funds. Once again, these are OGC's words, and they are fabricated to create an adverse inference against Respondents. OGC's suggestion that their discussion with Norris about Arabella Advisors somehow "contradicts" his and others' consistent representation that LZP was created for tax and accounting purposes strains credibility.

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[21] Statement of Reasons of Chair Dickerson, Vice Chair Walther, and Commissioners Broussard and Weintraub, MUR 7454 (Blue Magnolia Investments, LLC) (Apr. 15, 2022).
[22] General Counsel's Brief at 14 n. 58.
[23] General Counsel's Brief at 14 n. 58.

Unfortunately, OGC's deceptive and dishonest tactics in this matter are not just confined to their brief. Throughout their investigation, Messrs. Rabinowitz and Shonkwiler have made gross misrepresentations to undersigned counsel with respect to various witness testimony in an effort to extract concessions and additional tolling agreements, presumably so it could continue its frivolous investigation into IFN's donors and donors to IFN's donors. For instance, following their interview with Norris on February 6, 2023, Mr. Rabinowitz sent an email[24] to undersigned counsel stating that "Mr. Norris has told us that Mr. Everhart was asked by him to fundraise specifically for the IEs at issue in this MUR. Mr. Everhart therefore clearly was a fundraising agent for IFN." But this was simply not true, as Mr. Norris never stated that "Mr. Everhart was asked by him to fundraise specifically for the IEs at issue in this MUR." Mr. Rabinowitz insisted that Mr. Everhart be labeled a fundraising agent who was asked to "fundraise specifically for the IEs at issue in this MUR" because that fact pattern lent itself to OGC's misguided theory of the case, which at that point was (and probably still is) that some "Unknown Respondent" directed funds to be filtered through both IFN and LZP and end up with Honor PAC. Rabinowitz pushed this self-serving conclusion over the course of several emails, but it appears he must have given up on pursuing his Russian doll conspiracy theory because the brief concludes that no entities "intended to make a federal contribution under the Act" to Respondents.[25]

OGC employed similar self-serving and ill-mannered tactics throughout their investigation. Toward the beginning of its investigation after we provided Respondents' bank records, OGC tried to track down the name and contact information for the address associated with one of the accounts on the bank records, which led them to a former address for Joel Riter. However, despite OGC already having the contact information for Riter stemming from other matters with the Commission, and having the ability to procure Riter's number through other means, OGC instead chose to call the phone number it tracked down for the associated address, which was a former address for Riter and the current address for Riter's father. The investigator apparently asked to speak with Riter despite the fact that he no longer lived at that address and proceeded to provide details of the case to Riter's father, suggesting that his son was under investigation by the federal government. Rabinowitz never denied OGC's calling Riter's father during an email exchange with undersigned counsel on October 4, 2022.[26]

These are just a few examples of OGC's tactics and procedural improprieties throughout this investigation, and this does not even scratch the surface when considering the lengths to which OGC went to investigate donors to IFN, and even donors to the donors of IFN, when those entities and individuals were never a part of the complaint or supplemental complaint, and there was never any indicia or facts to suggest that an investigation of such entities or individuals were warranted. OGC's intrusive inquiry into an individual who has a long history of donating to Ohio candidates and causes, perfectly encapsulates OGC's roving and directionless investigatory tactics was not a donor to IFN or LZP, but rather a donor to one of IFN's donors, and yet was subjected to unwarranted scrutiny based on OGC's legal theories

[24] *See* Email Chain Between James Tyrrell and Aaron Rabinowitz from Jan. 23, 2023 through Feb. 28, 2023 (attached as Exhibit B).

[25] General Counsel's Brief at 20.

[26] Email Exchange Between James Tyrrell and Aaron Rabinowitz from Sep. 27, 2022 through Oct. 4, 2022 (attached as Exhibit C).

concocted out of whole cloth. Indeed, this was purely a fishing expedition performed by conspiracy theory-driven attorneys at OGC.[28] Unfortunately, this has been a pattern of behavior with OGC as of late.[29]

II. OGC Has Failed the Demonstrate the Requisite Intent to Prove a Violation of Section 30122.

OGC's insists that "the key question under 52 U.S.C. § 30122…is who is the true source of the contribution and does not on its face require proof of an intent to deceive."[30] In making this argument, OGC tries to conflate the intent requirement of knowing and willful violations with non-knowing and willful violations, suggesting somehow that a non-knowing and willful violation of Section 30122 does not require a showing of intent or purpose. But this approach has simply not been adopted by the Commission and flies in the face of OGC's previous stance on the issue.[31]

In reality, "a contribution in the name of another can be structured in different ways: for example, a contributor can advance funds to another person to make a contribution in that person's name, or he or she can promise reimbursement to another person for the latter's contribution after the fact. <u>But the Commission's central inquiry in examining a potential conduit contribution is "whether funds were intentionally funneled through a [conduit] for the purpose of making a contribution that evades the Act's reporting requirements</u>."[32]

This intent and "purpose requirement is dictated by the plain text of the Act, court decisions, forty years of Commission practice, and common sense. Congress defined a 'contribution' as '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."[33] *In Van Hollen v. FEC*, the D.C. Circuit "observed that the Act rests upon a "purpose-laden definition of

[28] Why else would OGC reference in a brief recommending probable cause against Respondents that a donor to one of IFN's donors "may have had specific motive to hide that it was the original source of some of these funds, as publicly available information indicated that it also contributed to another organization that supported Householder"? *See* General Counsel's Brief at 21 n. 87. This is pure speculation and innuendo and has no factual or legal bearing on the actual recommendation in OGC's brief. Its inclusion raises serious questions about whether OGC was engaged in actual fact-finding throughout its investigation, or whether it asserted some meandering investigatory authority based in Messrs. Rabinowitz and Shonkwiler's own hunches.

[29] *See* Statement of Reasons of Vice Chair Cooksey and Commissioners Dickerson and Trainor at 1, MUR 7889 (SIG SAUER, Inc.) (Jan. 20, 2023) ("Based on this Complaint solely against SIG SAUER, OGC not only engaged in an ultra vires investigation of other companies without Commission approval, but it further proposed a broader investigation of the IEOPC based upon unsubstantiated speculation about parties' personal knowledge.").

[30] General Counsel's Brief at 19.

[31] *See* MUR 6930 (SPM Holdings, LLC), First General Counsel's Report (Nov. 19, 2015).

[32] Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 4-5 (Dec. 1, 2021), MUR 7754 (Pacific Environmental Coalition) (citing Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman at 12 (Apr. 1, 2016), MUR 6485 (W Spann LLC, et al.), MURs 6487/6488 (F8, LLC, et al.), MUR 6711 (Specialty Investment Group, Inc., et al.), MUR 6930 (SPM Holdings LLC, et al.)

[33] Supplemental Statement of Reasons of Chairman Peterson and Commissioners Hunter and Goodman at 2 (Apr. 18, 2016), MUR 6485 (W Spann LLC, et al.), MURs 6487/6488 (F8, LLC, et al.), MUR 6711 (Specialty Investment Group, Inc., et al.), MUR 6930 (SPM Holdings LLC, et al.) (citing 52 U.S.C.§ 30101(8)(A)).

'contribution.'"[34] Accordingly, "the Commission and federal courts have consistently interpreted 52 U.S.C. § 30122, which prohibits making a contribution in the name of another, to require a specific purpose of funding a campaign contribution in another person's name."[35]

As we stated in our response to the Factual and Legal Analysis following the Commission's Reason to Believe finding,[36] the Act provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person."[37] The Commission's implementing regulation supplements the statute by also prohibiting the aiding and abetting of impermissible contribution-in-the-name-of-another schemes. That implementing regulation states, in pertinent part:

> **§ 110.4 Contributions in the name of another; cash contributions**
> (a) [Reserved]
> (b) *Contributions in the name of another.* (1) No person shall—
> (i) Make a contribution in the name of another;
> (ii) Knowingly permit his or her name to be used to effect that contribution;
> (iii) Knowingly help or assist any person in making a contribution in the name of another; or
> (iv) Knowingly accept a contribution made by one person in the name of another.

Importantly, each prohibited action set forth in (b)(i) - (iv) requires the Commission to prove intent to establish a violation of the contribution-in-the-name-of-another prohibition. To be clear, despite the absence of "knowingly" in paragraph (b)(i), no person can be found in violation of (b)(i), (b)(ii), (b)(iii), or (b)(iv) unless the Commission first proves that a source transmitted property to another with the intent to mask the identity of the true source.

This intent requirement was discussed in detail in the controlling Statement of Reasons in MURs 6485, 6487, 6711, and 6930, in which those Commissioners explained:

> [T]he proper focus in these matters is whether the funds used to make a contribution were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements, making

[34] *Id*. at 3 (citing *Van Hollen v. FEC*, No. 15-5016, slip op. at 11 (D.C. Cir. Jan. 21, 2016) ("[T]he FEC's purpose requirement is consistent with the purpose-laden definition of 'contribution' set forth in FECA's very own definitional section.")).
[35] *Id*. at 3.
[36] IFN and LZP Response to Factual and Legal Analysis at 14-15, MUR 7464 (Aug. 26, 2021). In considering this matter, we also strongly urge the Commission to carefully review IFN and LZP's response to the Commission's Factual and Legal Analysis submitted after the Reason to Believe finding (attached as Exhibit D) and LZP's response to the complaint, which sets forth the rationale for why LZP believed it was required to transmit funds in its own name under Ohio corporate law. LZP Response to Complaint at 3 (Mar. 11, 2019) (attached as Exhibit E).
[37] 52 U.S.C. § 30122.

> the individual, not the corporation or corporate LLC, the true source of the funds. Thus, in matters alleging section 30122 violations against such entities, the Commission will examine whether the available evidence establishes the requisite purpose.[38]

Therefore, the Commission's test for determining whether a contribution was made in the name of another should effectively have two prongs:

> 1. First, an examination of whether a source transmitted property to another with the purpose that it be used to make or reimburse a contribution; and,
> 2. Second, an examination of whether that source transmitted property to another with the intent to mask the identity of the true source.

While this intent requirement may not be favored by certain Commission members and clearly not by Messrs. Rabinowitz and Shonkwiler, it is nonetheless required to distinguish impermissible Section 30122 contributions from conduit contributions transferred lawfully. For example, contributors regularly make conduit contributions through platforms such as WinRed or ActBlue that satisfy the first prong of the test, but every conduit contribution effectuated through those platforms certainly does not constitute an impermissible contribution in the name of another. In short, intent matters.

In this case, regardless of OGC's furious attempts to uncover evidence to the contrary, IFN's intent in creating LZP was always to simplify and better organize IFN's various projects for accounting purposes. As a 501(c)(4) social welfare organization, it was important for IFN to ensure that its political spending did not exceed fifty percent of its overall spending, and it created LZP to separate out projects and easily account for such spending. Not only has McVeigh, IFN's sole director, produced a sworn affidavit attesting to this fact, but McVeigh confirmed that this was his understanding of the purpose of creating LZP in his deposition testimony. Norris and Riter also made clear in their interviews that LZP was established as a way to separate out such spending for accounting purposes.

OGC also seems to take issue with the fact that IFN made a grant to another federal Super PAC called Onward Ohio on March 16, 2018 but did not set up a disregarded entity related to that grant,[39] inferring that this is somehow proof that LZP was not set up for accounting purposes or to separate out projects. OGC even falsely claims that "Norris was not able to provide an explanation for this discrepancy other than to say that the recipients were different organizations."[40] But just because IFN made a grant to Onward Ohio directly does not mean that it was not also interested in separating out its political spending with respect to the

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[38] Statement of Reasons of Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Lee E. Goodman at 2, MURs 6485, 6487, 6711, and 6930 (April 1, 2016).
[39] General Counsel's Brief at 20 ("IFN made contributions to another IEOPC ten days before its first contribution to Honor and Principles PAC,82 yet it did not form a separate disregarded entity for this contribution, which was disclosed as coming from IFN directly.").
[40] General Counsel's Brief at 20.

projects it would actually be working on. IFN was actually managing the project related to LZP, whereas IFN's grant to Onward Ohio was only a grant where IFN had no involvement in that group's plans for the money. The same can be said for IFN's grants to "two other grants to organizations that were not federal PACs that same year" where IFN "also did not create subsidiaries in those instances."[41] In those instances, IFN was also not handling those groups' projects.

Despite the numerous pieces of evidence showing that IFN's intent in creating LZP was for accounting purposes and was not to mask IFN's identity, OGC just blindly states that "there is no evidence that this justification is anything but a post-hoc rationalization made after receiving the complaint and FLA in this matter."[42] But a sworn affidavit and witness testimony <u>are</u> *evidence*, and OGC's attempts to shift the burden to Respondents to prove a negative instead of presenting actual counter-evidence to demonstrate that this is somehow not the case is improper under the Commission's enforcement procedures.[43] Indeed, OGC's statement that "IFN has also not provided any contemporaneous documentation that could support its position that LZP was created for accounting purposes"[44] constitutes this exact type of impermissible burden shifting.[45] Earlier in their brief, OGC also states that "there does not appear to be any contemporaneous support for this representation," and actually has the nerve to complain that "the first indication that this was a putative basis for forming LZP is in IFN and LZP's response to the Complaint in this matter."[46] It is unclear where else OGC would expect Respondents to provide a rebuttal to the allegations in a complaint other than in its response, but apparently OGC expected Respondents to answer to these bogus allegations before a complaint was even filed, or even contemporaneously with the alleged activity giving way to the complaint. We were not aware OGC is now in the business of identifying "pre-crime."[47]

OGC's fixation with IFN producing "contemporaneous support" and "contemporaneous documentation" to justify its rationale for creating LZP also does not account for Norris' testimony during his interview that any additional documentation showing that LZP's purpose was for accounting purposes would have been privileged communications with IFN's attorney at the time when IFN was looking into the viability of using a disregarded entity to separate out its various projects for accounting purposes.

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[41] General Counsel's Brief at 20.
[42] General Counsel's Brief at 21.
[43] Statement of Reason of Chairman Wold and Commissioners Mason and Thomas, MUR 4850, July 20, 2000 ("mere conjecture [or a] conclusory allegation . . . does not shift the burden of proof to respondents").
[44] General Counsel's Brief at 21.
[45] This is analogous to a recent matter where OGC recommended finding reason to believe against a respondent, and stated in the first General Counsel's Report that "[t]he Responses do not sufficiently rebut the allegations." In response, three Commissioners pushed back against OGC, stating that "[t]his inappropriately shifts the burden of proof onto the Respondents in our view. Notwithstanding the reason-to believe standard being lower than belief beyond a reasonable doubt, respondents are presumed innocent until there is sufficient evidence to the contrary." Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 6 n. 30 (Oct. 8, 2021), MUR 7753 (Friends of Lucy McBath). *See also*, Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (July 20, 2000), MUR 4850 (Deloitte & Touche, LLP, et al.) ("The burden of proof does not shift to a respondent merely because a complaint is filed.").
[46] General Counsel's Brief at 7.
[47] *See Minority Report*, https://www.imdb.com/title/tt0181689/.

III. OGC's Emphasis on Corporate Governance Issues has No Legal Significance.

In its brief, OGC places primary emphasis on a host of corporate governance issues that have no legal bearing in determining a Section 30122 violation and are well outside the scope of the Commission's jurisdiction. Messrs. Rabinowitz and Shonkwiler likewise spend significant portions of their interviews and deposition with Norris, Riter, McVeigh, and other witnesses on corporate governance issues. However, to resolve what is ultimately a legal issue, the Commission need not determine who controlled, operationally or otherwise, Respondents, or what McVeigh did or didn't do with respect to his role with IFN. The same goes for OGC's *ultra vires* inquiries into the corporate and leadership structure of donors to IFN, namely Ohio Works. Of course, OGC is well aware that corporate governance issues are outside the Commission's jurisdiction, but they insist on offering their own commentary about IFN and Ohio Works' corporate structure for the sole purpose of casting an adverse inference against Respondents.

For instance, OGC spends almost four pages of its brief focused on the corporate structure of Ohio Works, a donor to IFN, and goes down a rabbit hole analyzing donors to Ohio Works, as if this has some sort of legal significance to the probable cause recommendation actually being made in this matter. Hint, it does not. OGC even offers a chart[48] juxtaposing donations to Ohio Works with Ohio Works' donations to IFN, but then fails to explain any relevance to the current probable cause recommendation. Even more egregious is OGC's statement toward the end of their brief that "the structure of [Ohio Works], which involved the siloing of the three individuals involved for the specific purpose of avoiding allegations that Ohio Works was receiving funds with instruction that they be thereafter transferred to another organization, further indicates an overall design to hide the source of the funds ultimately used to run advertisements opposing Householder and supporting Black."[49] While unclear, what OGC appears to be saying is that the way a nonprofit donor to IFN organized its staff somehow amounts to evidence that IFN participated in some sort of conspiracy to hide the source of funds used to run ads. Rabinowitz and Shonkwiler should win the gold medal for legal gymnastics for proposing this novel analysis, or maybe a close second to their argument that a joke made by Norris in an email to McVeigh about "joining the 'dark side'" almost a year before the activity in this matter "further supports this understanding of IFN's purpose."[50]

OGC makes similar extraneous commentary about IFN's corporate structure throughout the brief, arguing that "[t]he structure of IFN itself is designed to obfuscate the actual individuals who manage its affairs and exercise control over its operations" and that "Norris and Riter established McVeigh as a figurehead who was ostensibly the sole director and officer of IFN but who had no actual operational control or indeed any knowledge of its affairs until it was in its wind-down stage, when he was asked to sign paperwork to dissolve it and LZP and to hire representation in connection with an IRS audit and this MUR."[51] Aside from being inaccurate, the corporate structure of IFN, and whether or not IFN's sole director handled the day-to-day operations has no legal significance.

[48] General Counsel's Brief at 13.
[49] General Counsel's Brief at 21.
[50] General Counsel's Brief at 20.
[51] General Counsel's Brief at 20.

IFN's organizational structure seemed to be a shocking revelation for Rabinowitz and Shonkwiler during McVeigh's deposition. Specifically, Shonkwiler told McVeigh, "I'm going to tell you my impression. Usually, when we see someone named as a sole director, sole officer, we expect the person to be involved in the transactions. And so we're a little bit maybe surprised to hear that you had very little role in the transactions."[52] It is not uncommon for nonprofit organizations to have directors who have very little to do with an organization's spending and activities, but this revelation apparently came as a surprise to Rabinowitz and Shonkwiler who do not appear to have any experience managing or working with nonprofit organizations. In any event, OGC's commentary on IFN and Ohio Works' corporate structure is legally irrelevant and only pushed by Rabinowitz and Shonkwiler to cast Respondents in a negative light.

IV. If Anything, this Matter Involved a Reporting Violation that was Not Considered a Reporting Violation at the Time.

Notwithstanding OGC's serial misdirection attempts and bloviating on irrelevant topics, the issue presented in this matter is narrow, framed by a set of facts never contested by Respondents, and one previously resolved by the Commission—albeit after the date of the subject transactions. Respondents argued in their response to the complaint and still maintain that the Commission's guidance with respect to the reporting of disregarded entity and partnership LLC contributions to Super PACs was not settled at the time of the transactions in this matter. In fact, when we first responded to the Complaint, the Commission's recent Statements of Reasons concerning LLC Contributions to Super PACs had not yet contemplated contributions from a single-member nonprofit LLC, which was how LZP was organized. It wasn't until four years after the activity in this case that the Commission finally came to a consensus (i.e. four votes) on how LLC contributions to Super PACs should be reported.[53]

Accordingly, while LZP was of the good-faith belief that it did not need to provide any attribution information to Honor PAC at the time it made its contributions in 2018, if those contributions had been made after the so called "notice date" of April 15, 2022 set forth in the Blue Magnolia MUR, LZP would have undoubtedly provided Lisa Lisker, Honor PAC's treasurer, with IFN's name so she could attribute LZP's contribution to IFN. But that was not the guidance back in 2018, and so while LZP's failure to provide attribution information to Honor PAC, and Honor PAC's failure to initially report IFN as the attributed donor on its reports, would ostensibly amount to a reporting violation if it took place today, it was clearly not a reporting violation back in 2018 during the relevant time period and when the transactions actually occurred in this case. While the regulated community is now on notice of the Blue Magnolia guidance, the Commission cannot punish Respondents for not complying with guidance that simply didn't exist at the relevant time period in 2018. At most, this is what this case amounts to—a reporting violation that was not a reporting violation at the time.

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[52] McVeigh Dep. at 63:15-20.

[53] Statement of Reasons of Chair Dickerson, Vice Chair Walther, and Commissioners Broussard and Weintraub, MUR 7454 (Blue Magnolia Investments, LLC) (Apr. 15, 2022).

V. Pursuing a Probable Cause Finding Against Two Dissolved Entities with no Money on the Eve of the Expiration of the Statute of Limitations is a Further Waste of Commission Resources and the Commission Should Therefore Dismiss the Case as a Matter of Prosecutorial Discretion

This matter has sat in FEC purgatory for five years, and on the eve of the statute of limitations, OGC has filed a misleading, dishonest and sloppy probable cause brief asking the Commission to make a determination against two now-defunct and insolvent nonprofit organizations with no prospect of paying civil penalties when the public record was clarified two years ago. Continued pursuit of this matter is a waste of Commission resources. It is within the Commission's discretion to dismiss this matter and we exhort the Commission to terminate this proceeding.[54]

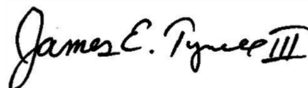
The Commission has set precedent of using its prosecutorial discretion to dismiss similar matters when Respondents are dissolved, insolvent and the statute of limitations expiration is imminent in order to preserve Commission resources.[55] This matter is no different. Considering the vanishing odds of enforcement, equitable relief and the enormous costs to the agency, the best course here is dismissal.

VI. Conclusion

For all of the foregoing reasons, this matter should be dismissed.

Submitted: March 16, 2023

Respectfully submitted,



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Counsel to Independence and Freedom Network and LZP, LLC

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[54] The Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount of the violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law.

[55] Statement of Reasons of Chair Shana M. Broussard, Vice Chair Allen Dickerson, And Commissioners Sean J. Cooksey, James E. "Trey" Trainor, III, Steven T. Walther, And Ellen Weintraub at 1-2 (May 28, 2021), MUR 7460 (Fair People for Fair Government); Statement of Reasons of Chairman Allen Dickerson And Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III at 11 (Mar. 7, 2022) MUR 7465 (Freedom Vote, Inc.); Statement of Reasons of Commissioner Ellen L. Weintraub at 16-17 (Dec. 3, 2021) MUR 7860 (Jobs and Progress Fund, Inc.).

EXHIBIT A

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Independence and Freedom Network, Inc.	)	MUR 7464
LZP, LLC	)	
	)	

DECLARATION OF TOM NORRIS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

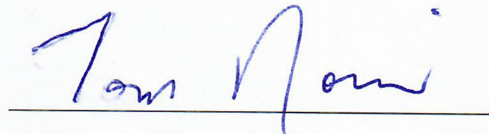
1. I am a person of proper age and majority and have personal knowledge of the facts as stated in this declaration.
2. I was previously interviewed by attorneys from the Federal Election Commission's General Counsel's office.
3. I have never stated or otherwise suggested that I and/or Joel Riter formed, or caused the formation of, LZP, LLC and Honor PAC for the specific purpose of having Independence and Freedom Network transfer funds to LZP, LLC to be thereafter transferred to Honor PAC so that those funds could be used to pay for certain independent expenditures in an Ohio state race.
4. I never stated that LZP, LLC was formed for the specific purpose of having Independence and Freedom Network transfer funds to it, so it could in turn transfer funds to Honor PAC.
5. I advised the General Counsel's office that Independence and Freedom Network was organized for the general purpose of issue advocacy, but that I could not specifically recall the stated purpose of this organization on the paperwork submitted to the Internal Revenue Service. I never stated that there was a "specific purpose" for Independence and Freedom Network. To the contrary, I specifically advised the General Counsel's office of the exact

opposite: The organization would pursue issue advocacy but was not formed for any particular issue or objective.

6. I have never stated that LZP, LLC and Honor PAC were formed for the purpose of paying to create and distribute advertisements in connection with the Ohio State Representative race between Ohio State Representative Larry Householder and Kevin Black.
7. I advised the General Counsel's office that LZP, LLC was created as a disregarded entity to facilitate accounting and record keeping based on guidance provided by professional advisors and my understanding of how Arabella Advisors was reported to have operated under multiple organization names.
8. I never stated that Independence and Freedom Network received specific funds that were used to pay for the advertisements in the Householder/Black race from Ohio Works.
9. I never stated that Independence and Freedom Network and/or LZP, LLC would not have made the contributions had I been aware of the Commission's guidance regarding the requirement that LLC's that are taxed as partnerships must attribute their contributions to IEOPCs.
10. I never stated or acknowledged that LZP, LLC was set up specifically to act as a conduit between Independence and Freedom Network and Honor PAC.
11. I never stated that Independence and Freedom Network would not have made these contributions if they had known at the time that FEC regulations required that Independence and Freedom Network's name would have to be disclosed.
12. I never stated that Independence and Freedom Network was created for tax and accounting purposes.

13. I never stated that Independence and Freedom Network or LZP, LLC was created as part of an effort to model activity on an organization that was alleged to have operated in a manner to conceal the true source of funds.
14. I swear under penalty of perjury that the foregoing statements are true and correct.

Dated this 16th Day of March 2023



Tom Norris

EXHIBIT C

From: James E. Tyrrell III
Sent: Tuesday, October 4, 2022 4:29 PM
To: Aaron Rabinowitz <arabinowitz@fec.gov>
Cc: Mark Shonkwiler <mshonkwiler@fec.gov>
Subject: RE: EXTERNAL: MUR 7464 (LZP LLC, et al.)

Hi Aaron,

My understanding is that Mr. Riter's counsel sent a letter on September 9, 2021 to OGC in response to Ana Pena-Wallace's letter dated August 17, 2021 and a phone call that was placed to Mr. Riter's father around that time. In the letter, Mr. Riter's counsel, Marion Little of Zeiger, Tigges & Little LLP in Columbus, OH instructed OGC to direct all further communications regarding this matter to him. Was there no record of this correspondence in the case file?

I'm working on the other items and will let you know when I have more information.

Thanks,
Jim

From: Aaron Rabinowitz <arabinowitz@fec.gov>
Sent: Wednesday, September 28, 2022 10:01 AM
To: James E. Tyrrell III <JTyrrell@dickinson-wright.com>
Cc: Mark Shonkwiler <mshonkwiler@fec.gov>
Subject: RE: EXTERNAL: MUR 7464 (LZP LLC, et al.)

Thank you, Jim,

Regarding Mr. Riter, would you please provide contact information for his counsel? We've looked back through our records in the matter and haven't been able to find a record of our hearing from him.

We look forward to hearing from you regarding dates for Mr. McVeigh and a representative of Honor and Principles PAC.

Best,
Aaron

From: James E. Tyrrell III <JTyrrell@dickinson-wright.com>
Sent: Tuesday, September 27, 2022 10:16 AM
To: Aaron Rabinowitz <arabinowitz@fec.gov>
Cc: Mark Shonkwiler <mshonkwiler@fec.gov>
Subject: RE: EXTERNAL: MUR 7464 (LZP LLC, et al.)

Aaron and Mark,

Thank you again for your patience. It has been a bit difficult to track down individuals and answers due to election crunch time. With that said, we performed a search for any relevant communications from March 1, 2018 through October 31, 2018 in the possession, custody or control of Independence and

Freedom Network and LZP, LLC, and there was nothing that came up with any of the individuals or entities listed below regarding the cited topics.

With respect to your request for interviews, it is my understanding that Mr. Riter would be willing to sit down for an interview. However, with the election only about a month away, it is unlikely he would be able to do the interview until after November 8th. With that said, you will have to make those arrangements with Mr. Riter's counsel, who I believe you have already been in contact with from earlier in the investigation after you called Mr. Riter's father.

As for your other interview requests, I am looking into whether Mr. McVeigh would even be available, as it's my understanding he spends months at a time away from home during hunting season in the Midwest and is basically unreachable. I'm also checking on who would be a suitable representative for Honor and Principles PAC. I'll get back to you on these as soon as I get more information.

Thanks,
Jim

James E. Tyrrell III Member

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EXHIBIT D

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August 26, 2021

Ana J. Peña-Wallace, Esq.
Federal Election Commission
Office of General Counsel
1050 First St, NE
Washington, D.C. 20463
VIA EMAIL: APena-Wallace@fec.gov

Re: MUR 7464; Response to Factual and Legal Analysis and Request for Pre-Probable Cause Conciliation from Independence and Freedom Network, Inc. and LZP, LLC

Dear Ms. Peña-Wallace:

Independence and Freedom Network, Inc. and Ray McVeigh, in his official capacity as Director ("IFN"), and LZP, LLC and James G. Ryan, in his official capacity as registered agent ("LZP") (collectively, the "Respondents"), respondents in the above-referenced Matter Under Review, hereby respond, by and through the undersigned counsel, to the Commission's Reason to Believe ("RTB") finding and Factual and Legal Analysis ("F&LA").

This letter provides Respondents' position regarding the legal rationale set forth in the F&LA and the Commission's RTB finding that Respondents violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.1(g)(5), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), and the Commission's regulations. It also provides additional background on Respondents' purposes and activities, as the F&LA makes certain assertions regarding such activities which are incomplete, misleading, and in some cases incorrect.

As explained below, the allegations in the Complaint and the F&LA are similar to allegations made in a number of MURs dismissed by the Commission over the last five years because respondents lacked prior notice of the appropriate legal standard.[1] Because the conduct alleged here predated the Commission's release of three of these MURs most applicable to the facts in this case, including the controlling Statement of Reasons in those MURs, this matter should be dismissed for the same reason. In addition, just as in those MURs, where the

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[1] *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).

individuals who participated in making the contribution acknowledged their role, IFN has publicly acknowledged its role here through public IRS filings, and by asking the recipient committee, Honor and Principles PAC ("HP PAC"), to amend its reports filed with the Commission.[2]

Should the Commission conclude that a dismissal is not warranted in this matter, we would respectfully request to engage in pre-probable cause conciliation, as all of the facts and information germane to the RTB finding and the F&LA are provided herein. Moreover, the Respondents have dissolved and no longer have bank accounts or any funds. It would therefore be a waste of the Commission's resources to pursue any further investigation in this matter.

I. FACTUAL BACKGROUND

A. Independence and Freedom Network, Inc.

IFN was a nonprofit social welfare organization exempt from federal taxation under to Section 501(c)(4) of the Internal Revenue Code. It was incorporated in the State of Ohio on April 13, 2017 by James G. Ryan, a corporate attorney at the law firm of Bailey Cavalieri in Columbus, Ohio, who also serves as IFN's registered agent.[3] Mr. Ryan has created and provided counsel to hundreds of corporations and limited liability companies in Ohio since 1993, and has served as the registered agent to more than 150 of such entities.[4] He is an expert in Ohio corporate law issues.[5]

IFN was governed by its Bylaws, which states that "all corporate powers will be exercised by or under the authority of the Board of Directors, which will also control all the business and affairs of the Corporation."[6] IFN's sole Director was Ray McVeigh, who formally adopted the Bylaws on April 27, 2017.[7]

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[2] *See* Email from Raymond McVeigh to Lisa Lisker (Aug. 18, 2021) (attached as Exhibit A).
[3] *See* IFN Articles of Incorporation, Business Search, Ohio Sec. of State (April 13, 2017), https://bizimage.ohiosos.gov/api/image/pdf/201710303302.
[4] *See* Ohio Sec. of State, Business Search, Search by Agent or Registrant Name "James G. Ryan", https://businesssearch.ohiosos.gov/#.
[5] *See* James G. Ryan Bio, http://baileycav.com/people/james-g-ryan/.
[6] *See* IFN Bylaws, at 2, https://s3.documentcloud.org/documents/6144815/Independence-and-Freedom-Network-Inc-1024.pdf.
[7] *See* IFN Bylaws, at 13; *see also* Affidavit of Raymond McVeigh ¶ 3 (Aug. 23, 2021) (hereinafter, the "McVeigh Affidavit").

IFN filed its IRS Form 1024, *Application for Recognition of Exemption under Section 501(c)(4) of the Internal Revenue Code*, on November 15, 2017,[8] and received its IRS Determination Letter granting 501(c)(4) tax-exempt status on April 13, 2018.[9] IFN's activities and operational information, as reflected in its Form 1024 Application for Exemption, states:

> The Organization was not formed for the private gain of any person, but for the purpose of bringing about civic betterments and social improvements. More specifically, Independence and Freedom Network was found to promote solutions to pressing public policy issues related to individual liberty and the expansion of personal freedom.[10]

IFN's Form 1024 explains that its planned activities include research and policy analysis, public education, issue advocacy and grassroots lobbying activities.[11] IFN's 2018 IRS Form 990 annual tax return states that its mission is "to promote solutions to pressing public policy problems related to individual liberty and the expansion of personal freedom."[12] Likewise, IFN's Articles of Incorporation state that one of its purposes is "to promote the common good and general welfare of the citizens of the United States of America."[13]

In 2018, IFN raised $2,936,702 in contributions and grants and had $2,822,777 in expenses, the majority of which was spent in furtherance of its social welfare major purpose.[14] Also included in IFN's expenses for 2018 was $1,120,000 in contributions to Section 527 political organizations, which accounted for 39.6 percent of its overall spending that year.[15] In March 2018, which included the "four-day period" underscored in the Complaint and F&LA, IFN raised $1,230,000.[16] All of these donations were raised by IFN prior to March 28, 2018, the

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[8] *See* IFN Form 1024, *Application for Recognition of Exemption under Section 501(c)(4) of the Internal Revenue Code* (November 15, 2017); https://s3.documentcloud.org/documents/6144815/Independence-and-Freedom-Network-Inc-1024.pdf; *see also* McVeigh Affidavit ¶ 4.
[9] *See* IFN IRS Determination Letter (April 13, 2018), https://s3.documentcloud.org/documents/6144815/Independence-and-Freedom-Network-Inc-1024.pdf; *see also* McVeigh Affidavit ¶ 5.
[10] *See* IFN Form 1024, Addendum, at 1.
[11] *See* IFN Form 1024, Addendum, at 1-3.
[12] *See* IFN 2018 IRS Form 990 (November 15, 2019), at 1, https://s3.documentcloud.org/documents/6773070/Independence-and-Freedom-Network-Inc-2018-990.pdf.
[13] *See* IFN Articles of Incorporation, *supra* n. 1, at 5; *see also* McVeigh Affidavit ¶ 6.
[14] *See* IFN 2018 IRS Form 990, at 1.
[15] *See* IFN 2018 IRS Form 990, Schedule C.
[16] *See* IFN Bank Statement (March 30, 2018).

date IFN made its first transfer to the bank account of its nonprofit disregarded entity, LZP, an entity it controlled one hundred percent.[17]

Due to a lack of fundraising during the COVID-19 pandemic, IFN decided to wind up its affairs and dissolve at the end of 2020 in accordance with its Articles of Incorporation.[18] IFN filed a Certificate of Dissolution with the Ohio of Secretary State's Office on December 30, 2020 and subsequently closed its bank accounts.[19] IFN's dissolution was adopted by Mr. McVeigh, IFN's sole Director, via unanimous written consent on December 17, 2020.[20]

B. Independence and Freedom Network's Establishment of LZP, LLC

In early-2018, IFN was engaged in several different projects and sought to separate and organize its spending for purposes of simplifying its accounting procedures.[21] After reviewing the relevant law and performing comprehensive due diligence, IFN believed that establishing an Ohio nonprofit LLC as a disregarded entity would be its best option to accomplish that purpose.[22] IFN understood that under Ohio corporate law, "[a] limited liability company may be formed for any purpose or purposes for which individuals lawfully may associate themselves, including for any profit or nonprofit purpose…"[23] Furthermore, IFN was aware that under Ohio law, "a single member limited liability company that operates with a nonprofit purpose…shall be treated as part of the same legal entity as its nonprofit member, and all assets and liabilities of that single member limited liability company shall be considered to be that of the nonprofit member."[24]

While IFN understood a disregarded entity to be an entity disregarded as separate from an organization for federal income tax purposes, it was under the impression—based on its due diligence—that any nonprofit LLC it might eventually create would be considered to be part of the same legal entity pursuant to Ohio state corporate law.[25] IFN had explored the possibility of contributing a portion of its funds to some like-minded Section 527 political organizations with disclosure obligations, and it wanted to make sure that by creating a nonprofit LLC to better internally structure this giving for accounting purposes, it would not run afoul of any state or

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[17] *See* IFN Bank Statement (March 30, 2018).
[18] *See* McVeigh Affidavit ¶ 14.
[19] *See* IFN Certificate of Dissolution, Business Search, Ohio Sec. of State (December 30, 2020), https://bizimage.ohiosos.gov/api/image/pdf/202036405238.
[20] *See* IFN Certificate of Dissolution, at 7.
[21] *See* McVeigh Affidavit ¶ 7.
[22] *See* McVeigh Affidavit ¶ 8.
[23] Ohio Rev. Code § 1705.02; *see also* McVeigh Affidavit ¶ 8.
[24] Ohio Rev. Code § 5701.14; *see also* McVeigh Affidavit ¶ 8.
[25] *See* McVeigh Affidavit ¶ 8-9.

federal laws governing earmarked contributions or the making of a contribution in the name of another person.[26]

Specifically, when considering potential donations to Section 527 organizations registered with the Commission as IE-Only Committees, IFN believed that the Commission would defer to state corporate law—as it had done consistently in numerous contexts[27]—and not treat an Ohio nonprofit LLC established and controlled by IFN as a separate legal entity for purposes of the Act's prohibition on making a contribution in the name of another.[28] In short, IFN never believed a nonprofit LLC that was fully controlled by IFN could even be considered to be a conduit for a contribution in the name of another to an IE-Only Committee because they would both be part of the same legal entity.[29]

Operating under these good faith assumptions and intentions, IFN instructed Mr. Ryan to create LZP, which he did on March 27, 2018.[30] LZP was a single-member nonprofit LLC whose sole member was IFN, a 501(c)(4) nonprofit corporation. As noted in the F&LA, LZP was treated as a disregarded entity for federal income tax purposes and was not considered a corporate LLC. Accordingly, LZP was publicly disclosed on IFN's 2018 IRS Form 990 tax return as a disregarded entity wholly owned and controlled by IFN.[31] As an entity wholly owned and controlled by IFN, LZP shared the same organizational purposes as IFN. In late 2020, Mr. McVeigh instructed Mr. Ryan to file a Certificate of Dissolution for LZP, which he did on December 23, 2020.[32] LZP closed its bank account at the same time.[33]

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[26] *See* McVeigh Affidavit ¶ 8-9.
[27] The Commission has historically deferred to the "well established principle[s] of [state] corporate law" when addressing the intricacies of corporate organizational structures. *See* FEC's Motion for Summary Judgment, *FEC v. Kalogianis*, No. 06-68 (Feb. 28, 2007) at 18. For example, in Advisory Opinion 1981-50, the Commission concluded that "[p]artnerships are generally recognized as a type of voluntary, unincorporated business organization pursuant to state law, and their legal character is determined with reference to state law." Advisory Opinion 1981-50 (Hansell, Post, Brandon & Dorsey), at 2.
[28] 52 U.S.C. § 30122.
[29] *See* McVeigh Affidavit ¶ 9.
[30] *See* LZP Articles of Organization, Business Search, Ohio Sec. of State (March 27, 2018), https://bizimage.ohiosos.gov/api/image/pdf/201808600966; *see also* McVeigh Affidavit ¶ 10.
[31] *See* IFN 2018 IRS Form 990 at 5 (answering "Yes" to question 33 asking "Did the organization own 100% of an entity disregarded as separate from the organization"); *id*. at Schedule R (listing LZP as IFN's only disregarded entity and noting that IFN is the "Direct controlling entity").
[32] *See* LZP Certificate of Dissolution, Business Search, Ohio Sec. of State (December 23, 2020), https://bizimage.ohiosos.gov/api/image/pdf/202034205968; *see also* McVeigh Affidavit ¶ 14.
[33] *See* McVeigh Affidavit ¶ 14.

C. Independence and Freedom Network's Transfers to LZP, LLC

The primary transaction at issue in this matter was a March 28, 2018 contribution of $175,000 from LZP to HP PAC, a 527 organization registered with the Commission as an IE-Only Committee, the day after LZP was established as a nonprofit LLC on March 27, 2018. In late March 2018, IFN was interested in donating to HP PAC. However, as explained above, IFN sought to separate and organize this portion of its spending internally to simplify its accounting procedures, so IFN authorized Mr. Ryan to create LZP for that purpose.[34] Once LZP was registered as a nonprofit LLC and opened a bank account, IFN transferred $180,000 from its bank account to LZP's bank account on March 28, 2018 to be used for the HP PAC contribution.[35] IFN authorized additional transfers to LZP of $50,000 on April 6, 2018, $6,000 on April 17, 2018,[36] and $35,000 on October 17, 2018.[37] These transfers were subsequently used by LZP to contribute to HP PAC.[38]

As noted above, IFN never believed that LZP could even be considered a conduit for a contribution in the name of another to HP PAC because its due diligence and review of the relevant law reinforced the fact that IFN and LZP were the same legal entity.[39] If IFN had thought its desire to simplify and better organize its accounting procedures would result in an allegation that IFN made a contribution in the name of another in violation of the Act, IFN would have never approved the creation of LZP in the first place. Instead, IFN would have simply contributed directly to HP PAC from its main account, as it had done ten days earlier when it contributed $850,000 to another IE-Only Committee registered with the Commission called Onward Ohio.[40]

The fact that IFN contributed directly to an IE-Only Committee just days before its initial transfer to LZP shows that it was not concerned about being revealed as a donor in public filings. In addition, IFN reflected both its $850,000 contribution to Onward Ohio and LZP's $270,000 contribution to HP PAC on Schedule C of its 2018 Form 990, which is also publicly available.[41] Indeed, IFN's decision to contribute to another IE-Only Committee through its main account, which it knew would be reflected on the recipient committee's public filings, demonstrates that

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[34] See McVeigh Affidavit ¶¶ 7, 10.
[35] *See* IFN Bank Statement (March 30, 2018); *see also* McVeigh Affidavit ¶ 11.
[36] *See* IFN Bank Statement (April 30, 2018).
[37] *See* IFN Bank Statement (October 30, 2018); *see also* McVeigh Affidavit ¶ 11.
[38] *See* LZP Bank Statements (March 30, 2018, April 30, 2018, and October 31, 2018); *see also* McVeigh Affidavit ¶ 12.
[39] *See* McVeigh Affidavit ¶ 9.
[40] *See* Onward Ohio (Committee ID C00629857), 2018 April Quarterly Report at 6, https://docquery.fec.gov/pdf/981/201804159108118981/201804159108118981.pdf.
[41] *See* IFN 2018 IRS Form 990, Schedule C.

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IFN's sole motivation in creating LZP and donating to HP PAC through LZP was for the accounting purposes cited above, and not for the purpose of concealing IFN's identity. The fact that IFN listed both Onward Ohio and HP PAC as recipients of contributions on its 2018 Form 990, even though IFN only directly contributed using its main account to Onward Ohio, also further bolsters IFN's position that it always considered LZP to be the same legal entity as IFN, and that LZP was therefore incapable of facilitating a contribution in the name of another.

II. LEGAL ANALYSIS

A. The Commission's Treatment of LLC Contributions to IE-Only Committees

In 2016, the Commission considered for the first time whether, and under what circumstances, a contribution from a closely held corporation or a corporate LLC violated the prohibition against making a contribution in the name of another at 52 U.S.C. § 30122.[42] In addressing a series of LLC contributions to IE-Only Committees during the 2012 election cycle in MURs 6485, 6487, 6488, 6711 and 6930, the Commission failed to find reason to believe a violation of Section 30122 of the Act occurred.

In the controlling Statement of Reasons, the Commission at the time concluded that "to vindicate the purpose underlying Section 30122 without violating First Amendment rights, the proper focus . . . is whether the funds used to make a contribution were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements, making the individual, not the corporation or corporate LLC, the true source of the funds."[43] However, the Commission also concluded that because the issue was "one of first impression, and because past Commission decisions regarding funds deposited into corporate accounts may be confusing in light of recent legal developments, principles of due process, fair notice, and First Amendment clarity counsel against applying a standard to persons and entities that were not on notice of the governing norm."[44] Accordingly, the Commission voted to exercise prosecutorial discretion and dismiss the matters, a result that the U.S. District Court for the District of Columbia determined was not contrary to law.[45] The D.C. Circuit has since concluded in a separate case that such dismissals pursuant to prosecutorial discretion are "not subject to judicial review."[46]

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[42] *See* MURs 6485 (W Spann LLC), 6487 & 6488 (F8, LLC), 6711 (Specialty Investments Group, Inc.), 6930 (SPM Holdings LLC).
[43] Statement of Reasons of Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Lee E. Goodman at 2, MURs 6485, 6487, 6711, and 6930 (April 1, 2016).
[44] *Id*.
[45] *See Campaign Legal Center v. FEC*, No. 1:16-cv-00752, 2018 WL 2739920, at *8 (D.D.C. June 7, 2018).
[46] *CREW v. FEC*, No. 17-5049, 2018 WL 2993249, at *5 (D.C. Cir. June 15, 2018)

In 2017 and 2018, the Commission dealt with a similar line of cases stemming from activity that took place during the 2016 election cycle. In MURs 6968, 6995, 7014, 7017, 7019, and 7090, the Commission was once again faced with allegations that certain LLCs served as vehicles for contributions in the name of another in violation of Section 30122 of the Act. Like the foregoing LLC matters from the 2012 election cycle, the complaints in these matters similarly arose from contributions made by a closely held corporation and corporate LLCs to IE-Only Committees. In each case, the Commission failed to find Reason to Believe a violation of Section 30122 occurred.

While the Commission again recognized that "under certain circumstances, the name-of-another prohibition applies to contributions to Super PACs by closely held corporations and corporate LLCs,"[47] the controlling Statement of Reasons also acknowledged the fact that the "conduct alleged in these complaints occurred before 'the relevant notice date,'"[48] referring to April 1, 2016, the date of their 2016 LLC Statement. The Commission noted that April 1, 2016 was the date "we issued our prior LLC Statement, which first articulated the correct legal standard in these types of matters."[49] In dismissing the Section 30122 allegations in these complaints as an exercise of prosecutorial discretion, the Commission explained that "the same considerations of due process, fair notice, and First Amendment clarity, which informed our decision to exercise prosecutorial discretion in those prior matters, also apply here."[50]

Around the same time, the Commission was dealing with another series of LLC-related cases that were somewhat like the prior matters, but with some important distinctions.[51] In the previous LLC matters, the Commission considered the question of whether closely held corporations and LLCs taxed as corporations violated the Act's ban on straw donor contributions by making contributions to IE-Only Committees. Like those matters, the respondents in MURs 6969, 7031 and 7034 included LLCs that were alleged to have made, and IE-Only Committees were alleged to have accepted, straw donor contributions in violation of the Act. However, unlike the LLCs in the prior matters, the LLCs identified in MURs 6969, 7031 and 7034 did not opt to be taxed like corporations, raising the question of how these contributions should be attributed.[52]

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[47] Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen at 8, MURs 6968, 6995, 7014, 7017, 7019, and 7090 (July 2, 2018).
[48] *Id*. at 3.
[49] *Id*.
[50] *Id*.
[51] *See generally*, MURs 6969 (MMWP12 LLC), 7031 & 7034 (Children of Israel).
[52] Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen at 1-2, MURs 6969, 7031, and 7034 (September 13, 2018).

Specifically, these matters involved (1) an LLC treated as a disregarded entity whose sole member was another LLC taxed as a partnership and owned by two individuals through living trusts; and, (2) an LLC whose sole member was a living trust. In the controlling Statement of Reasons, the Commission recognized that "[a] contribution from an LLC that elects to be taxed as a partnership, or that does not elect to be taxed as either a partnership or corporation, is treated as a contribution from a partnership; contributions from an LLC with a single natural person member (that does not elect corporate taxation) are attributed to the sole member."[53] The Commission added that, "[i]n turn, contributions by partnerships are attributed to the partnership itself and (generally) to each partner in proportion to their ownership shares."[54]

However, while the Commission determined that the LLC contributions at issue in these MURs should have been attributed to each LLC's natural person owners, they voted to dismiss the matters as an exercise of prosecutorial discretion because the "respondents did not have prior notice of the relevant legal interpretation."[55] In doing so, they concluded that "while the Commission's existing attribution regulations at 11 C.F.R § 110.1(g) apply to the reporting of these contributions, several factors counsel in favor of exercising our prosecutorial discretion, including considerations of due process, fair notice, and First Amendment clarity."[56] In short, the respondents in these matters did not have prior notice of the correct legal standard regarding LLC contributions to IE-Only Committees when such LLCs are treated as disregarded entities or partnerships. The Commissioners pointed to this lack of fair notice as the reason for their vote to dismiss the matters, stating that "[t]he Supreme Court has observed that '[a] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.'"[57]

It is important to note that the Commission's decision and the controlling Statement of Reasons in MURs 6968, 6995, 7014, 7017, 7019, and 7090 were not made public until July 6, 2018.[58] Likewise, the Commission's decision in MURs 6969, 7031, and 7034 was not released until July 13, 2018,[59] and while then-Vice Chair Weintraub issued her Statement of Reasons on

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[53] *Id*. at 5 (citing 11 C.F.R. § 110.1(g)).
[54] *Id*. (citing 11 C.F.R. 110.1(e)).
[55] *Id*.
[56] *Id*. at 2.
[57] *Id*. at 6 (citing *FCC v. Fox Television Stations*, 567 U.S. 239, 253 (2012); Statement of Reasons of Vice Chairman Donald F. McGahn II and Commissioners Caroline C. Hunter and Matthew S. Petersen at 23, MUR 6081 (July 25, 2013) ("[D]ue process requires that the public know what is required ex ante, and that the Commission acknowledge and provide the public with prior notice of any regulatory change.").
[58] *See* FEC Weekly Digest, Week of July 2-July 6, 2018 (July 6, 2018), https://www.fec.gov/updates/week-july-2-july-6-2018/.
[59] *See* FEC Weekly Digest, Week of July 9-July 13, 2018 (July 13, 2018), https://www.fec.gov/updates/week-july-2-july-6-2018/.

July 13, 2018,[60] the controlling Statement of Reasons was not made public until September 13, 2018.[61] All of these decisions, and the resulting guidance and legal standards were publicly released after the transactions and reporting that gave rise to the Complaint in the current matter.

B. It Would Be Unfair to Pursue Enforcement Against Independence and Freedom Network and LZP, LLC

As noted above, when the Commission considered MURs 6485, 6487, 6711, and 6930 in 2016, three Commissioners wrote that pursuing enforcement against the respondents in those cases would have been "manifestly unfair because Commission precedent does not provide adequate notice regarding the application of section 30122 to closely held corporations and corporate LLCs or the proper standards for its application."[62] Those Commissioners reasoned that:

> [T]his is the first occasion the Commission has examined whether it is possible for individuals to violate section 30122 by contributing in the names of their closely held corporations and corporate LLCs. Based on Commission precedent, the regulated community may have reasonably concluded that the answer to that question was "no." Therefore, because Respondents did not have prior notice of the legal interpretation discussed above, we determined that applying section 30122 to Respondents would be inconsistent with due process principles.[63]

Likewise, when the Commission considered MURs 6968, 6995, 7014, 7017, 7019, and 7090, matters that also dealt with contributions from corporations and corporate LLCs, two Commissioners voted to dismiss the allegations in the complaints "for the same reasons set forth" in their 2016 LLC Statement, namely, that "'because Respondents did not have prior notice of the legal interpretation discussed above, . . . applying section 30122 to Respondents would be inconsistent with due process principles.'"[64]

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[60] Statement of Reasons of Vice Chair Ellen L. Weintraub, MURs 6969, 7031, and 7034 (July 13, 2018).
[61] Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen at 1-2, MURs 6969, 7031, and 7034 (September 13, 2018).
[62] Statement of Reasons of Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Lee E. Goodman at 8, MURs 6485, 6487, 6711, and 6930 (April 1, 2016).
[63] *Id*. at 13.
[64] Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen at 12, MURs 6968, 6995, 7014, 7017, 7019, and 7090 (July 2, 2018).

In MURs 6969, 7031, and 7034, the Commission considered alleged Section 30122 violations by LLCs in a different context. Unlike the prior matters, which focused solely on allegations that corporations and corporate LLCs served as straw donors, the respondents in MURs 6969, 7031, and 7034 were treated as disregarded entities or partnerships. Accordingly, just as the Commission in 2016 addressed for the first time whether, and under what circumstances, a contribution from a closely held corporation or corporate LLC could be in violation of Section 30122, the Commission in MURs 6969, 7031, and 7034 considered, for the first time whether, and under what circumstances, a contribution from an LLC treated as a disregarded entity or partnership could be in violation of Section 30122. Indeed, the release of the controlling Statement of Reasons in these matters on September 13, 2018 was the first time the Commission provided the correct legal standard with respect to the applicability of Section 30122 to LLCs treated as disregarded entities or partnerships.

It should also be noted that while the release of the controlling Statement of Reasons in MURs 6969, 7031, 7034 on September 13, 2018 provided notice to the regulated community, for the first time, of the applicability of Section 30122 to contributions from disregarded entity and partnership LLCs to IE-Only Committees, and the method of reporting such contributions, it only provided guidance with respect to disregarded entity and partnership LLCs that are organized for-profit and have natural person members. As explained above, LZP was a single-member <u>nonprofit LLC</u> treated as a disregarded entity whose sole member was IFN, <u>a 501(c)(4) nonprofit corporation</u>.

The Commission's regulations state that, "[a] contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e)."[65] Section 110.1(e) of the Commission's regulations, which addresses "contributions by partnerships," states, in pertinent part, that "[a] contribution by a partnership shall be attributed to the partnership and to each partner…<u>in direct proportion to his or her share of the partnership profits</u>…"[66] With respect to contributions to IE-Only Committees from for-profit LLCs that have one or more <u>natural person</u> members who share in the LLC's profits, these attribution requirements are quite clear. Indeed, then-Vice Chair Weintraub was correct when she said, "there should be no confusion that the law prohibits <u>individuals</u> from using such entities [referring to disregarded entities] to make contributions in the name of another."[67]

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[65] 11 C.F.R. § 110.1(g)(2).
[66] 11 C.F.R. § 110.1(e)
[67] Statement of Reasons of Vice Chair Ellen L. Weintraub, at 2, MURs 6969, 7031, and 7034 (July 13, 2018).

Conversely, a single member nonprofit LLC with a nonprofit corporate member does not involve any natural persons or individuals. Moreover, by definition and law, a nonprofit LLC with a single 501(c)(4) nonprofit corporate member does not have profits. This is because a nonprofit LLC takes on the nonprofit characteristics of its sole nonprofit corporate member, and its activities must be in line with those of the nonprofit corporate member.[68] In this case, LZP took on the characteristics of its nonprofit corporate member, IFN, which is organized under 26 U.S.C. § 501(c)(4). Section 501(c)(4) of the Internal Revenue Code (the "Code") makes clear that a social welfare organization is "not organized for profit" and does not permit any "net earnings [to] inure[] to the benefit of any private shareholder or individual."[69] Accordingly, IFN and Mr. McVeigh believed that the Commission's attribution regulation governing partnership contributions at 11 C.F.R. § 110.1(e) would not be applicable because it requires attribution of underlying partners "in direct proportion to his or her share of partnership profits."[70] In this case, LZP had no "partnership profits," so it was reasonable for IFN and Mr. McVeigh to assume that no attribution of LZP's single nonprofit corporate member, IFN, would be required.

The F&LA dismisses out of hand LZP's argument, contained in its response to the initial Complaint, that it was not required to attribute its HP PAC contributions to IFN because of IFN's nonprofit corporate form and the fact that LZP did not have any "partnership profits."[71] The F&LA asserts that the "regulations direct that the partnership contribution must be attributed to both the partnership and all partners in proportion to their shares,"[72] and goes on to explain that "[b]ecause there would not be multiple partners under the LZP's current organizational structure, the share of the contributions attributable to LZP's single member would be 100%."[73] As an initial matter, the F&LA conveniently ignores the rest of the regulatory language in 11 C.F.R. § 110.1(e)(1) when it says "in proportion to their shares,"[74] as the actual regulation states, "in direct proportion to his or her share of the partnership profits."[75]

In taking this position and citing 11 C.F.R. 110.1(e) and (g) as support, the F&LA fails to recognize that such regulations only explicitly contemplate the attribution requirement when partnerships contributions can be attributed "in direct proportion to his or her share of partnership profits."[76] In concluding that "the share of the contributions attributable to LZP's single member would be 100%," the F&LA is unilaterally assigning shareable "profits" to LZP,

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[68] *See* IRS Announcement 99-102, 1999-43 I.R.B. 545.
[69] 26 U.S.C. § 501(c)(4)(A)-(B).
[70] 11 C.F.R. § 110.1(e); *see also* McVeigh Affidavit ¶ 13.
[71] MUR 7464, Response to Complaint from LZP, LLC, at 5-7.
[72] MUR 7464 (LZP, LLC), F&LA at 15 (citing 11 C.F.R. 110.1(e), (g)).
[73] *Id*.
[74] *Id*.
[75] 11 C.F.R. § 110.1(e)(1).
[76] 11 C.F.R. § 110.1(e)(1).

an entity that by law does not have any profits. This critical fact—that LZP was a nonprofit LLC with a nonprofit corporate member with no profits—is relegated to a single footnote in the F&LA.[77]

In addition, with respect to the requirement that disregarded entity and partnership LLCs, including LLCs with single natural person members, provide attribution information to recipients of their contributions under 11 C.F.R. 110.1(g)(5), the F&LA pushes a theory that these 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*,[78] a regulation that was adopted more than ten years before the birth of IE-Only Committees post-*Citizens United*, and which focused on "identifying prohibited contributions from foreign national or government contractor sources."[79] If the closed LLC matters since the 2012 election cycle are any indication, it was not at all clear prior to the release of the foregoing controlling Statements of Reasons that "[t]he Commission's regulations concerning the attribution of LLC contributions apply on their face to all such LLC contributions irrespective of recipient."[80]

In sum, finding any probable cause to believe that IFN and LZP violated Section 30122 would be manifestly unfair and inconsistent with due process principles because they did not have adequate notice of the potential application of Section 30122 to a contribution to an IE-Only Committee from a nonprofit LLC treated as a disregarded entity with a single nonprofit corporate member. Not only was the correct legal standard applicable to disregarded entity and partnership LLC contributions to IE-Only Committees first announced almost six months after the activity giving rise to the Complaint in this matter—in the form of the controlling Statement of Reasons in MURs 6969, 7031, 7034—but, when such guidance was ultimately released, it was not even directly applicable to the unique structure of LZP due to its nonprofit purpose and the nonprofit corporate form of its sole member. We therefore respectfully request that the Commission exercise its prosecutorial discretion here, as the Commission did with respect to the LLC MURs cited above, without finding probable cause that IFN or LZP committed a violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.1(g)(5).

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[77] MUR 7464 (LZP, LLC), F&LA at 15 n. 56.
[78] Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,398 – 37,399 (July 12, 1999).
[79] MUR 7464 (LZP, LLC), F&LA at 14 n. 53.
[80] MUR 7464 (LZP, LLC), F&LA at 14.

C. The Commission Must Prove Scienter to Establish a Section 30122 Violation

The Act provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person."[81] The Commission's implementing regulation supplements the statute by also prohibiting the aiding and abetting of impermissible contribution-in-the-name-of-another schemes. That implementing regulation states, in pertinent part:

> **§ 110.4 Contributions in the name of another; cash contributions**
> (a) [Reserved]
> (b) *Contributions in the name of another*. (1) No person shall—
> (i) Make a contribution in the name of another;
> (ii) Knowingly permit his or her name to be used to effect that contribution;
> (iii) Knowingly help or assist any person in making a contribution in the name of another; or
> (iv) Knowingly accept a contribution made by one person in the name of another.

Importantly, each prohibited action set forth in (b)(i) - (iv) requires the Commission to prove scienter to establish a violation of the contribution-in-the-name-of-another prohibition. To be clear, despite the absence of "knowingly" in paragraph (b)(i), no person can be found in violation of (b)(i), (b)(ii), (b)(iii), or (b)(iv) unless the Commission first proves that a source transmitted property to another with the intent to mask the identity of the true source.

This scienter requirement was discussed in detail in the controlling Statement of Reasons in MURs 6485, 6487, 6711, and 6930, in which those Commissioners explained:

> [T]he proper focus in these matters is whether the funds used to make a contribution were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements, making the individual, not the corporation or corporate LLC, the true source of the funds. Thus, in matters alleging section 30122 violations against such entities, the Commission will examine whether the available evidence establishes the requisite purpose.[82]

[81] 52 U.S.C. § 30122.
[82] Statement of Reasons of Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Lee E. Goodman at 2, MURs 6485, 6487, 6711, and 6930 (April 1, 2016).

Therefore, the Commission's test for determining whether a contribution was made in the name of another should effectively have two prongs:

1. First, an examination of whether a source transmitted property to another with the purpose that it be used to make or reimburse a contribution; and,

2. Second, an examination of whether that source transmitted property to another with the intent to mask the identity of the true source.

While this scienter requirement may not be favored by certain Commission members and staff, it is nonetheless required to distinguish impermissible Section 30122 contributions from conduit contributions transferred lawfully. For example, contributors often make conduit contributions through platforms such as WinRed or ActBlue that satisfy the first prong of the test, but every conduit contribution effectuated through those platforms certainly does not constitute an impermissible contribution in the name of another. In short, intent matters.

In this case, Mr. McVeigh 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.[83] IFN never intended to use LZP as a means to conceal contributions from IFN. In fact, IFN's lack of concern for publicly disclosing IFN as a donor is buttressed by the fact that IFN contributed directly, and in a much larger amount, to Onward Ohio, another IE-Only Committee registered with the Commission that publicly disclosed the receipt of IFN's contribution on its 2018 April Quarterly Report. IFN also reflected its contribution to Onward Ohio, and LZP's contribution to HP PAC on its publicly available 2018 Form 990, which further demonstrates that IFN never had the intent of masking the identity of the true source of LZP's contribution to HP PAC.

IFN's intent in creating LZP, as established by Mr. McVeigh's affidavit, was for accounting purposes, not to mask the identity of the true source of LZP's contributions to HP PAC.[84] In the absence of such intent or purpose, the Commission must dismiss this matter without further action.

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[83] *See* McVeigh Affidavit ¶¶ 7-8.
[84] *See* McVeigh Affidavit ¶¶ 7-8.

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D. Independence and Freedom Network Should Not Be Compelled to Disclose Its Donors to the Commission

Respondents submitted copies of both IFN's and LZP's bank statements for the months of March, April, and October 2018 to the Office of General Counsel ("OGC") on July 22, 2021.[85] The bank statements for IFN were partially redacted to remove the names and addresses of donors to IFN. In response to Respondents' submission of IFN's redacted bank statements, OGC stated that "the Commission made reason to believe findings regarding contributions in the name of another, which requires us to investigate the source of the contributions, including the names of the contributors."[86] OGC added that "[w]e request unredacted documents instead to allow us to conduct the investigation."[87] In requesting unredacted copies of IFN's bank statements, OGC is essentially requiring that IFN provide an unredacted Form 990 Schedule B, effectively treating IFN as if it were an FEC-regulated political committee. The Supreme Court recently stated that such compelled disclosure must survive "exacting scrutiny," which requires "a substantial relation between the disclosure requirement and a sufficiently important governmental interest," and that it must also be "narrowly tailored to the government's asserted interest."[88]

In this case, the complainants initially alleged that an "Unknown Respondent" made a contribution to HP PAC in the name of LZP.[89] Once IFN filed its 2018 Form 990, it became clear to the complainants that IFN was indeed the source of LZP's funds, as they stated in their Amended Complaint: "Independence and Freedom Network reported LZP's 'total income' in 2018 was $271,000, meaning that all but $1,000 of the money LZP took in was transferred to Honor and Principles PAC."[90] In short, IFN was the sole "Unknown Respondent."

It is therefore unclear what OGC is seeking when it requests unredacted copies of IFN's bank statements and asserts that the Commission's reason to believe finding "requires us to investigate the source of the contributions, including the names of the contributors." To be clear, there is no longer an "Unknown Respondent" to investigate in order to determine the source of the contributions to HP PAC. Engaging in a fishing expedition to determine the identity of IFN's donors, when both the complainants and OGC are now fully aware of the source of LZP's contributions to HP PAC, hardly serves a "sufficiently important governmental interest" and is

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[85] *See* Email from J. Tyrrell to A. Peña-Wallace (July 22, 2021).
[86] Email from A. Peña-Wallace to J. Tyrrell (July 23, 2021).
[87] *Id*.
[88] *See Americans for Prosperity Foundation v. Bonta*, 594 U.S. __, slip op. at 12 (2021)
[89] *See generally*, MUR 7464, Complaint (August 9, 2018).
[90] MUR 7464, Amended Complaint, at 7 (May 29, 2020).

not "narrowly tailored to [OGC's] asserted interest" in getting to the "true source"[91] of LZP's contribution to HP PAC because both the complainants and the Commission already know that to be IFN.

Moreover, both the Amended Complaint and the F&LA erroneously point to a $271,000 donation reflected on Schedule B of IFN's 2018 Form 990, and LZP's income amount reflected on Schedule R of IFN's Form 990 as "support [for] the allegation that LZP's contribution was derived from a single source."[92] As an initial matter, the Commission only found reason to believe LZP violated 52 U.S.C. § 30122 "by allowing its name to be used to make contributions in the name of another,"[93] and that IFN violated the same section of the Act "by making, and allowing LZP's name to be used to make, contributions in the name of another."[94] It did not find reason to believe an unknown respondent violated this provision by making a contribution to LZP in the name of IFN. Furthermore, the entire impetus for the complaint in this matter was a "remarkable four-day period" which "started with the formation of a federal super PAC called Honor and Principles PAC, followed the next day by the establishment in Ohio of a nonprofit limited liability company, LZP, LLC," and then "the day after that, LZP made a $175,000 contribution to Honor and Principles PAC, even though it has no known business activity and it is virtually impossible that it generated sufficient income to pay for the contribution in just one day."[95]

In finding reason to believe that LZP violated 52 U.S.C. § 30122, the F&LA points to two of these facts to support its conclusion: (1) the temporal proximity between LZP's formation and its first contribution to HP PAC; and, (2) because LZP did not reference its sole nonprofit corporate member, IFN, in its response to the complaint, or the way in which its sole corporate member procured its assets, the Commission was "unable to conclude that those assets were provided to LZP for any other lawful purpose and not for the purpose of making a political contribution."[96] No such facts exist when considering IFN's transfers to LZP, as IFN was created almost a year earlier, on April 13, 2017, and IFN raised $1,230,000 in donations before it even made its first transfer to LZP on March 28, 2018. Further, if complainants and OGC want to use the amount of a donation as the sole basis for inferring a Section 30122 violation, then we would note that none of the donations raised by IFN prior to its initial transfer to LZP on March 28, 2018 was for $180,000, which was the amount IFN initially transferred to LZP.[97]

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[91] The F&LA makes clear that "the concern of the law is the true source from which a contribution to a candidate or committee originates…" MUR 7464, F&LA at 9.
[92] MUR 7464, F&LA at 4.
[93] MUR 7464 (LZP), F&LA at 1.
[94] MUR 7464 (IFN), F&LA at 1.
[95] MUR 7464, Amended Complaint at 1-2.
[96] MUR 7464, F&LA at 12-13.
[97] See IFN Bank Statement (March 30, 2018).

MUR746400389

In short, because it is clear through public filings and sworn testimony that IFN was the "true source" behind LZP's contributions to HP PAC, there is simply not a "sufficiently important governmental interest" to justify OGC's request for IFN's unredacted bank statements disclosing its donors' identities.

III. CONCLUSION

We respectfully request that the Commission follow previous precedent and conclude that it would be "manifestly unfair" to pursue enforcement against IFN and LZP since they did not have adequate notice regarding the application of 52 U.S.C. § 30122 to the contributions at issue. Furthermore, we request that the Commission promptly close this matter because IFN and Mr. McVeigh never created or transmitted funds to LZP with the intent to mask the identity of the true source.

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 Independence and Freedom Network, Inc. and Ray McVeigh, as Director, and LZP, LLC and James G. Ryan, as Registered Agent

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

Caution: External Email

Lisa,

I am the former Director of Independence and Freedom Network (“IFN”), 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’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’s contributions to HP PAC should have potentially been attributed to its sole nonprofit corporate member, IFN. While the FEC’s guidance was not directly applicable to IFN and LZP’s unique corporate structure, in an abundance of caution, I am requesting that you file amended reports attributing LZP’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

BEFORE THE FEDERAL ELECTION COMMISSION

Affidavit of	)	
	)	MUR 7464
Raymond McVeigh	)	
	)	

AFFIDAVIT OF RAYMOND MCVEIGH

I, Raymond McVeigh, of lawful age and a resident of the State of Michigan, do hereby affirm and state:

1. I was the sole Director of Independence and Freedom Network, Inc. ("IFN"), a 501(c)(4) social welfare organization that was incorporated in Ohio on April 13, 2017.

2. I served as the only Officer of IFN, holding the positions of President, Treasurer, and Secretary.

3. I adopted IFN's Bylaws on April 27, 2017, which stated that "all corporate powers will be exercised by or under the authority of the Board of Directors, which will also control all the business and affairs of the Corporation."

4. I submitted IFN's Form 1024 Application for Exemption Under Section 501(a) to the Internal Revenue Service ("IRS") on November 15, 2017.

5. I received IFN's Determination Letter of 501(c)(4) status in April 2018, which reflected an effective date of exemption of April 13, 2017.

6. During its existence, IFN engaged in an array of research, education, and issue advocacy activities focused on solutions to pressing public policy issues, which included making grants to other like-minded nonprofit and political organizations.

7. In March 2018, IFN was engaged in several different projects, and sought to better organize its spending for purposes of simplifying its accounting procedures. IFN reviewed the relevant law and performed comprehensive due diligence to determine the best way to accomplish this objective.

8. Based on its review of the relevant law and comprehensive due diligence, IFN concluded that creating a nonprofit LLC as IFN's disregarded entity would be the best option to simplify IFN's accounting procedures, as Ohio law allowed for nonprofit LLCs that are treated as the same legal entities as their nonprofit corporate members.

9. In light of its understanding that Ohio law treated a nonprofit LLC as the same legal entity as its nonprofit corporate member, IFN never believed that creating a nonprofit LLC as IFN's disregarded entity and using it to contribute to a political organization would implicate any campaign finance laws, let alone those governing the making of a contribution in the name of another.

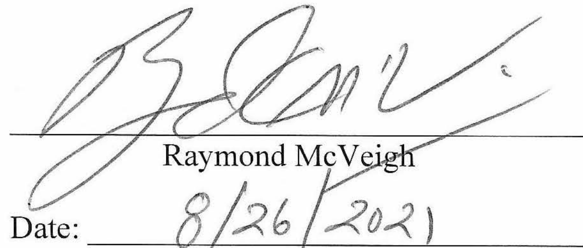
10. IFN directed James G. Ryan, a corporate partner at the law firm of Bailey Cavalieri, to create LZP, LLC ("LZP") as its nonprofit disregarded entity on March 27, 2018.

11. IFN made transfers to LZP of $180,000 on March 28, 2018, $50,000 on April 6, 2018, $6,000 on April 17, 2018, and $35,000 on October 17, 2018.

12. As LZP's controlling member, IFN authorized LZP's contributions to Honor and Principles PAC ("HP PAC"), a federal independent expenditure-only committee, of $175,000 on March 28, 2018, $50,000 on April 6, 2018, $10,000 on April 18, 2018, and $35,000 on October 19, 2018.

13. When IFN authorized LZP's contributions to HP PAC, IFN was under the impression, based on its research and due diligence, that LZP's contributions would not need to be attributed to IFN because the Federal Election Commission had not yet specifically addressed how to report disregarded entity and partnership LLC contributions to independent expenditure-only committees and LZP and IFN were considered to be the same legal entity with shared assets. Accordingly, LZP did not provide any underlying attribution information to HP PAC's treasurer upon making the contributions to HP PAC.

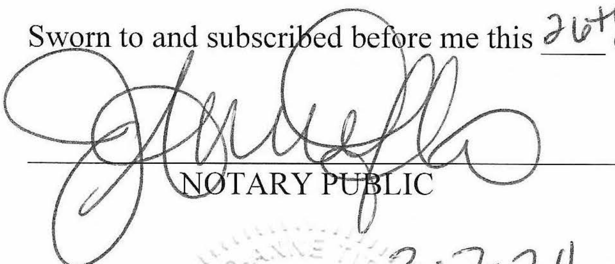
14. In light of a lack of fundraising due to the COVID-19 pandemic in 2020, I authorized IFN and LZP's dissolution and closed both bank accounts in December 2020. Neither entity has any remaining assets.



Raymond McVeigh

Date: 8/26/2021

Sworn to and subscribed before me this 26th day of August, 2021



NOTARY PUBLIC

My commission expires: 3-2-24

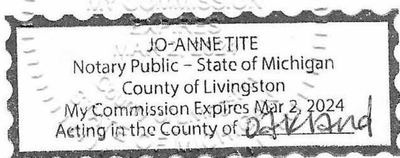


EXHIBIT E

600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

March 11, 2019

James E. Tyrrell III
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Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street NE
Washington, DC 20463
VIA EMAIL: CELA@fec.gov

Re: MUR 7464; Response to Complaint from LZP, LLC

Dear Mr. Jordan:

We are writing this letter on behalf of LZP, LLC ("LZP") in response to the Complaint filed in the above-referenced matter by Citizens for Responsibility and Ethics in Washington ("CREW"). The Complaint is just the latest edition in a long line of purely speculative, politically-charged complaints by CREW – filed disproportionately against conservative organizations and their donors. It should be promptly dismissed.

The Federal Election Commission (the "Commission") may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). *See* 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

CREW alleges that "LZP appears to have…violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b) by knowingly permitting its name to be used to effect a $175,000 contribution by Unknown Respondent (or Respondents) to Honor and Principles PAC." Compl. at ¶19. CREW fails to provide a single piece of evidence to support this allegation other than speculation about the timing of the cited contribution made by LZP to Honor and Principles PAC ("HPP") and its own self-serving conclusions about LZP's activities. In short, CREW's accusations are without legal or factual support, and the Complaint should be promptly dismissed.

MUR746400394

I. Legal Analysis

A. LZP Did Not Effect the Making of a Contribution in the Name of Another

As the Complaint notes, LZP "is a Domestic Nonprofit Limited Liability Company organized and registered in Ohio." Compl. ¶8. Ohio is one of a handful of states that allows for nonprofit LLCs. Ohio corporate law makes clear that "[a] limited liability company may be formed for any purpose or purposes for which individuals lawfully may associate themselves, including for any profit or nonprofit purpose…" Ohio Rev. Code § 1705.02. More precisely, LZP is a single-member nonprofit LLC whose sole member is a 501(c)(4) nonprofit corporation. LZP is treated as a disregarded entity for federal income tax purposes.

Despite LZP's clear nonprofit status, CREW spends much of the Complaint speciously inferring that LZP is somehow organized as a for-profit entity that is solely dependent on "business activity" to generate income. In fact, on the very first page of the Complaint, CREW blindly asserts that LZP "has no known business activity," and therefore, "it is virtually impossible that it generated sufficient income to pay for the contribution [to HPP] in just one day." Compl. ¶2. Such a flawed conclusion is not only entirely speculative, but it overlooks the plain language of Ohio's laws governing single-member nonprofit LLCs. Ohio law states, in pertinent part, that "a single member limited liability company that operates with a nonprofit purpose…shall be treated as part of the same legal entity as its nonprofit member, and all assets and liabilities of that single member limited liability company shall be considered to be that of the nonprofit member." Ohio Rev. Code § 5701.14.

The Commission has historically deferred to the "well established principle[s] of [state] corporate law" when addressing the intricacies of corporate organizational structures,[1] and it should do the same here. For instance, in MUR 6102 (Georgianna Oliver), the Commission considered an allegation that a candidate loaned corporate funds to her own campaign.[2] The Commission drew heavily on principles of corporate law, but dismissed the case on the grounds that the candidate had, according to sworn testimony, followed corporate bylaws in distributing the funds.[3] In Advisory Opinion 1981-50, the Commission concluded that "[p]artnerships are generally recognized as a type of voluntary, unincorporated business organization pursuant to state law, and their legal character is determined with reference to state law."[4] Likewise, in Advisory Opinion 2008-05 (Holland and Knight), the Commission noted: "Neither the Act,

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[1] Plaintiff Federal Election Commission's Motion for Summary Judgment, *FEC v. Kalogianis*, No. 06-68 (Feb. 28, 2007) at 18.
[2] *See* Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Cynthia L. Bauerly, Caroline C. Hunter and Donald F. McGahn II at 1 (Sept. 28, 2009), MUR 6102 (Georgianna Oliver).
[3] *Id*. at 6.
[4] Advisory Opinion 1981-50 (Hansell, Post, Brandon & Dorsey), at 2.

MUR746400395

Commission regulations, nor the Act's legislative history define 'corporation' or 'partnership.' Instead, the Act's legislative history and Commission regulations rely on State law to distinguish a partnership from a corporation."[5] Lastly, the Commission's own "personal use" regulation explicitly mandates deference to "applicable state law" when determining a candidate's "personal funds."[6] In this case, the Commission should therefore defer to Ohio law's treatment of nonprofit LLCs when considering CREW's allegations.

In light of Ohio's treatment of a single-member nonprofit LLC as being "part of the same legal entity as its nonprofit member," where all assets of the nonprofit LLC are considered to be "that of the nonprofit member," CREW's argument that LZP "knowingly permitt[ed] its name to be used to effect a $175,000 contribution by Unknown Respondent (or Respondents) to Honor and Principles PAC" is facially defective. Compl. ¶19. Likewise, CREW's contention that "this appears to be a prototypical example of a conduit contribution scheme," (Compl. ¶2) also holds no water, as LZP and its nonprofit corporate member's assets are one in the same under Ohio state law, and there were more than enough of such assets to cover the contribution to HPP. In reality, LZP could not have effected the making of a contribution in the name of another to HPP because such a conduit arrangement is not possible where a nonprofit LLC and its sole nonprofit corporate member are considered the same legal entity with indistinguishable assets.

Further bolstering this conclusion is the fact that, under Ohio law, LZP is required to convey its property in its own name. Under Chapter 1705 of the Ohio Revised Code, which addresses Limited Liability Companies, "[r]eal and personal property owned or purchased by a limited liability company shall be held and owned in the name of the company," and "[c]onveyance of that property shall be made in the name of the company." Ohio Rev. Code § 1705.34. Therefore, not only did LZP make its contribution to HPP using its own assets that are legally indistinguishable from those of its nonprofit corporate member, but LZP was required to convey such property in its own name under Ohio corporate law.

The Ninth Circuit has concluded that "[a] straw donor contribution is an indirect contribution from A, through B, to the campaign. It occurs when A solicits B to transmit funds to a campaign in B's name, subject to A's promise to advance or reimburse the funds to B." *U.S. v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010). In this matter, there is no such straw donor arrangement because LZP made its contribution to HPP with its own funds, which are indistinguishable from those of its nonprofit corporate member, and Ohio law treats LZP and its nonprofit corporate member as "part of the same legal entity." Further, LZP was required to convey its contribution to HPP in its own name pursuant to Ohio Rev. Code § 1705.34. Applying

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[5] Advisory Opinion 2008-05 (Holland and Knight), at 2.
[6] See 11 C.F.R. § 100.33(a) ("Amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over…").

the Ninth Circuit's rationale above, there is no A and B in this matter—only A; and A made the contribution in question and was correctly reported as the donor on HPP's 2018 April Quarterly report.

Not surprisingly, CREW chooses to ignore these laws and facts, and instead opts to push conspiracy theories about "Unknown Respondents" being the true source of funds in this matter. Such propagandizing should be swiftly discarded by the Commission.

B. The Complaint Fails to Provide Any Evidence of an Earmarked Contribution

The Complaint asserts that one or more "Unknown Respondents" made an earmarked contribution to HPP by using LZP as an intermediary or conduit. Compl. ¶16. Specifically, the Complaint claims that "an unknown Respondent (or Respondents) appears to have made a $175,000 contribution to Honor and Principles PAC in the name of LZP in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)" (Compl. ¶18) and that "LZP appears to have correspondingly violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b) by knowingly permitting its name to be used to effect a $175,000 contribution by Unknown Respondent (or Respondents) to Honor and Principles PAC." Compl. ¶19. Aside from the fact that such a conduit arrangement is legally untenable in this case under the state law analysis set forth above, CREW has also failed to provide any evidence to sustain an earmarking claim under the Commission's regulations and precedent.

A contribution is earmarked when there is "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part or a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b). In the past, the Commission has determined that contributions were earmarked where there was clear documentary evidence demonstrating a designation or instruction by the donor. *See* MURs 4831/5274 (Nixon) (finding contributions were earmarked where checks contained express designations on memo lines); MUR 6920 (American Conservative Union) (finding contributions were earmarked where American Conservative Union's ("ACU") Director of Operations characterized funds received from true donor as a "pass through," and ACU amended its 2012 IRS Form 990 to reflect donation from true donor as "a political contribution received by the Organization and promptly and directly delivered to a separate political organization."); *see also*, MUR 5732 (Matt Brown for U.S. Senate), MUR 5520 (Republican Party of Louisiana/Tauzin), MUR 5445 (Nesbitt), MUR 4643 (Democratic Party of New Mexico) (rejecting earmarking allegations where there was no evidence of a clear designation, instruction, or encumbrance by the donor), and MUR 5125 (Perry) (finding no earmarking because the complaint contained only bare allegations of earmarking, but showed no designation, instruction or encumbrance). The Commission has rejected earmarking claims even where the timing of the contributions at issue

appeared to be a significant factor, but the contributions lacked a clear designation or instruction. *See* MUR 5445 (Nesbitt) and MUR 4643 (Democratic Party of New Mexico).

In this case, any allegation of earmarking is irrelevant on its face because LZP used its own funds to make the cited contribution to HPP. However, even if LZP's contribution to HPP stemmed from a donation from another individual or entity, which it did not, the Complaint fails to provide any evidence that such "Unknown Respondent" made a transfer of funds to LZP, let alone a transfer that contained "designations, instructions and encumbrances" required for a violation of 52 U.S.C. § 30116(a)(8) and 11 C.F.R. § 110.6(b)(l). Moreover, LZP never received an express or implied, or written or oral instructions or designations from any mysterious "Unknown Respondent" with respect to the funds it used to make its contribution to HPP. The only purported evidence CREW cites to support its earmarking claim is the timing of LZP's contribution to HPP and its registration as a nonprofit LLC. However, this line of reasoning, based exclusively on the timing of a contribution, has been explicitly rejected by the Commission in the numerous enforcement matters referenced above. The Commission has made clear that "weak circumstantial evidence" such as "suspicious timing standing alone" is insufficient to justify a reason to believe finding.[7]

In short, LZP never received an earmarked contribution from anyone, as the funds it used to make the contribution to HPP were its own. CREW's argument, which relies solely on the timing of the cited contribution, amounts to mere conjecture and is not sufficient evidence on which to base an earmarking claim under the Commission's precedent.

C. The Commission's Recent Statements of Reasons Concerning LLC Contributions to Super PACs Do Not Contemplate Contributions from a Single-Member Nonprofit LLC with a Nonprofit Corporate Member.

As stated above, LZP made the contribution to HPP using its own assets, which are legally indistinguishable from those of its nonprofit corporate member because they are considered to be "part of the same legal entity." Ohio Rev. Code § 5701.14. The Commission has never addressed the attribution requirements of a Super PAC donor organized as a single-member nonprofit LLC with a nonprofit corporate member. In fact, all of the recent Statements of Reasons in matters alleging violations of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b) by LLCs over the last several years have dealt with for-profit LLCs contributing to Super PACs.

[7] *See* MUR 5732 (Matt Brown for U.S. Senate), Statement of Reasons of Vice Chairman David G. Mason (May 10, 2007) (noting that "[t]he Commission has rejected investigating allegations of earmarking unsupported by evidence or where only weak circumstantial evidence existed…suspicious timing alone, without any indication in the record that contributors directed, controlled, or took action to earmark their contributions, was insufficient to find reason to believe a violation occurred…").

MUR746400398

Furthermore, all of these matters involved for-profit LLCs that chose to be taxed as a corporation or a disregarded entity, where the LLC's member or members consisted only of natural persons or statutory or living trusts. *See* 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). None of these recent matters involved contributions to a Super PAC from a nonprofit LLC whose single member is a 501(c)(4) nonprofit corporation. Thus, this is a case of first impression.

Neither the Commission's regulations nor the guidance presented in any of the foregoing Statements of Reasons provide any clarity with respect to the attribution requirements applicable to a contribution to a Super PAC from a single-member nonprofit LLC with a nonprofit corporate member. Under the Internal Revenue Code (the "Code"), a single member LLC cannot elect to be classified as a partnership; instead, it may choose to be treated either as a corporation or to be disregarded as an entity separate from its owner. 26 C.F.R. § 301.7701-3(a). A single-member LLC that does not affirmatively elect treatment as a corporation is treated by default as a disregarded entity. *See* 26 C.F.R. §§ 301.7701-3(b)(1) and 7701-2(c)(2); *see also* Advisory Opinion 2009-02 (TPN), at 3.

Despite these classification provisions under the Code, the Commission's regulations state that, "[a] contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e)." 11 C.F.R. § 110.1(g)(2). Section 110.1(e) of the Commission's regulations, which addresses "contributions by partnerships," states, in pertinent part, that "[a] contribution by a partnership shall be attributed to the partnership and to each partner…in direct proportion to his or her share of the partnership profits…" 11 C.F.R. § 110.1(e). With respect to contributions to Super PACs from for-profit LLCs that have one or more natural person members who share in the LLC's profits, these attribution requirements are quite clear. Indeed, then-Vice Chair Weintraub was correct when she said, "there should be no confusion that the law prohibits individuals from using such entities [referring to disregarded entities] to make contributions in the name of another."[8]

[8] Statement of Reasons of Vice Chair Ellen L. Weintraub, at 2, in the Matters of MURs 6969 (MMWP12 LLC) and 7031/7034 (Children of Israel), dated July 13, 2018, *available at* https://www.fec.gov/files/legal/murs/6969/6969_1.pdf.

For example, in MUR 6969, MMWP12 LLC was organized as a single member for-profit LLC whose sole member was K2M, an LLC taxed as a partnership and owned by Mark and Megan Kvamme through living trusts. Because MMWP12 LLC was organized for-profit, and its ultimate owners were natural persons who shared partnership profits, the Republican Commissioners concluded in their controlling Statement of Reasons that, "MMWP12's contributions should have been attributed to K2M and each of its owners, Mark and Megan Kvamme."[9]

Conversely, a single member nonprofit LLC with a nonprofit *corporate* member does not legally involve any natural persons or individuals. Moreover, by definition and law, a nonprofit LLC with a single 501(c)(4) nonprofit corporate member does not have profits. This is because a nonprofit LLC takes on the nonprofit characteristics of its sole nonprofit corporate member, and its activities must be in line with those of the nonprofit corporate member. *See* IRS Announcement 99-102, 1999-43 I.R.B. 545. In this case, LZP takes on the characteristics of its nonprofit corporate member, which is organized under 26 U.S.C. § 501(c)(4). Section 501(c)(4) of the Code makes clear that a social welfare organization is "not organized for profit" and does not permit any "net earnings [to] inure[] to the benefit of any private shareholder or individual." 26 U.S.C. § 501(c)(4)(A)-(B). The Commission's attribution regulation governing partnership contributions at 11 C.F.R. § 110.1(e) would therefore not be applicable in this matter because it requires attribution of underlying partners "in direct proportion to his or her share of partnership profits." In this case, there are simply no "partnership profits," so as a matter of law, no attribution of LZP's single nonprofit corporate member would be required.

Lastly, it should be noted that the Commission's regulations governing contributions by single member LLC's with natural person members at 11 C.F.R. 110.1(g)(4) would also not apply in this case because LZP's single member is not a natural person. The Commission has stated that its "regulations provide that contributions by an LLC with a single natural person member that does not elect to be treated as a corporation for Federal income tax purposes 'shall be attributable only to that single member.'" *See* 11 C.F.R. § 110.1(g)(4); Advisory Opinion 2009-02 (TPN), at 3. Because LZP's single member is a 501(c)(4) nonprofit corporation, this regulation is not applicable.

[9] Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Peterson at 5 in the Matters of MURs 6969 (MMWP12 LLC) and 7031/7034 (Children of Israel), dated September 13, 2018, *available at* https://www.fec.gov/files/legal/murs/6969/6969_2.pdf.

In sum, the Commission has never addressed the attribution requirements for contributions to a Super PAC made by a single member nonprofit LLC with a nonprofit corporate member, which makes this a matter of first impression. As specified in the controlling Statements of Reasons in the LLC matters referenced above, "principles of due process, fair notice, and First Amendment clarity counsel against applying a standard to persons and entities that were not on notice of the governing norm."[10] In light of lack of clarity and guidance with respect to this type of LLC disclosure, the Commission should prudently exercise its prosecutorial discretion and dismiss the Complaint.

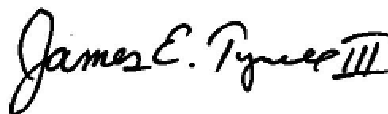
II. Conclusion

In presenting such a hollow argument, CREW identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). CREW's partisan tactics have no place before the Commission, and the Complaint should be summarily dismissed.

In presenting politically-motivated and factually and legally unsubstantiated arguments, CREW has failed to demonstrate that LZP has violated any provision of the Act or the Commission's regulations. Instead, CREW has yet again invoked an administrative process as a means to continue its assault on its political opponents. The Complaint is based on malicious speculation and innuendo. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

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 LZP, LLC

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[10] MURs 6485, 6487, 6488, 6711, and 6930, Statement of Reasons of Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Lee E. Goodman, at 2.