

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
 3 In the Matter of)
 4)
 5 Ohio Works) MUR 7464
 6 American Electric Power)
 7)
 8)
 9)
 10 Raymond McVeigh)
 11)

12 **SECOND GENERAL COUNSEL'S REPORT**

13 **I. ACTIONS RECOMMENDED**

14
 15 We recommend that the Commission: (1) substitute the names Ohio Works,
 16
 17 – in place of
 18 “Unknown Respondents” in the Commission’s previous findings that Unknown Respondents
 19 violated 52 U.S.C. § 30122; (2) find no reason to believe that American Electric Power (“AEP”)
 20 violated 52 U.S.C. § 30122; (3) take no further action as to Raymond McVeigh, Ohio Works,
 21 and (4) close the file.

22 **II. BACKGROUND**

23 On May 20, 2021, the Commission found reason to believe that Unknown Respondents
 24 and Raymond McVeigh violated 52 U.S.C. § 30122 in connection with \$270,000 in federal
 25 contributions made to Honor and Principles PAC and Lisa Lisker in her official capacity as
 26 treasurer (“Honor PAC”) through and in the name of LZP, LLC, a disregarded entity of
 27 Independence and Freedom Network, Inc. (“IFN”).¹

¹ Cert. at 1 (May 27, 2021).

1 Based upon the Commission’s reason-to-believe findings, this Office conducted an
2 investigation to gather information regarding the source of the funds that were provided to IFN
3 and then transferred to LZP in order to make the contributions to Honor PAC and what
4 instructions, if any, were given, or commitments made, in connection with providing those funds.
5 After obtaining bank records and written responses from IFN and LZP, we identified Ohio
6 Works as the source of funds that were contributed to Honor PAC through IFN. On May 3,
7 2022, we alerted the Commission that we intended to notify Ohio Works as a respondent in this
8 matter and subsequently did so.² Information provided by Ohio Works identified
9 and AEP as the sources of funds that were used to donate to
10 IFN, and on August 5, 2022, we alerted the Commission that we intended to notify these persons
11 as respondents and thereafter did so.³ Based on information subsequently provided by AEP, we
12 learned that was the source of the funds we previously understood to have come from AEP,
13 and on November 29, 2022, we alerted the Commission that we intended to notify and did
14 so.⁴

15 **III. SUMMARY OF INVESTIGATION**

16 The purpose of the investigation in this matter was to identify the ultimate source of
17 funds used to make federal contributions through and in the name of LZP, that were used by
18 Honor PAC to pay for advertisements and other activity in connection with the Ohio House of
19 Representatives primary race between Larry Householder and Kevin Black. The investigation

2 Memo. to Comm’n re Notification of Respondent (May 3, 2022).

3 Memo. to Comm’n re Notification of Respondent (Aug. 5, 2022).

4 Memo. to Comm’n re Notification of Respondent (Nov. 29, 2022).

1 consisted of a document subpoena to IFN and LZP, depositions of Lisa Lisker and Raymond
2 McVeigh, and informal discovery responses and documents provided by the respondents. Prior
3 to the investigation, the available information established that IFN was the direct source of funds
4 into LZP, but it was unclear whether those funds originally came from another source. The
5 investigation revealed that Ohio Works was the entity that provided funds to IFN that were
6 ultimately contributed to Honor PAC and that three entities and individuals —
7 — provided the funds to Ohio Works that were
8 thereafter donated to IFN.

9 **A. IFN, LZP, and Honor PAC**

10 IFN is organized as a social welfare organization under section 501(c)(4) of the tax code
11 in late 2017.⁵ IFN's 2018 IRS Form 990 annual tax return represents that its mission is "to
12 promote solutions to pressing public policy problems related to individual liberty and the
13 expansion of personal freedom."⁶ And it represented that its planned activities include research
14 and policy analysis, public education, issue advocacy and grassroots lobbying activities.⁷ IFN's
15 Articles of Incorporation state that one of its purposes is "to promote the common good and
16 general welfare of the citizens of the United States of America."⁸

⁵ IRS Form 990, IFN, 2018 Return of Organization Exempt from Income Tax (Nov. 15, 2019) ("IFN 2018 990").

⁶ IFN 2018 990 at 1.

⁷ IFN Form 1024, Application for Recognition of Exemption under Section 501(c)(4) of the Internal Revenue Code (Nov. 15, 2017), (McVeigh 000001-31).

⁸ IFN Directors' Action by Written Consent in Lieu of Organizational Meeting (McVeigh 000122-144).

1 Throughout its lifetime, IFN's sole director and officer has been Raymond McVeigh.⁹
2 However, McVeigh played almost no substantive role in running the organization, which was
3 controlled by two political consultants, Tom Norris and Joel Riter.¹⁰ McVeigh signed paperwork
4 giving Norris and Riter authority to create a bank account and make disbursements on behalf of
5 IFN.¹¹ IFN and LZP have also represented that McVeigh gave Norris and Riter general authority
6 to act on behalf of the organization in any way that would further its aims.¹² After the
7 organization was formed, Norris and Riter began running its operations without communicating
8 any information to McVeigh about what IFN was doing.¹³ McVeigh testified that he was under
9 the impression that the organization simply never got off the ground until Norris and Riter
10 presented him with dissolution paperwork for IFN and LZP in 2020.¹⁴

11 After forming IFN, Norris and Riter created LZP, LLC, a Domestic Nonprofit Limited
12 Liability Company organized and registered in Ohio and formed on March 27, 2018, as an IFN

⁹ *Id.*

¹⁰ Raymond McVeigh Dep. at 13:12-22; 14:12-25; at 19:2-22 (Jan 6, 2023); Email from James Tyrrell, counsel, to Aaron Rabinowitz, FEC (Jan. 24, 2023) ("Jan. 24 Tyrrell Email") ("In managing IFN, Mr. Riter and Mr. Norris did not have any regular correspondence with Mr. McVeigh regarding the group and never had any correspondence with Mr. McVeigh regarding the group's financial transactions, donors, activities, plans, etc.").

¹¹ Directors' Action by Written Consent in Lieu of Organizational Meeting (McVeigh 000122).

¹² Jan. 24 Tyrrell Email ("Pursuant to Article IV of IFN's bylaws, Mr. McVeigh, as sole Director, authorized Mr. Riter and Mr. Norris, as agents of IFN, to manage the group. Mr. McVeigh's authorization was general and not confined to specific instances."). In an interview, Riter represented that he recalled that McVeigh granted him and Norris authority to operate IFN. McVeigh has testified that he does not recall giving Norris and Riter authority outside of the banking authority described above. McVeigh Dep. at 52:2-22 2.

¹³ McVeigh Dep. at 19:2-22; Jan. 24 Tyrrell Email; Report of Investigation of Tom Norris at 2 (Feb. 6, 2023) ("Norris ROI") (Norris represented that, despite being IFN's sole officer and director, McVeigh did not have a particularly substantive role in its operations); Report of Investigation of Joel Riter at 1-2 (Feb. 10, 2023) ("Second Riter ROI") (Riter did not recall any conversations with McVeigh regarding forming LZP or any subsidiary, or in forming Honor PAC).

¹⁴ McVeigh Dep., at 47:23-48:15; 62:8-12.

1 subsidiary.¹⁵ Norris and Riter directed that LZP be formed and opened its bank account.¹⁶ IFN
2 reported on its 2018 Form 990 that LZP is treated as a disregarded entity for federal tax purposes
3 and represented that LZP had a total income of \$271,000 for that year.¹⁷

4 Honor PAC, is an independent-expenditure-only committee (“IEOPC”) that first
5 registered with the Commission on March 26, 2018.¹⁸ Riter hired Lisa Lisker to serve as its
6 treasurer.¹⁹ Honor PAC also filed a statement of organization with the state of Ohio as a Super
7 PAC but does not appear to have filed any other reports with the state.²⁰

8 Norris directed that LZP and Honor PAC be formed for the purpose of paying to create
9 and distribute advertisements in connection with the Ohio State Representative race between
10 Ohio State Representative Larry Householder and Kevin Black.²¹ LZP, in turn, was created for
11 the specific purpose of transferring funds from IFN to it and then to Honor PAC.²² Norris and
12 Riter represented that they formed Honor PAC because they understood that Ohio did not have

¹⁵ See *LZP, LLC Articles of Organization* (eff. date Mar. 27, 2018), Business Search, Ohio Sec. of State,
<https://businesssearch.ohiosos.gov?=businessDetails/4158880>.

¹⁶ Jan. 24 Tyrrell email (“it would have either been Mr. Norris or Mr. Riter who reached out to Jamie Ryan at Bailey Cavalieri to create LZP. Once LZP was created by Bailey Cavalieri, it would have either been Mr. Norris or Mr. Riter who communicated with Chain Bridge Bank to open a bank account for LZP. Brad Elgin, a Certified Public Accountant who regularly works with Mr. Norris and Mr. Riter on various clients and projects, was the signer on the LZP account, and he would have been the one who initiated any wire transfers to Honor and Principles PAC.”).

¹⁷ IFN 2018 990 at 5; *id.* at Schedule R.

¹⁸ Honor and Principles PAC, FEC Form 1, Statement of Organization (Mar. 26, 2018).

¹⁹ *Id.*; Lisa Lisker Dep. at 7:18-8:2; 9:1-16 (Dec. 19, 2022).

²⁰ Honor and Principles PAC (Super PAC) filings, Ohio Sec. of State,
https://www6.ohiosos.gov/ords/f?p=CFDISCLOSURE:39:::NO:RP:P39_ENTITY_ID,P39_LISTTYPE:14969,simpl.

²¹ Norris ROI at 2-3.

²² Norris ROI at 2-4.

1 an equivalent state organization as a federal IEOPC but that it would accept FEC filings from a
2 federal IEOPC that made expenditures in connection with state races.²³

3 According to Norris, he initially developed the idea of creating advertisements connected
4 to the race between Householder and Black and asked a media vendor he knew, Nick Everhart,
5 to see if he could find funding for those advertisements through Everhart's connections in the
6 Ohio political sphere.²⁴ Everhart thereafter called Norris back and told him that he had secured
7 funding.²⁵ Norris did not recall whether Everhart was told that these independent expenditures
8 were going to be done through a federal PAC, or whether Everhart would have conveyed such
9 information to donors.²⁶

10 In December 2020, Norris and Riter sent McVeigh dissolution paperwork for IFN and
11 LZP.²⁷ McVeigh testified that this was the first time that he had heard of LZP or learned that
12 IFN had engaged in any activity.²⁸ McVeigh signed the Certificate of Dissolution for IFN on

²³ Norris ROI at 3; Report of Investigation of Joel Riter at 2 (Nov. 16, 2022) ("First Riter ROI").

²⁴ Norris ROI at 3-4.

²⁵ *Id.* at 4.

²⁶ *Id.* Everhart did not respond to our requests to interview him regarding these activities.

²⁷ IFN Ohio Certificate of Dissolution (Dec. 29, 2020) (McVeigh 000079-85), Email from Joel Riter to Raymond McVeigh (Dec. 15, 2020) (McVeigh 000115-6), Email from Joel Riter to Raymond McVeigh (Dec. 16, 2020) (McVeigh 000117).

²⁸ McVeigh Dep. 10:13-11:2; 47:23-48:15 ("Q: Did you have any other communications around that time with Mr. Riter about dissolving LZP, LLC? A: I'm sure I had a conversation. When I got the email with the dissolution documents, know we talked about it. But I don't recall specifically a date or a specific conversation. Q: Well, do you recall the substance of those conversations? A: Yes. Q: And what was the substance of those conversations? A: The substance was me saying, what's this all about? What is LZP? And what's going on here? And finding out at that point that IFN had been active for a period of time and being told that LZP was there for accounting purposes to simplify accounting and that everything was being -- everything -- that IFN and LZP needed to be dissolved.").

1 December 17, 2020, and it was filed with the Ohio of Secretary State's Office on December 30,
2 2020.²⁹ McVeigh also signed dissolution paperwork for LZP around that same time.³⁰

3 **B. Transfers from IFN to LZP to Honor PAC**

4 IFN made the following transfers into LZP on the following dates: \$180,000 on March,
5 28, 2018, \$50,000 on April 6, 2018, \$6,000 on April 17, 2018 and \$35,000 on October 17,
6 2018.³¹ LZP then transferred the following amounts to Honor PAC on the following dates:
7 \$175,000 on March 28, 2018; \$50,000 on April 6, 2018, \$10,000 on April 18, 2018, and \$35,000
8 on October 19, 2018.³² Honor PAC made a \$163,838 disbursement on March 29, 2018, to
9 Target Enterprises, LLC, for a "non Federal IE-Media Buy."³³ Honor PAC also reported
10 additional disbursements of \$49,000 to SOM Media, LLC for "non federal voter calls" and "non
11 federal-direct mail" as well as \$15,000 to Target Enterprises LLC for "non federal-media buy."³⁴
12 Honor PAC's disbursements paid for a series of advertisements criticizing Householder and
13 endorsing Black, which aired in Ohio around this time.³⁵

²⁹ IFN Certificate of Dissolution, Business Search, Ohio Sec. of State (December 30, 2020),
<https://bizimage.ohiosos.gov/api/image/pdf/202036405238>.

³⁰ McVeigh Dep at 46:17-48:15.

³¹ Subpoena Resp. at IFN003, IFN005, IFN009.

³² *Id.* at IFN006; Honor and Principles PAC 2018 April Quarterly Report at 6 (Apr. 15, 2018); Honor PAC
2018 July Quarterly Report at 6 (July 14, 2018); Honor PAC 2018 Post-General Report at 6, 7 (Dec. 6, 2018).

³³ Honor and Principles PAC 2018 April Quarterly Report at 8.

³⁴ Honor PAC 2018 July Quarterly Report at 7-8.

³⁵ *See* Medium Buying, TWITTER (Apr. 1, 2018, 8:37 PM),
<https://twitter.com/MediumBuying/status/980605173247758336>; Medium Buying, TWITTER (Apr. 23, 2018, 10:18
AM), <https://twitter.com/MediumBuying/status/988421940326162435>; Medium Buying, TWITTER (May 6, 2018,
4:43 PM), <https://twitter.com/MediumBuying/status/993229755343409153>; *see also* Report of Investigation of
Melissa McNulty at 1 (Sep. 21, 2022) ("McNulty ROI") at 2 (noting that she remembered seeing the advertisements
around the time that they were aired); Donelon ROI at 3 (same).

1 LZP made no other contributions and engaged in no other activity other than the transfers
2 to Honor PAC.³⁶ Honor PAC has never reported receiving any other funds, although it amended
3 its reports to attribute the contributions to IFN after the Commission found reason to believe in
4 this matter.³⁷

5 C. Ohio Works

6 Ohio Works represents that it is a 501(c)(4) organization that was formed in the state of
7 Ohio on March 29, 2017; it further represents that its purpose is promoting entrepreneurship,
8 economic growth, and the development of 21st century jobs in Ohio for the common good and
9 general welfare of all people residing within the state.³⁸ Ohio Works transferred \$30,000 to IFN
10 on March 7, 2018, \$200,000 to IFN on March 28, 2018, \$120,000 April 6, 2018, and \$2,000 on
11 May 8, 2018.³⁹ In its Response, Ohio Works contended that it “did not have any knowledge or
12 control of IFN’s operation or its use of these funds prior to and/or following the transfers.”⁴⁰

13 According to information provided by representatives of Ohio Works, the organization
14 was run by three individuals: Tod Bowen, who was responsible for fundraising, Terry Donelon,
15 who was responsible for authorizing expenditures, and Melissa McNulty, whose responsibilities
16 were administrative.⁴¹ Ohio Works represented that, after its formation, these three individuals

³⁶ Letter from James E. Tyrrell III, counsel, to Ana J Peña-Wallace, FEC, at 2 (Nov. 24, 2021); Resp. to Mar. 18, 2022, Subpoena to IFN (“Subpoena Resp.”) at IFN007-9.

³⁷ See *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00674291 (reflecting receipts to Honor PAC from formation to the present) (last visited April 27, 2023).

³⁸ Ohio Works Resp. at 1 (June 2, 2022).

³⁹ Subpoena Resp. at 3, IFN001, IFN003, IFN004.

⁴⁰ Ohio Works Resp. at 2.

⁴¹ McNulty ROI at 1.

1 never communicated with one another about the activities they were engaging in, except that
2 Bowen might inform McNulty that funds would be coming in, and Donelon would instruct
3 McNulty to wire funds to specific parties.⁴² Donelon said this was done because of concerns that
4 they believed they otherwise could be accused of impropriety or illegality.⁴³

5 Ohio Works received the funds it transferred to IFN from three sources:

6 – which provided \$50,000 to Ohio Works on March 14, 2018; , which
7 Ohio Works understood to be affiliated with AEP and which provided \$150,000 to Ohio Works
8 on March 27, 2018; and who provided \$100,000 to Ohio Works on April 3, 2018.⁴⁴ A
9 review of receipts and disbursements from Ohio Works' bank account establishes that it would
10 not have had sufficient funds to transfer \$200,000 to IFN on March 28, 2018, without receiving
11 \$200,000 from – and earlier that
12 month.⁴⁵ And it would not have had sufficient funds to transfer \$120,000 to IFN on April 6,
13 2018, without receiving \$100,000 from three days prior.⁴⁶

14 IFN's bank records also establish that it would not have had sufficient funds to transfer
15 \$180,000 to LZP on March 28, 2018 had it not received \$200,000 from Ohio Works earlier that
16 same day.⁴⁷ In total, Ohio Works transferred \$352,000 to IFN, IFN transferred \$271,000 to LZP,

⁴² McNulty ROI at 1-2; Report of Investigation of Terry Donelon at 2-3 (Sep. 22, 2022) (“Donelon ROI”).

⁴³ Donelon ROI at 3.

⁴⁴ Letter from Christopher N. Slagle, counsel for Ohio Works, to Charles Kitcher, FEC, at 3 (July 27, 2022) (“Slagle Letter”).

⁴⁵ *Id.* at Ex. 1.

⁴⁶ *Id.*

⁴⁷ Subpoena Resp. at 3, IFN001, IFN003, IFN004.

1 LZP transferred \$270,000 to Honor PAC, and Honor PAC reported making \$227,838 in media
 2 related disbursements.

3 Terry Donelon, of Ohio Works, stated that he had a meeting with Riter at which Riter
 4 represented that IFN shared similar broad goals as Ohio Works and that Ohio Works should
 5 donate to IFN on that basis.⁴⁸ Riter, however, represented that he did not generally fundraise for
 6 IFN and did not recall this conversation.⁴⁹ Neither Ohio Works nor Honor PAC provided any
 7 written communications regarding Ohio Works' decision to provide funds to IFN. Donelon,
 8 Norris, and Riter all represented that there were no other substantive communications about Ohio
 9 Works' decision to donate to IFN either before or after Ohio Works made transfers totaling
 10 \$350,000 to IFN.⁵⁰ Donelon also represented that he did not discuss Honor PAC with Riter and
 11 was not aware of what IFN would use the money for until after learning of the advertisements
 12 that Honor PAC paid for.⁵¹

13 **D.**

14 is an Ohio company that is affiliated with the
 15 and is taxed as a 501(c)(4) corporation.⁵² describes itself as an
 16 organization that

17

18

⁴⁸ Donelon ROI at 2.

⁴⁹ First Riter ROI at 2.

⁵⁰ Donelon ROI at 1-2. First Riter ROI at 2.

⁵¹ Donelon ROI at 2-3.

⁵² Resp. at 1 (Sep. 6, 2022).

1 advocacy work, among other things. As described above, transferred
 2 \$50,000 to Ohio Works on March 14, 2018, which was used to make Ohio Works' transfer to
 3 IFN on March 28, 2018 of \$200,000.⁵⁴
 4 represented that it did not have knowledge "of any specific
 5 expenditures that Ohio Works planned to make or did make" with the funds that were provided
 6 and that did not have "any knowledge of the existence of LZP,
 7 IFN, or Honor PAC or of any of the activities alleged in the letter."⁵⁵ It further represented that
 8 it did not provide instruction regarding how Ohio Works should use these funds and was not told
 9 that donating to Ohio Works would result in any particular activity or further transfers.⁵⁶
 10
 11 is an individual who lives in Ohio and who donated \$100,000 to Ohio
 12 Works on April 3, 2018, which Ohio Works used to donate \$120,000 to IFN on April 6, 2018.⁵⁷
 13 who has made prior donations, represented that was asked to make a donation to
 14 Ohio Works by Ohio State Representative Ryan Smith; at the time, Smith was working to build
 15 support to become the next Speaker of the Ohio House of Representatives over Householder,
 16 another person seeking this role. had been a longtime public supporter of Smith and
 17 opponent of Householder and represented that therefore agreed to support Smith by making a

⁵⁴ Slagle Letter Ex. 1.

⁵⁵ Resp. at 1.

⁵⁶ Email from Executive Director, to Aaron Rabinowitz, FEC (Sep. 28, 2022).

⁵⁷ Slagle Letter Ex. 1.

1 \$100,000 donation to Ohio Works.⁵⁹ represented that did not anticipate that the funds
 2 provided would be used for any specific purpose.

3 **F. American Electric Power**

4 American Electric Power, Inc., is a publicly traded power company; its subsidiary, AEP
 5 Ohio, provides power services through areas in Ohio.⁶¹ is a social welfare organization
 6 created in 2014 pursuant to Section 501(c)(4) of the U.S. Tax Code.⁶² Together, the two AEP
 7 entities contributed the following amounts to : \$3 million on January 15, 2015; \$5 million
 8 on December 29, 2016; \$200,000 on July 31, 2019; and \$500,000 on October 9, 2019.⁶³

9 In 2017 and 2018, donated \$350,000 to Ohio Works, including a \$150,000 donation
 10 on March 27, 2018, the day before Ohio Works donated \$200,000 to IFN.⁶⁴ In 2018,
 11 five-member board included AEP's then-Vice President of External Affairs,
 12 an attorney and outside political consultant for AEP, while AEP Ohio's Director of
 13 Government Affairs, also assisted with matters.⁶⁵

⁵⁹ *Id.* ¶¶ 10-13; *see also*

discussing public financial support of Smith and the competing efforts
 of Smith and Householder to become speaker).

⁶¹ AEP Resp. at 2 (Nov. 18, 2022).

⁶² *Id.*

⁶³ *Id.* & Decl. of Jeffrey Hoersdig (Nov. 18, 2022).

⁶⁴ *Id.*; Resp. at 5-6 (Jan. 24, 2023).

⁶⁵ AEP Resp. at 2.

1 **IV. ANALYSIS**

2 **A. Contributions in the Name of Another**

3 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
 4 deposit of money or anything of value made by any person for the purpose of influencing any
 5 election for Federal office.”⁷¹ The term “person” for purposes of the Act and Commission
 6 regulations includes partnerships, corporations, and “any other organization or group of
 7 persons.”⁷² The Act prohibits a person from making a contribution in the name of another
 8 person, knowingly permitting his or her name to be used to effect such a contribution, or
 9 knowingly accepting such a contribution.⁷³ The Commission has included in its regulations
 10 illustrations of activities that constitute making a contribution in the name of another:

- 11 (i) Giving money or anything of value, all or part of which was
 12 provided to the contributor by another person (the true contributor)
 13 without disclosing the source of money or the thing of value to the
 14 recipient candidate or committee at the time the contribution is
 15 made; or
- 16 (ii) Making a contribution of money or anything of value and
 17 attributing as the source of the money or thing of value another
 18 person when in fact the contributor is the source.⁷⁴

19 The requirement that a contribution be made in the name of its true source promotes
 20 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
 21 committees of the political contributions they receive.⁷⁵ Courts therefore have uniformly

⁷¹ 52 U.S.C. § 30101(8)(A).

⁷² *Id.* § 30101(11); 11 C.F.R. § 100.10.

⁷³ 52 U.S.C. § 30122.

⁷⁴ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

⁷⁵ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections

1 rejected the assertion that “only the person who actually transmits funds . . . makes the
 2 contribution,”⁷⁶ recognizing that “it is implausible that Congress, in seeking to promote
 3 transparency, would have understood the relevant contributor to be [an] intermediary who
 4 merely transmitted the campaign gift.”⁷⁷ Consequently, both the Act and the Commission’s
 5 implementing regulations provide that a person who furnishes another with funds for the purpose
 6 of contributing to a candidate or committee “makes” the resulting contribution.⁷⁸ This is true
 7 whether funds are advanced to another person to make a contribution in that person’s name or
 8 promised as reimbursement of a solicited contribution.⁷⁹

9 Because the concern of the law is the true source from which a contribution to a
 10 candidate or committee originates, regardless of the mechanism by which the funds are
 11 transmitted, the Commission will examine the structure of the transaction itself and the
 12 arrangement between the parties to determine who in fact “made” a given contribution.

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

⁷⁶ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

⁷⁷ *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

⁷⁸ *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee”) (emphasis added); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent [the Act’s reporting] restrictions[.]”).

⁷⁹ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 Accordingly, Section 30122's prohibition of contributions in the name of another applies to
 2 LLCs such that an LLC is prohibited from being used as a "straw donor" to transmit the funds of
 3 another but must instead be the true source of any contribution it purports to make.⁸⁰

4 **B. There Is Insufficient Evidence to Warrant a Finding of Probable Cause to**
 5 **Believe that Ohio Works,**
 6 **Made Contributions in the Name of Another**
 7 **in Violation of 55 U.S.C. § 30122.**

8 The available evidence indicates that Ohio Works and the donors to Ohio Works
 9 understood that the funds they provided to IFN likely would support the efforts of Smith, who at
 10 the time was working to build support to become the next Speaker of the Ohio House of
 11 Representatives over Householder, who was also seeking this role. represented in its
 12 Response that it understood Ohio Works to have been supportive of Smith,⁸¹ and an AEP-
 13 provided email from an board member similarly describes Ohio Works as "the c4
 14 supportive of Rep Ryan Smith."⁸², similarly, was asked by Smith himself to donate to
 15 Ohio Works to support his efforts.

16 It is also possible that some of these respondents were made aware that their funds would
 17 be used to pay for the specific advertisements that Honor PAC paid for. Norris stated that after
 18 he developed the idea for these advertisements he asked a media vendor, Everhart, to fundraise

⁸⁰ See, e.g., MUR 7903 (Tomfoolery, LLC, *et al.*) (conciliating with respondent LLC, a disregarded entity for federal tax purposes, and single member for violating 52 U.S.C. § 30122 when single member provided funds and caused LLC to send a contribution to IEOPC).

⁸¹ Resp. at 6.

⁸² AEP Resp. Ex. K, Email from AEP, to AEP (Nov. 21, 2017).

1 for the advertisement idea and that Everhart later called back to say that he had found funding.⁸⁴
2 Given that the only source of funds used for these advertisements are the donations to IFN from
3 Ohio Works, this would appear to indicate that Everhart either directly communicated with Ohio
4 Works or the sources of funds into Ohio Works or else to a third party who coordinated or
5 facilitated the transactions. However, these Respondents generally have directly disputed that
6 they received information about how their funds would be used after donating to Ohio Works or
7 IFN.⁸⁵

8 However, the available evidence does not indicate that Ohio Works or the donors to Ohio
9 Works would have had reason to know that their funds would be contributed to Honor PAC
10 specifically or to a federal political committee more generally. There is no information in the
11 record indicating that Ohio Works, were directly
12 told of the existence of Honor PAC or that funds would be transferred from IFN to a federal
13 political committee such as Honor PAC, rather than an Ohio state political committee.

14 It therefore appears that the available evidence does not establish probable cause to
15 believe that these Respondents made a contribution under the Act, meaning a payment or other

⁸⁴ Norris ROI at 3-4.

⁸⁵ Ohio Works Resp. at 1 (“Ohio Works did not have any knowledge or control of IFN’s operation or its use of these funds prior to and/or following the transfers.”); – Resp. at 1 (“Neither nor had any knowledge at the time the contributions were made or at any time afterward of any specific expenditures that Ohio Works planned to make or did make.”); Resp. at 5-6 Board of Directors did not discuss or correspond with any agents of Ohio Works regarding any subsequent transfer of funds provided by to Independence and Freedom Network, Inc., LZP, LLC, or Honor and Principles PAC”). represented that was told by Smith that her funds would be used generally to support his efforts to become house speaker, but denies that was told that the funds would be routed through other entities and represents that had been under the impression that Ohio Works itself was a political action committee.

1 thing of value made “for the purpose of influencing any election for *Federal* office,”⁸⁶ given
 2 that, at most, these Respondents would appear to have understood that the funds would be used
 3 for Ohio state, rather than federal, activity. Due to the insufficiency of the information indicating
 4 that these Respondents understood themselves to have been making federal contributions, it
 5 follows that they therefore should not be considered to have “ma[de] a contribution in the name
 6 of another person.”⁸⁷

7 Accordingly, we recommend that the Commission substitute the names Ohio Works,
 8 in place of
 9 “Unknown Respondents” in the Commission’s previous findings that Unknown Respondents
 10 violated 52 U.S.C. § 30122 and take no further action with respect to these respondents.

11 **C. The Commission Should Find No Reason to Believe that American Electric**
 12 **Power Violated 55 U.S.C. § 30122.**

13 We notified AEP as a respondent in this matter on the basis that Ohio Works’ records and
 14 written responses indicated that AEP was the source of funds that were thereafter transferred
 15 from Ohio Works to IFN. The investigation has established that those funds actually came from
 16 a 501(c)(4) organization with unofficial ties to AEP and
 17 that received substantial donations from AEP.⁸⁸ Although executives at AEP also acted as

⁸⁶ 52 U.S.C. § 30101(8)(A)(i) (emphasis added); *accord* 11 C.F.R. § 100.52.

⁸⁷ 52 U.S.C. § 30122; *cf.* O’Donnell, 608 F.3d at 550 (“In a straw donor situation, the person who actually transmits the money acts merely as a mechanism, whereas it is the original source who has made the gift by arranging for his money to finance the donation. To identify the individual who has made the contribution, we must look past the intermediary’s essentially ministerial role to the substance of the transaction. Accordingly, the statutory language [defining who makes a contribution] applies when a defendant’s funds go to a campaign either directly from him or through an intermediary.”).

⁸⁸ *Supra* Part III.F.

1 directors at ⁸⁹, we did not develop information in the investigation that would establish that
2 the funds transferred to Ohio Works necessarily originated with AEP or that AEP provided
3 specific instruction to regarding the use of any funds AEP provided to . Accordingly,
4 the available information indicates that AEP was not one of the “Unknown Respondents” as to
5 whom the Commission found reason to believe violated 52 U.S.C. § 30122 in this matter.
6 Further, based on this lack of information confirming the company’s direct involvement in the
7 transfers of funds at issue, we recommend that the Commission find no reason to believe that
8 AEP violated 52 U.S.C. § 30122.

9 **D. There Is Insufficient Evidence to Warrant a Finding of Probable Cause to**
10 **Believe that Raymond McVeigh Violated 55 U.S.C. § 30122.**

11 The Commission found reason to believe that Raymond McVeigh, the sole officer and
12 director of IFN, violated 52 U.S.C § 30122 by allowing LZP’s name to be used to make
13 contributions in the name of another.⁹⁰ However, the investigation revealed that McVeigh was
14 not the source of the funds that IFN transferred to LZP to be contributed to Honor PAC.⁹¹ The
15 investigation further established that McVeigh was unaware of the transactions at the time and
16 only learned of them years later.⁹² We therefore recommend that the Commission take no
17 further action concerning the allegation that Raymond McVeigh violated 52 U.S.C. § 30122.

⁸⁹ *Id.*

⁹⁰ Cert. at 1 (May 27, 2021).

⁹¹ Subpoena Resp. at IFN003, IFN005-06, IFN009.

⁹² *Supra* Part III.A.

1 **V. RECOMMENDATIONS**

- 2 1. Substitute the names Ohio Works, —
- 3 in place of “Unknown Respondents” in the
- 4 Commission’s previous findings that Unknown Respondents violated 52 U.S.C.
- 5 § 30122;
- 6 2. Find no reason to believe that American Electric Power violated 52 U.S.C.
- 7 § 30122;
- 8 3. Take no further action as to Raymond McVeigh, Ohio Works,
- 9
- 10 4. Approve the appropriate letters; and
- 11 5. Close the file.

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