

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR: 7479**

6 DATE OF COMPLAINT AND

7 SUPPLEMENT: Aug. 9 and 16, 2018¹

8 DATE OF NOTIFICATION: Aug. 22, 2018

9 DATE OF LAST RESPONSE:

10 Sept. 11, 2018

11 DATE ACTIVATED: Nov. 21, 2018

12
13 EXPIRATION OF SOL:

14 December 2021 (earliest)

15 November 2023 (latest)²

16 ELECTION CYCLE: 2018

17
18 **COMPLAINANT:**

19 Kendra Arnold, Executive Director
20 Foundation for Accountability
21 and Civic Trust

22 **RESPONDENTS:**

23 Keeping America in Republican Control
24 PAC and H. Russell Taub in his official
25 capacity as treasurer
26 H. Russell Taub

27 **RELEVANT STATUTES
28 AND REGULATIONS:**

29 52 U.S.C. § 30101(17)

30 52 U.S.C. § 30102(b)(3)

31 52 U.S.C. § 30103

32 52 U.S.C. § 30104 (a), (b), (g)

33 52 U.S.C. § 30120

34 52 U.S.C. § 30121

35 11 C.F.R. § 100.26

36 11 C.F.R. § 102.15

37 11 C.F.R. § 109.10

38 11 C.F.R. § 110.11

39 11 C.F.R. § 110.20

INTERNAL REPORTS CHECKED:

Disclosure Reports

¹ An unsworn Complaint was filed on August 6, 2018, and the Supplement was filed on August 9, 2018. A corrected sworn version of the Complaint was filed on August 16, 2018, and Respondents were provided with both the Complaint and Supplement at the time of their notification.

² Information in criminal charging documents indicate that H. Russell Taub operated the organization at issue from December 2016 through November 2018. *See infra* note 9 and associated text.

1 **FEDERAL AGENCIES CHECKED:** None

2
3 **I. INTRODUCTION**

4
5 The Complaint alleges that Keeping America in Republican Control PAC (“KAIRC
6 PAC”) failed to register as a political committee with the Commission despite raising over \$1.5
7 million for federal elections, in violation of the Federal Election Campaign Act of 1971, as
8 amended (the “Act”), and, as a result, has not filed reports of its receipts and disbursements.³
9 The Complaint further alleges that KAIRC PAC failed to include a disclaimer on its website, that
10 KAIRC PAC executive director H. Russell Taub misused committee funds, and that KAIRC
11 PAC may have received contributions from foreign nationals.⁴ Respondents describe KAIRC
12 PAC as an unincorporated association of Republican donors who individually raise and/or make
13 individual contributions to Republican candidates for primarily state offices, and Respondents
14 deny that KAIRC PAC qualified as a political committee.⁵

15 On March 21, 2019, Taub pleaded guilty to criminal charges relating to his operation of
16 KAIRC PAC, specifically, wire fraud in violation of 18 U.S.C. § 1343 and the knowing and
17 willful failure to file reports with the Commission in violation of 52 U.S.C. §§ 30104 and
18 30109.⁶ As discussed below, based on the available information, including publicly available
19 information from the criminal case, it appears that KAIRC PAC was operating as a political

³ Compl. at 1-3 (Aug. 16, 2018).

⁴ *Id.* at 4.

⁵ Resp. (Sept. 11, 2018).

⁶ See Information, *United States v. Harold Russell Taub*, No. CR 19-015, (D. RI Feb. 12, 2019) (“Criminal Information”); Waiver of Indictment, *United States v. Harold Russell Taub*, No. CR 19-015 (D. RI Feb. 22, 2019); Plea Agreement, *United States v. Harold Russell Taub*, No. CR 19-015, (D. RI Feb. 12, 2019) (“Plea Agreement”); Criminal Docket, *United States v. Harold Russell Taub*, No. CR 19-015 (D. RI Feb. 22, 2019) (updated Mar. 21, 2019).

1 committee, raising and spending funds for federal elections starting in December 2016.
2 Therefore, we recommend that the Commission find reason to believe that KAIRC PAC and
3 H. Russell Taub, acting as treasurer, failed to properly register as a political committee and file
4 disclosure reports with the Commission in knowing and willful violation of 52 U.S.C. §§ 30103
5 and 30104(a). Additionally, it appears that Respondents may have commingled committee funds
6 with Taub's personal funds, may have paid for advertisements in support of federal candidates
7 that required the filing of independent expenditure reports with the Commission, and further
8 failed to include complete disclaimers on advertisements, emails, and a website. Accordingly,
9 we also recommend that the Commission find reason to believe that KAIRC PAC and Taub
10 knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and that KAIRC PAC violated
11 52 U.S.C. § 30120. For the reasons discussed below, we recommend that the Commission take
12 no action at this time with respect to the allegations concerning the failure to file independent
13 expenditure reports and dismiss the allegations regarding possible foreign national contributions
14 to KAIRC PAC. We request that the Commission authorize compulsory process for an
15 investigation to determine the scope of the violations. With that information, we will be able to
16 assess whether it is worth further pursuing Taub and KAIRC PAC in view of Taub's guilty plea.

17 **II. FACTUAL BACKGROUND**

18 H. Russell Taub was a candidate for the U.S House of Representatives in Rhode Island's
19 First congressional district in 2016⁷ and is a self-described activist; his Facebook page shows
20

⁷ See H. Russell Taub, *Statement of Candidacy*, FEC Form 2 (Dec. 19, 2014 and amend. Feb. 6, 2015). Taub lost to the incumbent, David Cicilline. See *Federal Elections 2016: Election Results for the U.S. President, the U.S. Senate, and the U.S. House of Representatives* at 164, available at <https://transition.fec.gov/general/FederalElections2016.shtml>.

1 numerous photos of him attending political events and with various congressional candidates.⁸

2 According to the Criminal Information, Taub operated KAIRC PAC from 2016 to 2018.⁹

3 It appears that KAIRC PAC's website, www.kaircpac.com, was registered on December 5, 2016,

4 but is no longer active.¹⁰ The criminal case documents, however, indicate that the website

5 included pages titled "Federal PAC" and "State PAC," and that the site also allowed individuals

6 to submit donations.¹¹ A link to KAIRC PAC's donation page remains active. According to that

7 page, the group solicited donations to "help keep, support, re-elect Republicans in control both in

8 the state and federal government" and "raises money for candidates."¹² The donation page does

9 not refer to the organization as a PAC, just simply as "Keeping America in Republican Control

10 (KAIRC)," but it does request the contributor's employer and occupation information and

11 references "Federal law" requiring best efforts to obtain such information.¹³ A number of

12 KAIRC PAC's other donation pages also appear to remain active, including one titled "I stand

13

⁸ See "H. Russell Taub Activist," <https://www.facebook.com/hrt2016/>.

⁹ Criminal Information at 3. Taub describes KAIRC PAC as "an unincorporated association of Republican donors," but does not provide further details about its organization or its tax status. Aff. of H. Russell Taub ¶ 1 ("Taub Aff."). A search of the Internal Revenue Service website does not show that KAIRC PAC is identified as a tax exempt organization. See <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search>.

¹⁰ Compl. at Attach. (website registration information).

¹¹ Criminal Information at 5.

¹² <https://secure.piryx.com/donate/AX5fY8pK/Keeping-America-in-Republican-Control/KAIRC> (last accessed Apr. 26, 2019); see also Compl. at note 5 (noting that the same language previously appeared on the "About" page of KAIRC PAC's website).

¹³ The bottom of the web page includes the following language:

Contributions or gifts to Keeping America In Republican Control are not tax deductible as charitable contributions for federal income tax purposes. Corporate contributions and contributions from foreign nationals are prohibited by law. It is illegal for any person to reimburse another for making a contribution to Keeping America in Republican Control. Federal law requires us to use our best efforts to obtain and report the name, mailing address, occupation and name of employer for each individual who contribute[s].

1 with Rick Scott for the U.S. Senate,” which displays a link to Scott’s official donation page and
 2 displays a separate donation form for donations to KAIRC PAC.¹⁴ KAIRC PAC also operated a
 3 fundraising page through another website listing approximately 50 contributors by name and showing
 4 donations made as recently as August 2018; that site described KAIRC PAC as “[a] Political Action
 5 Committee Dedicated to electing and re-electing Republicans.”¹⁵

6 In addition, KAIRC PAC solicited contributions through Facebook advertisements on Taub’s
 7 Facebook page. One of Taub’s Facebook posts, from January 7, 2018, shows an advertisement
 8 advocating the defeat of Rep. Maxine Waters that states that it was “PAID FOR BY KAIRC PAC,”
 9 and includes a link to a donation page.¹⁶ An image of the advertisement is displayed below.



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¹⁴ <https://secure.piryx.com/donate/AX5fY8pK/Keeping-America-in-Republican-Control/rickscott> .

¹⁵ <http://giving.piryx.com/streams/Keeping-America-in-Republican-Control/AX5fY8pK> (last accessed Apr. 26, 2019).

¹⁶ <https://secure.piryx.com/donate/AX5fY8pK/Keeping-America-in-Republican-Control/stop--maxine-waters>.

1 Taub's other Facebook posts, from as early as December 2016, contain links to active
 2 donation pages seeking contributions through the sale of t-shirts and raffle tickets.¹⁷ Taub also
 3 used Facebook to advertise fundraising events to benefit KAIRC PAC, as displayed below.



4
 5 The Complaint alleges that KAIRC PAC failed to register as a political committee with
 6 the Commission, failed to include appropriate disclaimers on its communications, and misused
 7 contributions.¹⁸ The Complaint also questions whether some of KAIRC PAC's funds may have
 8 come from foreign nationals.¹⁹ In support of the allegations against KAIRC PAC and Taub, the
 9 Complaint and Supplement attach a Facebook post and copies of emails raising funds to elect
 10 candidates. The Facebook post announced a KAIRC PAC event hosted by Taub — *i.e.*, a
 11 “KAIRC PAC Reception – Cigar Dining/Raising money for Republicans” — scheduled for

¹⁷ See, e.g., <https://secure.piryx.com/donate/AX5fY8pK/Keeping-America-in-Republican-Control/i-support-israel>; <https://secure.piryx.com/donate/AX5fY8pK/Keeping-America-in-Republican-Control/raffle>.

¹⁸ Compl. at 1-4.

¹⁹ *Id.* at 4-5.

1 February 6, 2017.²⁰ The emails, dated May and July 2018, appear to have been sent by KAIRC
2 PAC and urged support for various federal candidates. An email dated May 31, 2018, urged
3 support for U.S. Senate candidates John James and Ted Cruz, stating that KAIRC PAC had
4 “helped over 54 candidates,” “[s]cheduled multiple fundraisers to help candidates in 2018,”
5 “[r]aised over \$990,000 as of – March 30, 2018,” and “[l]aunched 9 support Ads to help our
6 candidates.”²¹ The email asks the recipient to “join me by supporting KAIRC PAC,” and
7 appears to include donation links to the James and Cruz campaigns. The sender listed on the
8 email “From” line is an individual named Kris “Tanto” Paronto, described as a “Benghazi”
9 survivor, while the message within the email is signed by “Amb. J. William Middendorf III,
10 Former Secretary of the U.S. Navy.”²²

11 The Complaint also attaches two emails from July 2018, one urging support of Rick Scott
12 and another supporting Ted Cruz. Both of those emails state that KAIRC PAC has “helped over
13 85 candidates,” “[r]aised over \$1.5 million as of June 30, 2018,” and “[l]aunched 9 support
14 ads.”²³ Those emails were each purportedly sent by Amb. Middendorf, and include a “Donate”
15 button at the end. It is unclear whether the Donate button led to the candidate’s official
16 campaign website or to KAIRC PAC’s donation page.

17 Additionally, the Complaint alleges that KAIRC PAC’s website failed to include a
18 disclaimer stating that it was not authorized by any federal candidate and that KAIRC PAC
19 misused contributions because the \$1.5 million KAIRC PAC claims to have raised “has not

²⁰ Compl. at Ex. C.

²¹ Suppl. at Ex. C.

²² *Id.*

²³ Compl. at Ex. A; Suppl. at Ex. B.

1 actually been distributed to any federal candidates or committees.”²⁴ Finally, the Complaint
2 alleges that based on Taub’s claims on the KAIRC PAC website that he is an “Ambassador” to a
3 Ukrainian organization known as the “International Human Rights Commission,” there is a
4 possibility some of the PAC’s funds could have come from foreign nationals.²⁵

5 Respondents deny the allegations and in a sworn affidavit, Taub asserts that “KAIRC” is
6 an association of donors who “individually raise and/or make individual contributions to
7 Republican candidates,” focusing primarily on state offices.²⁶ He adds that in early 2017 he
8 decided to test whether KAIRC PAC members would support a political committee, as a separate
9 organization, that “would support candidates for state and local races.”²⁷ According to Taub, it
10 was not until July 2018 that he sought to test whether KAIRC PAC members would support a
11 political committee to raise funds for federal candidates as well.²⁸ Taub acknowledges that he
12 was aware that the Commission required a political committee to register “10 days after it has
13 raised or expended \$1,000 in the aggregate in a calendar year,” but states that “KAIRC PAC”
14 failed “to raise or expend that aggregate sum to influence a federal race since January 2018, [and

²⁴ Compl. at 4.

²⁵ *Id.* at 5. Taub’s LinkedIn Profile indicates that he is a “Former International Human Rights Commission Rep. to the USA.” See <https://www.linkedin.com/in/honorable-h-russell-taub-bb79b42a> (last accessed Mar. 14, 2019). According to the organization’s website, the International Human Rights Commission (“IHRC”) was first established in the Ukraine but now promotes human rights throughout the world. See <https://www.ihrchq.org/history.html> and <https://www.ihrchq.org/mission.html>. A large number of “Ambassadors,” “Ambassadors at Large,” “Young Ambassadors,” and “Ambassadors of Goodwill,” representing different countries, are listed on the website. Taub is not included on any of those lists as a current ambassador.

²⁶ Resp. (Sept. 4, 2018), Taub Aff. ¶ 1.

²⁷ Taub Aff. ¶¶ 5-8.

²⁸ *Id.* ¶ 7.

1 as a result, he] did not bother to register KAIRC PAC with the Commission as a political
2 committee.”²⁹

3 Taub states that KAIRC PAC did not receive any contributions, made no independent
4 expenditures, and that event expenses were paid by those in attendance or by Taub himself.³⁰

5 Taub also claims that it was KAIRC PAC's “members” (and not KAIRC PAC) who raised funds
6 for candidates, hosted fundraisers, and launched the support ads.³¹

7 On February 22, 2019, Taub was arraigned on criminal charges relating to his operation
8 of KAIRC PAC and Keeping Ohio in Republican Control (“KOIRC PAC”), another entity that
9 may have been engaged in similar federal political activity.³² On March 21, 2019, Taub pleaded
10 guilty to wire fraud, in violation of 18 U.S.C. § 1343, and the knowing and willful failure to file
11 reports with the Commission, in violation of 52 U.S.C. §§ 30104 and 30109.³³ According to the
12 criminal charging documents, Taub operated KAIRC PAC and KOIRC PAC between December
13 2016 and November 2018 as part of a scheme to defraud and obtain money under false
14 pretenses.³⁴ He carried out this scheme by soliciting contributions through the website
15 “www.kairepac.com,” as well as through the direct solicitation of individuals through the U.S.

²⁹ *Id.* ¶ 9. Taub's affidavit does not address the allegation that KAIRC PAC may have accepted contributions from foreign nationals.

³⁰ Taub further explains that KAIRC PAC maintained a bank account under the name “Russell Taub d/b/a KAIRC,” that he used to deposit checks and pay KAIRC PAC expenses. *Id.* ¶ 1-2.

³¹ *Id.* ¶ 8.

³² See Criminal Information at 4-5; Waiver of Indictment; Criminal Docket, *United States v. Harold Russell Taub*, No. CR 19-015 (D. RI Feb. 22, 2019) (updated Mar. 21, 2019).

³³ See Plea Agreement. Taub is scheduled to be sentenced on July 12, 2019. The Plea Agreement notes that restitution will be ordered for the donors to Taub's “two purported political action committees.” *Id.* at 4.

³⁴ According to the Criminal Information, Taub formed KAIRC PAC in December 2016 and started KOIRC PAC in March 2018. Criminal Information at 4-5.

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1 mail, e-mail, and social media, and by using the name of a former Ambassador, without his
2 permission, to give credibility to the solicitations.³⁵ In the solicitations, Taub represented that
3 KAIRC PAC and KOIRC PAC were comprised of volunteers and that “100%” of donations
4 would be used to support candidates.³⁶ However, according to the criminal investigation Taub
5 was the only individual working for the entities.³⁷ Taub obtained contributions through KAIRC
6 PAC and KOIRC PAC totaling \$1,630,439: \$1,126,114 to KAIRC PAC from 160 donors, and
7 \$504,325 to KOIRC PAC from six donors.³⁸ Of the total amount, \$1,275,000 came from two
8 donors.³⁹ Taub used more than \$1 million of the contributions that KAIRC PAC and KOIRC
9 PAC received to pay for personal expenses, including transfers to his personal bank accounts,
10 and for the payment of personal expenses such as “travel, hotels, restaurants, clothing, cigars,
11 adult entertainment, and escort services.”⁴⁰ Additionally, the Criminal Information indicates that
12 Taub issued donations totaling \$215,000 from KAIRC PAC and KOIRC PAC directly to federal
13 candidates, but the document does not identify those candidates.⁴¹ The Commission’s database
14 indicates that Taub made individual contributions to federal committees totaling \$8,525 during

³⁵ *Id.* at 6.

³⁶ *Id.*

³⁷ *Id.* at 4.

³⁸ *Id.* at 7.

³⁹ None of the donors were named identified in the Criminal Information.

⁴⁰ *Id.* at 7-8.

⁴¹ *Id.* at 6.

1 the 2016 election cycle and \$443,676.80 during the 2018 election cycle.⁴² Finally, neither
2 KAIRC PAC nor KOIRC PAC has registered with the Commission.

3 **III. LEGAL ANALYSIS**

4 As discussed below, we recommend that the Commission find reason to believe that Taub
5 operated KAIRC PAC as a political committee. As a result of its status, KAIRC PAC and Taub
6 also failed to comply with a number of the Act's requirements for political committees:
7 specifically, registration with the Commission, the filing of periodic reports, maintaining
8 committee and personal funds separately, and adding disclaimers on KAIRC PAC's public
9 communications and on its website.

10 Further, it appears that some of these violations were knowing and willful. A violation of
11 the Act is knowing and willful when the respondent acts "with full knowledge of all the relevant
12 facts and a recognition that the action is prohibited by law."⁴³ This standard does not require
13 proving knowledge of the specific statute or regulation the respondent allegedly violated.⁴⁴
14 Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his

⁴² No federal committees have reported contributions directly from KAIRC PAC or KOIRC PAC. Additionally, Ohio state records do not show that Taub made any contributions in support of any state candidates or political committees in Ohio. *See Campaign Finance Reports Search*, Ohio Sec. of State, <https://www.sos.state.oh.us/campaign-finance/search/>.

⁴³ 122 Cong. Rec. 12197, 12199 (daily ed. May 3, 1976) (defining phrase "knowing and willful"). *See FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010) (granting Commission's motion for summary judgment where there were no genuine issues of material fact as to the knowing and willful allegations). The Commission has made knowing and willful findings against respondents who have admitted to criminal violations related to the same activity at issue in the enforcement matter. *See, e.g.*, MUR 7225 (Jack Wu); MUR 7132 (Michael David Pitts); MUR 6597 (Kinde Durkee); MUR 6475 (Andrew McCrosson), MUR 6179 (Christopher Ward), MUR 5971 (Jennifer Adams), MURs 5721/5772 (Kenneth Phelps); MUR 5610 (Earl Allen Haywood).

⁴⁴ *See United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)).

1 conduct was unlawful.”⁴⁵ This awareness may be shown through circumstantial evidence, such
2 as a “defendant’s elaborate scheme for disguising” her actions, or other “facts and circumstances
3 from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized
4 and illegal.”⁴⁶

5 Taub’s admissions through his guilty plea, as well as his sworn statements to the
6 Commission, provide evidence that Taub was aware that his conduct relating to KAIRC PAC
7 was illegal. In his affidavit, Taub admits that he was aware of the Act’s thresholds triggering the
8 registration of political committees, but claims that he did not believe that KAIRC PAC had met
9 the thresholds.⁴⁷ This claim is contradicted, however, by his subsequent admissions to criminal
10 violations that he deliberately failed to file reports with the Commission in connection with
11 KAIRC PAC’s and KOIRC PAC’s federal political activity that included soliciting and receiving
12 contributions.⁴⁸ Further, as a former federal candidate, Taub was already familiar with at least
13 the general requirements of the Act. Therefore, as described in further detail below, it appears
14 that some of the violations were knowing and willful.

15 **A. Political Committee Status**

16 The Act defines a political committee as “any committee, club, association, or other
17 group of persons” that receives aggregate contributions or makes aggregate expenditures in

⁴⁵ *Id.* (internal quotation marks omitted).

⁴⁶ *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁴⁷ *Supra* at 8-9.

⁴⁸ *Supra* at 9-10.

1 excess of \$1,000 during a calendar year.⁴⁹ In *Buckley v. Valeo*, the Supreme Court held that
2 defining political committee status “only in terms of the annual amount of ‘contributions’ and
3 ‘expenditures’” might be overbroad, reaching “groups engaged purely in issue discussion.”⁵⁰ To
4 cure that infirmity, the Court concluded that the term “political committee” “need only
5 encompass organizations that are under the control of a candidate or the major purpose of which
6 is the nomination or election of a candidate.”⁵¹ Accordingly, under the statute as thus construed,
7 an organization that is not controlled by a candidate will be considered a political committee only
8 if (1) it crosses the \$1,000 threshold and (2) its “major purpose is Federal campaign activity (*i.e.*,
9 the nomination or election of a Federal candidate).”⁵²

10 Political committees are required to register with the Commission, meet organizational
11 and recordkeeping requirements, and file periodic disclosure reports.⁵³ Such requirements
12 “provide[] the electorate with information as to where political campaign money comes from and
13 how it is spent” and help it “make informed choices in the political marketplace.”⁵⁴

14 In examining the “major purpose” of an organization, the Commission takes a case-by-
15 case approach that requires a fact-intensive analysis of the group’s activities.⁵⁵ To determine an

⁴⁹ 52 U.S.C. § 30101(4)(A).

⁵⁰ 424 U.S. 1, 79 (1976) (*per curiam*).

⁵¹ *Id.*

⁵² Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (“Supplemental E&J”); *see Buckley*, 424 U.S. at 79; *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986) (“*MCFL*”).

⁵³ *See* 52 U.S.C. §§ 30102, 30103, 30104.

⁵⁴ *Citizens United v. FEC*, 558 U.S.C. 310, 367 (2010) (quoting *Buckley*, 424 U.S. at 66-67, and *McConnell v. FEC*, 540 U.S. 93, 197 (2003), and upholding disclosure requirements).

⁵⁵ *See* Supplemental E&J, 72 Fed. Reg. at 5601.

1 entity's "major purpose," the Commission explained that it considers a group's "overall
2 conduct," including public statements about its mission, organizational documents, government
3 filings (*e.g.*, IRS notices), the proportion of spending related to "Federal campaign activity (*i.e.*,
4 the nomination or election of a Federal candidate)," and the extent to which fundraising
5 solicitations indicate funds raised will be used to support or oppose specific candidates.⁵⁶ The
6 Commission has also explained that it compares how much of an organization's spending is for
7 "federal campaign activity" relative to "activities that [a]re not campaign related."⁵⁷

8 The Department of Justice's ("DOJ's") criminal investigation found that KAIRC PAC
9 operated as a political committee, that it solicited funds purportedly to influence federal and state
10 elections, and collected over \$1 million in the process — well over the statutory threshold for
11 political committees. This information is consistent with the Complaint, Supplement, Response,
12 KAIRC PAC's website and Taub's Facebook account, all of which indicate that KAIRC PAC's
13 major purpose was to elect Republicans at the federal and state levels. First, KAIRC PAC's
14 website referred to the organization as a "PAC" through its URL address, www.kairpac.com, as
15 well as by including pages on the website titled "Federal PAC" and State PAC."⁵⁸ Additionally,
16 KAIRC PAC's website and donation pages solicit contributions with the stated purpose, also set

⁵⁶ Supplemental E & J, 72 Fed. Reg. at 5,597, 5,605; *see also* Factual and Legal Analysis at 6-9, MUR 6538R (Americans for Job Security, *et al.*) (summarizing Commission's case-by-case method of determining political committee status); Supplemental E&J, 72 Fed. Reg. at 5601 (noting that the "Federal courts' interpretation of the constitutionally mandated major purpose doctrine requires the Commission to conduct investigations into the conduct of specific organizations that may reach well beyond the publicly available advertisements," such as an examination of its spending, fundraising appeals, and sources of contributions).

⁵⁷ Supplemental E & J, 72 Fed. Reg. at 5,601, 5,605; *see also* *MCFL*, 479 U.S. at 262-64; *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996). In *CREW v. FEC*, a district court considered application of the major purpose test, and instructed the Commission, when examining an organization's major purpose to look beyond express advocacy and include spending on communications that "indicate a campaign-related purpose." 209 F. Supp. 3d 77, 93 (D.D.C. Sept. 19, 2016).

⁵⁸ *Supra* at 4.

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1 forth explicitly in the group's name, to "*help keep, support, re-elect Republicans in control both*
2 *in the state and federal government.*"⁵⁹ Second, the emails attached to the Complaint and
3 Supplement demonstrate that the group solicited funds for at least three separate U.S. Senate
4 campaigns, those of Rick Scott, John James, and Ted Cruz, and also indicate that KAIRC PAC
5 raised over \$1.5 million.⁶⁰ And a Facebook post from December 2016 advertised a fundraiser
6 "benefitting the 'Keeping America in Republican Control PAC (KAIRC)'" scheduled for
7 February 2017.⁶¹ Taub's Facebook account also includes a post from January 7, 2018, opposing
8 a federal candidate by urging readers to "STOP MAXINE WATERS – Donate Today," with a
9 link to a KAIRC PAC donation page and with the words "PAID for By KAIRC PAC" printed at
10 the bottom of the advertisement. That January 2018 post included a photograph of federal
11 candidate Maxine Waters.⁶²

12 Taub's claims that KAIRC was not a political committee, that "KAIRC PAC never
13 existed," and that he had merely decided to "test" running the organization as a possible political
14 committee are not credible in light of the available information.⁶³ Taub's assertions that he
15 decided "for the first time" in July 2018 to see if "KAIRC PAC" could potentially raise money
16 for federal elections are contradicted by the emails and Facebook evidence: the February 2018
17 Maxine Waters Facebook ad and the May 2018 email in support of John James and Ted Cruz.⁶⁴

⁵⁹ *Supra* at 4 (emphasis added).

⁶⁰ *Supra* at 7.

⁶¹ *See* Attach. 1.

⁶² *Supra* at 5.

⁶³ *See* Taub Aff. ¶¶ 5-8, 11.

⁶⁴ Taub Aff. ¶ 7; Suppl. Ex. C.

1 Based on the available information, in particular KAIRC PAC's email solicitations concerning
2 federal candidates, and its statements on its website and Taub's Facebook posts, it appears that
3 KAIRC PAC's major purpose was the nomination or election of federal candidates.

4 With regard to KAIRC PAC's spending, the current record includes the statements made
5 on KAIRC PAC's email solicitations concerning the level of fundraising and spending (*i.e.*,
6 having "helped over 85 candidates," "scheduled multiple fundraisers," "[r]aised over \$1.5
7 million," and "[l]aunched 9 support Ads"). These statements are consistent with information
8 from DOJ's investigation that KAIRC PAC raised over \$1 million in contributions, and, given
9 that level of funding, the cost of the "9 support Ads" likely exceeded \$1,000 as well. While DOJ
10 discovered that Taub converted a significant portion of the funds donated to KAIRC PAC and
11 KOIRC PAC, DOJ also notes that Taub also issued more than \$215,000 in contributions directly
12 from KAIRC PAC and KOIRC PAC to the campaign committees of federal candidates.⁶⁵
13 However, as noted *supra*, no federal committees have disclosed contributions from KAIRC PAC
14 or KOIRC PAC, but they have disclosed contributions from Taub personally.⁶⁶ Based on this
15 information, and the likelihood that the organizations' funds were used in making the
16 contributions (commingling allegations are discussed below), there is reason to believe that
17 KAIRC PAC exceeded the Act's thresholds for registration with the Commission and had the
18 requisite major purpose of nominating or electing candidates.

⁶⁵ *Supra* at 10. Independent expenditure-only political committees are prohibited from making direct or in-kind contributions to candidates and their authorized committees. *See* 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. 2010-11 (Commonsense Ten) at 2-3. Federal candidates and their authorized committees may not knowingly accept an excessive or prohibited contribution. 52 U.S.C. §§ 30118(a) and 30116(f). We do not have sufficient information at this time to make recommendation regarding possible excessive or prohibited contributions that KAIRC made to federal candidates.

⁶⁶ *Supra* at 10-11 and note 42.

1 As a political committee, KAIRC PAC would have been required, but failed to, file
2 reports of receipts and disbursements with the Commission. Additionally, DOJ's investigation
3 determined that Taub was the only individual behind both KAIRC PAC and KOIRC PAC and
4 handled their receipts and disbursements.⁶⁷ Taub has stated to the Commission that he was the
5 named accountholder on KAIRC PAC's bank account, and, as discussed above, has
6 acknowledged his understanding of the Act's requirements for political committees.⁶⁸ Therefore,
7 Taub acted as KAIRC PAC's treasurer. Accordingly, we recommend that the Commission find
8 reason to believe that KAIRC PAC and Taub knowingly and willfully failed to register as a
9 political committee and file reports with the Commission in violation of 52 U.S.C. §§ 30103 and
10 30104.

11 **B. Commingling**

12 As a political committee, KAIRC PAC was required to ensure that all campaign funds are
13 "segregated from, and may not be commingled with the personal funds of any individual."⁶⁹ The
14 Criminal Information indicates that Taub converted KAIRC PAC and KOIRC PAC funds to
15 personal use in part by "transferring more than \$715,000 directly into his personal checking and
16 savings accounts."⁷⁰ In his affidavit submitted with the Commission, Taub himself

⁶⁷ *Supra* at 10.

⁶⁸ *Supra* at note 30 and associated text.

⁶⁹ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15. *See, e.g.*, MUR 7225 (Jack Wu) (finding respondent knowingly and willfully violated the commingling provisions by withdrawing funds from the committee account and depositing the money into his personal and business accounts); MUR 7132 (Michael David Pitts) (finding respondent knowingly and willfully commingled funds by forging a check drawn on a PAC account and making it payable to a company with a bank account that was controlled by the respondent).

⁷⁰ Criminal Information at 7. Although the criminal case documents set forth details concerning Taub's personal use of committee funds, we do not examine that as a potential violation of 52 U.S.C. § 30114(a) and (b) because the Act's personal use provisions do not apply to unauthorized committees.

1 acknowledges that the KAIRC PAC bank account listed his name and that he also paid some
2 committee expenses using his personal bank account.⁷¹ Based on this information, we
3 recommend that the Commission find reason to believe that KAIRC PAC and Taub knowingly
4 and willfully commingled committee funds, in violation of 52 U.S.C. § 30102(b)(3).

5 **C. Disclaimers**

6 All public communications made by a political committee and all public communications
7 made “by any person that expressly advocate the election or defeat of a clearly identified
8 candidate” are required to include a disclaimer.⁷² Disclaimers are required on emails containing
9 substantially similar messages sent by political committees to more than 500 recipients and on
10 “all Internet websites of political committees available to the general public.”⁷³ “If the
11 communication, including any solicitation, is not authorized by a candidate, authorized
12 committee of a candidate, or an agent of either, the disclaimer must clearly state the full name
13 and permanent street address, telephone number, or World Wide Web address of the person who
14 paid for the communication, and that the communication is not authorized by any candidate or
15 candidate’s committee.”⁷⁴ The disclaimer “must be presented in a clear and conspicuous
16 manner,” and a disclaimer that appears on any printed public communication must be of
17 sufficient type size to be clearly readable by the recipient of the communication, in a printed box,

⁷¹ Criminal Information at 1-2; Taub Aff. ¶¶ 1-2.

⁷² 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1), (a)(2). Public communications include communications placed for a fee on another person’s website. 11 C.F.R. § 100.26.

⁷³ 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a)(1).

⁷⁴ 11 C.F.R. § 110.11(b)(3).

1 and with a reasonable degree of color contrast between the background and the printed
2 statement.⁷⁵

3 Our review of KAIRC PAC's emails attached to the Complaint and Supplement, the
4 Maxine Waters Facebook ad, and KAIRC PAC's website donation pages, indicates that KAIRC
5 PAC failed to include complete disclaimers on its communications. The emails list KAIRC
6 PAC's name and address, but do not state who paid for the communication or whether it was
7 authorized by the candidate; the Facebook ad states that it was "Paid for By KAIRC PAC," but
8 includes no additional information; and KAIRC's donation pages only identify KAIRC PAC,
9 without its address or any other information required by the Act and Commission regulations.
10 Therefore, we recommend that the Commission find reason to believe that KAIRC PAC violated
11 52 U.S.C. § 30120 by failing to include the required disclaimers on its website, emails, and
12 public communications.

13 **D. Independent Expenditure Reporting**

14 Under the Act, unauthorized political committees, as well as other persons, must disclose
15 independent expenditures. Non-connected political committees must itemize each independent
16 expenditure which exceeds \$200 or which, when added to previous independent expenditures
17 made on behalf of (or in opposition to) the same candidate, aggregates over \$200 during a
18

⁷⁵ *Id.* § 110.11(c).

1 calendar year.⁷⁶ Additionally, “every person (other than a political committee) who makes
 2 independent expenditures in an aggregate amount or value in excess of \$250 during a calendar
 3 year” must file a statement disclosing information about the expenditures.⁷⁷ An independent
 4 expenditure is an expenditure that “expressly advocat[es] the election or defeat of a clearly
 5 identified federal candidate,” and “is not made in concert or cooperation with or at the request or
 6 suggestion of such candidate, the candidate’s authorized political committee, or their agents.”⁷⁸

7 The email solicitations discussed *supra* referencing “9 support Ads to help our
 8 candidates” appear to indicate that that KAIRC PAC and Taub may have paid for ads in support
 9 or opposition of federal candidates. Indeed, the “9 support Ads” claim appeared on email
 10 solicitations that KAIRC PAC referencing federal candidates. However, there is insufficient

⁷⁶ 52 U.S.C. § 30104(b)(6)(B)(iii). Independent expenditures of \$200 or less must be subtotaled and reported as unitemized expenditures. In addition to a political committee’s regular reporting obligations, when a committee makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours before, the date of an election, the Act requires the committee to file an additional report describing those expenditures within 24 hours. *See* 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). Further, a political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more outside of that 20-day period, up to and including the 20th day, must file a report describing those expenditures within 48 hours. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). *See, e.g.*, MUR 7286 (Indivisible Kentucky) (finding reason to believe that respondent failed to report independent expenditures and identify contributors received for the purpose of funding billboards advocating the defeat of a federal candidate); MUR 6816 (Americans for Job Security) (finding reason to believe that respondent failed to disclose donor that made contributions for the purpose of furthering independent expenditures).

⁷⁷ 52 U.S.C. § 30104(c)(1), (2); 11 C.F.R. § 109.10(b), (e)(1)(i)-(v). In *CREW v. FEC*, the court vacated 11 C.F.R. § 109.10(e)(1)(vi), which addressed reporting by persons other than political committees that make independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year. 316 F. Supp. 3d 349 (D.D.C. 2018) (stay pending appeal lifted Sept. 18, 2018), *appeal docketed*, No. 18-5261(D.C. Cir. Aug. 30, 2018). After the court vacated the regulation, the Commission issued guidance stating that only disclosure reports due after September 18, 2018, would be required to identify each person (other than a political committee) who made a contribution(s) to the reporting person during the reporting period whose contribution(s) had an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of such contribution(s) and use memo text to indicate which of these persons made a contribution in excess of \$200 to the reporting person for the purpose of furthering any independent expenditure. *See FEC Provides Guidance Following U.S. District Court Decision in CREW v. FEC, 316 F. Supp. 3d 349 (D.D.C. 2018)*, FEC Press Release (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/>. We do not have sufficient information on the dates of KAIRC PAC’s independent expenditures at this stage to determine how KAIRC PAC would be affected by the decision.

⁷⁸ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of “expressly advocating”).

1 information available at this stage to determine whether the Respondents were required to file
2 independent expenditure reports with the Commission in connection with those purported ads.
3 Accordingly, we recommend that the Commission take no action at this time with respect to the
4 allegations that that KAIRC PAC and Taub violated 52 U.S.C. § 30104(g).

5 **E. Contributions from Foreign Nationals**

6 The Act prohibits any “foreign national” from “directly or indirectly” making a
7 contribution or donation of money or any other thing of value in connection with a Federal, State,
8 or local election.⁷⁹ Commission Regulations also provide that no person shall “knowingly
9 solicit, accept, or receive from a foreign national any contribution or donation . . .”⁸⁰ “Foreign
10 national” includes anyone who “is not a citizen of the United States or a national of the United
11 States . . . and who is not lawfully admitted for permanent residence[.]”⁸¹

12 The Complaint alleges that because Taub claimed a role with a Ukrainian organization,
13 then it is possible that KAIRC PAC could have accepted contributions from a foreign national.
14 The Response is silent as to this allegation and we have not found any publicly available
15 information to indicate that there may have been such contributions. Taken together, the
16 information available in the record, including the speculative nature of the Complaint’s pleading
17 with respect to the possibility of foreign national contributions, fails to give rise to a reasonable
18 inference that a violation has occurred. Accordingly, we recommend that the Commission
19 dismiss the foreign national contribution allegation.

⁷⁹ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c).

⁸⁰ 11 C.F.R. § 110.20(g).

⁸¹ 52 U.S.C. § 30121(b); *see also* 11 C.F.R. § 110.20(a)(3).

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First General Counsel's Report

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1 **V. RECOMMENDATIONS**

- 2 1. Find reason to believe that Keeping America in Republican Control PAC and
3 H. Russell Taub in his official capacity as treasurer, and H. Russell Taub in his
4 personal capacity, knowingly and willfully violated 52 U.S.C. §§ 30103 and 30104 by
5 failing to register and report as a political committee;
6
- 7 2. Find reason to believe that Keeping America in Republican Control PAC and
8 H. Russell Taub in his official capacity as treasurer, and H. Russell Taub in his
9 personal capacity, knowingly and willfully violated 52 U.S.C. § 30102(b)(3) by
10 commingling committee and personal funds;
11
- 12 3. Find reason to believe that Keeping America in Republican Control PAC and
13 H. Russell Taub in his official capacity as treasurer, violated 52 U.S.C. § 30120 and
14 11 C.F.R. § 110.11 by failing to include required disclaimers on its communications;
15
- 16 4. Take no action at this time concerning allegations that Keeping America in
17 Republican Control PAC and H. Russell Taub in his official capacity as treasurer, and
18 H. Russell Taub in his personal capacity, violated 52 U.S.C. § 30104(g) by failing to
19 file independent expenditure reports;
20
- 21 5. Dismiss the allegations that Keeping America in Republican Control PAC and
22 H. Russell Taub in his official capacity as treasurer, and H. Russell Taub in his
23 personal capacity, violated 52 U.S.C. § 30121(a);
24
- 25 6. Approve the attached Factual and Legal Analysis;
26

