

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

MUR 7482

DATE COMPLAINT FILED: August 16, 2018

DATE OF NOTIFICATIONS: August 22, 2018

DATE OF LAST RESPONSE: October 11, 2018

DATE ACTIVATED: April 1, 2019

## ELECTION CYCLE: 2018

EXPIRATION OF SOL: July 9, 2023 (earliest) – September 20, 2023 (latest)

**COMPLAINANT:** Tennessee Citizen Action

**RESPONDENTS:** Marsha for Senate and Les Williamson in his official capacity as treasurer

# Ward Baker

Club for Growth Action and Adam Rozansky in his official capacity as treasurer

Americans for Prosperity

Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer

**RELEVANT STATUTES AND REGULATIONS:** 52 U.S.C. § 30116(a), (f)  
52 U.S.C. § 30118(a)

11 C.F.R. § 109.21

**INTERNAL REPORTS  
CHECKED:** Disclosure Reports

**AGENCIES CHECKED:** None

## I. INTRODUCTION

36 The Complaint in this matter alleges that Marsha for Senate and Les Williamson in his  
37 official capacity as treasurer (the “Committee”), accepted excessive in-kind contributions in the  
38 form of coordinated communications from Club for Growth Action (“CFG”), Americans for  
39 Prosperity (“AFP”), and Senate Leadership Fund (“SLF”). The Complaint specifically alleges  
40 that the Committee’s political consultant, Ward Baker, spoke of such coordination during a

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1 speech he gave at a private event.<sup>1</sup> Respondents CFGA and SLF are independent expenditure-  
 2 only political committees (“IEOPCs”) registered with the Commission, while AFP is organized  
 3 as a 501(c)(4) group under the Internal Revenue Service code.

4 All of the Respondents argue that the Complaint fails to identify any allegedly  
 5 coordinated communication or allege facts showing conduct rising to coordinated conduct, and  
 6 they request dismissal of the Complaint. Based on the available record, we recommend that the  
 7 Commission dismiss the Complaint as to all of the Respondents and close the file.

8 **II. FACTUAL BACKGROUND**

9 In November 2018, Marsha Blackburn, a U.S. Representative since 2002, won election to  
 10 the U.S. Senate from Tennessee.<sup>2</sup> Marsha for Senate is her principal campaign committee.<sup>3</sup>  
 11 According to the Committee’s disclosure reports, starting in November 2017, it hired Ward  
 12 Baker, a political consultant, and his firm, Baker Group, LLC, to work on the campaign.<sup>4</sup> At the  
 13 same time, the Baker Group was paid by SLF for “political strategy consulting.”<sup>5</sup>

14 On July 9, 2018, Baker spoke to a monthly meeting of Republicans in Nashville about the  
 15 upcoming election in general and the Blackburn campaign specifically.<sup>6</sup> During a question and  
 16 answer period at the end of his speech, Baker was asked about the Blackburn Committee

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<sup>1</sup> The Complaint included an audio file of the speech,

<sup>2</sup> See <https://www.blackburn.senate.gov/about-marsha> (last visited June 13, 2019).

<sup>3</sup> See Committee Amended Statement of Organization (Nov. 7, 2018).

<sup>4</sup> See Committee Disbursements, 2017-18.

<sup>5</sup> See SLF Disbursements, 2017-18.

<sup>6</sup> Compl. at 2-3; see also, *Ward Baker guest of First Tuesday on Monday July 9th, A DISGRUNTLED REPUBLICAN IN NASHVILLE*, July 6, 2018, available at <http://www.adisgruntledrepublican.com/2018/07/ward-baker-guest-of-first-tuesday-on.html>.

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1 working with groups outside Tennessee, specifically, the Koch Brothers and Club for Growth.<sup>7</sup>

2 Baker responded:

3 At the end of the day, we try to figure out what we have to do to win this race on  
 4 our own. If anyone else comes in, that's great. But will AFP be involved? Yes.  
 5 Will Freedom Partners be involved? Senate Leadership Fund, I'm a senior advisor  
 6 to the Senate Leadership Fund, which is Mitch McConnell's Super PAC. I'm  
 7 obviously not involved with the Tennessee Senate race [for SLF]. I'm a firewall;  
 8 that's because I'm doing this race; that's why I don't do a lot of Senate races  
 9 anymore because of that job. And I know that they've already laid down — Peter?  
 10 — \$2.8 million for Congressman Blackburn. *And we're going to have a lot of*  
 11 *people involved. To be honest with you, it's just really . . . the Super PAC world*  
 12 *and outside groups is part of your campaign now. And if you don't treat it that*  
 13 *way, then you're going to lose because that's just another arm. You have to do*  
 14 *presentations for them. A lot of people are begging them for money, and you have*  
 15 *to constantly be in front of them...Susan B. Anthony List has been great for us,*  
 16 *endorsed us, and they're doing a lot for us. So there's going to be a lot of people*  
 17 *involved.*<sup>8</sup>

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19 In the 2018 election cycle, Respondents disclosed making independent expenditures in

20 support of Blackburn or in opposition to her general election opponent: SLF disclosed a total of  
 21 \$15,132,001 and AFP disclosed \$72,547.<sup>9</sup> While CFGA reported minimal spending in the  
 22 Tennessee Senate race,<sup>10</sup> its Tennessee affiliate, CFG Action Tennessee, disclosed spending  
 23 \$201,802 on the race, while receiving a cash donation from CFGA of \$80,000 and in-kind  
 24 donations of \$14,642.<sup>11</sup>

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<sup>7</sup> Baker Speech, available in VBM.

<sup>8</sup> Compl. at 3-4 (emphasis in original).

<sup>9</sup> See SLF Independent Expenditures, 2017-18, and AFP Independent Expenditures, 2017-18.

<sup>10</sup> Disclosure reports show that CFGA spent \$3,336 in the 2018 Tennessee Senate race. See [https://www.fec.gov/data/independent-expenditures/?data\\_type=efiling&committee\\_id=C00487470&is\\_notice=true&candidate\\_id=S8TN00337&candidate\\_id=S8TN000386&min\\_date=01bF012017&max\\_date=12312018&candidate\\_name=Blackburn](https://www.fec.gov/data/independent-expenditures/?data_type=efiling&committee_id=C00487470&is_notice=true&candidate_id=S8TN00337&candidate_id=S8TN000386&min_date=01bF012017&max_date=12312018&candidate_name=Blackburn).

<sup>11</sup> See CFG Action Tennessee Independent Expenditures, 2017-18.

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1        The Complaint alleges that, based on Ward's remarks, CFG, AFP, and SLF have made  
2        in-kind contributions to Marsha for Senate in the form of coordinated communications that  
3        exceed the Act's limit on contributions by non-multicandidate political committees.<sup>12</sup> The  
4        Complaint asserts that, by "doing presentations" with CFG, AFP and SLF, it follows that the  
5        Committee and the groups have or will coordinate strategies.<sup>13</sup> The Complaint suggests that the  
6        Commission conduct an investigation to "reveal the full extent of these coordinated  
7        expenditures, thereby resulting in discovery of illegal in-kind contributions."<sup>14</sup>

8        In a joint response, the Committee and Baker state that the Complaint does not point to a  
9        single allegedly coordinated expenditure.<sup>15</sup> They further assert that Baker made only general  
10       statements during his speech about what independent groups would likely spend.<sup>16</sup> They  
11       contend that Baker also clearly stated during the speech that he had no non-public knowledge  
12       about these groups' activities in the Tennessee Senate race.<sup>17</sup>

13       CFGA similarly responds that the Complaint does not identify any CFGA  
14       communications that are allegedly coordinated.<sup>18</sup> It further responds that CFGA had, by the date

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<sup>12</sup>       Compl. at 2.

<sup>13</sup>       *Id.* at 4.

<sup>14</sup>       *Id.* at 7.

<sup>15</sup>       Committee and Baker Resp. at 1 (Oct. 4, 2018) ("Committee Resp.").

<sup>16</sup>       *Id.*

<sup>17</sup>       *Id.*

<sup>18</sup>       CFGA Response at 1 (Oct. 10, 2018).

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1 of its Response, spent only \$231 on the Blackburn race.<sup>19</sup> CFGA argues that the Complaint is  
 2 baseless and has alleged no facts establishing the conduct required for coordination.<sup>20</sup>

3 AFP responds that it is a 501(c)(4) that publicly announced it would support Blackburn  
 4 because of her positions on Obamacare, the tax code, and government regulations.<sup>21</sup> AFP states  
 5 that it has made independent expenditures to support Blackburn, all of which have been reported  
 6 to the Commission.<sup>22</sup> AFP argues that the Complaint fails to assert any facts that demonstrate  
 7 coordination between it and the Blackburn campaign.<sup>23</sup> It further states that it cannot control the  
 8 statements of Baker, who is not an AFP employee or consultant.<sup>24</sup> AFP provided sworn  
 9 declarations from its Chief Executive Officer and from its Tennessee State Director, both stating  
 10 that neither has ever spoken to Baker concerning advertising for the Committee and that neither  
 11 Baker nor the Committee has ever given a presentation to AFP or asked AFP for a contribution  
 12 or other type of engagement.<sup>25</sup>

13 SLF denies the Complaint allegations, although it acknowledges that Baker has a  
 14 consulting services contract with SLF.<sup>26</sup> SLF reiterates, however, Baker's statement during the

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<sup>19</sup> *Id.* at 2. By the end of the election cycle, CFGA had spent more than \$3,000 on the Blackburn race and had made numerous in-kind donations and one large direct donation to its Tennessee branch. *See supra*, n.10.

<sup>20</sup> CFGA Resp. at 6.

<sup>21</sup> AFP Resp. at 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, Attachs. 1 and 2, Declarations of Emily Seidel, AFP CEO, and Tori Venable, Tenn. AFP State Director.

<sup>26</sup> SLF Resp. at 1-2 (Oct. 11, 2018).

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1 speech that “he is ‘firewalled’ with respect to the Tennessee Senate election in connection with  
2 his role for SLF.”<sup>27</sup> SLF explains that Baker has no access to SLF materials relating to the  
3 Tennessee Senate race, and that SLF employees and contractors do not discuss non-public,  
4 strategic information or plans regarding the race with him.<sup>28</sup> SLF states that its contract with  
5 Baker requires him to provide periodic advice about Senate races as needed, but that he is  
6 specifically obligated not to convey any non-public information pertaining to federal candidates  
7 to SLF and vice versa.<sup>29</sup>

8 SLF also asserts that Baker never said that the Committee did a presentation for SLF;  
9 rather, Baker noted more generally that candidates do such presentations for “the Super PAC  
10 world and outside groups.”<sup>30</sup> In an affidavit, Steven Law, SLF’s president and CEO, attests that  
11 neither Blackburn, nor any representative or agent of her Senate campaign, made a presentation  
12 to SLF or “begged” SLF for money.<sup>31</sup> Finally, SLF asserts that its independent expenditures in  
13 connection with the Tennessee Senate race have not involved Baker or anyone else from the  
14 Committee.<sup>32</sup>

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<sup>27</sup> *Id.* at 1.

<sup>28</sup> *Id.* SLF did not provide a copy of any firewall policy, and it is unclear if the “consulting services contract” with Baker also constitutes the firewall policy.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 2 (quoting Baker).

<sup>31</sup> *Id.*, Attach. 1, Affidavit of Steven J. Law, ¶¶ 3-4; *see also id.*, Attach. 2, Affidavit of Carl Forti.

<sup>32</sup> *Id.* at 2-3.

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1     **III.    LEGAL ANALYSIS**

2           The Act prohibits corporations and independent expenditure-only political committees  
3     from making, and candidates or their committees from knowingly accepting, contributions,  
4     including in-kind contributions, in connection with any election to political office.<sup>33</sup> The Act  
5     provides that a “contribution” includes “anything of value made by any person for the purpose of  
6     influencing any election for Federal office.”<sup>34</sup> “Anything of value” includes all in-kind  
7     contributions.<sup>35</sup>

8           Under Commission regulations, a communication that is coordinated with a candidate or  
9     his or her authorized committee is considered an in-kind contribution and is subject to the limits,  
10    prohibitions, and reporting requirements of the Act.<sup>36</sup> A communication is coordinated with a  
11    candidate, his or her authorized committee, or agent of either, if it meets a three-prong test set  
12    forth in the Commission’s regulations: (1) it is paid for, in whole or in part, by a person other  
13    than the candidate or authorized committee; (2) it satisfies a content standard in 11 C.F.R.  
14    § 109.21(c); and (3) it satisfies a conduct standard in 11 C.F.R. § 109.21(d). All three prongs  
15    must be satisfied for a communication to be considered coordinated.<sup>37</sup>

16           The Complaint alleges that Baker’s description of the campaign process between  
17    committees and outside groups provides evidence that there must be coordinated

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<sup>33</sup>       52 U.S.C. § 30118(a).

<sup>34</sup>       52 U.S.C. § 30101(8)(A)(i).

<sup>35</sup>       11 C.F.R. § 100.52(d)(1).

<sup>36</sup>       52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

<sup>37</sup>       11 C.F.R. § 109.21(a); *see also Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (Explanation and Justification).

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1 communications. The Complaint, however, does not identify any communication with which to  
2 conduct the coordination analysis established in the Commission's regulation. Furthermore, as  
3 to CFGA and AFP, the Complaint does not identify any conduct by the Committee that would  
4 satisfy the conduct prong of the coordinated communications test.<sup>39</sup>

5 As to SLF, however, the fact that Baker worked for the Committee while also working  
6 for SLF raises the possibility that relevant information could have flowed between them in a  
7 manner sufficient to satisfy the conduct prong. Baker's July 2018 comments about IEOPCs  
8 "being part of the campaign" and that "you have to do presentations for them" raise questions  
9 about SLF's contacts with the Committee. Although the Committee's Response characterizes  
10 Baker's comments as predicting what third party groups would be doing in Tennessee, his  
11 speech, in fact, seems to indicate that he was speaking knowledgably about past events and  
12 current practice.

13 Baker's comments, however, are general and not tied to any particular communication or,  
14 as to certain points he was making, to any particular outside group; thus, his comments do not  
15 provide enough information to make a reason-to- believe recommendation. Moreover, in  
16 affidavits, two high-level SLF officials attest that they have never discussed with Baker non-  
17 public, strategic information (including campaign plans, projects, activities, or needs) regarding  
18 the 2018 Senate race in Tennessee, and that no representative or agent of the Committee,  
19 including Blackburn, has ever communicated any specific request for SLF's involvement in the  
20 race. During his speech, Baker stated that he was "firewalled" at SLF from advising SLF on

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<sup>39</sup>

The Complaint also does not make any specific allegation as to Ward Baker.

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1 certain Senate races because of his work on the Blackburn campaign. Though it is possible  
2 Baker made the comment knowing that it was inaccurate, the overall circumstances suggest that  
3 his reference to being “firewalled” was for the purpose of conveying what information he had  
4 access to with respect to SLF’s plans.

5 Thus, because the allegations fail to give rise to a reasonable inference that a violation of  
6 the Act has occurred, and the Responses have provided credible information supporting  
7 dismissal, we recommend that the Commission dismiss the allegation that Club for Growth  
8 Action, Senate Leadership Fund, and Americans for Prosperity violated 52 U.S.C. §§ 30116(a)  
9 or 30118(a) by making prohibited or excessive in-kind contributions in the form of coordinated  
10 communications, and dismiss the allegation that the Committee violated 52 U.S.C. §§ 30116(f)  
11 or 30118(a) by knowingly accepting them. Finally, we also recommend that the Commission  
12 dismiss the allegations as to Ward Baker.

13 **IV. RECOMMENDATIONS**

14 1. Dismiss the allegation that Marsha for Senate and Les Williamson in his official  
15 capacity as treasurer, violated 52 U.S.C. §§ 30116(f) or 30118(a) by knowingly  
16 accepting excessive or prohibited contributions in the form of coordinated  
17 communications;

18 2. Dismiss the allegation that Club for Growth Action and Adam Rozansky in his  
19 official capacity as treasurer, Senate Leadership Fund and Caleb Crosby in his official  
20 capacity as treasurer, and Americans for Prosperity violated 52 U.S.C. §§ 30116(a) or  
21 30118(a) by making excessive or prohibited contributions in the form of coordinated  
22 communications;

23 3. Dismiss the allegation that Ward Baker violated the Act;

24 4. Approve the attached Factual and Legal Analysis;

25 5. Approve the appropriate letters; and

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1           6. Close the file.

2           Lisa J. Stevenson  
3           Acting General Counsel  
4  
5  
6

7           June 14, 2019

8           Date

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