FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 16, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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RE: MUR 7482

Dear Mr. Gastel:

This is in reference to the complaint you filed with the Federal Election Commission on August 16, 2018, on behalf of your client, Tennessee Citizen Action, alleging violations of the Federal Election Campaign Act of 1971, as amended. On June 15, 2021, the Commission voted to dismiss the allegations that Marsha for Senate and Les Williamson in his official capacity as treasurer accepted excessive or prohibited contributions in the form of coordinated communications, in violation of 52 U.S.C. §§ 30116(f) or 30118(a), and that Club for Growth Action, Americans for Prosperity, and Senate Leadership Fund made excessive or prohibited in-kind contributions in the form of coordinated communications, in violation of 52 U.S.C. §§ 30116(a) and 30118(a). In addition, the Commission dismissed the allegation that Ward Baker violated the Act. Accordingly, the Commission closed the file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Lynn Tran

BY: Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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	MUR 7482

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Tennessee Citizen Action. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that Marsha for Senate and Les Williamson in his official capacity as treasurer (the "Committee"), accepted excessive in-kind contributions in the form of coordinated communications from Club for Growth Action ("CFGA"), Americans for Prosperity ("AFP"), and Senate Leadership Fund ("SLF"). The Complaint specifically alleges that the Committee's political consultant, Ward Baker, spoke of such coordination during a speech he gave at a private event. Based on the Complaint and Responses, the Commission dismisses the allegations.

II. FACTUAL BACKGROUND

In November 2018, Marsha Blackburn, a U.S. Representative since 2002, won election to the U.S. Senate from Tennessee.[1] Marsha for Senate is her principal campaign committee.[2] According to the Committee's disclosure reports, starting in November 2017, it hired Ward

[1] *See* https://www.blackburn.senate.gov/about-marsha (last visited June 13, 2019).

[2] *See* Committee Amended Statement of Organization (Nov. 7, 2018).

Baker, a political consultant, and his firm, Baker Group, LLC, to work on the campaign.[3] At the same time, the Baker Group was paid by SLF for "political strategy consulting."[4]

On July 9, 2018, Baker spoke to a monthly meeting of Republicans in Nashville about the upcoming election in general and the Blackburn campaign specifically.[5] During a question and answer period at the end of his speech, Baker was asked about the Blackburn Committee working with groups outside Tennessee, specifically, the Koch Brothers and Club for Growth.[6] Baker responded:

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

In the 2018 election cycle, Respondents disclosed making independent expenditures in support of Blackburn or in opposition to her general election opponent: SLF disclosed a total of

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3 *See* Committee Disbursements, 2017-18.

4 *See* SLF Disbursements, 2017-18.

5 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.

6 Baker Speech.

7 Compl. at 3-4 (emphasis in original).

$15,132,001 and AFP disclosed $72,547.[8] While CFGA reported minimal spending in the Tennessee Senate race,[9] its Tennessee affiliate, CFG Action Tennessee, disclosed spending $201,802 on the race, while receiving a cash donation from CFGA of $80,000 and in-kind donations of $14,642.[10]

The Complaint alleges that, based on Ward's remarks, CFG, AFP, and SLF have made in-kind contributions to Marsha for Senate in the form of coordinated communications that exceed the Act's limit on contributions by non-multicandidate political committees.[11] The Complaint asserts that, by "doing presentations" with CFG, AFP and SLF, it follows that the Committee and the groups have or will coordinate strategies.[12] The Complaint suggests that the Commission conduct an investigation to "reveal the full extent of these coordinated expenditures, thereby resulting in discovery of illegal in-kind contributions."[13]

In a joint response, the Committee and Baker state that the Complaint does not point to a single allegedly coordinated expenditure.[14] They further assert that Baker made only general statements during his speech about what independent groups would likely spend.[15] They

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8 *See* SLF Independent Expenditures, 2017-18, and AFP Independent Expenditures, 2017-18.

9 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.

10 *See* CFG Action Tennessee Independent Expenditures, 2017-18.

11 Compl. at 2.

12 *Id*. at 4.

13 *Id*. at 7.

14 Committee and Baker Resp. at 1 (Oct. 4, 2018) ("Committee Resp.").

15 *Id*.

contend that Baker also clearly stated during the speech that he had no non-public knowledge about these groups' activities in the Tennessee Senate race.[16]

CFGA similarly responds that the Complaint does not identify any CFGA communications that are allegedly coordinated.[17] It further responds that CFGA had, by the date of its Response, spent only $231 on the Blackburn race.[18] CFGA argues that the Complaint is baseless and has alleged no facts establishing the conduct required for coordination.[19]

AFP responds that it is a 501(c)(4) that publicly announced it would support Blackburn because of her positions on Obamacare, the tax code, and government regulations.[20] AFP states that it has made independent expenditures to support Blackburn, all of which have been reported to the Commission.[21] AFP argues that the Complaint fails to assert any facts that demonstrate coordination between it and the Blackburn campaign.[22] It further states that it cannot control the statements of Baker, who is not an AFP employee or consultant.[23] AFP provided sworn declarations from its Chief Executive Officer and from its Tennessee State Director, both stating that neither has ever spoken to Baker concerning advertising for the Committee and that neither

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16 *Id*.

17 CFGA Response at 1 (Oct. 10, 2018).

18 *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.9.

19 CFGA Resp. at 6.

20 AFP Resp. at 2.

21 *Id*.

22 *Id*. at 3.

23 *Id*.

Baker nor the Committee has ever given a presentation to AFP or asked AFP for a contribution or other type of engagement.[24]

SLF denies the Complaint allegations, although it acknowledges that Baker has a consulting services contract with SLF.[25] SLF reiterates, however, Baker's statement during the speech that "he is 'firewalled' with respect to the Tennessee Senate election in connection with his role for SLF."[26] SLF explains that Baker has no access to SLF materials relating to the Tennessee Senate race, and that SLF employees and contractors do not discuss non-public, strategic information or plans regarding the race with him.[27] SLF states that its contract with Baker requires him to provide periodic advice about Senate races as needed, but that he is specifically obligated not to convey any non-public information pertaining to federal candidates to SLF and vice versa.[28]

SLF also asserts that Baker never said that the Committee did a presentation for SLF; rather, Baker noted more generally that candidates do such presentations for "the Super PAC world and outside groups."[29] In an affidavit, Steven Law, SLF's president and CEO, attests that neither Blackburn, nor any representative or agent of her Senate campaign, made a presentation to SLF or "begged" SLF for money.[30] Finally, SLF asserts that its independent expenditures in

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[24] *Id.*, Attachs. 1 and 2, Declarations of Emily Seidel, AFP CEO, and Tori Venable, Tenn. AFP State Director.

[25] SLF Resp. at 1-2 (Oct. 11, 2018).

[26] *Id*. at 1.

[27] *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.

[28] *Id*.

[29] *Id*. at 2 (quoting Baker).

[30] *Id.*, Attach. 1, Affidavit of Steven J. Law, ¶¶ 3-4; *see also id.*, Attach. 2, Affidavit of Carl Forti.

connection with the Tennessee Senate race have not involved Baker or anyone else from the Committee.[31]

III. LEGAL ANALYSIS

The Act prohibits corporations and independent expenditure-only political committees from making, and candidates or their committees from knowingly accepting, contributions, including in-kind contributions, in connection with any election to political office.[32] The Act provides that a "contribution" includes "anything of value made by any person for the purpose of influencing any election for Federal office."[33] "Anything of value" includes all in-kind contributions.[34]

A communication that is coordinated with a candidate or his or her authorized committee is considered an in-kind contribution and is subject to the limits, prohibitions, and reporting requirements of the Act.[35] A communication is coordinated with a candidate, his or her authorized committee, or agent of either, if it meets a three-prong test set forth in the Commission's regulations: (1) it is paid for, in whole or in part, by a person other than the candidate or authorized committee; (2) it satisfies a content standard in 11 C.F.R. § 109.21(c); and (3) it satisfies a conduct standard in 11 C.F.R. § 109.21(d). Under Commission regulations, all three prongs must be satisfied for a communication to be considered coordinated.[36]

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31 *Id.* at 2-3.

32 52 U.S.C. § 30118(a).

33 52 U.S.C. § 30101(8)(A)(i).

34 11 C.F.R. § 100.52(d)(1).

35 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

36 11 C.F.R. § 109.21(a); *see also Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (Explanation and Justification).

The Complaint alleges that Baker's description of the campaign process between committees and outside groups provides evidence of coordinated communications. The Complaint, however, does not identify any communication with which to conduct the coordination analysis established in the Commission's regulation. Furthermore, as to CFGA and AFP, the Complaint does not identify any conduct by the Committee that would satisfy the conduct prong of the coordinated communications test.[37]

There is also insufficient evidence of coordination as to SLF. In affidavits, two high-level SLF officials attest that they have never discussed with Baker non-public, strategic information (including campaign plans, projects, activities, or needs) regarding the 2018 Senate race in Tennessee, and that no representative or agent of the Committee, including Blackburn, has ever communicated any specific request for SLF's involvement in the race. During his speech, Baker stated that he was "firewalled" at SLF from advising SLF on certain Senate races because of his work on the Blackburn campaign.

Finally, Baker's July 2018 comments about IEOPCs "being part of the campaign" and that "you have to do presentations for them" are vague and not tied to any particular communication or, as to certain points he was making, to any particular outside group; thus, his comments do not provide enough information to make a reason-to-believe recommendation, in light of the information provided in the responses.

Thus, because the allegations fail to give rise to a reasonable inference that a violation of the Act has occurred, and the Responses have provided credible information supporting dismissal, the Commission dismisses the allegation that Club for Growth Action, Senate Leadership Fund, and Americans for Prosperity violated 52 U.S.C. §§ 30116(a) or 30118(a) by

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

making prohibited or excessive in-kind contributions in the form of coordinated communications, and dismisses the allegation that the Committee violated 52 U.S.C. §§ 30116(f) or 30118(a) by knowingly accepting them. The Commission also dismisses the allegations as to Ward Baker.