FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL’S REPORT

MUR 7486
COMPLAINT FILED: Aug. 23, 2018
NOTIFICATION DATE: Aug. 29, 2018
LAST RESPONSE FILED: Feb. 27, 2019
ACTIVATION DATE: Apr. 23, 2019

STATUTE OF LIMITATIONS:
Oct. 14, 2021 (earliest) – Ongoing
ELECTION CYCLE: 2016, 2018

COMPLAINANT: Campaign Legal Center
RESPONDENT: 45Committee, Inc.
RELEVANT AUTHORITY: 52 U.S.C. §§ 30102, 30103, 30104
INTERNAL REPORTS CHECKED: Disclosure Reports
FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

The Complaint in this matter alleges that 45Committee, Inc. (“45Committee”), a Section 501(c)(4) nonprofit organization, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by not registering and reporting as a political committee despite making over $21 million in independent expenditures in the weeks leading up to the 2016 presidential election. 45Committee asserts that it is not a political committee but is instead an issue-advocacy and lobbying organization. The Complaint, however, alleges that 51% of 45Committee’s overall spending in 2016 was for independent expenditures and disbursements for electioneering communications, and that 45Committee’s major purpose was the nomination or election of a federal candidate.

45Committee’s public statements, fundraising appeals, and the proportion of its overall spending directed toward independent expenditures and disbursements for electioneering...
communications in 2016, viewed as a whole, raise a reasonable inference that the organization’s “major purpose” was nominating or electing a federal candidate, and, as such, that the organization appears to be a political committee. Accordingly, we recommend that the Commission find reason to believe 45Committee violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee.

II. FACTUAL BACKGROUND

45Committee was organized in April 2015 as a corporation in Virginia, and it claims to be tax-exempt under Section 501(c)(4) of the Internal Revenue Code.1 45Committee asserts that it is “an independent, social welfare organization” that was established “to engage primarily in issue advocacy campaigns” and has “been educating Americans on possible solutions to the challenges facing the 45th President of the United States.”2 45Committee states that it has a “sister political committee, Future45,” that was formed “to engage primarily in federal electoral advocacy.”3

The Complaint contends that 45Committee’s public statements and fundraising appeals indicate that its major purpose is the nomination or election of federal candidates. The Complaint alleges that fundraising efforts promoted 45Committee as a vehicle for potential

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1 45Committee, Fiscal Year (“FY”) 2015-2016 Return of Organization Exempt from Income Tax (“IRS Form 990”) at 1 (Feb. 16, 2017); 45Committee Resp. at 1 (Oct. 10, 2018).

2 45Committee Resp. at 1 (quoting its website, available at https://45committee.com). On each of its annual IRS tax filing documents, 45Committee has described itself as “an organization devoted to promoting solutions to the issues that confront the United States during the 45th President’s term” that “will advocate for reforms and solutions on a wide range of public policy issues.” See, e.g., 45Committee, FY 2016-2017 IRS Form 990 at 2 (Feb. 15, 2018).

donors to support the election of a federal candidate, Donald J. Trump, without disclosing their identities. The Complaint cites a news article reporting that “three Republican fundraisers familiar with the effort . . . and others in GOP finance circles say [Todd] Ricketts is making a particular effort to win over donors who want to help [Donald] Trump but are leery of having their names publicly associated with the polarizing Republican nominee.”

According to that article, “Ricketts’s pitch to these donors focuses on the fact that one of the pro-Trump groups he’s fronting can accept unlimited checks while keeping its donors’ names secret.” It further states that “[t]he group, which is called 45Committee, . . . [can] accept contributions of unlimited sizes that can be used to air political and issue-based ads without disclosing [its] donors’ names.”

The Complaint further alleges that 45Committee and its “sister political committee, Future45,” were reportedly organized for the express purpose of influencing a federal election, by funding online and television ads criticizing Hillary Clinton, based on campaign issues that emerged, or comments made by Clinton, during the 2016 presidential election.

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5 Id.
6 Id.
7 45Committee Resp. at 1.
8 Compl. ¶¶ 6, 30.ii (quoting Patrick O’Connor and Rebecca Ballhaus, New GOP Groups Taking Aim at Hillary Clinton, WALL ST. J. (Oct. 27, 2015), available at https://www.wsj.com/articles/prominent-gop-donors-launch-new-groups-to-take-aim-at-hillary-clinton-1445984161) (“The groups — Future45, a super PAC, and 45Committee, an issue-advocacy organization — are designed to seize on issues that emerge in the campaign or comments [Hillary] Clinton makes and quickly assemble ads that will run both online and on television. Organizers are hoping the groups will become something of an experimental, quick-strike vehicle to see what messages and tactics work.”); see also Vogel, supra (stating that Future45 “along with 45Committee, had been created in October [2015] to attack Clinton, but both had gone largely dormant . . . So Todd Ricketts essentially took them over this month with the intention of running pro-Trump ads”) (cited at Compl. ¶¶ 7, 30.iii).
also notes that 45Committee’s president, Brian Baker, publicly criticized Clinton, saying: “It will take a builder and a proven job creator to get Americans working again[.] . . . As we all know, after 40 years in political life, [Hillary] Clinton is not the change our country needs — in fact, it is no change at all.”

Between October 4, 2016, and November 5, 2016, 45Committee made $21,339,015 in independent expenditures, all of which supported 2016 presidential candidate Donald J. Trump or opposed Trump’s general-election opponent, Hillary Clinton. 45Committee also made two disbursements totaling $671,320 on October 25, 2016, and October 26, 2016, for electioneering communications that referred to Patrick Murphy, a 2016 candidate for the U.S. Senate in Florida. During the 2018 election cycle, 45Committee made $1,687,062 in independent expenditures and four disbursements totaling $167,669 for electioneering communications that referred to Joseph Manchin and Joseph Donnelly, U.S. Senate candidates in West Virginia and

9  Compl. ¶¶ 9, 30.v (quoting Maggie Haberman, Pro-Trump Group to Release Ads as Part of Major Swing State Effort, N.Y. TIMES (Oct. 6, 2016), available at https://www.nytimes.com/2016/10/07/us/politics/campaign-ads.html) (reporting that 45Committee “will begin airing ads criticizing Hillary Clinton and praising Donald J. Trump as the 2016 election enters its final weeks” with ads “featuring an image of a fatigued-looking Mrs. Clinton [that] describe her as a ‘tired’ politician mired in scandal, while depicting Mr. Trump as a creator of jobs”).


11  45Committee, FEC Form 9, 24-Hour Notice for Electioneering Communications, at 3 (Oct. 28, 2016) (disclosing disbursements of $663,320 for “Media Placement – Iran Sanctions Act Extension” and $8,000 for “Media Production – Iran Sanctions Act Extension”). This communication supported extending the Iran Sanctions Act, contending that “the Obama administration’s Iranian Nuclear Deal gave [Iran] billions [of dollars]. Congressman Patrick Murphy and Senator Bill Nelson supported the deal. And now the Iranian Sanctions Act is set to expire. Call Murphy and Nelson and tell them it’s never too late to do the right thing.” See “Iran Sanctions Act Extension,” https://twitter.com/i/status/79385079449797124 (Nov. 2, 2016).
Indiana, respectively. As of August 21, 2019, 45Committee has not reported making any independent expenditures or disbursements for electioneering communications in the 2020 election cycle. Over its four-year lifespan, therefore, 45Committee has made independent expenditures totaling $23,026,077 and disbursements for electioneering communications totaling $838,989.

Aside from the funds that it reported spending on independent expenditures and disbursements for electioneering communications, 45Committee reported spending $36,828,379 for all other expenses to the IRS, funds that it asserts have financed “substantial issue-oriented activities in furtherance of its mission[,]” including, e.g., “substantial issue advocacy campaigns — including through television, digital, and direct mail — which relate to the areas of ‘foreign policy, national security, healthcare, size of government, role and make-up of the federal judiciary, role of the Internal Revenue Service, reducing the tax burden, ethics issues related to federal officials, improving the regulatory environment, [and] promoting entrepreneurship.’”

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13 45Committee has not filed any disclosure reports with the Commission during the 2020 election cycle and appears to be inactive. The last disclosure report that it filed with the Commission was in July 2018. See 45Committee, FEC Form 5, Report of Independent Expenditures Made and Contributions Received at 1 (July 15, 2018). The most recent post on its website is dated October 10, 2018. See https://45committee.com/news/ (viewed July 30, 2019).

A declaration by 45Committee’s treasurer submitted with its response states that, “[s]ince its inception in April 2015, 45Committee, Inc.’s spending has been primarily related to issue advocacy and policy debates consistent with its tax-exempt status.”

45Committee’s response also asserts that it “deployed advertising and grassroots advocacy campaigns” supporting the confirmations of Trump administration Cabinet and judicial nominees, including “Attorney General Jeff Sessions, Secretary of State Mike Pompeo, and Supreme Court Justices Neil Gorsuch and Brett Kavanaugh.” The current record does not indicate how much of the $36,828,379 that 45Committee reported spending on all other expenses — i.e., spending that was not directly used for independent expenditures and electioneering communications — was used for its non-election-related advocacy, as opposed to its administrative costs, such as staff salaries and overhead, which would have supported both its election-related and non-election-related advocacy.

The Complaint alleges that 45Committee satisfied the Act’s requirements for political committee status and therefore violated the Act by not registering as a political committee and abiding by the Act’s organizational, recordkeeping, and reporting requirements for political

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15 45Committee Resp., Ex. C (Decl. of Maria Wojciechowski) ¶ 3. Additional information provided in a declaration attached to 45Committee’s Supplemental Response, which is based on 45Committee’s filing with the IRS for its 2018-2019 fiscal year, is consistent with the information provided in the declaration attached to 45Committee’s initial Response. See 45Committee Suppl. Resp., Ex. 1 (Decl. of Maria Wojciechowski) ¶¶ 4-5 (Feb. 27, 2019).


17 For its 2016-2017 fiscal year, 45Committee asserts that its “operating costs” were $447,430.53. 45Committee Resp., Ex. C ¶ 7. However, it provides no breakdown of that figure, which appears potentially inconsistent with its IRS filing for that fiscal year. See id., Ex. A at 10, lines 11b, 11c, 11g, 14, 17, 23, 24c, and 24e (disclosing expenses of $150,630 for Legal, $61,694 for Accounting, $26,975 for Information Technology, $51,504 for Travel, $12,484 for Insurance, $1,379,964 for Research, $1,250 for Fundraising Expenses, and $444,344 for “Other”). 45Committee did not provide operating cost figures for its other fiscal years.
committees. The Complaint asserts that during calendar year 2016, 45Committee spent $22,010,335 on independent expenditures and disbursements for electioneering communications, out of $42,564,823 in overall expenses — i.e., 51.7% of 45Committee’s 2016 expenses directly paid for independent expenditures and disbursements for electioneering communications.

The chart below summarizes 45Committee’s financial activity:

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<tr>
<td>IEs</td>
<td>$21,339,015</td>
<td>$21,650,515</td>
<td>$23,026,077</td>
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<tr>
<td>ECs</td>
<td>$671,320</td>
<td>$671,320</td>
<td>$838,989</td>
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<tr>
<td>Overall Expenses</td>
<td>$42,564,823</td>
<td>$45,556,334</td>
<td>$59,854,457</td>
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<td>IEs/Overall</td>
<td>50.1%</td>
<td>47.5%</td>
<td>38.5%</td>
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<td>(IEs + ECs)/Overall</td>
<td>51.7%</td>
<td>49%</td>
<td>39.9%</td>
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45Committee’s expenses for FY 2015-2016, from April 23, 2015, through March 31, 2016, totaled $1,008,489; its expenses for FY 2016-2017, from April 1, 2016 through March 31, 2017 totaled $45,556,334. 45Committee, FY 2015-2016 IRS Form 990 at 1; 45Committee, FY 2016-2017 IRS Form 990 at 1. 45Committee’s lifetime reported expenses, from April 23, 2015, through March 31, 2018, totaled $59,854,457. See 45Committee FY 2017-2018 IRS Tax Form 990 at 1 (Feb. 15, 2019).

The figures in this column are based on the 45Committee’s Response and the sworn declaration of its treasurer. See 45Committee Resp., Ex. C ¶¶ 4-6. 45Committee’s treasurer states that if all of the organization’s FY 2016-2017 operating costs ($447,430.53) are allocated as political expenses, its “political spending remained under 50% of total expenditures[.]” Id. ¶ 7. In that case, the combined “political expenses” — i.e., independent expenditures, disbursements for electioneering communications, and operating expenses — would be $22,769,265, or almost exactly half (49.98%) of its $45,556,334 in overall expenditures for the fiscal year.

News reports indicated that $4 million of 45Committee’s FY 2016-2017 activity occurred during the first five weeks of 2017, and based on that information, the Complaint contends that even if all of 45Committee’s FY 2015-2016 expenses, and all but the $4 million of its FY 2016-2017 expenses, were incurred during calendar year 2016, 45Committee’s total expenses during the 2016 calendar year were, at most, $42,564,823. See Compl. ¶ 27 (citing Tom LoBianco, First on CNN: Pro-Trump Group Hacked, Website Taken Down in Cabinet Fight, CNN (Feb. 6, 2017), available at https://www.cnn.com/2017/02/06/politics/45-committee-website-hacked/index.html) (“The 45 Committee [sic] has spent upward of $4 million so far on-air and online supporting Trump’s Cabinet picks[,]”); see David M. Drucker, Pro-Trump Outside Groups Ready to Shell Out Cash for 2018, WASH. EXAMINER (Feb. 7, 2017), available at https://www.washingtonexaminer.com/pro-trump-outside-groups-ready-to-shell-out-cash-for-2018 (“45Committee has invested $4 million this year alone to generate support for Trump’s Cabinet nominees, a senior official with the political nonprofit said Tuesday.”) (emphasis added).
III. LEGAL ANALYSIS

A. Political Committee Status

The Act defines a political committee as “any committee, club, association, or other group of persons” that receives aggregate contributions or makes aggregate expenditures in excess of $1,000 during a calendar year. Notwithstanding the statutory threshold for contributions and expenditures, an organization that is not controlled by a candidate will be considered a political committee only if its “major purpose is Federal campaign activity (i.e., the nomination or election of a Federal candidate).” Political committees are required to register with the Commission, meet organizational and recordkeeping requirements, and file periodic disclosure reports.

The Commission has explained that applying the “major purpose” test “requires the flexibility of a case-by-case analysis of an organization’s conduct that is incompatible with a one-size-fits-all rule” and that “any list of factors developed by the Commission would not likely be exhaustive in any event, as evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions considering the political committee status of various


23 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5,595, 5,597 (Feb. 7, 2007) (“Suppl. E&J”) (“[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct — whether it received $1,000 in contributions or made $1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (i.e., the nomination or election of a Federal candidate).”); see Buckley v. Valeo, 424 U.S. 1, 79 (1976); FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 262 (1986). In Buckley, the Supreme Court held that defining political committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” was overbroad, reaching “groups engaged purely in issue discussion.” Buckley, 424 U.S. at 79. To cure that infirmity, the Court concluded that the term “political committee” “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” Id. (emphasis added).

In conducting that analysis, the Commission will consider whether an organization has satisfied the “major purpose doctrine through sufficiently extensive spending on Federal campaign activity.” The Commission also looks to the organization’s public statements, which “can also be instructive in determining an organization’s purpose[,]” while “giving due weight to the form and nature of the statements, as well as the speaker’s position within the organization.” In addition, the Commission may also need to consider the organization’s “fundraising appeals” and solicitations to prospective supporters.

B. There is Reason to Believe That 45Committee is a Political Committee

1. Statutory Threshold

To assess whether an organization has made an “expenditure,” the Commission analyzes whether spending on any of an organization’s communications made independently of a candidate constitutes express advocacy under 11 C.F.R. § 100.22. 45Committee reported making over $21 million in independent expenditures in calendar year 2016 and therefore exceeded the $1,000 statutory threshold set forth in the Act, which 45Committee does not

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26 Suppl. E&J at 5,601.

27 Id.

28 Id.

29 Id. at 5,606.
Whether 45Committee constituted a political committee therefore turns on whether its major purpose is the nomination or election of federal candidates.

2. **Major Purpose**

45Committee’s overall conduct — as evidenced by its public statements, fundraising approach, and relative spending on independent expenditures and disbursements for electioneering communications — objectively indicates that its major purpose is the nomination or election of federal candidates.

News reports cited in the Complaint provide support for the notion that 45Committee’s organizational purpose was the nomination or election of federal candidates. The articles describe appeals to potential supporters by one of 45Committee’s primary fundraisers, Todd Ricketts, as well as a public statement that “Clinton is not the change our country needs” by the organization’s president, Brian Baker. Ricketts reportedly sought funding for the organization by conveying to potential donors that 45Committee was “one of the pro-Trump groups” that “can accept unlimited checks while keeping its donors’ names secret” because of its status as a 501(c)(4) nonprofit organization. Rather than soliciting support based on 45Committee’s stated mission of advocating for “solutions to the issues that confront the United States during the 45th President’s term[,]” Ricketts reportedly solicited donations for the “45Committee” by presenting such a donation as an opportunity for donors to discreetly support Trump, a federal

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30. See 52 U.S.C. § 30101(4)(A); 45Committee Resp. at 6 (acknowledging that “45Committee did surpass the Act’s $1,000 spending threshold in 2016”).

31. See Haberman, supra (cited at Compl. ¶¶ 9, 30.v); Vogel, supra (cited at Compl. ¶¶ 7, 30.iii).

32. Vogel, supra (cited at Compl. ¶¶ 7, 30.iii).

33. Resp. at 1 (quoting 45Committee’s 2017 IRS Form 990).
candidate. These news articles indicate that, along with Future45, an IEOPC, 45Committee was reportedly formed — and repurposed by Ricketts after the groups had “gone largely dormant” — for the specific purpose of influencing a federal election, by running ads immediately before the 2016 presidential election supporting Donald J. Trump or opposing Hillary Clinton.  

45Committee’s name’s use of the number 45 in reference to the forty-fifth president and inclusion of the word “Committee” are consistent with such reports that the organization was holding itself out as a political committee, and, more generally, that it had an electoral purpose.  

45Committee’s spending during the 32-day period immediately preceding the 2016 presidential election further indicates that its major purpose is the nomination or election of federal candidates. In 2016, the first full calendar year that 45Committee existed and the first year in which 45Committee crossed the statutory threshold for political committee status, and the year in which the Complaint alleges 45Committee became a political committee, the organization spent more of its funds on independent expenditures and disbursements for electioneering communications — virtually all of which paid for communications expressly advocating for a specific federal candidate or against that candidate’s opponent — than on the issue advocacy purpose described in its IRS filings. Independent expenditures and disbursements for electioneering communications comprised 51.7% of 45Committee’s overall spending in 2016, and 97% of that activity — $21,339,015 out of $22,010,443 — was for independent expenditures in the month before the 2016 election. Thus, 48.4% of 45Committee’s overall spending in 2016 paid for everything else, including grants to other nonprofit

34 Haberman, supra (cited at Compl. ¶¶ 9, 30.v); O’Connor and Ballhaus, supra (cited at Compl. ¶¶ 6, 30.ii); Vogel, supra (cited at Compl. ¶¶ 7, 30.iii).

35 See Compl. ¶¶ 2, 26-27.
organizations, 36 other communications, and general overhead, such as staff salaries, legal and accounting fees, and other administrative expenses. With respect to the overhead, the Complaint points out that some portion of those overhead costs, in turn, would likely have supported the organization’s political spending. 37 The current record thus establishes a reasonable inference that 45Committee spent more, perhaps significantly more, on political spending than on issue advocacy spending in 2016.

45Committee’s principal response to the Complaint is that because its spending on independent expenditures and electioneering communications has been below 50% of its overall spending in each fiscal year since its formation and over its entire lifetime, it lacks the major purpose of nominating or election federal candidates. 38 45Committee’s argument that such spending has been below 50% in each of the 12-month cycles selected to be its fiscal year is unpersuasive in light of the overall circumstances, including the nature of its spending. If 45Committee’s spending is analyzed in accordance with its preferred fiscal year framework, it remains the case that 47.5% of its overall spending in FY 2016-2017 — $21,650,550 — was conceded by used to make independent expenditures, and if its spending on electioneering

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37 Compl. ¶ 26 (contending that 45Committee’s reported spending on independent expenditures and electioneering communications “may not reflect the total of its election-related spending, such as overhead costs,” suggesting that some portion of these overhead costs was used in connection with the independent expenditures and electioneering communications and could therefore also be counted as election-related spending).

38 E.g., 45Committee Resp. at 7 (“[T]he organization’s spending on political activity, as a factual matter, has constituted a minority of total spending overall and in each fiscal year, including fiscal year 2017.”); id. at 9 (“[L]ess than 37% of 45Committee’s total spending has been on political activity (including electioneering communications) over its lifetime.”); id. at 10 (“In each of its fiscal years, including 2017, less than half of its total spending has been on political activity.”) (citing Decl. of Maria Wojciechowski at id., Ex. C ¶ 5.).
communications is included as relevant or presumptively relevant,\textsuperscript{39} then 49\% of its overall spending was for the purpose of nominating or electing a federal candidate.\textsuperscript{40} Neither the Commission nor any court has ever required that an organization spend a majority of its funds on political activity to meet the major purpose requirement; instead, the Commission has adopted a case by case approach to determining major purpose, which the courts have approved.\textsuperscript{41} In this case, considering 45Committee’s fundraising purpose as reported in news articles that the Complaint relies upon — to support the election of Donald Trump without disclosing donors’ identities — in conjunction with 47.5\% of 45Committee’s FY 2016-2017 spending, comprising over $21 million, having been used to make communications expressly advocating for Trump or against his opponent, Hillary Clinton, in the four weeks leading up to the 2016 general election, the overall information supports a finding that 45Committee’s major purpose during its 2016-2017 fiscal year was the nomination or election of a federal candidate.\textsuperscript{42}

Following the 2016 election, the record indicates that 45Committee spent less, both overall and as a proportion of its post-2016 spending, on independent expenditures and

\textsuperscript{39} See CREW v. FEC, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (determining that the Commission “must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate”); see also id. at 100 (“The Commission may in special circumstances conclude that an electioneering ad does not have [an election-related major] purpose. But given Congress’s recognition that the “vast majority” of electioneering ads have the purpose of electing a candidate, the Commission’s exclusion of electioneering ads from its major-purpose analysis should be the rare exception, not the rule.”) (emphases added).

\textsuperscript{40} 45Committee Resp., Ex. C (Decl. of Maria Wojciechowski) ¶ 6. It is unclear why the figure for “political advocacy” that 45Committee provides in its Response — $21,650,515 — is $311,535 greater than the number that 45Committee reported in its independent-expenditure reports filed with the Commission.

\textsuperscript{41} See Suppl. E&J at 5,601; Shays, 511 F. Supp. 2d at 19.

\textsuperscript{42} As discussed above, see supra note 19 and related text, if disbursements for electioneering communications are included, the proportion of political spending rises to 49\% of overall spending, and if operating expenses are also included, then spending indicating a major purpose may have been greater than 50\% of 45Committee’s overall spending.
disbursements for electioneering communications, and instead spent comparatively more on
supporting the Trump administration’s legislative initiatives and nominees to the Cabinet and
federal judiciary. However, the record supports a reasonable inference that by the time
45Committee engaged in that activity, it had already become a political committee, and the
organization’s comparatively lesser spending following 2016, and its subsequent decline in
activity and possible dormancy does not undermine that conclusion. Accordingly, we recommend that the Commission find reason to believe 45Committee violated 52 U.S.C. §§ 30102, 30103, and 30104, and authorize the use of compulsory process.

IV. INVESTIGATION

We propose to investigate 45Committee’s overall expenses and activities in 2016 by obtaining relevant financial records, fundraising solicitations, and any other documents relevant to evaluating whether it had the major purpose of nominating or electing federal candidates. We would also seek any internal or external communications regarding its mission and purpose, as well as the organization’s initiatives or programs to engage in issue advocacy or spending on the nomination or election of candidates. Although we would initially seek these materials voluntarily, we recommend that the Commission authorize the use of compulsory process.

V. RECOMMENDATIONS

1. Find reason to believe that 45Committee, Inc. violated 52 U.S.C. §§ 30102, 30103, and 30104 by not registering as a political committee and meeting the Act’s organizational, recordkeeping, and reporting requirements;

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43 See supra n.13.

44 See also Factual and Legal Analysis at 9, MUR 7465 (Freedom Vote, Inc.) (July 25, 2019) (finding reason to believe a nonprofit organization’s “proportion of spending related to Federal campaign activity compared to its total spending in 2014 indicates that its major purpose may be the nomination or election of federal candidates”)

2. Approve the attached Factual and Legal Analysis;

3. Authorize the use of compulsory process; and

4. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

August 21, 2019
Date

Charles Kitcher
Acting Associate General Counsel for Enforcement

Mark Shonkwiler
Assistant General Counsel for Enforcement

Saurav Ghosh
Attorney

Attachments:
Factual and Legal Analysis
FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: 45Committee, Inc. MUR 7486

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by the Campaign Legal Center. See 52 U.S.C. § 30109(a)(1). The Complaint alleges that 45Committee, Inc. ("45Committee"), a Section 501(c)(4) nonprofit organization, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by not registering and reporting as a political committee despite making over $21 million in independent expenditures in the weeks leading up to the 2016 presidential election. 45Committee asserts that it is not a political committee but is instead an issue-advocacy and lobbying organization. The Complaint, however, alleges that 51% of 45Committee’s overall spending in 2016 was for independent expenditures and disbursements for electioneering communications, and that 45Committee’s major purpose was the nomination or election of a federal candidate.

45Committee’s public statements, fundraising appeals, and the proportion of its overall spending directed toward independent expenditures and disbursements for electioneering communications in 2016, viewed as a whole, raise a reasonable inference that the organization’s "major purpose" was nominating or electing a federal candidate, and, as such, that the organization appears to be a political committee. Accordingly, the Commission finds reason to believe 45Committee violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee.
II. FACTUAL AND LEGAL ANALYSIS

A. Background

45Committee was organized in April 2015 as a corporation in Virginia, and it claims to be tax-exempt under Section 501(c)(4) of the Internal Revenue Code. 1 45Committee asserts that it is “an independent, social welfare organization” that was established “to engage primarily in issue advocacy campaigns” and has “been educating Americans on possible solutions to the challenges facing the 45th President of the United States.” 2 45Committee states that it has a “sister political committee, Future45,” that was formed “to engage primarily in federal electoral advocacy.” 3

The Complaint contends that 45Committee’s public statements and fundraising appeals indicate that its major purpose is the nomination or election of federal candidates. The Complaint alleges that fundraising efforts promoted 45Committee as a vehicle for potential donors to support the election of a federal candidate, Donald J. Trump, without disclosing their identities. The Complaint cites a news article reporting that “three Republican fundraisers familiar with the effort . . . and others in GOP finance circles say [Todd] Ricketts is making a particular effort to win over donors who want to help [Donald] Trump but are leery of having

1 45Committee, Fiscal Year (“FY”) 2015-2016 Return of Organization Exempt from Income Tax (“IRS Form 990”) at 1 (Feb. 16, 2017); 45Committee Resp. at 1 (Oct. 10, 2018).

2 45Committee Resp. at 1 (quoting its website, available at https://45committee.com). On each of its annual IRS tax filing documents, 45Committee has described itself as “an organization devoted to promoting solutions to the issues that confront the United States during the 45th President’s term” that “will advocate for reforms and solutions on a wide range of public policy issues.” See, e.g., 45Committee, FY 2016-2017 IRS Form 990 at 2 (Feb. 15, 2018).

their names publicly associated with the polarizing Republican nominee.”

According to that article, “Ricketts’s pitch to these donors focuses on the fact that one of the pro-Trump groups he’s fronting can accept unlimited checks while keeping its donors’ names secret.” It further states that “[t]he group, which is called 45Committee, . . . [can] accept contributions of unlimited sizes that can be used to air political and issue-based ads without disclosing [its] donors’ names.”

The Complaint further alleges that 45Committee and its “sister political committee, Future45,” were reportedly organized for the express purpose of influencing a federal election, by funding online and television ads criticizing Hillary Clinton, based on campaign issues that emerged, or comments made by Clinton, during the 2016 presidential election. The Complaint also notes that 45Committee’s president, Brian Baker, publicly criticized Clinton, saying: “It will take a builder and a proven job creator to get Americans working again[.] . . . As we all

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5 Id.

6 Id.

7 45Committee Resp. at 1.

8 Compl. ¶¶ 6, 30.ii (quoting Patrick O’Connor and Rebecca Ballhaus, New GOP Groups Taking Aim at Hillary Clinton, WALL ST. J. (Oct. 27, 2015), available at https://www.wsj.com/articles/prominent-gop-donors-launch-new-groups-to-take-aim-at-hillary-clinton-1445984161) (“The groups — Future45, a super PAC, and 45Committee, an issue-advocacy organization — are designed to seize on issues that emerge in the campaign or comments [Hillary] Clinton makes and quickly assemble ads that will run both online and on television. Organizers are hoping the groups will become something of an experimental, quick-strike vehicle to see what messages and tactics work.”); see also Vogel, supra (stating that Future45 “along with 45Committee, had been created in October [2015] to attack Clinton, but both had gone largely dormant . . . . So Todd Ricketts essentially took them over this month with the intention of running pro-Trump ads”) (cited at Compl. ¶ 7, 30.iii).
know, after 40 years in political life, [Hillary] Clinton is not the change our country needs — in fact, it is no change at all."9

Between October 4, 2016, and November 5, 2016, 45Committee made $21,339,015 in independent expenditures, all of which supported 2016 presidential candidate Donald J. Trump or opposed Trump’s general-election opponent, Hillary Clinton.10 45Committee also made two disbursements totaling $671,320 on October 25, 2016, and October 26, 2016, for electioneering communications that referred to Patrick Murphy, a 2016 candidate for the U.S. Senate in Florida.11 During the 2018 election cycle, 45Committee made $1,687,062 in independent expenditures and four disbursements totaling $167,669 for electioneering communications that referred to Joseph Manchin and Joseph Donnelly, U.S. Senate candidates in West Virginia and Indiana, respectively.12 As of August 21, 2019, 45Committee has not reported making any

9  Compl. ¶¶ 9, 30.v (quoting Maggie Haberman, Pro- Trump Group to Release Ads as Part of Major Swing State Effort, N.Y. TIMES (Oct. 6, 2016), available at https://www.nytimes.com/2016/10/07/us/politics/campaign-ads.html) (reporting that 45Committee “will begin airing ads criticizing Hillary Clinton and praising Donald J. Trump as the 2016 election enters its final weeks” with ads “featuring an image of a fatigued-looking Mrs. Clinton [that] describe her as a ‘tired’ politician mired in scandal, while depicting Mr. Trump as a creator of jobs”).


11  45Committee, FEC Form 9, 24-Hour Notice for Electioneering Communications, at 3 (Oct. 28, 2016) (disclosing disbursements of $663,320 for “Media Placement – Iran Sanctions Act Extension” and $8,000 for “Media Production – Iran Sanctions Act Extension”). This communication supported extending the Iran Sanctions Act, contending that “the Obama administration’s Iranian Nuclear Deal gave [Iran] billions [of dollars]. Congressman Patrick Murphy and Senator Bill Nelson supported the deal. And now the Iranian Sanctions Act is set to expire. Call Murphy and Nelson and tell them it’s never too late to do the right thing.” See “Iran Sanctions Act Extension,” https://twitter.com/i/status/79385079449797124 (Nov. 2, 2016).

independent expenditures or disbursements for electioneering communications in the 2020

election cycle. Over its four-year lifespan, therefore, 45Committee has made independent

expenditures totaling $23,026,077 and disbursements for electioneering communications totaling

$838,989.

Aside from the funds that it reported spending on independent expenditures and
disbursements for electioneering communications, 45Committee reported spending $36,828,379

for all other expenses to the IRS, funds that it asserts have financed “substantial issue-oriented

activities in furtherance of its mission[,]” including, e.g., “substantial issue advocacy campaigns

— including through television, digital, and direct mail — which relate to the areas of ‘foreign

policy, national security, healthcare, size of government, role and make-up of the federal

judiciary, role of the Internal Revenue Service, reducing the tax burden, ethics issues related to

federal officials, improving the regulatory environment, [and] promoting entrepreneurship.’”

A declaration by 45Committee’s treasurer submitted with its response states that, “[s]ince its

inception in April 2015, 45Committee, Inc.’s spending has been primarily related to issue

advocacy and policy debates consistent with its tax-exempt status.”

be confirmed as Secretary of State. See 45Committee, FEC Form 9, 24-Hour Notice for Electioneering
uses essentially the same script with respect to Senator Joe Manchin. See 45Committee, FEC Form 9, 24-Hour
20, 2018).

45Committee has not filed any disclosure reports with the Commission during the 2020 election cycle and
appears to be inactive. The last disclosure report that it filed with the Commission was in July 2018. See
45Committee, FEC Form 5, Report of Independent Expenditures Made and Contributions Received at 1 (July 15,
2018). The most recent post on its website is dated October 10, 2018. See https://45committee.com/news/ (viewed
July 30, 2019).

45Committee Resp. at 2 (quoting 45Committee FY 2016-2017 IRS Form 990). See, e.g., “Real Tax
Slayer,” available at https://45committee.com/real-tax-slayer or https://www.youtube.com/watch?time_continue

45Committee Resp., Ex. C (Decl. of Maria Wojciechowski) ¶ 3. Additional information provided in a
declaration attached to 45Committee’s Supplemental Response, which is based on 45Committee’s filing with the

also asserts that it “deployed advertising and grassroots advocacy campaigns” supporting the
confirmations of Trump administration Cabinet and judicial nominees, including “Attorney
General Jeff Sessions, Secretary of State Mike Pompeo, and Supreme Court Justices Neil
Gorsuch and Brett Kavanaugh.” The current record does not indicate how much of the
$36,828,379 that 45Committee reported spending on all other expenses — i.e., spending that was
not directly used for independent expenditures and electioneering communications — was used
for its non-election-related advocacy, as opposed to its administrative costs, such as staff salaries
and overhead, which would have supported both its election-related and non-election-related
advocacy.

The Complaint alleges that 45Committee satisfied the Act’s requirements for political
commitee status and therefore violated the Act by not registering as a political committee and
abiding by the Act’s organizational, recordkeeping, and reporting requirements for political
committees. The Complaint asserts that during calendar year 2016, 45Committee spent
$22,010,335 on independent expenditures and disbursements for electioneering communications,

IRS for its 2018-2019 fiscal year, is consistent with the information provided in the declaration attached to
45Committee’s initial Response. See 45Committee Suppl. Resp., Ex. 1 (Decl. of Maria Wojciechowski) ¶¶ 4-5
(Feb. 27, 2019).

confirm or https://www.youtube.com/watch?v=4PlvnYK9umY (Sept. 4, 2018).

For its 2016-2017 fiscal year, 45Committee asserts that its “operating costs” were $447,430.53.
45Committee Resp., Ex. C ¶ 7. However, it provides no breakdown of that figure, which appears potentially
inconsistent with its IRS filing for that fiscal year. See id., Ex. A at 10, lines 11b, 11c, 11g, 14, 17, 23, 24c, and 24e
disclosing expenses of $150,630 for Legal, $61,694 for Accounting, $26,975 for Information Technology, $51,504
for Travel, $12,484 for Insurance, $1,379,964 for Research, $1,250 for Fundraising Expenses, and $444,344 for
“Other”). 45Committee did not provide operating cost figures for its other fiscal years.

of $42,564,823 in overall expenses — i.e., 51.7% of 45Committee’s 2016 expenses directly
paid for independent expenditures and disbursements for electioneering communications.

The chart below summarizes 45Committee’s financial activity:19

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>IEs</td>
<td>$21,339,015</td>
<td>$21,650,515</td>
<td>$23,026,077</td>
</tr>
<tr>
<td>ECs</td>
<td>$671,320</td>
<td>$671,320</td>
<td>$838,989</td>
</tr>
<tr>
<td>Overall Expenses</td>
<td>$42,564,82321</td>
<td>$45,556,334</td>
<td>$59,854,457</td>
</tr>
<tr>
<td>IEs/Overall</td>
<td>50.1%</td>
<td>47.5%</td>
<td>38.5%</td>
</tr>
<tr>
<td>(IEs + ECs)/Overall</td>
<td>51.7%</td>
<td>49%</td>
<td>39.9%</td>
</tr>
</tbody>
</table>

B. There is Reason to Believe That 45Committee is a Political Committee

The Act defines a political committee as “any committee, club, association, or other
group of persons” that receives aggregate contributions or makes aggregate expenditures in
excess of $1,000 during a calendar year.22 Notwithstanding the statutory threshold for

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19 45Committee’s expenses for FY 2015-2016, from April 23, 2015, through March 31, 2016, totaled
$1,008,489; its expenses for FY 2016-2017, from April 1, 2016 through March 31, 2017 totaled $45,556,334.
45Committee, FY 2015-2016 IRS Form 990 at 1; 45Committee, FY 2016-2017 IRS Form 990 at 1. 45Committee’s
lifetime reported expenses, from April 23, 2015, through March 31, 2018, totaled $59,854,457. See 45Committee
FY 2017-2018 IRS Tax Form 990 at 1 (Feb. 15, 2019).

20 The figures in this column are based on the 45Committee’s Response and the sworn declaration of its
treasurer. See 45Committee Resp., Ex. C ¶¶ 4-6. 45Committee’s treasurer states that if all of the organization’s
FY 2016-2017 operating costs ($447,430.53) are allocated as political expenses, its “political spending remained
under 50% of total expenditures[.]” Id. ¶ 7. In that case, the combined “political expenses” — i.e., independent
expenditures, disbursements for electioneering communications, and operating expenses — would be $22,769,265,
or almost exactly half (49.98%) of its $45,556,334 in overall expenditures for the fiscal year.

21 News reports indicated that $4 million of 45Committee’s FY 2016-2017 activity occurred during the first
five weeks of 2017, and based on that information, the Complaint contends that even if all of 45Committee’s FY
2015-2016 expenses, and all but the $4 million of its FY 2016-2017 expenses, were incurred during calendar year
2016, 45Committee’s total expenses during the 2016 calendar year were, at most, $42,564,823. See Compl. ¶ 27
citing Tom LoBianco, First on CNN: Pro-Trump Group Hacked, Website Taken Down in Cabinet Fight, CNN
(“The 45 Committee [sic] has spent upward of $4 million so far on-air and online supporting Trump’s Cabinet
picks[,]”); see David M. Drucker, Pro-Trump Outside Groups Ready to Shell Out Cash for 2018, WASH. EXAMINER
(Feb. 7, 2017), available at https://www.washingtonexaminer.com/pro-trump-outside-groups-ready-to-shell-out-
cash-for-2018 (“45Committee has invested $4 million this year alone to generate support for Trump’s Cabinet
nominees, a senior official with the political nonprofit said Tuesday.”) (emphasis added).

contributions and expenditures, an organization that is not controlled by a candidate will be considered a political committee only if its “major purpose is Federal campaign activity (i.e., the nomination or election of a Federal candidate).” Political committees are required to register with the Commission, meet organizational and recordkeeping requirements, and file periodic disclosure reports.

The Commission has explained that applying the “major purpose” test “requires the flexibility of a case-by-case analysis of an organization’s conduct that is incompatible with a one-size-fits-all rule” and that “any list of factors developed by the Commission would not likely be exhaustive in any event, as evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions considering the political committee status of various entities.” In conducting that analysis, the Commission will consider whether an organization has satisfied the “major purpose doctrine through sufficiently extensive spending on Federal

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23 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5,595, 5,597 (Feb. 7, 2007) (“Suppl. E&J”) (“[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct — whether it received $1,000 in contributions or made $1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (i.e., the nomination or election of a Federal candidate).”); see Buckley v. Valeo, 424 U.S. 1, 79 (1976); FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 262 (1986). In Buckley, the Supreme Court held that defining political committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” was overbroad, reaching “groups engaged purely in issue discussion.” Buckley, 424 U.S. at 79. To cure that infirmity, the Court concluded that the term “political committee” “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” Id. (emphasis added).


campaign activity.” The Commission also looks to the organization’s public statements, which “can also be instructive in determining an organization’s purpose[,]” while “giving due weight to the form and nature of the statements, as well as the speaker’s position within the organization.” In addition, the Commission may also need to consider the organization’s “fundraising appeals” and solicitations to prospective supporters.

To assess whether an organization has made an “expenditure,” the Commission analyzes whether spending on any of an organization’s communications made independently of a candidate constitutes express advocacy under 11 C.F.R. § 100.22. 45Committee reported making over $21 million in independent expenditures in calendar year 2016 and therefore exceeded the $1,000 statutory threshold set forth in the Act, which 45Committee does not dispute. Whether 45Committee constituted a political committee therefore turns on whether its major purpose is the nomination or election of federal candidates.

45Committee’s overall conduct — as evidenced by its public statements, fundraising approach, and relative spending on independent expenditures and disbursements for electioneering communications — objectively indicates that its major purpose is the nomination or election of federal candidates.

News reports cited in the Complaint provide support for the notion that 45Committee’s organizational purpose was the nomination or election of federal candidates. The articles

26 Suppl. E&J at 5,601.
27 Id.
28 Id.
29 Id. at 5,606.
30 See 52 U.S.C. § 30101(4)(A); 45Committee Resp. at 6 (acknowledging that “45Committee did surpass the Act’s $1,000 spending threshold in 2016”).
describe appeals to potential supporters by one of 45Committee’s primary fundraisers, Todd Ricketts, as well as a public statement that “Clinton is not the change our country needs” by the organization’s president, Brian Baker.\footnote{See Haberman, supra (cited at Compl. ¶¶ 9, 30.v); Vogel, supra (cited at Compl. ¶ 7, 30.iii).} Ricketts reportedly sought funding for the organization by conveying to potential donors that 45Committee was “one of the pro-Trump groups” that “can accept unlimited checks while keeping its donors’ names secret” because of its status as a 501(c)(4) nonprofit organization.\footnote{Vogel, supra (cited at Compl. ¶¶ 7, 30.iii).} Rather than soliciting support based on 45Committee’s stated mission of advocating for “solutions to the issues that confront the United States during the 45th President’s term[.]”\footnote{Resp. at 1 (quoting 45Committee’s 2017 IRS Form 990).} Ricketts reportedly solicited donations for the “45Committee” by presenting such a donation as an opportunity for donors to discreetly support Trump, a federal candidate. These news articles indicate that, along with Future45, an IEOPC, 45Committee was reportedly formed — and repurposed by Ricketts after the groups had “gone largely dormant” — for the specific purpose of influencing a federal election, by running ads immediately before the 2016 presidential election supporting Donald J. Trump or opposing Hillary Clinton.\footnote{Haberman, supra (cited at Compl. ¶¶ 9, 30.v); O’Connor and Ballhaus, supra (cited at Compl. ¶ 6, 30.ii); Vogel, supra (cited at Compl. ¶ 7, 30.iii).} 45Committee’s name’s use of the number 45 in reference to the forty-fifth president and inclusion of the word “Committee” are consistent with such reports that the organization was holding itself out as a political committee, and, more generally, that it had an electoral purpose. 45Committee’s spending during the 32-day period immediately preceding the 2016 presidential election further indicates that its major purpose is the nomination or election of

\footnote{See Haberman, supra (cited at Compl. ¶¶ 9, 30.v); Vogel, supra (cited at Compl. ¶ 7, 30.iii).}
\footnote{Vogel, supra (cited at Compl. ¶¶ 7, 30.iii).}
\footnote{Resp. at 1 (quoting 45Committee’s 2017 IRS Form 990).}
\footnote{Haberman, supra (cited at Compl. ¶¶ 9, 30.v); O’Connor and Ballhaus, supra (cited at Compl. ¶ 6, 30.ii); Vogel, supra (cited at Compl. ¶ 7, 30.iii).}
federal candidates. In 2016, the first full calendar year that 45Committee existed and the first year in which 45Committee crossed the statutory threshold for political committee status, and the year in which the Complaint alleges 45Committee became a political committee, the organization spent more of its funds on independent expenditures and disbursements for electioneering communications — virtually all of which paid for communications expressly advocating for a specific federal candidate or against that candidate’s opponent — than on the issue advocacy purpose described in its IRS filings. Independent expenditures and disbursements for electioneering communications comprised 51.7% of 45Committee’s overall spending in 2016, and 97% of that activity — $21,339,015 out of $22,010,443 — was for independent expenditures in the month before the 2016 election. Thus, 48.4% of 45Committee’s overall spending in 2016 paid for everything else, including grants to other nonprofit organizations, other communications, and general overhead, such as staff salaries, legal and accounting fees, and other administrative expenses. With respect to the overhead, the Complaint points out that some portion of those overhead costs, in turn, would likely have supported the organization’s political spending. The current record thus establishes a reasonable inference that 45Committee spent more, perhaps significantly more, on political spending than on issue advocacy spending in 2016.

35 See Compl. ¶¶ 2, 26-27.


37 Compl. ¶ 26 (contending that 45Committee’s reported spending on independent expenditures and electioneering communications “may not reflect the total of its election-related spending, such as overhead costs,” suggesting that some portion of these overhead costs was used in connection with the independent expenditures and electioneering communications and could therefore also be counted as election-related spending).
45Committee’s principal response to the Complaint is that because its spending on independent expenditures and electioneering communications has been below 50% of its overall spending in each fiscal year since its formation and over its entire lifetime, it lacks the major purpose of nominating or election federal candidates. 45Committee’s argument that such spending has been below 50% in each of the 12-month cycles selected to be its fiscal year is unpersuasive in light of the overall circumstances, including the nature of its spending. If 45Committee’s spending is analyzed in accordance with its preferred fiscal year framework, it remains the case that 47.5% of its overall spending in FY 2016-2017 — $21,650,550 — was concededly used to make independent expenditures, and if its spending on electioneering communications is included as relevant or presumptively relevant, then 49% of its overall spending was for the purpose of nominating or electing a federal candidate. Neither the Commission nor any court has ever required that an organization spend a majority of its funds on political activity to meet the major purpose requirement; instead, the Commission has adopted a case by case approach to determining major purpose, which the courts have approved. In this

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38 E.g., 45Committee Resp. at 7 (“[T]he organization’s spending on political activity, as a factual matter, has constituted a minority of total spending overall and in each fiscal year, including fiscal year 2017.”); id. at 9 (“[L]ess than 37% of 45Committee’s total spending has been on political activity (including electioneering communications) over its lifetime.”); id. at 10 (“In each of its fiscal years, including 2017, less than half of its total spending has been on political activity.”) (citing Decl. of Maria Wojciechowski at id., Ex. C ¶ 5.).

39 See CREW v. FEC, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (determining that the Commission “must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate”); see also id. at 100 (“The Commission may in special circumstances conclude that an electioneering ad does not have [an election-related major] purpose. But given Congress’s recognition that the “vast majority” of electioneering ads have the purpose of electing a candidate, the Commission’s exclusion of electioneering ads from its major-purpose analysis should be the rare exception, not the rule.”) (emphases added).

40 45Committee Resp., Ex. C (Decl. of Maria Wojciechowski) ¶ 6. It is unclear why the figure for “political advocacy” that 45Committee provides in its Response — $21,650,515 — is $311,535 greater than the number that 45Committee reported in its independent-expenditure reports filed with the Commission.

41 See Suppl. E&J at 5,601; Shays, 511 F. Supp. 2d at 19.
case, considering 45Committee’s fundraising purpose as reported in news articles that the
Complaint relies upon — to support the election of Donald Trump without disclosing donors’
identities — in conjunction with 47.5% of 45Committee’s FY 2016-2017 spending, comprising
over $21 million, having been used to make communications expressly advocating for Trump or
against his opponent, Hillary Clinton, in the four weeks leading up to the 2016 general election,
the overall information supports a finding that 45Committee’s major purpose during its 2016-
2017 fiscal year was the nomination or election of a federal candidate.42

Following the 2016 election, the record indicates that 45Committee spent less, both
overall and as a proportion of its post-2016 spending, on independent expenditures and
disbursements for electioneering communications, and instead spent comparatively more on
supporting the Trump administration’s legislative initiatives and nominees to the Cabinet and
federal judiciary. However, the record supports a reasonable inference that by the time
45Committee engaged in that activity, it had already become a political committee, and the
organization’s comparatively lesser spending following 2016, and its subsequent decline in
activity and possible dormancy43 does not undermine that conclusion.

Accordingly, the Commission finds reason to believe 45Committee violated 52 U.S.C.
§§ 30102, 30103, and 30104.44

42 As discussed above, see supra note 19 and related text, if disbursements for electioneering communications
are included, the proportion of political spending rises to 49% of overall spending, and if operating expenses are also
included, then spending indicating a major purpose may have been greater than 50% of 45Committee’s overall
spending.

43 See supra n.13.