

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

MUR: 7754  
DATE COMPLAINT FILED: June 25, 2020  
DATE OF NOTIFICATION: June 29, 2020 –  
October 21, 2020<sup>1</sup>  
LAST RESPONSE RECEIVED: October 23, 2020  
DATE ACTIVATED: September 24, 2020

ELECTION CYCLE: 2018 – 2020  
EXPIRATION OF SOL: May 21, 2023 –  
May 14, 2025

**COMPLAINANTS:** Campaign Legal Center and Margaret Christ

**RESPONDENTS:** Pacific Atlantic Action Coalition  
Pacific Environmental Coalition  
SMP and Rebecca Lambe in her official capacity as  
treasurer  
Unite the Country and Michael Morris in his official  
capacity as treasurer  
VoteVets PAC and Rick Hegdahl in his official  
capacity as treasurer  
Tom Van Loben Sels  
Melissa Carrig  
Matt Cohler  
James P. Joseph

**RELEVANT STATUTES  
AND REGULATIONS:** 52 U.S.C. § 30122  
11 C.F.R. § 110.4(b)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

---

<sup>1</sup> Due to an administrative oversight, Respondent Melissa Carrig was not notified until October 21, 2020. She subsequently joined the previously-filed joint Response of Respondents PAAC, PEC, Cohler, and Van Loben Sels. *See Carrig Resp.* (Oct. 23, 2020).

1     **I.     INTRODUCTION**

2             The Complaint alleges that Pacific Atlantic Action Coalition (“PAAC”) and Pacific  
3     Environmental Coalition (“PEC”), two 501(c)(4) public benefit corporations, made contributions  
4     in the name of one or more unidentified persons to three independent expenditure-only political  
5     committees — SMP<sup>2</sup> and Rebecca Lambe in her official capacity as treasurer (“SMP”),  
6     VoteVets PAC and Rick Hegdahl in his official capacity as treasurer (“VoteVets”), and Unite the  
7     Country and Michael Morris in his official capacity as treasurer (“Unite the Country”)  
8     (collectively, the “IEOPCs”) — in violation of the Federal Election Campaign Act of 1971, as  
9     amended (the “Act”). PAAC and PEC, in their joint Response, contend that they are legitimate  
10    grant-making charitable corporations and that neither accepted funds for the purpose of making  
11    political contributions in the name of another.

12            There are significant discrepancies, however, regarding the source of PAAC and PEC’s  
13    funding. Neither entity has provided information regarding how many donors funded their  
14    activities, and there is no information suggesting that either actively solicited donations. The  
15    available information indicates that, in its first five weeks after formation, PAAC received a  
16    single infusion of funds and, in as few as 18 days, made a contribution to SMP. The available  
17    information further indicates that PAAC and PEC may have received their funding from Matt  
18    Cohler, both organizations’ CEO, which, in turn and along with other available information,  
19    indicates that Cohler may have exercised control over PAAC and PEC’s decision-making with  
20    respect to their contributions to the IEOPCs, contradicting PAAC and PEC’s suggestion that they  
21    operate independently from the source or sources of their funds. Taken together with the timing

---

<sup>2</sup>           Formerly “Senate Majority PAC.” Am. Statement of Organization 2017 (Nov. 16, 2017).

1 of the transactions at issue and the notable absence of information regarding PAAC and PEC's  
2 activities, the available information suggests that Cohler was the true source of the contributions  
3 made to the IEOPCs.

4 As such, we recommend that the Commission find reason to believe that Cohler provided  
5 funds to PAAC and PEC for the purpose of making political contributions and, as a result, that  
6 PAAC, PEC, and Cohler violated 52 U.S.C. § 30122. We recommend that the Commission take  
7 no action at this time as to the other Respondents pending an investigation.

## 8 **II. FACTUAL BACKGROUND**

9 PAAC and PEC are public benefit corporations organized under California law and  
10 recognized as 501(c)(4) organizations by the Internal Revenue Service ("IRS").<sup>3</sup> PAAC  
11 represents that its organizational mission is to promote certain public policy positions, including  
12 regarding "economic development, voting rights, criminal justice reform and gun violence."<sup>4</sup>  
13 PEC's stated purpose is to promote reforms "in a broad range of environmental policy areas."<sup>5</sup>  
14 PAAC and PEC each have two officers and directors. Matt Cohler is the Chief Executive  
15 Officer ("CEO") and a Director of both organizations.<sup>6</sup> Tom Van Loben Sels is the Secretary,  
16 Treasurer, and a Director of PAAC, while Melissa Carrig serves in those same roles at PEC.<sup>7</sup>

---

<sup>3</sup> Response of PAAC, PEC, Van Loben Sels, and Cohler at 2 ("PAAC & PEC Resp.") (Sep. 4, 2020).

<sup>4</sup> PAAC & PEC Resp. Ex G, PAAC Response to Form 1024-A Supplemental Information Request at 2 (Apr. 26, 2019).

<sup>5</sup> PAAC & PEC Resp. Ex. E, PEC Form 1024-A Exemption Application, Narrative Attachment at 2 (Mar. 6, 2019).

<sup>6</sup> PAAC & PEC Resp. at 3, 5.

<sup>7</sup> *Id.*

1 PAAC was incorporated on May 21, 2018, and received one donation of approximately  
2 \$430,000 in stock by the end of its first fiscal year on June 30, 2018.<sup>8</sup> Within weeks of its  
3 formation and after the close of its fiscal year, PAAC made a \$200,000 contribution to SMP on  
4 July 18, 2018, and then made donations totaling \$483,000 to two 501(c)(4) organizations in late  
5 July and August of that year.<sup>9</sup> PAAC represents that it has received a total of \$1,612,459 from  
6 “over ten donations” since its formation, which includes \$510,000 that it received from PEC in  
7 June and August of 2020.<sup>10</sup>

8 PEC was incorporated on September 23, 2019, and received six donations totaling  
9 \$22,840,920 in the following seven weeks.<sup>11</sup> PEC then made contributions to Unite the Country  
10 and VoteVets on February 13, 2020, a contribution to SMP on May 14, 2020, and donations to  
11 nine different 501(c)(4) organizations, including PAAC, between February 21, 2020, and August  
12 18, 2020.<sup>12</sup> In total, between February 13, 2020, and August 18, 2020, PEC contributed  
13 \$1,050,000 to the three IEOPCs and approximately \$6,000,000 to the various 501(c)(4)  
14 organizations.<sup>13</sup>

---

<sup>8</sup> PAAC & PEC Resp. at 5; PAAC & PEC Resp. Ex. F, PAAC IRS Form 1024-A Exemption Application, Application for Recognition of Exemption at 3 (Aug. 20, 2018).

<sup>9</sup> PAAC & PEC Resp. Ex. K, PAAC Grant Summary Chart. Specifically, PAAC contributed \$233,000 to New Nation Rising Action Fund on July 31, 2018, and \$250,000 to Govern for California on August 13, 2020. *Id.*

<sup>10</sup> Declaration of Tom Van Loben Sels ¶ 8 (Sep. 4, 2020); PAAC & PEC Resp. Ex. J, PEC Grant Summary Chart.

<sup>11</sup> PAAC & PEC Resp. at 2–3. Since then it has received only \$23,451 in additional donations. *Id.* at 3.

<sup>12</sup> PAAC & PEC Resp. Ex. J, PEC Grant Summary Chart. Specifically, PEC made the following contributions: Unite the Country for \$300,000 on February 13, 2020; VoteVets for \$250,000 on February 13, 2020; ACRONYM for \$1,500,000 on February 21, 2020; Big Tent Project Fund for \$100,000 on February 21, 2020; Center for Voter Information for \$337,500 on March 5, 2020; SMP for \$500,000 on May 14, 2020; PAAC for \$10,000 on June 1, 2020; SilverLining Policy, Inc. for \$1,000,000 on July 23, 2020; Environmental Defense Action Fund for \$500,000 on August 3, 2020; PAAC for \$500,000 on August 12, 2020; Defending Democracy Together for \$1,000,000 on August 18, 2020; and WorkMoney Inc. for \$1,000,000 on August 18, 2020. *Id.*

<sup>13</sup> *Id.*

1           The available information indicates that Van Loben Sels and Carrig may have  
2 connections to Cohler outside of their roles for PAAC and PEC that would allow Cohler to  
3 exercise control over the decisions of the organizations. Cohler is one of the founding  
4 employees and a former executive at Facebook and is estimated by Forbes to have a net worth of  
5 \$670,000,000 as of 2016.<sup>14</sup> At least one press report suggests that Cohler solely funded both  
6 PAAC and PEC.<sup>15</sup> Van Loben Sels and Carrig are partners at Apercen Partners LLC, which  
7 describes itself as a tax consulting firm specializing in “high net-worth individual clients.”<sup>16</sup>  
8 Apercen previously represented Cohler in at least one public transaction, a purchase of real  
9 estate,<sup>17</sup> and Van Loben Sels serves as the Secretary and Chief Financial Officer of another  
10 Cohler-owned entity, the Sommerfeldt Cohler Foundation.<sup>18</sup>

11           According to PAAC and PEC, neither organization has conducted any publicly-facing  
12 outreach and, instead, both have “focused thus far on supporting existing organizations that are

---

<sup>14</sup> Luisa Kroll, *America's Richest Entrepreneurs Under 40 2016*, FORBES (Dec. 12, 2016), <https://www.forbes.com/sites/luisakroll/2016/12/12/americas-richest-entrepreneurs-under-40-2016/#6c844c6967c3>; FORBES, Profile of Matt Cohler, <https://www.forbes.com/profile/matt-cohler/#1546815c6576>.

<sup>15</sup> Lachlan Markay, *Revealed: Silicon Valley Bigwig Sent a Million Dollars to Dem Groups*, THE DAILY BEAST (June 23, 2020) <https://www.thedailybeast.com/revealed-silicon-valley-bigwig-matt-cohler-sent-a-million-dollars-to-dem-groups?ref=scroll>.

<sup>16</sup> Apercen Partners, “Apercen Defined,” <https://www.apercen.com/> (last visited Dec. 21, 2020); LinkedIn, Tom Van Loben Sels, <https://www.linkedin.com/in/tom-van-loben-sels-83455010/> (last visited Dec. 21, 2020); LinkedIn, Melissa Carrig, <https://www.linkedin.com/in/melissa-carrig-592b326/> (last visited Dec. 21, 2020).

<sup>17</sup> *Compare* David Jeans, *Penthouse at Tadao Ando's 152 Elizabeth sells for \$30M*, THE REAL DEAL (July 24, 2018), <https://therealdeal.com/2018/07/24/penthouse-at-152-elizabeth-street-sells-for-30m> (reporting that public records showed that Cohler was under contract to purchase property before it was purchased by an LLC under the care of an attorney with Apercen); *with* Katherine Clarke, *Matt Cohler Lists Swanky Manhattan Penthouse for \$29.5 Million*, WALL STREET J. (Oct. 10, 2019), <https://www.wsj.com/articles/matt-cohler-lists-swanky-manhattan-penthouse-for-29-5-million-11570718184>.

<sup>18</sup> *See* Statement of Information filed with California Secretary of State (Dec. 18, 2019) (listing Cohler as CEO and Van Loben Sels as Secretary, CFO, and process agent).

1 aligned with [their] mission[s].”<sup>19</sup> PAAC and PEC do not describe who proposes their grant  
2 targets or how they are selected. They represent that, once grant targets are chosen, Carrig and  
3 Van Loben Sels, “assisted by Apercen Partners,” then vet these targets,<sup>20</sup> although they do not  
4 describe what this vetting process entails. The two-member boards of PAAC and PEC,  
5 consisting in each case of Cohler and one of the Apercen partners, then vote on whether to issue  
6 the grant, and Apercen coordinates grant payments and reporting.<sup>21</sup> PAAC and PEC submitted  
7 sworn declarations from Van Loben Sels and Carrig, respectively, attesting that they had “not  
8 determined what nonprofit organizations or other groups [they] would support” at the time  
9 PAAC and PEC were incorporated, and that the groups’ donations were not directed towards  
10 specific activities.<sup>22</sup> Cohler did not submit a similar declaration.

11 Other available information also casts doubt on PAAC and PEC’s representations  
12 regarding their overall purposes and activities. PAAC and PEC’s activities, based on the current  
13 information, reflects a sole focus on grant-making, contradicting their representation to the IRS  
14 in their requests for 501(c)(4) status recognition that grant-making would be only a fraction of  
15 their overall conduct.<sup>23</sup> In addition, most of their grants, including to the IEOPCs, are to

---

<sup>19</sup> PAAC & PEC Resp. at 3–4, 6.

<sup>20</sup> *Id.* at 4, 6.

<sup>21</sup> *Id.*

<sup>22</sup> Van Loben Sels Decl. ¶¶ 4–8; Declaration of Melissa Carrig ¶¶ 5–9 (Sep. 4, 2020).

<sup>23</sup> Compare PAAC & PEC Resp. Ex. E, PEC Form 1024-A Exemption Application, Narrative Attachment at 6 (Mar. 6, 2019) (“The Organization expects to devote the following percentage of time and/or resources to the following activities, in each case in furtherance of the Organization’s tax-exempt mission: 30 percent to supporting organizations working to change environmental policy and protect our environment; 30 percent to grantmaking; 20 percent to advocacy; and 20 percent to public education.”); PAAC & PEC Resp. Ex. F, PAAC Form 1024-A Exemption Application, Narrative Attachment at 6 (Aug. 20, 2018) (“With respect to the activities described in this Part III, the Organization expects to devote the following percentage of time and/or funds to each activity: 40 percent to grantmaking; 40 percent to advocacy; and 20 percent to public education.”); *with* PAAC & PEC Resp. at 12–13 (“Respondents determined that during the initial stages of formation, they could best advance their respective

1 organizations that appear not to further the causes PAAC and PEC purport to promote;<sup>24</sup> their  
 2 grants appear to be functionally indistinguishable from direct donations;<sup>25</sup> and we were unable to  
 3 locate any public information regarding PAAC and PEC's officers and directors indicating that  
 4 these individuals have significant prior experience managing charitable organizations or in  
 5 promoting PAAC and PEC's purported causes.<sup>26</sup>

6 The Complaint alleges that PAAC and PEC were used to funnel contributions from other,  
 7 unnamed sources in violation of 52 U.S.C. § 30122.<sup>27</sup> The Complaint bases its allegations on the  
 8 following: (1) PAAC received a \$430,000 contribution from a single source within weeks of its

---

missions by making grants to other, more established organizations, rather than conducting their own programmatic activities.”).

<sup>24</sup> In particular, of the eleven organizations to which PEC has given money, only two describe themselves as promoting environmental policy. *See* PAAC & PEC Resp. Ex. J. Three of the supported organizations are political committees. *Id.* Another is PAAC. *Id.* Another four are 501(c)(4) organizations that do not describe themselves as promoting environmental causes. *See* ACRONYM, <https://www.anotheracronym.org/#theplaybook> (describing ACRONYM's activities as engaging in get-out-the-vote efforts, “fighting misinformation online with facts + local journalism,” and “creating a framework to move the needle among key audiences”); Center for Voter Information, <https://www.centerforvoterinformation.org/> (describing itself as “a non-profit, non-partisan partner organization to Voter Participation Center, both founded to provide resources and tools to help voting-eligible citizens register and vote in upcoming elections”); Defending Democracy Together, <https://www.defendingdemocracytogether.org/about-us/> (describing itself as an “advocacy organization created by lifelong conservatives and Republicans . . . dedicated to defending America's democratic norms, values, and institutions and fighting for consistent conservative principles like rule of law, free trade, and expanding legal immigration”); WorkMoney, <https://www.facebook.com/WorkMoney.org/> (describing itself as “a not-for-profit group that helps Americans figure out how to navigate the worst economic catastrophe of our lifetimes”).

<sup>25</sup> The example grant provided by PEC simply states that the grantee “will use the grant to support the expansion of the Grantee's budget over a 3 year period” and requires no particular reporting or monitoring. Ex. I, Grant Agreement between PEC and SilverLining Policy, Inc. at 2. PAAC and PEC also represent that each of their grants has been “general support” for the grant target, rather than funding towards any specific project. PAAC & PEC Resp. Exs. J, K.

<sup>26</sup> In preparing this report, we attempted to obtain publicly available information regarding PAAC and PEC through searches on Google, prominent social media platforms including Facebook, Twitter, YouTube, and Instagram, and organizational information databases including the Better Business Bureau and Guidestar, all of which produced no results — aside from news reports discussing the allegations of the Complaint in this matter and public filings available from the IRS's and California Secretary of State's websites.

<sup>27</sup> Compl. at 2, 11 (June 25, 2020).

1 incorporation “and then weeks later contributed \$200,000 to the super PAC [SMP];” (2) PEC,  
2 similarly, was formed in September 2019 and thereafter contributed to Unite the Country and  
3 VoteVets in February 2020 and SMP in May 2020; (3) PAAC and PEC’s officers and directors  
4 are also employed with the tax consulting firm Apercen Partners, “which represents high net-  
5 worth individual clients;” and (4) PAAC and PEC do not appear to have an online presence.<sup>28</sup>  
6 The Complaint also identified James P. Joseph as the incorporator of PAAC and PEC.<sup>29</sup>

7 PAAC, PEC, Cohler, Van Loben Sels and Carrig joined a Response contending that:  
8 (1) corporate donors like PAAC and PEC have a recognized right to make contributions to  
9 IEOPCs; (2) the Complaint fails to allege facts establishing that PAAC or PEC made  
10 contributions in the name of another; (3) the sworn declarations of Van Loben Sels and Carrig  
11 demonstrate that PAAC and PEC did not have specific grant targets in mind when formed and  
12 did not receive donations directed to any specific purpose; (4) PAAC and PEC’s grants were  
13 made weeks or months after their incorporation; and (5) PAAC and PEC’s lack of an online  
14 presence is merely a result of their decision not to engage in their own independent education  
15 and advocacy activities at this time.<sup>30</sup> The IEOPCs submitted Responses contending that there is  
16 no information or allegation suggesting that they were aware that the contributions they received  
17 from PAAC and PEC were made in the name of another.<sup>31</sup> Joseph also filed a Response,

---

<sup>28</sup> *Id.* at 2–6.

<sup>29</sup> *Id.* at 3, 5.

<sup>30</sup> PAAC & PEC Resp. at 8–13; Van Loben Sels Decl. ¶¶ 6–8; Carrig Decl. ¶¶ 7–9; *see also* Carrig Resp. at 1–2 (adopting Response of PAAC and PEC).

<sup>31</sup> SMP Resp. at 1–2 (July 14, 2020); Unite the Country Resp. at 1–3 (July 30, 2020); VoteVets Resp. at 1–2 (July 30, 2020).

1 contending that he acted in a purely administrative capacity to draft and file PAAC's and PEC's  
 2 incorporation documents and thus should not be named as a Respondent.<sup>32</sup>

### 3 **III. LEGAL ANALYSIS**

#### 4 **A. Contributions in the Name of Another**

##### 5 1. No Person May Furnish Another Person with Funds for the Purpose of 6 Making a Political Contribution

7 The Act provides that a contribution includes “any gift, subscription, loan, advance, or  
 8 deposit of money or anything of value made by any person for the purpose of influencing any  
 9 election for Federal office.”<sup>33</sup> The term “person” for purposes of the Act and Commission  
 10 regulations includes partnerships, corporations, and “any other organization or group of  
 11 persons.”<sup>34</sup> The Act prohibits a person from making a contribution in the name of another  
 12 person, knowingly permitting his or her name to be used to effect such a contribution, or  
 13 knowingly accepting such a contribution.<sup>35</sup> The Commission has included in its regulations  
 14 illustrations of activities that constitute making a contribution in the name of another:

- 15 (i) Giving money or anything of value, all or part of which  
 16 was provided to the contributor by another person (the true  
 17 contributor) without disclosing the source of money or the  
 18 thing of value to the recipient candidate or committee at the  
 19 time the contribution is made; or
- 20 (ii) Making a contribution of money or anything of value and  
 21 attributing as the source of the money or thing of value  
 22 another person when in fact the contributor is the source.<sup>36</sup>

---

<sup>32</sup> Resp. of James P. Joseph at 2 (Sep. 4, 2020).

<sup>33</sup> 52 U.S.C. § 30101(8)(A).

<sup>34</sup> *Id.* § 30101(11); 11 C.F.R. § 100.10.

<sup>35</sup> 52 U.S.C. § 30122.

<sup>36</sup> 11 C.F.R. § 110.4(b)(2)(i)–(ii).

1           The requirement that a contribution be made in the name of its true source promotes  
2 Congress's objective of ensuring the complete and accurate disclosure by candidates and  
3 committees of the political contributions they receive.<sup>37</sup> Courts therefore have uniformly  
4 rejected the assertion that "only the person who actually transmits funds . . . makes the  
5 contribution,"<sup>38</sup> recognizing that "it is implausible that Congress, in seeking to promote  
6 transparency, would have understood the relevant contributor to be [an] intermediary who  
7 merely transmitted the campaign gift."<sup>39</sup> Consequently, both the Act and the Commission's  
8 implementing regulations provide that a person who furnishes another with funds for the purpose  
9 of contributing to a candidate or committee "makes" the resulting contribution.<sup>40</sup> This is true  
10 whether funds are advanced to another person to make a contribution in that person's name or  
11 promised as reimbursement of a solicited contribution.<sup>41</sup>

---

<sup>37</sup> *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain." (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

<sup>38</sup> *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

<sup>39</sup> *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

<sup>40</sup> *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent [the Act's reporting] restrictions.").

<sup>41</sup> *O'Donnell*, 608 F.3d at 555. Moreover, the "key issue . . . is the *source* of the funds" and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is "irrelevant to a determination of who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant's "unconditional gifts" to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1           Because the concern of the law is the true source from which a contribution to a  
2 candidate or committee originates, regardless of the mechanism by which the funds are  
3 transmitted, we examine the structure of the transaction itself and the arrangement between the  
4 parties to determine who in fact, “made” a given contribution.

5           Accordingly, in previous conduit contribution cases involving LLCs and closely-held  
6 corporations, we have recommended finding reason to believe where the overall record —  
7 including, *e.g.*, the temporal gap between the entity’s formation and the contributions in  
8 question, information suggesting that the entity may not have had the means to make a  
9 contribution without funds provided to it for that purpose, and other facts suggesting that the  
10 entity may have been used to conceal the true contributor’s identity — supported an inference  
11 that the entity was likely not the true source of the contribution.<sup>42</sup> By contrast, we have not  
12 recommended finding reason to believe in cases where the overall record — including, *e.g.*,  
13 evidence that the entity engaged in commercial activity and may have had the ability to make the

---

<sup>42</sup> *E.g.*, First Gen. Counsel’s Report at 10–11, MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (recommending finding reason to believe an LLC made conduit contributions where the LLC’s manager acknowledged that it was created for the specific purpose of making donations to charities, nonprofit organizations, and political committees, and, over a nine-month period, the LLC made contributions totaling \$884,000 to multiple political committees); First Gen. Counsel’s Report at 8–9, MURs 7014, 7017, 7019, and 7090 (DE First Holdings, *et al.*) (recommending finding reason to believe a statutory trust made a \$1 million conduit contribution, where the contribution was made the day after the trust was created and the trust’s owner later acknowledged that he was the source of the funds); *id.* at 12–13 (recommending finding reason to believe an LLC made two \$250,000 conduit contributions sixteen days and twenty-two days, respectively, after its formation, where the LLC vaguely offered only that it was formed as a “for-profit LLC”); First Gen. Counsel’s Report at 9–10, MUR 6995 (Right to Rise, *et al.*) (recommending finding reason to believe an LLC made conduit contributions where it ambiguously stated that it had plans to do business in the future and purported to make a \$100,000 contribution two weeks after being formed); First Gen. Counsel’s Report at 10–11, MUR 6969 (MMWP12, LLC, *et al.*) (recommending finding reason to believe an LLC made a conduit contribution when the contribution was made the day after the LLC was formed, after a meeting between the LLC’s owner and a representative of the recipient committee); First Gen. Counsel’s Report at 9–10, MUR 6968 (Tread Standard, LLC, *et al.*) (recommending finding reason to believe an LLC made a \$150,000 conduit contribution to an IEOPC approximately seven weeks after it was formed, on a record that also linked that LLC to a company whose executive officers made contributions in their own names to the IEOPC and a multicandidate PAC that supported the same candidate); First Gen. Counsel’s Report at 1–2, 7, MUR 6920 (Am. Conservative Union, *et al.*) (recommending finding reason to believe a 501(c)(4) social welfare organization made a contribution in the name of another where it represented that it received and “promptly and directly delivered” funds that it contributed to an IEOPC).

1 contributions at issue with its own income, a sworn statement attesting that the entity had not  
2 received outside funds to make the contribution, and information suggesting that the entity was  
3 not being used to circumvent the Act's disclosure requirements — supported an inference that  
4 the entity in question was not used as a conduit but was, instead, the true contributor.<sup>43</sup>

5 Although the Commission split evenly on our recommendations in most of these prior  
6 matters regarding alleged violations of 52 U.S.C. § 30122,<sup>44</sup> Commissioners separately  
7 expressed agreement that Section 30122's prohibition of contributions in the name of another  
8 applies to LLCs and closely-held corporations — a conclusion approved of by a panel of the U.S.  
9 Court of Appeals for the D.C. Circuit<sup>45</sup> — such that an LLC or closely-held corporation cannot  
10 be used as a “straw donor” to transmit the funds of another, but must instead be the true source of  
11 any contribution it purports to make.<sup>46</sup>

---

<sup>43</sup> *E.g.*, First Gen. Counsel's Report at 9–10, MURs 7013 and 7015 (IGX, LLC, *et al.*) (recommending finding no reason to believe an LLC made a \$500,000 conduit contribution five months after its formation on a record that included, *inter alia*, press articles that indicated that the LLC was a legitimate business that had already funded several film projects, one with a named director and another shown at the SXSW film festival); First Gen. Counsel's Report at 8–9, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (recommending finding no reason to believe a single member LLC made conduit contributions on evidence including, *inter alia*, a declaration from the LLC's single member). *But see* Indictment, *United States v. Prakazrel Michel et al.*, Case No. 1:19-CR-148 (D.D.C. May 3, 2019) (charging LLC's single member, Michel, with four counts, including the making of false records in a federal investigation, in relation to alleged conduit contributions and Michel's declaration filed with the Commission).

<sup>44</sup> Certification, MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (June 7, 2018); Certification, MURs 7014, 7017, 7019, and 7090 (DE First Holdings, *et al.*) (May 10, 2018); Certification, MURs 7013 and 7015 (IGX, LLC, *et al.*) (Apr. 10, 2018); Certification, MUR 6995 (Right to Rise, *et al.*) (May 8, 2018); Certification, MUR 6969 (MMWP12, LLC, *et al.*) (June 7, 2018); Certification, MUR 6968 (Tread Standard, LLC, *et al.*) (May 8, 2018); Certification, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Feb. 23, 2016); *but see* Certification, MUR 6920 (Am. Conservative Union, *et al.*) (Jan. 24, 2017) (finding reason to believe 501(c)(4) social welfare organization violated 52 U.S.C. § 30122).

<sup>45</sup> *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (“The controlling commissioners did not dispute that [52 U.S.C.] § 30122 applies to closely held corporations and corporate LLCs. We agree that it does.”). The Court held that the Commission's dismissal of several matters involving alleged LLC conduits — based on the rationale that the matters presented an issue of first impression, which raised fair notice and due process concerns — was reasonable. *Id.* at 357–58.

<sup>46</sup> *See* Statement of Reasons of Chairman Matthew S. Petersen and Comm'rs Caroline C. Hunter and Lee E. Goodman at 8, 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“Upon thorough

1                   2.       The Available Information Supports an Inference that PAAC and PEC  
 2                               Were Not the True Source of the Contributions to the IEOPCs

3                   The factual record in this matter supports finding reason to believe that PAAC and PEC  
 4 were not the true source of the contributions to the IEOPCs, and that Cohler was, in fact, the true  
 5 contributor. Significant unknowns plague the record regarding the source or sources of PAAC  
 6 and PEC's funds and their operations, which are made no clearer by PAAC and PEC's  
 7 representations in their Response. What information is available, however, including the timing  
 8 and nature of PAAC's and PEC's contributions, is consistent with the Complaint's allegation that  
 9 the contributions to the IEOPCs were made in the name of another. The available information  
 10 suggests, moreover, that Cohler may have been the source of their funds and exercised control  
 11 over them such that PAAC and PEC operated to make contributions — and provide other  
 12 charitable grants not relevant here — on his behalf.

13                   Though PAAC and PEC were able to raise significant sums in short time, there is little-  
 14 to-no information about how they obtained their funds or from whom. PAAC received a single  
 15 donation of approximately \$430,000 in stock in its first five weeks after incorporation, which

---

consideration of these matters, we conclude that closely held corporations and corporate LLCs may be considered straw donors in violation of section 30122 under certain circumstances. . . . [W]hen enforcing section 30122 in similar future matters, the proper focus will be on whether funds were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements. If they were, then the true source of the funds is the person who funneled them through the corporate entity for this purpose. Where direct evidence of this purpose is lacking, the Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); Statement of Reasons of Vice Chairman Steven T. Walther and Comm’rs Ann M. Ravel and Ellen L. Weintraub at 3–4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“Although the ability of individuals and corporations to make unlimited contributions to super PACs is a post-*Citizens United* and *SpeechNow* phenomenon, the longstanding prohibition against making contributions in the name of another remains unchanged and squarely applies to these [LLC] cases . . . . Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.” (citations omitted)).

1 appears to be the sole funding it received before making its contribution to SMP.<sup>47</sup> PEC,  
2 meanwhile, received six donations totaling approximately \$22 million in the seven weeks  
3 between its incorporation and the end of its first fiscal year and, since then, has largely stopped  
4 receiving donations.<sup>48</sup> Though PAAC and PEC tout the number of donations each has  
5 received,<sup>49</sup> notably, neither has addressed how many distinct *donors* have given to them and  
6 neither has represented that the donations they received prior to making the relevant  
7 contributions came from more than one source.<sup>50</sup> PAAC and PEC also have not provided  
8 information explaining how they were able to obtain these sizeable donations. Publicly available  
9 information sheds no more light on the situation, as PAAC and PEC have no online presence and  
10 their Officers and Directors — Cohler, Van Loben Sels, and Carrig — do not appear to have  
11 publicly solicited donations or promoted the organizations.<sup>51</sup> Furthermore, while ostensibly  
12 explaining the roles of Van Loben Sels, Carrig, and Apercen in the contributions of PAAC and  
13 PEC, Respondents fail to give similar attention to Cohler's role and conspicuously sidestep the  
14 question of whether Cohler provided any of the funds for these organizations.

---

<sup>47</sup> Compare PAAC & PEC Resp. at 5 (“In its initial fiscal year (May 21, 2018 through June 30, 2018), PAAC received donations of appreciated publicly traded securities in the amount of \$434,400.”), with PAAC & PEC Resp. Ex. K, PAAC Grant Summary Chart (reflecting \$200,000 contribution to SMP on July 18, 2018).

<sup>48</sup> PAAC & PEC Resp. at 3–5; Carrig Decl. ¶ 9.

<sup>49</sup> PAAC & PEC Resp. at 3–6.

<sup>50</sup> See *supra* nn. 10–11 and accompanying text; accord First Gen. Counsel's Report at 11,

<sup>51</sup> See Compl. ¶¶ 9, 12 (discussing lack of public footprint of PAAC and PEC); PAAC & PEC Resp. at 12–13 (“Respondents determined that during the initial stages of formation, they could best advance their respective missions by making grants to other, more established organizations, rather than conducting their own programmatic activities.”).

1           The timing of the transactions at issue is also indicative of the contributions from PAAC  
2 and PEC to the IEOPCs being straw donor contributions. PAAC received one infusion of stocks  
3 worth approximately \$434,000 during its first five weeks after incorporation — between May 21,  
4 2018, and June 30, 2018 — and shortly thereafter made a \$200,000 contribution to SMP on July  
5 18, 2018 — along with a donation of \$233,000 to a 501(c)(4) on July 31, 2018.<sup>52</sup> It thus appears  
6 that PAAC received a single infusion of funds and, in as few as 18 days, used that influx of  
7 funding to contribute to SMP. The Commission has previously found that close temporal  
8 proximity between an entity's receipt of funds and its subsequent contribution may indicate that  
9 it is not the true source of the contribution.<sup>53</sup> While PEC's timeline is more extended — it was  
10 formed in late September 2019, received over \$22 million in donations by year-end, and made  
11 contributions to the IEOPCs in February and May of 2020<sup>54</sup> — its pattern of activity is likewise  
12 consistent with the use of the entity as a conduit for contributions in the name of another.<sup>55</sup>

13           In addition, the available information is in tension with many of PAAC and PEC's  
14 representations regarding the manner in which they operate and their purposes. Although both  
15 organizations stated in their IRS filings that grant-making would only be a subset of their overall  
16 practices, both represent that they have not engaged in any public-facing outreach and do not

---

<sup>52</sup> PAAC & PEC Resp. at 5; PAAC & PEC. Resp. Ex. K, PAAC Grant Summary Chart.

<sup>53</sup> Factual & Legal Analysis at 3, MUR 6920 (Now or Never PAC) (transfer of funds from respondent to entity who then made contribution to PAC “on the same day” indicative of conduit contribution);

; First Gen. Counsel's Report at 14–17,

First Gen. Counsel's Report at 9–10, MUR 6968 (Tread Standard, LLC, *et al.*) (\$150,000 contribution to an IEOPC approximately seven weeks after the LLC was formed).

<sup>54</sup> PAAC & PEC Resp. at 3–5.

<sup>55</sup> *Accord* First Gen. Counsel's Report at 10–11, MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (contributions made over a nine-month period).

1 describe any activity beyond grant-making.<sup>56</sup> PEC also appears to make donations and  
2 contributions irrespective of whether the recipient's activities directly advance its stated purposes  
3 relating to environmentalism.<sup>57</sup> The lack of consistency between PAAC and PEC's stated  
4 purposes, on the one hand, and their actual activities, including their political donations and  
5 contributions, on the other hand, indicate that their stated purposes may conceal another, true  
6 purpose that is behind the formation and operation of these organizations.

7         The available information indicates that Cohler may be the source of PAAC and PEC's  
8 funds and may exercise control over the organizations. As described above, there is no available  
9 information that would explain how PAAC and PEC could have raised the sizeable funds they  
10 received in the short time after their formation from third parties, supporting an inference that  
11 Cohler, the CEO of both organizations, is the source of PAAC's and PEC's funds.<sup>58</sup> Given this  
12 and the apparent relationship between Apercen, its partners, Van Loben Sels and Carrig, and  
13 Cohler,<sup>59</sup> as well as the lack of available information suggesting why these three individuals  
14 would otherwise choose to form and operate charitable organizations together, it appears likely  
15 that Cohler is an Apercen client and the source of PAAC and PEC's funds. If so, then Van  
16 Loben Sels and Carrig have an incentive to follow Cohler's direction in voting to approve grants  
17 such that Cohler may also have exercised *de facto* control over those organizations' decision-

---

<sup>56</sup> PAAC & PEC Resp. at 3–6; *accord*

First Gen.

Counsel's Report at 9–10, MUR 6995 (Right to Rise, *et al.*) (recommending finding reason to believe an LLC made conduit contributions where it ambiguously stated that it had plans to do business in the future).

<sup>57</sup> See *supra* n. 24 and accompanying text.

<sup>58</sup> See *supra* nn. 47–51 and accompanying text.

<sup>59</sup> See *supra* nn. 14–18 and accompanying text.

1 making in contributing to the IEOPCs. This is consistent with the organizations' making straw  
2 donor contributions and contradicts PAAC and PEC's representations that there is sufficient  
3 separation between their source of funds and their decision-making to ameliorate concerns of the  
4 same.<sup>60</sup>

5 More specifically, Van Loben Sels and Carrig submitted sworn declarations representing  
6 that the funds PAAC and PEC received "were not received for the purpose of making subsequent  
7 political contributions to super PACs in the name of another" and did not include a "designation,  
8 instruction, or encumbrance to any super PACs."<sup>61</sup> However, that the funds received were not  
9 encumbered or designated towards a specific purpose at the time they were received does not  
10 exclude a possible violation of Section 30122. For example, the court in *United States v.*  
11 *Whittemore* upheld a jury verdict finding that an individual had violated 52 U.S.C. § 30122 when  
12 he made a series of unconditional gifts to friends and employees while encouraging them to use  
13 those funds to contribute to a candidate.<sup>62</sup> Van Loben Sels and Carrig's carefully-worded  
14 attestations that the funds "were not received for the purpose of making subsequent political  
15 contributions to super PACs in the name of another"<sup>63</sup> are nevertheless consistent with the  
16 Complaint's allegation that funds were provided to enable PAAC and PEC to make political  
17 contributions, as they merely make the conclusory legal claim that such contributions were not to

---

<sup>60</sup> Moreover, although Van Loben Sels and Carrig discuss the process of vetting and approving grants, *see* Van Loben Sels Decl. ¶ 7 ("[a]ll grants awarded by PAAC, [sic.] were reviewed and vetted through PAAC's diligence process"); Carrig Decl. ¶ 8 ("[a]ll grants awarded by PEC were reviewed and vetted through PEC's diligence process"), neither provide any details regarding what this process entails or how grant targets are selected in the first instance.

<sup>61</sup> Van Loben Sels Decl. ¶ 8; Carrig Decl. ¶ 9.

<sup>62</sup> 776 F.3d 1074, 1079 (9th Cir. 2015).

<sup>63</sup> Van Loben Sels Decl. ¶ 8; Carrig Decl. ¶ 9.

1 be given in the name of another. And, in any event, if Cohler funded PAAC and PEC, then Van  
2 Loben Sels and Carrig may lack personal knowledge of the purpose of the funding.<sup>64</sup> As noted  
3 earlier, Cohler did not submit a declaration.

4 The Response of PAAC, PEC, and their officers contends that this matter is  
5 distinguishable from prior matters before the Commission that involved alleged LLC conduits  
6 because PAAC and PEC are public benefit corporations that lack stockholders or other beneficial  
7 owners and, thus, “PAAC and PEC’s funds are legally distinct from the funds of any donor.”<sup>65</sup>  
8 The legal separation between PAAC and PEC and the source or sources of their funds, however,  
9 does not preclude their engaging in specific transactions that violate Section 30122. In prior  
10 matters, Commissioners and courts have explained that, although earlier decisions of the  
11 Commission had “treat[ed] funds deposited in a corporate account as the corporation’s funds,  
12 even if the corporation’s owner could legally convert them into his or her own personal funds,”  
13 this strict legal separation is not an appropriate basis to evaluate a potential straw donor  
14 contribution.<sup>66</sup> And the Commission found reason to believe that a closely-held corporation  
15 violated Section 30122 in MUR 6920 (*American Conservative Union, et al.*).<sup>67</sup>

---

<sup>64</sup> And neither Van Loben Sels nor Carrig make any representations about whether those who funded PAAC and PEC did so with the purpose of making political contributions.

<sup>65</sup> PAAC & PEC Resp. at 11.

<sup>66</sup> *Campaign Legal Ctr. & Democracy 21 v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (quoting Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, MURs 6485, 6487, 6488, 6711, 6930 at 2 (April 1, 2016)); *cf. Whittemore*, 776 F.3d at 1080 (noting that because the “key issue . . . is the source of the funds,” their legal status when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122]”).

<sup>67</sup> Certification, MUR 6920 (*Am. Conservative Union, et al.*) (Sep. 20, 2017); *see also* Conciliation Agreement § IV.2, MUR 6920 (*Am. Conservative Union, et al.*) (explaining that respondent “American Conservative Union is registered with the IRS as a social welfare organization under section 501(c)(4) of the Internal Revenue Code”).

1 In sum, if Cohler is the source of PAAC and PEC's funds, proposes which organizations  
2 PAAC and PEC should support, and holds sway over how PAAC and PEC's boards vote — all  
3 of which are reasonable inferences from the information currently available — then it would  
4 appear that PAAC and PEC were not the true contributors to the IEOPCs. Accordingly, we  
5 recommend that the Commission find reason to believe that PAAC, PEC, and Cohler violated  
6 52 U.S.C. § 30122.

7 **B. The Commission Should Take No Action at this Time Regarding the Other**  
8 **Respondents**

9 There is no indication from the available information that the IEOPCs knew or had  
10 reason to know that PAAC's and PEC's contributions were made in the name of another. And  
11 the available information does not suggest that Joseph, Van Loben Sels, or Carrig violated the  
12 Act or Commission regulations as a result of their actions.<sup>68</sup> However, because of the opacity  
13 surrounding PAAC and PEC's structure, formation, and manner of selecting grant targets, we  
14 recommend that the Commission take no action at this time regarding these other Respondents  
15 pending an investigation.

16 **IV. PROPOSED INVESTIGATION**

17 The proposed investigation would involve determining: (1) the source of the funds used  
18 by PAAC and PEC to make contributions to SMP, VoteVets, and Unite the Country; (2) details  
19 regarding the nature of PAAC and PEC's decision-making regarding their contributions to SMP,  
20 VoteVets, and Unite the Country, including the identification of these political committees as  
21 grant targets, the vetting of these committees, and the approval of these grants by PAAC and

---

<sup>68</sup> See *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1115 (D. Utah 2018) (invalidating the Commission's regulation at 11 C.F.R. § 110.4(b)(1)(iii) prohibiting "knowingly help[ing] or assist[ing] any person in making a contribution in the name of another").

1 PEC's boards; (3) whether the funds used to make PAAC and PEC's contributions to SMP,  
2 VoteVets, and Unite the Country were provided for the purpose of making political  
3 contributions; and (4) details regarding PAAC and PEC's general practices and formation as  
4 relevant to evaluate whether they function as a legitimate 501(c)(4) organization in other  
5 respects. We plan to begin by seeking relevant information on an informal basis, but we  
6 recommend that the Commission authorize the use of compulsory process, as necessary, to  
7 complete the investigation.

## 8 **V. RECOMMENDATIONS**

- 9 1. Find reason to believe that Pacific Atlantic Action Coalition violated 52 U.S.C.  
10 § 30122 by knowingly permitting its name to be used to effect a contribution in  
11 the name of another;
- 12 2. Find reason to believe that Pacific Environmental Coalition violated 52 U.S.C.  
13 § 30122 by knowingly permitting its name to be used to effect contributions in the  
14 name of another;
- 15 3. Find reason to believe that Matt Cohler violated 52 U.S.C. § 30122 by making  
16 contributions in the name of another;
- 17 4. Take no action at this time with respect to Tom Van Loben Sels, Melissa Carrig,  
18 James P. Joseph, SMP and Rebecca Lambe in her official capacity as treasurer,  
19 Unite the Country and Michael Morris in his official capacity as treasurer, and  
20 VoteVets PAC and Rick Hegdahl in his official capacity as treasurer;
- 21 5. Authorize the use of compulsory process;
- 22 6. Approve the attached Factual and Legal Analysis; and
- 23 7. Approve the appropriate letters.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Date: 12/21/20

Lisa J. Stevenson  
Acting General Counsel

  
Charles Kitcher  
Acting Associate General Counsel  
for Enforcement

  
Lynn Y. Tran  
Assistant General Counsel

  
Aaron Rabinowitz  
Attorney