



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7754
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)	
)	

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

The Complaint in this matter alleged that two 501(c)(4) organizations—Pacific Atlantic Action Coalition (“PAAC”) and Pacific Environmental Coalition (“PEC”)—served as illegal conduits for contributions made in the name of another (known colloquially as “straw donor” contributions) to various independent expenditure-only political committees (“IEOPCs”), in violation of 52 U.S.C. § 30122 of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹

PAAC and PEC deny the allegations, and assert they are grantmaking charitable organizations that made the contributions of their own accord, without direction or instruction from any donor, to further their respective policy missions.² Indeed, PAAC and PEC submitted substantial evidence establishing their corporate structure, organizational mission, decision-making processes, and other grantmaking activity. Given this rebuttal evidence, and considering

¹ Complaint at 2, 9–11 (June 25, 2020), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

² Response of PAAC, PEC, Van Loben Sels, and Cohler at 2 (Sept. 4, 2020), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*) (“PAAC & PEC Response”). *See also* Response of Carrig (Oct. 23, 2020), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*) (adopting the PAAC & PEC Response).

the costs and bleak prospects of any potential investigation, we voted to dismiss the allegations as an exercise of prosecutorial discretion.³

I. Factual Background

The Complaint's allegations center on PAAC's and PEC's formations and early activities to suggest that their purposes were to obfuscate the true sources of their political contributions. Although these entities share some common features, each organization's origin and activities differs from the other's in significant ways.

A. *Pacific Atlantic Action Coalition*

PAAC incorporated in California on May 21, 2018, and it registered with the IRS as a 501(c)(4) nonprofit organization.⁴ Its stated mission is to educate the public and advocate in a number of policy areas, including voting rights, criminal justice, and firearms policy.⁵ PAAC's CEO is Matt Cohler, and its Treasurer and Secretary is Tom van Loben Sels. Both Cohler and van Loben Sels serve on the two-member board of directors.⁶ In addition, PAAC retains an outside tax consulting firm, Apercen Partners LLC, to assist with its grantmaking work.⁷ As set out in PAAC and PEC's response, affidavits, and other supporting documents, as Treasurer, van Loben Sels leads the grantmaking process for PAAC and engages Apercen to research and vet potential grantees. Proposed grants are then presented to the board of directors for final approval.⁸

After incorporating and before the end of its first fiscal year on June 30, 2018, PAAC received one donation of approximately \$434,000 in securities for its initial funding.⁹ According to PAAC's Treasurer, since its formation, PAAC has received a total of approximately \$1.6 million in funding through ten donations. PAAC maintains that all these donations were for its general operations—none carried instructions for a specific use, including any earmark for a contribution to another organization.¹⁰

Since forming, PAAC has made three contributions to other organizations: On July 19, 2018, PAAC contributed \$200,000 to Senate Majority PAC, an IEOPC. The same month, on July 31, it made a \$233,000 contribution to New Nation Rising Action Fund, a 501(c)(4) organization. Finally, PAAC made a third contribution to another 501(c)(4) organization—Govern for California—on August 13, 2020.¹¹ Again, according to van Lobel Sels's affidavit, PAAC did not

³ Certification (Oct. 26, 2021), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

⁴ PAAC & PEC Response at 5 & Ex. F.

⁵ PAAC & PEC Response, van Loben Sels Decl. ¶ 2.

⁶ PAAC & PEC Response at 5.

⁷ *Id.*

⁸ PAAC & PEC Response, van Loben Sels Decl. ¶¶ 3–7.

⁹ PAAC & PEC Response at 5.

¹⁰ PAAC & PEC Response, van Loben Sels Decl. at ¶ 8.

¹¹ PAAC & PEC Response, Ex. K (Pacific Atlantic Action Coalition Grant Summary Chart).

form with the intent to make contributions to any specific group, and PAAC plans to continue its grantmaking activities in the future.¹²

B. Pacific Environmental Coalition

PEC incorporated in California on September 23, 2019, and it registered as a 501(c)(4) nonprofit organization with the IRS.¹³ Its stated mission is to educate the public and promote policies related to conservation and the environment.¹⁴ Matt Cohler serves as PEC's CEO and on its board of directors. PEC's Treasurer, Secretary, and other Director is Melissa Carrig.¹⁵ Like PAAC, PEC has retained Apercen Partners LLC to assist with due diligence for grantmaking. In a sworn statement, Carrig states that her role as PEC's Treasurer involves managing the organization's financial transactions and recordkeeping, and that she leads the grantmaking and due diligence process, which is ultimately subject to board approval.¹⁶

By the end of its first calendar year of operations in 2019, PEC received nearly \$23 million in donations via six contributions.¹⁷ According to Carrig, all the contributions were for general operations and were unencumbered.¹⁸ Since forming, PEC has made twelve grants totaling almost \$7 million.¹⁹ According to the Respondents, nine of the twelve grants were made to 501(c)(4) organizations, for a total of \$5,947,500. Three of the twelve grants, totaling \$1,050,000, were made to IEOPCs—two contributions to Unite the Country and VoteVets PAC on February 13, 2020, and one contribution to Senate Majority PAC on May 14, 2020.²⁰ Carrig further attests that PEC was not formed with the intent of supporting any specific organizations.²¹

C. The Complaint

The Complaint alleges that PAAC and PEC were used by unnamed individuals as conduits to make the above-mentioned contributions to IEOPCs without disclosing the true contributor. It bases this claim on the timing of the contributions relative to the organizations' formations, the ties of the organizations' officers to Apercen Partners, and the organizations' lack of public-facing

¹² PAAC & PEC Response, van Loben Sels Decl. ¶ 6.

¹³ PAAC & PEC Response at 2–3 & Ex. E.

¹⁴ PAAC & PEC Response, Carrig Decl. ¶ 2.

¹⁵ PAAC & PEC Response at 3.

¹⁶ PAAC & PEC Response, Carrig Decl. ¶¶ 4–8.

¹⁷ *Id.* at ¶ 9.

¹⁸ *Id.*

¹⁹ PAAC & PEC Response, Ex. J (Pacific Environmental Coalition Grant Summary Chart).

²⁰ *Id.*

²¹ PAAC & PEC Response, Carrig Decl. ¶ 7.

activities. It does not accuse any specific individual or group of individuals of being the true source of the alleged straw donor contributions.²²

In its First General Counsel's Report, the Office of General Counsel ("OGC") recommended that the Commission find reason to believe a violation of the Act occurred and open an investigation. Based on the Complaint and its own speculative outside research to supplement the Complaint's allegations,²³ OGC targeted the groups' CEO, Matthew Cohler, as the likely source of PAAC and PEC's funds and contributions and claimed that his alleged control over the organizations made him the true contributor to the relevant IEOPCs.²⁴ For the reasons set forth below, however, we disagreed with OGC's recommendations and voted to dismiss the Complaint.

II. The Law

The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.²⁵ The term "person" for purposes of the Act and Commission regulations includes partnerships, corporations, and "any other organization or group of persons."²⁶ The Commission's regulations include two examples of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.²⁷

A contribution in the name of another can be structured in different ways: for example, a contributor can advance funds to another person to make a contribution in that person's name, or he or she can promise reimbursement to another person for the latter's contribution after the fact. But the Commission's central inquiry in examining a potential conduit contribution is "whether

²² Complaint at 3–6 (June 25, 2020), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

²³ See Statement of Reasons of Vice Chairman McGahn and Commissioner Hunter at 12 (July 25, 2013), MUR 6540 (Rick Santorum for President, *et al.*) ("OGC apparently thinks it has free reign to conduct (or not conduct) pre-RTB investigative activities without any guiding or limiting principles.").

²⁴ First General Counsel's Report at 2–3 (Dec. 21, 2020), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

²⁵ 52 U.S.C. § 30122.

²⁶ 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

²⁷ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

funds were intentionally funneled through a [conduit] for the purpose of making a contribution that evades the Act’s reporting requirements.”²⁸

In the absence of direct evidence at the reason-to-believe stage in a matter involving an alleged straw donor contribution, the Commission engages in a fact-bound assessment of the specific circumstances surrounding the contribution, including, but not limited to, the transaction’s structure, the contributor’s legal status, the contributor’s previous and subsequent activities, and any relevant relationships between the contributing entity and third parties.²⁹ For instance, in the case of limited liability corporations accused of conduit contributions, past Commissioners have written that “the Commission will look at whether ... 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.”³⁰ In other matters, the Commission has noted that clustered contributions among employees in a single firm may suggest potential conduit contributions.³¹

But no one factor or circumstance is dispositive. Evidence that may be relevant in one case may not be persuasive in a matter involving a different organizational structure or other key factual distinction. Consequently, when considering whether there is reason to believe that a particular transaction is a conduit contribution, the Commission takes each allegation on a case-by-case basis.³²

III. Legal Analysis

Applying the Commission’s statute and regulations to the case at hand, there are not sufficient facts to find reason to believe PAAC or PEC served as illegal conduits for straw donor contributions. Specifically, there is insufficient evidence to suggest that PAAC and PEC are not the true donors to the relevant IEOPCs. Moreover, the cost of a potential investigation, relative to the low likelihood of success and the Commission’s interests, counseled in favor of the exercise of prosecutorial discretion.

²⁸ Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman at 12 (Apr. 1, 2016), 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.*)

²⁹ First General Counsel’s Report at 11 (Dec. 21, 2020), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

³⁰ Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman at 8 (Apr. 1, 2016), MUR 6485 (W Spann LLC, *et al.*), MURs 6487 and 6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*).

³¹ *See, e.g.*, Factual & Legal Analysis at 2 (Sept. 26, 2006), MUR 5818 (Fieger, Fieger, Kenney & Johnson, P.C.). *But see* Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas at 2 (July 20, 2000), MUR 4850 (Deloitte & Touche, LLP) (“The fact that several employees of the same company make contributions even on the same day, often after a fundraising drive, should raise no eyebrows.”).

³² Statement of Reasons of Chair Hunter and Commissioner Petersen at 9 (July 2, 2018), MURs 6968, 6995, 7014, 7017, 7019, and 7090 (Tread Standard LLC, *et al.*) (noting that the inquiry of an alleged conduit contribution “will often be fact-intensive”).

A. *Insufficient Evidence of Conduit Contribution*

As OGC’s First General Counsel’s Report summarizes, the Complaint suggests that three factors indicate a potential conduit contribution: (1) the timing between PAAC and PEC’s formation, initial donations, and subsequent contributions; (2) the overlap and relationships between PAAC and PEC’s officers; and (3) the lack of publicly known activities by the organizations.³³ Taken both separately and together, however, these circumstances do not suggest that PAAC or PEC made IEOPC contributions in the name of another, and the evidence the Complaint and OGC rely upon has been adequately rebutted by the Respondents.

First, the timing and circumstances of the relevant transactions does not suggest a conduit contribution. The Commission does not impose—and indeed, the Constitution forbids—any mandatory waiting period after an organization’s formation before it may engage in political activity.³⁴ It is possible that a particularly short length of time between an organization receiving funds and then contributing similar amounts of funds could indicate a conduit contribution, and the Commission has reasoned in past matters that evidence of an entity receiving funds and then making a political contribution shortly thereafter suggests that the contribution was in the name of another.³⁵ By contrast, however, the time between the Respondents’ receipt of donations and subsequent contributions was significantly longer: PAAC’s incorporation and its first IEOPC contribution were approximately two months apart, and the time between PEC’s incorporation and first IEOPC contribution was almost five months. Such an extended period of time between receiving donations and making contributions is not consistent with a scheme to illegally convey another’s contribution through the organizations.

Likewise, the significant differences in amounts received and later contributed by PAAC and PEF undermine the Complaint’s allegations. An entity contributing an amount identical to a sum recently received—or being later reimbursed for that amount—may suggest that the funds were conveyed for the purpose of being contributed.³⁶ By contrast, here PAAC and PEC’s IEOPC contributions were significantly less than their initial capital, let alone all donations received since their incorporations. And both PAAC and PEC have engaged in significant other grantmaking activity to non-political committees.³⁷ These facts too militate against finding reason to believe the transactions were conduit contributions.

³³ First General Counsel’s Report at 15–16 (Dec. 21, 2020), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

³⁴ *See Catholic Leadership Coalition of Tex. v. Reisman*, 764 F.3d 409, 428 (5th Cir. 2014) (holding that a Texas statute limiting general-purpose political action committee’s political expenditures to \$500 for 60-day window after its treasurer was appointed facially violated the First Amendment).

³⁵ *See, e.g.*, Factual & Legal Analysis at 3 (July 13, 2017), MUR 6920 (Now or Never PAC) (reasoning that the transfer of funds from respondent to an entity who then made contribution to PAC “on the same day” is indicative of a conduit contribution).

³⁶ *See, e.g.*, Factual & Legal Analysis at 7 (Oct. 13, 1999), MUR 4818 (Hon. Gene Stipe) (reasoning that a candidate receiving a personal loan for the same amount the candidate, shortly thereafter, lent his own campaign suggests a contribution in the name of another).

³⁷ PAAC & PEC Response, Exs. J & K.

Second, the use of an outside firm to assist with grantmaking and due diligence, and any overlap between the organizations' officers and employees, does not bear on the central legal question of the purpose or intent behind the contributions. Indeed, the significant detail provided by the Respondents about PAAC and PEC's internal governance, due diligence, and grantmaking process strengthens Respondents' claims that the contributions were their own. PAAC and PEC have given to different kinds of recipients, and outside experts vet all potential grants—including to political committees—which are then subject to board approval. This suggests that these 501(c)(4) organizations made their own grant decisions and were not controlled by, or mere pass-throughs for, another's political contributions. This extensive evidence from the Respondents undermines any reason-to-believe finding.³⁸

Finally, PAAC and PEC's lack of publicly known activities or promotional efforts by PAAC or PEC does not suggest that these organizations served as illegal conduits. The Act does not contain any requirement that an individual or organization must advertise or publicize their political activities. Nor is it surprising that a relatively new nonprofit organization focused on soliciting sizeable donations from a small number of contributors did not engage in large-scale grassroots fundraising campaigns. This information is simply irrelevant in determining whether a contribution was in the name of another. We therefore decline the Complaint and OGC's invitation to assume a nefarious purpose from PAAC or PEC's decision not to advertise its activities or maintain an internet or social media presence.³⁹

In sum, the facts and circumstances of these contributions suggest that the contributions at issue were appropriately attributed to PAAC and PEC. Consequently, there was no basis for finding reason to believe that PAAC, PEC, their individual officers, or the recipient IEOPCs engaged in a conduit contribution scheme in violation of 52 U.S.C. § 30122.

B. Prosecutorial Discretion

Separate and apart from the merits, this matter further warranted dismissal under *Heckler v. Chaney* to avoid wasting the Commission's limited prosecutorial resources on a likely fruitless investigation.⁴⁰ As we have noted, the relevant legal question in this matter is one of intent and purpose: whether PAAC and PEC made IEOPC contributions based not on their own organizational decisions, but on the instructions of one or more donors.

Under these circumstances, adopting OGC's recommendation to ransack these organizations in order to disprove the Respondents' evidence and establish individuals' subjective

³⁸ See Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman at 8 (Apr. 1, 2016), MUR 6485 (W Spann LLC, *et al.*), MURs 6487 and 6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (noting that it is suggestive of a conduit contribution if an LLC “was created and operated for the sole purpose of making political contributions.”).

³⁹ First General Counsel's Report at 7 & n.26 (Dec. 21, 2020), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

⁴⁰ See *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (“[A]n agency's decision not to prosecute or enforce ... is a decision generally committed to an agency's absolute discretion ... [and] often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, ...”).

intent would require us to devote significant resources to a likely doomed effort.⁴¹ PAAC and PEC submitted detailed and authoritative evidence establishing both their independence and their organizational decision-making processes. Officers for both organizations filed affidavits attesting to the fact that neither organization received funds earmarked for political contributions.⁴² And likely legal challenges—such as the Respondents asserting their constitutional right to maintain the confidentiality of their donors—would rightfully limit the Commission’s ability to pry into these organizations’ papers and effects.⁴³

In the face of a daunting enforcement backlog, and given that a number of recent enforcement matters have wasted significant Commission resources, the Commission must carefully consider under what circumstances it seeks to launch long-term and expensive investigations.⁴⁴ Considering the costs and obstacles to such an investigation in this matter, as well as the Commission’s other pending matters, we opted against adopting such a far-reaching proposal.⁴⁵

IV. Conclusion

For the foregoing reasons, and based on the specific circumstances of this case, we declined to adopt OGC’s recommendations and voted to dismiss this matter as an exercise of prosecutorial discretion pursuant to *Heckler v. Chaney*.



Allen Dickerson
Vice Chair

December 1, 2021

Date


⁴¹ See Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 10 (July 21, 2021), MURs 7370 and 7496 (New Republican PAC, *et al.*) (“To probe [Respondent’s] subjective intent during this period would have necessitated a wide-ranging, costly, and invasive investigation.”).

⁴² PAAC & PEC Response, van Loben Sels Decl. ¶ 6; PAAC & PEC Response, Carrig Decl. ¶ 7. See also Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 9 (July 21, 2021), MURs 7370 and 7496 (New Republican PAC *et al.*) (reasoning that where speculative allegations are countered with sworn statements of rebuttal, the Commission must credit the sworn testimony).

⁴³ See *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021) (holding that a state requirement that nonprofit organizations disclose their donors unconstitutionally burdens donors’ associational rights).

⁴⁴ See, e.g., Second General Counsel’s Report at 8 (Aug. 4, 2021), MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*) (recommending ending an investigation after two years and dismissing a matter in light of the resource costs and expired statute of limitations). See also Statement of Commissioner Ellen L. Weintraub on the Senate’s Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), available at <https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf>.

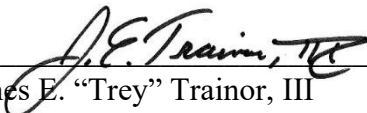
⁴⁵ Certification (Oct. 26, 2021), MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).



Sean J. Cooksey
Commissioner

December 1, 2021

Date



James E. "Trey" Trainor, III
Commissioner

December 1, 2021

Date