

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

Pre-MUR 668

DATES SUBMITTED: January 21, 2021

DATE ACTIVATED: July 20, 2023

EXPIRATION OF SOL: June 25, 2025-January 13,
2026

ELECTION CYCLE: 2020

SOURCE:

Office of the Election Comptroller of Puerto Rico

RESPONDENTS:

Foundation for Progress, Inc.
Fundación Pro Igualdad, Inc.
Salvemos a Puerto Rico and Joseph Fuentes-
Fernandez in his official capacity as Treasurer

MUR 7772

DATE COMPLAINT FILED: August 5, 2020

DATE OF NOTIFICATION: August 7, 2020;
September 28, 2022

LAST RESPONSE RECEIVED: December 8, 2022

DATE ACTIVATED: August 5, 2020

ELECTION CYCLE: 2020

EXPIRATION OF SOL: June 25, 2025-January 13,
2026**COMPLAINANTS:**

Comité Amigos Wanda Vazques
Jorge Dávila

RESPONDENTS:

Foundation for Progress, Inc.
Fundación Pro Igualdad, Inc.
Salvemos a Puerto Rico and Joseph Fuentes-
Fernandez in his official capacity as Treasurer
Joseph Fuentes-Fernandez in his personal capacity¹
Alejandro Brito-Zubizarreta
Andrew Keys
AP Engineering, Inc.
Augustos McCloskey

¹ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005) (explaining that treasurers may, in certain matters, be notified in both their official and personal capacities and that, in such matters, the Commission will make findings as to the committee and the treasurer in both their official and personal capacities).

1 BAE FE, LLC
 2 Beam, Longest and Neff, LLC
 3 Essential Insurance Services, Inc.
 4 Jaap, LLC
 5 LAS Enterprises
 6 Little Pictures Corp.
 7 Michael McCloskey
 8 National Strategies Group, LLC
 9 NGX Military Store
 10 Northshore Management Corp.
 11 Richard Machado-Gonzalez
 12

13 **RELEVANT STATUTES**
 14 **AND REGULATIONS:**

52 U.S.C. § 30122
 52 U.S.C. § 30104(b)
 11 C.F.R. § 104.3(a)(4)
 11 C.F.R. § 110.4(b)

15 **INTERNAL REPORTS CHECKED:** Disclosure Reports

16 **FEDERAL AGENCIES CHECKED:**

17 **I. INTRODUCTION**

18
 19 These matters stem from a Complaint filed with the Federal Election Commission and a
 20 referral from Puerto Rico's Oficina del Contralor Electoral alleging that at least \$250,000 in
 21 contributions in the name of another were made through two nonprofit corporations, Fundación
 22 Pro Igualdad, Inc. and Foundation for Progress, Inc. (collectively, the "Foundations"), to
 23 Salvemos a Puerto Rico, an independent expenditure-only political committee ("IEOPC"), and
 24 Joseph Fuentes-Fernandez ("Fuentes-Fernandez") in his official capacity as Treasurer.
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On

1 May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to violations of
 2 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the true identities
 3 of donors.³ Fuentes-Fernandez admitted in his plea agreement
 4 that he and others established the Foundations in order to
 5 conceal the true identities of donors to Salvemos a Puerto Rico and that the Foundations were
 6 merely conduits for contributions from others.⁴ Fuentes-Fernandez was sentenced on August 26,
 7 2022, to 14 months in prison with three years of supervised release.⁵ Salvemos a Puerto Rico,
 8 the ultimate recipient IEOPC, was sentenced to three years of supervised probation, ordered to
 9 pay a \$150,000 fine, and required to file amended reports with the Commission.⁶

10 Fuentes-Fernandez subsequently filed amended reports with the Commission disclosing
 11 the identities of 15 contributors who made contributions through the Foundations,⁷ and the
 12 Commission later sent notifications to those contributors in relation to MUR 7772.⁸ Certain of
 13 those Respondents submitted Responses following the notifications

14 The

³ Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

⁴ Fuentes-Fernandez Plea, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁵ Fuentes-Fernandez Judgment at 2.

⁶ Salvemos a Puerto Rico Judgment at 1; *see also* Salvemos a Puerto Rico, 2022 July Quarterly Report at 6 (Aug. 19, 2022) (disclosing payment of \$150,000 fine to United States District Court).

⁷ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁸ Compl. Notif. Letters (Sept. 28, 2022).

1 available information as it relates to the knowledge and intent of the contributors is mixed,
2 however, given the overall context of the scheme as relating to a nonfederal election and the lack
3 of available information indicating that the contributors understood that the ultimate recipient of
4 their money was a *federal* political committee.

5 We recommend that the Commission exercise its prosecutorial discretion, dismiss the
6 allegations against Fuentes-Fernandez and Salvemos a Puerto Rico, and issue a letter of
7 admonishment to those Respondents, because the Commission's interests as to these
8 Respondents have been adequately vindicated by the criminal proceedings. Similarly, although
9 it could choose to engage in further investigation to determine the extent to which the
10 contributors understood the federal aspects of the straw-donor scheme, we nevertheless
11 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations
12 against the 15 contributors who were identified as donating to Salvemos a Puerto Rico through
13 the Foundations.

14 Finally, we recommend that the Commission find reason to believe that Fundación Pro
15 Igualdad, Inc., and Foundation for Progress, Inc., which served distinct roles in the scheme and
16 were not defendants in the criminal case, knowingly and willfully violated 52 U.S.C. § 30122 by
17 permitting their names to be used to effect contributions in the name of another. We recommend
18 that the Commission authorize pre-probable cause conciliation with the Foundations.

1 II. FACTUAL BACKGROUND

2 A. Initial Complaints and Responses

3 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
 4 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

5 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
 6 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
 7 represented in their certifications with the Puerto Rico Secretary of State that they would be
 8 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
 9 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
 10 under Puerto Rico law and section 501(c)(4) of the Internal Revenue Code.¹¹ The Foundations
 11 were incorporated within seven minutes of each other by Alvaro Pilar-Vilagran (“Pilar-
 12 Vilagran”)

13 .¹² The Foundations share the same physical address,¹³ which a
 14 company offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites
 15 or any accounts on social media sites, and online searches revealed no information about their

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation;

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

1 activities other than articles discussing the allegations in the Complaint, the federal criminal
2 case, or related litigation. As of the date of this report, the Foundations do not appear on the
3 Internal Revenue Service's database of nonprofit entities.¹⁵

4 On June 25, 2020, fifteen days after the Foundations' formations, they contributed
5 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
6 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
7 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
8 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
9 October 2020 and January 2021, totaling \$257,500.¹⁸

10 The Foundations maintain active status with the Puerto Rico Department of State and
11 filed Annual Reports with balance sheets in 2021 and 2022.¹⁹ Foundation for Progress, Inc.
12 reported \$32,490 in current assets in 2021, and \$7,752 in current assets in 2022.²⁰ Fundación
13 Pro Igualdad, Inc. reported \$6,135 in current assets in 2021, and \$1,134 in current assets in 2022.

¹⁵ See *Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

¹⁹ *Corporations Search*, GOV'T OF P.R. DEP'T OF STATE, <https://rceweb.estado.pr.gov/en/search/results/> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”).

²⁰ *Corporation Information: Foundation for Progress Inc.*, GOV'T OF P.R. DEP'T OF STATE, <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121> (last visited Dec. 11, 2023)

1 ²¹ Publicly available information does not indicate that the Foundations have engaged in any
2 activity other than the aforementioned contributions to Salvemos a Puerto Rico.

3 1. MUR 7772 Complaint

4 The Complaint in MUR 7772 was filed on August 5, 2020, and primarily alleges that
5 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
6 “laundering the funds” through the two nonprofit organizations and “failing to report the origin
7 of the donations.”²² The Complaint further alleges that the “only purpose of these two nonprofits
8 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
9 Puerto Rico PAC.”²³ The Complaint points to the fact that the Foundations were registered
10 seven minutes apart and the short period of time between the incorporation of the Foundations
11 and their first donations to Salvemos a Puerto Rico 15 days later as factors supporting its
12 allegations.²⁴

13 Fuentes-Fernandez, Salvemos a Puerto Rico, and the Foundations submitted initial
14 Responses prior to DOJ’s filing of the criminal charges. Fuentes-Fernandez and Salvemos a
15 Puerto Rico asserted in their initial Response that the Commission lacks jurisdiction because
16 there is no federal candidate involved.²⁵ The Foundations likewise contended in their joint

²¹ *Corporation Information: Fundación Pro Igualdad Inc.*, GOV’T OF P.R. DEP’T OF STATE, <https://rcweb.estado.pr.gov/en/entity-information?c=445222-121> (last visited Dec. 11, 2023).

²² Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id.*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

²³ Compl. at 4-5.

²⁴ *Id.* at 3.

²⁵ Salvemos a Puerto Rico & Joseph Fuentes-Fernandez Resp.at 2-3 (Sept. 20, 2020) (“Salvemos Resp.”).

1 Response that the Commission lacks jurisdiction because the matter does not involve a federal
2 election and all funds collected by the Foundations and their donations to Salvemos a Puerto
3 Rico were legally permissible and duly reported.²⁶ The Foundations did not provide any
4 information regarding the provenance of their funds, who manages them, or whether they have
5 engaged in any activity other than the contributions to Salvemos a Puerto Rico. Salvemos a
6 Puerto Rico and Joseph Fuentes-Fernandez filed a joint supplemental Response following the
7 criminal charges and resulting pleas requesting that the Commission close the matter in light of
8 the guilty pleas.²⁷

9 2. Pre-MUR 668 Referral

10 A week before they filed the Complaint in this matter, the Complainants in MUR 7772
11 raised similar issues before Puerto Rico's Oficina del Contralor Electoral ("OCE").²⁸ OCE
12 issued a decision on September 23, 2020, finding that it did not have jurisdiction because
13 Salvemos a Puerto Rico is a federal political committee registered with the Commission and
14 directing that a copy of its determination letter be sent to the Commission.²⁹ On January 21,
15 2021, the Commission received the determination letter and supporting documentation, and it has
16 designated the referral Pre-MUR 668. The Commission sent notifications regarding the
17 referral to Salvemos a Puerto Rico and Fuentes-Fernandez on July 27, 2023, and to the

²⁶ Fundación Pro Igualdad Inc. & Foundation for Progress Inc. Resp. at 5-7 (Sep. 23, 2020) ("Foundations' Resp.").

²⁷ Salvemos a Puerto Rico & Joseph Fuentes-Fernandez Supp. Resp. at 2 (June 29, 2022).

²⁸ Oficina del Contralor Electoral, Determination, OCE-Q-2020-005 (Sept. 18, 2020), Pre-Mur 668 [hereinafter OCE Referral]. OCE is the agency responsible for investigating violations of Puerto Rico's campaign finance laws. OFICINA DEL CONTRALOR ELECTORAL, <https://oce.pr.gov/sobre-nosotros/> (last visited Dec. 11, 2023).

²⁹ OCE Referral at 5-6.

1 Foundations on August 21, 2023.³¹ Salvemos a Puerto Rico and Fuentes-Fernandez filed a joint
2 Response asking the Commission to exercise prosecutorial discretion and dismiss the matter
3 because the allegations had been reviewed and resolved by DOJ.³² The Response attached an
4 exhibit reflecting that Salvemos a Puerto Rico, Inc., is no longer an active corporation and has
5 been dissolved under Virginia law. The Response further stated that Salvemos a Puerto Rico's
6 bank account was closed with a zero balance.³³ Foundation for Progress, Inc. and Fundación Pro
7 Igualdad, Inc. responded that the issues in Pre-MUR 668 were investigated and addressed by
8 DOJ and therefore the Commission should close Pre-MUR 668 without further action.³⁴

9 **B. DOJ's Criminal Investigation and Prosecution**

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11 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as
12 an organizational defendant, pleaded guilty to 18 U.S.C. § 1001(a)(1) for making false
13 statements to the Commission about the true identities of the donors of the contributions at issue
14 in these matters.³⁶ Fuentes-Fernandez was sentenced on August 26, 2022 to 14 months in prison

³¹ Notif. Letters (July 27, 2023, August 21, 2023), Pre-MUR 668.

³² Salvemos a Puerto Rico & Joseph Fuentes-Fernandez Resp. at 1-2 (Aug. 11, 2023), Pre-MUR 668.

³³ *Id.* at 2.

³⁴ Foundation for Progress, Inc. & Fundación Pro Igualdad, Inc. Resp. at 2 (Sept. 5, 2023), Pre-MUR 668.

³⁶ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

1 with three years of supervised release.³⁷ Salvemos a Puerto Rico was sentenced to three years of
2 supervised probation and a \$150,000 fine, and ordered to file amended reports with the
3 Commission.³⁸

4 1. Plea Agreement

5 The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
6 organized primarily to support the election of an “official in the executive branch of the
7 government of Puerto Rico.”³⁹ Fuentes-Fernandez admitted in his plea agreement that:

8 [Fuentes-Fernandez] and others established an interlocking group
9 of three entities — Nonprofit-1, Nonprofit-2, and Salvemos a
10 Puerto Rico — designed to conceal the true identities of donors to
11 Salvemos a Puerto Rico. By ensuring that these donors were
12 anonymous [Fuentes-Fernandez] and others knowing and willfully
13 schemed to and did deprive the people of the Commonwealth of
14 Puerto Rico and the FEC of material information concerning the
15 “true source” of hundreds of thousands of dollars in political
16 spending that was provided to Salvemos a Puerto Rico.⁴⁰

17 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
18 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
19 in fact he was aware that the money came from others and the Foundations were merely conduits
20 for the funds.⁴¹ The plea agreement referenced several text messages Fuentes-Fernandez sent to
21 donors explaining that the donors could remain anonymous if they contributed through a third-

³⁷ Fuentes-Fernandez Judgment at 2. Fuentes-Fernandez was released from confinement on July 10, 2023. *See Find an Inmate*, FED. BUR. OF PRISONS, https://www.bop.gov/mobile/find_inmate/byname.jsp (last visited Dec. 11, 2023) (search last name: Fuentes-Fernandez, first name: Joseph).

³⁸ Salvemos a Puerto Rico Judgment at 1; *see also* Salvemos a Puerto Rico, 2022 July Quarterly Report at 6 (Aug. 19, 2022) (disclosing payment of the \$150,000 fine to the United States District Court).

³⁹ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

⁴⁰ Fuentes-Fernandez Stipulation of Facts ¶ 9.

⁴¹ *Id.* ¶¶ 9, 19.

1 party entity.⁴² The plea agreement also contains examples of text messages between Fuentes-
 2 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating
 3 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
 4 facilitate anonymous donations.⁴³ The stipulated facts in the plea agreement for Salvemos a

Donor	Approximate Donation Date	Amount
Northshore Management Corp.	June 15, 2020	\$25,000
Essential Insurance Services Inc.	June 18, 2020	\$100,000
AP Engineering Inc.	June 19, 2020	\$59,200
LAS Enterprises Inc.	June 20, 2020	\$15,000
JAAP LLC	June 22, 2020	\$40,800
Alejandro Brito-Zubizarreta	June 23, 2020	\$50,000
Arturo Diaz-Angueira	June 23, 2020	\$20,000
BAE FE LLC	October 15, 2020	\$50,000
AP Engineering Inc.	October 16, 2020	\$35,000
JAAP LLC	October 16, 2020	\$35,000
National Guard Exchange Military Store	October 19, 2020	\$50,000
Little Pictures	October 19, 2020	\$25,000
Essential Insurance Services Inc.	October 20, 2020	\$100,000

5 Puerto Rico contained the following chart depicting the “true donors who donated funds to Non-
 6 profit-1 or Non-profit 2, some or all of which were transferred to [Salvemos a Puerto Rico], and
 7 which were not accurately reported to the FEC.”⁴⁴

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⁴² *Id.* ¶¶ 21-24.

⁴³ *Id.* ¶¶ 21, 23.

⁴⁴ Salvemos a Puerto Rico Plea Agreement, Stipulation of Facts ¶ 30, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (District of Puerto Rico, May 3, 2022) [hereinafter *Salvemos a Puerto Rico Stipulation of Facts*].

MUR 7772, Pre-MUR 668 (Salvemos a Puerto Rico, *et al.*)

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2. Amended Reports and Subsequent Notifications

On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the names of the Foundations, as depicted in the following tables.⁶⁶

Contributions Made Through Fundación Pro Igualdad		
Contributor	Amount	Date
AP Engineering, Inc.	\$ 51,800.00	6/22/2020
AP Engineering, Inc.	\$ 2,960.00	10/20/2020
Essential Insurance Services, Inc.	\$ 87,500.00	6/22/2020
Essential Insurance Services, Inc.	\$ 5,000.00	10/20/2020
Jaap, LLC	\$ 35,700.00	6/22/2020
Jaap, LLC	\$ 2,040.00	10/20/2020
Little Pictures Corp.	\$ 16,667.00	10/20/2020
NGX Military Store	\$ 33,333.00	10/20/2020
Total	\$235,000.00	

Contributions Made Through Foundation for Progress		
Contributor	Amount	Date
Anonymous	\$ 9,867.00	10/26/2020
AP Engineering, Inc.	\$ 30,584.00	10/20/2020
BAE FE, LLC	\$ 49,330.00	10/20/2020
Beam, Longest and Neff, LLC	\$ 4,918.00	10/28/2020
Brito-Zubizarreta, Alejandro	\$ 35,000.00	6/23/2020
Jaap, LLC	\$ 30,584.00	10/20/2020
Jason & Sondhi	\$ 4,918.00	10/28/2020
Keys, Andrew	\$ 230.00	1/13/2021
Keys, Andrew	\$ 735.00	11/02/2020
LAS Enterprises	\$ 15,000.00	6/22/2020
Machado-Gonzalez, Richard	\$ 36,765.00	11/02/2020
Machado-Gonzalez, Richard	\$ 11,490.00	1/13/2021

⁶⁶ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Amended 2021 Mid-Year Report (Aug. 19, 2022).

McCloskey, Augustos	\$ 320.00	1/13/2021
McCloskey, Augustos	\$ 1,029.00	11/02/2020
McCloskey, Michael	\$ 460.00	1/13/2021
McCloskey, Michael	\$ 1,471.00	11/02/2020
National Strategies Group, LLC	\$ 14,799.00	10/28/2020
Northshore Management Corp.	\$ 25,000.00	6/22/2020
Total	\$272,500.00	

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 2 Notably, there is a \$97,500 discrepancy between the total contributions on the amended
 3 reports and the total contributions reflected in the chart in the plea agreement.⁶⁷ Salvemos a
 4 Puerto Rico's Response to the notification in Pre-MUR 668 included a copy of an email between
 5 counsel and DOJ stating that the Foundations "did not directly transfer all the funds [they]
 6 received to Salvemos," and that an allocation percentage formula was used to determine the
 7 amount to report.⁶⁸

8 On September 28, 2022, the Office of General Counsel notified the 15 individuals and
 9 entities that were disclosed on the amended reports as the true contributors to Salvemos a Puerto
 10 Rico, displayed in the above tables, as additional Respondents in this matter.⁶⁹ Nine of those
 11 Respondents filed Responses. Eight of the Responses do not substantively address Respondents'
 12 contributions to the Foundations but primarily assert that the Complaint does not contain any
 13 allegations of improper action by Respondents, because they are not required to file disclosure
 14 reports under the Act.⁷⁰

⁶⁷ The chart in the plea agreement reflects \$605,000 in contributions to Salvemos a Puerto Rico through the Foundations between June and October 2020, and the amended reports reflect \$507,500 in contributions during the same period. *See* plea agreement and amended report charts, *supra*.

⁶⁸ Salvemos a Puerto Rico & Joseph Fuentes-Fernandez Resp., Ex. D at 31 (August 11, 2023), Pre-Mur 668.

⁶⁹ Compl. Notif. Letters (Sept. 28, 2022).

⁷⁰ AP Eng'g, Inc. Resp. at 5-9 (Nov. 15, 2022); Beam, Longest and Neff, LLC Resp. at 1 (Nov. 15, 2022); Essential Ins. Servs., Inc. Resp. at 1 (Oct. 7, 2022); Jaap, LLC Resp. at 5-9 (Nov. 15, 2022); Michael McCloskey Resp. at 2 (Oct. 13, 2022); NGX Mil. Store Resp. at 1 (Nov. 18, 2022); Northshore Mgmt. Resp. at 1 (Nov. 28, 2022); Richard Machado-Gonzalez Resp. at 1 (Nov. 9, 2022).

1 One Respondent, Andrew Keys, confirmed in his Response that he contributed to
2 Foundation for Progress, but in the amount of \$5,000 rather than the \$965 that was reflected in
3 Salvemos a Puerto Rico's amended reports.⁷¹ He provided a signed declaration stating that he
4 thought Foundation for Progress was a PAC that would "work to re-elect the Governor," and that
5 his name would be disclosed.⁷²

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⁷¹ Andrew Keys Resp. at 1-3 (Nov. 18, 2022). He also provided a copy of his \$5,000 contribution check. *Id.*

⁷² *Id.*

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9 **III. LEGAL ANALYSIS**

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11 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
12 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
13 value made by any person for the purpose of influencing any election for Federal office.”⁸⁴ The
14 term “person” for purposes of the Act and Commission regulations includes partnerships,
15 corporations, and “any other organization or group of persons.”⁸⁵ The Act prohibits a person
16 from making a contribution in the name of another person, knowingly permitting his or her name
17 to be used to effect such a contribution, or knowingly accepting such a contribution.⁸⁶ The

⁸⁴ 52 U.S.C. § 30101(8)(A).

⁸⁵ *Id.* § 30101(11); 11 C.F.R. § 100.10.

⁸⁶ 52 U.S.C. § 30122.

1 Commission has included in its regulations illustrations of activities that constitute making a
2 contribution in the name of another:

- 3 (i) Giving money or anything of value, all or part of which
4 was provided to the contributor by another person (the true
5 contributor) without disclosing the source of money or the
6 thing of value to the recipient candidate or committee at the
7 time the contribution is made; or
- 8 (ii) Making a contribution of money or anything of value and
9 attributing as the source of the money or thing of value
10 another person when in fact the contributor is the source.⁸⁷

11 The requirement that a contribution be made in the name of its true source promotes
12 Congress's objective of ensuring the complete and accurate disclosure by candidates and
13 committees of the political contributions they receive.⁸⁸ Courts therefore have uniformly
14 rejected the assertion that "only the person who actually transmits funds . . . makes the
15 contribution,"⁸⁹ recognizing that "it is implausible that Congress, in seeking to promote
16 transparency, would have understood the relevant contributor to be [an] intermediary who
17 merely transmitted the campaign gift."⁹⁰ Consequently, both the Act and the Commission's
18 implementing regulations provide that a person who furnishes another with funds for the purpose
19 of contributing to a candidate or committee "makes" the resulting contribution.⁹¹ This is true

⁸⁷ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

⁸⁸ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [§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 § 30122 in light of compelling governmental interest in disclosure).

⁸⁹ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

⁹⁰ *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.").

⁹¹ *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

1 whether funds are advanced to another person to make a contribution in that person's name or
2 promised as reimbursement of a solicited contribution.⁹² Because the concern of the law is the
3 true source from which a contribution to a candidate or committee originates, regardless of the
4 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
5 and the arrangement between the parties to determine who in fact, "made" a given contribution.

6 Here, a number of individuals and entities provided funds to the Foundations for the
7 purpose of making contributions to Salvemos a Puerto Rico, which knowingly accepted the
8 contributions in the name of another in violation of § 30122, and falsely disclosed the
9 contributions as made by the Foundations. The actual sources of the funds under the law,
10 however, are the original contributors who made contributions in the name of another in
11 violation of § 30122. The Foundations, for their part, knowingly permitted their names to be
12 used to effect the contributions in the name of another, also in violation of § 30122.⁹³

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.").

⁹² *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

⁹³ See, e.g., Factual & Legal Analysis ("F&LA") at 9, MUR 7903 (Tomfoolery, LLC) (finding reason to believe that an LLC knowingly permitted its name to be used to effect a contribution in the name of another where the LLC's single member provided funds and caused the LLC to send a contribution to an IEOPC); F&LA at 4, MUR 6920 (Am. Conservative Union, *et al.*) (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 A. **The Commission Should Exercise Its Prosecutorial Discretion to Dismiss the**
2 **Allegations Against Salvemos a Puerto Rico and Joseph Fuentes-Fernandez**

3 Salvemos a Puerto Rico and Fuentes-Fernandez pleaded guilty to criminal charges and
4 admitted in plea agreements that the Foundations were established with the purpose of
5 concealing contributor identities, and that they made false statements to the Commission about
6 the true identities of their donors. Accordingly, there is sufficient information to find that
7 Salvemos a Puerto Rico and Fuentes-Fernandez knowingly accepted contributions in the name of
8 another in violation of 52 U.S.C. § 30122, and failed to accurately report the contributions in
9 violation of 52 U.S.C. § 30104(b)(3)(A). Nonetheless, we recommend that the Commission
10 exercise its prosecutorial discretion and dismiss the allegations against Salvemos a Puerto and
11 Fuentes-Fernandez with a letter of admonishment, because the Commission's interests as to
12 these Respondents have been adequately vindicated by the criminal proceedings.⁹⁴

13 The Commission has previously exercised its prosecutorial discretion and declined to
14 pursue matters where it determined that a related criminal conviction adequately vindicated its
15 civil enforcement interests under the Act. The Commission has taken this approach within the
16 following parameters: the respondent pleaded guilty or was convicted of at least one criminal
17 count directly relating to a federal campaign finance law violation; the facts in the civil matter
18 under review related to the count(s) to which the respondent pleaded guilty in the criminal
19 matter; and the respondent received criminal punishment.⁹⁵ By contrast, the Commission has

⁹⁴ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007).

⁹⁵ See, e.g., F&LA at 1-2, MUR 7072 (Babulal Bera) (declining to pursue further action against perpetrator of conduit scheme "among the largest [ever] considered" after Bera pleaded guilty to 52 U.S.C. §§ 30116(a)(1)(A) and 30122 and was sentenced to a prison term of one year and one day, supervised release for a term of 36 months, and a criminal fine of \$100,000, while also noting statute of limitations concerns and respondent's advanced age); MURs 7011, 7092 (HC4President, *et al.*) (declining to further pursue action against respondents in matter where treasurer had pleaded guilty to related violations); F&LA at 9-10, MUR 6793 (Steve Stockman for Senate, *et al.*) (dismissing matter as to respondent who pled guilty to mail fraud, wire fraud and money laundering in criminal prosecution that

1 taken further action, notwithstanding a criminal conviction, when the criminal conviction or plea
 2 did not specifically vindicate the Act's discrete civil enforcement interests, *e.g.*, where the
 3 criminal count(s) to which the respondent pleaded guilty or was convicted did not directly relate
 4 to the facts of the civil matter under review, or did not directly relate to a federal campaign
 5 finance law violation.⁹⁶

6 Here, these Respondents pleaded guilty to making false statements to the Federal
 7 Election Commission about the true identities of donors to Salvemos a Puerto Rico, which
 8 encompasses the campaign finance violations at issue in this matter.⁹⁷ These Respondents have
 9 also received substantial punishment. Fuentes-Fernandez was sentenced to 14 months in prison
 10 with three years of supervised release.⁹⁸ Salvemos a Puerto Rico was sentenced to three years of
 11 supervised probation and ordered to pay a \$150,000 fine and file amended reports with the

involved underlying facts that directly related to the enforcement matter); F&LA at 1, MUR 6232 (Gladwin Gill) (declining to further pursue action against respondent who had pleaded guilty to one count of making contributions in the name of another and was sentenced to one year and one day in federal prison, followed by three years of supervised release, and was fined \$200,100); F&LA at 2, 5, MUR 6231 (Glenn Marshall) (declining to further pursue action against respondent, who had pleaded guilty to provisions now codified at 52 U.S.C. §§ 30118 and 30122 and was sentenced to 41 months in federal prison and ordered to pay restitution of \$467,612.62); Statement of Reasons ("SOR"), Comm'rs Cooksey & Trainor (April 26, 2021), MURs 7313, 7319, 7379 (Michael D. Cohen, *et al.*) (stating that the Commission's interests were vindicated as to a respondent who had been criminally prosecuted for the same conduct); SOR, Comm'rs Broussard & Weintraub (May 6, 2021), MURs 7313, 7319, 7379 (same).

⁹⁶ See, *e.g.*, Conciliation Agreement, MUR 7132 (Michael David Pitts) (Mar. 19, 2018) (conciliating with respondent who pleaded guilty to wire fraud, but the criminal charges did not address the funds the respondent took from the committee); Conciliation Agreement, MUR 6465 (John Junker) (Nov. 7, 2013) (conciliating penalties, including \$25,000 civil penalty with respondent who would later plead guilty to one count of criminal conspiracy under 18 U.S.C. § 371, rather than campaign finance violation); Conciliation Agreement, MUR 6179 (Christopher Ward) (Nov. 29, 2010) (conciliating with respondent who pleaded guilty to one count of criminal "Interstate Transportation of Stolen Property" in violation of 18 U.S.C. § 2314, rather than campaign finance violation); Conciliation Agreement, MUR 5971 (Mary Jennifer Adams) (Feb. 13, 2009) (conciliating with respondent who pleaded guilty to five counts of "Breach of Trust with Fraudulent Intent" and one count of "Financial Identity Fraud" in violation of state law, rather than federal campaign finance violation).

⁹⁷ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

⁹⁸ Fuentes-Fernandez Judgment at 2.

1 Commission.⁹⁹ Accordingly, under these circumstances, we recommend that the Commission
2 exercise its prosecutorial discretion¹⁰⁰ to dismiss the allegations against Fuentes-Fernandez and
3 Salvemos a Puerto Rico with letters of admonishment.¹⁰¹

4 **B. The Commission Should Exercise Its Prosecutorial Discretion to Dismiss the**
5 **Allegations Against the Contributor Respondents**

6 The amended disclosure reports, plea agreements
7 identified 15 individuals that made contributions to Salvemos a Puerto Rico through the
8 Foundations. Although there is significant information about the facts at issue, as it specifically
9 relates to the knowledge and intent of each of the contributors, the available information is
10 mixed. While one of the contributors admitted that he wanted his donations to remain
11 anonymous, others reported that they assumed that their names would be disclosed. Some
12 of the contributors expressed that they thought they were donating directly to a political
13 committee, while others maintained that they intended to donate to the Foundations.¹⁰⁵ The
14 common thread in the available information is that the contributor Respondents likely understood

⁹⁹ Salvemos a Puerto Rico Judgment at 1; *see also* Salvemos a Puerto Rico, 2022 July Quarterly Report at 6 (Aug. 19, 2022) (disclosing payment of \$150,000 fine to United States District Court).

¹⁰⁰ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

¹⁰¹ This approach is consistent with prior Commission action. *See, e.g.*, Admonishment Letter (Jan. 4, 2017), MUR 7072 (Babulal Bera) (admonishing respondent who had made contributions in the names of others where respondent had pleaded guilty to related charges in federal court); Admonishment Letter (July 27, 2023), MUR 7468 (Progressive Priorities PAC, *et al.*) (admonishing respondent who pleaded guilty to related criminal charges); Admonishment Letter (Sept. 5, 2023), MUR 8162 (Support American Leaders PAC) (admonishing respondent who had pleaded guilty to criminal charges in a related matter).

¹⁰⁵ Beam, Longest and Neff, LLC Resp. at 1; Essential Ins. Servs., Inc. Resp. at 1; Michael McCloskey Resp. at 1; NGX Mil. Store Resp. at 1.

1 that the funds they provided to the Foundations would support the efforts of a gubernatorial
2 candidate. There is comparatively less information indicating that the contributors understood
3 that the ultimate recipient of their money was a *federal* political committee.

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7 Given the resources that would be required and the available record's overall indications that the
8 scheme was not devised by the contributors themselves, we recommend that the Commission
9 exercise its prosecutorial discretion and dismiss the allegations against these Respondents.

10 **C. The Commission Should Find Reason to Believe That the Foundations**
11 **Knowingly and Willfully Violated 52 U.S.C. § 30122**

12 The available information supports finding reason to believe the Foundations knowingly
13 and willfully permitted their names to be used to effect contributions in the name of another.
14 Fuentes-Fernandez admitted in his plea agreement that he and
15 others established the Foundations in order to conceal the true identities of donors to Salvemos a
16 Puerto Rico and that the Foundations were merely conduits for contributions from others.¹⁰⁸
17 Fuentes-Fernandez admitted that he sent text messages to donors explaining that the donors
18 could remain anonymous if they contributed through a third-party entity.¹⁰⁹ The plea agreement
19 also contains examples of text messages between Fuentes-Fernandez and individuals associated

¹⁰⁶ See *e.g.* Andrew Keys Resp. at 1-3; Beam, Longest and Neff, LLC Resp. at 2;

¹⁰⁸ Fuentes-Fernandez Stipulation of Facts ¶¶ 9, 19.

¹⁰⁹ *Id.* ¶¶ 21-24.

1 with the Foundation exchanging information to facilitate donations to the Foundations and
2 coordinate subsequent transfers to Salvemos a Puerto Rico.¹¹⁰ Pursuant to its own plea
3 agreement, Salvemos a Puerto Rico filed amended disclosure reports identifying the true sources
4 of the \$507,500 in transfers to Salvemos a Puerto Rico from the Foundations.¹¹¹

5 Respondents emphasized in their initial Response that Salvemos a Puerto Rico engaged
6 in activity to influence an election for state office, rather than federal office.¹¹² This does not
7 change the fact that the Foundations' payments to Salvemos a Puerto Rico, a federal IEOPC,
8 were contributions. Salvemos a Puerto Rico registered with the Commission as a federal
9 political committee and reported the money from the Foundations as federal contributions.¹¹³
10 Salvemos a Puerto Rico did not indicate in any of its disclosure reports that the funds the
11 Foundations provided were encumbered such that they were unavailable for federal activity.
12 Notably, Salvemos a Puerto Rico reported that it spent \$219,652.30 on federal administrative
13 costs including bank charges, legal services, FEC administrative fines for reporting violations,
14 and the federal criminal fine.¹¹⁴

15 The available information reflects that the individuals who created and managed the
16 Foundations understood that Salvemos a Puerto Rico was a *federal* IEOPC registered with the

¹¹⁰ *Id.* ¶¶ 21, 23.

¹¹¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Amended 2021 Mid-Year Report (Aug. 19, 2022).

¹¹² Foundations' Resp. at 5.

¹¹³ Salvemos a Puerto Rico, Amended Statement of Organization at 1; Salvemos a Puerto Rico 2020 July Quarterly Report; Salvemos a Puerto Rico 2020 October Quarterly Report; Salvemos a Puerto Rico 2020 Post-General Report.

¹¹⁴ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?committee_id=C00746594&two_year_transaction_period=2022&data_type=processed (last visited Dec. 11, 2023) (showing Salvemos a Puerto Rico's disbursements).

MUR 7772, Pre-MUR 668 (Salvemos a Puerto Rico, *et al.*)

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1 Commission.

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5 Salvemos a Puerto Rico's federal registration appears to have allowed it to avoid the
6 jurisdiction of Puerto Rico's Office of the Electoral Comptroller,¹²⁴ but, by the same token,
7 Salvemos a Puerto Rico opted into the Act's federal regulatory regime, pursuant to which the
8 funds it received and reported as federal contributions are treated as such and fall under the
9 Commission's jurisdiction.

10 The overall record indicates that the Foundations were not the true source of the
11 \$507,500 that they transferred to Salvemos a Puerto Rico, but instead acted as conduits to
12 convey the funds of another in violation of 52 U.S.C. § 30122.¹²⁵ The record also supports a
13 finding that the Foundations' violations were knowing and willful. Such a finding does not
14 require proving knowledge of the specific statute or regulation the respondent allegedly
15 violated.¹²⁶ Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was

¹²⁴ OCE Referral, at 5.

¹²⁵ *See Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 354 (D.C. Cir. 2020) ("As the Supreme Court has repeatedly declared, the electorate has an interest in knowing where political campaign money comes from and how it is spent by the candidate. To that end, the [Act] imposes disclosure requirements on those who give and spend money to influence elections. The straw donor provision, 52 U.S.C. § 30122, is designed to ensure accurate disclosure of contributor information." (internal citations and quotation marks omitted)).

¹²⁶ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

1 aware that his conduct was unlawful.”¹²⁷ This may be shown by circumstantial evidence from
 2 which the respondents’ unlawful intent reasonably may be inferred.¹²⁸ For example, a person’s
 3 awareness that an action is prohibited may be inferred from “the elaborate scheme for
 4 disguising . . . political contributions.”¹²⁹

5 Here, as described above, there is both direct and circumstantial evidence that the
 6 Foundations engaged in a deliberate scheme to disguise the true identities of donors to Salvemos
 7 a Puerto Rico.¹³⁰ Most definitively, Fuentes-Fernandez admitted in his plea agreement that the
 8 Foundations were “designed to conceal the true identities of donors to Salvemos a Puerto
 9 Rico”¹³¹ and further admitted that the Foundations were “created exclusively to hide
 10 the donors.”¹³²

11 The Foundations played a distinct and essential role in the orchestration of this large-
 12 scale scheme involving more than half a million dollars in straw contributions. They were not
 13 defendants in the criminal case and have faced no punishment. Thus, civil enforcement against
 14 the Foundations would properly vindicate the Commission’s interests.¹³³ We therefore

¹²⁷ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 108-36 (D.P.R. 2009), *United States v. Feiger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

¹²⁸ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)).

¹²⁹ *Hopkins*, 916 F.2d. at 214-15. As the *Hopkins* court stated, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

¹³⁰ *Cf.* F&LA at 14-15, MUR 8092 (Bashar Wali) (declining to make a knowing and willful finding where the information suggested the respondent did not know his actions were illegal and did not take actions to conceal the illegal activity); F&LA at 10, MUR 7949 (Crown Prods. & Servs.) (declining to find a knowing and willful violation where the respondents did not take actions to conceal the illegal activity).

¹³¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

¹³² *Id.* ¶ 13.

¹³³ The Foundations’ minimal assets, as reported in their filings with the Puerto Rico Department of State, should not be a barrier to finding reason to believe in this matter. It is not unexpected that shell organizations, created to serve as pass-through entities for making anonymous political contributions, would have minimal

1 recommend that the Commission find reason to believe the Foundations knowingly and willfully
2 violated 52 U.S.C. § 30122.

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remaining assets after an election has ended. Indeed, the available information about the Foundations' financial status supports the conclusion that the Foundations were mere tools to mask the identities of Salvemos a Puerto Rico's true contributors. Notably, the Commission has conciliated against organizations with minimal or no resources. *See e.g.*, Conciliation Agreement, MUR 7527 (News for Democracy) (Apr. 4, 2023) (reflecting conciliation with a 501(c)(4) organization that the Office of General Counsel had previously observed was "defunct" and providing for the payment of a \$25,000 civil penalty); Conciliation Agreement, MUR 6538R (Ams. for Job Sec.) (Sept. 9, 2019) (conciliating with a defunct 501(c)(6) organization but without a civil penalty because of the organization's financial condition).

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18 **V. RECOMMENDATIONS**

- 19 1. Open a Matter Under Review with respect to Pre-MUR 668 and merge it into
20 MUR 7772.
- 21 2. Dismiss as an exercise of prosecutorial discretion the allegations that Salvemos a
22 Puerto Rico and Joseph Fuentes-Fernandez in his personal capacity and in his
23 official capacity as Treasurer violated 52 U.S.C. § 30122 by knowingly accepting

- 1 a contribution in the name of another and violated 52 U.S.C. § 30104(b) and
2 11 C.F.R. § 104.3(a)(4) by filing inaccurate disclosure reports and issue
3 admonishment letters to Salvemos a Puerto Rico and Joseph Fuentes-Fernandes;
- 4 3. Dismiss as an exercise of prosecutorial discretion the allegations that Alejandro
5 Brito-Zubizarreta, Andrew Keys, AP Engineering, Inc., Augustos McCloskey,
6 BAE FE, LLC, Beam, Longest and Neff, LLC, Essential Insurance Services, Inc.,
7 Jaap, LLC, LAS Enterprises, Little Pictures Corp., Michael McCloskey, National
8 Strategies Group, LLC, NGX Military Store, Northshore Management Corp., and
9 Richard Machado-Gonzalez violated 52 U.S.C. § 30122 by making a contribution
10 in the name of another;
- 11 4. Find reason to believe that Fundación Pro Igualdad, Inc. and Foundation for
12 Progress, Inc. violated 52 U.S.C. § 30122 by knowingly and willfully permitting
13 their names to be used to effect contributions in the name of another;
- 14 5. Enter into pre-probable cause conciliation with Fundación Pro Igualdad, Inc. and
15 Foundation for Progress, Inc.;
- 16 6. Approve the attached conciliation agreement;
- 17 7. Approve the attached Factual and Legal Analyses;
- 18 8. Approve the appropriate letters; and
- 19 9. Close the file as to Salvemos a Puerto Rico, Joseph Fuentes-Fernandez, Alejandro
20 Brito-Zubizarreta, Andrew Keys, AP Engineering, Inc., Augustos McCloskey,
21 BAE FE, LLC, Beam, Longest and Neff, LLC, Essential Insurance Services, Inc.,
22 Jaap, LLC, LAS Enterprises, Little Pictures Corp., Michael McCloskey, National

1 Strategies Group, LLC, NGX Military Store, Northshore Management Corp., and
2 Richard Machado-Gonzalez.

3 Lisa J. Stevenson
4 Acting General Counsel
5

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7 Date: Dec. 19, 2023

Charles Kitcher by MA
8 Charles Kitcher
9 Associate General Counsel
10 for Enforcement

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12
13 *Mark Allen*
14 Mark Allen
15 Assistant General Counsel

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17 *Lindsay Bird*
18 Lindsay Bird
19 Attorney
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23 Attachments:

- 24 1. Factual and Legal Analysis Fundación Pro Igualdad, Inc. and Foundation for Progress,
25 Inc.
- 26 2. Factual and Legal Analysis Salvemos a Puerto Rico and Joseph Fuentes-Fernandez
- 27 3. Factual and Legal Analysis Alejandro Brito-Zubizarreta
- 28 4. Factual and Legal Analysis Andrew Keys
- 29 5. Factual and Legal Analysis AP Engineering, Inc.
- 30 6. Factual and Legal Analysis Augustos McCloskey
- 31 7. Factual and Legal Analysis BAE FE, LLC
- 32 8. Factual and Legal Analysis Beam, Longest and Neff, LLC
- 33 9. Factual and Legal Analysis Essential Insurance Services, Inc.
- 34 10. Factual and Legal Analysis Jaap, LLC
- 35 11. Factual and Legal Analysis LAS Enterprises
- 36 12. Factual and Legal Analysis Little Pictures Corp.
- 37 13. Factual and Legal Analysis Michael McCloskey
- 38 14. Factual and Legal Analysis National Strategies Group, LLC
- 39 15. Factual and Legal Analysis NGX Military Store
- 40 16. Factual and Legal Analysis Northshore Management Corp.
- 41 17. Factual and Legal Analysis Richard Machado-Gonzalez

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1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENTS:** Fundación Pro Igualdad, Inc.
5 Foundation for Progress, Inc**MUR: 7772**6
7 **I. INTRODUCTION**8 This matter was generated by a Complaint filed with the Federal Election Commission
9 (the “Commission”) and a referral from Puerto Rico’s Oficina del Contralor Electoral alleging
10 that at least \$250,000 in contributions in the name of another were made through two nonprofit
11 corporations, Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. (collectively, the
12 “Foundations”), to Salvemos a Puerto Rico, an independent expenditure-only political committee
13 (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-Fernandez”) in his official capacity as
14 treasurer.15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors of the contributions at issue in this matter.¹ Fuentes-Fernandez
18 admitted in his plea agreement that he and others established the Foundations in order to conceal
19 the true identities of donors to Salvemos a Puerto Rico and that the Foundations were merely
20 conduits for contributions from others.² Fuentes-Fernandez was sentenced on August 26, 2022,

¹ Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022) [hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

² Fuentes-Fernandez Plea, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

1 to 14 months in prison with three years of supervised release.³ Salvemos a Puerto Rico, the
2 ultimate recipient IEOPC, was sentenced to three years of supervised probation, ordered to pay a
3 \$150,000 fine, and required to file amended reports with the Commission.⁴ Fuentes-Fernandez
4 subsequently filed amended reports with the Commission disclosing the identities of 15
5 contributors who made contributions through the Foundations.⁵

6 The available information indicates that the Foundations were not the true source of the
7 funds that they transferred to Salvemos a Puerto Rico, but instead acted as conduits to convey the
8 funds of another.⁶ As set forth below, the Commission finds reason to believe that Fundación
9 Pro Igualdad, Inc. and Foundation for Progress, Inc. knowingly and willfully violated 52 U.S.C.
10 § 30122 by permitting their names to be used to effect contributions in the name of another.

11 II. FACTUAL BACKGROUND

12 A. Complaint and Response

13 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
14 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
15 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
16 of the donations.”⁷ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Judgment at 2.

⁴ Salvemos a Puerto Rico Judgment at 1; *see also* Salvemos a Puerto Rico, 2022 July Quarterly Report at 6 (Aug. 19, 2022) (disclosing payment of \$150,000 fine to United States District Court).

⁵ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁶ *See Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 354 (D.C. Cir. 2020) (“As the Supreme Court has repeatedly declared, the electorate has an interest in knowing where political campaign money comes from and how it is spent by the candidate. To that end, the [Act] imposes disclosure requirements on those who give and spend money to influence elections. The straw donor provision, 52 U.S.C. § 30122, is designed to ensure accurate disclosure of contributor information.”) (citations and quotation marks omitted).

⁷ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁸ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later as factors supporting its
5 allegations.⁹

6 A week before they filed the Complaint in this matter, the Complainants in MUR 7772
7 raised similar issues before Puerto Rico’s Oficina del Contralor Electoral (“OCE”), which
8 subsequently referred the matter to the Commission.¹⁰

9 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
10 2020, and Joseph Fuentes-Fernandez is its treasurer.¹¹

11 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
12 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹² The Foundations
13 represented in their certifications with the Puerto Rico Secretary of State that they would be

Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

⁸ Compl. at 4-5.

⁹ *Id.* at 3.

¹⁰ Oficina del Contralor Electoral, Determination, OCE-Q-2020-005 (Sept. 18, 2020), Pre-MUR 668 [hereinafter OCE Referral]. OCE is the agency responsible for investigating violations of Puerto Rico’s campaign finance laws. OFICINA DEL CONTRALOR ELECTORAL, <https://oce.pr.gov/sobre-nosotros/> (last visited Dec. 11, 2023).

¹¹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹² Fundación Pro Igualdad, Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

1 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
2 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
3 under Puerto Rico law and section 501(c)(4) of the Internal Revenue Code.¹³ The Foundations
4 were incorporated within seven minutes of each other.¹⁴ The Foundations share the same
5 physical address,¹⁵ which a company offers to rent as a “virtual office.”¹⁶ The Foundations do
6 not appear to have websites or any accounts on social media sites, and online searches revealed
7 no information about their activities other than articles discussing the allegations in the
8 Complaint, the federal criminal case, or related litigation. The Foundations do not appear on the
9 Internal Revenue Service’s database of nonprofit entities.¹⁷

10 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
11 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
12 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁸ Salvemos a Puerto Rico then made two
13 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
14 “media campaign.”¹⁹ The Foundations subsequently made six additional contributions between
15 October 2020 and January 2021, totaling \$257,500.²⁰

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁵ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁶ *Reserve Your Virtual Office Address at Palmeras Office Center, DAVINCI*, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁷ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁸ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁹ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

²⁰ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited

1 The Foundations maintain active status with the Puerto Rico Department of State and
2 filed Annual Reports with balance sheets in 2021 and 2022.²¹ Foundation for Progress, Inc.
3 reported \$32,490 in current assets in 2021, and \$7,752 in current assets in 2022.²² Fundación
4 Pro Igualdad, Inc. reported \$6,135 in current assets in 2021, and \$1,134 in current assets in 2022.
5 ²³ Publicly available information does not indicate that the Foundations have engaged in any
6 activity other than the aforementioned contributions to Salvemos a Puerto Rico.

7 The Foundations submitted an initial joint Response to this matter prior to DOJ’s filing of
8 the criminal charges. The Foundations contended in their initial Response that the Commission
9 lacks jurisdiction because the matter does not involve a federal election and all funds collected
10 by the Foundations and their donations to Salvemos a Puerto Rico were legally permissible and
11 duly reported.²⁴ The Foundations did not provide any information regarding the provenance of
12 their funds, who manages them, or whether they have engaged in any activity other than the
13 contributions to Salvemos a Puerto Rico.

14 **B. DOJ’s Criminal Prosecution**

15
16 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
17 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
18 statements to the Commission about the true identities of the donors of the contributions at

Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

²¹ *Corporations Search*, GOV’T OF P.R. DEP’T OF STATE, <https://rceweb.estado.pr.gov/en/search/results/> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”).

²² *Corporation Information: Foundation for Progress Inc.*, GOV’T OF P.R. DEP’T OF STATE, <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121> (last visited Dec. 11, 2023).

²³ *Corporation Information: Fundación Pro Igualdad Inc.*, GOV’T OF P.R. DEP’T OF STATE, <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121> (last visited Dec. 11, 2023).

²⁴ Fundación Pro Igualdad, Inc. & Foundation for Progress, Inc. Resp. at 5-7 (Sep. 23, 2020) (“Foundations’ Resp.”).

1 issue.²⁵ Fuentes-Fernandez was sentenced on August 26, 2022 to 14 months in prison with three
2 years of supervised release.²⁶ Salvemos a Puerto Rico was sentenced to three years of
3 supervised probation and a \$150,000 fine and ordered to file amended reports with the
4 Commission.²⁷

5 1. Plea Agreement

6 Fuentes-Fernandez admitted in his plea agreement that:
7

8 [Fuentes-Fernandez] and others established an interlocking group of three entities
9 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
10 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
11 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
12 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
13 the FEC of material information concerning the “true source” of hundreds of
14 thousands of dollars in political spending that was provided to Salvemos a Puerto
15 Rico.²⁸
16

17 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
18 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
19 in fact he was aware that the money came from others and the Foundations were merely conduits
20 for the funds.²⁹

21 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
22 explaining that the donors could remain anonymous if they contributed through a third-party
23

²⁵ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁶ Fuentes-Fernandez Judgment at 2. Fuentes-Fernandez was released from confinement on July 10, 2023. *See Find an Inmate*, FED. BUR. OF PRISONS, https://www.bop.gov/mobile/find_inmate/byname.jsp (last visited Dec. 11, 2023) (search last name: Fuentes-Fernandez, first name: Joseph).

²⁷ Salvemos a Puerto Rico Judgment at 1; *see also* Salvemos a Puerto Rico, 2022 July Quarterly Report at 6 (Aug. 19, 2022) (disclosing payment of the \$150,000 fine to the United States District Court).

²⁸ Fuentes-Fernandez Stipulation of Facts ¶ 9.

²⁹ *Id.* ¶¶ 9, 19.

1 entity.³⁰ The plea agreement also contains examples of text messages between Fuentes-
2 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating
3 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
4 facilitate anonymous donations.³¹ For example, on or about October 15, 2020, the Secretary of
5 the Foundations sent a group text message to Fuentes-Fernandez and others associated with
6 Salvemos a Puerto Rico, stating, “As soon as I have an accounting of (i) what has been or will be
7 sent to the PAC for deposit and (ii) what is going to be deposited in [the Foundations] to donate
8 to the PAC, I’ll let you know.”³² On October 16, 2020, Fuentes-Fernandez sent a text message
9 to the Secretary of the Foundations and others associated with the Foundations asking them to
10 “send me the bank account info for [the Foundations] so that [a potential contributor] and other
11 people who are donating can remain anonymous.”³³ The Secretary for the Foundations then
12 responded with the bank information for the Foundations.³⁴ Fuentes-Fernandez sent the
13 Foundations’ bank account information to a potential donor with wiring instructions and texted,
14 “It’s totally anonymous in the accounts I gave you.”³⁵

³⁰ *Id.* ¶¶ 21-24.

³¹ *Id.* ¶¶ 21, 23.

³² *Id.* ¶ 21.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* ¶ 24.

1 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained the
 2 following chart depicting the “true donors who donated funds to [the Foundations], some or all
 3 of which were transferred to [Salvemos a Puerto Rico], and which were not accurately reported
 4 to the FEC”:³⁶

Donor	Approximate Donation Date	Amount
Northshore Management Corp.	June 15, 2020	\$25,000
Essential Insurance Services Inc.	June 18, 2020	\$100,000
AP Engineering Inc.	June 19, 2020	\$59,200
LAS Enterprises Inc.	June 20, 2020	\$15,000
JAAP LLC	June 22, 2020	\$40,800
Alejandro Brito-Zubizarreta	June 23, 2020	\$50,000
Arturo Diaz-Angueira	June 23, 2020	\$20,000
BAE FE LLC	October 15, 2020	\$50,000
AP Engineering Inc.	October 16, 2020	\$35,000
JAAP LLC	October 16, 2020	\$35,000
National Guard Exchange Military Store	October 19, 2020	\$50,000
Little Pictures	October 19, 2020	\$25,000
Essential Insurance Services Inc.	October 20, 2020	\$100,000

5 The Foundations submitted a second Response to the Commission after the criminal
 6 prosecution contending that the issues in this matter were investigated and addressed by DOJ and
 7 therefore the Commission should close the matter without further action.³⁷

8 2. Amended Reports

9
 10 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
 11 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
 12 names of the Foundations, as depicted in the following tables.³⁸

³⁶ *Id.* ¶ 30.

³⁷ Foundation for Progress, Inc. & Fundación Pro Igualdad, Inc. Resp. at 2 (Sept. 5, 2023), Pre-MUR 668.

³⁸ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

1

Contributions Made Through Fundación Pro Igualdad		
Contributor	Amount	Date
AP Engineering, Inc.	\$ 51,800.00	6/22/2020
AP Engineering, Inc.	\$ 2,960.00	10/20/2020
Essential Insurance Services, Inc.	\$ 87,500.00	6/22/2020
Essential Insurance Services, Inc.	\$ 5,000.00	10/20/2020
Jaap, LLC	\$ 35,700.00	6/22/2020
Jaap, LLC	\$ 2,040.00	10/20/2020
Little Pictures Corp.	\$ 16,667.00	10/20/2020
NGX Military Store	\$ 33,333.00	10/20/2020
Total	\$235,000.00	

2

Contributions Made Through Foundation for Progress		
Contributor	Amount	Date
Anonymous	\$ 9,867.00	10/26/2020
AP Engineering, Inc.	\$ 30,584.00	10/20/2020
BAE FE, LLC	\$ 49,330.00	10/20/2020
Beam, Longest and Neff, LLC	\$ 4,918.00	10/28/2020
Brito-Zubizarreta, Alejandro	\$ 35,000.00	6/23/2020
Jaap, LLC	\$ 30,584.00	10/20/2020
Jason & Sondhi	\$ 4,918.00	10/28/2020
Keys, Andrew	\$ 230.00	1/13/2021
Keys, Andrew	\$ 735.00	11/02/2020
LAS Enterprises	\$ 15,000.00	6/22/2020
Machado-Gonzalez, Richard	\$ 36,765.00	11/02/2020
Machado-Gonzalez, Richard	\$ 11,490.00	1/13/2021
McCloskey, Augustos	\$ 320.00	1/13/2021
McCloskey, Augustos	\$ 1,029.00	11/02/2020
McCloskey, Michael	\$ 460.00	1/13/2021
McCloskey, Michael	\$ 1,471.00	11/02/2020
National Strategies Group, LLC	\$ 14,799.00	10/28/2020
Northshore Management Corp.	\$ 25,000.00	6/22/2020
Total	\$272,500.00	

3

4 III. LEGAL ANALYSIS

5 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
 6 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of

1 value made by any person for the purpose of influencing any election for Federal office.”³⁹ The
 2 term “person” for purposes of the Act and Commission regulations includes partnerships,
 3 corporations, and “any other organization or group of persons.”⁴⁰ The Act prohibits a person
 4 from making a contribution in the name of another person, knowingly permitting his or her name
 5 to be used to effect such a contribution, or knowingly accepting such a contribution.⁴¹ The
 6 Commission has included in its regulations illustrations of activities that constitute making a
 7 contribution in the name of another:

- 8 (i) Giving money or anything of value, all or part of which
 9 was provided to the contributor by another person (the true
 10 contributor) without disclosing the source of money or the
 11 thing of value to the recipient candidate or committee at the
 12 time the contribution is made; or
- 13 (ii) Making a contribution of money or anything of value and
 14 attributing as the source of the money or thing of value
 15 another person when in fact the contributor is the source.⁴²

16 The requirement that a contribution be made in the name of its true source promotes
 17 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
 18 committees of the political contributions they receive.⁴³ Courts therefore have uniformly
 19 rejected the assertion that “only the person who actually transmits funds . . . makes the
 20 contribution,”⁴⁴ recognizing that “it is implausible that Congress, in seeking to promote

³⁹ 52 U.S.C. § 30101(8)(A).

⁴⁰ *Id.* § 30101(11); 11 C.F.R. § 100.10.

⁴¹ 52 U.S.C. § 30122.

⁴² 11 C.F.R. § 110.4(b)(2)(i)-(ii).

⁴³ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

⁴⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

1 transparency, would have understood the relevant contributor to be [an] intermediary who
2 merely transmitted the campaign gift.”⁴⁵ Consequently, both the Act and the Commission’s
3 implementing regulations provide that a person who furnishes another with funds for the purpose
4 of contributing to a candidate or committee “makes” the resulting contribution.⁴⁶ This is true
5 whether funds are advanced to another person to make a contribution in that person’s name or
6 promised as reimbursement of a solicited contribution.⁴⁷ Because the concern of the law is the
7 true source from which a contribution to a candidate or committee originates, regardless of the
8 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
9 and the arrangement between the parties to determine who in fact, “made” a given contribution.

10 The available information supports finding reason to believe the Foundations knowingly
11 and willfully permitted their names to be used to effect contributions in the name of another in
12 violation of 52 U.S.C. §30122. Fuentes-Fernandez admitted in his plea agreement that he and
13 others established the Foundations in order to conceal the true identities of donors to Salvemos a
14 Puerto Rico and that the Foundations were merely conduits for contributions from others.⁴⁸

⁴⁵ *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.”).

⁴⁶ *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.”).

⁴⁷ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

⁴⁸ Fuentes-Fernandez Stipulation of Facts ¶¶ 9, 19.

1 Fuentes-Fernandez admitted that he sent text messages to donors explaining that the donors
2 could remain anonymous if they contributed through a third-party entity.⁴⁹ The plea agreement
3 also contains examples of text messages between Fuentes-Fernandez and individuals associated
4 with the Foundation exchanging information to facilitate donations to the Foundations and
5 coordinate subsequent transfers to Salvemos a Puerto Rico.⁵⁰ Pursuant to its own plea
6 agreement, Salvemos a Puerto Rico filed amended disclosure reports identifying the true sources
7 of the \$507,500 in transfers to Salvemos a Puerto Rico from the Foundations.⁵¹

8 The Foundations emphasized in their initial Response that Salvemos a Puerto Rico
9 engaged in activity to influence an election for state office, rather than federal office.⁵² This
10 does not change the fact that the Foundations' payments to Salvemos a Puerto Rico, a federal
11 IEOPC, were contributions. Salvemos a Puerto Rico registered with the Commission as a federal
12 political committee and reported the money from the Foundations as federal contributions.⁵³
13 Salvemos a Puerto Rico did not indicate in any of its disclosure reports that the funds the
14 Foundations provided were encumbered such that they were unavailable for federal activity.
15 Notably, Salvemos a Puerto Rico reported that it spent \$219,652.30 on federal administrative
16 costs including bank charges, legal services, FEC administrative fines for reporting violations,

⁴⁹ *Id.* ¶¶ 21-24.

⁵⁰ *Id.* ¶¶ 21, 23.

⁵¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵² Foundations' Resp. at 5.

⁵³ Salvemos a Puerto Rico Amended Statement of Organization at 1; Salvemos a Puerto Rico 2020 July Quarterly Report; Salvemos a Puerto Rico 2020 October Quarterly Report; Salvemos a Puerto Rico 2020 Post-General Report.

1 and the federal criminal fine.⁵⁴ Additionally, the Commission is in possession of information
2 indicating that the individuals who created and managed the Foundations understood that
3 Salvemos a Puerto Rico was a *federal* IEOPC registered with the Commission. Salvemos a
4 Puerto Rico opted into the Act’s federal regulatory regime, pursuant to which the funds it
5 received through the Foundations and reported as federal contributions are treated as such and
6 fall under the Commission’s jurisdiction.

7 The overall record indicates that the Foundations were not the true source of the
8 \$507,500 that they transferred to Salvemos a Puerto Rico, but instead acted as conduits to
9 convey the funds of another in violation of 52 U.S.C. § 30122.⁵⁵ The record also supports a
10 finding that the Foundations’ violations were knowing and willful. Such a finding does not
11 require proving knowledge of the specific statute or regulation the respondent allegedly
12 violated.⁵⁶ Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was
13 aware that his conduct was unlawful.”⁵⁷ This may be shown by circumstantial evidence from

⁵⁴ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?committee_id=C00746594&two_year_transaction_period=2022&data_type=processed (last visited Dec. 11, 2023) (showing Salvemos a Puerto Rico’s disbursements).

⁵⁵ *See Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 354 (D.C. Cir. 2020) (“As the Supreme Court has repeatedly declared, the electorate has an interest in knowing where political campaign money comes from and how it is spent by the candidate. To that end, the [Act] imposes disclosure requirements on those who give and spend money to influence elections. The straw donor provision, 52 U.S.C. § 30122, is designed to ensure accurate disclosure of contributor information.” (internal citations and quotation marks omitted)).

⁵⁶ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁵⁷ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 108-36 (D.P.R. 2009), *United States v. Feiger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

1 which the respondents' unlawful intent reasonably may be inferred.⁵⁸ For example, a person's
2 awareness that an action is prohibited may be inferred from "the elaborate scheme for disguising
3 . . . political contributions."⁵⁹

4 Here, as described above, there is both direct and circumstantial evidence that the
5 Foundations engaged in a deliberate scheme to disguise the true identities of donors to Salvemos
6 a Puerto Rico.⁶⁰ Most definitively, Fuentes-Fernandez admitted in his plea agreement that the
7 Foundations were "designed to conceal the true identities of donors to Salvemos a Puerto
8 Rico."⁶¹ The Foundations played a distinct and essential role in the orchestration of this large-
9 scale scheme involving more than half a million dollars in straw contributions. They were not
10 defendants in the criminal case and have faced no punishment. Thus, civil enforcement against
11 the Foundations would properly vindicate the Commission's interests. The Commission
12 therefore finds reason to believe the Foundations knowingly and willfully violated 52 U.S.C.
13 § 30122.

⁵⁸ Cf. *United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)).

⁵⁹ *Hopkins*, 916 F.2d. at 214-15. As the *Hopkins* court stated, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁶⁰ Cf. Factual & Legal Analysis ("F&LA") at 14-15, MUR 8092 (Bashar Wali) (declining to make a knowing and willful finding where the information suggested the respondent did not know his actions were illegal and did not take actions to conceal the illegal activity); F&LA at 10, MUR 7949 (Crown Prod. & Serv.) (declining to find a knowing and willful violation where the respondents did not take actions to conceal the illegal activity).

⁶¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Salvemos a Puerto Rico **MUR: 7772**
5 Joseph Fuentes -Fernandez
6 in his official capacity as Treasurer
7 Joseph Fuentes-Fernandez
8 in his personal capacity¹
9

10 **I. INTRODUCTION**

11 This matter was generated by a Complaint filed with the Federal Election Commission
12 and a referral from Puerto Rico’s Oficina del Contralor Electoral alleging that at least \$250,000
13 in contributions in the name of another were made through two nonprofit corporations,
14 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. (collectively, the “Foundations”),
15 to Salvemos a Puerto Rico, an independent expenditure-only political committee (“IEOPC”), and
16 Joseph Fuentes-Fernandez (“Fuentes-Fernandez”) in his official capacity as treasurer.

17 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
18 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
19 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
20 agreement that he and others established the Foundations in order to conceal the true identities of
21 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005) (explaining that treasurers may, in certain matters, be notified in both their official and personal capacities and that, in such matters, the Commission will make findings as to the committee and the treasurer in both their official and personal capacities).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022) [hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Fuentes-Fernandez was sentenced on August 26, 2022, to 14 months
2 in prison with three years of supervised release.⁴ Salvemos a Puerto Rico, the ultimate recipient
3 IEOPC, was sentenced to three years of supervised probation, ordered to pay a \$150,000 fine,
4 and required to file amended reports with the Commission.⁵ Fuentes-Fernandez subsequently
5 filed amended reports with the Commission disclosing the identities of 15 contributors who
6 made contributions through the Foundations.⁶

7 The available information indicates that Salvemos a Puerto Rico and Fuentes-
8 Fernandez knowingly accepted contributions in the name of another in violation of 52 U.S.C.
9 § 30122, and failed to accurately report the contributions in violation of 52 U.S.C.
10 § 30104(b)(3)(A). The Commission finds, however, that its interests as to these Respondents
11 have been adequately vindicated by the criminal proceedings.⁷ Salvemos a Puerto Rico and
12 Fuentes-Fernandez pleaded guilty to criminal charges that encompassed the campaign finance
13 violations at issue in this matter and received substantial punishment that included incarceration,
14 a criminal fine, and disclosure of the true sources of the contributions at issue. Under these

³ Fuentes-Fernandez Plea, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter *Fuentes-Fernandez Stipulation of Facts*].

⁴ Fuentes-Fernandez Judgment at 2.

⁵ Salvemos a Puerto Rico Judgment at 1.

⁶ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁷ *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007).

1 circumstances, the Commission is exercising its prosecutorial discretion⁸ and dismissing the
2 allegations against Salvemos a Puerto and Fuentes-Fernandez with a letter of admonishment.

3 II. FACTUAL BACKGROUND

4 A. Complaint

5 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
6 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
7 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
8 of the donations.”⁹ The Complaint further alleges that the “only purpose of these two nonprofits
9 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
10 Puerto Rico PAC.”¹⁰ The Complaint points to the fact that the Foundations were registered
11 seven minutes apart, and the short period of time between the incorporation of the Foundations
12 and their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
13 allegations.¹¹ The Complaint made allegations as to Joseph Fuentes-Fernandez in his official
14 capacity as treasurer of Salvemos a Puerto Rico and in his personal capacity.

⁸ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁹ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 3.

1 A week before they filed the Complaint in this matter, the Complainants in MUR 7772
2 raised similar issues before Puerto Rico’s Oficina del Contralor Electoral (“OCE”), which
3 subsequently referred the matter to the Commission.¹²

4 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
5 2020, and Joseph Fuentes-Fernandez is its treasurer.¹³

6 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
7 501(c)(4) corporations incorporated under Puerto Rico law on June 10, 2020.

8 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
9 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
10 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁴ Salvemos a Puerto Rico then made two
11 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
12 “media campaign.”¹⁵ The Foundations subsequently made six additional contributions between
13 October 2020 and January 2021, totaling \$257,500.¹⁶

¹² Oficina del Contralor Electoral, Determination, OCE-Q-2020-005 (Sept. 18, 2020), Pre-MUR 668 [hereinafter OCE Referral]. OCE is the agency responsible for investigating violations of Puerto Rico’s campaign finance laws. OFICINA DEL CONTRALOR ELECTORAL, <https://oce.pr.gov/sobre-nosotros/> (last visited Dec. 11, 2023).

¹³ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁴ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁵ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁶ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 Fuentes-Fernandez and Salvemos a Puerto Rico submitted an initial Response to this
2 matter asserting that that the Commission lacks jurisdiction because there is no federal candidate
3 involved.¹⁷

4 **B. Department of Justice’s Criminal Prosecution**

5
6 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
7 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
8 statements to the Commission about the true identities of the donors of the contributions at
9 issue.¹⁸ Fuentes-Fernandez was sentenced on August 26, 2022 to 14 months in prison with three
10 years of supervised release.¹⁹ Salvemos a Puerto Rico was sentenced to three years of
11 supervised probation and a \$150,000 fine and ordered to file amended reports with the
12 Commission.²⁰

13 Fuentes-Fernandez admitted in his plea agreement that:

14
15 [Fuentes-Fernandez] and others established an interlocking group of three entities
16 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
17 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
18 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
19 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
20 the FEC of material information concerning the “true source” of hundreds of
21 thousands of dollars in political spending that was provided to Salvemos a Puerto
22 Rico.²¹
23

¹⁷ Salvemos a Puerto Rico & Joseph Fuentes-Fernandez Resp. at 2-3 (Sept. 20, 2020) (“Salvemos Resp.”).

¹⁸ Fuentes-Fernandez Plea ¶ 1, Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea Agreement ¶ 1; Salvemos a Puerto Rico Judgment at 1.

¹⁹ Fuentes-Fernandez Judgment at 2. Fuentes-Fernandez was released from confinement on July 10, 2023. *See Find an Inmate*, Fed. Bur. Of Prisons, https://www.bop.gov/mobile/find_inmate/byname.jsp (last visited Dec. 11, 2023) (search last name: Fuentes-Fernandez, first name: Joseph).

²⁰ Salvemos a Puerto Rico Judgment at 1; *see also* Salvemos a Puerto Rico, 2022 July Quarterly Report at 6 (Aug. 19, 2022) (disclosing payment of the \$150,000 fine to the United States District Court).

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

1 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
2 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
3 in fact he was aware that the money came from others and the Foundations were merely conduits
4 for the funds.²²

5 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
6 explaining that the donors could remain anonymous if they contributed through a third-party
7 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
8 Fernandez and “Individual 2” —identified as the Secretary of the Foundations — coordinating
9 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
10 facilitate anonymous donations.²⁴

11 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
12 behalf of Salvemos a Puerto Rico disclosing the identities of those who made the contributions in
13 the names of the Foundations.²⁵

14 Salvemos a Puerto Rico and Joseph Fuentes-Fernandez filed a supplemental Response
15 following the criminal charges and resulting pleas requesting that the Commission close the
16 matter in light of the guilty pleas.²⁶

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁶ Salvemos a Puerto Rico & Joseph Fuentes-Fernandez Supp. Resp. at 2 (June 29, 2022).

1 **III. LEGAL ANALYSIS**
2

3 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
4 deposit of money or anything of value made by any person for the purpose of influencing any
5 election for Federal office.”²⁷ The term “person” for purposes of the Act and Commission
6 regulations includes partnerships, corporations, and “any other organization or group of
7 persons.”²⁸ The Act prohibits a person from making a contribution in the name of another
8 person, knowingly permitting his or her name to be used to effect such a contribution, or
9 knowingly accepting such a contribution.²⁹ The Commission has included in its regulations
10 illustrations of activities that constitute making a contribution in the name of another:

- 11 (i) Giving money or anything of value, all or part of which
12 was provided to the contributor by another person (the true
13 contributor) without disclosing the source of money or the
14 thing of value to the recipient candidate or committee at the
15 time the contribution is made; or
- 16 (ii) Making a contribution of money or anything of value and
17 attributing as the source of the money or thing of value
18 another person when in fact the contributor is the source.³⁰

19 The requirement that a contribution be made in the name of its true source promotes
20 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
21 committees of the political contributions they receive.³¹ Courts therefore have uniformly

²⁷ 52 U.S.C. § 30101(8)(A).

²⁸ *Id.* § 30101(11); 11 C.F.R. § 100.10.

²⁹ 52 U.S.C. § 30122.

³⁰ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³¹ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

1 rejected the assertion that “only the person who actually transmits funds . . . makes the
2 contribution,”³² recognizing that “it is implausible that Congress, in seeking to promote
3 transparency, would have understood the relevant contributor to be [an] intermediary who
4 merely transmitted the campaign gift.”³³ Consequently, both the Act and the Commission’s
5 implementing regulations provide that a person who furnishes another with funds for the purpose
6 of contributing to a candidate or committee “makes” the resulting contribution.³⁴ This is true
7 whether funds are advanced to another person to make a contribution in that person’s name or
8 promised as reimbursement of a solicited contribution.³⁵ Because the concern of the law is the
9 true source from which a contribution to a candidate or committee originates, regardless of the
10 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
11 and the arrangement between the parties to determine who in fact, “made” a given contribution.

12 Here, the available information indicates that a number of individuals and entities
13 provided funds to the Foundations for the purpose of making contributions to Salvemos a Puerto
14 Rico, which knowingly accepted the contributions in the name of another in violation of

³² *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³³ *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.”).

³⁴ *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.”).

³⁵ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 52 U.S.C. § 30122, and falsely disclosed the contributions as made by the Foundations in
2 violation of 52 U.S.C. § 30104(b)(3)(A). Nonetheless, the Commission is exercising its
3 prosecutorial discretion and dismissing the allegations against Salvemos a Puerto and Fuentes-
4 Fernandez with a letter of admonishment, because the Commission’s interests as to these
5 Respondents have been adequately vindicated by the criminal proceedings.³⁶

6 The Commission has previously exercised its prosecutorial discretion and declined to
7 pursue matters where it determined that a related criminal conviction adequately vindicated its
8 civil enforcement interests under the Act. The Commission has taken this approach within the
9 following parameters: the respondent pleaded guilty or was convicted of at least one criminal
10 count directly relating to a federal campaign finance law violation; the facts in the civil matter
11 under review related to the count(s) to which the respondent pleaded guilty in the criminal
12 matter; and the respondent received criminal punishment.³⁷ By contrast, the Commission has
13 taken further action, notwithstanding a criminal conviction, when the criminal conviction or plea

³⁶ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007).

³⁷ See, e.g., Factual & Legal Analysis (“F&LA”) at 1-2, MUR 7072 (Babulal Bera) (declining to pursue further action against perpetrator of conduit scheme “among the largest [ever] considered” after Bera pleaded guilty to 52 U.S.C. §§ 30116(a)(1)(A) and 30122 and was sentenced to a prison term of one year and one day, supervised release for a term of 36 months, and a criminal fine of \$100,000, while also noting statute of limitations concerns and respondent’s advanced age); MURs 7011, 7092 (HC4President, *et al.*) (declining to further pursue action against respondents in matter where treasurer had pleaded guilty to related violations); F&LA at 9-10, MUR 6793 (Steve Stockman for Senate, *et al.*) (dismissing matter as to respondent who pled guilty to mail fraud, wire fraud and money laundering in criminal prosecution that involved underlying facts that directly related to the enforcement matter); F&LA at 1, MUR 6232 (Gladwin Gill) (declining to further pursue action against respondent who had pleaded guilty to one count of making contributions in the name of another and was sentenced to one year and one day in federal prison, followed by three years of supervised release, and was fined \$200,100); F&LA at 2, 5, MUR 6231 (Glenn Marshall) (declining to further pursue action against respondent, who had pleaded guilty to provisions now codified at 52 U.S.C. §§ 30118 and 30122 and was sentenced to 41 months in federal prison and ordered to pay restitution of \$467,612.62); Statement of Reasons (“SOR”), Comm’rs Cooksey & Trainor (Apr. 26, 2021), MURs 7313, 7319, 7379 (Michael D. Cohen, *et al.*) (stating that the Commission’s interests were vindicated as to a respondent who had been criminally prosecuted for the same conduct); SOR, Comm’rs Broussard & Weintraub (May 6, 2021), MURs 7313, 7319, 7379 (same).

1 did not specifically vindicate the Act’s discrete civil enforcement interests, *e.g.*, where the
2 criminal count(s) to which the respondent pleaded guilty or was convicted did not directly relate
3 to the facts of the civil matter under review, or did not directly relate to a federal campaign
4 finance law violation.³⁸

5 Here, Salvemos a Puerto Rico and Fuentes-Fernandez pleaded guilty to making false
6 statements to the Federal Election Commission about the true identities of donors to Salvemos a
7 Puerto Rico, which encompasses the campaign finance violations at issue in this matter.³⁹ These
8 Respondents have also received substantial punishment. Fuentes-Fernandez was sentenced to 14
9 months in prison with three years of supervised release.⁴⁰ Salvemos a Puerto Rico was
10 sentenced to three years of supervised probation and ordered to pay a \$150,000 fine and file
11 amended reports with the Commission.⁴¹ Accordingly, under these circumstances, the
12 Commission is exercising its prosecutorial discretion⁴² and dismissing the allegations that
13 Salvemos a Puerto Rico and Joseph Fuentes-Fernandez in his personal capacity and in his
14 official capacity as treasurer violated 52 U.S.C. § 30122 by knowingly accepting a contribution

³⁸ See, *e.g.*, Conciliation Agreement, MUR 7132 (Michael David Pitts) (Mar. 19, 2018) (conciliating with respondent who pleaded guilty to wire fraud, but the criminal charges did not address the funds the respondent took from the committee); Conciliation Agreement, MUR 6465 (John Junker) (Nov. 7, 2013) (conciliating penalties, including \$25,000 civil penalty with respondent who would later plead guilty to one count of criminal conspiracy under 18 U.S.C. § 371, rather than campaign finance violation); Conciliation Agreement, MUR 6179 (Christopher Ward) (Nov. 29, 2010) (conciliating with respondent who pleaded guilty to one count of criminal “Interstate Transportation of Stolen Property” in violation of 18 U.S.C. § 2314, rather than campaign finance violation); Conciliation Agreement, MUR 5971 (Mary Jennifer Adams) (Feb. 13, 2009) (conciliating with respondent who pleaded guilty to five counts of “Breach of Trust with Fraudulent Intent” and one count of “Financial Identity Fraud” in violation of state law, rather than federal campaign finance violation).

³⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

⁴⁰ Fuentes-Fernandez Judgment at 2.

⁴¹ Salvemos a Puerto Rico Judgment at 1; see *also* Salvemos a Puerto Rico, 2022 July Quarterly Report at 6 (Aug. 19, 2022) (disclosing payment of \$150,000 fine to United States District Court).

⁴² *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.

- 1 in the name of another and violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a)(4) by filing
- 2 inaccurate disclosure reports and issuing admonishment letters to Salvemos a Puerto Rico and
- 3 Joseph Fuentes-Fernandes.

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** Alejandro Brito-Zubizarreta **MUR:** 7772
56 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that
13 Alejandro Brito-Zubizarreta (“Brito-Zubizarreta”) made a \$35,000 contribution to Salvemos a
14 Puerto Rico through Foundation for Progress, Inc.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included Alejandro Brito-Zubizarreta.⁴ The Commission
4 notified Brito-Zubizarreta in relation to MUR 7772 following the disclosure of his name as a
5 person who made a contribution to Salvemos a Puerto Rico through Foundation for Progress,
6 Inc.

7 There is insufficient information in the available record to determine that Brito-
8 Zubizarreta understood that the ultimate recipient of the money that he gave to Foundation for
9 Progress was a *federal* political committee. Additionally, the overall record reflects that the
10 scheme was not devised by the contributors themselves. Under these circumstances, the
11 Commission is exercising its prosecutorial discretion⁵ and dismissing the allegations against
12 Alejandro Brito-Zubizarreta.

13 **II. FACTUAL BACKGROUND**

14 **A. Complaint**

15 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
16 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
17 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
18 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven

contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company
2 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
3 accounts on social media sites, and online searches revealed no information about their activities
4 other than articles discussing the allegations in the Complaint, the federal criminal case, or
5 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
6 nonprofit entities.¹⁵

7 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
8 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
9 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
10 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
11 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
12 October 2020 and January 2021, totaling \$257,500.¹⁸

13 **B. Department of Justice’s Criminal Prosecution**

14 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
15 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 statements to the Commission about the true identities of the donors of the contributions at
2 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
3 organized primarily to support the election of an “official in the executive branch of the
4 government of Puerto Rico.”²⁰

5 Fuentes-Fernandez admitted in his plea agreement that:

6
7 [Fuentes-Fernandez] and others established an interlocking group of three entities
8 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
9 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
10 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
11 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
12 the FEC of material information concerning the “true source” of hundreds of
13 thousands of dollars in political spending that was provided to Salvemos a Puerto
14 Rico.²¹

15
16 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
17 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
18 in fact he was aware that the money came from others and the Foundations were merely conduits
19 for the funds.²²

20 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
21 explaining that the donors could remain anonymous if they contributed through a third-party
22 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
23 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 **C. Disclosure of the True Contributors to Salvemos a Puerto Rico**

4 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained a chart
5 depicting the “true donors who donated funds to [the Foundations], some or all of which were
6 transferred to [Salvemos a Puerto Rico], and which were not accurately reported to the FEC.”²⁵
7 The chart reflected that on approximately June 23, 2020, Alejandro Brito-Zubizarreta gave
8 approximately \$50,000 to the Foundations for transfer to Salvemos a Puerto Rico.²⁶

9 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
10 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
11 names of the Foundations.²⁷ Salvemos a Puerto Rico disclosed that Brito-Zubizarreta
12 contributed \$35,000 through Foundation for Progress on June 23, 2020.²⁸

13 Brito-Zubizarreta’s donation to Foundation for Progress was made less than two weeks
14 after the Foundation’s formation,²⁹ and two days before the Foundation transferred \$75,000 to
15 Salvemos a Puerto Rico.³⁰

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico Stipulation of Facts ¶ 30.

²⁶ *Id.*

²⁷ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022).

²⁹ *See* Fundación Pro Igualdad Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

³⁰ *See* Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

1 Brito-Zubizarreta has not filed a Response with the Commission with regard to this
2 matter.

3 III. LEGAL ANALYSIS

4
5 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
6 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
7 value made by any person for the purpose of influencing any election for Federal office.”³¹ The
8 term “person” for purposes of the Act and Commission regulations includes partnerships,
9 corporations, and “any other organization or group of persons.”³² The Act prohibits a person
10 from making a contribution in the name of another person, knowingly permitting his or her name
11 to be used to effect such a contribution, or knowingly accepting such a contribution.³³ The
12 Commission has included in its regulations illustrations of activities that constitute making a
13 contribution in the name of another:

- 14 (i) Giving money or anything of value, all or part of which
15 was provided to the contributor by another person (the true
16 contributor) without disclosing the source of money or the
17 thing of value to the recipient candidate or committee at the
18 time the contribution is made; or
- 19 (ii) Making a contribution of money or anything of value and
20 attributing as the source of the money or thing of value
21 another person when in fact the contributor is the source.³⁴

22 The requirement that a contribution be made in the name of its true source promotes
23 Congress’s objective of ensuring the complete and accurate disclosure by candidates and

³¹ 52 U.S.C. § 30101(8)(A).

³² *Id.* § 30101(11); 11 C.F.R. § 100.10.

³³ 52 U.S.C. § 30122.

³⁴ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

1 committees of the political contributions they receive.³⁵ Courts therefore have uniformly
2 rejected the assertion that “only the person who actually transmits funds . . . makes the
3 contribution,”³⁶ recognizing that “it is implausible that Congress, in seeking to promote
4 transparency, would have understood the relevant contributor to be [an] intermediary who
5 merely transmitted the campaign gift.”³⁷ Consequently, both the Act and the Commission’s
6 implementing regulations provide that a person who furnishes another with funds for the purpose
7 of contributing to a candidate or committee “makes” the resulting contribution.³⁸ This is true
8 whether funds are advanced to another person to make a contribution in that person’s name or
9 promised as reimbursement of a solicited contribution.³⁹ Because the concern of the law is the
10 true source from which a contribution to a candidate or committee originates, regardless of the
11 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
12 and the arrangement between the parties to determine who in fact, “made” a given contribution.

³⁵ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁶ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁷ *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.”).

³⁸ *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.”).

³⁹ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 Here, there is insufficient information in the available record to determine that Brito-
2 Zubizarreta understood that the ultimate recipient of the money that he gave to Foundation for
3 Progress was a *federal* political committee. Indeed, information in the Commission’s possession
4 indicates that Respondent likely intended to support a gubernatorial candidate. Given the
5 resources that would be required to further investigate this point, and the available record’s
6 overall indications that the scheme was not devised by the contributors themselves, the
7 Commission is exercising its prosecutorial discretion⁴⁰ and dismissing the allegations against
8 Respondent Alejandro Brito-Zubizarreta.

⁴⁰ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** Andrew Keys **MUR:** 77725
6 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that Andrew
13 Keys (“Keys”) made \$965 in contributions to Salvemos a Puerto Rico through Foundation for
14 Progress, Inc.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included Andrew Keys.⁴ The Commission notified Keys in
4 relation to MUR 7772 following the disclosure of his name as a person who made a contribution
5 to Salvemos a Puerto Rico through Foundation for Progress, Inc.

6 There is insufficient information in the available record to determine that Keys
7 understood that the ultimate recipient of the money that he gave to Foundation for Progress was a
8 *federal* political committee. Additionally, the overall record reflects that the scheme was not
9 devised by the contributors themselves. Under these circumstances, the Commission is
10 exercising its prosecutorial discretion⁵ and dismissing the allegations against Andrew Keys.

11 II. FACTUAL BACKGROUND

12 A. Complaint

13 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
14 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
15 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
16 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven
14 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
2 accounts on social media sites, and online searches revealed no information about their activities
3 other than articles discussing the allegations in the Complaint, the federal criminal case, or
4 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
5 nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center, DAVINCI*, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

5
6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 C. Disclosure of the True Contributors to Salvemos a Puerto Rico

4 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
5 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
6 names of the Foundations.²⁵ Salvemos a Puerto Rico disclosed that Keys made two
7 contributions through Foundation for Progress: (1) \$735 on November 2, 2020,²⁶ and (2) \$230
8 on January 13, 2021.²⁷

9 Keys filed a response with the Commission confirming that he contributed to Foundation
10 for Progress, Inc., but in the amount of \$5,000 rather than the \$965 that was reflected in
11 Salvemos a Puerto Rico's amended reports.²⁸ Keys provided a signed declaration stating that he
12 thought Foundation for Progress was a PAC that would "work to re-elect the Governor," and that
13 his name would be disclosed.²⁹

14 III. LEGAL ANALYSIS

15
16 The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a
17 contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of
18 value made by any person for the purpose of influencing any election for Federal office."³⁰ The

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁶ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

²⁷ Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ Andrew Keys Resp. at 1-3 (Nov. 18, 2022). He also provided a copy of his \$5,000 contribution check. *Id.*

²⁹ *Id.*

³⁰ 52 U.S.C. § 30101(8)(A).

1 term “person” for purposes of the Act and Commission regulations includes partnerships,
2 corporations, and “any other organization or group of persons.”³¹ The Act prohibits a person
3 from making a contribution in the name of another person, knowingly permitting his or her name
4 to be used to effect such a contribution, or knowingly accepting such a contribution.³² The
5 Commission has included in its regulations illustrations of activities that constitute making a
6 contribution in the name of another:

- 7 (i) Giving money or anything of value, all or part of which
8 was provided to the contributor by another person (the true
9 contributor) without disclosing the source of money or the
10 thing of value to the recipient candidate or committee at the
11 time the contribution is made; or
- 12 (ii) Making a contribution of money or anything of value and
13 attributing as the source of the money or thing of value
14 another person when in fact the contributor is the source.³³

15 The requirement that a contribution be made in the name of its true source promotes
16 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
17 committees of the political contributions they receive.³⁴ Courts therefore have uniformly
18 rejected the assertion that “only the person who actually transmits funds . . . makes the
19 contribution,”³⁵ recognizing that “it is implausible that Congress, in seeking to promote
20 transparency, would have understood the relevant contributor to be [an] intermediary who

³¹ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³² 52 U.S.C. § 30122.

³³ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³⁴ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁵ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

1 merely transmitted the campaign gift.”³⁶ Consequently, both the Act and the Commission’s
2 implementing regulations provide that a person who furnishes another with funds for the purpose
3 of contributing to a candidate or committee “makes” the resulting contribution.³⁷ This is true
4 whether funds are advanced to another person to make a contribution in that person’s name or
5 promised as reimbursement of a solicited contribution.³⁸ Because the concern of the law is the
6 true source from which a contribution to a candidate or committee originates, regardless of the
7 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
8 and the arrangement between the parties to determine who in fact, “made” a given contribution.

9 Here, there is insufficient information in the available record to determine that Keys
10 understood that the ultimate recipient of the money that he gave to Foundation for Progress was a
11 *federal* political committee. Indeed, Keys indicated in his response that he intended to support a
12 gubernatorial candidate. Given the resources that would be required to further investigate this
13 point, and the available record’s overall indications that the scheme was not devised by the

³⁶ *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.”).

³⁷ *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.”).

³⁸ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

- 1 contributors themselves, the Commission is exercising its prosecutorial discretion³⁹ and
- 2 dismissing the allegations against Respondent Andrew Keys.

³⁹ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: AP Engineering, Inc. **MUR:** 7772

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that AP Engineering, Inc. made \$54,760 in contributions to Salvemos a Puerto Rico through Fundación Pro Igualdad, Inc., and \$30,584 in contributions through Foundation for Progress.¹

On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea agreement that he and others established the Foundations in order to conceal the true identities of donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included AP Engineering, Inc.⁴ The Commission notified AP
4 Engineering, Inc. in relation to MUR 7772 following the disclosure of its name as an entity that
5 made such contributions.

6 There is insufficient information in the available record to determine that AP Engineering
7 Inc. understood that the ultimate recipient of the money that it gave to the Foundations was a
8 *federal* political committee. Additionally, the overall record reflects that the scheme was not
9 devised by the contributors themselves. Under these circumstances, the Commission is
10 exercising its prosecutorial discretion⁵ and dismissing the allegations against AP Engineering,
11 Inc.

12 II. FACTUAL BACKGROUND

13 A. Complaint

14 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
15 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
16 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
17 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and Section 501(c)(4) of the Internal Revenue Code.¹¹ The Foundations
14 were incorporated within seven minutes of each other.¹² The Foundations share the same

to Salvemos a Puerto Rico from the Foundations).

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 physical address,¹³ which a company offers to rent as a “virtual office.”¹⁴ The Foundations do
2 not appear to have websites or any accounts on social media sites, and online searches revealed
3 no information about their activities other than articles discussing the allegations in the
4 Complaint, the federal criminal case, or related litigation. The Foundations do not appear on the
5 Internal Revenue Service’s database of nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

5
6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

²² *Id.* at ¶¶ 9, 19.

²³ *Id.* at ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 **C. Disclosure of the True Contributors to Salvemos a Puerto Rico**

4 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained a chart
5 depicting the “true donors who donated funds to [the Foundations], some or all of which were
6 transferred to [Salvemos a Puerto Rico], and which were not accurately reported to the FEC.”²⁵
7 The chart reflected that AP Engineering, Inc. gave the Foundations money to transfer to
8 Salvemos a Puerto Rico on two occasions: (1) \$59,200 on approximately June 19, 2020, and
9 (2) \$35,000 on approximately October 16, 2020.²⁶

10 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
11 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
12 names of the Foundations.²⁷ Salvemos a Puerto Rico disclosed that AP Engineering, Inc. made
13 two contributions through Fundación Pro Igualdad: (1) \$51,800 on June 22, 2020, and (2) \$2,960
14 on October 20, 2020; and one contribution through Foundation for Progress: \$30,584 on
15 October 20, 2020.²⁸ Notably, the June 22, 2020 donation was made less than two weeks after

²⁴ *Id.* at ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico Stipulation of Facts, ¶ 30.

²⁶ *Id.*

²⁷ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

1 Fundación Pro Igualdad's formation,²⁹ and three days before it transferred \$175,000 to
2 Salvemos a Puerto Rico.³⁰

3 AP Engineering, Inc. filed a Response with the Commission contending that the
4 Complaint does not contain any allegations of improper action on its part, it does not have
5 reporting obligations under the Federal Election Campaign Act of 1971, as amended (the "Act"),
6 and any donations were protected First Amendment activity.³¹

7 III. LEGAL ANALYSIS

8
9 The Act provides that a contribution includes "any gift, subscription, loan, advance, or
10 deposit of money or anything of value made by any person for the purpose of influencing any
11 election for Federal office."³² The term "person" for purposes of the Act and Commission
12 regulations includes partnerships, corporations, and "any other organization or group of
13 persons."³³ The Act prohibits a person from making a contribution in the name of another
14 person, knowingly permitting his or her name to be used to effect such a contribution, or
15 knowingly accepting such a contribution.³⁴ The Commission has included in its regulations
16 illustrations of activities that constitute making a contribution in the name of another:

- 17 (i) Giving money or anything of value, all or part of which
18 was provided to the contributor by another person (the true
19 contributor) without disclosing the source of money or the
20 thing of value to the recipient candidate or committee at the
21 time the contribution is made; or

²⁹ See Fundación Pro Igualdad Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

³⁰ See Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

³¹ AP Eng'g, Inc. Resp. at 5-9 (Nov. 15, 2022).

³² 52 U.S.C. § 30101(8)(A).

³³ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³⁴ 52 U.S.C. § 30122.

- 1 (ii) Making a contribution of money or anything of value and
2 attributing as the source of the money or thing of value
3 another person when in fact the contributor is the source.³⁵

4 The requirement that a contribution be made in the name of its true source promotes
5 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
6 committees of the political contributions they receive.³⁶ Courts therefore have uniformly
7 rejected the assertion that “only the person who actually transmits funds . . . makes the
8 contribution,”³⁷ recognizing that “it is implausible that Congress, in seeking to promote
9 transparency, would have understood the relevant contributor to be [an] intermediary who
10 merely transmitted the campaign gift.”³⁸ Consequently, both the Act and the Commission’s
11 implementing regulations provide that a person who furnishes another with funds for the purpose
12 of contributing to a candidate or committee “makes” the resulting contribution.³⁹ This is true
13 whether funds are advanced to another person to make a contribution in that person’s name or
14 promised as reimbursement of a solicited contribution.⁴⁰ Because the concern of the law is the

³⁵ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³⁶ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§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 § 30122 in light of compelling governmental interest in disclosure).

³⁷ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁸ *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.”).

³⁹ *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.”).

⁴⁰ *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 [§3 0122].” *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

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

4 Here, there is insufficient information in the available record to determine that AP
5 Engineering, Inc. understood that the ultimate recipient of the money that it gave to the
6 Foundations was a *federal* political committee. Indeed, information in the Commission’s
7 possession indicates that Respondent likely intended to support a gubernatorial candidate. Given
8 the resources that would be required to further investigate this point, and the available record’s
9 overall indications that the scheme was not devised by the contributors themselves, the
10 Commission is exercising its prosecutorial discretion⁴¹ and dismissing the allegations against
11 Respondent AP Engineering, Inc.

contribute the funds to a specific political committee, violated § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

⁴¹ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Augustos McCloskey **MUR:** 7772

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that Augustos McCloskey (“McCloskey”) made \$1,349 in contributions to Salvemos a Puerto Rico through Foundation for Progress, Inc.¹

On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea agreement that he and others established the Foundations in order to conceal the true identities of donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included Augustos McCloskey.⁴ The Commission notified
4 McCloskey in relation to MUR 7772 following the disclosure of his name as a person who made
5 a contribution to Salvemos a Puerto Rico through Foundation for Progress, Inc.

6 There is insufficient information in the available record to determine that McCloskey
7 understood that the ultimate recipient of the money that he gave to Foundation for Progress was a
8 *federal* political committee. Additionally, the overall record reflects that the scheme was not
9 devised by the contributors themselves. Under these circumstances, the Commission is
10 exercising its prosecutorial discretion⁵ and dismissing the allegations against Augustos
11 McCloskey.

12 II. FACTUAL BACKGROUND

13 A. Complaint

14 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
15 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
16 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
17 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

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1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

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9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven
14 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company

[&contributor_name=foundation&contributor_name=fundacion](#) (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

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1 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
2 accounts on social media sites, and online searches revealed no information about their activities
3 other than articles discussing the allegations in the Complaint, the federal criminal case, or
4 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
5 nonprofit entities.¹⁵

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7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
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9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

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¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

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1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

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6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

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15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
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18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

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²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 **C. Disclosure of the True Contributors to Salvemos a Puerto Rico**

4 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
5 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
6 names of the Foundations.²⁵ Salvemos a Puerto Rico disclosed that McCloskey made two
7 contributions through Foundation for Progress: (1) \$1,029 on November 2, 2020,²⁶ and (2) \$320
8 on January 13, 2021.²⁷

9 McCloskey has not filed a Response with the Commission with regard to this matter.

10 **III. LEGAL ANALYSIS**

11
12 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
13 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
14 value made by any person for the purpose of influencing any election for Federal office.”²⁸ The
15 term “person” for purposes of the Act and Commission regulations includes partnerships,
16 corporations, and “any other organization or group of persons.”²⁹ The Act prohibits a person
17 from making a contribution in the name of another person, knowingly permitting his or her name

²⁴ *Id.* ¶¶ 21, 23.

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²⁶ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

²⁷ Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ 52 U.S.C. § 30101(8)(A).

²⁹ *Id.* § 30101(11); 11 C.F.R. § 100.10.

1 to be used to effect such a contribution, or knowingly accepting such a contribution.³⁰ The
2 Commission has included in its regulations illustrations of activities that constitute making a
3 contribution in the name of another:

- 4 (i) Giving money or anything of value, all or part of which
5 was provided to the contributor by another person (the true
6 contributor) without disclosing the source of money or the
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8 time the contribution is made; or
- 9 (ii) Making a contribution of money or anything of value and
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11 another person when in fact the contributor is the source.³¹

12 The requirement that a contribution be made in the name of its true source promotes
13 Congress's objective of ensuring the complete and accurate disclosure by candidates and
14 committees of the political contributions they receive.³² Courts therefore have uniformly
15 rejected the assertion that "only the person who actually transmits funds . . . makes the
16 contribution,"³³ recognizing that "it is implausible that Congress, in seeking to promote
17 transparency, would have understood the relevant contributor to be [an] intermediary who
18 merely transmitted the campaign gift."³⁴ Consequently, both the Act and the Commission's
19 implementing regulations provide that a person who furnishes another with funds for the purpose

³⁰ 52 U.S.C. § 30122.

³¹ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³² *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³³ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁴ *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.").

1 of contributing to a candidate or committee “makes” the resulting contribution.³⁵ This is true
2 whether funds are advanced to another person to make a contribution in that person’s name or
3 promised as reimbursement of a solicited contribution.³⁶ Because the concern of the law is the
4 true source from which a contribution to a candidate or committee originates, regardless of the
5 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
6 and the arrangement between the parties to determine who in fact, “made” a given contribution.

7 Here, there is insufficient information in the available record to determine that
8 McCloskey understood that the ultimate recipient of the money that he gave to Foundation for
9 Progress was a *federal* political committee. Indeed, information in the Commission’s possession
10 indicates that Respondent likely intended to support a gubernatorial candidate. Given the
11 resources that would be required to further investigate this point, and the available record’s
12 overall indications that the scheme was not devised by the contributors themselves, the
13 Commission is exercising its prosecutorial discretion³⁷ and dismissing the allegations against
14 Respondent Augustos McCloskey.

³⁵ 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.”).

³⁶ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³⁷ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** BAE FE, LLC **MUR:** 77725
6 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that BAE
13 FE, LLC made a \$49,330 contribution to Salvemos a Puerto Rico through Foundation for
14 Progress, Inc.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included BAE FE, LLC.⁴ The Commission notified BAE FE,
4 LLC in relation to MUR 7772 following the disclosure of its name as an entity that made a
5 contribution to Salvemos a Puerto Rico through Foundation for Progress, Inc.

6 There is insufficient information in the available record to determine that BAE FE, LLC
7 understood that the ultimate recipient of the money that it gave to Foundation for Progress was a
8 *federal* political committee. Additionally, the overall record reflects that the scheme was not
9 devised by the contributors themselves. Under these circumstances, the Commission is
10 exercising its prosecutorial discretion⁵ and dismissing the allegations against BAE FE, LLC.

11 II. FACTUAL BACKGROUND

12 A. Complaint

13 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
14 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
15 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
16 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter *Fuentes-Fernandez Stipulation of Facts*].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven
14 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
2 accounts on social media sites, and online searches revealed no information about their activities
3 other than articles discussing the allegations in the Complaint, the federal criminal case, or
4 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
5 nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center, DAVINCI*, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

5
6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 **C. Disclosure of the True Contributors to Salvemos a Puerto Rico**

4 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained a chart
5 depicting the “true donors who donated funds to [the Foundations], some or all of which were
6 transferred to [Salvemos a Puerto Rico], and which were not accurately reported to the FEC.”²⁵
7 The chart reflected that on approximately June 23, 2020, BAE FE, LLC gave \$50,000 to a
8 Foundation for transfer to Salvemos a Puerto Rico.²⁶ The reported donation was made less than
9 two weeks after the Foundation’s formation,²⁷ and two days before the Foundation transferred
10 \$75,000 to Salvemos a Puerto Rico.²⁸

11 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
12 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
13 names of the Foundations.²⁹ Salvemos a Puerto Rico disclosed that BAE FE, LLC contributed
14 \$49,330 through Foundation for Progress on October 20, 2020.³⁰

15 BAE FE, LLC has not filed a Response with the Commission with regard to this matter.

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico Stipulation of Facts ¶ 30.

²⁶ *Id.*

²⁷ *See* Fundación Pro Igualdad Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

²⁸ *See* Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

²⁹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

³⁰ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

1 **III. LEGAL ANALYSIS**

2
3 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
4 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
5 value made by any person for the purpose of influencing any election for Federal office.”³¹ The
6 term “person” for purposes of the Act and Commission regulations includes partnerships,
7 corporations, and “any other organization or group of persons.”³² The Act prohibits a person
8 from making a contribution in the name of another person, knowingly permitting his or her name
9 to be used to effect such a contribution, or knowingly accepting such a contribution.³³ The
10 Commission has included in its regulations illustrations of activities that constitute making a
11 contribution in the name of another:

- 12 (i) Giving money or anything of value, all or part of which
13 was provided to the contributor by another person (the true
14 contributor) without disclosing the source of money or the
15 thing of value to the recipient candidate or committee at the
16 time the contribution is made; or
- 17 (ii) Making a contribution of money or anything of value and
18 attributing as the source of the money or thing of value
19 another person when in fact the contributor is the source.³⁴

20 The requirement that a contribution be made in the name of its true source promotes
21 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
22 committees of the political contributions they receive.³⁵ Courts therefore have uniformly

³¹ 52 U.S.C. § 30101(8)(A).

³² *Id.* § 30101(11); 11 C.F.R. § 100.10.

³³ 52 U.S.C. § 30122.

³⁴ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³⁵ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is

1 rejected the assertion that “only the person who actually transmits funds . . . makes the
2 contribution,”³⁶ recognizing that “it is implausible that Congress, in seeking to promote
3 transparency, would have understood the relevant contributor to be [an] intermediary who
4 merely transmitted the campaign gift.”³⁷ Consequently, both the Act and the Commission’s
5 implementing regulations provide that a person who furnishes another with funds for the purpose
6 of contributing to a candidate or committee “makes” the resulting contribution.³⁸ This is true
7 whether funds are advanced to another person to make a contribution in that person’s name or
8 promised as reimbursement of a solicited contribution.³⁹ Because the concern of the law is the
9 true source from which a contribution to a candidate or committee originates, regardless of the
10 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
11 and the arrangement between the parties to determine who in fact, “made” a given contribution.

12 Here, there is insufficient information in the available record to determine that BAE FE,
13 LLC understood that the ultimate recipient of the money that it gave to Foundation for Progress,

plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to § 30122 in light of compelling governmental interest in disclosure).

³⁶ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁷ *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.”).

³⁸ 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.”).

³⁹ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 was a *federal* political committee. Indeed, information in the Commission’s possession indicates
2 that Respondent likely intended to support a gubernatorial candidate. Given the resources that
3 would be required to further investigate this point, and the available record’s overall indications
4 that the scheme was not devised by the contributors themselves, the Commission is exercising its
5 prosecutorial discretion⁴⁰ and dismissing the allegations against Respondent BAE FE, LLC.

⁴⁰ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Beam, Longest and Neff, LLC **MUR:** 7772

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that Beam, Longest and Neff, LLC (“BLN”) made a \$4,918 contribution to Salvemos a Puerto Rico through Foundation for Progress, Inc.¹

On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea agreement that he and others established the Foundations in order to conceal the true identities of donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included BLN.⁴ The Commission notified BLN in relation to
4 MUR 7772 following the disclosure of its name as an entity that made a contribution to
5 Salvemos a Puerto Rico through Foundation for Progress, Inc.

6 There is insufficient information in the available record to determine that BLN
7 understood that the ultimate recipient of the money that it gave to Foundation for Progress was a
8 *federal* political committee. Additionally, the overall record reflects that the scheme was not
9 devised by the contributors themselves. Under these circumstances, the Commission is
10 exercising its prosecutorial discretion⁵ and dismissing the allegations against BLN.

11 II. FACTUAL BACKGROUND

12 A. Complaint

13 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
14 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
15 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
16 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven
14 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
2 accounts on social media sites, and online searches revealed no information about their activities
3 other than articles discussing the allegations in the Complaint, the federal criminal case, or
4 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
5 nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

5
6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” —identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 C. Disclosure of the True Contributors to Salvemos a Puerto Rico

4 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
5 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
6 names of the Foundations.²⁵ Salvemos a Puerto Rico disclosed that BLN contributed \$4,918
7 through Foundation for Progress on October 28, 2020.²⁶

8 BLN filed a Response with the Commission contending that the Complaint did not allege
9 any improper or illegal action on its part, and that “it had no advance notice that the Foundation
10 would use the funds it received to support federal election activities under the jurisdiction of the
11 FEC.”²⁷

12 III. LEGAL ANALYSIS

13
14 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
15 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
16 value made by any person for the purpose of influencing any election for Federal office.”²⁸ The
17 term “person” for purposes of the Act and Commission regulations includes partnerships,
18 corporations, and “any other organization or group of persons.”²⁹ The Act prohibits a person

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁶ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

²⁷ Beam, Longest and Neff, LLC Resp. at 2 (Nov. 15, 2022).

²⁸ 52 U.S.C. § 30101(8)(A).

²⁹ *Id.* § 30101(11); 11 C.F.R. § 100.10.

1 from making a contribution in the name of another person, knowingly permitting his or her name
2 to be used to effect such a contribution, or knowingly accepting such a contribution.³⁰ The
3 Commission has included in its regulations illustrations of activities that constitute making a
4 contribution in the name of another:

- 5 (i) Giving money or anything of value, all or part of which
6 was provided to the contributor by another person (the true
7 contributor) without disclosing the source of money or the
8 thing of value to the recipient candidate or committee at the
9 time the contribution is made; or
- 10 (ii) Making a contribution of money or anything of value and
11 attributing as the source of the money or thing of value
12 another person when in fact the contributor is the source.³¹

13 The requirement that a contribution be made in the name of its true source promotes
14 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
15 committees of the political contributions they receive.³² Courts therefore have uniformly
16 rejected the assertion that “only the person who actually transmits funds . . . makes the
17 contribution,”³³ recognizing that “it is implausible that Congress, in seeking to promote
18 transparency, would have understood the relevant contributor to be [an] intermediary who
19 merely transmitted the campaign gift.”³⁴ Consequently, both the Act and the Commission’s

³⁰ 52 U.S.C. § 30122.

³¹ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³² *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³³ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁴ *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.”).

1 implementing regulations provide that a person who furnishes another with funds for the purpose
2 of contributing to a candidate or committee “makes” the resulting contribution.³⁵ This is true
3 whether funds are advanced to another person to make a contribution in that person’s name or
4 promised as reimbursement of a solicited contribution.³⁶ Because the concern of the law is the
5 true source from which a contribution to a candidate or committee originates, regardless of the
6 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
7 and the arrangement between the parties to determine who in fact, “made” a given contribution.

8 Here, there is insufficient information in the available record to determine that BLN
9 understood that the ultimate recipient of the money that it gave to Foundation for Progress, Inc.
10 was a *federal* political committee. Indeed, BLN indicated in its response that it did not have
11 notice that the Foundation would use the funds it received from BLN to support federal election
12 activities.³⁷ Given the resources that would be required to further investigate this point, and the
13 available record’s overall indications that the scheme was not devised by the contributors
14 themselves, the Commission is exercising its prosecutorial discretion³⁸ and dismissing the
15 allegations against Respondent BLN.

³⁵ 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.”).

³⁶ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³⁷ Beam, Longest and Neff, LLC Resp. at 2.

³⁸ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** Essential Insurance Services, Inc. **MUR:** 7772
56 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that
13 Essential Insurances Services, Inc. (“EIS”) made \$92,500 in contributions to Salvemos a Puerto
14 Rico through Fundación Pro Igualdad, Inc.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included EIS.⁴ The Commission notified EIS in relation to
4 MUR 7772 following the disclosure of its name as an entity that made a contribution to
5 Salvemos a Puerto Rico through Fundación Pro Igualdad, Inc.

6 There is insufficient information in the available record to determine that EIS understood
7 that the ultimate recipient of the money that it gave to Fundación Pro Igualdad, Inc. was a *federal*
8 political committee. Additionally, the overall record reflects that the scheme was not devised by
9 the contributors themselves. Under these circumstances, the Commission is exercising its
10 prosecutorial discretion⁵ and dismissing the allegations against EIS.

11 II. FACTUAL BACKGROUND

12 A. Complaint

13 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
14 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
15 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
16 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven
14 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
2 accounts on social media sites, and online searches revealed no information about their activities
3 other than articles discussing the allegations in the Complaint, the federal criminal case, or
4 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
5 nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

5
6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 **C. Disclosure of the True Contributors to Salvemos a Puerto Rico**

4 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained a chart
5 depicting the “true donors who donated funds to [the Foundations], some or all of which were
6 transferred to [Salvemos a Puerto Rico], and which were not accurately reported to the FEC.”²⁵
7 The chart reflected that on approximately June 18, 2020, EIS gave \$100,000 to a Foundation for
8 transfer to Salvemos a Puerto Rico.²⁶

9 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
10 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
11 names of the Foundations.²⁷ Salvemos a Puerto Rico disclosed that EIS made two contributions
12 through Fundación Pro Igualdad: (1) \$87,500 on June 22, 2020, and (2) \$5,000 on October 20,
13 2020.²⁸ Notably, the June 22, 2020 donation was made less than two weeks after the
14 Foundation’s formation,²⁹ and three days before the Foundation transferred \$175,000 to
15 Salvemos a Puerto Rico.³⁰

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico Stipulation of Facts, ¶ 30.

²⁶ *Id.*

²⁷ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

²⁹ *See* Fundación Pro Igualdad Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

³⁰ *See* Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

1 EIS filed a Response with the Commission contending that the Complaint did not allege
2 any improper or illegal action on its part, and that its donations to Fundación Pro Igualdad, Inc.
3 are protected speech.³¹

4 III. LEGAL ANALYSIS

5
6 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
7 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
8 value made by any person for the purpose of influencing any election for Federal office.”³² The
9 term “person” for purposes of the Act and Commission regulations includes partnerships,
10 corporations, and “any other organization or group of persons.”³³ The Act prohibits a person
11 from making a contribution in the name of another person, knowingly permitting his or her name
12 to be used to effect such a contribution, or knowingly accepting such a contribution.³⁴ The
13 Commission has included in its regulations illustrations of activities that constitute making a
14 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.³⁵

³¹ Essential Ins. Servs., Inc. Resp. at 1-2 (Oct. 7, 2022).

³² 52 U.S.C. § 30101(8)(A).

³³ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³⁴ 52 U.S.C. § 30122.

³⁵ 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.³⁶ Courts therefore have uniformly
4 rejected the assertion that “only the person who actually transmits funds . . . makes the
5 contribution,”³⁷ 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.”³⁸ 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.³⁹ 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.⁴⁰ Because the concern of the law is the
12 true source from which a contribution to a candidate or committee originates, regardless of the

³⁶ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁷ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁸ *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.”).

³⁹ *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.”).

⁴⁰ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
2 and the arrangement between the parties to determine who in fact, “made” a given contribution.

3 Here, there is insufficient information in the available record to determine that EIS
4 understood that the ultimate recipient of the money that it gave to Fundación Pro Igualdad, Inc.
5 was a *federal* political committee. Indeed, information in the Commission’s possession indicates
6 that Respondent likely intended to support a gubernatorial candidate. Given the resources that
7 would be required to further investigate this point, and the available record’s overall indications
8 that the scheme was not devised by the contributors themselves, the Commission is exercising its
9 prosecutorial discretion⁴¹ and dismissing the allegations against Respondent Essential Insurance
10 Services, Inc.

⁴¹ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** Jaap, LLC **MUR:** 77725
6 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that Jaap,
13 LLC made \$37,740, in contributions to Salvemos a Puerto Rico through Fundación Pro Igualdad,
14 Inc., and \$30,584 in contributions through Foundation for Progress.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included Jaap, LLC.⁴ The Commission notified Jaap, LLC in
4 relation to MUR 7772 following the disclosure of its name as an entity that made such
5 contributions.

6 There is insufficient information in the available record to determine that Jaap, LLC
7 understood that the ultimate recipient of the money that it gave to the Foundations was a *federal*
8 political committee. Additionally, the overall record reflects that the scheme was not devised by
9 the contributors themselves. Under these circumstances, the Commission is exercising its
10 prosecutorial discretion⁵ and dismissing the allegations against Jaap, LLC.

11 II. FACTUAL BACKGROUND

12 A. Complaint

13 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
14 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
15 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
16 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven
14 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

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1 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
2 accounts on social media sites, and online searches revealed no information about their activities
3 other than articles discussing the allegations in the Complaint, the federal criminal case, or
4 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
5 nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 **B. Department of Justice’s Criminal Prosecution**

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center, DAVINCI*, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

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6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

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15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 **C. Disclosure of the True Contributors to Salvemos a Puerto Rico**

4 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained a chart
5 depicting the “true donors who donated funds to [the Foundations], some or all of which were
6 transferred to [Salvemos a Puerto Rico], and which were not accurately reported to the FEC.”²⁵
7 The chart reflected that Jaap, LLC gave the Foundations money to transfer to Salvemos a Puerto
8 Rico on two occasions: (1) \$40,800 on approximately June 22, 2020, and (2) \$35,000 on
9 approximately October 16, 2020.²⁶

10 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
11 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
12 names of the Foundations.²⁷ Salvemos a Puerto Rico disclosed that Jaap, LLC made two
13 contributions through Fundación Pro Igualdad: (1) \$35,700 on June 22, 2020, and (2) \$2,040 on
14 October 20, 2020; and one contribution through Foundation for Progress: \$30,584 on
15 October 20, 2020.²⁸ Notably, the June 22, 2020 donation was made less than two weeks after

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico Stipulation of Facts, ¶ 30.

²⁶ *Id.*

²⁷ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

1 Fundación Pro Igualdad’s formation,²⁹ and three days before it transferred \$175,000 to Salvemos
2 a Puerto Rico.³⁰

3 Jaap, LLC filed a Response with the Commission contending that the Complaint does not
4 contain any allegations of improper action on its part, it does not have reporting obligations
5 under the Act, and any donations were protected First Amendment activity.³¹

6 III. LEGAL ANALYSIS

7
8 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
9 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
10 value made by any person for the purpose of influencing any election for Federal office.”³² The
11 term “person” for purposes of the Act and Commission regulations includes partnerships,
12 corporations, and “any other organization or group of persons.”³³ The Act prohibits a person
13 from making a contribution in the name of another person, knowingly permitting his or her name
14 to be used to effect such a contribution, or knowingly accepting such a contribution.³⁴ The
15 Commission has included in its regulations illustrations of activities that constitute making a
16 contribution in the name of another:

- 17 (i) Giving money or anything of value, all or part of which
18 was provided to the contributor by another person (the true
19 contributor) without disclosing the source of money or the
20 thing of value to the recipient candidate or committee at the
21 time the contribution is made; or

²⁹ See Fundación Pro Igualdad Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

³⁰ See Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

³¹ Jaap, LLC Resp. at 5-9 (Nov. 15, 2022).

³² 52 U.S.C. § 30101(8)(A).

³³ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³⁴ 52 U.S.C. § 30122.

- 1 (ii) Making a contribution of money or anything of value and
2 attributing as the source of the money or thing of value
3 another person when in fact the contributor is the source.³⁵

4 The requirement that a contribution be made in the name of its true source promotes
5 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
6 committees of the political contributions they receive.³⁶ Courts therefore have uniformly
7 rejected the assertion that “only the person who actually transmits funds . . . makes the
8 contribution,”³⁷ recognizing that “it is implausible that Congress, in seeking to promote
9 transparency, would have understood the relevant contributor to be [an] intermediary who
10 merely transmitted the campaign gift.”³⁸ Consequently, both the Act and the Commission’s
11 implementing regulations provide that a person who furnishes another with funds for the purpose
12 of contributing to a candidate or committee “makes” the resulting contribution.³⁹ This is true
13 whether funds are advanced to another person to make a contribution in that person’s name or
14 promised as reimbursement of a solicited contribution.⁴⁰ Because the concern of the law is the

³⁵ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³⁶ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁷ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁸ *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.”).

³⁹ *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.”).

⁴⁰ *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 [§ 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

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

4 Here, there is insufficient information in the available record to determine that Jaap, LLC
5 understood that the ultimate recipient of the money that it gave to the Foundations was a *federal*
6 political committee. Indeed, information in the Commission’s possession indicates that
7 Respondent likely intended to support a gubernatorial candidate. Given the resources that would
8 be required to further investigate this point, and the available record’s overall indications that the
9 scheme was not devised by the contributors themselves, the Commission is exercising its
10 prosecutorial discretion⁴¹ and dismissing the allegations against Respondent Jaap, LLC.

contribute the funds to a specific political committee, violated § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

⁴¹ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: LAS Enterprises, Inc. **MUR:** 7772

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that LAS Enterprises, Inc. made a \$15,000 contribution to Salvemos a Puerto Rico through Foundation for Progress.¹

On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea agreement that he and others established the Foundations in order to conceal the true identities of donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included LAS Enterprises, Inc.⁴ The Commission notified LAS
4 Enterprises, Inc. in relation to MUR 7772 following the disclosure of its name as an entity that
5 made a contribution to Salvemos a Puerto Rico through Foundation for Progress.

6 There is insufficient information in the available record to determine that LAS
7 Enterprises, Inc. understood that the ultimate recipient of the money that it gave to Foundation
8 for Progress, Inc. was a *federal* political committee. Additionally, the overall record reflects that
9 the scheme was not devised by the contributors themselves. Under these circumstances, the
10 Commission is exercising its prosecutorial discretion⁵ and dismissing the allegations against
11 LAS Enterprises, Inc.

12 II. FACTUAL BACKGROUND

13 A. Complaint

14 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
15 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
16 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
17 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

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[&contributor_name=foundation&contributor_name=fundacion](#) (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

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5 depicting the “true donors who donated funds to [the Foundations], some or all of which were
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7 The chart reflected that on approximately June 20, 2020, LAS Enterprises, Inc. gave \$15,000 to a
8 Foundation for transfer to Salvemos a Puerto Rico.²⁵

9 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
10 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
11 names of the Foundations.²⁶ Salvemos a Puerto Rico disclosed that LAS Enterprises, Inc.
12 contributed \$15,000 through Foundation for Progress on June 22, 2020.²⁷ Notably, the donation
13 was made less than two weeks after the Foundation’s formation,²⁸ and three days before the
14 Foundation transferred \$75,000 to Salvemos a Puerto Rico.²⁹

15 LAS Enterprises, Inc. has not filed a Response with the Commission with regard to this
16 matter.

²⁴ *Id.* ¶¶ 21, 23.

²⁵ *Id.*

²⁶ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

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1 **III. LEGAL ANALYSIS**
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3 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
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15 thing of value to the recipient candidate or committee at the
16 time the contribution is made; or
- 17 (ii) Making a contribution of money or anything of value and
18 attributing as the source of the money or thing of value
19 another person when in fact the contributor is the source.³³

20 The requirement that a contribution be made in the name of its true source promotes
21 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
22 committees of the political contributions they receive.³⁴ Courts therefore have uniformly

³⁰ 52 U.S.C. § 30101(8)(A).

³¹ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³² 52 U.S.C. § 30122.

³³ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³⁴ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is

1 rejected the assertion that “only the person who actually transmits funds . . . makes the
2 contribution,”³⁵ recognizing that “it is implausible that Congress, in seeking to promote
3 transparency, would have understood the relevant contributor to be [an] intermediary who
4 merely transmitted the campaign gift.”³⁶ Consequently, both the Act and the Commission’s
5 implementing regulations provide that a person who furnishes another with funds for the purpose
6 of contributing to a candidate or committee “makes” the resulting contribution.³⁷ This is true
7 whether funds are advanced to another person to make a contribution in that person’s name or
8 promised as reimbursement of a solicited contribution.³⁸ Because the concern of the law is the
9 true source from which a contribution to a candidate or committee originates, regardless of the
10 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
11 and the arrangement between the parties to determine who in fact, “made” a given contribution.

12 Here, there is insufficient information in the available record to determine that LAS
13 Enterprises, Inc. understood that the ultimate recipient of the money that it gave to Foundation

plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to § 30122 in light of compelling governmental interest in disclosure).

³⁵ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁶ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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).

³⁷ *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.”).

³⁸ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 for Progress, Inc. was a *federal* political committee. Indeed, information in the Commission's
2 possession indicates that Respondent likely intended to support a gubernatorial candidate. Given
3 the resources that would be required to further investigate this point, and the available record's
4 overall indications that the scheme was not devised by the contributors themselves, the
5 Commission is exercising its prosecutorial discretion³⁹ and dismissing the allegations against
6 Respondent LAS Enterprises, Inc.

³⁹ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Little Pictures Corp. **MUR:** 7772

I. INTRODUCTION

This matter was generated by a Complaint filed with Federal Election Commission (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that Little Pictures Corp. contributed \$16,667 to Salvemos a Puerto Rico through Fundación Pro Igualdad, Inc.¹

On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea agreement that he and others established the Foundations in order to conceal the true identities of donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended reports with the Commission disclosing the identities of 15 contributors who made contributions

¹ Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

1 through the Foundations, which included Little Pictures Corp.⁴ The Commission notified Little
2 Pictures Corp. in relation to MUR 7772 following the disclosure of its name as an entity that
3 made a contribution to Salvemos a Puerto Rico through Fundación Pro Igualdad, Inc.

4 There is insufficient information in the available record to determine that Little Pictures
5 Corp. understood that the ultimate recipient of the money that it gave to Fundación Pro Igualdad,
6 Inc. was a *federal* political committee. Additionally, the overall record reflects that the scheme
7 was not devised by the contributors themselves. Under these circumstances, the Commission is
8 exercising its prosecutorial discretion⁵ and dismissing the allegations against Little Pictures
9 Corp.

10 II. FACTUAL BACKGROUND

11 A. Complaint

12 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
13 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
14 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
15 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits
16 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
2 minutes apart, and the short period of time between the incorporation of the Foundations and
3 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
4 allegations.⁸

5 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
6 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

7 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
8 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
9 represented in their certifications with the Puerto Rico Secretary of State that they would be
10 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
11 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
12 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven
13 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company
14 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center, DAVINCI*, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

1 accounts on social media sites, and online searches revealed no information about their activities
2 other than articles discussing the allegations in the Complaint, the federal criminal case, or
3 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
4 nonprofit entities.¹⁵

5 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
6 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
7 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
8 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
9 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
10 October 2020 and January 2021, totaling \$257,500.¹⁸

11 **B. Department of Justice’s Criminal Prosecution**

12 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
13 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
14 statements to the Commission about the true identities of the donors of the contributions at
15 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was

¹⁵ See *Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

1 organized primarily to support the election of an “official in the executive branch of the
2 government of Puerto Rico.”²⁰

3 Fuentes-Fernandez admitted in his plea agreement that:

4
5 [Fuentes-Fernandez] and others established an interlocking group of three entities
6 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
7 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
8 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
9 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
10 the FEC of material information concerning the “true source” of hundreds of
11 thousands of dollars in political spending that was provided to Salvemos a Puerto
12 Rico.²¹

13
14 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
15 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
16 in fact he was aware that the money came from others and the Foundations were merely conduits
17 for the funds.²²

18 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
19 explaining that the donors could remain anonymous if they contributed through a third-party
20 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
21 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating
22 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
23 facilitate anonymous donations.²⁴

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

²⁴ *Id.* ¶¶ 21, 23.

1 **C. Disclosure of the True Contributors to Salvemos a Puerto Rico**

2 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained a chart
3 depicting the “true donors who donated funds to [the Foundations], some or all of which were
4 transferred to [Salvemos a Puerto Rico], and which were not accurately reported to the FEC.”²⁵
5 The chart reflected that on approximately October 19, 2020, Little Pictures Corp. gave \$25,000
6 to a Foundation for transfer to Salvemos a Puerto Rico.²⁶

7 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
8 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
9 names of the Foundations.²⁷ Salvemos a Puerto Rico disclosed that Little Pictures Corp.
10 contributed \$16,667 through Foundation for Progress on October 19, 2020.²⁸

11 Little Pictures Corp. has not filed a Response with the Commission with regard to this
12 matter.

13 **III. LEGAL ANALYSIS**

14 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
15 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
16 value made by any person for the purpose of influencing any election for Federal office.”²⁹ The
17 term “person” for purposes of the Act and Commission regulations includes partnerships,
18

²⁵ Salvemos a Puerto Rico Stipulation of Facts, ¶ 30.

²⁶ *Id.*

²⁷ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

²⁹ 52 U.S.C. § 30101(8)(A).

1 corporations, and “any other organization or group of persons.”³⁰ The Act prohibits a person
2 from making a contribution in the name of another person, knowingly permitting his or her name
3 to be used to effect such a contribution, or knowingly accepting such a contribution.³¹ The
4 Commission has included in its regulations illustrations of activities that constitute making a
5 contribution in the name of another:

- 6 (i) Giving money or anything of value, all or part of which
7 was provided to the contributor by another person (the true
8 contributor) without disclosing the source of money or the
9 thing of value to the recipient candidate or committee at the
10 time the contribution is made; or
- 11 (ii) Making a contribution of money or anything of value and
12 attributing as the source of the money or thing of value
13 another person when in fact the contributor is the source.³²

14 The requirement that a contribution be made in the name of its true source promotes
15 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
16 committees of the political contributions they receive.³³ Courts therefore have uniformly
17 rejected the assertion that “only the person who actually transmits funds . . . makes the
18 contribution,”³⁴ recognizing that “it is implausible that Congress, in seeking to promote
19 transparency, would have understood the relevant contributor to be [an] intermediary who

³⁰ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³¹ 52 U.S.C. § 30122.

³² 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³³ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

1 merely transmitted the campaign gift.”³⁵ Consequently, both the Act and the Commission’s
2 implementing regulations provide that a person who furnishes another with funds for the purpose
3 of contributing to a candidate or committee “makes” the resulting contribution.³⁶ This is true
4 whether funds are advanced to another person to make a contribution in that person’s name or
5 promised as reimbursement of a solicited contribution.³⁷ Because the concern of the law is the
6 true source from which a contribution to a candidate or committee originates, regardless of the
7 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
8 and the arrangement between the parties to determine who in fact, “made” a given contribution.

9 Here, there is insufficient information in the available record to determine that Little
10 Pictures Corp. understood that the ultimate recipient of the money that it gave to Fundación Pro
11 Igualdad, Inc. was a *federal* political committee. Indeed, information in the Commission’s
12 possession indicates that Respondent likely intended to support a gubernatorial candidate. Given
13 the resources that would be required to further investigate this point, and the available record’s
14 overall indications that the scheme was not devised by the contributors themselves, the

³⁵ *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.”).

³⁶ *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.”).

³⁷ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.

MUR 7772 (Little Pictures Corp.)
Factual and Legal Analysis
Page 9 of 9

- 1 Commission is exercising its prosecutorial discretion³⁸ and dismissing the allegations against
- 2 Respondent Little Pictures Corp.

³⁸ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** Michael McCloskey **MUR:** 77725
6 **I. INTRODUCTION**7 This matter was generated by a Complaint filed with Federal Election Commission (the
8 “Commission”) alleging that at least \$250,000 in contributions in the name of another were made
9 through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for Progress,
10 Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent expenditure-
11 only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-Fernandez”) in
12 his official capacity as treasurer. Amended disclosure reports reflect that Michael McCloskey
13 (“McCloskey”) made \$1,931 in contributions to Salvemos a Puerto Rico through Foundation for
14 Progress, Inc.¹15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

1 ¹ Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).2 ² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included McCloskey.⁴ The Commission notified McCloskey in
4 relation to MUR 7772 following the disclosure of his name as a person who made a contribution
5 to Salvemos a Puerto Rico through Foundation for Progress, Inc.

6 There is insufficient information in the available record to determine that McCloskey
7 understood that the ultimate recipient of the money that he gave to Foundation for Progress was a
8 *federal* political committee. Additionally, the overall record reflects that the scheme was not
9 devised by the contributors themselves. Under these circumstances, the Commission is
10 exercising its prosecutorial discretion⁵ and dismissing the allegations against Michael
11 McCloskey.

12 II. FACTUAL BACKGROUND

13 A. Complaint

14 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
15 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
16 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
17 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven
14 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company

[&contributor_name=foundation&contributor_name=fundacion](#) (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
2 accounts on social media sites, and online searches revealed no information about their activities
3 other than articles discussing the allegations in the Complaint, the federal criminal case, or
4 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
5 nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 **B. Department of Justice’s Criminal Prosecution**

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center, DAVINCI*, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

5
6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 C. Disclosure of the True Contributors to Salvemos a Puerto Rico

4 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
5 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
6 names of the Foundations.²⁵ Salvemos a Puerto Rico disclosed that McCloskey made two
7 contributions through Foundation for Progress: (1) \$1,471 on November 2, 2020,²⁶ and (2) \$460
8 on January 13, 2021.²⁷

9 McCloskey filed Responses with the Commission contending that the Complaint did not
10 allege any improper or illegal action on his part.²⁸

11 III. LEGAL ANALYSIS

12
13 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
14 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
15 value made by any person for the purpose of influencing any election for Federal office.”²⁹ The
16 term “person” for purposes of the Act and Commission regulations includes partnerships,
17 corporations, and “any other organization or group of persons.”³⁰ The Act prohibits a person

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁶ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

²⁷ Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ Michael McCloskey Resp. at 2 (Oct. 13, 2022); Michael McCloskey Resp. at 1 (Dec. 8, 2022).

²⁹ 52 U.S.C. § 30101(8)(A).

³⁰ *Id.* § 30101(11); 11 C.F.R. § 100.10.

1 from making a contribution in the name of another person, knowingly permitting his or her name
2 to be used to effect such a contribution, or knowingly accepting such a contribution.³¹ The
3 Commission has included in its regulations illustrations of activities that constitute making a
4 contribution in the name of another:

- 5 (i) Giving money or anything of value, all or part of which
6 was provided to the contributor by another person (the true
7 contributor) without disclosing the source of money or the
8 thing of value to the recipient candidate or committee at the
9 time the contribution is made; or
- 10 (ii) Making a contribution of money or anything of value and
11 attributing as the source of the money or thing of value
12 another person when in fact the contributor is the source.³²

13 The requirement that a contribution be made in the name of its true source promotes
14 Congress's objective of ensuring the complete and accurate disclosure by candidates and
15 committees of the political contributions they receive.³³ Courts therefore have uniformly
16 rejected the assertion that "only the person who actually transmits funds . . . makes the
17 contribution,"³⁴ recognizing that "it is implausible that Congress, in seeking to promote
18 transparency, would have understood the relevant contributor to be [an] intermediary who
19 merely transmitted the campaign gift."³⁵ Consequently, both the Act and the Commission's

³¹ 52 U.S.C. § 30122.

³² 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³³ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁵ *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.").

1 implementing regulations provide that a person who furnishes another with funds for the purpose
2 of contributing to a candidate or committee “makes” the resulting contribution.³⁶ This is true
3 whether funds are advanced to another person to make a contribution in that person’s name or
4 promised as reimbursement of a solicited contribution.³⁷ Because the concern of the law is the
5 true source from which a contribution to a candidate or committee originates, regardless of the
6 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
7 and the arrangement between the parties to determine who in fact, “made” a given contribution.

8 Here, there is insufficient information in the available record to determine that
9 McCloskey understood that the ultimate recipient of the money that he gave to Foundation for
10 Progress, Inc. was a *federal* political committee. Indeed, information in the Commission’s
11 possession indicates that Respondent likely intended to support a gubernatorial candidate. Given
12 the resources that would be required to further investigate this point, and the available record’s
13 overall indications that the scheme was not devised by the contributors themselves, the
14 Commission is exercising its prosecutorial discretion³⁸ and dismissing the allegations against
15 Respondent Michael McCloskey.

³⁶ 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.”).

³⁷ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³⁸ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** National Strategies Group, LLC **MUR:** 77725
6 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that
13 National Strategies Group, LLC made a \$14,799 contribution to Salvemos a Puerto Rico through
14 Foundation for Progress.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included National Strategies Group, LLC.⁴ The Commission
4 notified National Strategies Group, LLC in relation to MUR 7772 following the disclosure of its
5 name as an entity that made a contribution to Salvemos a Puerto Rico through Foundation for
6 Progress.

7 There is insufficient information in the available record to determine that National
8 Strategies Group, LLC understood that the ultimate recipient of the money that it gave to
9 Foundation for Progress, Inc. was a *federal* political committee. Additionally, the overall record
10 reflects that the scheme was not devised by the contributors themselves. Under these
11 circumstances, the Commission is exercising its prosecutorial discretion⁵ and dismissing the
12 allegations against National Strategies Group, LLC.

13 **II. FACTUAL BACKGROUND**

14 **A. Complaint**

15 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
16 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
17 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
18 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and IRC 501(c)(4).¹¹ The Foundations were incorporated within seven

contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter *Fundación Pro Igualdad, Articles of Incorporation*], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter *Foundation for Progress, Articles of Incorporation*], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 minutes of each other.¹² The Foundations share the same physical address,¹³ which a company
2 offers to rent as a “virtual office.”¹⁴ The Foundations do not appear to have websites or any
3 accounts on social media sites, and online searches revealed no information about their activities
4 other than articles discussing the allegations in the Complaint, the federal criminal case, or
5 related litigation. The Foundations do not appear on the Internal Revenue Service’s database of
6 nonprofit entities.¹⁵

7 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
8 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
9 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
10 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
11 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
12 October 2020 and January 2021, totaling \$257,500.¹⁸

13 **B. Department of Justice’s Criminal Prosecution**

14 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
15 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 statements to the Commission about the true identities of the donors of the contributions at
2 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
3 organized primarily to support the election of an “official in the executive branch of the
4 government of Puerto Rico.”²⁰

5 Fuentes-Fernandez admitted in his plea agreement that:

6
7 [Fuentes-Fernandez] and others established an interlocking group of three entities
8 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
9 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
10 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
11 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
12 the FEC of material information concerning the “true source” of hundreds of
13 thousands of dollars in political spending that was provided to Salvemos a Puerto
14 Rico.²¹

15
16 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
17 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
18 in fact he was aware that the money came from others and the Foundations were merely conduits
19 for the funds.²²

20 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
21 explaining that the donors could remain anonymous if they contributed through a third-party
22 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
23 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 C. Disclosure of the True Contributors to Salvemos a Puerto Rico

4 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
5 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
6 names of the Foundations.²⁵ Salvemos a Puerto Rico disclosed that National Strategies Group,
7 LLC contributed \$14,799 through Foundation for Progress on October 28, 2020.²⁶

8 National Strategies Group, LLC has not filed a Response with the Commission with
9 regard to this matter.

10 III. LEGAL ANALYSIS

11
12 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
13 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
14 value made by any person for the purpose of influencing any election for Federal office.”²⁷ The
15 term “person” for purposes of the Act and Commission regulations includes partnerships,
16 corporations, and “any other organization or group of persons.”²⁸ The Act prohibits a person
17 from making a contribution in the name of another person, knowingly permitting his or her name
18 to be used to effect such a contribution, or knowingly accepting such a contribution.²⁹ The

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁶ Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022).

²⁷ 52 U.S.C. § 30101(8)(A).

²⁸ *Id.* § 30101(11); 11 C.F.R. § 100.10.

²⁹ 52 U.S.C. § 30122.

1 Commission has included in its regulations illustrations of activities that constitute making a
2 contribution in the name of another:

- 3 (i) Giving money or anything of value, all or part of which
4 was provided to the contributor by another person (the true
5 contributor) without disclosing the source of money or the
6 thing of value to the recipient candidate or committee at the
7 time the contribution is made; or
- 8 (ii) Making a contribution of money or anything of value and
9 attributing as the source of the money or thing of value
10 another person when in fact the contributor is the source.³⁰

11 The requirement that a contribution be made in the name of its true source promotes
12 Congress's objective of ensuring the complete and accurate disclosure by candidates and
13 committees of the political contributions they receive.³¹ Courts therefore have uniformly
14 rejected the assertion that "only the person who actually transmits funds . . . makes the
15 contribution,"³² recognizing that "it is implausible that Congress, in seeking to promote
16 transparency, would have understood the relevant contributor to be [an] intermediary who
17 merely transmitted the campaign gift."³³ Consequently, both the Act and the Commission's
18 implementing regulations provide that a person who furnishes another with funds for the purpose

³⁰ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³¹ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³² *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³³ *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.").

1 of contributing to a candidate or committee “makes” the resulting contribution.³⁴ This is true
2 whether funds are advanced to another person to make a contribution in that person’s name or
3 promised as reimbursement of a solicited contribution.³⁵ Because the concern of the law is the
4 true source from which a contribution to a candidate or committee originates, regardless of the
5 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
6 and the arrangement between the parties to determine who in fact, “made” a given contribution.

7 Here, there is insufficient information in the available record to determine that National
8 Strategies Group, LLC understood that the ultimate recipient of the money that it gave to
9 Foundation for Progress, Inc. was a *federal* political committee. Indeed, information in the
10 Commission’s possession indicates that Respondent likely intended to support a gubernatorial
11 candidate. Given the resources that would be required to further investigate this point, and the
12 available record’s overall indications that the scheme was not devised by the contributors
13 themselves, the Commission is exercising its prosecutorial discretion³⁶ and dismissing the
14 allegations against Respondent National Strategies Group, LLC.

³⁴ 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.”).

³⁵ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³⁶ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** NGX Military Store **MUR:** 77725
6 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that NGX
13 Military Store (“NGX”) made \$33,333 in contributions to Salvemos a Puerto Rico through
14 Fundación Pro Igualdad, Inc.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022) [hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included NGX.⁴ The Commission notified NGX in relation to
4 MUR 7772 following the disclosure of its name as an entity that made a contribution to
5 Salvemos a Puerto Rico through Fundación Pro Igualdad, Inc.

6 There is insufficient information in the available record to determine that NGX
7 understood that the ultimate recipient of the money that it gave to Fundación Pro Igualdad, Inc.
8 was a *federal* political committee. Additionally, the overall record reflects that the scheme was
9 not devised by the contributors themselves. Under these circumstances, the Commission is
10 exercising its prosecutorial discretion⁵ and dismissing the allegations against NGX.

11 II. FACTUAL BACKGROUND

12 A. Complaint

13 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
14 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
15 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
16 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id.*; *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=fundacion&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and section 501(c)(4) of the Internal Revenue Code.¹¹ The Foundations
14 were incorporated within seven minutes of each other.¹² The Foundations share the same

⁷ Compl. at 4-5.

⁸ Compl. at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 physical address,¹³ which a company offers to rent as a “virtual office.”¹⁴ The Foundations do
2 not appear to have websites or any accounts on social media sites, and online searches revealed
3 no information about their activities other than articles discussing the allegations in the
4 Complaint, the federal criminal case, or related litigation. The Foundations do not appear on the
5 Internal Revenue Service’s database of nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, October Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

5
6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1,6; Salvemos a Puerto Rico Plea Agreement ¶¶ 1, 5.

²¹ Fuentes-Fernandez Plea, Stipulation of Facts ¶ 9.

²² *Id.* ¶¶ 9, 19.

²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 C. Disclosure of the True Contributors to Salvemos a Puerto Rico

4 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained a chart
5 depicting the “true donors who donated funds to [the Foundations], some or all of which were
6 transferred to [Salvemos a Puerto Rico], and which were not accurately reported to the FEC.”

7 The chart reflected that on approximately October 19, 2020, NGX gave \$50,000 to a Foundation
8 for transfer to Salvemos a Puerto Rico.²⁵

9 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
10 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
11 names of the Foundations.²⁶ Salvemos a Puerto Rico disclosed that NGX contributed \$33,333
12 through Foundation for Progress on October 20, 2020.²⁷

13 NGX filed a Response with the Commission contending that the Complaint did not
14 contain any allegations against it, and that its donation to Fundación Pro Igualdad, Inc. was made
15 legally.²⁸

16 III. LEGAL ANALYSIS

17 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
18 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
19

²⁴ *Id.* ¶¶ 21, 23.

²⁵ *Id.*

²⁶ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁷ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

²⁸ NGX Mil. Store Resp. at 1 (Nov. 18, 2022).

1 value made by any person for the purpose of influencing any election for Federal office.”²⁹ The
2 term “person” for purposes of the Act and Commission regulations includes partnerships,
3 corporations, and “any other organization or group of persons.”³⁰ The Act prohibits a person
4 from making a contribution in the name of another person, knowingly permitting his or her name
5 to be used to effect such a contribution, or knowingly accepting such a contribution.³¹ The
6 Commission has included in its regulations illustrations of activities that constitute making a
7 contribution in the name of another:

- 8 (i) Giving money or anything of value, all or part of which
9 was provided to the contributor by another person (the true
10 contributor) without disclosing the source of money or the
11 thing of value to the recipient candidate or committee at the
12 time the contribution is made; or
- 13 (ii) Making a contribution of money or anything of value and
14 attributing as the source of the money or thing of value
15 another person when in fact the contributor is the source.³²

16 The requirement that a contribution be made in the name of its true source promotes
17 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
18 committees of the political contributions they receive.³³ Courts therefore have uniformly
19 rejected the assertion that “only the person who actually transmits funds . . . makes the
20 contribution,”³⁴ recognizing that “it is implausible that Congress, in seeking to promote

²⁹ 52 U.S.C. § 30101(8)(A).

³⁰ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³¹ 52 U.S.C. § 30122.

³² 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³³ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

1 transparency, would have understood the relevant contributor to be [an] intermediary who
2 merely transmitted the campaign gift.”³⁵ Consequently, both the Act and the Commission’s
3 implementing regulations provide that a person who furnishes another with funds for the purpose
4 of contributing to a candidate or committee “makes” the resulting contribution.³⁶ This is true
5 whether funds are advanced to another person to make a contribution in that person’s name or
6 promised as reimbursement of a solicited contribution.³⁷ Because the concern of the law is the
7 true source from which a contribution to a candidate or committee originates, regardless of the
8 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
9 and the arrangement between the parties to determine who in fact, “made” a given contribution.

10 Here, there is insufficient information in the available record to determine that NGX
11 understood that the ultimate recipient of the money that it gave to Fundación Pro Igualdad, Inc.
12 was a *federal* political committee. Indeed, information in the Commission’s possession indicates
13 that Respondent likely intended to support a gubernatorial candidate. Given the resources that
14 would be required to further investigate this point, and the available record’s overall indications
15 that the scheme was not devised by the contributors themselves, the Commission is exercising its

³⁵ *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.”).

³⁶ *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.”).

³⁷ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.

MUR 7772 (NGX Military Store)
Factual and Legal Analysis
Page 9 of 9

- 1 prosecutorial discretion³⁸ and dismissing the allegations against Respondent NGX Military
- 2 Store.

³⁸ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** Northshore Management Corp. **MUR:** 7772
56 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that
13 Northshore Management Corp. made a \$25,000 contribution to Salvemos a Puerto Rico through
14 Foundation for Progress.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022)[hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included Northshore Management Corp.⁴ The Commission
4 notified Northshore Management Corp. in relation to MUR 7772 following the disclosure of its
5 name as an entity that made a contribution to Salvemos a Puerto Rico through Foundation for
6 Progress.

7 There is insufficient information in the available record to determine that Northshore
8 Management Corp. understood that the ultimate recipient of the money that it gave to Foundation
9 for Progress, Inc. was a *federal* political committee. Additionally, the overall record reflects that
10 the scheme was not devised by the contributors themselves. Under these circumstances, the
11 Commission is exercising its prosecutorial discretion⁵ and dismissing the allegations against
12 Northshore Management Corp.

13 **II. FACTUAL BACKGROUND**

14 **A. Complaint**

15 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
16 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
17 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
18 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Stipulation of Facts].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

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⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

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7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

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9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
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11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and Section 501(c)(4) of the Internal Revenue Code.¹¹ The Foundations
14 were incorporated within seven minutes of each other.¹² The Foundations share the same

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⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

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¹¹ *Fundación Pro Igualdad, Articles of Incorporation*; *Foundation for Progress, Articles of Incorporation*.

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1 physical address,¹³ which a company offers to rent as a “virtual office.”¹⁴ The Foundations do
2 not appear to have websites or any accounts on social media sites, and online searches revealed
3 no information about their activities other than articles discussing the allegations in the
4 Complaint, the federal criminal case, or related litigation. The Foundations do not appear on the
5 Internal Revenue Service’s database of nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

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1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

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6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea Agreement ¶ 1, Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Stipulation of Facts ¶ 9.

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²³ *Id.* ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 **C. Disclosure of the True Contributors to Salvemos a Puerto Rico**

4 The stipulated facts in the plea agreement for Salvemos a Puerto Rico contained a chart
5 depicting the “true donors who donated funds to [the Foundations], some or all of which were
6 transferred to [Salvemos a Puerto Rico], and which were not accurately reported to the FEC.”
7 The chart reflected that on approximately June 15, 2020, Northshore Management Corp. gave
8 \$25,000 to a Foundation for transfer to Salvemos a Puerto Rico.²⁵

9 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
10 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
11 names of the Foundations.²⁶ Salvemos a Puerto Rico disclosed that Northshore Management
12 Corp. contributed \$25,000 through Foundation for Progress on June 22, 2020.²⁷ Notably, the
13 donation was made less than two weeks after the Foundation’s formation,²⁸ and three days
14 before the Foundation transferred \$75,000 to Salvemos a Puerto Rico.²⁹

²⁴ *Id.* ¶¶ 21, 23.

²⁵ *Id.*

²⁶ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁷ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022).

²⁸ *See* Fundación Pro Igualdad Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

²⁹ *See* Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

1 Northshore Management Corp. filed a Response with the Commission asserting that the
2 Complaint did not contain allegations against it, as it does not have reporting obligations under
3 the Federal Election Campaign Act of 1971, as amended (the “Act”).³⁰

4 **III. LEGAL ANALYSIS**

5
6 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
7 deposit of money or anything of value made by any person for the purpose of influencing any
8 election for Federal office.”³¹ The term “person” for purposes of the Act and Commission
9 regulations includes partnerships, corporations, and “any other organization or group of
10 persons.”³² The Act prohibits a person from making a contribution in the name of another
11 person, knowingly permitting his or her name to be used to effect such a contribution, or
12 knowingly accepting such a contribution.³³ The Commission has included in its regulations
13 illustrations of activities that constitute making a contribution in the name of another:

- 14 (i) Giving money or anything of value, all or part of which
15 was provided to the contributor by another person (the true
16 contributor) without disclosing the source of money or the
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- 19 (ii) Making a contribution of money or anything of value and
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21 another person when in fact the contributor is the source.³⁴

22 The requirement that a contribution be made in the name of its true source promotes
23 Congress’s objective of ensuring the complete and accurate disclosure by candidates and

³⁰ Northshore Mgmt. Corp. Resp. at 1 (Nov. 28, 2022).

³¹ 52 U.S.C. § 30101(8)(A).

³² *Id.* § 30101(11); 11 C.F.R. § 100.10.

³³ 52 U.S.C. § 30122.

³⁴ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

1 committees of the political contributions they receive.³⁵ Courts therefore have uniformly
2 rejected the assertion that “only the person who actually transmits funds . . . makes the
3 contribution,”³⁶ recognizing that “it is implausible that Congress, in seeking to promote
4 transparency, would have understood the relevant contributor to be [an] intermediary who
5 merely transmitted the campaign gift.”³⁷ Consequently, both the Act and the Commission’s
6 implementing regulations provide that a person who furnishes another with funds for the purpose
7 of contributing to a candidate or committee “makes” the resulting contribution.³⁸ This is true
8 whether funds are advanced to another person to make a contribution in that person’s name or
9 promised as reimbursement of a solicited contribution.³⁹ Because the concern of the law is the
10 true source from which a contribution to a candidate or committee originates, regardless of the
11 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
12 and the arrangement between the parties to determine who in fact, “made” a given contribution.

³⁵ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁶ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁷ *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.”).

³⁸ *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.”).

³⁹ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 Here, there is insufficient information in the available record to determine that
2 Northshore Management Corp. understood that the ultimate recipient of the money that it gave to
3 Foundation for Progress, Inc. was a *federal* political committee. Indeed, information in the
4 Commission's possession indicates that Respondent likely intended to support a gubernatorial
5 candidate. Given the resources that would be required to further investigate this point, and the
6 available record's overall indications that the scheme was not devised by the contributors
7 themselves, the Commission is exercising its prosecutorial discretion⁴⁰ and dismissing the
8 allegations against Respondent Northshore Management Corp.

⁴⁰ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**3
4 **RESPONDENT:** Richard Machado-Gonzalez **MUR:** 77725
6 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the “Commission”) alleging that at least \$250,000 in contributions in the name of another were
9 made through two nonprofit corporations, Fundación Pro Igualdad, Inc. and Foundation for
10 Progress, Inc. (collectively, the “Foundations”), to Salvemos a Puerto Rico, an independent
11 expenditure-only political committee (“IEOPC”), and Joseph Fuentes-Fernandez (“Fuentes-
12 Fernandez”) in his official capacity as treasurer. Amended disclosure reports reflect that Richard
13 Machado-Gonzalez (“Machado-Gonzalez”) made \$48,255 in contributions to Salvemos a Puerto
14 Rico through Foundation for Progress, Inc.¹

15 On May 5, 2022, Fuentes-Fernandez and Salvemos a Puerto Rico pleaded guilty to
16 violations of 18 U.S.C. § 1001(a)(1) for making false statements to the Commission about the
17 true identities of the donors to Salvemos a Puerto Rico.² Fuentes-Fernandez admitted in his plea
18 agreement that he and others established the Foundations in order to conceal the true identities of
19 donors to Salvemos a Puerto Rico and that the Foundations were merely conduits for

¹ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

² Fuentes-Fernandez Plea Agreement ¶ 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. May 3, 2022) [hereinafter Fuentes-Fernandez Plea]; Fuentes-Fernandez Judgment at 1, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-001 (D.P.R. Aug. 26, 2022) [hereinafter Fuentes-Fernandez Judgment]; Salvemos a Puerto Rico Plea Agreement ¶ 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 6, 2022) [hereinafter Salvemos a Puerto Rico Plea]; Salvemos a Puerto Rico Judgment at 1, *United States v. Salvemos a Puerto Rico*, 3:22-cr-00182-002 (D.P.R. Aug. 26, 2022) [hereinafter Salvemos a Puerto Rico Judgment].

1 contributions from others.³ Pursuant to the plea agreements, Fuentes-Fernandez filed amended
2 reports with the Commission disclosing the identities of 15 contributors who made contributions
3 through the Foundations, which included Machado-Gonzalez.⁴ The Commission notified
4 Machado-Gonzalez in relation to MUR 7772 following the disclosure of his name as a person
5 who made a contribution to Salvemos a Puerto Rico through Foundation for Progress, Inc.

6 There is insufficient information in the available record to determine that Machado-
7 Gonzalez understood that the ultimate recipient of the money that he gave to Foundation for
8 Progress was a *federal* political committee. Additionally, the overall record reflects that the
9 scheme was not devised by the contributors themselves. Under these circumstances, the
10 Commission is exercising its prosecutorial discretion⁵ and dismissing the allegations against
11 Machado-Gonzalez.

12 II. FACTUAL BACKGROUND

13 A. Complaint

14 The Complaint in this matter was filed on August 5, 2020, and primarily alleges that
15 Salvemos a Puerto Rico “disguised” \$250,000 worth of contributed campaign funds by
16 “laundering the funds” through the two nonprofit organizations, and “failing to report the origin
17 of the donations.”⁶ The Complaint further alleges that the “only purpose of these two nonprofits

³ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶¶ 9, 19, *United States v. Joseph Fuentes-Fernandez*, 3:22-cr-00182-1 (District of Puerto Rico, May 3, 2022) [hereinafter *Fuentes-Fernandez Stipulation of Facts*].

⁴ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

⁵ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁶ Compl. at 2 (Aug. 5, 2020). The Complaint only identified \$250,000 in contributions as from the Foundations to Salvemos a Puerto Rico; however, the Commission’s disclosure database shows additional contributions reported as being from the Foundations totaling \$507,500. *See id*; *FEC Individual Contributions*:

1 [was] to donate directly to Salvemos [a] Puerto Rico,” and “to put dark money to Salvemos [a]
2 Puerto Rico PAC.”⁷ The Complaint points to the fact that the Foundations were registered seven
3 minutes apart, and the short period of time between the incorporation of the Foundations and
4 their first donations to Salvemos a Puerto Rico 15 days later, as factors supporting its
5 allegations.⁸

6 Salvemos a Puerto Rico is an IEOPC that registered with the Commission on May 19,
7 2020, and Joseph Fuentes-Fernandez is its treasurer.⁹

8 Fundación Pro Igualdad, Inc. and Foundation for Progress, Inc. are two nonprofit
9 501(c)(4) corporations organized under Puerto Rico law on June 10, 2020.¹⁰ The Foundations
10 represented in their certifications with the Puerto Rico Secretary of State that they would be
11 operated “for charitable and/or education purposes, for the promotion of social welfare . . . or
12 such other purposes which will allow the Foundation[s] to qualify as tax-exempt organization[s]”
13 under Puerto Rico law and Section 501(c)(4) of the Internal Revenue Code.¹¹ The Foundations
14 were incorporated within seven minutes of each other.¹² The Foundations share the same

Filtered Results, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

⁷ Compl. at 4-5.

⁸ *Id.* at 3.

⁹ Salvemos a Puerto Rico, Statement of Organization (May 19, 2020). The committee originally registered under the name PRP PAC and changed its name to Salvemos a Puerto Rico on May 27, 2020. *Id.*; Salvemos a Puerto Rico, Amended Statement of Organization (May 27, 2020).

¹⁰ Fundación Pro Igualdad, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Fundación Pro Igualdad, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445222-121>; Foundation for Progress, Inc., Articles of Incorporation (June 10, 2020) [hereinafter Foundation for Progress, Articles of Incorporation], <https://rceweb.estado.pr.gov/en/entity-information?c=445221-121>.

¹¹ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹² Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

1 physical address,¹³ which a company offers to rent as a “virtual office.”¹⁴ The Foundations do
2 not appear to have websites or any accounts on social media sites, and online searches revealed
3 no information about their activities other than articles discussing the allegations in the
4 Complaint, the federal criminal case, or related litigation. The Foundations do not appear on the
5 Internal Revenue Service’s database of nonprofit entities.¹⁵

6 On June 25, 2020, fifteen days after the Foundations’ formations, they contributed
7 \$250,000 in total — \$175,000 from Fundación Pro Igualdad, Inc. and \$75,000 from Foundation
8 for Progress, Inc. — to Salvemos a Puerto Rico.¹⁶ Salvemos a Puerto Rico then made two
9 disbursements — \$40,000 on July 9, 2020, and \$100,000 on July 13, 2020 — for a nonfederal
10 “media campaign.”¹⁷ The Foundations subsequently made six additional contributions between
11 October 2020 and January 2021, totaling \$257,500.¹⁸

12 B. Department of Justice’s Criminal Prosecution

13 On May 5, 2022, both Fuentes-Fernandez and Salvemos a Puerto Rico, as an
14 organizational defendant, pleaded guilty to violations of 18 U.S.C. § 1001(a)(1) for making false
15 statements to the Commission about the true identities of the donors of the contributions at

¹³ Fundación Pro Igualdad, Articles of Incorporation; Foundation for Progress, Articles of Incorporation.

¹⁴ *Reserve Your Virtual Office Address at Palmeras Office Center*, DAVINCI, <https://www.davincivirtual.com/loc/puerto-rico/san-juan-virtual-offices/facility-2235> (last visited Dec. 11, 2023).

¹⁵ *See Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos> (last visited Dec. 11, 2023) (search “Fundación Pro Igualdad”); *id.* (search “Foundation for Progress”). One entity with the name Foundation for Progress appears in the search results, but its tax-exempt status was revoked in 2013, and it does not appear to be related to the similarly named Respondent here.

¹⁶ Salvemos a Puerto Rico, July Quarterly Report at 6 (July 9, 2020).

¹⁷ Salvemos a Puerto Rico, Oct. Quarterly Report at 7 (Oct. 13, 2020).

¹⁸ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00746594&contributor_name=foundation&contributor_name=fundacion (last visited Dec. 11, 2023) (showing contributions to Salvemos a Puerto Rico from the Foundations).

1 issue.¹⁹ The stipulated facts in the plea agreements stated that Salvemos a Puerto Rico was
2 organized primarily to support the election of an “official in the executive branch of the
3 government of Puerto Rico.”²⁰

4 Fuentes-Fernandez admitted in his plea agreement that:

5
6 [Fuentes-Fernandez] and others established an interlocking group of three entities
7 — Nonprofit-1, Nonprofit-2, and Salvemos a Puerto Rico — designed to conceal
8 the true identities of donors to Salvemos a Puerto Rico. By ensuring that these
9 donors were anonymous [Fuentes-Fernandez] and others knowing and willfully
10 schemed to and did deprive the people of the Commonwealth of Puerto Rico and
11 the FEC of material information concerning the “true source” of hundreds of
12 thousands of dollars in political spending that was provided to Salvemos a Puerto
13 Rico.²¹

14
15 Fuentes-Fernandez further admitted in the plea agreement that he filed a report with the
16 Commission that listed contributions only from the Foundations to Salvemos a Puerto Rico when
17 in fact he was aware that the money came from others and the Foundations were merely conduits
18 for the funds.²²

19 The plea agreement referenced several text messages Fuentes-Fernandez sent to donors
20 explaining that the donors could remain anonymous if they contributed through a third-party
21 entity.²³ The plea agreement also contains examples of text messages between Fuentes-
22 Fernandez and “Individual 2” — identified as the Secretary of the Foundations — coordinating

¹⁹ Fuentes-Fernandez Plea ¶ 1; Fuentes-Fernandez Judgment at 1; Salvemos a Puerto Rico Plea ¶ 1; Salvemos a Puerto Rico Judgment at 1.

²⁰ Fuentes-Fernandez Stipulation of Facts ¶¶ 1, 6; Salvemos a Puerto Rico Plea ¶¶ 1, 5.

²¹ Fuentes-Fernandez Plea Agreement, Stipulation of Facts ¶ 9.

²² *Id.* at ¶¶ 9, 19.

²³ *Id.* at ¶¶ 21-24.

1 transfers from the Foundations to Salvemos a Puerto Rico and exchanging bank information to
2 facilitate anonymous donations.²⁴

3 C. Disclosure of the True Contributors to Salvemos a Puerto Rico

4 On August 19, 2022, Fuentes-Fernandez filed amended reports with the Commission on
5 behalf of Salvemos a Puerto Rico disclosing the identities of those who made contributions in the
6 names of the Foundations.²⁵ Salvemos a Puerto Rico disclosed that Machado-Gonzalez made
7 two contributions through Foundation for Progress: (1) \$36,765 on November 2, 2020,²⁶ and
8 (2) \$11,490 on January 13, 2021.²⁷

9 Machado-Gonzalez filed a Response with the Commission contending that the Complaint
10 did not contain any allegations against him.²⁸

11 III. LEGAL ANALYSIS

12
13 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
14 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
15 value made by any person for the purpose of influencing any election for Federal office.”²⁹ The
16 term “person” for purposes of the Act and Commission regulations includes partnerships,
17 corporations, and “any other organization or group of persons.”³⁰ The Act prohibits a person

²⁴ *Id.* ¶¶ 21, 23.

²⁵ Salvemos a Puerto Rico, Amended 2020 July Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 October Quarterly Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022); Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁶ Salvemos a Puerto Rico, Amended 2020 Post-General Report (Aug. 19, 2022).

²⁷ Salvemos a Puerto Rico, Amended 2021 Mid-Year Report (Aug. 19, 2022).

²⁸ Richard Machado-Gonzalez Resp. at 2 (Nov. 9, 2022).

²⁹ 52 U.S.C. § 30101(8)(A).

³⁰ *Id.* § 30101(11); 11 C.F.R. § 100.10.

1 from making a contribution in the name of another person, knowingly permitting his or her name
2 to be used to effect such a contribution, or knowingly accepting such a contribution.³¹ The
3 Commission has included in its regulations illustrations of activities that constitute making a
4 contribution in the name of another:

- 5 (i) Giving money or anything of value, all or part of which
6 was provided to the contributor by another person (the true
7 contributor) without disclosing the source of money or the
8 thing of value to the recipient candidate or committee at the
9 time the contribution is made; or
- 10 (ii) Making a contribution of money or anything of value and
11 attributing as the source of the money or thing of value
12 another person when in fact the contributor is the source.³²

13 The requirement that a contribution be made in the name of its true source promotes
14 Congress's objective of ensuring the complete and accurate disclosure by candidates and
15 committees of the political contributions they receive.³³ Courts therefore have uniformly
16 rejected the assertion that "only the person who actually transmits funds . . . makes the
17 contribution,"³⁴ recognizing that "it is implausible that Congress, in seeking to promote
18 transparency, would have understood the relevant contributor to be [an] intermediary who
19 merely transmitted the campaign gift."³⁵ Consequently, both the Act and the Commission's

³¹ 52 U.S.C. § 30122.

³² 11 C.F.R. § 110.4(b)(2)(i)-(ii).

³³ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [§ 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 § 30122 in light of compelling governmental interest in disclosure).

³⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁵ *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.").

1 implementing regulations provide that a person who furnishes another with funds for the purpose
2 of contributing to a candidate or committee “makes” the resulting contribution.³⁶ This is true
3 whether funds are advanced to another person to make a contribution in that person’s name or
4 promised as reimbursement of a solicited contribution.³⁷ Because the concern of the law is the
5 true source from which a contribution to a candidate or committee originates, regardless of the
6 mechanism by which the funds are transmitted, we examine the structure of the transaction itself
7 and the arrangement between the parties to determine who in fact, “made” a given contribution.

8 Here, there is insufficient information in the available record to determine that Machado-
9 Gonzalez understood that the ultimate recipient of the money that he gave to Foundation for
10 Progress was a *federal* political committee. Indeed, information in the Commission’s possession
11 indicates that Respondent likely intended to support a gubernatorial candidate. Given the
12 resources that would be required to further investigate this point, and the available record’s
13 overall indications that the scheme was not devised by the contributors themselves, the
14 Commission is exercising its prosecutorial discretion³⁸ and dismissing the allegations against
15 Respondent Richard Machado-Gonzalez.

³⁶ 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.”).

³⁷ *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 [§ 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 § 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³⁸ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).