

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 7848
DATE FILED: October 28, 2020
DATE OF NOTIFICATION: November 4, 2020
LAST RESPONSE RECEIVED: November 20, 2020
DATE ACTIVATED: May 11, 2021
SOL EXPIRATION: September 30, 2025
ELECTION CYCLE: 2020

COMPLAINANT:

C. A. “Neil” Combee

RESPONDENTS:

Cohn for Congress 2020 and Brian Foucart
in his official capacity as treasurer
House Victory Project 2020 and Judith Zamore in her
official capacity as treasurer
Alan Cohn

RELEVANT STATUTES
AND REGULATIONS:

52 U.S.C. § 30102(e)(1)
52 U.S.C. § 30116(a)(5)(A)
52 U.S.C. § 30116(f)
11 C.F.R. § 102.6
11 C.F.R. § 102.17

REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED: None**I. INTRODUCTION**

The Complaint alleges that House Victory Project 2020 (“House Victory Project”), a joint fundraising committee, made an excessive contribution of \$235,029.40 to Cohn for Congress 2020 (“Cohn Committee”) and Alan Cohn, because when it transferred funds to the Cohn Committee, House Victory Project was not authorized by Cohn to receive contributions on his behalf.¹ Cohn responds that House Victory Project was an authorized committee, but a clerical error caused the Cohn Committee’s amended Statement of Organization identifying

¹ Compl. at 1 (Oct. 28, 2020).

House Victory Project as an authorized committee to be filed a few days after the funds were transferred. As set forth below, we recommend that the Commission exercise its prosecutorial discretion to dismiss the allegations that House Victory Project made, and the Cohn Committee and Cohn accepted, an excessive contribution in the form of the transfer.

II. FACTUAL SUMMARY

Alan Cohn was the Democratic Party nominee for U.S. Congress from the 15th Congressional District of Florida in 2020.² Cohn for Congress 2020 is Cohn's principal campaign committee.³ House Victory Project 2020 is a joint fundraising committee comprised of itself as a joint fundraising representative and 40 participating candidate committees.⁴ On September 15, 2020, House Victory Project amended its Statement of Organization to add the Cohn Committee as a participating candidate committee.⁵ On September 30, 2020, House Victory Project transferred \$235,029.40 to the Cohn Committee, comprised of contributions dated between September 15 and September 30, 2020.⁶ On October 4, 2020, the Cohn Committee amended its Statement of Organization to identify House Victory Project as a joint

² Alan Cohn Amended Statement of Candidacy (Oct. 22, 2020). The primary election was held on August 18, 2020. Cohn lost the general election on November 3, 2020.

³ Cohn Committee Statement of Organization (Sept. 9, 2019).

⁴ *See* Amended House Victory Project Statement of Organization at 2, 5-13 (Sept. 15, 2020).

⁵ *Id.* at 6. Prior to the amended Statement of Organization, House Victory Project was comprised of 32 candidate committees. *See* Amended House Victory Project Statement of Organization at 2, 5-11 (July 28, 2020).

⁶ *See* House Victory Project 2020 October Monthly Report at 85 (Oct. 15, 2020) (transfer); Cohn Committee 2020 October Monthly Report at 762 (Oct. 15, 2020) (receipt of transfer); Cohn Committee Amended 2020 October Monthly Report at 762-795 (Oct. 21, 2020) (itemized contributions by date);

1 fundraising representative.⁷ Finally, on October 22, 2020, Cohn amended his Statement of
2 Candidacy to name House Victory Project as an authorized committee.⁸

3 In response to the Complaint, the Cohn Committee and Cohn (“Cohn Respondents”)
4 assert that House Victory Project was an authorized committee of Cohn by virtue of its being the
5 joint fundraising representative for joint fundraising activity in which Cohn participated pursuant
6 to a written joint fundraising agreement.⁹ The Cohn Respondents cite the House Victory
7 Project’s Amended Statement of Organization filed on September 15, 2020, naming the Cohn
8 Committee as a participating candidate committee prior to the transfer of funds to the Cohn
9 Committee, and assert that the transfer of funds was made in accordance with Commission
10 regulations and the joint fundraising agreement.¹⁰ The Cohn Respondents acknowledge that due
11 to a clerical error, the Cohn Committee’s amended Statement of Organization identifying House
12 Victory Project as its joint fundraising representative was not timely filed, but contend the
13 problem was “immediately corrected.”¹¹ Under these circumstances, the Cohn Respondents
14 assert, the Commission should exercise its prosecutorial discretion and dismiss this matter.¹²
15 House Victory Project did not submit a response to the Complaint.

⁷ Cohn Committee Amended Statement of Organization at 3 (Oct. 4, 2020).

⁸ Alan Cohn Amended Statement of Candidacy at 1-2 (Oct. 22, 2020).

⁹ Cohn Committee and Alan Cohn Response (“Cohn Resp.”) at 1.

¹⁰ *Id.*

¹¹ *Id.* at 1, 2.

¹² Cohn Respondents Resp. at 2.

III. LEGAL ANALYSIS

During the 2020 election cycle, no person could make contributions to any candidate and his or her authorized political committee with respect to any election for Federal office, which in the aggregate exceeded \$2,800.¹³ No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of section 30116.¹⁴ A political committee may engage in joint fundraising with other political committees or unregistered committees or organizations.¹⁵ An “authorized committee” means the principal campaign committee or any other political committee authorized by a candidate under section 30102(e)(1) to receive contributions or make expenditures on behalf of such candidate.¹⁶ The Act provides that candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.¹⁷ A joint fundraising representative is a committee designated by other committees participating in a joint fundraising agreement to collect contributions, pay fundraising costs, and disburse net proceeds to each participating committee.¹⁸ The joint fundraising representative must be a reporting committee and must also be an authorized committee of each participant who is a candidate for federal office.¹⁹ The participants in a joint fundraising activity shall enter into a written agreement, which shall identify

¹³ 52 U.S.C. § 30116(a)(1)(A). *See* 11 C.F.R. § 110.1(b)(1)(i) and (ii).

¹⁴ 52 U.S.C. § 30116(f).

¹⁵ 11 C.F.R. § 102.17(a)(1)(i).

¹⁶ 52 U.S.C. § 30101(6). *See also* 11 C.F.R. § 102.17(a)(1)(i).

¹⁷ 52 U.S.C. § 30102(e)(3)(A)(ii).

¹⁸ 11 C.F.R. § 102.17(b).

¹⁹ *Id.*

the fundraising representative and shall state the formula for the allocation of fundraising proceeds.²⁰ There is no limit on transfers between political committees of funds raised through joint fundraising efforts,²¹ provided that no participant committee or organization received more than its allocated share of funds raised.²² Each participating committee shall report its share of net proceeds received as a transfer-in from the fundraising representative.²³ Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors.²⁴

The Complaint alleges that because Cohn had not authorized House Victory Project to receive contributions on his behalf at the time of its \$235,029.40 transfer to the Cohn Committee, the transfer is an excessive contribution. The Complaint is correct that Cohn had not authorized House Victory Project in his Statement of Candidacy at the time of the transfer. However, for the following reasons, we recommend that the Commission exercise its prosecutorial discretion and dismiss this matter. First, House Victory Project disclosed the Cohn Committee's participation in its joint fundraising activity prior to the transfer, by amending its Statement of Organization on September 15, 2020. Second, the contributions comprising the transfer were all received after the House Victory Project amended its Statement of Organization, except for one contribution of \$2,800 that was made on September 15, 2020, the same day of the amended Statement of Organization. Third, the Cohn Committee asserts that it entered into a joint fundraising

²⁰ 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

²¹ *See* 52 U.S.C. § 30116(a)(5)(A).

²² 11 C.F.R. § 102.6(a)(1)(iii).

²³ 11 C.F.R. § 102.17(c)(8)(B).

²⁴ *Id.*

1 agreement with House Victory Project, the Complaint does not allege otherwise, and we have no
2 information to the contrary. Fourth, the Cohn Committee filed its late amended Statement of
3 Organization only four days after the transfer, and Cohn's late amended Statement of Candidacy
4 followed less than three weeks later, and these amendments pre-dated the Complaint. Finally,
5 when House Victory Project filed its disclosure report on October 15, 2020, showing the transfer
6 of funds, the Cohn Committee had already amended its Statement of Organization. Under these
7 circumstances, we recommend that the Commission exercise its prosecutorial discretion to
8 dismiss the allegations that House Victory Project made, and the Cohn Committee and Alan Cohn
9 received, an excessive contribution.²⁵

10 **IV. RECOMMENDATIONS**

- 11 1. Dismiss the allegation that Cohn for Congress 2020 and Brian Foucart in his official
12 capacity as treasurer violated 52 U.S.C. § 30116(f);
13
- 14 2. Dismiss the allegation that Alan Cohn violated 52 U.S.C. § 30116(f);
15
- 16 3. Dismiss the allegation that House Victory Project 2020 and Judith Zamore in her
17 official capacity as treasurer violated 52 U.S.C. § 30116(a);
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- 19 4. Approve the attached Factual and Legal Analysis;
20
- 21 5. Approve the appropriate letters; and

²⁵ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 6. Close the file.
2
3

4 Lisa J. Stevenson
5 Acting General Counsel

6 Charles Kitcher
7 Associate General Counsel for Enforcement
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9
10 08.05.21

11 Date

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