

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

**MUR: 7859**

DATE COMPLAINT FILED: Nov. 20, 2020

DATE OF NOTIFICATIONS: Nov. 25, 2020

LAST RESPONSE RECEIVED: Jan. 22, 2021

DATE ACTIVATED: Mar. 31, 2021

EXPIRATION OF SOL: Oct. 1, 2016 – Ongoing

ELECTION CYCLES: 2012 – 2018

**COMPLAINANT:**Citizens for Responsibility and Ethics in  
Washington**RESPONDENTS:**Citizens for a Working America, Inc.  
Joel Riter  
Norman Cummings**RELEVANT STATUTES  
AND REGULATION:**

52 U.S.C. § 30102

52 U.S.C. § 30103

52 U.S.C. § 30104

11 C.F.R. § 100.5

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that Citizens for a Working America, Inc. (“CWA”), formed in 2009 and incorporated in August 2010 as a 501(c)(4) tax-exempt social welfare organization, was required to, but did not, register as a political committee in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint also names current CWA President Joel Riter and former CWA President Norman Cummings as Respondents. In support of the allegations, the Complaint analyzes CWA’s public tax filings, CWA’s independent expenditure reports filed with the Commission, and CWA’s reported contributions to

1 nonconnected political committees, arguing that a majority of the group's spending in 2011 and  
2 2017 was on federal campaign-related activity.

3 CWA denies that it is a political committee. It generally asserts that its "central  
4 organizational purpose" is and has been the "promotion of social welfare." CWA acknowledges  
5 that a majority of its spending in 2011 was on federal campaign-related activity but asserts that  
6 such spending decreased sharply after 2011 and never again represented a majority of its total  
7 spending, indicating that its major purpose was not the nomination or election of federal  
8 candidates. Moreover, CWA disputes the Complaint's assertion that a majority of its spending in  
9 2018 was on federal campaign-related activity and, more generally, asserts that its federal  
10 campaign-related spending is much lower than alleged in the Complaint. CWA argues that its  
11 purpose for making the vast majority of its contributions to federal independent expenditure-only  
12 political committees ("IEOPCs") was to support state candidates, explaining that the recipient  
13 IEOPCs were active exclusively in state elections during the relevant time periods. Accordingly,  
14 CWA argues that such contributions to these IEOPCs should not be considered in analyzing  
15 whether its major purpose was the nomination or election of federal candidates. Finally, CWA  
16 argues that its activity prior to 2016 is outside the statute of limitations.

17 As discussed below, it appears that CWA may have become a political committee in  
18 2011 when approximately 75% of its spending related to federal elections. However, over the  
19 near decade that followed, CWA decreased its federal campaign-related spending to a level  
20 below what is sufficient to indicate that its major purpose was the nomination or election of  
21 federal candidates. CWA's federal campaign-related spending in 2012 decreased to  
22 approximately 40% of its total spending, and from 2013 to 2019 (the last year for which total  
23 spending data is publicly available), CWA's federal campaign-related spending constituted

1 between 13% and 16% of its total spending. Indeed, the available information indicates that,  
2 after 2011, CWA never again spent a majority of its funds on federal campaign-related activity in  
3 a given year. These calculations do not include CWA's contributions to IEOPCs that operated  
4 exclusively during the relevant time periods in state elections, described above. Based on the  
5 available information, it does not appear that CWA's contributions to such IEOPCs, though  
6 registered as federal political committees, are indicative of a major purpose of electing or  
7 nominating federal candidates given that CWA apparently intended for the funds to support state  
8 candidates.

9 Under these circumstances, including the passage of time since CWA may have become a  
10 political committee in 2011 and the lack of sufficient information to show that CWA continued  
11 to act with the major purpose of nominating or electing federal candidates in the near decade that  
12 followed, we recommend that the Commission dismiss, as a matter of prosecutorial discretion,  
13 the allegations that CWA violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register  
14 and report as a political committee.<sup>1</sup> Finally, because these registration and reporting obligations  
15 apply only to committees and treasurers, we recommend that the Commission find no reason to  
16 believe that individual Respondents Cummings and Riter violated 52 U.S.C. §§ 30102, 30103,  
17 and 30104.

## 18 **II. FACTUAL BACKGROUND**

19 CWA formed in 2009 and formally incorporated in Delaware on August 10, 2010, as a  
20 tax exempt 501(c)(4) social welfare organization.<sup>2</sup> Joel Riter is the President of CWA and has

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<sup>1</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>2</sup> Resp. at 3 (Jan. 22, 2021) (responding on behalf of CWA; Joel Riter, both individually and in his official capacity as President of CWA; and Norman Cummings, both individually and in his official capacity as former President of CWA); Delaware Sec'y of State: Division of Corporations Entity Search, <https://icis.corp.delaware.gov/>

served in that role since 2014; Norman Cummings was President from 2012 to 2013.<sup>3</sup> CWA asserts, both in its Response and in its incorporation and tax filings, that its purpose is the “promotion of social welfare” including efforts such as “promot[ing] sound economic policy by engaging in citizen led initiatives and referendum efforts, by participating in the public policy arena, and by providing educational services to the general public.”<sup>4</sup>

The Complaint alleges that CWA is a political committee based on a review of its spending, as evidenced by reported “political activity” in its corporate tax filings, its reported contributions to IEOPCs, and its reported independent expenditures.<sup>5</sup> The amount of “political activity” appears to be derived from schedule C of CWA’s IRS Form 990 filings, which require disclosure of “political campaign activities.”<sup>6</sup>

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ecorp/entitysearch/NameSearch.aspx (search for “Citizens for a Working America”); IRS Tax Exempt Organization Search, <https://apps.irs.gov/app/eos/allSearch> (same). We note that an IEOPC named Citizens for a Working America PAC (CWA PAC) was active from September 2010 through October 2020, and that Riter served as the CWA PAC treasurer from January 2018 through the date of its termination. CWA PAC Statement of Org. (Sep. 2, 2010); CWA PAC Amended Statement of Org. (Jan. 16, 2018) (naming Riter as treasurer); CWA PAC Termination Report (Oct. 14, 2020). Although CWA PAC’s statements of organization never listed any connected organizations, both the name and the fact that Riter served concurrently as treasurer of CWA PAC and president of CWA raise the possibility that the two entities were affiliated. CWA made a single \$163,000 contribution to CWA PAC on January 11, 2012. CWA PAC 2012 April Quarterly Report at 6 (Apr. 13, 2012). Over its lifetime, CWA PAC: received 49 contributions totaling \$3,389,844 between October 2010 and June 2014; made 28 independent expenditures totaling \$3,305,724 between September 2010 and October 2014; and made 18 disbursements totaling \$135,269.36 between November 2010 and March 2015. CWA PAC Independent Expenditures 2009-2020, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C00488767&is\\_notice=false&most\\_recent=true&min\\_date=01%2F01%2F2009&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00488767&is_notice=false&most_recent=true&min_date=01%2F01%2F2009&max_date=12%2F31%2F2020); CWA PAC Disbursements 2009-2020, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00488767&two\\_year\\_transaction\\_period=2010&two\\_year\\_transaction\\_period=2012&two\\_year\\_transaction\\_period=2014&two\\_year\\_transaction\\_period=2016&two\\_year\\_transaction\\_period=2018&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00488767&two_year_transaction_period=2010&two_year_transaction_period=2012&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020); CWA PAC Receipts 2009-2020, [https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00488767&two\\_year\\_transaction\\_period=2010&two\\_year\\_transaction\\_period=2012&two\\_year\\_transaction\\_period=2014&two\\_year\\_transaction\\_period=2016&two\\_year\\_transaction\\_period=2018&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00488767&two_year_transaction_period=2010&two_year_transaction_period=2012&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020).

<sup>3</sup> Resp. at 9.

<sup>4</sup> *Id.* at 3, Ex. A at 1, 5.

<sup>5</sup> Compl. ¶¶ 2, 3 (Nov. 20, 2020).

<sup>6</sup> *Id.* ¶ 16. The official instructions to that form define “political campaign activities” as “[a]ll activities that support or oppose candidates for elective federal, *state, or local public office*,” and exclude from the definition “any activity to encourage participation in the electoral process, such as voter registration or voter education, provided that the activity doesn’t directly or indirectly support or oppose any candidate.” Internal Revenue Service 2020

According to the Complaint, CWA's annual spending on "political activity" — as reported on its tax reports — constituted the majority of its annual spending in 2011 and 2017.<sup>7</sup> In addition to highlighting these two specific years when CWA's campaign-related spending allegedly represented a majority of its total spending, the Complaint also alleges that CWA's cumulative campaign-related spending between 2011-2017 represented a majority (54%) of its total aggregate spending.<sup>8</sup> The Complaint also alleges that CWA was particularly active during the period 2015 through 2017 when its political expenses exceeded its lifetime average and constituted 63% of its total spending.<sup>9</sup>

**Table 1: CWA's Expenses as Alleged in Complaint<sup>10</sup>**

Year	Total Expenses	Political Expenses	Political Expenses as % of Total
2011	\$1,086,555	\$803,060	73.9%
2012	\$4,201,348	\$1,699,991	40.5%
2013	\$308,805	\$0	0%
2014	\$992,523	\$0	0%
2015	\$2,556,204	\$568,817	22.3%
2016	\$1,221,269	\$554,000	45.4%
2017	\$8,208,425	\$6,395,500	77.9%
<b>Aggregate:</b>	<b>\$18,575,129</b>	<b>\$10,021,368<sup>11</sup></b>	<b>54%</b>

Instructions for Form 990 Return of Organization Exempt from Income Tax, at 68, *available at* <https://www.irs.gov/instructions/i990> (emphasis added).

<sup>7</sup> Compl. ¶ 2. All references to "year" or a numeric year (*e.g.*, "2016") in this Report refer to CWA's corporate fiscal year, used in its tax filings, which runs from October 1 to September 30. Because the only information currently available regarding CWA's total spending relates to its fiscal tax year, it is not possible to determine CWA's percentage of political or election-related spending on a calendar-year basis. Accordingly, the analysis in this report follows CWA's fiscal year.

<sup>8</sup> *Id.* ¶¶ 17-24, 26-35 (alleging that CWA spend a total of \$18,575,129 between 2011-2017, including \$10,021,368 in "political expenses").

<sup>9</sup> *Id.* (alleging that CWA spent a total \$11,985,898 between 2015-2017, including \$7,518,317 in "political spending").

<sup>10</sup> *Id.*

<sup>11</sup> The information provided in the Complaint indicates that CWA's total political spending over this period was \$8,997,075, but the actual total of the yearly activity enumerated in the Complaint is \$10,021,368. *Compare* Compl. ¶ 25 (providing the \$8,997,075 aggregate total), *with* Compl. ¶¶ 17-24, 26-35 (providing the year-by-year political expenses adding up to \$10,021,368). The source of this discrepancy is unknown, but in this Report the yearly proportion of political spending in Table 1 was calculated using the detailed year-by-year spending numbers provided in the Complaint.

The Complaint also cites Commission records showing that CWA made the following aggregate annual independent expenditures and contributions to IEOPCs (CWA did not report making any electioneering communications),<sup>12</sup> which are included in the “political expenses” CWA reported on its tax filings:

**Table 2: Reported IEs and Contributions from CWA to IEOPCs**

Year	Contributions to IEOPCs	IEs
2011	\$163,000	\$640,060
2012	\$785,000	\$914,991
2013	\$0	\$0
2014	\$0	\$0
2015	\$195,625	\$147,623
2016	\$689,000	\$0
2017	\$5,464,500	\$0
2018	\$152,150	\$0
2019	\$0	\$0
2020	\$0	\$0

The Complaint alleges that, based on its spending, CWA became a political committee “starting in 2011 and certainly no later than [tax year 2017], and continues to be one, but failed and continues to fail to register as one with the FEC.”<sup>13</sup>

CWA denies the allegations, asserting that they are “blatantly false” and that the Complaint is “full of distorted facts and overblown innuendo, both leading to highly speculative conclusions.”<sup>14</sup> CWA acknowledges that 74% of CWA’s expenses in 2011 were made in connection with federal elections.<sup>15</sup> CWA asserts, however, that the Complaint’s figures for “political expenses” in tax years 2015-2017 are misleading because they include \$5,727,308 in contributions to registered IEOPCs that CWA claims were for the purpose of “support[ing]

<sup>12</sup> CWA Independent Expenditures, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C90012758](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90012758).

<sup>13</sup> Compl. ¶ 36.

<sup>14</sup> Resp. at 1.

<sup>15</sup> *Id.* at 1-2, 6.

1 candidates in state elections, not to effectuate a contribution [within the meaning of the Act].”<sup>16</sup>  
 2 CWA highlights its spending in tax year 2017, asserting that of the \$6,394,500 in political  
 3 expenses CWA reported on schedule C of its form 990, \$5,475,500 was spent for the purpose of  
 4 supporting state candidates and argues that “all of this spending by CWA should not be included  
 5 on the federal campaign activity side of the major purpose spending comparison.”<sup>17</sup> CWA cites  
 6 disclosure reports from three federal IEOPCs and one state political action committee (“PAC”)  
 7 — that received a total of \$5,475,500 from CWA that year — indicating that those organizations  
 8 exclusively spent money on state elections and made no IEs in connection with federal elections  
 9 during that time period.<sup>18</sup> A review of the disclosure reports for the recipient committees,  
 10 Hometown Freedom Action Network, The Palmetto PAC, and A Better Georgia, confirms  
 11 CWA’s claims about these recipient committees’ spending during that period.<sup>19</sup>

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<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 7 (identifying IEOPCs Hometown Freedom Action Network, The Palmetto PAC, and A Better Georgia, along with state PAC the Republican Attorney General’s Association).

<sup>19</sup> Hometown Freedom Action Network reported receiving \$3,414,000 in contributions — \$3,270,000 (96%) from CWA — and making \$3,450,643 in disbursements during the 2018 election cycle, all for state election expenses, with the exception of two IEs in April 2017, totaling \$130,300. Hometown Freedom Action Network 2018 Cycle Raising, <https://www.fec.gov/data/committee/C00528901/?cycle=2018&tab=raising> (listing eight contributions from CWA totaling \$3,270,000 and two contributions from other organizations totaling \$144,000); Hometown Freedom Action Network 2018 Cycle Spending, <https://www.fec.gov/data/committee/C00528901/?cycle=2018&tab=spending#disbursement-transactions> (listing two IEs supporting House candidate Tommy Pope and 17 reported disbursements summarized in Attachment 1); The Palmetto PAC reported receiving \$1,547,027 in contributions — \$1,115,000 (72%) from CWA — and making \$1,538,860 in disbursements that appear to all be either administrative expenses or communications in connection with non-federal elections. The Palmetto PAC 2018 Cycle Raising, <https://www.fec.gov/data/committee/C00607119/?cycle=2018&tab=raising> (listing ten contributions from CWA totaling \$1,115,000 and 25 contributions from other sources totaling \$232,000); The Palmetto PAC 2018 Cycle Raising (showing that The Palmetto PAC made no IEs during the 2018 election cycle and listing 34 reported disbursements summarized in Attachment 1). A Better Georgia PAC reported receiving \$272,500.00 in contributions — \$200,500 (73%) from CWA — and making \$270,940 in disbursements, also for communications related to state elections. A Better Georgia PAC 2018 Cycle Raising, <https://www.fec.gov/data/committee/C00679746/?cycle=2018&tab=raising> (listing a \$200,500 contribution from CW and a \$72,000 contribution from another entity); A Better Georgia PAC Spending, <https://www.fec.gov/data/committee/C00679746/?cycle=2018&tab=spending> (showing that The Palmetto PAC made no IEs during the 2018 election cycle and listing 3 reported disbursements summarized in Attachment 1)

**Table 3: CWA's Self-Reported Expenses<sup>20</sup>**

Year	Total Expenses	Political Expenses		Campaign-related as % of Total
		Federal Election Expenses	State Election Expenses	
2009	\$2,266,898	\$0	\$9,500	0%
2010	\$762,212	\$0	\$0	0%
2011	\$1,086,555	\$803,060	\$0	74%
2012	\$4,201,348	\$1,699,991	\$0	40%
2013	\$308,805	\$0	\$0	0%
2014	\$992,523	\$0	\$0	0%
2015	\$2,556,204	\$475,534	\$93,283	19%
2016	\$1,221,269	\$428,000	\$66,000	35%
2017	\$8,208,425	\$919,000	\$5,475,500	11%
2018	\$1,298,214	\$112,150	\$92,525	9%
2019	\$907,776	\$0	\$275,000	0%
TOTAL	\$23,810,229	\$4,437,735	\$6,011,808	19%

Excluding the activity that CWA argues was for state election activity, CWA characterizes its lifetime federal election spending as “occasional” and argues that its “spending record clearly demonstrates that although it has occasionally advocated for the nomination, election, or defeat of federal candidates, or supported Super PACs for that purpose, and that in some years that spending has been greater than in other years, it clearly has not been the major purpose of the organization over its lifetime.”<sup>21</sup>

### III. LEGAL ANALYSIS

#### A. Determining Political Committee Status

Under the Act and Commission regulations, as construed by controlling Supreme Court precedent, an organization that is not controlled by a candidate must register as a political

<sup>20</sup> Resp. at 6.

<sup>21</sup> *Id.* at 7.

committee only if it both (1) receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year and (2) has as its “major purpose” the nomination or election of federal candidates.<sup>22</sup>

In 2007, following litigation resulting from the Commission’s decision not to pursue rulemaking on the subject of political committee status, the Commission issued a Supplemental Explanation and Justification to provide the public with additional guidance as to its process for determining political committee status.<sup>23</sup> As explained in the Supplemental E&J, to determine an entity’s “major purpose,” the Commission considers a group’s “overall conduct,” including public statements about its mission, organizational documents, government filings (*e.g.*, IRS notices), the proportion of spending related to “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate),” and the extent to which fundraising solicitations indicate funds raised will be used to support or oppose specific candidates.<sup>24</sup> The Commission stated in the Supplemental E&J that it compares how much of an organization’s spending is for “federal campaign activity” relative to “activities that [a]re not campaign related.”<sup>25</sup>

In 2016, the United States District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington v. FEC* (“*CREW I*”) instructed the Commission, when examining an organization’s major purpose, to look beyond express advocacy and consider

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<sup>22</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5 (defining “political committee” based on the \$1,000 thresholds); *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (holding that the term “political committee” “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate”).

<sup>23</sup> Political Committee Status, 72 Fed. Reg. 5595 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”). The Supplemental E&J was issued following a court challenge to the Commission’s decision to engage in case-by-case decision-making rather than formal rulemaking. *See Shays v. FEC*, 424 F. Supp. 2d 100, 117 (D.D.C. 2006).

<sup>24</sup> Supplemental E&J at 5,597, 5,605 (Feb. 7, 2007).

<sup>25</sup> *Id.* at 5601, 5605.

whether other communications at issue indicate a “campaign-related purpose.”<sup>26</sup> The Court also held that the Commission’s analysis of the relevant time period for evaluating a group’s spending must retain the flexibility to account for changes in an organization’s major purpose over time.<sup>27</sup>

**B. The Available Information Suggests That CWA Became a Political Committee in 2011**

**1. CWA Exceeded the Statutory Threshold**

In 2011, CWA reported making \$640,060 in independent expenditures.<sup>28</sup> Accordingly, CWA exceeded the \$1,000 statutory threshold for aggregate expenditures set forth in the Act’s political committee definition.<sup>29</sup>

**2. CWA’s Spending Indicates That its Major Purpose in 2011 May Have Been the Nomination or Election of Federal Candidates**

CWA states in its Response, corporate filings, and tax returns, that its major purpose is not federal campaign activity, but rather the promotion of social welfare and engaging and educating the public.<sup>30</sup> The Commission explained in the Supplemental E&J that it may consider such statements made by an organization in its analysis of an organization’s major

<sup>26</sup> 209 F. Supp. 3d 77, 92-93 (D.D.C. 2016). The same District Court later held that electioneering communications “*presumptively* have an election-related purpose,” but the analysis by that Court in *CREW I* and its subsequent decision refers generally to all speech that is campaign-related but does not contain express advocacy. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018). The Court refrained from establishing its own bright-line rule regarding which communications inherently have a campaign-related purpose, but stated that the First Amendment does not require “the agency to exclude from its consideration all non-express advocacy in the context of disclosure.” *CREW I*, 209 F. Supp. 3d at 93.

<sup>27</sup> *CREW I*, 209 F. Supp. 3d at 94. In its subsequent Factual and Legal Analysis (“F&LA”), the Commission accepted the Court’s remand of the enforcement matter, found that the organization’s campaign-related spending exceeded 50% of its overall spending approximately one year before the 2010 election, and found reason to believe that the organization violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee. F&LA at 14-15, MUR 6538R (Americans for Job Security).

<sup>28</sup> Resp. at 2; Citizens for a Working America 2012 Spending, <https://www.fec.gov/data/committee/C90012758/?cycle=2012&tab=spending>.

<sup>29</sup> See 52 U.S.C. § 30101(4)(A).

<sup>30</sup> *Supra* notes 2, 4.

purpose,<sup>31</sup> but that such statements are not necessarily dispositive.<sup>32</sup> Here, as acknowledged by CWA,<sup>33</sup> its spending in 2011 on federal campaign-related activity represented a majority (74%) of its total spending. The Commission has never set a threshold on the proportion of spending on major purpose activities required for political committee status. Without determining whether it is *necessary* to cross a 50 percent threshold to determine an organization's major purpose, however, it is *sufficient* in this case, based on the available information, to conclude that by 2011, CWA's major purpose had become the nomination or election of federal candidates.<sup>34</sup>

This conclusion is in line with previous case law and Commission analysis of organizations whose original major purpose was other than nominating and electing federal candidates, but whose spending patterns changed over time in a manner that evidenced a shift in their major purpose.<sup>35</sup> The available information, therefore, is sufficient to support a finding that

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<sup>31</sup> Supplemental E&J at 5606.

<sup>32</sup> See *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at \*14 (E.D. Va. Sept. 24, 2008) ("A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive.") (emphasis in original), *aff'd*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311).

<sup>33</sup> *Supra* note 15.

<sup>34</sup> See F&LA at 11, MUR 6538R (Americans for Job Security) (stating that "[w]ithout determining whether it is *necessary* to cross a 50 percent threshold to determine an organization's major purpose, it is *sufficient* in this case ... to find reason to believe that [Americans for Job Security]'s major purpose had become the nomination or election of federal candidates" where the respondent group had spent \$6,487,511 of its \$12,417,809 in total spending on federal campaign-related activity).

<sup>35</sup> See *CREW I*, 209 F. Supp. 3d at 94 ("The Commissioners' refusal to give any weight whatsoever to an organizations' [sic] relative spending in the most recent calendar year — particularly in the case of a fifteen-year-old organization like AJS — indicates an arbitrary 'fail[ure] to consider an important aspect of the [relevant] problem.'" (quoting *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 664, 658 (2007)); see also *FEC v. Malenick*, 310 F. Supp. 2d 230, 237 (D.D.C. 2004) ("Accordingly, because Triad and then Triad Inc.'s major purpose was the nomination or election of specific candidates *in 1996*, and because Triad received contributions aggregating more than \$1,000 *in 1996*, I find that Triad and Triad, Inc. operated as a 'political committee' *in 1996*.")) (emphasis added); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 853 (D.D.C. 1996) (discussing major purpose only in 1989 and 1990 with respect to group formed in 1979); see also MUR 5492 (Freedom, Inc.) (analyzing admitted major purpose in 2004 of group formed in 1962); MURs 5577, 5620 (National Association of Realtors — 527 Fund) (analyzing 2004 spending of NAR-527 Fund registered with IRS in 2000); MUR 5755 (New Democrat Network) (analyzing 1996 group New Democrat Network's 2004 spending); MUR 5753 (League of Conservation Voters) (analyzing

CWA became a political committee in 2012. As explained above, CWA's \$803,060 in federal campaign-related spending in 2011 represented 74% of its total spending that year.<sup>37</sup>

While the underlying violations arise from activity beginning in 2011, the five-year statute of limitations at 28 U.S.C. § 2462 does not bar potential injunctive relief, such as requiring that CWA register as a political committee and file disclosure reports beginning in 2011.<sup>38</sup> Once CWA became a political committee in 2011, it also had an ongoing obligation to file disclosure reports with the Commission.<sup>39</sup> Indeed, the Commission approved precisely that type of injunctive relief in MUR 6538R (Americans for Job Security), which resulted in the disclosure of the respondent's contributions and expenditures during the relevant time period, even though much of the activity fell outside the five year statute of limitations.<sup>40</sup> However, as

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LCV's 2004 spending when one of LCV's funds had registered with the IRS as early as 2000); MURs 5694, 5910 (Americans for Job Security) (analyzing activity for group founded in 1997 from 2000 through 2006 in determining group's major purpose in 2006); MUR 5487 (Progress for America VF) (analyzing group's major purpose based on 2004 disbursements where group had raised \$4.6 million and spent \$11.2 million through 2006).

<sup>37</sup> *Supra* Table 1; Table 3.

<sup>38</sup> *See FEC v. Christian Coal.*, 965 F. Supp. 66, 71 (D.D.C. 1997) (holding that injunctive relief is not a penalty); *FEC v. Nat'l Republican Senatorial Comm.*, 877 F. Supp. 15, 20-21 (D.D.C. 1995) (same).

<sup>39</sup> 52 U.S.C. § 30103(d)(1); 11 C.F.R. § 102.3(a)(1); *CREW v. American Action Network*, No. 18-cv-945 (CRC), 2019 WL 4750248, at \*14 (D.D.C. Sept. 30, 2019) ("FECA requires political committees to disclose, *see* 52 U.S.C. § 30104, and political committees must disclose that information in perpetuity until they take certain steps to terminate that status."); *see also* Advisory Op. 1997-47 (Hansen) ("Under the Act and Commission regulations, a political committee is a continuing organization until specific action is taken to terminate the registration of, or disband, the committee."); Federal Election Commission, *Campaign Guide for Nonconnected Committees* at 93 (May 2008) (noting that a "committee's reporting obligation does not end until the Commission notifies the committee that the termination report has been accepted").

<sup>40</sup> *See* Conciliation Agreement at 5-6, MUR 6538R (Americans for Job Security); *cf.* *CREW*, 2019 WL 4750248, at \*14 (finding that court may order defendant to disclose activity post-dating the alleged conduct in the administrative complaint when fashioning an equitable remedy). *But see* Cert., MUR 7181 (Independent Women's Voice) (Mar. 1, 2021) (Commission split 3-3 on reason to believe predicated on conduct roughly as old as the conduct in this matter with accompanying recommendation for this type of injunctive relief).

explained below, under the unique circumstances of the case, we do not recommend that the Commission pursue any potential violations.

**C. CWA's Reported Post-2011 Spending is Insufficient to Indicate a Major Purpose of Nominating or Electing Federal Candidates and Counsels in Favor of Dismissing the Allegations as a Matter of Prosecutorial Discretion**

As discussed below, due to the age of the predicate activity and the apparent nature of CWA's major purpose in the intervening years, we recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations. Although CWA's reported federal campaign-related spending in 2011 was approximately 74% of its total spending and CWA may have become a political committee then, as detailed above, the available information indicates that over the near decade that followed, CWA decreased its spending in this category below what is sufficient to indicate its major purpose was the nomination or election of federal candidates.<sup>41</sup> Subsequently, from 2012-2019, CWA's reported federal campaign-related spending constituted 18.5% of its total spending. Moreover, during that period, CWA's reported federal campaign-related spending does not appear to have approached, let alone exceeded, 50% of its overall spending in any single year. In 2012, CWA reported spending 40% of its overall expenses on federal political activity.<sup>42</sup> In years 2013 and 2014, CWA reported spending no money on

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<sup>41</sup> There are no statements by CWA on record indicating that its major purpose during the period of 2012-present was the nomination or election of federal candidates. As described above, CWA's stated purpose in its Response, corporate filings, and tax returns was not federal campaign activity, but rather "promot[ing] sound economic policy by engaging citizen led initiatives and referendum efforts, by participating in the public policy arena, and by providing educational services to the general public." Resp., Ex. A (reproducing CWA's 2018 tax filing which describes the organization's purpose on line 1). Although there is no specific information on record to show precisely how CWA spent its funds for non-"political activities," there is also nothing to suggest that any such spending should be treated as having been for federal campaign-related activity. Accordingly, our analysis of CWA's activity focuses, as the Complaint does, on whether its reported campaign-related spending — consisting of contributions to IEOPCs and independent expenditures — is sufficient to satisfy the major purpose test.

<sup>42</sup> Table 3.

1 political activity.<sup>43</sup> As for the period 2015 through 2019, CWA's reported spending on federal  
2 campaign activity appears to have represented just 13.6% of its total spending across and never  
3 exceeded 35% in any single year.<sup>44</sup> Whereas the Complaint counts all of CWA's "political  
4 spending" as reported to the IRS during that period, at least \$6,002,308 of the total \$7,936,992  
5 (76%) appears to have been made for the purpose of influencing state elections; as such, we did  
6 not treat that spending as related to a federal campaign in our calculations. Finally, although  
7 CWA has not yet filed its 2020 reports with the IRS disclosing its total spending, CWA has not  
8 reported making any independent expenditures or electioneering communications during the  
9 2020 or 2022 election cycles, and no entities registered with the Commission have reported  
10 receiving any contributions from CWA during that period.

11 As discussed above, CWA asserts that its contributions to federal IEOPCs were made for  
12 the purpose of influencing state elections.<sup>45</sup> The record before the Commission does not include  
13 contemporaneous documentation corroborating CWA's assertion such as solicitations from or  
14 communications with the recipient IEOPCs, transmittal information from CWA to the recipient  
15 IEOPCs, or statements from individuals involved in the decision making. However, CWA's  
16 explanation nonetheless appears credible and is corroborated by Commission records showing  
17 that the recipient IEOPCs appear to have spent almost exclusively on state elections during the  
18 relevant time period. The fact that this pattern existed with respect to three separate IEOPCs  
19 indicates that it is unlikely to have been a coincidence and that CWA was consciously choosing  
20 to give to IEOPCs that were spending at the state level. Although a contribution to an IEOPC

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<sup>43</sup> *Id.*

<sup>44</sup> Table 3.

<sup>45</sup> *See* Table 3; *supra* notes 18, 19.

1 would normally be indicative of the donor's purpose to nominate or elect federal candidates, the  
2 record in this matter presents convincing information to the contrary. We note that CWA did not  
3 provide specific corroboration for its assertions regarding its state election spending in 2015,  
4 2016, 2018, and 2019, but even if all of its spending on political activity during that period had  
5 been for campaign-related activity, it would have represented only a small portion of its total  
6 spending.

7 In sum, looking at CWA's activity from 2012 through 2020, its proportion of spending on  
8 federal campaign-related activity appears insufficient to determine that its major purpose *during*  
9 *this time* was the nomination or election of federal candidates.

10 The Court decisions and Commission precedent discussed above make clear that a  
11 committee's major purpose can shift over time. Indeed, the Commission has regularly examined  
12 organizations that started out with a non-electoral purpose, but whose activity shifted over time  
13 and has explained that "the Commission's analysis of the relevant time period for evaluating a  
14 group's spending must be flexible to account for changes in an organization's major purpose  
15 over time."<sup>46</sup> The Commission has not, however, opined that an organization can qualify as a  
16 political committee and then, by virtue of its future conduct, "un-ring the bell," shed its political  
17 committee status, and revert back to its original purpose. We are not suggesting such an  
18 approach here, but the available information here supports dismissal of the allegations for two  
19 primary reasons. First, we expect that a potential investigation into CWA's major purpose in  
20 2011, given that CWA denies that it qualified as a political committee, would, by its nature, be  
21 fact-intensive, require substantial Commission resources, and likely face obstacles both in terms

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<sup>46</sup> See, e.g., Factual & Legal Analysis at 14-15, MUR 6538R (Americans for Job Security) (examining whether respondent's major purpose may have changed over time); cf. *CREW I*, 209 F. Supp. 3d at 94 (noting "that an organization's major purpose can *change*") (citing *MCFL*, 479 U.S. at 262) (emphasis in original)).

1 of acquiring relevant documents and obtaining accurate statements from individuals involved.  
2 Second, CWA's qualifying activity occurred nearly ten years ago in 2011, and CWA's reported  
3 post-2011 spending appears to have included only a small portion related to federal elections, as  
4 stated above. Although there might be a potential benefit regarding the Commission's interest in  
5 promoting disclosure, under these circumstances, and in light of the current caseload faced by the  
6 Commission related to more recent activity, we do not believe that pursuing CWA would be an  
7 efficient use of the Commission's limited resources.

8 CWA also raises the issue of the statute of limitations.<sup>47</sup> The predicate conduct for the  
9 violations in this matter occurred between October 2010 and September 2011. During the period  
10 still within the five-year statute of limitations for civil monetary penalties, CWA's reported  
11 federal campaign-related spending (here, between 2016-2019) appears to represent just 12.5% of  
12 its total spending. Absent other evidence indicating a major purpose of nominating or electing  
13 federal candidates, this level of spending falls well short of what the Commission has found  
14 sufficient to satisfy the major purpose test in previous matters.

15 As discussed above, the statute of limitations does not bar the Commission from finding  
16 reason to believe based on CWA's 2011 activity and seeking injunctive relief, such as  
17 compelling CWA to register as a political committee and file reports for all its receipts and  
18 disbursements since 2011. Given the age of the predicate activity and the fact that CWA's  
19 federal campaign activity diminished and remained relatively low in the intervening years,  
20 however, pursuing reason to believe and injunctive relief in this case may not be prudent. Again,  
21 although this Office is not suggesting that the statute of limitations is a bar to proceeding, the

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<sup>47</sup> Compl. at 8-11.

1 practical considerations of pursuing allegations premised on activity that occurred nearly a  
 2 decade ago must be weighed in light of the Commission's limited resources and the more  
 3 pressing needs of other cases involving activity that has occurred in more recent elections.

4 In conclusion, although the available information is sufficient to support a  
 5 recommendation that the Commission find reason to believe that CWA violated 52 U.S.C.  
 6 §§ 30102, 30103, 30104 by failing to register and report as a political committee, and the  
 7 Commission could seek to compel CWA to register and disclose its missing activity, under the  
 8 circumstances, we recommend that the Commission exercise its prosecutorial discretion and  
 9 dismiss the allegations.<sup>48</sup> Additionally, because these registration and reporting obligations  
 10 apply only to committees and treasurers, we recommend that the Commission find no reason to  
 11 believe that individual Respondents Cummings and Riter violated 52 U.S.C. §§ 30102, 30103,  
 12 30104.

#### 13 **IV. RECOMMENDATIONS**

- 14 1. Dismiss, as a matter of prosecutorial discretion, the allegations that Citizens for a  
 15 Working America violated 52 U.S.C. §§ 30102, 30103, 30104 by failing to  
 16 register and report as a political committee;
- 17 2. Find no reason to believe that Joel Riter and Norman Cummings violated  
 18 52 U.S.C. §§ 30102, 30103, 30104;
- 19 3. Approve the attached Factual and Legal Analysis;
- 20 4. Approve the appropriate letters; and

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<sup>48</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985). As discussed above, this recommendation is based on prudential concerns specific to the totality of the circumstances of this particular matter, including the passage of time since CWA may have become a political committee, and the lack of sufficient information to show that CWA continued to act with the major purpose of nominating or electing federal candidates in the near decade the followed. The available information is sufficient to establish that CWA was required to register and report as a political committee based on its 2011 activity, but failed to do so. But for these prudential concerns, and in light of the more pressing need to handle more recent matters that are part of the Commission's caseload, this Office would otherwise recommend that the Commission find reason to believe that CWA violated 52 U.S.C. §§ 30102, 30103, 30104 and conduct an investigation.

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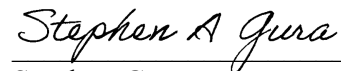
5. Close the file.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Associate General Counsel for Enforcement

August 24, 2021

Date



Stephen Gura  
Deputy Associate General Counsel for Enforcement



Claudio J. Pavia  
Acting Assistant General Counsel



Ray Wolcott  
Attorney

Attachments

1. Table of 2018 Cycle Disbursements by IEOPCs

**Table I: Summary of Disbursements by Hometown Freedom Action Network during the 2018 Election Cycle**

<b>Disbursement Description</b>	<b>Total 2018 Disbursements by Category</b>
DIGITAL ADVERTISING - STATE IE	\$248,958
DIGITAL ADVERTISING FOR NON-FEDERAL ELECTION	\$20,225
DIGITAL ADVERTISING FOR STATE RACE	\$175,000
DIRECT MAIL - STATE IE	\$501,472
DIRECT MAIL FOR NON-FEDERAL ELECTION	\$10,867
DIRECT MAIL FOR STATE RACE	\$39,984
LEGAL FEES	\$8,012
LEGAL SERVICES	\$3,002
MEDIA BUY - STATE IE	\$2,300,935
NON-FEDERAL IE DIRECT MAIL	\$11,588
<b>Grand Total</b>	<b>\$3,320,043</b>

**Table II: Summary of Disbursements by The Palmetto PAC during the 2018 Election Cycle**

<b>Disbursement Description</b>	<b>Total 2018 Disbursements by Category</b>
BANK FEES	\$80
COMMUNICATIONS CONSULTING	\$1,000
CONTRIBUTION	\$37,500
DIGITAL ADVERTISING FOR NONFEDERAL ELECTION	\$56,143
FUNDRAISING CONSULTING	\$21,250
LEGAL FEES	\$2,972
ONLINE FUNDRAISING FEES	\$2,382
POLITICAL STRATEGY CONSULTING	\$6,750
POLLING EXPENSE	\$7,000
RADIO ADVERTISING (PLACEMENT) FOR NONFEDERAL ELECTION	\$18,000
RADIO ADVERTISING (PRODUCTION) FOR NONFEDERAL ELECTION	\$2,000
RESEARCH SERVICES	\$10,100
STRATEGIC PLANNING CONSULTING	\$16,750
TV ADVERTISING (PLACEMENT) FOR NONFEDERAL ELECTION	\$1,303,084
TV ADVERTISING (PRODUCTION) FOR NONFEDERAL ELECTION	\$51,000
WEBSITE HOSTING	\$2,850
<b>Grand Total</b>	<b>\$1,538,860</b>

**Table III: Summary of Disbursements by A Better Georgia PAC during the 2018 Election Cycle**

<b>Disbursement Description</b>	<b>Total 2018 Disbursements by Category</b>
LEGAL SERVICES	\$900
MEDIA BUY - STATE IE	\$270,000
<b>Grand Total</b>	<b>\$270,900</b>

ELW edits 10/20/21  
SMB edits 10/25/2021

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS:     Citizens for a Working America, Inc.                             MUR 7859  
                             Joel Riter  
                             Norman Cummings

**I.       INTRODUCTION**

         This matter was generated by a Complaint filed with the Federal Election Commission by Citizens for Responsibility and Ethics in Washington alleging that Citizens for a Working America, Inc. (“CWA”), formed in 2009 and incorporated in August 2010 as a 501(c)(4) tax-exempt social welfare organization, was required to, but did not, register as a political committee in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint also names current CWA President Joel Riter and former CWA President Norman Cummings as Respondents. In support of the allegations, the Complaint analyzes CWA’s public tax filings, CWA’s independent expenditure reports filed with the Commission, and CWA’s reported contributions to nonconnected political committees, arguing that a majority of the group’s spending in 2011 and 2017 was on federal campaign-related activity.

         CWA denies that it is a political committee. It generally asserts that its “central organizational purpose” is and has been the “promotion of social welfare.” CWA acknowledges that a majority of its spending in 2011 was on federal campaign-related activity but asserts that such spending decreased sharply after 2011 and never again represented a majority of its total spending, indicating that its major purpose was not the nomination or election of federal candidates. Moreover, CWA disputes the Complaint’s assertion that a majority of its spending in 2018 was on federal campaign-related activity and, more generally, asserts that its federal campaign-related spending is much lower than alleged in the Complaint. CWA argues that its

1 purpose for making the vast majority of its contributions to federal independent expenditure-only  
2 political committees (“IEOPCs”) was to support state candidates, explaining that the recipient  
3 IEOPCs were active exclusively in state elections during the relevant time periods. Accordingly,  
4 CWA argues that such contributions to these IEOPCs should not be considered in analyzing  
5 whether its major purpose was the nomination or election of federal candidates. Finally, CWA  
6 argues that its activity prior to 2016 is outside the statute of limitations.

7 As discussed below, it appears that CWA may have become a political committee in  
8 2011 when approximately 75% of its spending related to federal elections. However, over the  
9 near decade that followed, CWA decreased its federal campaign-related spending. CWA’s  
10 federal campaign-related spending in 2012 decreased to approximately 40% of its total spending,  
11 and from 2013 to 2019 (the last year for which total spending data is publicly available), CWA’s  
12 federal campaign-related spending constituted between 13% and 16% of its total  
13 spending. Indeed, the available information indicates that, after 2011, CWA never again spent a  
14 majority of its funds on federal campaign-related activity in a given year. These calculations do  
15 not include CWA’s contributions to IEOPCs that operated exclusively during the relevant time  
16 periods in state elections, described above. Based on the available information, it does not  
17 appear that CWA’s contributions to such IEOPCs, though registered as federal political  
18 committees, are indicative of a major purpose of electing or nominating federal candidates given  
19 that CWA apparently intended for the funds to support state candidates.

20 Under these circumstances, including the passage of time since CWA may have become a  
21 political committee in 2011 and the lack of sufficient information to show that CWA continued  
22 to act with the major purpose of nominating or electing federal candidates in the near decade that  
23 followed, the Commission dismisses, as a matter of prosecutorial discretion, the allegations that

CWA violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a political committee.<sup>1</sup> Finally, because these registration and reporting obligations apply only to committees and treasurers, the Commission finds no reason to believe that Cummings and Riter violated 52 U.S.C. §§ 30102, 30103, and 30104.

## II. FACTUAL BACKGROUND

CWA formed in 2009 and formally incorporated in Delaware on August 10, 2010, as a tax exempt 501(c)(4) social welfare organization.<sup>2</sup> Joel Riter is the President of CWA and has served in that role since 2014; Norman Cummings was President from 2012 to 2013.<sup>3</sup> CWA asserts, both in its Response and in its incorporation and tax filings, that its purpose is the “promotion of social welfare” including efforts such as “promot[ing] sound economic policy by

<sup>1</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>2</sup> Resp. at 3 (Jan. 22, 2021) (responding on behalf of CWA; Joel Riter, both individually and in his official capacity as President of CWA; and Norman Cummings, both individually and in his official capacity as former President of CWA); Delaware Sec’y of State: Division of Corporations Entity Search, <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (search for “Citizens for a Working America”); IRS Tax Exempt Organization Search, <https://apps.irs.gov/app/eos/allSearch> (same). We note that an IEOPC named Citizens for a Working America PAC (CWA PAC) was active from September 2010 through October 2020, and that Riter — who has been President of CWA from 2014 to present — served as the CWA PAC treasurer from January 2018 through the date of its termination. CWA PAC Statement of Org. (Sep. 2, 2010); CWA PAC Amended Statement of Org. (Jan. 16, 2018) (naming Riter as treasurer); CWA PAC Termination Report (Oct. 14, 2020). Although CWA PAC’s statements of organization never listed any connected organizations, both the name and the fact that Riter served concurrently as treasurer of CWA PAC and president of CWA raise the possibility that the two entities were affiliated. CWA made a single \$163,000 contribution to CWA PAC on January 11, 2012. CWA PAC 2012 April Quarterly Report at 6 (Apr. 13, 2012). Over its lifetime, CWA PAC: received 49 contributions totaling \$3,389,844 between October 2010 and June 2014; made 28 independent expenditures totaling \$3,305,724 between September 2010 and October 2014; and made 18 disbursements totaling \$135,269.36 between November 2010 and March 2015. CWA PAC Independent Expenditures 2009-2020, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C00488767&is\\_notice=false&most\\_recent=true&min\\_date=01%2F01%2F2009&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00488767&is_notice=false&most_recent=true&min_date=01%2F01%2F2009&max_date=12%2F31%2F2020); CWA PAC Disbursements 2009-2020, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00488767&two\\_year\\_transaction\\_period=2010&two\\_year\\_transaction\\_period=2012&two\\_year\\_transaction\\_period=2014&two\\_year\\_transaction\\_period=2016&two\\_year\\_transaction\\_period=2018&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00488767&two_year_transaction_period=2010&two_year_transaction_period=2012&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020); CWA PAC Receipts 2009-2020, [https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00488767&two\\_year\\_transaction\\_period=2010&two\\_year\\_transaction\\_period=2012&two\\_year\\_transaction\\_period=2014&two\\_year\\_transaction\\_period=2016&two\\_year\\_transaction\\_period=2018&two\\_year\\_transaction\\_period=2020](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00488767&two_year_transaction_period=2010&two_year_transaction_period=2012&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020).

<sup>3</sup> Resp. at 9.

engaging in citizen led initiatives and referendum efforts, by participating in the public policy arena, and by providing educational services to the general public.”<sup>4</sup>

The Complaint alleges that CWA is a political committee based on a review of its spending, as evidenced by reported “political activity” in its corporate tax filings, its reported contributions to IEOPCs, and its reported independent expenditures.<sup>5</sup> The amount of “political activity” appears to be derived from schedule C of CWA’s IRS Form 990 filings, which require disclosure of “political campaign activities.”<sup>6</sup>

According to the Complaint, CWA’s annual spending on “political activity” — as reported on its tax reports — constituted the majority of its annual spending in 2011 and 2017.<sup>7</sup> In addition to highlighting these two specific years when CWA’s campaign-related spending allegedly represented a majority of its total spending, the Complaint also alleges that CWA’s cumulative campaign-related spending between 2011-2017 represented a majority (54%) of its total aggregate spending.<sup>8</sup> The Complaint also alleges that CWA was particularly active during

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<sup>4</sup> *Id.* at 3, Ex. A at 1, 5.

<sup>5</sup> Compl. ¶¶ 2, 3 (Nov. 20, 2020).

<sup>6</sup> *Id.* ¶ 16. The official instructions to that form define “political campaign activities” as “[a]ll activities that support or oppose candidates for elective federal, *state, or local public office*,” and exclude from the definition “any activity to encourage participation in the electoral process, such as voter registration or voter education, provided that the activity doesn’t directly or indirectly support or oppose any candidate.” Internal Revenue Service 2020 Instructions for Form 990 Return of Organization Exempt from Income Tax, at 68, *available at* <https://www.irs.gov/instructions/i990> (emphasis added).

<sup>7</sup> Compl. ¶ 2. All references to “year” or a numeric year (*e.g.*, “2016”) in this Report refer to CWA’s corporate fiscal year, used in its tax filings, which runs from October 1 to September 30. Because the only information currently available regarding CWA’s total spending relates to its fiscal tax year, it is not possible to determine CWA’s percentage of political or election-related spending on a calendar-year basis. Accordingly, the analysis in this report follows CWA’s fiscal year.

<sup>8</sup> *Id.* ¶¶ 17-24, 26-35 (alleging that CWA spend a total of \$18,575,129 between 2011-2017, including \$10,021,368 in “political expenses”).

the period 2015 through 2017 when its political expenses exceeded its lifetime average and constituted 63% of its total spending.<sup>9</sup>

**Table 1: CWA's Expenses as Alleged in Complaint<sup>10</sup>**

Year	Total Expenses	Political Expenses	Political Expenses as % of Total
2011	\$1,086,555	\$803,060	73.9%
2012	\$4,201,348	\$1,699,991	40.5%
2013	\$308,805	\$0	0%
2014	\$992,523	\$0	0%
2015	\$2,556,204	\$568,817	22.3%
2016	\$1,221,269	\$554,000	45.4%
2017	\$8,208,425	\$6,395,500	77.9%
<b>Aggregate:</b>	<b>\$18,575,129</b>	<b>\$10,021,368<sup>11</sup></b>	<b>54%</b>

The Complaint also cites Commission records showing that CWA made the following aggregate annual independent expenditures and contributions to IEOPCs (CWA did not report making any electioneering communications),<sup>12</sup> which are included in the “political expenses” CWA reported on its tax filings:

**Table 2: Reported IEs and Contributions from CWA to IEOPCs**

Year	Contributions to IEOPCs	IEs
2011	\$163,000	\$640,060
2012	\$785,000	\$914,991
2013	\$0	\$0
2014	\$0	\$0
2015	\$195,625	\$147,623
2016	\$689,000	\$0
2017	\$5,464,500	\$0
2018	\$152,150	\$0

<sup>9</sup> *Id.* (alleging that CWA spent a total \$11,985,898 between 2015-2017, including \$7,518,317 in “political spending”).

<sup>10</sup> *Id.*

<sup>11</sup> The information provided in the Complaint indicates that CWA's total political spending over this period was \$8,997,075, but the actual total of the yearly activity enumerated in the Complaint is \$10,021,368. *Compare* Compl. ¶ 25 (providing the \$8,997,075 aggregate total), *with* Compl. ¶¶ 17-24, 26-35 (providing the year-by-year political expenses adding up to \$10,021,368). The source of this discrepancy is unknown, but in this Report the yearly proportion of political spending in Table 1 was calculated using the detailed year-by-year spending numbers provided in the Complaint.

<sup>12</sup> CWA Independent Expenditures, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&committee\\_id=C90012758](https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90012758).

2019	\$0	\$0
2020	\$0	\$0

The Complaint alleges that, based on its spending, CWA became a political committee “starting in 2011 and certainly no later than [tax year 2017], and continues to be one, but failed and continues to fail to register as one with the FEC.”<sup>13</sup>

CWA denies the allegations, asserting that they are “blatantly false” and that the Complaint is “full of distorted facts and overblown innuendo, both leading to highly speculative conclusions.”<sup>14</sup> CWA acknowledges that 74% of CWA’s expenses in 2011 were made in connection with federal elections.<sup>15</sup> CWA asserts, however, that the Complaint’s figures for “political expenses” in tax years 2015-2017 are misleading because they include \$5,727,308 in contributions to registered IEOPCs that CWA claims were for the purpose of “support[ing] candidates in state elections, not to effectuate a contribution [within the meaning of the Act].”<sup>16</sup> CWA highlights its spending in tax year 2017, asserting that of the \$6,394,500 in political expenses CWA reported on schedule C of its form 990, \$5,475,500 was spent for the purpose of supporting state candidates and argues that “all of this spending by CWA should not be included on the federal campaign activity side of the major purpose spending comparison.”<sup>17</sup> CWA cites disclosure reports from three federal IEOPCs and one state political action committee (“PAC”) — that received a total of \$5,475,500 from CWA that year — indicating that those organizations exclusively spent money on state elections and made no IEs in connection with federal elections

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<sup>13</sup> Compl. ¶ 36.

<sup>14</sup> Resp. at 1.

<sup>15</sup> *Id.* at 1-2, 6.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 6-7.

- 1 during that time period.<sup>18</sup> A review of the disclosure reports for the recipient committees,
- 2 Hometown Freedom Action Network, The Palmetto PAC, and A Better Georgia, confirms
- 3 CWA's claims about these recipient committees' spending during that period.<sup>19</sup>

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<sup>18</sup> *Id.* at 7 (identifying IEOPCs Hometown Freedom Action Network, The Palmetto PAC, and A Better Georgia, along with state PAC the Republican Attorney General's Association).

<sup>19</sup> Hometown Freedom Action Network reported receiving \$3,414,000 in contributions — \$3,270,000 (96%) from CWA — and making \$3,450,643 in disbursements during the 2018 election cycle, all for state election expenses, with the exception of two IEs in April 2017, totaling \$130,300. Hometown Freedom Action Network 2018 Cycle Raising, <https://www.fec.gov/data/committee/C00528901/?cycle=2018&tab=raising> (listing eight contributions from CWA totaling \$3,270,000 and two contributions from other organizations totaling \$144,000); Hometown Freedom Action Network 2018 Cycle Spending, <https://www.fec.gov/data/committee/C00528901/?cycle=2018&tab=spending#disbursement-transactions> (listing two IEs supporting House candidate Tommy Pope and 17 reported disbursements summarized in Attachment 1); The Palmetto PAC reported receiving \$1,547,027 in contributions — \$1,115,000 (72%) from CWA — and making \$1,538,860 in disbursements that appear to all be either administrative expenses or communications in connection with non-federal elections. The Palmetto PAC 2018 Cycle Raising, <https://www.fec.gov/data/committee/C00607119/?cycle=2018&tab=raising> (listing ten contributions from CWA totaling \$1,115,000 and 25 contributions from other sources totaling \$232,000); The Palmetto PAC 2018 Cycle Raising (showing that The Palmetto PAC made no IEs during the 2018 election cycle and listing 34 reported disbursements summarized in Attachment 1). A Better Georgia PAC reported receiving \$272,500.00 in contributions — \$200,500 (73%) from CWA — and making \$270,940 in disbursements, also for communications related to state elections. A Better Georgia PAC 2018 Cycle Raising, <https://www.fec.gov/data/committee/C00679746/?cycle=2018&tab=raising> (listing a \$200,500 contribution from CW and a \$72,000 contribution from another entity); A Better Georgia PAC Spending, <https://www.fec.gov/data/committee/C00679746/?cycle=2018&tab=spending> (showing that The Palmetto PAC made no IEs during the 2018 election cycle and listing 3 reported disbursements summarized in Attachment 1)

**Table 3: CWA’s Self-Reported Expenses<sup>20</sup>**

Year	Total Expenses	Political Expenses		Campaign-related as % of Total
		Federal Election Expenses	State Election Expenses	
2009	\$2,266,898	\$0	\$9,500	0%
2010	\$762,212	\$0	\$0	0%
2011	\$1,086,555	\$803,060	\$0	74%
2012	\$4,201,348	\$1,699,991	\$0	40%
2013	\$308,805	\$0	\$0	0%
2014	\$992,523	\$0	\$0	0%
2015	\$2,556,204	\$475,534	\$93,283	19%
2016	\$1,221,269	\$428,000	\$66,000	35%
2017	\$8,208,425	\$919,000	\$5,475,500	11%
2018	\$1,298,214	\$112,150	\$92,525	9%
2019	\$907,776	\$0	\$275,000	0%
TOTAL	\$23,810,229	\$4,437,735	\$6,011,808	19%

Excluding the activity that CWA argues was for state election activity, CWA characterizes its lifetime federal election spending as “occasional” and argues that its “spending record clearly demonstrates that although it has occasionally advocated for the nomination, election, or defeat of federal candidates, or supported Super PACs for that purpose, and that in some years that spending has been greater than in other years, it clearly has not been the major purpose of the organization over its lifetime.”<sup>21</sup>

### III. LEGAL ANALYSIS

#### A. Determining Political Committee Status

Under the Act and Commission regulations, as construed by controlling Supreme Court precedent, an organization that is not controlled by a candidate must register as a political

<sup>20</sup> Resp. at 6.

<sup>21</sup> *Id.* at 7.

committee only if it both (1) receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year and (2) has as its “major purpose” the nomination or election of federal candidates.<sup>22</sup>

In 2007, following litigation resulting from the Commission’s decision not to pursue rulemaking on the subject of political committee status, the Commission issued a Supplemental Explanation and Justification to provide the public with additional guidance as to its process for determining political committee status.<sup>23</sup> As explained in the Supplemental E&J, to determine an entity’s “major purpose,” the Commission considers a group’s “overall conduct,” including public statements about its mission, organizational documents, government filings (*e.g.*, IRS notices), the proportion of spending related to “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate),” and the extent to which fundraising solicitations indicate funds raised will be used to support or oppose specific candidates.<sup>24</sup> The Commission stated in the Supplemental E&J that it compares how much of an organization’s spending is for “federal campaign activity” relative to “activities that [a]re not campaign related.”<sup>25</sup>

In 2016, the United States District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington v. FEC* (“*CREW I*”) instructed the Commission, when examining an organization’s major purpose, to look beyond express advocacy and consider

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<sup>22</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5 (defining “political committee” based on the \$1,000 thresholds); *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (holding that the term “political committee” “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate”).

<sup>23</sup> Political Committee Status, 72 Fed. Reg. 5595 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”). The Supplemental E&J was issued following a court challenge to the Commission’s decision to engage in case-by-case decision-making rather than formal rulemaking. *See Shays v. FEC*, 424 F. Supp. 2d 100, 117 (D.D.C. 2006).

<sup>24</sup> Supplemental E&J at 5,597, 5,605 (Feb. 7, 2007).

<sup>25</sup> *Id.* at 5601, 5605.

whether other communications at issue indicate a “campaign-related purpose.”<sup>26</sup> The Court also held that the Commission’s analysis of the relevant time period for evaluating a group’s spending must retain the flexibility to account for changes in an organization’s major purpose over time.<sup>27</sup>

**B. The Available Information Suggests That CWA Became a Political Committee in 2011**

**1. CWA Exceeded the Statutory Threshold**

In 2011, CWA reported making \$640,060 in independent expenditures.<sup>28</sup> Accordingly, CWA exceeded the \$1,000 statutory threshold for aggregate expenditures set forth in the Act’s political committee definition.<sup>29</sup>

**2. CWA’s Spending Indicates That its Major Purpose in 2011 May Have Been the Nomination or Election of Federal Candidates**

CWA states in its Response, corporate filings, and tax returns, that its major purpose is not federal campaign activity, but rather the promotion of social welfare and engaging and educating the public.<sup>30</sup> The Commission explained in the Supplemental E&J that it may consider such statements made by an organization in its analysis of an organization’s major

<sup>26</sup> 209 F. Supp. 3d 77, 92-93 (D.D.C. 2016). The same District Court later held that electioneering communications “*presumptively* have an election-related purpose,” but the analysis by that Court in *CREW I* and its subsequent decision refers generally to all speech that is campaign-related but does not contain express advocacy. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018). The Court refrained from establishing its own bright-line rule regarding which communications inherently have a campaign-related purpose, but stated that the First Amendment does not require “the agency to exclude from its consideration all non-express advocacy in the context of disclosure.” *CREW I*, 209 F. Supp. 3d at 93.

<sup>27</sup> *CREW I*, 209 F. Supp. 3d at 94. In its subsequent Factual and Legal Analysis (“F&LA”), the Commission accepted the Court’s remand of the enforcement matter, found that the organization’s campaign-related spending exceeded 50% of its overall spending approximately one year before the 2010 election, and found reason to believe that the organization violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee. F&LA at 14-15, MUR 6538R (Americans for Job Security).

<sup>28</sup> Resp. at 2; Citizens for a Working America 2012 Spending, <https://www.fec.gov/data/committee/C90012758/?cycle=2012&tab=spending>.

<sup>29</sup> See 52 U.S.C. § 30101(4)(A).

<sup>30</sup> *Supra* notes 2, 4.

purpose,<sup>31</sup> but that such statements are not necessarily dispositive.<sup>32</sup> Here, as acknowledged by CWA,<sup>33</sup> its spending in 2011 on federal campaign-related activity represented a majority (74%) of its total spending. The Commission has never set a threshold on the proportion of spending on major purpose activities required for political committee status. Without determining whether it is *necessary* to cross a 50 percent threshold to determine an organization's major purpose, however, it is *sufficient* in this case, based on the available information, to conclude that by 2011, CWA's major purpose had become the nomination or election of federal candidates.<sup>34</sup>

This conclusion is in line with previous case law and Commission analysis of organizations whose original major purpose was other than nominating and electing federal candidates, but whose spending patterns changed over time in a manner that evidenced a shift in their major purpose.<sup>35</sup> The available information, therefore, is sufficient to support a finding that

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<sup>31</sup> Supplemental E&J at 5606.

<sup>32</sup> See *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at \*14 (E.D. Va. Sept. 24, 2008) ("A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive.") (emphasis in original), *aff'd*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311).

<sup>33</sup> *Supra* note 15.

<sup>34</sup> See F&LA at 11, MUR 6538R (Americans for Job Security) (stating that "[w]ithout determining whether it is *necessary* to cross a 50 percent threshold to determine an organization's major purpose, it is *sufficient* in this case ... to find reason to believe that [Americans for Job Security]'s major purpose had become the nomination or election of federal candidates" where the respondent group had spent \$6,487,511 of its \$12,417,809 in total spending on federal campaign-related activity).

<sup>35</sup> See *CREW I*, 209 F. Supp. 3d at 94 ("The Commissioners' refusal to give any weight whatsoever to an organizations' [sic] relative spending in the most recent calendar year — particularly in the case of a fifteen-year-old organization like AJS — indicates an arbitrary 'fail[ure]' to consider an important aspect of the [relevant] problem.") (quoting *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 664, 658 (2007)); see also *FEC v. Malenick*, 310 F. Supp. 2d 230, 237 (D.D.C. 2004) ("Accordingly, because Triad and then Triad Inc.'s major purpose was the nomination or election of specific candidates *in 1996*, and because Triad received contributions aggregating more than \$1,000 *in 1996*, I find that Triad and Triad, Inc. operated as a 'political committee' *in 1996*.") (emphasis added); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 853 (D.D.C. 1996) (discussing major purpose only in 1989 and 1990 with respect to group formed in 1979); see also MUR 5492 (Freedom, Inc.) (analyzing admitted major purpose in 2004 of group formed in 1962); MURs 5577, 5620 (National Association of Realtors — 527 Fund) (analyzing 2004 spending of NAR-527 Fund registered with IRS in 2000); MUR 5755 (New Democrat Network) (analyzing 1996 group New Democrat Network's 2004 spending); MUR 5753 (League of Conservation Voters) (analyzing LCV's 2004 spending when one of LCV's funds had registered with the IRS as early as 2000); MURs 5694, 5910

CWA became a political committee in 2012. As explained above, CWA's \$803,060 in federal campaign-related spending in 2011 represented 74% of its total spending that year.<sup>36</sup>

While the underlying violations arise from activity beginning in 2011, the five-year statute of limitations at 28 U.S.C. § 2462 does not bar potential injunctive relief, such as requiring that CWA register as a political committee and file disclosure reports beginning in 2011.<sup>37</sup> Once CWA became a political committee in 2011, it also had an ongoing obligation to file disclosure reports with the Commission.<sup>38</sup> Indeed, the Commission approved precisely that type of injunctive relief in MUR 6538R (Americans for Job Security), which resulted in the disclosure of the respondent's contributions and expenditures during the relevant time period, even though much of the activity fell outside the five year statute of limitations.<sup>39</sup> However, as explained below, under the unique circumstances of the case, the Commission has decided not to pursue such injunctive relief in this matter.

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(Americans for Job Security) (analyzing activity for group founded in 1997 from 2000 through 2006 in determining group's major purpose in 2006); MUR 5487 (Progress for America VF) (analyzing group's major purpose based on 2004 disbursements where group had raised \$4.6 million and spent \$11.2 million through 2006).

<sup>36</sup> *Supra* Table 1; Table 3.

<sup>37</sup> *See FEC v. Christian Coal.*, 965 F. Supp. 66, 71 (D.D.C. 1997) (holding that injunctive relief is not a penalty); *FEC v. Nat'l Republican Senatorial Comm.*, 877 F. Supp. 15, 20-21 (D.D.C. 1995) (same).

<sup>38</sup> 52 U.S.C. § 30103(d)(1); 11 C.F.R. § 102.3(a)(1); *CREW v. American Action Network*, No. 18-cv-945 (CRC), 2019 WL 4750248, at \*14 (D.D.C. Sept. 30, 2019) ("FECA requires political committees to disclose, *see* 52 U.S.C. § 30104, and political committees must disclose that information in perpetuity until they take certain steps to terminate that status."); *see also* Advisory Op. 1997-47 (Hansen) ("Under the Act and Commission regulations, a political committee is a continuing organization until specific action is taken to terminate the registration of, or disband, the committee."); Federal Election Commission, *Campaign Guide for Nonconnected Committees* at 93 (May 2008) (noting that a "committee's reporting obligation does not end until the Commission notifies the committee that the termination report has been accepted").

<sup>39</sup> *See* Conciliation Agreement at 5-6, MUR 6538R (Americans for Job Security); *cf. CREW*, 2019 WL 4750248, at \*14 (finding that court may order defendant to disclose activity post-dating the alleged conduct in the administrative complaint when fashioning an equitable remedy). *But see* *Cert.*, MUR 7181 (Independent Women's Voice) (Mar. 1, 2021) (Commission split 3-3 on reason to believe predicated on conduct roughly as old as the conduct in this matter with accompanying recommendation for this type of injunctive relief).

**C. CWA’s Reported Post-2011 Spending is Insufficient to Indicate a Major Purpose of Nominating or Electing Federal Candidates and Counsels in Favor of Dismissing the Allegations as a Matter of Prosecutorial Discretion**

As discussed below, due to the age of the predicate activity and the apparent nature of CWA’s major purpose in the intervening years, the Commission exercises its prosecutorial discretion and dismisses the allegations. Although CWA’s reported federal campaign-related spending in 2011 was approximately 74% of its total spending and CWA may have become a political committee then, as detailed above, the available information indicates that over the near decade that followed, CWA decreased its spending in this category below what is sufficient to indicate its major purpose was the nomination or election of federal candidates.<sup>40</sup> Subsequently, from 2012-2019, CWA’s reported federal campaign-related spending constituted 18.5% of its total spending. In 2012, CWA reported spending 40% of its overall expenses on federal political activity.<sup>41</sup> In years 2013 and 2014, CWA reported spending no money on political activity.<sup>42</sup> As for the period 2015 through 2019, CWA’s reported spending on federal campaign activity appears to have represented just 13.6% of its total spending across and never exceeded 35% in any single year.<sup>43</sup> Whereas the Complaint counts all of CWA’s “political spending” as reported to the IRS during that period, at least \$6,002,308 of the total \$7,936,992 (76%) appears

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<sup>40</sup> There are no statements by CWA on record indicating that its major purpose during the period of 2012-present was the nomination or election of federal candidates. As described above, CWA’s stated purpose in its Response, corporate filings, and tax returns was not federal campaign activity, but rather “promot[ing] sound economic policy by engaging citizen led initiatives and referendum efforts, by participating in the public policy arena, and by providing educational services to the general public.” Resp., Ex. A (reproducing CWA’s 2018 tax filing which describes the organization’s purpose on line 1). Although there is no specific information on record to show precisely how CWA spent its funds for non-“political activities,” there is also nothing to suggest that any such spending should be treated as having been for federal campaign-related activity. Accordingly, the Commission’s analysis of CWA’s activity focuses, as the Complaint does, on whether its reported campaign-related spending — consisting of contributions to IEOPCs and independent expenditures — is sufficient to satisfy the major purpose test.

<sup>41</sup> Table 3.

<sup>42</sup> *Id.*

<sup>43</sup> Table 3.

1 to have been made for the purpose of influencing state elections; as such, the Commission did  
2 not treat that spending as related to a federal campaign in our calculations. Finally, although  
3 CWA has not yet filed its 2020 reports with the IRS disclosing its total spending, CWA has not  
4 reported making any independent expenditures or electioneering communications during the  
5 2020 or 2022 election cycles, and no entities registered with the Commission have reported  
6 receiving any contributions from CWA during that period.

7 As discussed above, CWA asserts that its contributions to federal IEOPCs were made for  
8 the purpose of influencing state elections.<sup>44</sup> The record before the Commission does not include  
9 contemporaneous documentation corroborating CWA's assertion such as solicitations from or  
10 communications with the recipient IEOPCs, transmittal information from CWA to the recipient  
11 IEOPCs, or statements from individuals involved in the decision making. However, CWA's  
12 explanation nonetheless appears credible and is corroborated by Commission records showing  
13 that the recipient IEOPCs appear to have spent almost exclusively on state elections during the  
14 relevant time period. The fact that this pattern existed with respect to three separate IEOPCs  
15 indicates that it is unlikely to have been a coincidence and that CWA was consciously choosing  
16 to give to IEOPCs that were spending at the state level. Although a contribution to an IEOPC  
17 would normally be indicative of the donor's purpose to nominate or elect federal candidates, the  
18 record in this matter presents convincing information to the contrary. The Commission notes  
19 that CWA did not provide specific corroboration for its similar assertions regarding its state  
20 election spending in 2015, 2016, 2018, and 2019, but even if all of its spending on political

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<sup>44</sup> See Table 3; *supra* notes 18, 19.

1 activity during that period had been for campaign-related activity, it would have represented a  
2 smaller portion of its total spending.

3 In sum, looking at CWA’s activity from 2012 through 2020, its proportion of spending on  
4 federal campaign-related activity appears insufficient to determine that its major purpose *during*  
5 *this time* was the nomination or election of federal candidates.

6 The Court decisions and Commission precedent discussed above make clear that a  
7 committee’s major purpose can shift over time. Indeed, the Commission has regularly examined  
8 organizations that started out with a non-electoral purpose, but whose activity shifted over time  
9 and has explained that “the Commission’s analysis of the relevant time period for evaluating a  
10 group’s spending must be flexible to account for changes in an organization’s major purpose  
11 over time.”<sup>45</sup> The Commission has not, however, opined that an organization can qualify as a  
12 political committee and then, by virtue of its future conduct, “un-ring the bell,” shed its political  
13 committee status, and revert back to its original purpose. The Commission is not taking such an  
14 approach here, but the available information in this matter supports dismissal of the allegations  
15 for two primary reasons. First, the Commission expects that a potential investigation into  
16 CWA’s major purpose in 2011, given that CWA denies that it qualified as a political committee,  
17 would, by its nature, be fact-intensive, require substantial Commission resources, and likely face  
18 obstacles both in terms of acquiring relevant documents and obtaining accurate statements from  
19 individuals involved. Indeed, it was not until November 2020, nearly a decade after the  
20 qualifying activity occurred, that the Complaint was filed and CWA was notified by the  
21 Commission of its legal obligation to preserve documents relating to this matter. Second,

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<sup>45</sup> See, e.g., Factual & Legal Analysis at 14-15, MUR 6538R (Americans for Job Security) (examining whether respondent’s major purpose may have changed over time); cf. *CREW I*, 209 F. Supp. 3d at 94 (noting “that an organization’s major purpose can *change*”) (citing *MCFL*, 479 U.S. at 262) (emphasis in original)).

1 CWA's reported post-2011 spending appears to have included a smaller portion related to federal  
2 elections, as stated above. Although an investigation might bare potential benefits regarding the  
3 Commission's interest in promoting disclosure, under these circumstances, and in light of the  
4 current caseload faced by the Commission related to more recent activity, the Commission does  
5 not believe that pursuing CWA would be an efficient use of the Commission's limited resources.

6 CWA also raises the issue of the statute of limitations.<sup>46</sup> The predicate conduct for the  
7 violations in this matter occurred between October 2010 and September 2011. During the period  
8 still within the five-year statute of limitations for civil monetary penalties, CWA's reported  
9 federal campaign-related spending (here between 2016-2019) appears to represent just 12.5% of  
10 its total spending. Absent other evidence indicating a major purpose of nominating or electing  
11 federal candidates, this level of spending falls well short of what the Commission has found  
12 sufficient to satisfy the major purpose test in previous matters.

13 As discussed above, the statute of limitations does not bar the Commission from finding  
14 reason to believe based on CWA's 2011 activity and seeking injunctive relief, such as  
15 compelling CWA to register as a political committee and file reports for all its receipts and  
16 disbursements since 2011. Given the age of the predicate activity and the fact that CWA's  
17 federal campaign activity diminished and remained relatively low in the intervening years,  
18 however, pursuing reason to believe and injunctive relief in this specific case is not prudent.  
19 Again, although the statute of limitations is not a bar to proceeding, the practical considerations  
20 of pursuing allegations premised on activity that occurred nearly a decade ago must be weighed

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<sup>46</sup> Compl. at 8-11.

1 in light of the Commission's limited resources and the more pressing needs of other cases  
2 involving activity that has occurred in more recent elections.

3 In conclusion, although the available information is sufficient to support a finding of  
4 reason to believe that CWA violated 52 U.S.C. §§ 30102, 30103, 30104 by failing to register and  
5 report as a political committee, and the Commission could seek to compel CWA to register and  
6 disclose its missing activity, under the circumstances, the Commission exercises its prosecutorial  
7 discretion and dismisses the allegations.<sup>47</sup> Additionally, because these registration and reporting  
8 obligations apply only to committees and treasurers, the Commission finds no reason to believe  
9 that Cummings and Riter violated 52 U.S.C. §§ 30102, 30103, 30104.

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<sup>47</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985). As discussed above, this recommendation is based on prudential concerns specific to the totality of the circumstances of this particular matter, including the passage of time since CWA may have become a political committee, and the lack of sufficient information to show that CWA continued to act with the major purpose of nominating or electing federal candidates in the near decade the followed. The available information is sufficient to establish that CWA was required to register and report as a political committee based on its 2011 activity, but failed to do so. But for these prudential concerns, and in light of the more pressing need to handle more recent matters that are part of the Commission's caseload, this Office would otherwise recommend that the Commission find reason to believe that CWA violated 52 U.S.C. §§ 30102, 30103, 30104 and conduct an investigation.