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BEFORE THE FEDERAL ELECTION COMMISSION

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)	**MUR 7912**
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RESPONSE OF CONGRESSIONAL LEADERSHIP FUND AND CALEB CROSBY, AS TREASURER

Congressional Leadership Fund and Caleb Crosby, as Treasurer (collectively, "CLF" or "Respondents"), hereby respond to the complaint, filed by the Campaign Legal Center ("CLC"), in the above-captioned Matter Under Review. CLC's misguided complaint fails to allege any violation of the Federal Election Campaign Act of 1971, as amended ("the Act") or FEC regulations. Respondents thus respectfully request that the Commission dismiss the complaint and close the file as to CLF immediately.

CLC's complaint asserts that during the 2020 election cycle, CLF—a national independent-expenditure only political committee ("IEOPC") dedicated to electing Republicans to the U.S. House of Representatives[1]—failed to disclose on its FEC Form 1 other IEOPCs as an "affiliate." While CLF disagrees that it could be deemed affiliated with these other committees under the well-known multifactor affiliation standard applied by the Commission, we need not address that question here. It is beyond dispute that the affiliation rules under the Act and FEC regulations, by their express terms, do not govern relationships between two or more IEOPCs. Indeed, the affiliation rules implement the Act's "anti-proliferation" amendments, 52 U.S.C. § 30116(a)(4)–(5), which Congress enacted in 1976—more than three decades before IEOPCs existed—for the sole purpose of "preventing the undermining of the Act's contribution limitations through the easy

[1] Formed in 2011, CLF makes independent expenditures to advance its mission of electing Republicans to Congress. Following the 2020 election cycle, CLF notified the FEC that it had established a separate depository account for the purpose of making contributions to candidates and committees in accordance with *Carey v. FEC*. That account is not at issue in this MUR.

expedient of forming multiple, nearly identical political committees." MUR 5338 (The Leadership Forum), First General Counsel's Report 31; *see also* 52 U.S.C. § 30116(a)(5) ("[A]ll contributions made by political committees established or financed or maintained or controlled by [the same sponsor] shall be considered to have been made by a single political committee."); 11 C.F.R. § 110.3 ("[F]or *the purposes of the contribution limitations* . . . all contributions made or received by one or more than one affiliated committee . . . shall be considered to be made or received by a single political committee." (emphasis added)); H.R. Conf. Rep. 94-1057, 58 (Apr. 28, 1976) ("The anti-proliferation rules . . . are intended to prevent corporations, labor organizations, or other persons or groups of persons *from evading the contribution limits* . . . ." (emphasis added)).[2] For this reason, affiliated committees "shar[e] a single contribution limit" under the Act—both when making and receiving contributions. 11 C.F.R. § 110.3(a)(2). The Act's contribution limits, however, do not apply to IEOPCs, which (i) may receive unlimited contributions from permissible sources but (ii) cannot make any contributions to hard-money committees. *See SpeechNow.org v. FEC,* 599 F.3d 686 (D.C. Cir. 2010). Accordingly, the anti-proliferation goals underpinning the affiliation rules have no relevance for IEOPCs, and the affiliation rules do not apply. CLC's complaint thus must be dismissed for failing to describe a violation of law. 11 C.F.R. § 111.4(d)(3).

Were that not enough, in more than ten years, the FEC never once has suggested that the affiliation rules could be extended to govern the relationships between IEOPCs. Therefore, even if the Commission had the authority to do so absent an act of Congress (doubtful), were the

[2] The Commission's website further defines "affiliation of nonconnected PACs" through a similar lens: "two or more affiliated committees are treated as a single committee for the **purposes of the contribution limits**." Moreover, the FEC recognized the basis for the regulation in its 2014 Advanced Notice of Proposed Rulemaking, asking whether "the current affiliation factors at 11 CFR 100.5(g)(4) and 110.3(a)(3) [are] adequate to prevent circumvention of the base contribution limits." Advance Notice of Proposed Rulemaking on Aggregate Biennial Contribution Limits, 79 Fed. Reg. 62,361, 62,363 (Oct. 17, 2014).

Commission to do so here—thereby engaging in a "rulemaking via MUR" without the benefit of advance notice and public comment following a decade of regulatory and enforcement silence in this area—would violate the norms of due process and fundamental fairness.[3] *See, e.g.*, MURs 6485, 6487, 6488, 6711, and 6930 (W Spann et al.), Statement of Reasons of Chairman Petersen and Comm'rs Hunter and Goodman at 2, 13; MUR 6206 (BASF Corp.), Statement of Reasons of Chairman Petersen and Comm'rs Hunter and McGahn at 2 n.4 (declining "to engage in rulemaking *via* MUR" (collecting MURs)); *cf. Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 158, 132 S. Ct. 2156, 2168, 183 L. Ed. 2d 153 (2012) ("[W]here, as here, an agency's announcement of its interpretation is preceded by a very lengthy period of conspicuous inaction, the potential for unfair surprise is acute."). As CLC's complaint underscores, it has been common practice by IEOPCs across the political spectrum to contribute to other IEOPCs, with such contributions often representing all or the vast majority of the recipient's funding.[4] This practice has been fully disclosed on the public record. Never has the Commission raised concerns. It cannot, as a matter of fairness, suddenly do so now in this MUR. *See* MUR 7243 (CITGO Petroleum Corp.), Statement of Reasons of Vice Chair Dickerson and Comm'rs Cooksey and Trainor) at 6 ("A fundamental value of due process is fair notice. If the regulated community cannot look to our

[3] In a footnote to Advisory Opinion 2010-11, the Commission said it will undertake future rulemakings that could "update registration and reporting forms" related to independent expenditure-only committees following recent court decisions. *See* Advisory Op. 2010-11 (Commonsense Ten) at *3 n.4. The Commission has not done so in either respect. *See id.* These comments, and the Commission's subsequent inaction, make clear that affiliation rules are inapplicable to IEOPCs.

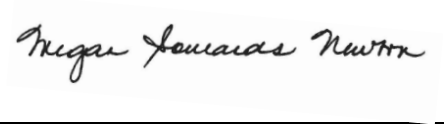
[4] SMP (FEC ID C00484642), or Senate Majority PAC, is one good example. During the 2020 cycle, SMP contributed $4.9 million to a newly established IEOPC called Carolina Blue (FEC ID C00737890)—representing all but $50 of the funds contributed to Carolina Blue that cycle. In the 2018 cycle, SMP contributed 99% of the $2.36 million contributed to an IEOPC called Texas Forever (FEC C00689919), which operated only that cycle. And in the 2014 cycle, SMP contributed almost $10 million to a short-lived IEOPC named Put Alaska First, an amount representing nearly all of the funds raised by Put Alaska First PAC.

regulations for clear guidance as to what it may and may not do, then this agency is failing in its mission and undermining the rule of law.").

* * *

CLC's effort to extend the Act and regulations' affiliation rules beyond their purpose falls flat. There is no basis in the law do so, and an enforcement action is the wrong mechanism by which to create new rules. CLC may petition the Commission for a rulemaking, but for the reasons described above, the Commission should reject this misguided attempt by Complainants at "rulemaking via MUR" and dismiss the complaint and close the file as to CLF immediately.

Respectfully submitted,



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