

**From:** [Rebecca Mears](#)  
**To:** [CELA](#)  
**Cc:** [Ezra Reese](#); [Marc Elias](#)  
**Subject:** Response to FEC MUR 7912 (SMP, Sunflower State, Carolina Blue, Red and Gold, Highway 31)  
**Date:** Tuesday, September 7, 2021 5:19:13 PM  
**Attachments:** [MUR 7912 - Response \(SMP, Sunflower State, Carolina Blue, Red and Gold, Highway 31\).pdf](#)

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Dear Ms. Ross:

We write as counsel to SMP, Sunflower State, Carolina Blue, Red and Gold, Highway 31, and their respective Treasurers—Rebecca Lambe, Jim Jesse, Doug Heyl, Roy Herrera, Jr., and Edward Still—in their official capacity as Treasurer of their respective committees (collectively, “Respondents”), regarding the complaint in MUR 7912. Attached please find a response to MUR 7912 on behalf of Respondents. Please provide us with confirmation that you have received the response.

Please also note that as explained in the response, we do not file this response on behalf of Texas Forever or its former treasurer Christopher R. Lippincott. Texas Forever was [terminated on January 31, 2019](#). Additionally, it has recently come to our attention that Texas Forever’s sole remaining point of contact, its former treasurer [Christopher R. Lippincott, has passed away](#).

Finally, as explained in Andrea Levien’s email to you on September 3, 2021, please be advised that counsel’s contact information has changed. Counsel in this matter – Marc Elias, Ezra Reese, and Rebecca Mears – started working at the Elias Law Group LLP on September 2, 2021. Our new mailing address is 10 G Street NE, Suite 600, Washington, DC 20002 and our new email addresses are reflected on this email thread.

Thank you,  
Rebecca Mears

**Rebecca Mears**  
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(she/her/hers)

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**RECEIVED**  
By OGC-CELA at 9:32 pm, Sep 07, 2021

September 7, 2021

**VIA E-MAIL**  
CELA@fec.gov

Roy Q. Lockett  
Acting Assistant General Counsel  
Federal Election Commission  
Office of Complaints Examination  
& Legal Administration  
1050 First Street, NE  
Washington, DC 20463

**RE: MUR 7912**

Dear Mr. Lockett:

We write as counsel to SMP, Sunflower State, Carolina Blue, Red and Gold, Highway 31, and their respective Treasurers—Rebecca Lambe, Jim Jesse, Doug Heyl, Roy Herrera, Jr., and Edward Still—in their official capacity as Treasurer of their respective committees (collectively, “*Respondents*”), regarding the complaint in MUR 7912 (the “*Complaint*”) filed by the Campaign Legal Center and Margaret Christ, alleging a violation of the Federal Election Campaign Act of 1971, as amended (the “*Act*”), and Federal Election Commission (“*FEC*” or the “*Commission*”) regulations.<sup>1</sup>

### **FACTUAL BACKGROUND**

The Complaint alleges that five political committees – Sunflower State, Carolina Blue, Texas Forever, Red and Gold, Highway 31 (collectively “*the five committees*”) – are affiliated, as set forth in Commission regulations in 11 C.F.R. § 100.5(g), with SMP. The Complaint further asserts

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<sup>1</sup> We do not file this response on behalf of Texas Forever or its former treasurer Christopher R. Lippincott, however we believe the Commission should dismiss the Complaint and close the file as concerns Texas Forever and Mr. Lippincott. Texas Forever was terminated on January 31, 2019. Texas Forever, Termination Report (filed Jan. 31, 2019), <https://docquery.fec.gov/cgi-bin/forms/C00689919/1312020/>. It has recently come to our attention that Texas Forever’s sole remaining point of contact, its former treasurer Christopher R. Lippincott, has passed away. See Philip Jankowski, *Chris Lippincott, Austin Political Insider and Media Expert, Dies at 47*, AUSTIN AMERICAN-STATESMAN (Aug. 12, 2021), <https://www.statesman.com/story/news/2021/08/12/austin-texas-transportation-department-political-insider-media-expert-chris-lippincott-dies/5555994001/>.

that SMP and the five committees violated 52 U.S.C. § 30103(b)(2) by failing to report one another as affiliated committees, and additionally violated 52 U.S.C. §§ 30104(b), et seq., by reporting contributions to/from the committees as contributions between other committees instead of transfers between affiliated committees.<sup>2</sup>

SMP is a federal independent expenditure-only committee which was first formed under the name Commonsense Ten in 2010.<sup>3</sup> SMP's treasurer is Rebecca Lambe who is not and has never been an officer or employee of any of the five committees.<sup>4</sup>

Sunflower State was a federal independent expenditure-only committee which registered with the Commission on July 13, 2020.<sup>5</sup> Sunflower State filed a termination report with the Commission on March 1, 2021.<sup>6</sup> Sunflower State did not have any overlap in staff with officers or employees of SMP. Sunflower State's treasurer was Jim Jesse; Mr. Jesse is not and has never been an officer or employee of SMP. While Sunflower State received funds from SMP, it also received a total of \$1.75 million in contributions from Women Vote!, a federal independent expenditure-only committee that is not affiliated with Sunflower State and which the Complaint has not asserted is affiliated with Sunflower State.<sup>7</sup> Women Vote!'s contributions represent roughly one-third of Sunflower State's total received contributions.<sup>8</sup>

Carolina Blue is a federal independent expenditure-only committee which registered with the Commission on February 6, 2020.<sup>9</sup> Carolina Blue does not have any overlap in staff with officers or employees of SMP. Carolina Blue's treasurer was Doug Heyl; Mr. Heyl is not and has never been an officer or employee of SMP. Carolina Blue received funds from SMP as well as from another source.<sup>10</sup>

Texas Forever was a federal independent expenditure-only committee which registered with the Commission on October 19, 2018.<sup>11</sup> Texas Forever filed a termination report with the Commission

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<sup>2</sup> Compl. ¶¶ 76, 82, 88, 95, 105.

<sup>3</sup> SMP, Statement of Organization, FEC Form 1 (filed Nov. 24, 2020), <https://docquery.fec.gov/pdf/287/202011249337130287/202011249337130287.pdf>; Commonsense Ten, Statement of Organization, FEC Form 1 (filed June 11, 2010), <https://docquery.fec.gov/pdf/921/10030344921/10030344921.pdf>.

<sup>4</sup> SMP, Statement of Organization, FEC Form 1 (filed Nov. 24, 2020), <https://docquery.fec.gov/pdf/287/202011249337130287/202011249337130287.pdf>.

<sup>5</sup> Sunflower State, Statement of Organization, FEC Form 1 (filed July 13, 2020),

<https://docquery.fec.gov/pdf/569/202007139244500569/202007139244500569.pdf>.

<sup>6</sup> Sunflower State, Termination Report (filed Mar. 1, 2021), <https://docquery.fec.gov/cgi-bin/forms/C00751461/1502431/>.

<sup>7</sup> Women Vote!, FEC Form 1 (filed Aug. 5, 2020), <https://docquery.fec.gov/pdf/562/202008059261234562/202008059261234562.pdf>.

<sup>8</sup> Sunflower State, 2019-2020 Total Receipts, <https://www.fec.gov/data/committee/C00751461/?tab=raising&cycle=2020>.

<sup>9</sup> Carolina Blue, Statement of Organization, FEC Form 1 (filed Feb. 6, 2020), <https://docquery.fec.gov/pdf/161/202002069186471161/202002069186471161.pdf>.

<sup>10</sup> See Carolina Blue, Financial Summary, 2019-20, FEC.gov, <https://www.fec.gov/data/committee/C00737890/?tab=summary&cycle=2020>.

<sup>11</sup> Texas Forever, Statement of Organization, FEC Form 1 (filed Oct. 9, 2018), <https://docquery.fec.gov/pdf/612/201810199125654612/201810199125654612.pdf>.

on January 31, 2019.<sup>12</sup> Texas Forever did not have any overlap in staff with officers or employees of SMP. Texas Forever's treasurer was Christopher R. Lippincott; Mr. Lippincott is not and has never been an officer or employee of SMP.<sup>13</sup> Texas Forever received funds from SMP as well as several from other contributors.<sup>14</sup>

Highway 31 was a federal independent expenditure-only committee which registered with the Commission on November 6, 2017.<sup>15</sup> Highway 31 filed a termination report with the Commission on January 19, 2018.<sup>16</sup> Highway 31 did not have any overlap in staff with officers or employees of SMP. Highway 31's treasurer was Edward Still; Mr. Still is not and has never been an officer or employee of SMP. Highway 31 received contributions from SMP as well as from other sources; the contributions from contributors other than SMP together totaled over \$1 million, or roughly one-third of all of Highway 31's total received contributions.<sup>17</sup>

Red and Gold was a federal independent expenditure-only committee which registered with the Commission on August 1, 2018.<sup>18</sup> Red and Gold filed a termination report with the Commission on January 31, 2019.<sup>19</sup> Red and Gold did not have any overlap in staff with officers or employees of SMP. Red and Gold's treasurer was Roy Herrera, Jr.; Mr. Herrera is not and has never been an officer or employee of SMP. Red and Gold received contributions from SMP as well as from other sources; the contributions from contributors other than SMP totaled roughly \$1.25 million from several non-SMP donors, or more than one-third of all of Red and Gold's total received contributions.<sup>20</sup>

To summarize, each of the five committees was organized in a different state and focused its actions on a unique U.S. Senate race. As noted, each of the five committees were led by different treasurers who are not and have never been officers or employees of SMP and none of the five committees had an overlap in officers or employees with SMP. Furthermore, as acknowledged in the Complaint, none of the five committees were solely funded by SMP; each committee received at least some funding from individuals and/or entities other than SMP. Moreover, Red and Gold,

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<sup>12</sup> Texas Forever, Termination Report (filed Jan. 31, 2019), <https://docquery.fec.gov/cgi-bin/forms/C00689919/1312020/>.

<sup>13</sup> As mentioned previously, Christopher R. Lippincott recently passed away. See Philip Jankowski, *Chris Lippincott, Austin Political Insider and Media Expert, Dies at 47*, AUSTIN AMERICAN-STATESMAN (Aug. 12, 2021), <https://www.statesman.com/story/news/2021/08/12/austin-texas-transportation-department-political-insider-media-expert-chris-lippincott-dies/5555994001/>.

<sup>14</sup> Texas Forever, 2017-2018 Total Receipts, <https://www.fec.gov/data/committee/C00689919/?tab=raising&cycle=2018>.

<sup>15</sup> Highway 31, Statement of Organization, FEC Form 1 (filed Nov. 6, 2017), <https://docquery.fec.gov/pdf/522/201711069086611522/201711069086611522.pdf>.

<sup>16</sup> Highway 31, Termination Report (filed Jan. 19, 2018), <https://docquery.fec.gov/cgi-bin/forms/C00659896/1198615/>.

<sup>17</sup> Highway 31, Individual Contributions, 2017-2018, [https://www.fec.gov/data/individual-contributions/?committee\\_id=C00659896&two\\_year\\_transaction\\_period=2018](https://www.fec.gov/data/individual-contributions/?committee_id=C00659896&two_year_transaction_period=2018).

<sup>18</sup> Red and Gold, FEC Form 1 (filed Aug. 1, 2018), <https://docquery.fec.gov/pdf/067/201808019119339067/201808019119339067.pdf>.

<sup>19</sup> Red and Gold, Termination Report (filed Jan. 31, 2019), <https://docquery.fec.gov/cgi-bin/forms/C00684209/1311977/>.

<sup>20</sup> Red and Gold, 2017-2018 Total Receipts, <https://www.fec.gov/data/committee/C00684209/?tab=raising&cycle=2020>.

Highway 31, and Sunflower State each received at least one-third of their total received contributions from non-SMP contributors.

Finally, note that SMP has acknowledged affiliation status of other committees when appropriate. In 2020, SMP was affiliated with two committees – The Georgia Way and Georgia Honor – which SMP listed on its statement of organization (FEC Form 1) filed with the Commission.<sup>21</sup>

## LEGAL ANALYSIS

### A. FECA and Related Commission Regulations Concerning Affiliated Committees Do Not Apply to Restrict Independent Expenditure-Only Committees

The Complaint skirts around the purpose and intent of the laws and regulations at issue. We turn to them here as they demonstrate that the provisions of the Act which Respondents allegedly violated were not intended, and as interpreted by the Commission do not apply, to regulate independent expenditure-only committee filing requirements, but rather to address potential concerns with political committees attempting to circumvent contribution limits.

The Complaint asserts that SMP and the five committees violated 52 U.S.C. § 30103(b)(2) by failing to report one another as affiliated committees, and violated 52 U.S.C. § 30104(b), by reporting contributions to/from committees as contributions between committees instead of as transfers between affiliated committees. The two provisions of the Act which the Complaint alleges were violated by Respondents are: (1) 52 U.S.C. § 30103(b)(2) which states that “[t]he statement of organization of a political committee shall include . . . the name, address, relationship, and type of any connected organization or affiliated committee . . . ;”<sup>22</sup> and (2) 52 U.S.C. § 30104(b) which states in part that “Each report [by a political committee] shall disclose . . . transfers from affiliated committees . . . .”<sup>23</sup>

Although the language in 52 U.S.C. § 30103(b)(2) and 52 U.S.C. § 30104(b), concerning reporting affiliated committees and transfers to affiliated committees existed in the Act when it was codified in 1971, the term “affiliated committee” was undefined until the Commission drafted regulations to define the term.<sup>24</sup> The Commission regulations at 11 C.F.R. § 100.5(g), which define which committees are “affiliated committees” and thus serve as the foundation for both provisions of the Act allegedly violated by Respondents, stems from the antiproliferation

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<sup>21</sup> The Georgia Way, FEC Form 1 (filed Nov. 16, 2020), <https://docquery.fec.gov/pdf/453/202011169336992453/202011169336992453.pdf>. The Georgia Way filed a termination report on March 1, 2021. The Georgia Way, Termination Report (filed Mar. 1, 2021), <https://docquery.fec.gov/pdf/453/202011169336992453/202011169336992453.pdf>; Georgia Honor, FEC Form 1 (filed Nov. 16, 2020), <https://docquery.fec.gov/pdf/758/202011169336992758/202011169336992758.pdf>; SMP, Statement of Organization, FEC Form 1 (filed Nov. 24, 2020), <https://docquery.fec.gov/pdf/287/202011249337130287/202011249337130287.pdf>.

<sup>22</sup> 52 U.S.C. § 30103(b)(2).

<sup>23</sup> *Id.* § 30104(b).

<sup>24</sup> FEC, Explanation and Justification for Suspended Regulations on Disclosure, House Document No. 94-293, pp. 27-37, at 30 (Dec. 4, 1975), [https://www.fec.gov/resources/cms-content/documents/94-293\\_1.pdf](https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf) (explaining that “the term ‘affiliated’ is used in the Act but not defined in it” thus the Commission would come to define the term via regulations.).

provisions added to the Act by the 1976 amendments which were aimed at preventing entities from circumventing contribution limits.<sup>25</sup>

In an Explanation and Justification from 1989, the Commission explained that the Commission revised 11 C.F.R. § 100.5(g) to address the contribution limitations and prohibitions established by the 1976 amendments to the Act and that the regulations “incorporate the anti-proliferation rules [in] the congressional reports.”<sup>26</sup> The anti-proliferation rules are entirely focused on preventing political committees from circumventing contribution limits.

It is no wonder, then, that the Commission’s regulation promulgating the affiliation standard is entirely and explicitly focused on anti-proliferation. 11 C.F.R. § 100.5(g)(3) describes affiliated committees as those “sharing a single contribution limitation.”<sup>27</sup> There is no application to committees with no contribution limitations at all, and no explanation of whether the affiliation standard even applies in this context, when the sole purpose of the reporting requirement is to aggregate any applicable contribution limits.

And when the Commission has been asked to decide whether it should apply the normal affiliation rules in the independent-expenditure context, it has declined to do so.

In Advisory Opinion 2010-09, a non-profit organization, Club for Growth, inquired about its plans to establish, administer, and pay the solicitation costs of an independent expenditure-only committee.<sup>28</sup> There was no question, then, that the new committee would meet the affiliation factors of 11 C.F.R. 100.5(g); it would easily have done so. The Advisory Opinion Request asked the Commission to nevertheless confirm that the independent expenditure-only committee would not be reported as a “separate segregated fund” – a type of affiliated committee under 11 C.F.R. § 100.5(g)(2) – because of the independent expenditure-only status of the new committee.<sup>29</sup> The Commission agreed.<sup>30</sup> The Commission explained that the non-profit’s payment of the independent expenditure-only committee’s establishment, administrative, and solicitation expenses “are not exempt from the definition of ‘contribution’ or ‘expenditure’ because the Committee is not an SSF [separate segregated fund].”<sup>31</sup>

The non-profit organization anticipated that there may have been some confusion over whether to report the relationship of an independent expenditure-only committee with a sponsoring entity. It noted that “the FEC may wish for the [independent expenditure-only committee] to identify the Club for Growth as a connected organization for disclosure

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<sup>25</sup> Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34098, 34099 (Aug. 17, 1989), <https://www.fec.gov/resources/cms-content/documents/notice1989-13-081789.pdf#page=11> (Explaining the Commission revised 11 C.F.R. 100.5 to incorporate the anti-proliferation rules stated by Rep. Hays).

<sup>26</sup> Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34098, 34099 (Aug. 17, 1989), <https://www.fec.gov/resources/cms-content/documents/notice1989-13-081789.pdf#page=11>.

<sup>27</sup> 11 C.F.R. § 100.5(g)(3).

<sup>28</sup> FEC Adv. Op. 2010-09 (Club for Growth), July 22, 2010.

<sup>29</sup> FEC Req. for Adv. Op. 2010-09 (Club for Growth), May 21, 2010, at 5.

<sup>30</sup> FEC Adv. Op. 2010-09 at 5.

<sup>31</sup> *Id.* at 5.

purposes - to show its tie to the Club.”<sup>32</sup> The Commission did not address this. Nor did they address whether the new independent expenditure-only committee would show affiliation with Club for Growth’s existing separate segregated fund. Subsequent to the Commission’s Advisory Opinion, Club for Growth filed a Statement of Organization for the new committee, Club for Growth Action, and made the decision to disclose Club for Growth as a connected organization but not to disclose the existing separate segregated fund as an affiliated committee, presumably because contribution limits did not apply. The Commission took no enforcement action.

The Commission’s regulations and precedent, then, seem to indicate either that the affiliation standards do not apply to independent-expenditure committees, or that there is at least general ambiguity whether they do so. Accordingly, the Commission should not use the regulations at 11 C.F.R. § 100.5(g) to unduly regulate the activities of independent expenditure-only committees before the Commission clarifies the law in this emerging and murky area.

**B. The Complaint Does Not Allege Facts Concluding that the Five Committees are Affiliated with SMP**

The Complaint alleges that the five political committees – Sunflower State, Carolina Blue, Texas Forever, Red and Gold, Highway 31 – are affiliated with SMP as defined by Commission regulations in 11 C.F.R. § 100.5(g). The alleged facts do not support this legal conclusion.

Those Commission regulations define “affiliated committees” as committees “established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons . . . .”<sup>33</sup> In assessing whether committees are affiliated, the Commission may examine factors “in the context of the overall relationship between the committees” to determine “whether the presence of any factor or factors is evidence of one committee [ ] having been established, financed, maintained or controlled by another committee or sponsoring organization.”<sup>34</sup> Such factors include:<sup>35</sup>

- a) Whether a sponsoring organization owns controlling interest in the voting stock or securities of the sponsoring organization of another committee;
- b) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;
- c) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;
- d) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

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<sup>32</sup> FEC Request for Adv. Op. 2010-09, at 5.

<sup>33</sup> 11 C.F.R. § 100.5(g)(2).

<sup>34</sup> *Id.* § 100.5(g)(4)(ii).

<sup>35</sup> *Id.*

- e) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;
- f) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;
- g) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;
- h) Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;
- i) Whether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and
- j) Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.

Critically, the Commission regulations explain that the Commission must consider the presence of any factor “in the context of the overall relationship between committees” to determine whether they are indicative of finding one committee established, financed, maintained or controlled the other.<sup>36</sup> The mere presence of any one factor or factors is not itself determinative in concluding whether a committee is affiliated with another.

1. The Facts Alleged by the Complaint Are Not Enough to Conclude that the Committees Are Affiliated with SMP as Opposed to Other Entities

Here, the Complaint’s allegations of affiliation between the five committees and SMP primarily hinge on two arguments: (1) that the five committees received contributions from SMP and often received them in close proximity to making expenditures; and (2) that in the case of Highway 31 and Sunflower State, a member of SMP made public comments regarding the work of those committees.

First, the Complaint asserts that SMP’s contributions to each of the five committees is suggestive that the committees are affiliated. However, other non-SMP donors, including both individuals and large political committees, also “cause[d] or arrange[d] for funds in a significant amount or on an ongoing basis to be provided” to the committees. As detailed above, and acknowledged in the Complaint, none of the five committees were solely funded by SMP; each committee received at

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<sup>36</sup> *Id.*

least some funding from individuals and/or entities other than SMP. Furthermore, three committees – Red and Gold, Highway 31, and Sunflower State – each received at least one-third of their total received contributions from non-SMP contributors.

For example, Women Vote! made \$1.75 million in contributions to Sunflower State, amounting to roughly one-third of all contributions to Sunflower State.<sup>37</sup> Women Vote! also appears to have made this contribution in close proximity to the days Sunflower State made independent expenditures. Accordingly, the facts which the Complaint suggests are indicative of Sunflower State being an affiliated committee of SMP, provide just as much support for the argument that Sunflower State is an affiliated committee of Women Vote!. Similarly, Priorities USA Action (another federal independent expenditure-only committee<sup>38</sup>) contributed \$910,000 to Highway 31.<sup>39</sup> This sum represents roughly one-quarter of the total contributions received by Highway 31.<sup>40</sup> The facts purported in the Complaint concerning funding simply are not enough to conclude that the committees are affiliated with SMP as opposed to entities like Women Vote! or Priorities USA Action. Accordingly, the Commission should not consider the information concerning funding to be determinative in supporting a finding that the five committees are affiliated with SMP.

Second, public comments of this nature cannot be considered determinative of affiliation between two committees. For instance, the Complaint claims that public comments made by J.B. Poersch, the President of SMP, in a *Politico* article acknowledging SMP’s monetary contributions to Sunflower State and applauding Sunflower State’s efforts in Kansas are evidence that SMP “‘had an active or significant role in the formation of Sunflower State [ ] and the formal or informal ‘authority or ability to direct or participate in the governance’ of Sunflower State [ ]”.<sup>41</sup> If complainant truly believes such comments as evidence of affiliation, then Women Vote! is subject to the same analysis, whose spokesperson also commented on Sunflower State’s actions in the same article.<sup>42</sup> Similarly, the Complaint claims that a comment made by an individual purportedly affiliated with SMP announcing that SMP was a predominant contributor to Highway 31 demonstrates that SMP “‘had an active or significant role in the formation of’ Highway 31 [ ] and the formal or informal ‘authority or ability to direct or participate in the governance’ of Highway 31 [ ].”<sup>43</sup> However, these statements merely indicate that SMP was a major contributor to the committee.<sup>44</sup> As discussed above, Priorities USA Action was also a major contributor of Highway 31, contributing nearly one-quarter of all contributions received by Highway 31. Simply put, public comments which merely involve one committee applauding the work of the other, or again, only relate back to funding, cannot be determinative of affiliation between two committees.

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<sup>37</sup> See Sunflower State, 2019-2020 Total Receipts, <https://www.fec.gov/data/committee/C00751461/?tab=raising&cycle=2020>.

<sup>38</sup> Priorities USA Action, FEC Form 1 (filed July 30, 2021), <https://docquery.fec.gov/pdf/927/202107309452414927/202107309452414927.pdf>.

<sup>39</sup> Highway 31, 2017-2018 Total Receipts, <https://www.fec.gov/data/committee/C00659896/?tab=raising>.

<sup>40</sup> *Id.*

<sup>41</sup> James Arkin, *Top Democrats funded super PAC that meddled in Kansas GOP primary*, POLITICO (Aug. 20, 2020), <https://www.politico.com/news/2020/08/20/democrats-super-pac-kansas-gop-primary-399415>.

<sup>42</sup> *Id.*; Women Vote!, FEC Form 1 (filed Aug. 5, 2020), <https://docquery.fec.gov/pdf/562/202008059261234562/202008059261234562.pdf>.

<sup>43</sup> Compl. ¶ 94.

<sup>44</sup> *Id.* ¶ 92.

The facts here are so thin that at one point, the Complaint alleges that both Sunflower State and Carolina Blue were ‘established, financed, maintained or controlled by’ **SLF**.<sup>45</sup> Respondents respond here to note that neither Carolina Blue nor Sunflower State are affiliated with SLF. While this particular allegation appears to be the result of a typographical error, the existence of this error betrays the cookie-cutter factual analysis upon which complainant rests.

2. The Complaint Fails to Demonstrate that SMP and the Five Committees are Affiliated Under the Factors which the Commission May Consider when Determining if Committees are Affiliated

As stated above, Commission regulations specify that the Commission may examine certain factors “in the context of the overall relationship between committees” in determining whether two committees are affiliated.<sup>46</sup> The mere presence of any one factor or factors is not itself determinative in concluding whether a committee is affiliated with another. Below, each factor listed in 11 C.F.R. § 100.5(g)(4)(ii) is analyzed in relation to the five committees and SMP. Analyzing each factor in turn demonstrates that, on balance, the factors do not merit the legal conclusion that SMP and the five committees are affiliated.

- a) SMP does not own controlling interest in the voting stock or securities of any of the five committees. Similarly, the five committees do not own controlling interest in the voting stock or securities of SMP. The Complaint also makes no allegations and presents no facts related to this factor.
- b) No facts alleged by the Complaint demonstrate that SMP has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures, and vice versa. As explained above, the public comments which complainant claims indicate Sunflower State and Highway 31 are affiliated with SMP merely involve one committee applauding the work of the other, or only relate back to funding. As other entities made similar comments and also provided substantial funding to Sunflower State and Highway 31, these facts cannot be determinative in concluding that SMP has any authority or ability to participate in the governance of these committees. Additionally, the timing of contributions made by SMP to the five committees has no bearing on the question of whether SMP has any authority or ability to direct or participate in the governance of the five committees.
- c) The Complaint does not allege that SMP has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of the five committees, and vice versa. Each of the five committees were led by different treasurers who are not and have never been officers or employees of SMP.
- d) SMP does not have a common or overlapping membership with any of the five committees. The Complaint also makes no allegations and presents no facts related to this factor.

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<sup>45</sup> *Id.* ¶¶ 75, 81 (emphasis added).

<sup>46</sup> 11 C.F.R. § 100.5(g)(4)(ii).

- e) SMP does not have common or overlapping officers or employees with any of the five committees. The Complaint also makes no allegations and presents no facts related to this factor.
- f) SMP does not have any members, officers or employees who were members, officers or employees of any of the five committees. The Complaint also makes no allegations and presents no facts related to this factor.
- g) Although SMP provided funds to each of the five committees, as explained above, the facts purported in the Complaint concerning funding simply are not enough to conclude that the committees are affiliated with SMP as opposed to entities like Women Vote! or Priorities USA Action.
- h) Aside from the fact that SMP itself provided funds to each of the five committees, the Complaint offers no evidence that SMP “cause[d] or arrange[d]” funds to be provided to any of the five committees.
- i) No facts alleged by the Complaint demonstrate that SMP had an active or significant role in the formation of any of the five committees. Public comments concerning funding and commending the work of a committee, and the timing of contributions made by SMP to the five committees, are simply not enough to establish that SMP formed any of the five committees.
- j) SMP does not have a similar pattern of contributions or contributors as the five committees, and no facts alleged by the Complaint demonstrate that they do. SMP’s contribution history is markedly different from the contribution history of each of the five committees.

In MUR 1605, the General Counsel’s report found no support for the argument that AFL-CIO and AFL-CIO COPE-PCC would be affiliated under the facts presented in that matter.<sup>47</sup> The facts provided in MUR 1605 included alleged evidence of control by the AFL-CIO COPE-PCC of the separate segregated funds based on “AFL-CTO COPE-PCC’s role in coordinating the political and legislative activities of affiliated unions and certain resolutions passed by AFL-CIO conventions regarding such coordination”; the issuance by COPE of “Rules Governing Committees on Political Education of State Central Bodies”; and “the establishment and maintenance by the AFL-CIO for use by itself and its affiliates of a computer data base of members of affiliated unions for use in voter registration and get-out-the-vote drives.”<sup>48</sup> The General Counsel’s report explains that due to the legislative history underlying affiliated unions and state and local bodies, “consideration of ‘discretionary affiliation’ is not applicable in the present matter. Even if it were applicable, the alleged evidence supplied by the complainant of ‘control’ and ‘maintenance’ by the AFL-CIO and AFL-CIO COPE-PCC of the respondent separate segregated funds and their connected / organizations appears to be related solely to coordination of activities aimed at union members and their families which have not been prohibited or limited by Congress.”<sup>49</sup> The facts at issue in the current matter are far more speculative than those present in MUR 1605. Furthermore, the matter at issue here also involves activities “which have not been prohibited or limited by

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<sup>47</sup> FEC MUR 1605 (AFL-CIO COPE-PCC), General Counsel’s Report, 43 (July 8, 1984), <https://www.fec.gov/files/legal/murs/1605.pdf>.

<sup>48</sup> *Id.* at 22, 31.

<sup>49</sup> *Id.* at 43.

Congress” as whether two independent expenditure-only committees are affiliated has no legal consequences.

### **3. The Violations Alleged in the Complaint are Violations Only Concerning Technical Omissions in Filings**

Finally, there is no merit to the assertion that Respondents deprived voters of information; each committee disclosed its activities in public reports filed with the Commission according to the appropriate deadlines set by the Commission. Moreover, four of the five committees were already terminated months, and in some cases, years, before the filing of this Complaint.

Any violations alleged are merely technical in nature. Practically speaking, these alleged violations amount to an assertion that SMP and the five committees committed minor technical filing errors by failing to list each other as affiliated committees on FEC Form 1 and by listing the receipts and disbursements from these committees as contributions from/to other political committees on lines 11 and 23 (respectively) on FEC Form 3x as opposed to transfers from/to affiliated committees on lines 12 and 22 (respectively) on the same form.

In an Explanation and Justification from 1989, the Commission explained that there “are several consequences resulting from a determination that committees are affiliated” including that “affiliated committees share a common contribution limit with regard to all contributions they make or receive,” “there is no limit on the total amount of funds that may be transferred between two committees,” and “determinations of affiliation will affect the ability of a corporation or federation of trade associations to solicit specific categories of individuals.”<sup>50</sup> As Respondents are all independent expenditure-only committees, none of these potential consequences of being an affiliated committee actually matter for the committees. As noted, unlike the political committees and organizations that existed at the time of the Act’s passage which are subject to strict contribution source and amount limits, independent expenditure-only committees may solicit and accept unlimited contributions from individuals, political committees, corporations and labor organizations.

Accordingly, if Respondents did commit such violations, the violations are merely technical filing errors committed by mostly already-terminated committees and the Commission should treat them as such and use its discretion to dismiss the case.

## **CONCLUSION**

The Act requires that the Commission find “reason to believe that a person has committed, or is about to commit, a violation” of the Act as a precondition to opening an investigation into the

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<sup>50</sup> Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34098, 34101 (Aug. 17, 1989), <https://www.fec.gov/resources/cms-content/documents/notice1989-13-081789.pdf#page=11>.

alleged violation.<sup>51</sup> In turn, the Commission may find “reason to believe” only if a complaint sets forth specific facts, which, if proven true, would constitute a violation of the Act.<sup>52</sup>

The Complaint has not alleged facts that provide a sufficient basis for the Commission to find “reason to believe” that the Act or Commission regulations have been violated. Accordingly, the Commission must reject the Complaint’s request for an investigation. It should instead immediately dismiss the Complaint and close the file.

Very truly yours,



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Rebecca K. Mears  
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<sup>51</sup> 52 U.S.C. § 30109(a)(2).

<sup>52</sup> See 11 C.F.R. § 111.4(a), (d); FEC MUR 4960 (Clinton for U.S. Senate), Statement of Reasons, Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000).