

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR 7912**

DATE COMPLAINT FILED: July 15, 2021

DATE OF NOTIFICATIONS: July 21, 2021

DATE OF LAST RESPONSE: Nov. 8, 2021

DATE ACTIVATED: Nov. 17, 2021

EXPIRATION OF SOL: Nov. 24, 2022-Dec. 7,
2025

ELECTION CYCLES: 2018 and 2020

COMPLAINANT:Margaret Christ
Campaign Legal Center**RESPONDENTS:**Senate Leadership Fund and Caleb Crosby in his
official capacity as treasurer
SMP and Rebecca Lambe in her official capacity as
treasurer
Congressional Leadership Fund and Caleb Crosby
in his official capacity as treasurer
Hold Them Accountable and Taryn Vogel in her
official capacity as treasurer (f/k/a LMG PAC)
Future45 and Maria Wojciechowski in her official
capacity as treasurer
American Crossroads and Caleb Crosby in his
official capacity as treasurer
American Future Fund Political Action and Chris
Marston in his official capacity as treasurer
Carolina Blue and Doug Heyl in his official
capacity as treasurer
DefendArizona and Benjamin Ottenhoff in his
official capacity as treasurer
Faith and Power PAC and Ezekiel Patterson in his
official capacity as treasurer
Highway 31 and Edward Still in his official
capacity as treasurer
Illinois Conservatives PAC and Kim Ledesma in
her official capacity as treasurer
Keep Kentucky Great and Caleb Crosby in his
official capacity as treasurer
Liberty SC and Lisa Pearson in her official capacity
as treasurer

1 Lone Star Values PAC and Maria Wojciechowski in
 2 her official capacity as treasurer
 3 The Maine Way PAC and Ben Ottenhoff in his
 4 official capacity as treasurer
 5 Mountain Families PAC and Benjamin Ottenhoff in
 6 his official capacity as treasurer
 7 Peachtree PAC and Julie Dozier in her official
 8 capacity as treasurer
 9 Plains PAC and Julie Dozier in her official capacity
 10 as treasurer
 11 Red and Gold and Roy Herrera, Jr., in his official
 12 capacity as treasurer
 13 Sunflower State and Jim Jesse in his official
 14 capacity as treasurer
 15 Texas Forever and Christopher R. Lippincott in his
 16 official capacity as treasurer
 17 Truth Still Matters PAC and Devy Enz in her
 18 official capacity as treasurer
 19

20 **RELEVANT STATUTES**
 21 **AND REGULATIONS:**

22 52 U.S.C. § 30103(b)(2)
 23 52 U.S.C. § 30104(b)
 24 11 C.F.R. § 100.5(g)
 25 11 C.F.R. § 102.2(a)(ii)
 26 11 C.F.R. § 104.3

27 **INTERNAL REPORTS CHECKED:** Disclosure Reports

28
 29 **FEDERAL AGENCIES CHECKED:** None

30 **I. INTRODUCTION**

31 The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five
 32 independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor
 33 Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and
 34 one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising
 35 the Contributor Committees’ roles in funding the Recipient Committees’ operations and

1 independent expenditures.¹ The Complaint alleges that the Contributor Committees and the
2 EFMC'd Recipient Committees then failed to report each other as affiliated on their Statements
3 of Organization and failed to report transactions between them as transfers to and from affiliated
4 committees in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

5 Respondents deny violating the Act and put forward a variety of arguments, most
6 prominently that affiliation reporting requirements should not apply to them. They contend that
7 the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that
8 such limits do not apply to IEOPCs or the non-contribution accounts of hybrid committees
9 because they may solicit funds in unlimited amounts. Respondents also dispute specific aspects
10 of the Complaint's EFMC analysis.

11 The available information indicates that three Contributor Committees — Senate
12 Leadership Fund, SMP, and Hold Them Accountable — EFMC'd one or more Recipient
13 Committees, and that none of those Respondents reported affiliation with or transfers to and
14 from such committees. Accordingly, as to those Respondents, we recommend that the
15 Commission find reason to believe that they violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
16 § 102.2(a)(ii) by failing to report affiliated committees on their Statements of Organization and
17 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
18 disbursements, and that the Commission authorize pre-probable cause conciliation.² As to the

¹ Although all five Contributor Committees were IEOPCs at the time of the relevant allegations, two of them — Hold Them Accountable and the Congressional Leadership Fund — have since become hybrid PACs. Hold Them Accountable, Amended Statement of Organization at 5 (Sept. 10, 2021) (declaring hybrid PAC status); Congressional Leadership Fund, Amended Statement of Organization at 5 (Dec. 18, 2020) (same).

² As to Senate Leadership Fund, the Recipient Committees for which we recommend the Commission find reason to believe are Faith and Power PAC, Maine Way PAC, Mountain Families PAC, and Peachtree PAC. As to SMP, the Recipient Committees for which we recommend reason to believe are Carolina Blue, Red and Gold, and Sunflower State. Finally, as to Hold Them Accountable, we recommend reason to believe for Recipient Committee Liberty SC.

1 remaining Respondents, we recommend that the Commission exercise its prosecutorial discretion
2 and dismiss the allegations that they violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
3 § 102.2(a)(ii), and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3.

4 **II. FACTUAL BACKGROUND**

5 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
6 one or more of the Recipient Committees during the 2018 or 2020 election cycles.³ The
7 Complaint suggests that the Contributor Committees did so primarily by helping to form the
8 Recipient Committees and providing all or most of the funds the Recipient Committees raised
9 during the relevant election cycles, thus allowing the Contributor Committees to control
10 spending in elections but delay disclosing their own involvement.⁴ In some instances, the
11 Complaint alleges that the contributions were “strategically timed” so that the public would not
12 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
13 voters of important information about who was spending to influence their votes.”⁵ The
14 Complaint focuses on the financial relationships between the Contributor and Recipient
15 Committees, and the degree to which the available information suggests that the Contributor
16 Committees played a role in the formation and governance of the Recipient Committees.

17 The below sections set out the available information about the relationships between the
18 Recipient and Contributor Committees.

³ Compl. ¶¶ 1, 3 (July 15, 2021).

⁴ *Id.* ¶¶ 1-3.

⁵ *Id.* ¶ 2.

A. Senate Leadership Fund and Its Recipient Committees

The Complaint alleges that Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer (“SLF”) EFMC’d eight Recipient Committees: American Crossroads and Caleb Crosby in his official capacity as treasurer (“American Crossroads”); DefendArizona and Benjamin Ottenhoff in his official capacity as treasurer (“DefendArizona”); Faith and Power PAC and Ezekiel Patterson in his official capacity as treasurer (“Faith and Power PAC”); Keep Kentucky Great and Caleb Crosby in his official capacity as treasurer (“Keep Kentucky Great”); The Maine Way PAC and Ben Ottenhoff in his official capacity as treasurer (“Maine Way PAC”); Mountain Families PAC and Benjamin Ottenhoff in his official capacity as treasurer (“Mountain Families PAC”); Peachtree PAC and Julie Dozier in her official capacity as treasurer (“Peachtree PAC”); and Plains PAC and Julie Dozier in her official capacity as treasurer (“Plains PAC”).

As shown in the table below, each of the Recipient Committees received funds in varying amounts from SLF, in one or more elections in which they also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC’d	First Contribution from SLF	First Independent Expenditure	Portion of Contributions from SLF	Active in Multiple Races or Cycles?
American Crossroads ⁶	Aug. 9, 2010	2020 presidential and U.S. Senate (GA, IA, KS, ME, NC)	Sept. 2, 2020	Apr. 30, 2020	96% (\$76.7 million)	Yes

⁶ American Crossroads, Statement of Organization at 1, 3 (Aug. 9, 2010); Compl. ¶¶ 47-55; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?two_year_transaction_period=2020&committee_id=C00487363&data_type=processed (last visited Nov. 1, 2022) (showing 2019-2020 receipts); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00487363&data_type=processed&q_spender=C00487363&is_notice=false&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Nov. 1, 2022) (showing 2019-2020 independent expenditures).

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from SLF	First Independent Expenditure	Portion of Contributions from SLF	Active in Multiple Races or Cycles?
DefendArizona ⁷	Feb. 1, 2018	Aug. 28, 2018, primary and Nov. 6, 2018, general, U.S. Senate (AZ) Nov. 3, 2020, general, U.S. Senate (AZ)	Aug. 10, 2018 Aug. 13, 2020	Aug. 2, 2018 Aug. 14, 2020	87% (\$34.4 million)	Yes
Faith and Power PAC ⁸	Jan. 29, 2020	Mar. 3, 2020, primary, U.S. Senate (NC)	Jan. 31, 2020	Feb. 3, 2020	100% (\$2.95 million)	No
Keep Kentucky Great ⁹	Mar. 19, 2020	Nov. 3, 2020, general, U.S. Senate (KY)	Apr. 13, 2020	Sept. 3, 2020	100% (\$13.6 million)	No
Maine Way PAC ¹⁰	Apr. 9, 2019	Nov. 3, 2020, general, U.S. Senate (ME)	Oct. 27, 2020	Oct. 27, 2020	97% (\$3.5 million)	No

⁷ Defend Arizona, Statement of Organization at 1, 3 (Feb. 1, 2018); Compl. ¶¶ 56-61; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00668301 (last visited Oct. 31, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00668301&data_type=processed&q_spender=DefendArizona&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁸ Faith and Power PAC, Statement of Organization at 1, 3 (Jan. 29, 2020); Compl. ¶¶ 40-46; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00736751 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00736751&data_type=processed&q_spender=C00736751&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁹ Keep Kentucky Great, Statement of Organization at 1, 3 (Mar. 19, 2020); Compl. ¶¶ 27-33; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00742494 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&most_recent=true&q_spender=C00742494&is_notice=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

¹⁰ The Maine Way PAC, Statement of Organization at 1, 3 (Apr. 9, 2019); Compl. ¶¶ 34-39; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00701821 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00701821&data_type=processed&q_spender=C00701821&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from SLF	First Independent Expenditure	Portion of Contributions from SLF	Active in Multiple Races or Cycles?
Mountain Families PAC ¹¹	Mar. 29, 2018	May 8, 2018, primary, U.S. Senate (WV)	Apr. 12, 2018	Apr. 12, 2018	100% (\$1.4 million)	No
Peachtree PAC ¹²	Nov. 6, 2020	Jan. 5, 2021, special election, U.S. Senate (GA)	Dec. 7, 2020	Dec. 7, 2020	100 % (\$38 million)	No
Plains PAC ¹³	July 1, 2020	Aug. 4, 2020, primary, U.S. Senate (KS) Nov. 3, 2020, general, U.S. Senate (IA)	July 1, 2020	July 2, 2020	99.2% (\$14.98 million)	Yes

1 None of these Recipient Committees reported affiliated committees on their Statements
 2 of Organization.¹⁴ In most cases, little is known about their staff, structure, and whether they
 3 solicited contributions. For example, some Recipient Committees do not appear to have

¹¹ Mountain Families PAC, Statement of Organization at 1, 3 (Mar. 29, 2018); Compl. ¶¶ 62-67; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00674689 (last visited Oct 31, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00674689&data_type=processed&q_spender=C00674689&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

¹² Peachtree PAC, Statement of Organization at 1,3 (Nov. 6, 2020); Compl. ¶¶ 12-20; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00762377 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00762377&data_type=processed&q_spender=C00762377&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

¹³ Plains PAC, Statement of Organization at 1, 3 (July 1, 2020); Compl. ¶¶ 21-26; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00750174 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00750174&data_type=processed&q_spender=C00750174&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restrictions).

¹⁴ American Crossroads, Statement of Organization at 3 (Feb. 10, 2017); DefendArizona, Statement of Organization at 3 (Feb. 1, 2018); Faith and Power PAC, Statement of Organization at 3 (Jan. 29, 2020); Keep Kentucky Great, Statement of Organization at 3 (Mar. 19, 2020); The Maine Way PAC, Statement of Organization at 1, 3 (Apr. 9, 2019); Mountain Families PAC, Statement of Organization at 3 (Mar. 29, 2018); Peachtree PAC, Statement of Organization at 3 (Nov. 6, 2020); Plains PAC, Statement of Organization at 3 (July 1, 2020). SLF has also not reported being affiliated with these Recipient Committees. SLF, Statement of Organization at 3 (May 19, 2021).

1 websites,¹⁵ and for those that do, the websites have little or no information about the
2 organizations' staff or structures.¹⁶ Only American Crossroads and Plains PAC appear to have
3 maintained websites that solicit contributions.¹⁷ Some information, however, can be gleaned
4 from public sources. Based on their Statements of Organization filed with the Commission, two
5 Recipient Committees (American Crossroads and Keep Kentucky Great) share a treasurer with
6 SLF.¹⁸ Additionally, the Complaint cites to a CNN report that SLF was "overseeing" Peachtree
7 PAC and includes a statement from SLF's President that "[t]his new activity through Peachtree
8 PAC will articulate the stakes couldn't be higher as the future of freedom is on the ballot."¹⁹
9 SLF has also posted statements on its own website referencing some of these Recipient
10 Committees. For instance, SLF released a statement "on Funding Faith and Power PAC," which
11 stated that SLF "stole a page out of Chuck Schumer's playbook, and it's been more successful
12 than we could have imagined We got a lot more for our money than when Democrats spent
13 millions in Thom Tillis'[s] primary six years ago."²⁰ In other postings, SLF identifies Keep

¹⁵ This is the case for Faith and Power PAC, Maine Way PAC, Mountain Families PAC, and Peachtree PAC.

¹⁶ This is the case for American Crossroads, DefendArizona, Keep Kentucky Great, and Plains PAC. See AM. CROSSROADS, <https://www.americancrossroads.org/> (last visited Nov. 1, 2022); DEFEND ARIZ., <https://defendarizona.org/> (last visited Nov. 1, 2022); KEEP KY. GREAT, <https://keepkentuckygreat.com/> (last visited Nov. 1, 2022); PLAINS PAC, <https://plainspac.com/> (last visited Nov. 1, 2022).

¹⁷ AM. CROSSROADS, <https://www.americancrossroads.org/> (last visited Nov. 1, 2022) (displaying "Donate" options on the web page); PLAINS PAC, <https://plainspac.com/> (last visited Nov. 1, 2022) (displaying a "Donate" button).

¹⁸ *Supra* note 14 (citing to SLF and Recipient Committee Statements of Organization).

¹⁹ Compl. ¶ 14 n.13 (citing Fredreka Schouten & David Wright, *A New McConnell-Aligned Super PAC Plans \$43 Million Ad Blitz to Sway Georgia Runoffs*, CNN (Dec. 8, 2020), <https://www.cnn.com/2020/12/08/politics/new-super-pac-to-spend-43-million-in-georgia-senate-runoffs/index.html>).

²⁰ *SLF Statement on Funding Faith and Power PAC: "An Unqualified Success,"* SENATE LEADERSHIP FUND (Feb. 21, 2020), <https://www.senateleadershipfund.org/slf-statement-on-funding-faith-and-power-pac-an-unqualified-success/>.

1 Kentucky Great and DefendArizona as “affiliate group[s],”²¹ states that it was making ad buys in
 2 “Arizona (through DefendArizona),”²² and indicates that it was placing simultaneous ad buys
 3 with American Crossroads.²³

4 Additionally, as shown in the chart below, seven of the eight Recipient Committees
 5 returned funds to SLF through contributions after the relevant elections, in some cases after
 6 receiving post-election refunds from their vendors. One of those Recipient Committees,
 7 Mountain Families PAC, then terminated its registration with the Commission.

Recipient Committee	Relevant Election Dates	Post-Election Contributions to SLF	Post-Election Vendor Refunds ²⁴	Post-Refund Contributions to SLF	Date of Termination Filing
DefendArizona ²⁵	Aug. 28, 2018 Nov. 6, 2018 Nov. 3, 2020	\$116,900 (Nov. 9, 2020)	N/A	N/A	N/A
Faith and Power PAC ²⁶	Mar. 3, 2020	N/A	\$1,643.05 (June 29, 2020)	\$10,000 (May 28, 2021)	N/A
Keep Kentucky Great ²⁷	Nov. 3, 2020	\$440,200 (Nov. 9, 2020)	\$49,651.88 (June 1, 2021)	\$45,000 (June 15, 2021)	N/A
Maine Way PAC ²⁸	Nov. 3, 2020	\$40,600 (Nov. 9, 2020)	\$6,684.40 (Jan. 14, 2021)	\$9,708.66 (June 29, 2021)	N/A
Mountain Families PAC ²⁹	May 8, 2018	\$40,840.47 (May 17, 2018)	N/A	N/A	May 20, 2018

²¹ *SLF Books \$67.1 Million Across Six States in Initial Reservations for Fall Elections*, SENATE LEADERSHIP FUND (Mar. 23, 2020), <https://www.senateleadershipfund.org/slf-books-67-1-million-across-six-states-in-initial-reservations-for-fall-elections/>.

²² *SLF Announces August Advertising Surge to Defend Senate Majority*, SENATE LEADERSHIP FUND (Aug. 5, 2020), <https://www.senateleadershipfund.org/slf-announces-august-advertising-surge-to-defend-senate-majority/>.

²³ Compl. ¶ 52 (citing *SLF & American Crossroads Place \$70 Million Reservation for Georgia Runoffs*, SENATE LEADERSHIP FUND (Nov. 20, 2020), <https://www.senateleadershipfund.org/slf-american-crossroads-place-70-million-reservation-for-georgia-runoffs/>).

²⁴ An entry of N/A in this column indicates that there was no post-election vendor refund that was followed by a refund to SLF. It does not indicate that the Recipient Committee received no vendor refunds after the relevant election.

²⁵ DefendArizona, 2020 30-Day Post-General Report at 13 (Dec. 3, 2020).

²⁶ Faith and Power PAC, 2021 Mid-Year Report at 7 (July 31, 2021).

²⁷ Keep Kentucky Great, 2021 Mid-Year Report at 6, 12 (July 31, 2021); Keep Kentucky Great, 2020 30-Day Post-General Report at 9 (Dec. 3, 2020).

²⁸ Maine Way PAC, 2020 30-Day Post-General Report at 8 (Dec. 3, 2020).

²⁹ Mountain Families PAC, 2018 Termination Report at 1, 7 (May 20, 2018).

1 **B. SMP and Its Recipient Committees**

2 The Complaint alleges that SMP and Rebecca Lambe in her official capacity as treasurer
 3 (“SMP”) EFMC’d five Recipient Committees: Carolina Blue and Doug Heyl in his official
 4 capacity as treasurer (“Carolina Blue”); Highway 31 and Edward Still in his official capacity as
 5 treasurer (“Highway 31”); Red and Gold and Roy Herrera, Jr., in his official capacity as treasurer
 6 (“Red and Gold”); Sunflower State and Jim Jesse in his official capacity as treasurer (“Sunflower
 7 State”); and Texas Forever and Christopher R. Lippincott in his official capacity as treasurer
 8 (“Texas Forever”).

9 As shown in the table below, each of the Recipient Committees received funds in varying
 10 amounts from SMP, in one or more elections in which they also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from SMP	First Independent Expenditure	Portion of Contributions from SMP	Active in Multiple Races or Cycles?
Carolina Blue ³⁷	Feb. 6, 2020	Mar. 3, 2020, primary, U.S. Senate (NC)	Feb. 7, 2020	Feb. 7, 2020	99% (\$4.9 million)	No
Highway 31 ³⁸	Nov. 6, 2017	Dec. 12, 2017, special, U.S. Senate (AL)	Nov. 24, 2017	Nov. 8, 2017	73% (\$3.2 million)	No
Red and Gold ³⁹	Aug. 1, 2018	Aug. 28, 2018, primary, U.S. Senate (AZ)	Aug. 1, 2018	Aug. 2, 2018	58% (\$1.7 million)	No

³⁷ Carolina Blue, Statement of Organization at 1 (Feb. 6, 2020); Compl. ¶¶ 77-82; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00737890 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00737890&data_type=processed&q_spender=C00737890&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

³⁸ Highway 31, Statement of Organization at 1 (Nov. 6, 2017); Compl. ¶¶ 89-95; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00659896 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00659896&data_type=processed&q_spender=C00659896&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

³⁹ Red and Gold, Statement of Organization at 1 (Aug. 1, 2018); Compl. ¶¶ 96-105; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00684209 (last visited

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from SMP	First Independent Expenditure	Portion of Contributions from SMP	Active in Multiple Races or Cycles?
Sunflower State ⁴⁰	July 13, 2020	Aug. 4, 2020, primary, U.S. Senate (KS)	July 14, 2020	July 14, 2020	67% (\$3.6 million)	No
Texas Forever ⁴¹	Oct. 19, 2018	Nov. 6, 2018, general, U.S. Senate (TX)	Oct. 25, 2018	Oct. 25, 2018	99% (\$2.35 million)	No

1 None of the Recipient Committees reported affiliated committees on their Statements of
 2 Organization.⁴² In most cases, little is known about their staff, structure, and whether they
 3 solicited contributions. For example, some Recipient Committees do not appear to have
 4 websites,⁴³ and for those that did, the websites have little or no information about the
 5 organizations' staff or structures.⁴⁴ Only Highway 31 appears to have maintained a website that

Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00684209&data_type=processed&q_spender=C00684209&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

⁴⁰ Sunflower State, Statement of Organization at 1 (July 13, 2020); Compl. ¶¶ 68-76; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00751461 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00751461&data_type=processed&q_spender=C00751461&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁴¹ Texas Forever, Statement of Organization at 1 (Oct. 19, 2018); Compl. ¶¶ 83-88; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00689919 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00689919&data_type=processed&q_spender=C00689919&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁴² Carolina Blue, Statement of Organization at 3 (Feb. 6, 2020); Highway 31, Statement of Organization at 1 (Nov. 6, 2017); Red and Gold, Statement of Organization at 3 (Aug. 1, 2018); Sunflower State, Statement of Organization at 3 (July 13, 2020); Texas Forever, Statement of Organization at 3 (Oct. 19, 2018).

⁴³ This is the case for Sunflower State and Texas Forever.

⁴⁴ This is the case for Carolina Blue and Highway 31. See CAROLINA BLUE, <https://www.cahrolina--blue.com/> (last visited Nov. 1, 2022); HIGHWAY 31, <https://www.highway31now.com> (Jan. 2, 2018) [<https://web.archive.org/web/20180102132823/https://www.highway31now.com/>]. According to a Statement of Organization filed with the Commission, Red and Gold maintained a website at redandgold.info, but it is no longer available and does not appear to have been archived. See INTERNET ARCHIVE, <https://web.archive.org/web/2/http://redandgold.info/> (last visited Nov. 1, 2022) (showing that “[t]he Wayback Machine has not archived that URL” with respect to redandgold.info); Red and Gold, Statement of Organization at 1 (Aug. 1, 2018).

1 solicited contributions.⁴⁵ Some information, however, can be gleaned from public sources. For
2 instance, following the 2017 special election in Alabama, a spokesperson for SMP told the
3 *Associated Press* that SMP “was the contributor to Highway 31. There were a few small
4 donations when Highway 31 became public, but it was predominantly funded by SMP.”⁴⁶
5 Additionally, SMP’s Chief Operating Officer informed the Commission in connection with a
6 different Matter Under Review that, in 2017, she served as an agent of both SMP and Highway
7 31.⁴⁷ Finally, *Politico* reported that, following the 2020 Senate primary in Kansas, SMP’s
8 president, J.B. Poersch, “said that his group got involved after another pop-up super PAC, Plains
9 PAC[,] started spending in the race.”⁴⁸

10 Additionally, as shown in the chart below, four of the five Recipient Committees returned
11 funds to SMP through contributions after the relevant elections, in some cases after receiving
12 post-election refunds from their vendors. Three of those Recipient Committees then terminated
13 their registrations with the Commission, as shown in the chart below.

⁴⁵ HIGHWAY 31 (Dec. 2, 2017), <https://www.highway31now.com> [<https://web.archive.org/web/20171202214022/https://www.highway31now.com/>] (displaying a “Donate” button on its homepage).

⁴⁶ Assoc’d. Press, *Mysterious Democratic-Funded ‘Highway 31’ Super PAC Spent \$4M to Defeat Moore in Alabama*, NBC NEWS (Dec. 27, 2017), <https://www.nbcnews.com/politics/elections/mysterious-democratic-funded-highway-31-super-pac-spent-4m-defeat-n832871> (cited in Compl. ¶ 92 n.117).

⁴⁷ Second Gen. Counsel’s Rpt. at 5, MUR 7343 (Highway 31) (describing affidavit submitted by Karen Hancox).

⁴⁸ 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> (cited in Compl. ¶ 73 n.91).

1 Gold, Highway 31, and Sunflower State, received significant funding from sources other than
2 SMP.⁵⁶ Additionally, the SMP Joint Response argues that the SMP statements reported by the
3 *Associated Press* and *Politico* are insufficient to establish affiliation, and that the Complaint does
4 not present facts that would support an EFMC finding as to any of the Recipient Committees on
5 any other basis.⁵⁷

6 Finally, the SMP Joint Response also argues that affiliation reporting requirements “were
7 not intended [to], and as interpreted by the Commission do not apply” to IEOPCs.⁵⁸ It contends
8 that the alleged violations are “merely technical in nature,” each of the Recipient Committees
9 disclosed contributions according to the applicable deadlines, and, in any case, four of the five
10 Recipient Committee have now terminated.⁵⁹

11 **C. Congressional Leadership Fund and Its Recipient Committees**

12 The Complaint alleges that Congressional Leadership Fund and Caleb Crosby in his
13 official capacity as treasurer (“CLF”) EFMC’d three Recipient Committees: American Future
14 Fund Political Action and Chris Marston in his official capacity as treasurer (“AFFPA”); Illinois
15 Conservatives PAC and Kim Ledesma in her official capacity as treasurer (“Illinois
16 Conservatives PAC”); and Lone Star Values PAC and Maria Wojciechowski in her official
17 capacity as treasurer (“Lone Star Values PAC”).

18 As shown in the table below, each of the Recipient Committees received funds in varying
19 amounts from CLF in one or more elections in which they also made independent expenditures.

⁵⁶ *Id.* at 3-4.

⁵⁷ *Id.* at 8-10.

⁵⁸ *Id.* at 4.

⁵⁹ *Id.* at 11.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from CLF	First Independent Expenditure	Portion of Contributions from CLF	Active in Multiple Races or Cycles?
AFFPA ⁶⁰	May 7, 2008	June 5, 2018, primary, U.S. House (CA-39, 48, 49) Aug. 2, 2018, primary, U.S. House (TN-06) Nov. 6, 2018, general, U.S. House (CA-10, 36, 39, 48; IA-03)	May 22, 2018	May 22, 2018	78% (\$1.4 million)	Yes
Illinois Conservatives PAC ⁶¹	Mar. 2, 2020	Mar. 17, 2020, primary, U.S. House (IL-14)	Mar. 4, 2020	Mar. 5, 2020	100% (\$911,000)	No
Lone Star Values PAC ⁶²	Feb. 9, 2018	Mar. 3, 2020, primary, U.S. House (TX-7)	Feb. 24, 2020	Feb. 24, 2020	100% (\$75,000)	Yes

⁶⁰ AFFPA, Statement of Organization at 1 (May 7, 2008); *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?two_year_transaction_period=2018&committee_id=C00449926&data_type=processed (last visited Nov. 1, 2022) (showing receipts for the period 2017-2018); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00449926&data_type=processed&q_spender=C00449926&cycle=2018&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures for the period 2017-2018).

⁶¹ Illinois Conservatives PAC, Statement of Organization at 1 (Mar. 2, 2020); Compl. ¶¶ 106-120; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00740662 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00740662&data_type=processed&q_spender=C00740662&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁶² Lone Star Values PAC, Statement of Organization at 1 (Feb. 9, 2018); Compl. ¶¶ 121-125; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00669325 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00669325&data_type=processed&q_spender=C00669325&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

1 In response to the Complaint, CLF generally disputes that there is an affiliation with the
2 relevant Recipient Committees.⁶⁷ It also argues that the Commission does not need to reach that
3 issue because “the Act and FEC regulations, by their express terms, do not govern relationships
4 between two or more IEOPCs.”⁶⁸ Like many of the other Respondents, discussed above, CLF
5 contends that the affiliation reporting requirements serve only to prevent circumvention of
6 contribution limits, which are inapplicable to IEOPCs.⁶⁹ Finally, CLF contends that the
7 Commission has never suggested that affiliation rules apply to IEOPCs and, therefore, that
8 attempting to apply such rules now would violate norms of due process and fundamental
9 fairness.⁷⁰

10 AFFPA, the only hybrid PAC among the Respondents during the time period covered by
11 the Complaint, contends that the Complaint alleges only “hyper-technical reporting violations”
12 and asserts that it properly disclosed all contributions received by its non-contribution account.⁷¹
13 It further argues that the Commission has “never addressed, much less affirmatively required”
14 affiliation reporting by the non-contribution accounts of hybrid PACs.⁷² AFFPA asserts that
15 such reporting is intended to prevent circumvention of the Act’s contribution limits, which do
16 not apply to non-contribution accounts.⁷³ Moreover, it argues that AFFPA’s contribution and
17 non-contribution accounts are “legally distinct,” that CLF contributed only to the non-

⁶⁷ CLF Resp. at 1 (Sept. 7, 2021).

⁶⁸ *Id.*

⁶⁹ *Id.* at 1-2.

⁷⁰ *Id.* at 2-3.

⁷¹ AFFPA Resp. at 1-2 (Nov. 8, 2021). AFFPA states that it first registered with the Commission as a non-connected political committee but became a hybrid PAC with a non-contribution account in 2014. *Id.* at 1.

⁷² *Id.* at 2, 4.

⁷³ *See id.* at 4-6.

1 contribution account, and that the Complaint offers no information suggesting a relationship
2 between CLF and AFFPA's non-contribution account.⁷⁴ Finally, AFFPA contends that CLF's
3 non-contribution account has existed since 2014, and that CLF's contributions in a single
4 election cycle are not sufficient to give rise to affiliation.⁷⁵

5 Illinois Conservatives PAC argues in response to the Complaint that the committee has
6 terminated and that it is inappropriate to pursue an enforcement action "concerning activity that
7 was fully disclosed on the public record."⁷⁶ It also states that it adopts the arguments made by
8 other Respondents in this matter, particularly CLF.⁷⁷

9 Finally, Lone Star Values PAC contends that the affiliation reporting regulations should
10 not apply to IEOPCs because the purpose of such reporting, preventing circumvention of
11 contribution limits, does not apply to committees that can accept unlimited contributions.⁷⁸
12 Additionally, the committee argues that, even if it is affiliated with CLF, there is no "substantive
13 legal violation," only a failure to "check a box," and accordingly that the Commission should not
14 expend further resources on this matter.⁷⁹

15 **D. Hold Them Accountable and Its Recipient Committee**

16 The Complaint alleges that Hold Them Accountable and Taryn Vogel in her official
17 capacity as treasurer (f/k/a LMG PAC) ("Hold Them Accountable") EFMC'd one Recipient
18 Committee, Liberty SC and Lisa Pearson in her official capacity as treasurer ("Liberty SC").

⁷⁴ *Id.* at 7.

⁷⁵ *Id.*

⁷⁶ Illinois Conservatives PAC Resp. at 1 (Oct. 1, 2021).

⁷⁷ *Id.*

⁷⁸ Lone Star Values Resp. at 2 (Sept. 22, 2021).

⁷⁹ *Id.* at 2-3.

1 As shown in the table below, Liberty SC received funds from Hold Them Accountable in
 2 a single 2020 election, in which Liberty SC also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from Hold Them Accountable	First Independent Expenditure	Portion of Contributions from Hold Them Accountable	Active in Multiple Races or Cycles?
Liberty SC ⁸⁰	Oct. 19, 2020	Nov. 3, 2020, general, U.S. Senate (SC)	Oct. 20, 2020	Oct. 21, 2020	100% (\$1.14 million)	No

3 Liberty SC reported no affiliated committees on its Statement of Organization,⁸¹ and little
 4 information appears to be publicly available about the committee. Liberty SC appears to have
 5 maintained a website during the 2020 elections, although the site is no longer available, and the
 6 archived version does not show a means to contribute to the committee or any information on its
 7 structure or staff.⁸² Public reporting prior to the election suggested a link between Liberty SC
 8 and Democratic groups but did not provide specific details.⁸³

9 Liberty SC made a single contribution back to Hold Them Accountable after the 2020
 10 elections and before filing for termination, as shown in the chart below.

Recipient Committee	Relevant Election Dates	Post-Election Contributions to Hold Them Accountable	Post-Election Vendor Refunds	Post-Refund Contributions to Hold Them Accountable	Date of Termination Filing
Liberty SC ⁸⁴	Nov. 3, 2020	\$191.64 (Mar. 8, 2021)	N/A	N/A	Mar. 8, 2021

⁸⁰ Liberty SC, Statement of Organization at 1 (Oct. 19, 2020); Compl. ¶¶ 126-132; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00761494 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00761494&data_type=processed&q_spender=C00761494&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁸¹ Liberty SC, Statement of Organization at 3 (Oct. 19, 2020).

⁸² LIBERTY SC (Nov. 7, 2020), <http://liberty-sc.com/> [<https://web.archive.org/web/20201107064635/https://www.liberty-sc.com/>].

⁸³ Darren Samuelsohn (@dsamuelsohn), TWITTER (Oct. 28, 2020, 5:30 PM), <https://twitter.com/dsamuelsohn/status/1321565080505470976> (describing reporting on Liberty SC).

⁸⁴ Liberty SC, 2021 Termination Report at 1-2, 6 (Mar. 8, 2021).

1 Hold Them Accountable's Response argues that the affiliation reporting requirements are
 2 inapplicable to IEOPCs for the same reasons raised by other Respondents, above.⁸⁵ It also
 3 argues that the Commission has issued advisory opinions on the creation of IEOPCs by other
 4 organizations without raising the issue of affiliation, thus reflecting an "understanding" that
 5 affiliation rules do not apply to them.⁸⁶ Liberty SC did not respond to the Complaint.

6 **E. Future45 and Its Recipient Committee**

7 The Complaint alleges that Future45 and Maria Wojciechowski in her official capacity as
 8 treasurer ("Future45") EFMC'd one Recipient Committee, Truth Still Matters PAC and Devy
 9 Enz in her official capacity as treasurer ("Truth Still Matters PAC").

10 As shown in the table below, Truth Still Matters PAC received funds from Future45 in a
 11 single 2020 election, in which Truth Still Matters PAC also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from Future45	First Independent Expenditure	Portion of Contributions from Future45	Active in Multiple Races or Cycles?
Truth Still Matters PAC ⁸⁷	Oct. 19, 2020	Nov. 3, 2020, general, U.S. Senate (NC)	Oct. 20, 2020	Oct. 20, 2020	100% (\$125,000)	No

12 Truth Still Matters PAC reported no affiliated committees on its Statement of
 13 Organization,⁸⁸ and little information appears to be publicly available about the committee. It
 14 reportedly maintained a website during the 2020 elections, but it is currently unavailable and no

⁸⁵ Hold Them Accountable Resp. at 1 (Sept. 2, 2021).

⁸⁶ *Id.* at 2.

⁸⁷ Truth Still Matters PAC, Statement of Organization at 1 (Oct. 19, 2020); Compl. ¶¶ 133-139; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00761452 (last visited Nov. 1, 2022) (showing receipts without date restrictions); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00761452&data_type=processed&q_spender=C00761452&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restrictions).

⁸⁸ Truth Still Matters PAC, Statement of Organization at 3 (Oct. 19, 2020).

1 available information suggests that the website solicited contributions or contained information
2 on the committee's structure or staff.⁸⁹ Truth Still Matters PAC did not make contributions back
3 to Future45 after the November 2020 general election.

4 * * *

5 Future45 contends, for the same reasons expressed by other Respondents in this matter,
6 that affiliation reporting requirements should not apply to IEOPCs.⁹⁰ It also asserts that there is
7 insufficient information to support a finding that it EFMC'd Truth Still Matters PAC, because
8 the Complaint fails to discuss how many of the EFMC factors set out in the Commission's
9 regulations would apply to Future45 and Truth Still Matters PAC.⁹¹ Finally, Future45 contends
10 that, even if the Commission were to find a violation of the reporting requirements, it would be a
11 "technical, ministerial" violation that does not merit further use of the Commission's resources.⁹²

12 Truth Still Matters PAC also filed a Response to the Complaint and similarly contends
13 that affiliation reporting requirements do not apply to IEOPCs and, in any case, any violation
14 would be de minimis.⁹³

15 III. LEGAL ANALYSIS

16 The Act and Commission regulations require every political committee to file a statement
17 of organization that includes "the name, address, relationship, and type of any connected

⁸⁹ *PAC Launches Website Soliciting Information on Cal Cunningham*, THE NORTH STATE JOURNAL (Oct. 28, 2020), <https://nsjonline.com/article/2020/10/pac-launches-website-soliciting-information-on-cal-cunningham/> (stating that a Truth Still Matters PAC billboard directed viewers to the website www.caltips.com). A Facebook page in the name Truth Still Matters PAC also links to the website www.CalTips.com, which is unavailable. Truth Still Matters PAC, FACEBOOK, <https://www.facebook.com/TruthStillMattersPAC> (last visited Nov. 1, 2022).

⁹⁰ Future45 Resp. at 3 (Sept. 7, 2021).

⁹¹ *Id.* at 4.

⁹² *Id.* at 2, 4.

⁹³ Truth Still Matters PAC Resp. at 1 (Sept. 9, 2021).

1 organization or affiliated committee.”⁹⁴ Political committee treasurers must file reports of
 2 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.⁹⁵ The
 3 reports must include, among other information, transfers to and from affiliated committees.⁹⁶

4 Commission regulations identify certain entities that are per se affiliated, such as
 5 organizations that are established, financed, maintained, or controlled by a single corporation or
 6 its subsidiaries, or by the same person or group of persons.⁹⁷ Outside of per se affiliation, the
 7 Commission's regulations provide that it will consider a non-exclusive list of ten factors, in the
 8 context of the overall relationship between committees, to determine if they are affiliated.⁹⁸ The
 9 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
 10 funds or goods in a significant amount or on an ongoing basis to another committee, such as
 11 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
 12 arranges for funds in a significant amount to be provided to another committee; (3) whether the
 13 committees have similar patterns of contributions or contributors indicating a formal or ongoing

⁹⁴ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

⁹⁵ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

⁹⁶ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

⁹⁷ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

⁹⁸ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

1 relationship between the committees; (4) whether a committee has authority or ability to direct or
 2 participate in the governance of another committee; and (5) whether a committee had an active
 3 or significant role in the formation of another committee.⁹⁹

4 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

5 The Act plainly states that every political committee must file a statement of
 6 organization, which “shall include” information regarding any affiliated committees, and that
 7 committee reports “shall disclose” transfers to and from affiliated committees.¹⁰⁰ Nevertheless,
 8 many of the Respondents in this matter argue that the affiliation reporting requirements do not
 9 apply. They contend that the Commission has not promulgated regulations on reporting
 10 requirements for IEOPCs or the non-contribution accounts of hybrid PACs, and that for policy
 11 reasons the existing affiliation reporting requirements are inapplicable to such committees.¹⁰¹
 12 Critically, however, both the text of the Act and Commission regulations require affiliation
 13 reporting by all political committees without exception, resulting in unambiguous legal
 14 requirements that directly contravene Respondents’ policy arguments.¹⁰²

⁹⁹ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

¹⁰⁰ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

¹⁰¹ *E.g.*, SLF Joint Resp. at 3-5; AFFPA Resp. at 2-6. AFFPA contends that the allegation that it failed to properly report transfers from affiliated committees is particularly inapposite because the Commission’s current reporting guidance does not permit hybrid PACs to record contributions to their non-contribution accounts on the line designated for showing transfers from affiliated committees. AFFPA Resp. at 4.

¹⁰² 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

1 Respondents contend that the current concept of affiliation was created in the 1976
2 amendments to the Act as part of Congress's "anti-proliferation" effort to prevent circumvention
3 of contribution limits.¹⁰³ They point to a 1989 Explanation and Justification ("E&J") for
4 revisions to the affiliation regulations, in which the Commission described three consequences
5 that flow from affiliation: (1) affiliated committees share a common contribution limit as to
6 contributions they make or receive; (2) there is no limit on transfers of funds between affiliated
7 committees; and (3) an affiliation determination affects the ability of a corporation or federation
8 of trade associations to solicit some categories of individuals.¹⁰⁴ Respondents assert that the
9 consequences discussed in the E&J are inapplicable to IEOPCs and the non-contribution
10 accounts of hybrid PACs, because they are "not subject to contribution limits . . . [,] may freely
11 'transfer' funds to one another regardless of affiliation status, and . . . are not subject to restricted
12 class solicitation limitations."¹⁰⁵ They further contend that the affiliation concept "has no
13 separate public disclosure purpose or basis."¹⁰⁶ Accordingly, they assert that there is no valid
14 reason for the Commission to apply the Act's affiliation reporting requirements to them.¹⁰⁷

15 These arguments, however, have a number of flaws. First, they contravene the Act's
16 express requirement that all political committees file a statement of organization that "shall
17 include" information on any affiliated committee, thereby urging the Commission to act contrary

¹⁰³ SLF Joint Resp. at 4.

¹⁰⁴ *Id.* (citing Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) ("Affiliation E&J")).

¹⁰⁵ *Id.*; *see* AFFPA Resp. at 5.

¹⁰⁶ SLF Joint Resp. at 5; *see* AFFPA Resp. at 6.

¹⁰⁷ SMP Joint Resp. at 5-6; AFFPA Resp. at 6-7.

1 to the plain text of the law passed by Congress.¹⁰⁸ All of the Respondents in this matter
2 registered with the Commission as political committees, and neither the Act nor Commission
3 regulations provide an exemption from the statement of organization requirements based on
4 committee type.

5 Second, Respondents' suggestion that affiliation reporting exists only to facilitate
6 enforcement of contribution limits is not supported by the historical record. The requirement to
7 report affiliation pre-dated the 1976 anti-proliferation amendments referenced by
8 Respondents.¹⁰⁹ The original 1971 Act, while not defining affiliation, nevertheless required that
9 political committees file a statement of organization including "the names, addresses, and
10 relationships of affiliated or connected organizations."¹¹⁰ Additionally, once the Commission
11 promulgated a regulation defining affiliated committee, it did not tie that definition exclusively
12 to the anti-proliferation regulations, as Respondents' policy arguments might suggest. Rather,
13 the Commission created a free-standing definition of affiliated committee and explained that it

¹⁰⁸ 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission's dismissal of a complaint to be "contrary to law" and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court's declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to "unwillingness to enforce its own [regulation]" it would be "easy to establish that such agency action was contrary to law").

¹⁰⁹ SMP Joint Resp. at 4 (acknowledging that affiliation predated these amendments).

¹¹⁰ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include "[a]ll authorized committees of the same candidate" as well as "[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control." Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission's proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. *See* Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission's regulations and the effect of *Buckley*).

1 “parallels the definition in § 110.3,” which was the regulation that implemented the anti-
2 proliferation provisions.¹¹¹ Had the Commission understood the concept of affiliation to have no
3 purpose beyond its anti-proliferation goals, this second, parallel definition, would have been
4 superfluous.

5 Further, the Commission's current regulations suggest that affiliation reporting for
6 statements of organization, in particular, is not dependent on a committee's status under the anti-
7 proliferation provisions. The regulation governing statements of organization instructs
8 registrants to report their affiliated committees “in accordance with paragraph (b) of this
9 section.”¹¹² Paragraph (b), in turn, states that an affiliated committee includes any committee
10 defined in several specific provisions of the regulations.¹¹³ These include 11 C.F.R. § 110.3,
11 which contains the anti-proliferation provisions and describes committees to which they apply,¹¹⁴
12 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
13 “affiliated committee” that resides outside the anti-proliferation regulation.¹¹⁵ Had the
14 Commission understood the Act to require affiliation reporting only when a committee's
15 activities are affected by the anti-proliferation provisions, there would have been no need to also
16 reference Section 100.5(g).

¹¹¹ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); *see id.* at 69 (providing explanation for Commission's regulation implementing anti-proliferation provisions of the Act).

¹¹² 11 C.F.R. § 102.2(a)(1)(ii).

¹¹³ *Id.* § 102.2(b).

¹¹⁴ *Id.* § 110.3(a), (b).

¹¹⁵ *Id.* § 100.5(g).

1 Finally, the E&J that Respondents rely on does discuss certain “consequences” of
2 affiliation, but the legal determination of whether committees are affiliated does not depend on
3 the downstream effects that determination may have. Rather, as described above, the
4 Commission’s regulations provide the legal test to determine whether committees are affiliated,
5 which includes a determination of whether a committee is established, financed, maintained, or
6 controlled by another committee.¹¹⁶

7 Respondents also raise concerns about notice and due process because they assert that it
8 is a common and public practice for IEOPCs to contribute to each other, in some cases providing
9 a majority of the recipient’s funding, and the Commission has not previously “raised concerns”
10 or suggested that the affiliation rules apply.¹¹⁷ However, the notion that affiliation reporting
11 among IEOPCs is somehow unprecedented is not correct. In fact, one of the Respondents in this
12 matter, SMP, acknowledges that in 2020 it reported being affiliated with two other IEOPCs that
13 are not Respondents in this matter.¹¹⁸ Additionally, the U.S. Court of Appeals for the District of
14 Columbia made clear in 2010 in *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C.
15 § 30103, which includes the requirement to report affiliation on a statement of organization, can
16 constitutionally be applied to political committees that make only independent expenditures.¹¹⁹

¹¹⁶ *Id.* § 100.5(g).

¹¹⁷ CLF Resp. at 2-3.

¹¹⁸ SMP Joint Resp. at 4; Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

¹¹⁹ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

1 Respondents point to advisory opinions in which the Commission considered requests
2 from 501(c)(4) non-profit organizations, with existing separate segregated funds (“SSFs”), that
3 were seeking to establish IEOPCs, and permitted those 501(c)(4) organizations to “establish and
4 administer” the IEOPCs with “no discussion whatsoever . . . about treating the [IEOPC] as
5 affiliated with the SSF.”¹²⁰ They argue that this absence of discussion reflects the Commission’s
6 “understanding” that affiliation rules do not apply to IEOPCs.¹²¹ However, the cited advisory
7 opinions do not indicate that the Commission considered the question of affiliation reporting, and
8 each of the cited opinions is clearly limited to “the specific transaction or activity set forth in
9 [the] request.”¹²² Thus, the Commission’s silence on the issue of affiliation does not appear to
10 have the significance Respondents suggest.

11 Accordingly, to the extent that Respondents are affiliated based on the EFMC analysis,
12 they were required to disclose each other as affiliated organizations and properly record the
13 transfers they made and received.

14 **B. The Commission Should Find Reason to Believe that Some of the**
15 **Contributor Committees EFMC’d Recipient Committees and Dismiss the**
16 **Allegations as to the Remaining Committees**

17 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
18 Recipient Committees are largely based on the financial relationships between those two groups.
19 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
20 funds from specific Contributor Committees;¹²³ (2) Contributor Committees funding Recipient

¹²⁰ Hold Them Accountable Resp. at 1-2 (citing Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”) and Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”)); *see* SMP Joint Resp. at 5-6 (discussing AO 2010-09).

¹²¹ Hold Them Accountable Resp. at 2.

¹²² AO 2010-09 at 6; AO 2012-18 at 3.

¹²³ *E.g.*, Compl. ¶¶ 19, 25, 75.

1 Committees close in time to their registration with the Commission or the dates of their
2 independent expenditures;¹²⁴ and (3) Recipient Committees appearing to return unspent funds to
3 Contributor Committees after elections.¹²⁵ The Complaint alleges that these factors, considered
4 in the context of the overall relationships between the Contributor and Recipient Committees, are
5 sufficient to establish affiliation through an EFMC analysis.¹²⁶

6 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
7 committee establishes, finances, maintains, *or* controls another.¹²⁷ As discussed above, there is
8 relatively little publicly available information about the Recipient Committees in this matter;
9 except for sharing the same treasurer in the case of SLF and some of its Recipient Committees,
10 and a common agent between SMP and Highway 31, there is little information on their staffs or
11 structures that could inform an EFMC analysis.¹²⁸ Therefore, our analysis at this stage of the
12 matter focuses on the Committees' disclosed financial transactions. The available information
13 indicates that the degree to which some Contributor Committees funded Recipient Committees,
14 considering the overall context of their relationships, was sufficient to trigger affiliation
15 reporting requirements.

16 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
17 the financial relationships between committees, specifically whether a committee (1) "provides
18 funds or goods in a significant amount or on an ongoing basis" to another committee, such as

¹²⁴ *E.g.*, Compl. ¶¶ 25, 75, 87.

¹²⁵ *E.g.*, Compl. ¶¶ 25, 81, 87.

¹²⁶ *E.g.*, Compl. ¶ 87, 94.

¹²⁷ 11 C.F.R. § 100.5(g)(2).

¹²⁸ *Supra* Part II.A-B. For example, one factor the Commission considers in an EFMC analysis is whether a committee has "the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members" of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committees.

1 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
2 significant amount or on an ongoing basis to be provided” to another committee.¹²⁹

3 The Commission determines what constitutes a “significant amount” on a case-by-case
4 basis, considering all relevant circumstances.¹³⁰ In MUR 5367 (Congressman Darrell Issa), the
5 Commission determined that a respondent had donated or caused to be donated funds in a
6 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
7 his company donated \$1.845 million through regular donations, ultimately providing more than
8 60% of the ballot committee’s total reported receipts.¹³¹ In Advisory Opinion 2006-04
9 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
10 committee’s total receipts at the time of the donation “must be considered ‘a significant
11 amount’” and would result in the donating candidate committee “financing” the committee.¹³²

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¹²⁹ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

¹³⁰ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

¹³¹ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6; *see also* First Gen. Counsel’s Rpt. at 10, MUR 7006 (Heaney for Congress, *et al.*) (reason to believe recommendations based in part on analysis that a candidate EFMC’d an IEOPC when his companies were the sole source of funding for the IEOPC’s startup activities); Certification (Apr. 12, 2019), MUR 7006 (Heaney for Congress, *et al.*) (Commission was equally divided over the recommendations). The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

¹³² AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

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 3 At the outset, it appears that all of the Recipient Committees received well in excess of
 4 50% of their contributions from a Contributor Committee, not merely at the time of contribution,
 5 but over an entire election cycle or the life-to-date of the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
American Crossroads	SLF	96%	2020 cycle
DefendArizona	SLF	87%	All time
Faith and Power PAC	SLF	100%	All time
Keep Kentucky Great	SLF	100%	All time
Maine Way PAC	SLF	97%	All time
Mountain Families PAC	SLF	100%	All time
Peachtree PAC	SLF	100%	All time
Plains PAC	SLF	99%	All time
Carolina Blue	SMP	99%	All time
Highway 31	SMP	73%	All time
Red and Gold	SMP	58%	All time
Sunflower State	SMP	67%	All time
Texas Forever	SMP	99%	All time
AFFPA	CLF	78%	2018 cycle
Illinois Conservatives PAC	CLF	100%	All time
Lone Star Values PAC	CLF	100%	2020 cycle
Liberty SC	Hold Them Accountable	100%	All time
Truth Still Matters PAC	Future45	100%	All time

6 The Commission's regulations also state, however, that the Commission will consider the
 7 "context of the overall relationship" between committees in determining if the "presence of any
 8 factor or factors" is evidence that one committee has EFMC'd another.¹³⁵ Here, the available

¹³⁵ 11 C.F.R. § 100.5(g)(4)(ii).

1 information about the relationships between certain Contributor and Recipient Committees
2 strongly suggests that the Recipient Committees were created and funded for the limited purpose
3 of carrying out a Contributor Committee's goals in particular elections — in effect, the
4 Contributor Committees were acting through the Recipient Committees.¹³⁶

5 This dynamic is evidenced most strongly in SLF's relationships with Faith and Power
6 PAC, Maine Way PC, Mountain Families PAC, and Peachtree PAC; SMP's relationships with
7 Carolina Blue, Red and Gold; Sunflower State, and Texas Forever; and Hold Them
8 Accountable's relationship with Liberty SC. In each instance, the Recipient Committee was
9 active in a single election; received significant funds from the Contributor Committee relatively
10 close in time to that election; the available information does not indicate that the Recipient
11 Committee solicited contributions from other sources, such as through a committee website; and
12 the Recipient Committee appeared to return leftover funds, whether from vendor refunds or
13 remaining cash on hand, to the Contributor Committee after the relevant election took place.¹³⁷
14 Although none of these factors are individually necessary for a finding that one Respondent
15 financed another, they are suggestive of overall relationships in which the Contributor
16 Committees had significant responsibility for the finances of the Recipient Committees and,
17 perhaps, may even have played a role in establishing, maintaining, or controlling their
18 operations. Indeed, SLF has been described as "overseeing" Peachtree PAC's activities, and
19 SLF itself acknowledges that it "got a lot more for [its] money" by "[f]unding Faith and Power
20 PAC."¹³⁸ Accordingly, these facts appear to indicate that these Contributor Committees

¹³⁶ See *supra* note 19 and accompanying text (quoting SLF's President describing the committee's "new activity through Peachtree PAC").

¹³⁷ *Supra* Part II.A, B, D.

¹³⁸ *Supra* notes 19 and 20 and accompanying text.

1 EFMC'd the corresponding Recipient Committees. Therefore, we recommend that the
2 Commission find reason to believe that SLF, Faith and Power PAC, Maine Way PAC, Mountain
3 Families PAC, Peachtree PAC, SMP, Carolina Blue, Red and Gold, Sunflower State, Hold Them
4 Accountable, and Liberty SC violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by
5 failing to report affiliated committees on their Statements of Organization and violated 52 U.S.C.
6 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements as
7 transfers to and from affiliated committees.¹³⁹

8 Although the available information would support a reason-to-believe recommendation
9 as to Texas Forever, that committee's treasurer and apparent last remaining point of contact is
10 deceased.¹⁴⁰ We therefore recommend that the Commission exercise its prosecutorial discretion
11 to dismiss the allegations that Texas Forever violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
12 § 102.2(a)(ii) by failing to report an affiliated committee on its Statement of Organization and
13 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
14 disbursements as transfers to and from an affiliated committee.¹⁴¹

¹³⁹ Liberty SC, Mountain Families PAC, Red and Gold, Sunflower State, and Texas Forever have terminated their registrations with the Commission. *Supra* notes 29, 51-53, 84. The fact that a committee has terminated has not prevented the Commission from considering possible enforcement action. *See, e.g.*, First Gen. Counsel's Rpt. at 1 n.1, MUR 7343 (Highway 31, *et al.*); Certification ¶ 1 (July 29, 2019), MUR 7343 (Highway 31, *et al.*) (making reason-to-believe findings against terminated committee); *see also* First Gen. Counsel's Rpt. at 1 n.1, MUR 7336 (Mulvaney for Congress) (noting Commission's ability to consider allegations against a terminated committee); First Gen. Counsel's Rpt. at 7 n.4, MUR 6790 (Coakley for Senate) (discussing Commission's history of considering allegations against terminated committees). Termination signals the cessation of reporting obligations but does not deprive the Commission of jurisdiction. When a committee's termination is approved, the Commission advises that pursuant to 52 U.S.C. § 30102(d) and 11 C.F.R. §§ 102.9(c) and 104.14(b)(3) the terminating committee must maintain records and reports for inspection for at least three years and "may be required to respond to Commission requests for information regarding [its] federal election activity and previously filed reports." *See* Liberty SC, 2021 Termination Approval Ltr. (Mar. 10, 2021); Mountain Families PAC, Termination Approval Ltr. (May 31, 2018); Red and Gold, Termination Approval Ltr. (Feb. 5, 2019); Sunflower State, Termination Approval Ltr. (Mar. 15, 2021); Texas Forever, Termination Approval Ltr. (Feb. 12, 2019).

¹⁴⁰ *See supra* note 54 (describing SMP's counsel's representations as to Texas Forever).

¹⁴¹ *See* F&LA at 8 n.33, MUR 7824 (Letlow for Congress, *et al.*) (stating that "[t]he Commission has generally not pursued deceased respondents in enforcement matters"); Second Gen. Counsel's Rpt. at 7 & Cert.¶ 1 (Apr. 27,

1 For the remaining Respondents, some aspects of their overall relationships could point to
 2 affiliation, but there is comparatively less compelling detail, and in some instances other factors
 3 present, which less strongly suggest the Recipient Committees were merely vehicles to quickly
 4 spend Contributor Committee funds in a specific election:

- 5 • Remaining SLF Recipient Committees: American Crossroads has been active
 6 since 2010, long before the 2020 cycle for which it was allegedly EFMC'd, it
 7 made independent expenditures in multiple races in 2020, solicits contributions,
 8 and did not return funds to SLF; DefendArizona and Plains PAC have also been
 9 active in multiple races or election cycles, and Plains PAC solicits contributions
 10 through its website; and Keep Kentucky Great began receiving funds from SLF in
 11 April 2020 but did not make independent expenditures until September 2020,
 12 which could suggest the funds were not contributed with an immediate use in
 13 mind.¹⁴²
- 14 • Remaining SMP Recipient Committee: Highway 31 appears to have solicited
 15 contributions through its website and did not return funds to SMP after the 2017
 16 special election.¹⁴³
- 17 • CLF Recipient Committees: AFFPA has been active since 2008, long before the
 18 2018 cycle for which it was allegedly EFMC'd, it made independent expenditures
 19 in multiple races in 2018, solicits contributions, and did not return funds to CLF;
 20 Illinois Conservatives PAC likewise did not return funds to CLF; and Lone Star
 21 Values PAC was active in the 2018 election cycle, prior to allegedly being
 22 EFMC'd, and it did not return funds to CLF after the 2020 primary election.¹⁴⁴
- 23 • Future45 Recipient Committee: Truth Still Matters PAC did not report returning
 24 funds to Future45 after the 2020 general election.

25 While it is possible that additional information about the remaining Recipient
 26 Committees' contacts with the relevant Contributor Committees would satisfy other factors in
 27 the EFMC analysis, in light of the minimal information currently available about these

2012), MUR 6249 (Karen L. Pletz, *et al.*) (taking no further action as to primary respondent because she was deceased).

¹⁴² *Supra* Part II.A.

¹⁴³ *Supra* Part II.B.

¹⁴⁴ *Supra* Part II.C.

1 Respondents, we recommend that the Commission exercise its prosecutorial discretion to dismiss
2 the allegations that American Crossroads, DefendArizona, Keep Kentucky Great, Plains PAC,
3 Highway 31, CLF, AFFPA, Illinois Conservatives PAC, Lone Star Values PAC, Future45, and
4 Truth Still Matters PAC violated 52 U.S.C. § 30103(b) and 11 C.F.R. § 102.2(a) by failing to
5 report affiliated committees on their Statements of Organization and 52 U.S.C. § 30104(b) and
6 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements as transfers to and
7 from affiliated committees.¹⁴⁵

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¹⁴⁵ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

MUR 7912 (Senate Leadership Fund, *et al.*)

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1 **V. RECOMMENDATIONS**

2 **Senate Leadership Fund and its Recipient Committees**

- 3 1. Find reason to believe that Senate Leadership Fund and Caleb Crosby in his
4 official capacity as treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
5 § 102.2(a)(ii) by failing to report an affiliated committee, and 52 U.S.C.
6 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
7 disbursements;
- 8 2. Dismiss as a matter of prosecutorial discretion the allegations that American
9 Crossroads and Caleb Crosby in his official capacity as treasurer violated
10 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an
11 affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing
12 to properly report receipts and disbursements;
- 13 3. Dismiss as a matter of prosecutorial discretion the allegations that DefendArizona
14 and Benjamin Ottenhoff in his official capacity as treasurer violated 52 U.S.C.
15 § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated
16 committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly
17 report receipts and disbursements;

- 1 4. Find reason to believe that Faith and Power PAC and Ezekiel Patterson in his
 2 official capacity as treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
 3 § 102.2(a)(ii) by failing to report an affiliated committee, and 52 U.S.C.
 4 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
 5 disbursements;
- 6 5. Dismiss as a matter of prosecutorial discretion the allegations that Keep Kentucky
 7 Great and Caleb Crosby in his official capacity as treasurer violated 52 U.S.C.
 8 § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated
 9 committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly
 10 report receipts and disbursements;
- 11 6. Find reason to believe that The Maine Way PAC and Ben Ottenhoff in his official
 12 capacity as treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
 13 § 102.2(a)(ii) by failing to report an affiliated committee, and 52 U.S.C.
 14 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
 15 disbursements;
- 16 7. Find reason to believe that Mountain Families PAC and Benjamin Ottenhoff in
 17 his official capacity as treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
 18 § 102.2(a)(ii) by failing to report an affiliated committee, and 52 U.S.C.
 19 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
 20 disbursements;
- 21 8. Find reason to believe that Peachtree PAC and Julie Dozier in her official
 22 capacity as treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
 23 § 102.2(a)(ii) by failing to report an affiliated committee, and 52 U.S.C.
 24 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
 25 disbursements;
- 26 9. Dismiss as a matter of prosecutorial discretion the allegations that Plains PAC and
 27 Julie Dozier in her official capacity as treasurer violated 52 U.S.C. § 30103(b)(2)
 28 and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated committee, and
 29 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts
 30 and disbursements;
- 31 10. Enter into conciliation with the Senate Leadership Fund and Caleb Crosby in his
 32 official capacity as treasurer, Faith and Power PAC and Ezekiel Patterson in his
 33 official capacity as treasurer, The Maine Way PAC and Ben Ottenhoff in his
 34 official capacity as treasurer, Mountain Families PAC and Benjamin Ottenhoff in
 35 his official capacity as treasurer, and Peachtree PAC and Julie Dozier in her
 36 official capacity as treasurer prior to a finding of probable cause to believe;

37 **SMP and its Recipient Committees**

- 38 11. Find reason to believe that SMP and Rebecca Lambe in her official capacity as
 39 treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing

- 1 to report an affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3
2 by failing to properly report receipts and disbursements;
- 3 12. Find reason to believe that Carolina Blue and Doug Heyl in his official capacity
4 as treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by
5 failing to report an affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R.
6 § 104.3 by failing to properly report receipts and disbursements;
- 7 13. Dismiss as a matter of prosecutorial discretion the allegations that Highway 31
8 and Edward Still in his official capacity as treasurer violated 52 U.S.C.
9 § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated
10 committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly
11 report receipts and disbursements;
- 12 14. Find reason to believe that Red and Gold and Roy Herrera, Jr., in his official
13 capacity as treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
14 § 102.2(a)(ii) by failing to report an affiliated committee, and 52 U.S.C.
15 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
16 disbursements;
- 17 15. Find reason to believe that Sunflower State and Jim Jesse in his official capacity
18 as treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by
19 failing to report an affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R.
20 § 104.3 by failing to properly report receipts and disbursements;
- 21 16. Dismiss as a matter of prosecutorial discretion the allegations that Texas Forever
22 and Christopher R. Lippincott in his official capacity as treasurer violated
23 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an
24 affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing
25 to properly report receipts and disbursements;
- 26 17. Enter into conciliation with SMP and Rebecca Lambe in her official capacity as
27 treasurer, Carolina Blue and Doug Heyl in his official capacity as treasurer, Red
28 and Gold and Roy Herrera, Jr., in his official capacity as treasurer, and Sunflower
29 State and Jim Jesse in his official capacity as treasurer prior to a finding of
30 probable cause to believe;

31 **CLF and its Recipient Committees**

- 32 18. Dismiss as a matter of prosecutorial discretion the allegations that Congressional
33 Leadership Fund and Caleb Crosby in his official capacity as treasurer violated
34 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an
35 affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing
36 to properly report receipts and disbursements;
- 37 19. Dismiss as a matter of prosecutorial discretion the allegations that American
38 Future Fund Political Action and Chris Marston in his official capacity as

- 1 treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing
2 to report an affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3
3 by failing to properly report receipts and disbursements;
- 4 20. Dismiss as a matter of prosecutorial discretion the allegations that Illinois
5 Conservatives PAC and Kim Ledesma in her official capacity as treasurer
6 violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report
7 an affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by
8 failing to properly report receipts and disbursements;
- 9 21. Dismiss as a matter of prosecutorial discretion the allegations that Lone Star
10 Values PAC and Maria Wojciechowski in her official capacity as treasurer
11 violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report
12 an affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by
13 failing to properly report receipts and disbursements;
- 14 **Other Committees**
- 15 22. Find reason to believe that Hold Them Accountable and Taryn Vogel in her
16 official capacity as treasurer (f/k/a LMG PAC) violated 52 U.S.C. § 30103(b)(2)
17 and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated committee, and
18 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts
19 and disbursements;
- 20 23. Find reason to believe that Liberty SC and Lisa Pearson in her official capacity as
21 treasurer violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing
22 to report an affiliated committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3
23 by failing to properly report receipts and disbursements;
- 24 24. Dismiss as a matter of prosecutorial discretion the allegations that Future45 and
25 Maria Wojciechowski in her official capacity as treasurer violated 52 U.S.C.
26 § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated
27 committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly
28 report receipts and disbursements;
- 29 25. Dismiss as a matter of prosecutorial discretion the allegations that Truth Still
30 Matters PAC and Devy Enz in her official capacity as treasurer violated 52 U.S.C.
31 § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated
32 committee, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly
33 report receipts and disbursements;
- 34 26. Enter into conciliation with Hold Them Accountable and Taryn Vogel in her
35 official capacity as treasurer, and Liberty SC and Lisa Pearson in her official
36 capacity as treasurer prior to a finding of probable cause to believe;
- 37 27. Approve the attached conciliation agreements;

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Senate Leadership Fund and Caleb Crosby MUR 7912
6 in his official capacity as treasurer
7 American Crossroads and Caleb Crosby in his
8 official capacity as treasurer
9 DefendArizona and Benjamin Ottenhoff in his
10 official capacity as treasurer
11 Faith and Power PAC and Ezekiel Patterson in
12 his official capacity as treasurer
13 Keep Kentucky Great and Caleb Crosby in his
14 official capacity as treasurer
15 The Maine Way PAC and Ben Ottenhoff in his
16 official capacity as treasurer
17 Mountain Families PAC and Benjamin Ottenhoff
18 in his official capacity as treasurer
19 Peachtree PAC and Julie Dozier in her official
20 capacity as treasurer
21 Plains PAC and Julie Dozier in her official
22 capacity as treasurer
23

24 **I. INTRODUCTION**

25 The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five
26 independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor
27 Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and
28 one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising
29 the Contributor Committees’ roles in funding the Recipient Committees’ operations and
30 independent expenditures. The Complaint alleges that the Contributor Committees and the
31 EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements
32 of Organization and failed to report transactions between them as transfers to and from affiliated
33 committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

34 Respondents deny violating the Act and put forward a variety of arguments, most
35 prominently that affiliation reporting requirements should not apply to them. They contend that

1 the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that
2 such limits do not apply to IEOPCs because they may solicit funds in unlimited amounts.

3 The available information indicates that Senate Leadership Fund, a Contributor
4 Committee, EFMC'd four Recipient Committees, Faith and Power PAC, Maine Way PAC,
5 Mountain Families PAC, and Peachtree PAC, and that none of those Respondents reported
6 affiliation with or transfers to and from each other. Accordingly, the Commission finds reason to
7 believe that Senate Leadership Fund, Faith and Power PAC, Maine Way PAC, Mountain
8 Families PAC, and Peachtree PAC violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii)
9 by failing to report affiliated committees on their Statements of Organization and 52 U.S.C.
10 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements. As to
11 the remaining Respondents allegedly EFMC'd by Senate Leadership Fund, American
12 Crossroads, DefendArizona, Keep Kentucky Great, and Plains PAC, the Commission exercises
13 its prosecutorial discretion to dismiss the allegations that they violated 52 U.S.C. § 30103(b)(2)
14 and 11 C.F.R. § 102.2(a)(ii), and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3.

15 **II. FACTUAL BACKGROUND**

16 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
17 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
18 Complaint suggests that the Contributor Committees did so primarily by helping to form the
19 Recipient Committees and providing all or most of the funds the Recipient Committees raised
20 during the relevant election cycles, thus allowing the Contributor Committees to control
21 spending in elections but delay disclosing their own involvement.² In some instances, the

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

1 Complaint alleges that the contributions were “strategically timed” so that the public would not
2 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
3 voters of important information about who was spending to influence their votes.”³ The
4 Complaint focuses on the financial relationships between the Contributor and Recipient
5 Committees, and the degree to which the available information suggests that the Contributor
6 Committees played a role in the formation and governance of the Recipient Committees.

7 The Complaint alleges that Senate Leadership Fund and Caleb Crosby in his official
8 capacity as treasurer (“SLF”) EFMC’d eight Recipient Committees: American Crossroads and
9 Caleb Crosby in his official capacity as treasurer (“American Crossroads”); DefendArizona and
10 Benjamin Ottenhoff in his official capacity as treasurer (“DefendArizona”); Faith and Power
11 PAC and Ezekiel Patterson in his official capacity as treasurer (“Faith and Power PAC”); Keep
12 Kentucky Great and Caleb Crosby in his official capacity as treasurer (“Keep Kentucky Great”);
13 The Maine Way PAC and Ben Ottenhoff in his official capacity as treasurer (“Maine Way
14 PAC”); Mountain Families PAC and Benjamin Ottenhoff in his official capacity as treasurer
15 (“Mountain Families PAC”); Peachtree PAC and Julie Dozier in her official capacity as treasurer
16 (“Peachtree PAC”); and Plains PAC and Julie Dozier in her official capacity as treasurer (“Plains
17 PAC”).

18 As shown in the table below, each of the Recipient Committees received funds in varying
19 amounts from SLF, in one or more elections in which they also made independent expenditures.

³ *Id.* ¶ 2.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from SLF	First Independent Expenditure	Portion of Contributions from SLF	Active in Multiple Races or Cycles?
American Crossroads ⁴	Aug. 9, 2010	2020 presidential and U.S. Senate (GA, IA, KS, ME, NC)	Sept. 2, 2020	Apr. 30, 2020	96% (\$76.7 million)	Yes
DefendArizona ⁵	Feb. 1, 2018	Aug. 28, 2018, primary and Nov. 6, 2018, general, U.S. Senate (AZ) Nov. 3, 2020, general, U.S. Senate (AZ)	Aug. 10, 2018 Aug. 13, 2020	Aug. 2, 2018 Aug. 14, 2020	87% (\$34.4 million)	Yes
Faith and Power PAC ⁶	Jan. 29, 2020	Mar. 3, 2020, primary, U.S. Senate (NC)	Jan. 31, 2020	Feb. 3, 2020	100% (\$2.95 million)	No
Keep Kentucky Great ⁷	Mar. 19, 2020	Nov. 3, 2020, general, U.S. Senate (KY)	Apr. 13, 2020	Sept. 3, 2020	100% (\$13.6 million)	No

⁴ American Crossroads, Statement of Organization at 1, 3 (Aug. 9, 2010); Compl. ¶¶ 47-55; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?two_year_transaction_period=2020&committee_id=C00487363&data_type=processed (last visited Nov. 1, 2022) (showing 2019-2020 receipts); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00487363&data_type=processed&q_spender=C00487363&is_notice=false&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Nov. 1, 2022) (showing 2019-2020 independent expenditures).

⁵ Defend Arizona, Statement of Organization at 1, 3 (Feb. 1, 2018); Compl. ¶¶ 56-61; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00668301 (last visited Oct. 31, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00668301&data_type=processed&q_spender=DefendArizona&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁶ Faith and Power PAC, Statement of Organization at 1, 3 (Jan. 29, 2020); Compl. ¶¶ 40-46; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00736751 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00736751&data_type=processed&q_spender=C00736751&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁷ Keep Kentucky Great, Statement of Organization at 1, 3 (Mar. 19, 2020); Compl. ¶¶ 27-33; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00742494 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&most_recent=true&q_spender=C00742494&is_notice=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from SLF	First Independent Expenditure	Portion of Contributions from SLF	Active in Multiple Races or Cycles?
Maine Way PAC ⁸	Apr. 9, 2019	Nov. 3, 2020, general, U.S. Senate (ME)	Oct. 27, 2020	Oct. 27, 2020	97% (\$3.5 million)	No
Mountain Families PAC ⁹	Mar. 29, 2018	May 8, 2018, primary, U.S. Senate (WV)	Apr. 12, 2018	Apr. 12, 2018	100% (\$1.4 million)	No
Peachtree PAC ¹⁰	Nov. 6, 2020	Jan. 5, 2021, special election, U.S. Senate (GA)	Dec. 7, 2020	Dec. 7, 2020	100% (\$38 million)	No
Plains PAC ¹¹	July 1, 2020	Aug. 4, 2020, primary, U.S. Senate (KS) Nov. 3, 2020, general, U.S. Senate (IA)	July 1, 2020	July 2, 2020	99.2% (\$14.98 million)	Yes

⁸ The Maine Way PAC, Statement of Organization at 1, 3 (Apr. 9, 2019); Compl. ¶¶ 34-39; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00701821 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00701821&data_type=processed&q_spender=C00701821&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁹ Mountain Families PAC, Statement of Organization at 1, 3 (Mar. 29, 2018); Compl. ¶¶ 62-67; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00674689 (last visited Oct. 31, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00674689&data_type=processed&q_spender=C00674689&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

¹⁰ Peachtree PAC, Statement of Organization at 1,3 (Nov. 6, 2020); Compl. ¶¶ 12-20; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00762377 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00762377&data_type=processed&q_spender=C00762377&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

¹¹ Plains PAC, Statement of Organization at 1, 3 (July 1, 2020); Compl. ¶¶ 21-26; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00750174 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00750174&data_type=processed&q_spender=C00750174&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restrictions).

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1 None of these Recipient Committees reported affiliated committees on their Statements
2 of Organization.¹² In most cases, little is known about their staff, structure, and whether they
3 solicited contributions. For example, some Recipient Committees do not appear to have
4 websites,¹³ and for those that do, the websites have little or no information about the
5 organizations' staff or structures.¹⁴ Only American Crossroads and Plains PAC appear to have
6 maintained websites that solicit contributions.¹⁵ Some information, however, can be gleaned
7 from public sources. Based on their Statements of Organization filed with the Commission, two
8 Recipient Committees (American Crossroads and Keep Kentucky Great) share a treasurer with
9 SLF.¹⁶ Additionally, the Complaint cites to a CNN report that SLF was "overseeing" Peachtree
10 PAC and includes a statement from SLF's President that "[t]his new activity through Peachtree
11 PAC will articulate the stakes couldn't be higher as the future of freedom is on the ballot."¹⁷
12 SLF has also posted statements on its own website referencing some of these Recipient
13 Committees. For instance, SLF released a statement "on Funding Faith and Power PAC," which

¹² American Crossroads, Statement of Organization at 3 (Feb. 10, 2017); DefendArizona, Statement of Organization at 3 (Feb. 1, 2018); Faith and Power PAC, Statement of Organization at 3 (Jan. 29, 2020); Keep Kentucky Great, Statement of Organization at 3 (Mar. 19, 2020); The Maine Way PAC, Statement of Organization at 1, 3 (Apr. 9, 2019); Mountain Families PAC, Statement of Organization at 3 (Mar. 29, 2018); Peachtree PAC, Statement of Organization at 3 (Nov. 6, 2020); Plains PAC, Statement of Organization at 3 (July 1, 2020). SLF has also not reported being affiliated with these Recipient Committees. SLF, Statement of Organization at 3 (May 19, 2021).

¹³ This is the case for Faith and Power PAC, Maine Way PAC, Mountain Families PAC, and Peachtree PAC.

¹⁴ This is the case for American Crossroads, DefendArizona, Keep Kentucky Great, and Plains PAC. See AM. CROSSROADS, <https://www.americancrossroads.org/> (last visited Nov. 1, 2022); DEFEND ARIZ., <https://defendarizona.org/> (last visited Nov. 1, 2022); KEEP KY. GREAT, <https://keepkentuckygreat.com/> (last visited Nov. 1, 2022); PLAINS PAC, <https://plainspac.com/> (last visited Nov. 1, 2022).

¹⁵ AM. CROSSROADS, <https://www.americancrossroads.org/> (last visited Nov. 1, 2022) (displaying "Donate" options on the web page); PLAINS PAC, <https://plainspac.com/> (last visited Nov. 1, 2022) (displaying a "Donate" button).

¹⁶ *Supra* note 12 (citing to SLF and Recipient Committee Statements of Organization).

¹⁷ Compl. ¶ 14 n.13 (citing Fredreka Schouten & David Wright, *A New McConnell-Aligned Super PAC Plans \$43 Million Ad Blitz to Sway Georgia Runoffs*, CNN (Dec. 8, 2020), <https://www.cnn.com/2020/12/08/politics/new-super-pac-to-spend-43-million-in-georgia-senate-runoffs/index.html>).

1 stated that SLF “stole a page out of Chuck Schumer’s playbook, and it’s been more successful
2 than we could have imagined We got a lot more for our money than when Democrats spent
3 millions in Thom Tillis’[s] primary six years ago.”¹⁸ In other postings, SLF identifies Keep
4 Kentucky Great and DefendArizona as “affiliate group[s],”¹⁹ states that it was making ad buys in
5 “Arizona (through DefendArizona),”²⁰ and indicates that it was placing simultaneous ad buys
6 with American Crossroads.²¹

7 Additionally, as shown in the chart below, seven of the eight Recipient Committees
8 returned funds to SLF through contributions after the relevant elections, in some cases after
9 receiving post-election refunds from their vendors. One of those Recipient Committees,
10 Mountain Families PAC, then terminated its registration with the Commission.

Recipient Committee	Relevant Election Dates	Post-Election Contributions to SLF	Post-Election Vendor Refunds ²²	Post-Refund Contributions to SLF	Date of Termination Filing
DefendArizona ²³	Aug. 28, 2018 Nov. 6, 2018 Nov. 3, 2020	\$116,900 (Nov. 9, 2020)	N/A	N/A	N/A
Faith and Power PAC ²⁴	Mar. 3, 2020	N/A	\$1,643.05 (June 29, 2020)	\$10,000 (May 28, 2021)	N/A

¹⁸ *SLF Statement on Funding Faith and Power PAC: “An Unqualified Success,”* SENATE LEADERSHIP FUND (Feb. 21, 2020), <https://www.senateleadershipfund.org/slf-statement-on-funding-faith-and-power-pac-an-unqualified-success/>.

¹⁹ *SLF Books \$67.1 Million Across Six States in Initial Reservations for Fall Elections,* SENATE LEADERSHIP FUND (Mar. 23, 2020), <https://www.senateleadershipfund.org/slf-books-67-1-million-across-six-states-in-initial-reservations-for-fall-elections/>.

²⁰ *SLF Announces August Advertising Surge to Defend Senate Majority,* SENATE LEADERSHIP FUND (Aug. 5, 2020), <https://www.senateleadershipfund.org/slf-announces-august-advertising-surge-to-defend-senate-majority/>.

²¹ Compl. ¶ 52 (citing *SLF & American Crossroads Place \$70 Million Reservation for Georgia Runoffs,* SENATE LEADERSHIP FUND (Nov. 20, 2020), <https://www.senateleadershipfund.org/slf-american-crossroads-place-70-million-reservation-for-georgia-runoffs/>).

²² An entry of N/A in this column indicates that there was no post-election vendor refund that was followed by a refund to SLF. It does not indicate that the Recipient Committee received no vendor refunds after the relevant election.

²³ DefendArizona, 2020 30-Day Post-General Report at 13 (Dec. 3, 2020).

²⁴ Faith and Power PAC, 2021 Mid-Year Report at 7 (July 31, 2021).

Recipient Committee	Relevant Election Dates	Post-Election Contributions to SLF	Post-Election Vendor Refunds ²²	Post-Refund Contributions to SLF	Date of Termination Filing
Keep Kentucky Great ²⁵	Nov. 3, 2020	\$440,200 (Nov. 9, 2020)	\$49,651.88 (June 1, 2021)	\$45,000 (June 15, 2021)	N/A
Maine Way PAC ²⁶	Nov. 3, 2020	\$40,600 (Nov. 9, 2020)	\$6,684.40 (Jan. 14, 2021)	\$9,708.66 (June 29, 2021)	N/A
Mountain Families PAC ²⁷	May 8, 2018	\$40,840.47 (May 17, 2018)	N/A	N/A	May 20, 2018
Peachtree PAC ²⁸	Jan. 5, 2021	\$50,000 (May 14, 2021)	\$403,331.76 (June 2, 2021)	\$400,000 (June 15, 2021)	N/A
Plains PAC ²⁹	Aug. 4, 2020 Nov. 3, 2020	\$4,000 (Nov. 10, 2020)	\$11,348.04 (May 11, 2021) \$29,452.03 (June 10, 2021)	\$10,000 (May 28, 2021) \$30,000 (June 15, 2021)	N/A

1 SLF and all eight Recipient Committees responded jointly to the Complaint in this
2 matter.³⁰ They contend that the Complaint alleges only “hyper-technical reporting violations”
3 and that all contributions were properly disclosed.³¹ The Response does not address whether
4 SLF EFMC’d the Recipient Committees.³² Instead, it argues that neither the Act nor
5 Commission regulations address affiliation reporting among IEOPCs and that the Commission
6 has never “affirmatively required” it.³³ These Respondents contend that, for policy reasons, the
7 Commission should not require determinations of affiliation among IEOPCs, as “the affiliation

²⁵ Keep Kentucky Great, 2021 Mid-Year Report at 6, 12 (July 31, 2021); Keep Kentucky Great, 2020 30-Day Post-General Report at 9 (Dec. 3, 2020).

²⁶ Maine Way PAC, 2020 30-Day Post-General Report at 8 (Dec. 3, 2020).

²⁷ Mountain Families PAC, 2018 Termination Report at 1, 7 (May 20, 2018).

²⁸ Peachtree PAC, 2021 July 31 Mid-Year Report at 6, 9 (July 31, 2021); The Maine Way PAC, 2021 July Mid-Year Report at 2, 6, 10 (July 31, 2021).

²⁹ Plains PAC, 2020 30-Day Post-General Report at 10 (Dec. 3, 2020); Plains PAC, 2021 Mid-Year Report at 6, 9 (July 31, 2021).

³⁰ SLF, Peachtree PAC, Plains PAC, Keep Kentucky Great, Maine Way PAC, Faith and Power PAC, American Crossroads, DefendArizona, & Mountain Families PAC Resp. (Sept. 2, 2021) (“SLF Joint Resp.”).

³¹ *Id.* at 1.

³² *Id.* at 1-6.

³³ *Id.* at 2-4.

1 concept exists solely as a means of preventing circumvention of the Act’s contribution limits”
2 and IEOPCs, by definition, are not subject to such limits.³⁴

3 III. LEGAL ANALYSIS

4 The Act and Commission regulations require every political committee to file a statement
5 of organization that includes “the name, address, relationship, and type of any connected
6 organization or affiliated committee.”³⁵ Political committee treasurers must file reports of
7 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.³⁶ The
8 reports must include, among other information, transfers to and from affiliated committees.³⁷

9 Commission regulations identify certain entities that are per se affiliated, such as
10 organizations that are established, financed, maintained, or controlled by a single corporation or
11 its subsidiaries, or by the same person or group of persons.³⁸ Outside of per se affiliation, the
12 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the

³⁴ *Id.* at 4-6.

³⁵ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

³⁶ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

³⁷ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

³⁸ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

1 context of the overall relationship between committees, to determine if they are affiliated.³⁹ The
 2 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
 3 funds or goods in a significant amount or on an ongoing basis to another committee, such as
 4 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
 5 arranges for funds in a significant amount to be provided to another committee; (3) whether the
 6 committees have similar patterns of contributions or contributors indicating a formal or ongoing
 7 relationship between the committees; (4) whether a committee has authority or ability to direct or
 8 participate in the governance of another committee; and (5) whether a committee had an active
 9 or significant role in the formation of another committee.⁴⁰

10 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

11 The Act plainly states that every political committee must file a statement of
 12 organization, which “shall include” information regarding any affiliated committees, and that
 13 committee reports “shall disclose” transfers to and from affiliated committees.⁴¹ Nevertheless,
 14 Respondents in this matter argue that the affiliation reporting requirements do not apply. They
 15 contend that the Commission has not promulgated regulations on reporting requirements for
 16 IEOPCs, and that for policy reasons the existing affiliation reporting requirements are

³⁹ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

⁴⁰ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

⁴¹ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

1 inapplicable to such committees.⁴² Critically, however, both the text of the Act and Commission
2 regulations require affiliation reporting by all political committees without exception, resulting in
3 unambiguous legal requirements that directly contravene Respondents' policy arguments.⁴³

4 Respondents contend that the current concept of affiliation was created in the 1976
5 amendments to the Act as part of Congress's "anti-proliferation" effort to prevent circumvention
6 of contribution limits.⁴⁴ They point to a 1989 Explanation and Justification ("E&J") for
7 revisions to the affiliation regulations, in which the Commission described three consequences
8 that flow from affiliation: (1) affiliated committees share a common contribution limit as to
9 contributions they make or receive; (2) there is no limit on transfers of funds between affiliated
10 committees; and (3) an affiliation determination affects the ability of a corporation or federation
11 of trade associations to solicit some categories of individuals.⁴⁵ Respondents assert that the
12 consequences discussed in the E&J are inapplicable to IEOPCs, because they are "not subject to
13 contribution limits . . . [,] may freely 'transfer' funds to one another regardless of affiliation
14 status, and . . . are not subject to restricted class solicitation limitations."⁴⁶ They further contend
15 that the affiliation concept "has no separate public disclosure purpose or basis."⁴⁷ Accordingly,
16 they assert that there is no valid reason for the Commission to apply the Act's affiliation
17 reporting requirements to them.

⁴² SLF Joint Resp. at 3-5.

⁴³ 52 U.S.C. § 30103 (requiring that statements of organization "shall include," among other information, the "name, address, relationship, and type of any connected organization or affiliated committee"); 11 C.F.R. § 102.2 (same).

⁴⁴ SLF Joint Resp. at 4.

⁴⁵ *Id.* (citing Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) ("Affiliation E&J")).

⁴⁶ *Id.*

⁴⁷ *Id.*

1 These arguments, however, have a number of flaws. First, they contravene the Act’s
2 express requirement that all political committees file a statement of organization that “shall
3 include” information on any affiliated committee, thereby urging the Commission to act contrary
4 to the plain text of the law passed by Congress.⁴⁸ Respondents registered with the Commission
5 as political committees, and neither the Act nor Commission regulations provide an exemption
6 from the statement of organization requirements based on committee type.

7 Second, Respondents’ suggestion that affiliation reporting exists only to facilitate
8 enforcement of contribution limits is not supported by the historical record. The requirement to
9 report affiliation pre-dated the 1976 anti-proliferation amendments referenced by Respondents.
10 The original 1971 Act, while not defining affiliation, nevertheless required that political
11 committees file a statement of organization including “the names, addresses, and relationships of
12 affiliated or connected organizations.”⁴⁹ Additionally, once the Commission promulgated a
13 regulation defining affiliated committee, it did not tie that definition exclusively to the anti-
14 proliferation regulations, as Respondents’ policy arguments might suggest. Rather, the

⁴⁸ 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

⁴⁹ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. *See* Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

1 Commission created a free-standing definition of affiliated committee and explained that it
2 “parallels the definition in § 110.3,” which was the regulation that implemented the anti-
3 proliferation provisions.⁵⁰ Had the Commission understood the concept of affiliation to have no
4 purpose beyond its anti-proliferation goals, this second, parallel definition, would have been
5 superfluous.

6 Further, the Commission’s current regulations suggest that affiliation reporting for
7 statements of organization, in particular, is not dependent on a committee’s status under the anti-
8 proliferation provisions. The regulation governing statements of organization instructs
9 registrants to report their affiliated committees “in accordance with paragraph (b) of this
10 section.”⁵¹ Paragraph (b), in turn, states that an affiliated committee includes any committee
11 defined in several specific provisions of the regulations.⁵² These include 11 C.F.R. § 110.3,
12 which contains the anti-proliferation provisions and describes committees to which they apply,⁵³
13 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
14 “affiliated committee” that resides outside the anti-proliferation regulation.⁵⁴ Had the
15 Commission understood the Act to require affiliation reporting only when a committee’s
16 activities are affected by the anti-proliferation provisions, there would have been no need to also
17 reference Section 100.5(g).

⁵⁰ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); *see id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

⁵¹ 11 C.F.R. § 102.2(a)(1)(ii).

⁵² *Id.* § 102.2(b).

⁵³ *Id.* § 110.3(a), (b).

⁵⁴ *Id.* § 100.5(g).

1 Finally, the E&J that Respondents rely on does discuss certain “consequences” of
2 affiliation, but the legal determination of whether committees are affiliated does not depend on
3 the downstream effects that determination may have. Rather, as described above, the
4 Commission’s regulations provide the legal test to determine whether committees are affiliated,
5 which includes a determination of whether a committee is established, financed, maintained, or
6 controlled by another committee.⁵⁵

7 The Commission is also aware of arguments, some raised by Respondents, asserting
8 concerns about notice and due process because allegedly it is a common and public practice for
9 IEOPCs to contribute to each other, in some cases providing a majority of the recipient’s
10 funding, and the Commission has not previously raised concerns or suggested that the affiliation
11 rules apply.⁵⁶ However, the notion that affiliation reporting among IEOPCs is somehow
12 unprecedented is not correct. In fact, a different Contributor Committee discussed in the
13 Complaint, SMP, reported being affiliated with two other IEOPCs in 2020.⁵⁷ Additionally, the
14 U.S. Court of Appeals for the District of Columbia made clear in 2010 in *SpeechNow v. FEC* that
15 the reporting requirements of 52 U.S.C. § 30103, which includes the requirement to report
16 affiliation on a statement of organization, can constitutionally be applied to political committees
17 that make only independent expenditures.⁵⁸

⁵⁵ *Id.* § 100.5(g).

⁵⁶ SLF Joint Resp. at 2.

⁵⁷ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

⁵⁸ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

1 The Commission is also aware of arguments that, in prior advisory opinions, it
2 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
3 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
4 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs
5 as affiliated with the SSFs.⁵⁹ This absence of discussion allegedly reflects the Commission’s
6 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
7 not indicate that the Commission considered the question of affiliation reporting, and each of the
8 opinions is clearly limited to “the specific transaction or activity set forth in [the] request.”⁶⁰
9 Thus, the Commission’s silence on the issue of affiliation does not appear to have the
10 significance this argument suggests.

11 Accordingly, to the extent that Respondents are affiliated based on the EFMC analysis,
12 they were required to disclose each other as affiliated organizations and properly record the
13 transfers they made and received.

14 **B. The Commission Finds Reason to Believe that SLF EFMC’d Some Recipient**
15 **Committees and Dismisses the Allegations as to the Remaining Committees**

16 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
17 Recipient Committees are largely based on the financial relationships between those two groups.
18 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
19 funds from specific Contributor Committees;⁶¹ (2) Contributor Committees funding Recipient
20 Committees close in time to their registration with the Commission or the dates of their

⁵⁹ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

⁶⁰ AO 2010-09 at 6; AO 2012-18 at 3.

⁶¹ *E.g.*, Compl. ¶¶ 19, 25, 75.

1 independent expenditures;⁶² and (3) Recipient Committees appearing to return unspent funds to
2 Contributor Committees after elections.⁶³ The Complaint alleges that these factors, considered
3 in the context of the overall relationships between the Contributor and Recipient Committees, are
4 sufficient to establish affiliation through an EFMC analysis.⁶⁴

5 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
6 committee establishes, finances, maintains, *or* controls another.⁶⁵ As discussed above, there is
7 relatively little publicly available information about SLF’s Recipient Committees; except for
8 SLF sharing the same treasurer with some of its Recipient Committees, there is little information
9 on their staffs or structures that could inform an EFMC analysis.⁶⁶ Therefore, the Commission’s
10 analysis at this stage of the matter focuses on the Committees’ disclosed financial transactions.
11 The available information indicates that the degree to which SLF funded some Recipient
12 Committees, considering the overall context of their relationships, was sufficient to trigger
13 affiliation reporting requirements.

14 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
15 the financial relationships between committees, specifically whether a committee (1) “provides
16 funds or goods in a significant amount or on an ongoing basis” to another committee, such as

⁶² *E.g., id.* ¶¶ 25, 75, 87.

⁶³ *E.g., id.* ¶¶ 25, 81, 87.

⁶⁴ *E.g., id.* ¶¶ 87, 94.

⁶⁵ 11 C.F.R. § 100.5(g)(2).

⁶⁶ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members” of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committees.

1 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
2 significant amount or on an ongoing basis to be provided” to another committee.⁶⁷

3 The Commission determines what constitutes a “significant amount” on a case-by-case
4 basis, considering all relevant circumstances.⁶⁸ In MUR 5367 (Congressman Darrell Issa), the
5 Commission determined that a respondent had donated or caused to be donated funds in a
6 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
7 his company donated \$1.845 million through regular donations, ultimately providing more than
8 60% of the ballot committee’s total reported receipts.⁶⁹ In Advisory Opinion 2006-04
9 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
10 committee’s total receipts at the time of the donation “must be considered ‘a significant
11 amount’” and would result in the donating candidate committee “financing” the committee.⁷⁰

⁶⁷ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

⁶⁸ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

⁶⁹ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

⁷⁰ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

1 At the outset, it appears that all of SLF’s Recipient Committees received well in excess of
2 50% of their contributions from SLF, not merely at the time of contribution, but over an entire
3 election cycle or the life-to-date of the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
American Crossroads	SLF	96%	2020 cycle
DefendArizona	SLF	87%	All time
Faith and Power PAC	SLF	100%	All time
Keep Kentucky Great	SLF	100%	All time
Maine Way PAC	SLF	97%	All time
Mountain Families PAC	SLF	100%	All time
Peachtree PAC	SLF	100%	All time
Plains PAC	SLF	99%	All time

4 The Commission’s regulations also state, however, that the Commission will consider the
5 “context of the overall relationship” between committees in determining if the “presence of any
6 factor or factors” is evidence that one committee has EFMC’d another.⁷¹ Here, the available
7 information about the relationships between SLF and certain Recipient Committees strongly
8 suggests that the Recipient Committees were created and funded for the limited purpose of
9 carrying out SLF’s goals in particular elections — in effect, SLF was acting through the
10 Recipient Committees.⁷²

11 This dynamic is evidenced most strongly in SLF’s relationships with Faith and Power
12 PAC, Maine Way PC, Mountain Families PAC, and Peachtree PAC. In each instance, the
13 Recipient Committee was active in a single election; received significant funds from SLF
14 relatively close in time to that election; the available information does not indicate that the

⁷¹ 11 C.F.R. § 100.5(g)(4)(ii).

⁷² *See supra* note 17 and accompanying text (quoting SLF’s President describing the committee’s “new activity through Peachtree PAC”).

1 Recipient Committee solicited contributions from other sources, such as through a committee
2 website; and the Recipient Committee appeared to return leftover funds, whether from vendor
3 refunds or remaining cash on hand, to SLF after the relevant election took place.⁷³ Although
4 none of these factors are individually necessary for a finding that one Respondent financed
5 another, they are suggestive of overall relationships in which SLF had significant responsibility
6 for the finances of the Recipient Committees and, perhaps, may even have played a role in
7 establishing, maintaining, or controlling their operations. Indeed, SLF has been described as
8 “overseeing” Peachtree PAC’s activities, and SLF itself acknowledges that it “got a lot more for
9 [its] money” by “[f]unding Faith and Power PAC.”⁷⁴ Accordingly, these facts appear to indicate
10 that SLF EFMC’d the corresponding Recipient Committees. Therefore, the Commission finds
11 reason to believe that SLF, Faith and Power PAC, Maine Way PAC, Mountain Families PAC,
12 and Peachtree PAC violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to
13 report affiliated committees on their Statements of Organization and violated 52 U.S.C.
14 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements as
15 transfers to and from affiliated committees.⁷⁵

⁷³ *Supra* Part II.

⁷⁴ *Supra* notes 17 and 18 and accompanying text.

⁷⁵ Mountain Families PAC has terminated its registration with the Commission. *Supra* note 27. The fact that a committee has terminated has not prevented the Commission from considering possible enforcement action. *See, e.g.,* First Gen. Counsel’s Rpt. at 1 n.1, MUR 7343 (Highway 31, *et al.*); Certification ¶ 1 (July 29, 2019), MUR 7343 (Highway 31, *et al.*) (making reason-to-believe findings against terminated committee); *see also* First Gen. Counsel’s Rpt. at 1 n.1, MUR 7336 (Mulvaney for Congress) (noting Commission’s ability to consider allegations against a terminated committee); First Gen. Counsel’s Rpt. at 7 n.4, MUR 6790 (Coakley for Senate) (discussing Commission’s history of considering allegations against terminated committees). Termination signals the cessation of reporting obligations but does not deprive the Commission of jurisdiction. When a committee’s termination is approved, the Commission advises that pursuant to 52 U.S.C. § 30102(d) and 11 C.F.R. §§ 102.9(c) and 104.14(b)(3) the terminating committee must maintain records and reports for inspection for at least three years and “may be required to respond to Commission requests for information regarding [its] federal election activity and previously filed reports.” *See* Mountain Families PAC, Termination Approval Ltr. (May 31, 2018).

1 For the remaining Respondents, some aspects of their overall relationships could point to
2 affiliation, but there is comparatively less compelling detail, and in some instances other factors
3 present, which less strongly suggest the Recipient Committees were merely vehicles to quickly
4 spend SLF's funds in a specific election. In particular, it is notable that American Crossroads
5 has been active since 2010, long before the 2020 cycle for which it was allegedly EFMC'd, it
6 made independent expenditures in multiple races in 2020, solicits contributions, and did not
7 return funds to SLF; DefendArizona and Plains PAC have also been active in multiple races or
8 election cycles, and Plains PAC solicits contributions through its website; and Keep Kentucky
9 Great began receiving funds from SLF in April 2020 but did not make independent expenditures
10 until September 2020, which could suggest the funds were not contributed with an immediate
11 use in mind.⁷⁶

12 While it is possible that additional information about the remaining Recipient
13 Committees' contacts with SLF would satisfy other factors in the EFMC analysis, in light of the
14 minimal information currently available about these Respondents, the Commission exercises its
15 prosecutorial discretion to dismiss the allegations that American Crossroads, DefendArizona,
16 Keep Kentucky Great, and Plains PAC violated 52 U.S.C. § 30103(b) and 11 C.F.R. § 102.2(a)
17 by failing to report affiliated committees on their Statements of Organization and 52 U.S.C.
18 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements as
19 transfers to and from affiliated committees.⁷⁷

⁷⁶ *Supra* Part II.

⁷⁷ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: SMP and Rebecca Lambe in her official capacity as treasurer MUR 7912
Carolina Blue and Doug Heyl in his official capacity as treasurer
Highway 31 and Edward Still in his official capacity as treasurer
Red and Gold and Roy Herrera, Jr., in his official capacity as treasurer
Sunflower State and Jim Jesse in his official capacity as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures. The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

Respondents deny violating the Act and put forward a variety of arguments, including that affiliation reporting requirements should not apply to them. They contend that the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that such limits do not apply to IEOPCs because they may solicit funds in unlimited amounts. Respondents also dispute specific aspects of the Complaint’s EFMC analysis.

1 The available information indicates that SMP, a Contributor Committee, EFMC'd a
2 number of Recipient Committees, and that none of the committees reported affiliation with or
3 transfers to and from each other. Accordingly, the Commission finds reason to believe that
4 SMP, Carolina Blue, Red and Gold, and Sunflower State violated 52 U.S.C. § 30103(b)(2) and
5 11 C.F.R. § 102.2(a)(ii) by failing to report affiliated committees on their Statements of
6 Organization and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report
7 receipts and disbursements. As to Highway 31, the Commission exercises its prosecutorial
8 discretion to dismiss the allegations that it violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
9 § 102.2(a)(ii), and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3.

10 **II. FACTUAL BACKGROUND**

11 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
12 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
13 Complaint suggests that the Contributor Committees did so primarily by helping to form the
14 Recipient Committees and providing all or most of the funds the Recipient Committees raised
15 during the relevant election cycles, thus allowing the Contributor Committees to control
16 spending in elections but delay disclosing their own involvement.² In some instances, the
17 Complaint alleges that the contributions were “strategically timed” so that the public would not
18 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
19 voters of important information about who was spending to influence their votes.”³ The
20 Complaint focuses on the financial relationships between the Contributor and Recipient

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

³ *Id.* ¶ 2.

1 Committees, and the degree to which the available information suggests that the Contributor

2 Committees played a role in the formation and governance of the Recipient Committees.

3 The Complaint alleges that SMP and Rebecca Lambe in her official capacity as treasurer
4 (“SMP”) EFMC’d five Recipient Committees: Carolina Blue and Doug Heyl in his official
5 capacity as treasurer (“Carolina Blue”); Highway 31 and Edward Still in his official capacity as
6 treasurer (“Highway 31”); Red and Gold and Roy Herrera, Jr., in his official capacity as treasurer
7 (“Red and Gold”); Sunflower State and Jim Jesse in his official capacity as treasurer (“Sunflower
8 State”); and Texas Forever and Christopher R. Lippincott in his official capacity as treasurer
9 (“Texas Forever”).

10 As shown in the table below, each of the Recipient Committees received funds in varying
11 amounts from SMP, in one or more elections in which they also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC’d	First Contribution from SMP	First Independent Expenditure	Portion of Contributions from SMP	Active in Multiple Races or Cycles?
Carolina Blue ⁴	Feb. 6, 2020	Mar. 3, 2020, primary, U.S. Senate (NC)	Feb. 7, 2020	Feb. 7, 2020	99% (\$4.9 million)	No
Highway 31 ⁵	Nov. 6, 2017	Dec. 12, 2017, special, U.S. Senate (AL)	Nov. 24, 2017	Nov. 8, 2017	73% (\$3.2 million)	No

⁴ Carolina Blue, Statement of Organization at 1 (Feb. 6, 2020); Compl. ¶¶ 77-82; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00737890 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00737890&data_type=processed&q_spender=C00737890&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

⁵ Highway 31, Statement of Organization at 1 (Nov. 6, 2017); Compl. ¶¶ 89-95; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00659896 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00659896&data_type=processed&q_spender=C00659896&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from SMP	First Independent Expenditure	Portion of Contributions from SMP	Active in Multiple Races or Cycles?
Red and Gold ⁶	Aug. 1, 2018	Aug. 28, 2018, primary, U.S. Senate (AZ)	Aug. 1, 2018	Aug. 2, 2018	58% (\$1.7 million)	No
Sunflower State ⁷	July 13, 2020	Aug. 4, 2020, primary, U.S. Senate (KS)	July 14, 2020	July 14, 2020	67% (\$3.6 million)	No
Texas Forever ⁸	Oct. 19, 2018	Nov. 6, 2018, general, U.S. Senate (TX)	Oct. 25, 2018	Oct. 25, 2018	99% (\$2.35 million)	No

1 None of the Recipient Committees reported affiliated committees on their Statements of
2 Organization.⁹ In most cases, little is known about their staff, structure, and whether they
3 solicited contributions. For example, some Recipient Committees do not appear to have
4 websites,¹⁰ and for those that did, the websites have little or no information about the
5 organizations' staff or structures.¹¹ Only Highway 31 appears to have maintained a website that

⁶ Red and Gold, Statement of Organization at 1 (Aug. 1, 2018); Compl. ¶¶ 96-105; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00684209 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00684209&data_type=processed&spender=C00684209&is_notice=false&most_recent=true (last visited Oct. 31, 2022) (showing independent expenditures without date restriction).

⁷ Sunflower State, Statement of Organization at 1 (July 13, 2020); Compl. ¶¶ 68-76; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00751461 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00751461&data_type=processed&spender=C00751461&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁸ Texas Forever, Statement of Organization at 1 (Oct. 19, 2018); Compl. ¶¶ 83-88; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00689919 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00689919&data_type=processed&spender=C00689919&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁹ Carolina Blue, Statement of Organization at 3 (Feb. 6, 2020); Highway 31, Statement of Organization at 1 (Nov. 6, 2017); Red and Gold, Statement of Organization at 3 (Aug. 1, 2018); Sunflower State, Statement of Organization at 3 (July 13, 2020); Texas Forever, Statement of Organization at 3 (Oct. 19, 2018).

¹⁰ This is the case for Sunflower State and Texas Forever.

¹¹ This is the case for Carolina Blue and Highway 31. See CAROLINA BLUE, <https://www.cahrolina--blue.com/> (last visited Nov. 1, 2022); HIGHWAY 31, <https://www.highway31now.com> (Jan. 2, 2018)

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1 solicited contributions.¹² Some information, however, can be gleaned from public sources. For
2 instance, following the 2017 special election in Alabama, a spokesperson for SMP told the
3 *Associated Press* that SMP “was the contributor to Highway 31. There were a few small
4 donations when Highway 31 became public, but it was predominantly funded by SMP.”¹³
5 Additionally, SMP’s Chief Operating Officer informed the Commission in connection with a
6 different Matter Under Review that, in 2017, she served as an agent of both SMP and Highway
7 31.¹⁴ Finally, *Politico* reported that, following the 2020 Senate primary in Kansas, SMP’s
8 president, J.B. Poersch, “said that his group got involved after another pop-up super PAC, Plains
9 PAC[,] started spending in the race.”¹⁵

10 Additionally, as shown in the chart below, four of the five Recipient Committees returned
11 funds to SMP through contributions after the relevant elections, in some cases after receiving
12 post-election refunds from their vendors. Three of those Recipient Committees then terminated
13 their registrations with the Commission, as shown in the chart below.

[<https://web.archive.org/web/20180102132823/https://www.highway31now.com/>]. According to a Statement of Organization filed with the Commission, Red and Gold maintained a website at redandgold.info, but it is no longer available and does not appear to have been archived. See INTERNET ARCHIVE, <https://web.archive.org/web/2/http://redandgold.info/> (last visited Nov. 1, 2022) (showing that “[t]he Wayback Machine has not archived that URL” with respect to redandgold.info); Red and Gold, Statement of Organization at 1 (Aug. 1, 2018).

¹² HIGHWAY 31 (Dec. 2, 2017), <https://www.highway31now.com> [<https://web.archive.org/web/20171202214022/https://www.highway31now.com/>] (displaying a “Donate” button on its homepage).

¹³ Assoc’d. Press, *Mysterious Democratic-Funded ‘Highway 31’ Super PAC Spent \$4M to Defeat Moore in Alabama*, NBC NEWS (Dec. 27, 2017), <https://www.nbcnews.com/politics/elections/mysterious-democratic-funded-highway-31-super-pac-spent-4m-defeat-n832871> (cited in Compl. ¶ 92 n.117).

¹⁴ Second Gen. Counsel’s Rpt. at 5, MUR 7343 (Highway 31) (describing affidavit submitted by Karen Hancox).

¹⁵ 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> (cited in Compl. ¶ 73 n.91).

Recipient Committee	Relevant Election Dates	Post-Election Contributions to SMP	Post-Election Vendor Refunds ¹⁶	Post-Refund Contributions to SMP	Date of Termination Filing
Carolina Blue ¹⁷	Mar. 3, 2020	N/A	\$273.00 (Apr. 14, 2020)	\$350,000 (Oct. 26, 2020)	N/A
Red and Gold ¹⁸	Aug. 28, 2018	\$1.25 million (Oct. 2, 2018)	\$39,425.21 (Dec. 26, 2018)	\$39,000 (Jan. 2, 2019) \$317.52 (Jan. 9, 2019)	Jan. 31, 2019
Sunflower State ¹⁹	Aug. 4, 2020	N/A	\$1,366.60 (Aug. 27, 2020) \$36,210.85 (Oct. 14, 2020)	\$30,000 (Dec. 7, 2020) \$7,290.92 (Feb. 26, 2021)	Mar. 1, 2021
Texas Forever ²⁰	Nov. 6, 2018	\$58,000 (Nov. 16, 2018) \$867.98 (Jan. 9, 2019)	N/A	N/A	Jan. 31, 2019

1 SMP filed a Response in this matter jointly with Sunflower State, Carolina Blue,
2 Highway 31, and Red and Gold (“SMP Joint Response”).²¹ The SMP Joint Response contends
3 that none of the five Recipient Committees “had an overlap in officers or employees with SMP”
4 and none of them were solely funded by SMP.²² It states that three of the committees, Red and
5 Gold, Highway 31, and Sunflower State, received significant funding from sources other than

¹⁶ An entry of N/A in this column indicates that there was no post-election vendor refund that was followed by a refund to SMP. It does not indicate that the Recipient Committee received no vendor refunds after the relevant election.

¹⁷ Carolina Blue, 2020 30-Day Post-General Report at 7 (Dec. 3, 2020); Carolina Blue, 2020 May Monthly Report at 6 (May 20, 2020).

¹⁸ Red and Gold, 2018 12-Day Pre-General Report at 6 (Oct. 25, 2018); Red and Gold, 2018 Year-End Report at 6 (Jan. 31, 2019); Red and Gold, 2019 Termination Report at 1, 7 (Jan. 31, 2019).

¹⁹ Sunflower State, 2020 September Monthly Report at 6 (Sept. 20, 2020); Sunflower State, 2020 12-Day Pre-General Report at 6 (Oct. 22, 2020); Sunflower State, 2020 Year-End Report at 7 (Jan. 31, 2021); Sunflower State, 2021 Termination Report at 1, 6 (Mar. 1, 2021).

²⁰ Texas Forever, 2018 30-Day Post General Report at 8 (Dec. 6, 2018); Texas Forever, 2019 Termination Report at 1, 7 (Jan. 31, 2019).

²¹ SMP, Sunflower State, Carolina Blue, Highway 31, & Red and Gold Resp. (Sept. 7, 2021) (“SMP Joint Resp.”). The Response expressly states that it is not filed on behalf of Texas Forever and that Texas Forever’s “sole remaining point of contact,” its former treasurer, is deceased, although the SMP Joint Response does contain some arguments as to Texas Forever’s affiliation status. *Id.* at 1 n.1.

²² *Id.* at 3.

1 SMP.²³ Additionally, the SMP Joint Response argues that the SMP statements reported by the
2 *Associated Press* and *Politico* are insufficient to establish affiliation, and that the Complaint does
3 not present facts that would support an EFMC finding as to any of the Recipient Committees on
4 any other basis.²⁴

5 Finally, the SMP Joint Response also argues that affiliation reporting requirements “were
6 not intended [to], and as interpreted by the Commission do not apply” to IEOPCs.²⁵ It contends
7 that the alleged violations are “merely technical in nature,” each of the Recipient Committees
8 disclosed contributions according to the applicable deadlines, and, in any case, four of the five
9 Recipient Committee have now terminated.²⁶

10 III. LEGAL ANALYSIS

11 The Act and Commission regulations require every political committee to file a statement
12 of organization that includes “the name, address, relationship, and type of any connected
13 organization or affiliated committee.”²⁷ Political committee treasurers must file reports of

²³ *Id.* at 3-4.

²⁴ *Id.* at 8-10.

²⁵ *Id.* at 4.

²⁶ *Id.* at 11.

²⁷ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

1 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.²⁸ The
2 reports must include, among other information, transfers to and from affiliated committees.²⁹
3 Commission regulations identify certain entities that are per se affiliated, such as
4 organizations that are established, financed, maintained, or controlled by a single corporation or
5 its subsidiaries, or by the same person or group of persons.³⁰ Outside of per se affiliation, the
6 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the
7 context of the overall relationship between committees, to determine if they are affiliated.³¹ The
8 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
9 funds or goods in a significant amount or on an ongoing basis to another committee, such as
10 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
11 arranges for funds in a significant amount to be provided to another committee; (3) whether the
12 committees have similar patterns of contributions or contributors indicating a formal or ongoing
13 relationship between the committees; (4) whether a committee has authority or ability to direct or
14 participate in the governance of another committee; and (5) whether a committee had an active
15 or significant role in the formation of another committee.³²

²⁸ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²⁹ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

³⁰ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

³¹ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

³² 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another

1 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

2 The Act plainly states that every political committee must file a statement of
3 organization, which “shall include” information regarding any affiliated committees, and that
4 committee reports “shall disclose” transfers to and from affiliated committees.³³ Nevertheless,
5 Respondents in this matter argue that, for policy reasons, the affiliation reporting requirements
6 do not apply.³⁴ The Commission is also aware of an argument that the requirements do not apply
7 because it has not promulgated regulations on reporting requirements for IEOPCs or the non-
8 contribution accounts of hybrid PACs. Critically, however, both the text of the Act and
9 Commission regulations require affiliation reporting by all political committees without
10 exception, resulting in unambiguous legal requirements that directly contravene these policy
11 arguments.³⁵

12 Respondents contend that the current concept of affiliation was created in the 1976
13 amendments to the Act as part of Congress’s anti-proliferation effort to prevent circumvention of
14 contribution limits.³⁶ They point to a 1989 Explanation and Justification (“E&J”) for revisions
15 to the affiliation regulations, in which the Commission described three consequences that flow
16 from affiliation: (1) affiliated committees share a common contribution limit as to contributions
17 they make or receive; (2) there is no limit on transfers of funds between affiliated committees;

committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R.
§ 100.5(g)(4)(ii)(A), (C)-(F).

³³ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986)
(stating that “it is elementary that an agency must adhere to its own rules and regulations”).

³⁴ SMP Joint Resp. at 4-6.

³⁵ 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the
“name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2
(same).

³⁶ SMP Joint Resp. at 4-5.

1 and (3) an affiliation determination affects the ability of a corporation or federation of trade
2 associations to solicit some categories of individuals.³⁷ Respondents assert that the
3 consequences discussed in the E&J are inapplicable to IEOPCs.³⁸ Accordingly, they assert that
4 there is no valid reason for the Commission to apply the Act’s affiliation reporting requirements
5 to them.³⁹

6 This argument, however, has a number of flaws. First, it contravenes the Act’s express
7 requirement that all political committees file a statement of organization that “shall include”
8 information on any affiliated committee, thereby urging the Commission to act contrary to the
9 plain text of the law passed by Congress.⁴⁰ Respondents registered with the Commission as
10 political committees, and neither the Act nor Commission regulations provide an exemption
11 from the statement of organization requirements based on committee type.

12 Second, Respondents’ suggestion that affiliation reporting exists only to facilitate
13 enforcement of contribution limits is not supported by the historical record. The requirement to
14 report affiliation pre-dated the 1976 anti-proliferation amendments referenced by Respondents.⁴¹
15 The original 1971 Act, while not defining affiliation, nevertheless required that political
16 committees file a statement of organization including “the names, addresses, and relationships of

³⁷ *Id.* at 11 (citing *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

³⁸ *Id.*

³⁹ SMP Joint Resp. at 5-6.

⁴⁰ 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

⁴¹ SMP Joint Resp. at 4 (acknowledging that affiliation predated these amendments).

1 affiliated or connected organizations.”⁴² Additionally, once the Commission promulgated a
2 regulation defining affiliated committee, it did not tie that definition exclusively to the anti-
3 proliferation regulations, as Respondents’ policy arguments might suggest. Rather, the
4 Commission created a free-standing definition of affiliated committee and explained that it
5 “parallels the definition in § 110.3,” which was the regulation that implemented the anti-
6 proliferation provisions.⁴³ Had the Commission understood the concept of affiliation to have no
7 purpose beyond its anti-proliferation goals, this second, parallel definition, would have been
8 superfluous.

9 Further, the Commission’s current regulations suggest that affiliation reporting for
10 statements of organization, in particular, is not dependent on a committee’s status under the anti-
11 proliferation provisions. The regulation governing statements of organization instructs
12 registrants to report their affiliated committees “in accordance with paragraph (b) of this
13 section.”⁴⁴ Paragraph (b), in turn, states that an affiliated committee includes any committee

⁴² *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. See Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

⁴³ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); see *id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

⁴⁴ 11 C.F.R. § 102.2(a)(1)(ii).

1 defined in several specific provisions of the regulations.⁴⁵ These include 11 C.F.R. § 110.3,
2 which contains the anti-proliferation provisions and describes committees to which they apply,⁴⁶
3 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
4 “affiliated committee” that resides outside the anti-proliferation regulation.⁴⁷ Had the
5 Commission understood the Act to require affiliation reporting only when a committee’s
6 activities are affected by the anti-proliferation provisions, there would have been no need to also
7 reference Section 100.5(g).

8 Finally, the E&J that Respondents rely on does discuss certain “consequences” of
9 affiliation, but the legal determination of whether committees are affiliated does not depend on
10 the downstream effects that determination may have. Rather, as described above, the
11 Commission’s regulations provide the legal test to determine whether committees are affiliated,
12 which includes a determination of whether a committee is established, financed, maintained, or
13 controlled by another committee.⁴⁸

14 The Commission is also aware of arguments, some raised by Respondents, asserting
15 concerns about notice and due process because allegedly it is a common and public practice for
16 IEOPCs to contribute to each other, in some cases providing a majority of the recipient’s
17 funding, and the Commission has not previously raised concerns or suggested that the affiliation
18 rules apply.⁴⁹ However, the notion that affiliation reporting among IEOPCs is somehow
19 unprecedented is not correct. In fact, SMP acknowledges that in 2020 it reported being affiliated

⁴⁵ *Id.* § 102.2(b).

⁴⁶ *Id.* § 110.3(a), (b).

⁴⁷ *Id.* § 100.5(g).

⁴⁸ *Id.* § 100.5(g).

⁴⁹ *See* SMP Joint Resp. at 5-6.

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1 with two other IEOPCs that are not Respondents in this matter.⁵⁰ Additionally, the U.S. Court of
2 Appeals for the District of Columbia made clear in 2010 in *SpeechNow v. FEC* that the reporting
3 requirements of 52 U.S.C. § 30103, which includes the requirement to report affiliation on a
4 statement of organization, can constitutionally be applied to political committees that make only
5 independent expenditures.⁵¹

6 Respondents point to an advisory opinion in which the Commission considered a request
7 from a 501(c)(4) non-profit organization, with an existing separate segregated fund (“SSF”), that
8 was seeking to establish an IEOPC, and the Commission permitted that organization to establish
9 and administer the IEOPC with no discussion of treating the IEOPC as affiliated with the SSF.⁵²
10 They argue that this absence of discussion reflects the Commission’s understanding that
11 affiliation rules do not apply to IEOPCs.⁵³ However, the cited advisory opinion does not
12 indicate that the Commission considered the question of affiliation reporting, and it is clearly
13 limited to “the specific transaction or activity set forth in [the] request.”⁵⁴ Thus, the
14 Commission’s silence on the issue of affiliation does not appear to have the significance
15 Respondents suggest.

⁵⁰ *Id.* at 4; Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

⁵¹ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

⁵² SMP Joint Resp. at 5-6 (discussing Advisory Opinion 2010-09(Club for Growth) (“AO 2010-09”).

⁵³ *See id.*

⁵⁴ AO 2010-09 at 6.

1 Accordingly, to the extent that Respondents are affiliated based on the EFMC analysis,
2 they were required to disclose each other as affiliated organizations and properly record the
3 transfers they made and received.

4 **B. The Commission Finds Reason to Believe that SMP EFMC'd Some Recipient**
5 **Committees and Dismisses the Allegations as to the Remaining Committee**

6 The Complaint's allegations that the Contributor Committees EFMC'd the relevant
7 Recipient Committees are largely based on the financial relationships between those two groups.
8 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
9 funds from specific Contributor Committees;⁵⁵ (2) Contributor Committees funding Recipient
10 Committees close in time to their registration with the Commission or the dates of their
11 independent expenditures;⁵⁶ and (3) Recipient Committees appearing to return unspent funds to
12 Contributor Committees after elections.⁵⁷ The Complaint alleges that these factors, considered
13 in the context of the overall relationships between the Contributor and Recipient Committees, are
14 sufficient to establish affiliation through an EFMC analysis.⁵⁸

15 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
16 committee establishes, finances, maintains, *or* controls another.⁵⁹ As discussed above, there is
17 relatively little publicly available information about SMP's Recipient Committees; except for a
18 common agent between SMP and Highway 31, there is little information on their staffs or

⁵⁵ *E.g.*, Compl. ¶¶ 19, 25, 75.

⁵⁶ *E.g.*, *id.* ¶¶ 25, 75, 87.

⁵⁷ *E.g.*, *id.* ¶¶ 25, 81, 87.

⁵⁸ *E.g.*, *id.* ¶¶ 87, 94.

⁵⁹ 11 C.F.R. § 100.5(g)(2).

1 structures that could inform an EFMC analysis.⁶⁰ Therefore, the Commission’s analysis at this
2 stage of the matter focuses on the Committees’ disclosed financial transactions. The available
3 information indicates that the degree to which SMP funded some Recipient Committees,
4 considering the overall context of their relationships, was sufficient to trigger affiliation
5 reporting requirements.

6 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
7 the financial relationships between committees, specifically whether a committee (1) “provides
8 funds or goods in a significant amount or on an ongoing basis” to another committee, such as
9 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
10 significant amount or on an ongoing basis to be provided” to another committee.⁶¹

11 The Commission determines what constitutes a “significant amount” on a case-by-case
12 basis, considering all relevant circumstances.⁶² In MUR 5367 (Congressman Darrell Issa), the
13 Commission determined that a respondent had donated or caused to be donated funds in a
14 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
15 his company donated \$1.845 million through regular donations, ultimately providing more than
16 60% of the ballot committee’s total reported receipts.⁶³ In Advisory Opinion 2006-04

⁶⁰ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members” of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committees.

⁶¹ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

⁶² Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

⁶³ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the

1 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
2 committee’s total receipts at the time of the donation “must be considered ‘a significant
3 amount’” and would result in the donating candidate committee “financing” the committee.⁶⁴

4 At the outset, it appears that all of SMP’s Recipient Committees received well in excess
5 of 50% of their contributions from SMP, not merely at the time of contribution, but over the life-
6 to-date of the committees, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
Carolina Blue	SMP	99%	All time
Highway 31	SMP	73%	All time
Red and Gold	SMP	58%	All time
Sunflower State	SMP	67%	All time
Texas Forever	SMP	99%	All time

7 The Commission’s regulations also state, however, that the Commission will consider the
8 “context of the overall relationship” between committees in determining if the “presence of any
9 factor or factors” is evidence that one committee has EFMC’d another.⁶⁵ Here, the available
10 information about the relationships between SMP and certain Recipient Committees strongly
11 suggests that the Recipient Committees were created and funded for the limited purpose of
12 carrying out SMP’s goals in particular elections — in effect, SMP was acting through the
13 Recipient Committees.

affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

⁶⁴ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

⁶⁵ 11 C.F.R. § 100.5(g)(4)(ii).

1 This dynamic is evidenced most strongly in SMP’s relationships with Carolina Blue, Red
2 and Gold, Sunflower State, and Texas Forever. In each instance, the Recipient Committee was
3 active in a single election; received significant funds from SMP relatively close in time to that
4 election; the available information does not indicate that the Recipient Committee solicited
5 contributions from other sources, such as through a committee website; and the Recipient
6 Committee appeared to return leftover funds, whether from vendor refunds or remaining cash on
7 hand, to SMP after the relevant election took place.⁶⁶ Although none of these factors are
8 individually necessary for a finding that one Respondent financed another, they are suggestive of
9 overall relationships in which SMP had significant responsibility for the finances of the
10 Recipient Committees and, perhaps, may even have played a role in establishing, maintaining, or
11 controlling their operations. Accordingly, these facts appear to indicate that SMP EFMC’d the
12 corresponding Recipient Committees. Therefore, the Commission finds reason to believe that
13 SMP, Carolina Blue, Red and Gold, and Sunflower State violated 52 U.S.C. § 30103(b)(2) and
14 11 C.F.R. § 102.2(a)(ii) by failing to report affiliated committees on their Statements of
15 Organization and violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly
16 report receipts and disbursements as transfers to and from affiliated committees.⁶⁷

⁶⁶ *Supra* Part II.

⁶⁷ Red and Gold and Sunflower State have terminated their registrations with the Commission. *Supra* notes 18-19. The fact that a committee has terminated has not prevented the Commission from considering possible enforcement action. *See, e.g.*, First Gen. Counsel’s Rpt. at 1 n.1, MUR 7343 (Highway 31, *et al.*); Certification ¶ 1 (July 29, 2019), MUR 7343 (Highway 31, *et al.*) (making reason-to-believe findings against terminated committee); *see also* First Gen. Counsel’s Rpt. at 1 n.1, MUR 7336 (Mulvaney for Congress) (noting Commission’s ability to consider allegations against a terminated committee); First Gen. Counsel’s Rpt. at 7 n.4, MUR 6790 (Coakley for Senate) (discussing Commission’s history of considering allegations against terminated committees). Termination signals the cessation of reporting obligations but does not deprive the Commission of jurisdiction. When a committee’s termination is approved, the Commission advises that pursuant to 52 U.S.C. § 30102(d) and 11 C.F.R. §§ 102.9(c) and 104.14(b)(3) the terminating committee must maintain records and reports for inspection for at least three years and “may be required to respond to Commission requests for information regarding [its] federal election activity and previously filed reports.” *See* Red and Gold, Termination Approval Ltr. (Feb. 5, 2019); Sunflower State, Termination Approval Ltr. (Mar. 15, 2021); Texas Forever, Termination Approval Ltr. (Feb. 12, 2019).

1 For the remaining Respondent, Highway 31, some aspects of its relationship with SMP
2 could point to affiliation, but there is comparatively less compelling detail suggesting it was
3 merely a vehicle to quickly spend SMP's funds in a specific election. In particular, it is notable
4 that Highway 31 appears to have solicited contributions through its website and did not return
5 funds to SMP after the 2017 special election.⁶⁸

6 While it is possible that additional information about Highway 31's contacts with SMP
7 would satisfy other factors in the EFMC analysis, in light of the minimal information currently
8 available, the Commission exercises its prosecutorial discretion to dismiss the allegations that
9 Highway 31 violated 52 U.S.C. § 30103(b) and 11 C.F.R. § 102.2(a) by failing to report an
10 affiliated committee on its Statement of Organization and 52 U.S.C. § 30104(b) and 11 C.F.R.
11 § 104.3 by failing to properly report receipts and disbursements as transfers to and from an
12 affiliated committee.⁶⁹

⁶⁸ *Supra* Part II.

⁶⁹ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Texas Forever and Christopher R. Lippincott MUR 7912
in his official capacity as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures. The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

The available information indicates that one of the Contributor Committees, SMP, EFMC’d Recipient Committee Texas Forever, and that neither committee reported affiliation with or transfers to and from each other. However, after considering the available information, the Commission exercises its prosecutorial discretion to dismiss the allegations that Texas Forever violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated committee on its Statement of Organization, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements.

1 **II. FACTUAL BACKGROUND**

2 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
3 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
4 Complaint suggests that the Contributor Committees did so primarily by helping to form the
5 Recipient Committees and providing all or most of the funds the Recipient Committees raised
6 during the relevant election cycles, thus allowing the Contributor Committees to control
7 spending in elections but delay disclosing their own involvement.² In some instances, the
8 Complaint alleges that the contributions were “strategically timed” so that the public would not
9 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
10 voters of important information about who was spending to influence their votes.”³ The
11 Complaint focuses on the financial relationships between the Contributor and Recipient
12 Committees, and the degree to which the available information suggests that the Contributor
13 Committees played a role in the formation and governance of the Recipient Committees.

14 The Complaint alleges that SMP and Rebecca Lambe in her official capacity as treasurer
15 (“SMP”) EFMC'd five Recipient Committees, among them Texas Forever and Christopher R.
16 Lippincott in his official capacity as treasurer (“Texas Forever”). As shown in the table below,
17 Texas Forever received funds from SMP in an election in which it also made independent
18 expenditures.

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

³ *Id.* ¶ 2.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from SMP	First Independent Expenditure	Portion of Contributions from SMP	Active in Multiple Races or Cycles?
Texas Forever ⁴	Oct. 19, 2018	Nov. 6, 2018, general, U.S. Senate (TX)	Oct. 25, 2018	Oct. 25, 2018	99% (\$2.35 million)	No

1 Texas Forever did not report affiliated committees on its Statement of Organization, and
2 little is known about its staff, structure, and whether it solicited contributions.⁵ For example,
3 Texas Forever does not appear to have a website. Additionally, as shown in the chart below,
4 Texas Forever returned funds to SMP through a contribution after the relevant election, and then
5 terminated its registration with the Commission.

Recipient Committee	Relevant Election Dates	Post-Election Contributions to SMP	Post-Election Vendor Refunds ⁶	Post-Refund Contributions to SMP	Date of Termination Filing
Texas Forever ⁷	Nov. 6, 2018	\$58,000 (Nov. 16, 2018) \$867.98 (Jan. 9, 2019)	N/A	N/A	Jan. 31, 2019

6 Texas Forever did not file a Response in this matter.

7 III. LEGAL ANALYSIS

8 The Act and Commission regulations require every political committee to file a statement
9 of organization that includes “the name, address, relationship, and type of any connected

⁴ Texas Forever, Statement of Organization at 1 (Oct. 19, 2018); Compl. ¶¶ 83-88; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00689919 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00689919&data_type=processed&q_spender=C00689919&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁵ Texas Forever, Statement of Organization at 3 (Oct. 19, 2018).

⁶ An entry of N/A in this column indicates that there was no post-election vendor refund that was followed by a refund to SMP. It does not indicate that the Recipient Committee received no vendor refunds after the relevant election.

⁷ Texas Forever, 2018 30-Day Post General Report at 8 (Dec. 6, 2018); Texas Forever, 2019 Termination Report at 1, 7 (Jan. 31, 2019).

1 organization or affiliated committee.”⁸ Political committee treasurers must file reports of
2 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.⁹ The reports
3 must include, among other information, transfers to and from affiliated committees.¹⁰

4 Commission regulations identify certain entities that are per se affiliated, such as
5 organizations that are established, financed, maintained, or controlled by a single corporation or
6 its subsidiaries, or by the same person or group of persons.¹¹ Outside of per se affiliation, the
7 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the
8 context of the overall relationship between committees, to determine if they are affiliated.¹² The
9 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
10 funds or goods in a significant amount or on an ongoing basis to another committee, such as
11 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
12 arranges for funds in a significant amount to be provided to another committee; (3) whether the
13 committees have similar patterns of contributions or contributors indicating a formal or ongoing

⁸ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

⁹ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁰ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

¹¹ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

¹² 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

1 relationship between the committees; (4) whether a committee has authority or ability to direct or
2 participate in the governance of another committee; and (5) whether a committee had an active
3 or significant role in the formation of another committee.¹³

4 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

5 The Act plainly states that every political committee must file a statement of
6 organization, which “shall include” information regarding any affiliated committees, and that
7 committee reports “shall disclose” transfers to and from affiliated committees.¹⁴ Nevertheless,
8 the Commission is aware of arguments that the affiliation reporting requirements do not apply,
9 either for policy reasons or because the Commission has not promulgated regulations on
10 reporting requirements for IEOPCs or the non-contribution accounts of hybrid PACs. Critically,
11 however, both the text of the Act and Commission regulations require affiliation reporting by all
12 political committees without exception, resulting in unambiguous legal requirements that directly
13 contravene these arguments.¹⁵

14 The Commission is aware of arguments asserting that the current concept of affiliation
15 was created in the 1976 amendments to the Act as part of Congress’s anti-proliferation effort to
16 prevent circumvention of contribution limits. A 1989 Explanation and Justification (“E&J”) for

¹³ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

¹⁴ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

¹⁵ 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

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1 revisions to the affiliation regulations described three consequences that flow from affiliation:
2 (1) affiliated committees share a common contribution limit as to contributions they make or
3 receive; (2) there is no limit on transfers of funds between affiliated committees; and (3) an
4 affiliation determination affects the ability of a corporation or federation of trade associations to
5 solicit some categories of individuals.¹⁶ The Commission is aware of an argument asserting that
6 the consequences discussed in the E&J are inapplicable to IEOPCs and, accordingly, there is no
7 valid reason for the Commission to apply the Act’s affiliation reporting requirements to them.

8 These arguments, however, have a number of flaws. First, they contravene the Act’s
9 express requirement that all political committees file a statement of organization that “shall
10 include” information on any affiliated committee, thereby urging the Commission to act contrary
11 to the plain text of the law passed by Congress.¹⁷ Texas Forever registered with the Commission
12 as a political committee, and neither the Act nor Commission regulations provide an exemption
13 from the statement of organization requirements based on committee type.

14 Second, the suggestion that affiliation reporting exists only to facilitate enforcement of
15 contribution limits is not supported by the historical record. The requirement to report affiliation
16 pre-dated the 1976 anti-proliferation amendments. The original 1971 Act, while not defining
17 affiliation, nevertheless required that political committees file a statement of organization

¹⁶ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

¹⁷ 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

1 including “the names, addresses, and relationships of affiliated or connected organizations.”¹⁸
2 Additionally, once the Commission promulgated a regulation defining affiliated committee, it
3 did not tie that definition exclusively to the anti-proliferation regulations. Rather, the
4 Commission created a free-standing definition of affiliated committee and explained that it
5 “parallels the definition in § 110.3,” which was the regulation that implemented the anti-
6 proliferation provisions.¹⁹ Had the Commission understood the concept of affiliation to have no
7 purpose beyond its anti-proliferation goals, this second, parallel definition, would have been
8 superfluous.

9 Further, the Commission’s current regulations suggest that affiliation reporting for
10 statements of organization, in particular, is not dependent on a committee’s status under the anti-
11 proliferation provisions. The regulation governing statements of organization instructs
12 registrants to report their affiliated committees “in accordance with paragraph (b) of this
13 section.”²⁰ Paragraph (b), in turn, states that an affiliated committee includes any committee

¹⁸ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. See Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

¹⁹ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); see *id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

²⁰ 11 C.F.R. § 102.2(a)(1)(ii).

1 defined in several specific provisions of the regulations.²¹ These include 11 C.F.R. § 110.3,
2 which contains the anti-proliferation provisions and describes committees to which they apply,²²
3 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
4 “affiliated committee” that resides outside the anti-proliferation regulation.²³ Had the
5 Commission understood the Act to require affiliation reporting only when a committee’s
6 activities are affected by the anti-proliferation provisions, there would have been no need to also
7 reference Section 100.5(g).

8 Finally, the E&J does discuss certain “consequences” of affiliation, but the legal
9 determination of whether committees are affiliated does not depend on the downstream effects
10 that determination may have. Rather, as described above, the Commission’s regulations provide
11 the legal test to determine whether committees are affiliated, which includes a determination of
12 whether a committee is established, financed, maintained, or controlled by another committee.²⁴

13 The Commission is also aware of arguments asserting concerns about notice and due
14 process because allegedly it is a common and public practice for IEOPCs to contribute to each
15 other, in some cases providing a majority of the recipient’s funding, and the Commission has not
16 previously raised concerns or suggested that the affiliation rules apply. However, the notion that
17 affiliation reporting among IEOPCs is somehow unprecedented is not correct. In fact, the
18 Contributor Committee that allegedly EFMC’d Texas Forever, SMP, reported being affiliated

²¹ *Id.* § 102.2(b).

²² *Id.* § 110.3(a), (b).

²³ *Id.* § 100.5(g).

²⁴ *Id.* § 100.5(g).

1 with two other IEOPCs in 2020.²⁵ Additionally, the U.S. Court of Appeals for the District of
2 Columbia made clear in 2010 in *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C.
3 § 30103, which includes the requirement to report affiliation on a statement of organization, can
4 constitutionally be applied to political committees that make only independent expenditures.²⁶

5 Finally, the Commission is aware of arguments that, in prior advisory opinions, it
6 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
7 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
8 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs
9 as affiliated with the SSFs.²⁷ This absence of discussion allegedly reflects the Commission’s
10 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
11 not indicate that the Commission considered the question of affiliation reporting, and each of the
12 opinions is clearly limited to “the specific transaction or activity set forth in [the] request.”²⁸
13 Thus, the Commission’s silence on the issue of affiliation does not appear to have the
14 significance this argument suggests.

15 Accordingly, to the extent that Texas Forever was affiliated with SMP based on the
16 EFMC analysis, it was required to disclose SMP as an affiliated organization and properly record
17 the transfers it made and received.

²⁵ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

²⁶ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

²⁷ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

²⁸ AO 2010-09 at 6; AO 2012-18 at 3.

1 **B. The Commission Dismisses the Allegations as to Texas Forever**

2 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
3 Recipient Committees are largely based on the financial relationships between those two groups.
4 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
5 funds from specific Contributor Committees;²⁹ (2) Contributor Committees funding Recipient
6 Committees close in time to their registration with the Commission or the dates of their
7 independent expenditures;³⁰ and (3) Recipient Committees appearing to return unspent funds to
8 Contributor Committees after elections.³¹ The Complaint alleges that these factors, considered
9 in the context of the overall relationships between the Contributor and Recipient Committees, are
10 sufficient to establish affiliation through an EFMC analysis.³²

11 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
12 committee establishes, finances, maintains, *or* controls another.³³ As discussed above, there is
13 relatively little publicly available information about Texas Forever that could inform an EFMC
14 analysis.³⁴ Therefore, the Commission’s analysis at this stage of the matter focuses on Texas
15 Forever’s disclosed financial transactions. The available information indicates that the degree to

²⁹ *E.g.*, Compl. ¶¶ 19, 25, 75.

³⁰ *E.g.*, *id.* ¶¶ 25, 75, 87.

³¹ *E.g.*, *id.* ¶¶ 25, 81, 87.

³² *E.g.*, *id.* ¶¶ 87, 94.

³³ 11 C.F.R. § 100.5(g)(2).

³⁴ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members” of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of a Recipient Committee.

1 which SMP funded Texas Forever, considering the overall context of their relationship, was
2 sufficient to trigger affiliation reporting requirements.

3 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
4 the financial relationships between committees, specifically whether a committee (1) “provides
5 funds or goods in a significant amount or on an ongoing basis” to another committee, such as
6 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
7 significant amount or on an ongoing basis to be provided” to another committee.³⁵

8 The Commission determines what constitutes a “significant amount” on a case-by-case
9 basis, considering all relevant circumstances.³⁶ In MUR 5367 (Congressman Darrell Issa), the
10 Commission determined that a respondent had donated or caused to be donated funds in a
11 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
12 his company donated \$1.845 million through regular donations, ultimately providing more than
13 60% of the ballot committee’s total reported receipts.³⁷ In Advisory Opinion 2006-04
14 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot

³⁵ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

³⁶ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

³⁷ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

1 committee’s total receipts at the time of the donation “must be considered ‘a significant
2 amount’” and would result in the donating candidate committee “financing” the committee.³⁸

3 At the outset, it appears that Texas Forever received well in excess of 50% of its
4 contributions from SMP over the life-to-date of the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
Texas Forever	SMP	99%	All time

5 The Commission’s regulations also state, however, that the Commission will consider the
6 “context of the overall relationship” between committees in determining if the “presence of any
7 factor or factors” is evidence that one committee has EFMC’d another.³⁹ Here, the available
8 information about the relationship between Texas Forever and SMP strongly suggests that Texas
9 Forever was created and funded for the limited purpose of carrying out SMP’s goals in a
10 particular election — in effect, SMP was acting through Texas Forever. Specifically, Texas
11 Forever was active in a single election; received significant funds from SMP relatively close in
12 time to that election; the available information does not indicate that Texas Forever solicited
13 contributions from other sources, such as through a committee website; and Texas Forever
14 appeared to return leftover funds to SMP after the relevant election took place.⁴⁰ Although none
15 of these factors are individually necessary for a finding that SMP financed Texas Forever, they
16 are suggestive of an overall relationship in which SMP had significant responsibility for the
17 finances of Texas Forever and, perhaps, may even have played a role in establishing,

³⁸ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

³⁹ 11 C.F.R. § 100.5(g)(4)(ii).

⁴⁰ *Supra* Part II.

1 maintaining, or controlling its operations. Accordingly, these facts appear to indicate that SMP
2 EFMC'd Texas Forever.⁴¹

3 However, although the available information would support a reason-to-believe finding
4 as to Texas Forever, the Commission possesses information that the committee's treasurer and
5 apparent last remaining point of contact is deceased. The Commission therefore exercises its
6 prosecutorial discretion to dismiss the allegations that Texas Forever violated 52 U.S.C.
7 § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated committee on its
8 Statement of Organization and violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to
9 properly report receipts and disbursements as transfers to and from an affiliated committee.⁴²

⁴¹ Texas Forever has terminated its registration with the Commission. *Supra* note 7. The fact that a committee has terminated has not prevented the Commission from considering possible enforcement action. *See, e.g.*, First Gen. Counsel's Rpt. at 1 n.1, MUR 7343 (Highway 31, *et al.*); Certification ¶ 1 (July 29, 2019), MUR 7343 (Highway 31, *et al.*) (making reason-to-believe findings against terminated committee); *see also* First Gen. Counsel's Rpt. at 1 n.1, MUR 7336 (Mulvaney for Congress) (noting Commission's ability to consider allegations against a terminated committee); First Gen. Counsel's Rpt. at 7 n.4, MUR 6790 (Coakley for Senate) (discussing Commission's history of considering allegations against terminated committees). Termination signals the cessation of reporting obligations but does not deprive the Commission of jurisdiction. When a committee's termination is approved, the Commission advises that pursuant to 52 U.S.C. § 30102(d) and 11 C.F.R. §§ 102.9(c) and 104.14(b)(3) the terminating committee must maintain records and reports for inspection for at least three years and "may be required to respond to Commission requests for information regarding [its] federal election activity and previously filed reports." *See* Liberty SC, 2021 Termination Approval Ltr. (Mar. 10, 2021); Mountain Families PAC, Termination Approval Ltr. (May 31, 2018); Red and Gold, Termination Approval Ltr. (Feb. 5, 2019); Sunflower State, Termination Approval Ltr. (Mar. 15, 2021); Texas Forever, Termination Approval Ltr. (Feb. 12, 2019).

⁴² *See Heckler v. Chaney*, 470 U.S. 821 (1985); F&LA at 8 n.33, MUR 7824 (Letlow for Congress, *et al.*) (stating that "[t]he Commission has generally not pursued deceased respondents in enforcement matters"); Second Gen. Counsel's Rpt. at 7 & Cert. ¶ 1 (Apr. 27, 2012), MUR 6249 (Karen L. Pletz, *et al.*) (taking no further action as to primary respondent because she was deceased).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Congressional Leadership Fund and Caleb MUR 7912
Crosby in his official capacity as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures.¹ The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

Congressional Leadership Fund, a Contributor Committee, denies violating the Act and puts forward a variety of arguments, most prominently that affiliation reporting requirements should not apply to it. Congressional Leadership Fund contends that the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that such limits do not apply to IEOPCs because they may solicit funds in unlimited amounts.

The available information indicates Congressional Leadership Fund made significant contributions to three Recipient Committees, and that it did not report affiliation with or transfers to and from those committees. However, after considering the available information, the

¹ Although Congressional Leadership Fund was an IEOPC at the time of the relevant allegations, it has since become a hybrid PAC. Congressional Leadership Fund, Amended Statement of Organization at 5 (Dec. 18, 2020) (declaring hybrid PAC status).

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1 Commission exercises its prosecutorial discretion to dismiss the allegations that Congressional
2 Leadership Fund violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to
3 report affiliated committees on its Statement of Organization, and 52 U.S.C. § 30104(b) and 11
4 C.F.R. § 104.3 by failing to properly report receipts and disbursements.

5 **II. FACTUAL BACKGROUND**

6 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
7 one or more of the Recipient Committees during the 2018 or 2020 election cycles.² The
8 Complaint suggests that the Contributor Committees did so primarily by helping to form the
9 Recipient Committees and providing all or most of the funds the Recipient Committees raised
10 during the relevant election cycles, thus allowing the Contributor Committees to control
11 spending in elections but delay disclosing their own involvement.³ In some instances, the
12 Complaint alleges that the contributions were “strategically timed” so that the public would not
13 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
14 voters of important information about who was spending to influence their votes.”⁴ The
15 Complaint focuses on the financial relationships between the Contributor and Recipient
16 Committees, and the degree to which the available information suggests that the Contributor
17 Committees played a role in the formation and governance of the Recipient Committees.

18 The Complaint alleges that Congressional Leadership Fund and Caleb Crosby in his
19 official capacity as treasurer (“CLF”) EFMC'd three Recipient Committees: American Future
20 Fund Political Action and Chris Marston in his official capacity as treasurer (“AFFPA”); Illinois

² Compl. ¶¶ 1, 3 (July 15, 2021).

³ *Id.* ¶¶ 1-3.

⁴ *Id.* ¶ 2.

1 Conservatives PAC and Kim Ledesma in her official capacity as treasurer (“Illinois
2 Conservatives PAC”); and Lone Star Values PAC and Maria Wojciechowski in her official
3 capacity as treasurer (“Lone Star Values PAC”).

4 As shown in the table below, each of the Recipient Committees received funds in varying
5 amounts from CLF in one or more elections in which they also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from CLF	First Independent Expenditure	Portion of Contributions from CLF	Active in Multiple Races or Cycles?
AFFPA ⁵	May 7, 2008	June 5, 2018, primary, U.S. House (CA-39, 48, 49) Aug. 2, 2018, primary, U.S. House (TN-06) Nov. 6, 2018, general, U.S. House (CA-10, 36, 39, 48; IA-03)	May 22, 2018	May 22, 2018	78% (\$1.4 million)	Yes
Illinois Conservatives PAC ⁶	Mar. 2, 2020	Mar. 17, 2020, primary, U.S. House (IL-14)	Mar. 4, 2020	Mar. 5, 2020	100% (\$911,000)	No

⁵ AFFPA, Statement of Organization at 1 (May 7, 2008); *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?two_year_transaction_period=2018&committee_id=C00449926&data_type=processed (last visited Nov. 1, 2022) (showing receipts for the period 2017-2018); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00449926&data_type=processed&q_spender=C00449926&cycle=2018&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures for the period 2017-2018).

⁶ Illinois Conservatives PAC, Statement of Organization at 1 (Mar. 2, 2020); Compl. ¶¶ 106-120; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00740662 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00740662&data_type=processed&q_spender=C00740662&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from CLF	First Independent Expenditure	Portion of Contributions from CLF	Active in Multiple Races or Cycles?
Lone Star Values PAC ⁷	Feb. 9, 2018	Mar. 3, 2020, primary, U.S. House (TX-7)	Feb. 24, 2020	Feb. 24, 2020	100% (\$75,000)	Yes

1 None of the Recipient Committees reported affiliated committees on their Statements of
2 Organization,⁸ and there is little known about their staff, structures, and whether they solicited
3 contributions. For example, Illinois Conservatives PAC and Lone Star Values PAC do not
4 appear to have websites and it is unclear whether or how they may have solicited contributions.
5 AFFPA's website contains a link to contribute to the committee but does not appear to provide
6 information on AFFPA's structure or staff.⁹

7 None of the Recipient Committees reported contributing funds back to CLF, and there
8 does not appear to be public reporting that further illuminates the relationships between CLF and
9 Illinois Conservatives PAC or Lone Star Values PAC. As to AFFPA, on June 5, 2018, *Politico*
10 reported that CLF was "secretly pick[ing] favorites" in three upcoming primaries in California
11 and that, according to a CLF official, the committee had "funneled" funds to AFFPA after seeing
12 polls indicating a risk that no Republicans would advance to the 2018 general election in certain
13 California congressional races.¹⁰ The next day, CLF tweeted that "[b]y partnering with

⁷ Lone Star Values PAC, Statement of Organization at 1 (Feb. 9, 2018); Compl. ¶¶ 121-125; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00669325 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00669325&data_type=processed&q_spender=C00669325&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁸ Illinois Conservatives PAC, Statement of Organization at 3 (Mar. 2, 2020); AFFPA, Amended Statement of Organization at 3, (Mar. 12, 2014); Lone Star Values PAC, Statement of Organization at 3 (Feb. 9, 2018).

⁹ AFFPA, <https://affpa.com/> (last visited Nov. 1, 2022).

¹⁰ Alex Isenstadt & Elena Schneider, *Republican Super PAC Secretly Promoted Candidates in California*, POLITICO (June 5, 2018), <https://www.politico.com/story/2018/06/05/house-republican-super-pac-california-candidates-625907> (cited in Compl. ¶¶ 118 n.150).

1 American Future Fund Political Action, CLF was able to boost Republican turnout in California”
2 and provided a link to the *Politico* story, stating “[r]ead more about the efforts here.”¹¹

3 In response to the Complaint, CLF generally disputes that there is an affiliation with the
4 relevant Recipient Committees.¹² It also argues that the Commission does not need to reach that
5 issue because “the Act and FEC regulations, by their express terms, do not govern relationships
6 between two or more IEOPCs.”¹³ CLF contends that the affiliation reporting requirements serve
7 only to prevent circumvention of contribution limits, which are inapplicable to IEOPCs.¹⁴
8 Finally, CLF contends that the Commission has never suggested that affiliation rules apply to
9 IEOPCs and, therefore, that attempting to apply such rules now would violate norms of due
10 process and fundamental fairness.¹⁵

11 III. LEGAL ANALYSIS

12 The Act and Commission regulations require every political committee to file a statement
13 of organization that includes “the name, address, relationship, and type of any connected
14 organization or affiliated committee.”¹⁶ Political committee treasurers must file reports of

¹¹ CLF (@CLFSuperPAC), TWITTER (June 6, 2018, 10:03 AM), <https://twitter.com/clfsuperpac/status/1004363064022654976>.

¹² CLF Resp. at 1 (Sept. 7, 2021).

¹³ *Id.*

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 2-3.

¹⁶ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and->

1 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁷ The
2 reports must include, among other information, transfers to and from affiliated committees.¹⁸

3 Commission regulations identify certain entities that are per se affiliated, such as
4 organizations that are established, financed, maintained, or controlled by a single corporation or
5 its subsidiaries, or by the same person or group of persons.¹⁹ Outside of per se affiliation, the
6 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the
7 context of the overall relationship between committees, to determine if they are affiliated.²⁰ The
8 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
9 funds or goods in a significant amount or on an ongoing basis to another committee, such as
10 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
11 arranges for funds in a significant amount to be provided to another committee; (3) whether the
12 committees have similar patterns of contributions or contributors indicating a formal or ongoing
13 relationship between the committees; (4) whether a committee has authority or ability to direct or
14 participate in the governance of another committee; and (5) whether a committee had an active
15 or significant role in the formation of another committee.²¹

[audit-division-recommendations/](#); Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

¹⁷ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁸ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

¹⁹ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

²⁰ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

²¹ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping

1 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

2 The Act plainly states that every political committee must file a statement of
3 organization, which “shall include” information regarding any affiliated committees, and that
4 committee reports “shall disclose” transfers to and from affiliated committees.²² Nevertheless,
5 CLF argues that, for policy reasons, the affiliation reporting requirements do not apply.²³ The
6 Commission is also aware of an argument that the requirements do not apply because it has not
7 promulgated regulations on reporting requirements for IEOPCs or the non-contribution accounts
8 of hybrid PACs. Critically, however, both the text of the Act and Commission regulations
9 require affiliation reporting by all political committees without exception, resulting in
10 unambiguous legal requirements that directly contravene these policy arguments.²⁴

11 The Commission is aware of arguments, some by CLF, asserting that the current concept
12 of affiliation was created in the 1976 amendments to the Act as part of Congress’s “anti-
13 proliferation” effort to prevent circumvention of contribution limits.²⁵ A 1989 Explanation and
14 Justification (“E&J”) for revisions to the affiliation regulations described three consequences that
15 flow from affiliation: (1) affiliated committees share a common contribution limit as to
16 contributions they make or receive; (2) there is no limit on transfers of funds between affiliated

membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

²² 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

²³ CLF Resp. at 1-2.

²⁴ 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

²⁵ CLF Resp. at 1-2.

1 committees; and (3) an affiliation determination affects the ability of a corporation or federation
2 of trade associations to solicit some categories of individuals.²⁶ The Commission is aware of an
3 argument asserting that the consequences discussed in the E&J are inapplicable to IEOPCs and,
4 accordingly, there is no valid reason for the Commission to apply the Act’s affiliation reporting
5 requirements to them.²⁷

6 These arguments, however, have a number of flaws. First, they contravene the Act’s
7 express requirement that all political committees file a statement of organization that “shall
8 include” information on any affiliated committee, thereby urging the Commission to act contrary
9 to the plain text of the law passed by Congress.²⁸ CLF registered with the Commission as a
10 political committee, and neither the Act nor Commission regulations provide an exemption from
11 the statement of organization requirements based on committee type.

12 Second, the suggestion that affiliation reporting exists only to facilitate enforcement of
13 contribution limits is not supported by the historical record. The requirement to report affiliation
14 pre-dated the 1976 anti-proliferation amendments. The original 1971 Act, while not defining
15 affiliation, nevertheless required that political committees file a statement of organization
16 including “the names, addresses, and relationships of affiliated or connected organizations.”²⁹

²⁶ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

²⁷ See CLF Resp. at 1-2.

²⁸ 52 U.S.C. § 30103(a), (b)(2); see *id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

²⁹ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees

1 Additionally, once the Commission promulgated a regulation defining affiliated committee, it
2 did not tie that definition exclusively to the anti-proliferation regulations, as CLF's policy
3 arguments might suggest. Rather, the Commission created a free-standing definition of affiliated
4 committee and explained that it "parallels the definition in § 110.3," which was the regulation
5 that implemented the anti-proliferation provisions.³⁰ Had the Commission understood the
6 concept of affiliation to have no purpose beyond its anti-proliferation goals, this second, parallel
7 definition, would have been superfluous.

8 Further, the Commission's current regulations suggest that affiliation reporting for
9 statements of organization, in particular, is not dependent on a committee's status under the anti-
10 proliferation provisions. The regulation governing statements of organization instructs
11 registrants to report their affiliated committees "in accordance with paragraph (b) of this
12 section."³¹ Paragraph (b), in turn, states that an affiliated committee includes any committee
13 defined in several specific provisions of the regulations.³² These include 11 C.F.R. § 110.3,

other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control." Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission's proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. See Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission's regulations and the effect of *Buckley*).

³⁰ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); see *id.* at 69 (providing explanation for Commission's regulation implementing anti-proliferation provisions of the Act).

³¹ 11 C.F.R. § 102.2(a)(1)(ii).

³² *Id.* § 102.2(b).

1 which contains the anti-proliferation provisions and describes committees to which they apply,³³
2 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
3 “affiliated committee” that resides outside the anti-proliferation regulation.³⁴ Had the
4 Commission understood the Act to require affiliation reporting only when a committee’s
5 activities are affected by the anti-proliferation provisions, there would have been no need to also
6 reference Section 100.5(g).

7 Finally, the E&J does discuss certain “consequences” of affiliation, but the legal
8 determination of whether committees are affiliated does not depend on the downstream effects
9 that determination may have. Rather, as described above, the Commission’s regulations provide
10 the legal test to determine whether committees are affiliated, which includes a determination of
11 whether a committee is established, financed, maintained, or controlled by another committee.³⁵

12 CLF also raises concerns about notice and due process because it asserts that it is a
13 common and public practice for IEOPCs to contribute to each other, in some cases providing a
14 majority of the recipient’s funding, and the Commission has not previously “raised concerns” or
15 suggested that the affiliation rules apply.³⁶ However, the notion that affiliation reporting among
16 IEOPCs is somehow unprecedented is not correct. In fact, a different Contributor Committee
17 discussed in the Complaint, SMP, reported being affiliated with two other IEOPCs in 2020.³⁷
18 Additionally, the U.S. Court of Appeals for the District of Columbia made clear in 2010 in

³³ *Id.* § 110.3(a), (b).

³⁴ *Id.* § 100.5(g).

³⁵ *Id.* § 100.5(g).

³⁶ CLF Resp. at 2-3.

³⁷ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

1 *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C. § 30103, which includes the
2 requirement to report affiliation on a statement of organization, can constitutionally be applied to
3 political committees that make only independent expenditures.³⁸

4 Finally, the Commission is aware of arguments that, in prior advisory opinions, it
5 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
6 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
7 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs
8 as affiliated with the SSFs.³⁹ This absence of discussion allegedly reflects the Commission’s
9 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
10 not indicate that the Commission considered the question of affiliation reporting, and each of the
11 opinions is clearly limited to “the specific transaction or activity set forth in [the] request.”⁴⁰
12 Thus, the Commission’s silence on the issue of affiliation does not appear to have the
13 significance this argument suggests.

14 Accordingly, to the extent that CLF was affiliated with Recipient Committees based on
15 the EFMC analysis, it was required to disclose them as affiliated organizations and properly
16 record the transfers it made and received.

17 **B. The Commission Dismisses the Allegations as to CLF**

18 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
19 Recipient Committees are largely based on the financial relationships between those two groups.

³⁸ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

³⁹ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

⁴⁰ AO 2010-09 at 6; AO 2012-18 at 3.

1 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
2 funds from specific Contributor Committees;⁴¹ (2) Contributor Committees funding Recipient
3 Committees close in time to their registration with the Commission or the dates of their
4 independent expenditures;⁴² and (3) Recipient Committees appearing to return unspent funds to
5 Contributor Committees after elections.⁴³ The Complaint alleges that these factors, considered
6 in the context of the overall relationships between the Contributor and Recipient Committees, are
7 sufficient to establish affiliation through an EFMC analysis.⁴⁴

8 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
9 committee establishes, finances, maintains, *or* controls another.⁴⁵ As discussed above, there is
10 relatively little publicly available information about CLF's Recipient Committees that could
11 inform an EFMC analysis.⁴⁶ Therefore, the Commission's analysis at this stage of the matter
12 focuses on CLF's disclosed financial transactions.

13 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
14 the financial relationships between committees, specifically whether a committee (1) "provides
15 funds or goods in a significant amount or on an ongoing basis" to another committee, such as

⁴¹ *E.g.*, Compl. ¶¶ 19, 25, 75.

⁴² *E.g.*, *id.* ¶¶ 25, 75, 87.

⁴³ *E.g.*, *id.* ¶¶ 25, 81, 87.

⁴⁴ *E.g.*, *id.* ¶¶ 87, 94.

⁴⁵ 11 C.F.R. § 100.5(g)(2).

⁴⁶ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has "the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members" of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committees.

1 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
2 significant amount or on an ongoing basis to be provided” to another committee.⁴⁷

3 The Commission determines what constitutes a “significant amount” on a case-by-case
4 basis, considering all relevant circumstances.⁴⁸ In MUR 5367 (Congressman Darrell Issa), the
5 Commission determined that a respondent had donated or caused to be donated funds in a
6 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
7 his company donated \$1.845 million through regular donations, ultimately providing more than
8 60% of the ballot committee’s total reported receipts.⁴⁹ In Advisory Opinion 2006-04
9 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
10 committee’s total receipts at the time of the donation “must be considered ‘a significant
11 amount’” and would result in the donating candidate committee “financing” the committee.⁵⁰

⁴⁷ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

⁴⁸ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

⁴⁹ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

⁵⁰ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

1 At the outset, it appears that all of CLF’s Recipient Committees received well in excess
2 of 50% of their contributions from CLF, not merely at the time of contribution, but over an entire
3 election cycle or the life-to-date of the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
AFFPA	CLF	78%	2018 cycle
Illinois Conservatives PAC	CLF	100%	All time
Lone Star Values PAC	CLF	100%	2020 cycle

4 The Commission’s regulations also state, however, that the Commission will consider the
5 “context of the overall relationship” between committees in determining if the “presence of any
6 factor or factors” is evidence that one committee has EFMC’d another.⁵¹ Here, the available
7 information about the relationships between certain Contributor and Recipient Committees
8 described in the Complaint strongly suggests that the Recipient Committees were created and
9 funded for the limited purpose of carrying out a Contributor Committee’s goals in particular
10 elections — in effect, the Contributor Committees were acting through the Recipient
11 Committees. For example, in some instances the Recipient Committee was active in a single
12 election; received significant funds from the Contributor Committee relatively close in time to
13 that election; the available information does not indicate that the Recipient Committee solicited
14 contributions from other sources, such as through a committee website; and the Recipient
15 Committee appeared to return leftover funds, whether from vendor refunds or remaining cash on
16 hand, to the Contributor Committee after the relevant election took place. Although none of
17 these factors are individually necessary for a finding that one committee financed another, they
18 are suggestive of overall relationships in which the Contributor Committees had significant

⁵¹ 11 C.F.R. § 100.5(g)(4)(ii).

1 responsibility for the finances of the Recipient Committees and, perhaps, may even have played
2 a role in establishing, maintaining, or controlling their operations.

3 As to CLF, some aspects of its relationships with Recipient Committees could point to
4 affiliation, but there is comparatively less compelling detail, and in some instances other factors
5 present, which less strongly suggest the Recipient Committees were merely vehicles to quickly
6 spend CLF's funds in a specific election. In particular, it is notable that AFFPA has been active
7 since 2008, long before the 2018 cycle for which it was allegedly EFMC'd, it made independent
8 expenditures in multiple races in 2018, solicits contributions, and did not return funds to CLF;
9 Illinois Conservatives PAC likewise did not return funds to CLF; and Lone Star Values PAC was
10 active in the 2018 election cycle, prior to allegedly being EFMC'd, and it did not return funds to
11 CLF after the 2020 primary election.⁵²

12 While it is possible that additional information about the Recipient Committees' contacts
13 with CLF would satisfy other factors in the EFMC analysis, in light of the minimal information
14 currently available, the Commission exercises its prosecutorial discretion to dismiss the
15 allegations that CLF violated 52 U.S.C. § 30103(b) and 11 C.F.R. § 102.2(a) by failing to report
16 affiliated committees on its Statement of Organization and 52 U.S.C. § 30104(b) and 11 C.F.R.
17 § 104.3 by failing to properly report receipts and disbursements as transfers to and from affiliated
18 committees.⁵³

⁵² *Supra* Part II.

⁵³ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Hold Them Accountable and Taryn Vogel in MUR 7912
her official capacity as treasurer (f/k/a LMG
PAC)

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures.¹ The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

Hold Them Accountable, a Contributor Committee, denies violating the Act and puts forward a variety of arguments, most prominently that affiliation reporting requirements should not apply to it. Hold Them Accountable contends that the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that such limits do not apply to IEOPCs because they may solicit funds in unlimited amounts.

The available information indicates that Hold Them Accountable EFMC’d one Recipient Committee and that it did not report affiliation with or transfers to and from that Recipient

¹ Although Hold Them Accountable was an IEOPC at the time of the relevant allegations, it has since become a hybrid PAC. Hold Them Accountable, Amended Statement of Organization at 5 (Sept. 10, 2021) (declaring hybrid PAC status).

1 Committee. Accordingly, the Commission finds reason to believe that Hold Them Accountable
2 violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated
3 committee on its Statement of Organization and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by
4 failing to properly report receipts and disbursements.

5 **II. FACTUAL BACKGROUND**

6 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
7 one or more of the Recipient Committees during the 2018 or 2020 election cycles.² The
8 Complaint suggests that the Contributor Committees did so primarily by helping to form the
9 Recipient Committees and providing all or most of the funds the Recipient Committees raised
10 during the relevant election cycles, thus allowing the Contributor Committees to control
11 spending in elections but delay disclosing their own involvement.³ In some instances, the
12 Complaint alleges that the contributions were “strategically timed” so that the public would not
13 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
14 voters of important information about who was spending to influence their votes.”⁴ The
15 Complaint focuses on the financial relationships between the Contributor and Recipient
16 Committees, and the degree to which the available information suggests that the Contributor
17 Committees played a role in the formation and governance of the Recipient Committees.

18 The Complaint alleges that Hold Them Accountable and Taryn Vogel in her official
19 capacity as treasurer (f/k/a LMG PAC) (“Hold Them Accountable”) EFMC'd one Recipient
20 Committee, Liberty SC and Lisa Pearson in her official capacity as treasurer (“Liberty SC”). As

² Compl. ¶¶ 1, 3 (July 15, 2021).

³ *Id.* ¶¶ 1-3.

⁴ *Id.* ¶ 2.

- 1 shown in the table below, Liberty SC received funds from Hold Them Accountable in a single
2 2020 election, in which Liberty SC also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from Hold Them Accountable	First Independent Expenditure	Portion of Contributions from Hold Them Accountable	Active in Multiple Races or Cycles?
Liberty SC ⁵	Oct. 19, 2020	Nov. 3, 2020, general, U.S. Senate (SC)	Oct. 20, 2020	Oct. 21, 2020	100% (\$1.14 million)	No

- 3 Liberty SC reported no affiliated committees on its Statement of Organization,⁶ and little
4 information appears to be publicly available about the committee. Liberty SC appears to have
5 maintained a website during the 2020 elections, although the site is no longer available, and the
6 archived version does not show a means to contribute to the committee or any information on its
7 structure or staff.⁷ Public reporting prior to the election suggested a link between Liberty SC and
8 Democratic groups but did not provide specific details.⁸

- 9 Liberty SC made a single contribution back to Hold Them Accountable after the 2020
10 elections and before filing for termination, as shown in the chart below.

Recipient Committee	Relevant Election Dates	Post-Election Contributions to Hold Them Accountable	Post-Election Vendor Refunds	Post-Refund Contributions to Hold Them Accountable	Date of Termination Filing
Liberty SC ⁹	Nov. 3, 2020	\$191.64 (Mar. 8, 2021)	N/A	N/A	Mar. 8, 2021

⁵ Liberty SC, Statement of Organization at 1 (Oct. 19, 2020); Compl. ¶¶ 126-132; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00761494 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00761494&data_type=processed&q_spender=C00761494&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁶ Liberty SC, Statement of Organization at 3 (Oct. 19, 2020).

⁷ LIBERTY SC (Nov. 7, 2020), <http://liberty-sc.com/> [<https://web.archive.org/web/20201107064635/https://www.liberty-sc.com/>].

⁸ Darren Samuelsohn (@dsamuelsohn), TWITTER (Oct. 28, 2020, 5:30 PM), <https://twitter.com/dsamuelsohn/status/1321565080505470976> (describing reporting on Liberty SC).

⁹ Liberty SC, 2021 Termination Report at 1-2, 6 (Mar. 8, 2021).

1 Hold Them Accountable’s Response argues that the affiliation reporting requirements do
2 not apply to it, as they are meant to prevent circumvention of the Act’s contribution limits and
3 IEOPCs, by definition, are not subject to such limits.¹⁰ Hold Them Accountable also argues that
4 the Commission has issued advisory opinions on the creation of IEOPCs by other organizations
5 without raising the issue of affiliation, thus reflecting an “understanding” that affiliation rules do
6 not apply to them.¹¹

7 **III. LEGAL ANALYSIS**

8 The Act and Commission regulations require every political committee to file a statement
9 of organization that includes “the name, address, relationship, and type of any connected
10 organization or affiliated committee.”¹² Political committee treasurers must file reports of
11 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹³ The
12 reports must include, among other information, transfers to and from affiliated committees.¹⁴

13 Commission regulations identify certain entities that are per se affiliated, such as
14 organizations that are established, financed, maintained, or controlled by a single corporation or

¹⁰ Hold Them Accountable Resp. at 1 (Sept. 2, 2021).

¹¹ *Id.* at 2.

¹² 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

¹³ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁴ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

1 its subsidiaries, or by the same person or group of persons.¹⁵ Outside of per se affiliation, the
 2 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the
 3 context of the overall relationship between committees, to determine if they are affiliated.¹⁶ The
 4 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
 5 funds or goods in a significant amount or on an ongoing basis to another committee, such as
 6 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
 7 arranges for funds in a significant amount to be provided to another committee; (3) whether the
 8 committees have similar patterns of contributions or contributors indicating a formal or ongoing
 9 relationship between the committees; (4) whether a committee has authority or ability to direct or
 10 participate in the governance of another committee; and (5) whether a committee had an active
 11 or significant role in the formation of another committee.¹⁷

12 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

13 The Act plainly states that every political committee must file a statement of
 14 organization, which “shall include” information regarding any affiliated committees, and that
 15 committee reports “shall disclose” transfers to and from affiliated committees.¹⁸ Nevertheless,

¹⁵ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

¹⁶ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

¹⁷ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

¹⁸ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

1 Hold Them Accountable argues that, for policy reasons, the affiliation reporting requirements do
2 not apply.¹⁹ The Commission is also aware of an argument that the requirements do not apply
3 because it has not promulgated regulations on reporting requirements for IEOPCs or the non-
4 contribution accounts of hybrid PACs. Critically, however, both the text of the Act and
5 Commission regulations require affiliation reporting by all political committees without
6 exception, resulting in unambiguous legal requirements that directly contravene these policy
7 arguments.²⁰

8 Hold Them Accountable contends that the current concept of affiliation was created in
9 the 1976 amendments to the Act as part of Congress’s anti-proliferation effort to prevent
10 circumvention of contribution limits.²¹ It points to a 1989 Explanation and Justification (“E&J”)
11 for revisions to the affiliation regulations, in which the Commission described three
12 consequences that flow from affiliation: (1) affiliated committees share a common contribution
13 limit as to contributions they make or receive; (2) there is no limit on transfers of funds between
14 affiliated committees; and (3) an affiliation determination affects the ability of a corporation or
15 federation of trade associations to solicit some categories of individuals.²² Hold Them
16 Accountable asserts that the consequences discussed in the E&J are inapplicable to IEOPCs,
17 because they “may accept unlimited contributions from nearly any source and make unlimited

¹⁹ Hold Them Accountable Resp. at 1.

²⁰ 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

²¹ See Hold Them Accountable Resp. at 1.

²² *Id.* (citing Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

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1 contributions to other [IEOPCs].”²³ Accordingly, Hold Them Accountable asserts that there is
2 no valid reason for the Commission to apply the Act’s affiliation reporting requirements to it.

3 These arguments, however, have a number of flaws. First, they contravene the Act’s
4 express requirement that all political committees file a statement of organization that “shall
5 include” information on any affiliated committee, thereby urging the Commission to act contrary
6 to the plain text of the law passed by Congress.²⁴ Hold Them Accountable registered with the
7 Commission as a political committee, and neither the Act nor Commission regulations provide
8 an exemption from the statement of organization requirements based on committee type.

9 Second, Hold Them Accountable’s suggestion that affiliation reporting exists only to
10 facilitate enforcement of contribution limits is not supported by the historical record. The
11 requirement to report affiliation pre-dated the 1976 anti-proliferation amendments. The original
12 1971 Act, while not defining affiliation, nevertheless required that political committees file a
13 statement of organization including “the names, addresses, and relationships of affiliated or
14 connected organizations.”²⁵ Additionally, once the Commission promulgated a regulation

²³ *Id.*

²⁴ 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

²⁵ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. *See* Federal Election Commission, Annual Report

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1 defining affiliated committee, it did not tie that definition exclusively to the anti-proliferation
2 regulations, as Hold Them Accountable’s policy arguments might suggest. Rather, the
3 Commission created a free-standing definition of affiliated committee and explained that it
4 “parallels the definition in § 110.3,” which was the regulation that implemented the anti-
5 proliferation provisions.²⁶ Had the Commission understood the concept of affiliation to have no
6 purpose beyond its anti-proliferation goals, this second, parallel definition, would have been
7 superfluous.

8 Further, the Commission’s current regulations suggest that affiliation reporting for
9 statements of organization, in particular, is not dependent on a committee’s status under the anti-
10 proliferation provisions. The regulation governing statements of organization instructs
11 registrants to report their affiliated committees “in accordance with paragraph (b) of this
12 section.”²⁷ Paragraph (b), in turn, states that an affiliated committee includes any committee
13 defined in several specific provisions of the regulations.²⁸ These include 11 C.F.R. § 110.3,
14 which contains the anti-proliferation provisions and describes committees to which they apply,²⁹
15 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
16 “affiliated committee” that resides outside the anti-proliferation regulation.³⁰ Had the

1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

²⁶ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); *see id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

²⁷ 11 C.F.R. § 102.2(a)(1)(ii).

²⁸ *Id.* § 102.2(b).

²⁹ *Id.* § 110.3(a), (b).

³⁰ *Id.* § 100.5(g).

1 Commission understood the Act to require affiliation reporting only when a committee’s
2 activities are affected by the anti-proliferation provisions, there would have been no need to also
3 reference Section 100.5(g).

4 Finally, the E&J that Hold Them Accountable relies on does discuss certain
5 “consequences” of affiliation, but the legal determination of whether committees are affiliated
6 does not depend on the downstream effects that determination may have. Rather, as described
7 above, the Commission’s regulations provide the legal test to determine whether committees are
8 affiliated, which includes a determination of whether a committee is established, financed,
9 maintained, or controlled by another committee.³¹

10 The Commission is also aware of arguments asserting concerns about notice and due
11 process because allegedly it is a common and public practice for IEOPCs to contribute to each
12 other, in some cases providing a majority of the recipient’s funding, and the Commission has not
13 previously raised concerns or suggested that the affiliation rules apply. However, the notion that
14 affiliation reporting among IEOPCs is somehow unprecedented is not correct. In fact, a different
15 Contributor Committee discussed in the Complaint, SMP, reported being affiliated with two
16 other IEOPCs in 2020.³² Additionally, the U.S. Court of Appeals for the District of Columbia
17 made clear in 2010 in *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C. § 30103,

³¹ *Id.* § 100.5(g).

³² SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

1 which includes the requirement to report affiliation on a statement of organization, can
2 constitutionally be applied to political committees that make only independent expenditures.³³

3 Hold Them Accountable also points to advisory opinions in which the Commission
4 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
5 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
6 organizations to “establish and administer” the IEOPCs with “no discussion whatsoever . . .
7 about treating the [IEOPC] as affiliated with the SSF.”³⁴ Hold Them Accountable argues that
8 this absence of discussion reflects the Commission’s “understanding” that affiliation rules do not
9 apply to IEOPCs.³⁵ However, the cited advisory opinions do not indicate that the Commission
10 considered the question of affiliation reporting, and each of the cited opinions is clearly limited
11 to “the specific transaction or activity set forth in [the] request.”³⁶ Thus, the Commission’s
12 silence on the issue of affiliation does not appear to have the significance that Hold Them
13 Accountable suggests.

14 Accordingly, to the extent that Hold Them Accountable was affiliated with Liberty SC
15 based on the EFMC analysis, Hold Them Accountable was required to disclose Liberty SC as an
16 affiliated organization and properly record the transfers it made and received.

³³ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

³⁴ Hold Them Accountable Resp. at 1-2 (citing Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”) and Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

³⁵ *Id.* at 2.

³⁶ AO 2010-09 at 6; AO 2012-18 at 3.

1 **B. The Commission Finds Reason to Believe that Hold Them Accountable**
2 **EFMC'd Liberty SC**

3 The Complaint's allegations that the Contributor Committees EFMC'd the relevant
4 Recipient Committees are largely based on the financial relationships between those two groups.
5 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
6 funds from specific Contributor Committees;³⁷ (2) Contributor Committees funding Recipient
7 Committees close in time to their registration with the Commission or the dates of their
8 independent expenditures;³⁸ and (3) Recipient Committees appearing to return unspent funds to
9 Contributor Committees after elections.³⁹ The Complaint alleges that these factors, considered
10 in the context of the overall relationships between the Contributor and Recipient Committees, are
11 sufficient to establish affiliation through an EFMC analysis.⁴⁰

12 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
13 committee establishes, finances, maintains, *or* controls another.⁴¹ As discussed above, there is
14 relatively little publicly available information about Liberty SC that could inform an EFMC
15 analysis.⁴² Therefore, the Commission's analysis at this stage of the matter focuses on Hold
16 Them Accountable's disclosed financial transactions. The available information indicates that

³⁷ *E.g.*, Compl. ¶¶ 19, 25, 75.

³⁸ *E.g.*, *id.* ¶¶ 25, 75, 87.

³⁹ *E.g.*, *id.* ¶¶ 25, 81, 87.

⁴⁰ *E.g.*, *id.* ¶¶ 87, 94.

⁴¹ 11 C.F.R. § 100.5(g)(2).

⁴² *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has "the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members" of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committee.

1 the degree to which Hold Them Accountable funded Liberty SC, considering the overall context
2 of their relationship, was sufficient to trigger affiliation reporting requirements.

3 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
4 the financial relationships between committees, specifically whether a committee (1) “provides
5 funds or goods in a significant amount or on an ongoing basis” to another committee, such as
6 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
7 significant amount or on an ongoing basis to be provided” to another committee.⁴³

8 The Commission determines what constitutes a “significant amount” on a case-by-case
9 basis, considering all relevant circumstances.⁴⁴ In MUR 5367 (Congressman Darrell Issa), the
10 Commission determined that a respondent had donated or caused to be donated funds in a
11 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
12 his company donated \$1.845 million through regular donations, ultimately providing more than
13 60% of the ballot committee’s total reported receipts.⁴⁵ In Advisory Opinion 2006-04
14 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot

⁴³ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

⁴⁴ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

⁴⁵ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

1 committee’s total receipts at the time of the donation “must be considered ‘a significant
2 amount’” and would result in the donating candidate committee “financing” the committee.⁴⁶

3 At the outset, it appears that Liberty SC received well in excess of 50% of its
4 contributions from Hold Them Accountable, not merely at the time of contribution, but over the
5 life-to-date of the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
Liberty SC	Hold Them Accountable	100%	All time

6 The Commission’s regulations also state, however, that the Commission will consider the
7 “context of the overall relationship” between committees in determining if the “presence of any
8 factor or factors” is evidence that one committee has EFMC’d another.⁴⁷ Here, the available
9 information about the relationship between Hold Them Accountable and Liberty SC strongly
10 suggests that Liberty SC was created and funded for the limited purpose of carrying out Hold
11 Them Accountable’s goals in a particular election — in effect, Hold Them Accountable was
12 acting through Liberty SC. Specifically, Liberty SC was active in a single election; received
13 significant funds from Hold Them Accountable relatively close in time to that election; the
14 available information does not indicate that Liberty SC solicited contributions from other
15 sources, such as through a committee website; and Liberty SC appeared to return leftover funds
16 to Hold Them Accountable after the relevant election took place.⁴⁸ Although none of these
17 factors are individually necessary for a finding that Hold Them Accountable financed Liberty

⁴⁶ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

⁴⁷ 11 C.F.R. § 100.5(g)(4)(ii).

⁴⁸ *Supra* Part II.

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1 SC, they are suggestive of an overall relationship in which Hold Them Accountable had
2 significant responsibility for the finances of Liberty SC and, perhaps, may even have played a
3 role in establishing, maintaining, or controlling its operations. Accordingly, these facts appear to
4 indicate that Hold Them Accountable EFMC'd Liberty SC. Therefore, the Commission finds
5 reason to believe that Hold Them Accountable violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.
6 § 102.2(a)(ii) by failing to report an affiliated committee on its Statement of Organization and
7 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
8 disbursements as transfers to and from an affiliated committee.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Future45 and Maria Wojciechowski in her official capacity as treasurer MUR 7912

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures. The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

Future45, a Contributor Committee, denies violating the Act and puts forward a variety of arguments, most prominently that affiliation reporting requirements should not apply to it. Future45 contends that the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that such limits do not apply to IEOPCs because they may solicit funds in unlimited amounts. Future45 also disputes specific aspects of the Complaint’s EFMC analysis.

The available information indicates that Future45 made significant contributions to one Recipient Committee, and that it did not report affiliation with or transfers to and from that committee. However, after considering the available information, the Commission exercises its prosecutorial discretion to dismiss the allegations that Future45 violated 52 U.S.C. § 30103(b)(2)

1 and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated committee on its Statement of
2 Organization, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report
3 receipts and disbursements.

4 **II. FACTUAL BACKGROUND**

5 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
6 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
7 Complaint suggests that the Contributor Committees did so primarily by helping to form the
8 Recipient Committees and providing all or most of the funds the Recipient Committees raised
9 during the relevant election cycles, thus allowing the Contributor Committees to control
10 spending in elections but delay disclosing their own involvement.² In some instances, the
11 Complaint alleges that the contributions were “strategically timed” so that the public would not
12 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
13 voters of important information about who was spending to influence their votes.”³ The
14 Complaint focuses on the financial relationships between the Contributor and Recipient
15 Committees, and the degree to which the available information suggests that the Contributor
16 Committees played a role in the formation and governance of the Recipient Committees.

17 The Complaint alleges that Future45 and Maria Wojciechowski in her official capacity as
18 treasurer (“Future45”) EFMC'd one Recipient Committee, Truth Still Matters PAC and Devy
19 Enz in her official capacity as treasurer (“Truth Still Matters PAC”). As shown in the table

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

³ *Id.* ¶ 2.

- 1 below, Truth Still Matters PAC received funds from Future45 in a single 2020 election, in which
2 Truth Still Matters PAC also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from Future45	First Independent Expenditure	Portion of Contributions from Future45	Active in Multiple Races or Cycles?
Truth Still Matters PAC ⁴	Oct. 19, 2020	Nov. 3, 2020, general, U.S. Senate (NC)	Oct. 20, 2020	Oct. 20, 2020	100% (\$125,000)	No

3 Truth Still Matters PAC reported no affiliated committees on its Statement of
4 Organization,⁵ and little information appears to be publicly available about the committee. It
5 reportedly maintained a website during the 2020 elections, but it is currently unavailable and no
6 available information suggests that the website solicited contributions or contained information
7 on the committee's structure or staff.⁶ Truth Still Matters PAC did not make contributions back
8 to Future45 after the November 2020 general election.

9 In response to the Complaint, Future45 contends that affiliation reporting requirements
10 should not apply to IEOPCs.⁷ It also asserts that there is insufficient information to support a
11 finding that it EFMC'd Truth Still Matters PAC, because the Complaint fails to discuss how
12 many of the EFMC factors set out in the Commission's regulations would apply to Future45 and

⁴ Truth Still Matters PAC, Statement of Organization at 1 (Oct. 19, 2020); Compl. ¶¶ 133-139; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00761452 (last visited Nov. 1, 2022) (showing receipts without date restrictions); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00761452&data_type=processed&q_spender=C00761452&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restrictions).

⁵ Truth Still Matters PAC, Statement of Organization at 3 (Oct. 19, 2020).

⁶ *PAC Launches Website Soliciting Information on Cal Cunningham*, THE NORTH STATE JOURNAL (Oct. 28, 2020), <https://nsjonline.com/article/2020/10/pac-launches-website-soliciting-information-on-cal-cunningham/> (stating that a Truth Still Matters PAC billboard directed viewers to the website www.caltips.com). A Facebook page in the name Truth Still Matters PAC also links to the website www.CalTips.com, which is unavailable. Truth Still Matters PAC, FACEBOOK, <https://www.facebook.com/TruthStillMattersPAC> (last visited Nov. 1, 2022).

⁷ Future45 Resp. at 3 (Sept. 7, 2021).

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1 Truth Still Matters PAC.⁸ Finally, Future45 contends that, even if the Commission were to find
2 a violation of the reporting requirements, it would be a “technical, ministerial” violation that
3 does not merit further use of the Commission’s resources.⁹

4 III. LEGAL ANALYSIS

5 The Act and Commission regulations require every political committee to file a statement
6 of organization that includes “the name, address, relationship, and type of any connected
7 organization or affiliated committee.”¹⁰ Political committee treasurers must file reports of
8 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹¹ The
9 reports must include, among other information, transfers to and from affiliated committees.¹²

10 Commission regulations identify certain entities that are per se affiliated, such as
11 organizations that are established, financed, maintained, or controlled by a single corporation or
12 its subsidiaries, or by the same person or group of persons.¹³ Outside of per se affiliation, the
13 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the

⁸ *Id.* at 4.

⁹ *Id.* at 2, 4.

¹⁰ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

¹¹ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹² 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

¹³ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

1 context of the overall relationship between committees, to determine if they are affiliated.¹⁴ The
 2 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
 3 funds or goods in a significant amount or on an ongoing basis to another committee, such as
 4 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
 5 arranges for funds in a significant amount to be provided to another committee; (3) whether the
 6 committees have similar patterns of contributions or contributors indicating a formal or ongoing
 7 relationship between the committees; (4) whether a committee has authority or ability to direct or
 8 participate in the governance of another committee; and (5) whether a committee had an active
 9 or significant role in the formation of another committee.¹⁵

10 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

11 The Act plainly states that every political committee must file a statement of
 12 organization, which “shall include” information regarding any affiliated committees, and that
 13 committee reports “shall disclose” transfers to and from affiliated committees.¹⁶ Nevertheless,
 14 Future45 argues that, for policy reasons, the affiliation reporting requirements do not apply.¹⁷
 15 The Commission is also aware of an argument that the requirements do not apply because it has

¹⁴ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

¹⁵ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

¹⁶ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

¹⁷ Future45 Resp. at 3.

1 not promulgated regulations on reporting requirements for IEOPCs or the non-contribution
2 accounts of hybrid PACs. Critically, however, both the text of the Act and Commission
3 regulations require affiliation reporting by all political committees without exception, resulting in
4 unambiguous legal requirements that directly contravene these policy arguments.¹⁸

5 The Commission is aware of arguments, some by Future45, asserting that the current
6 concept of affiliation was created in the 1976 amendments to the Act as part of Congress's anti-
7 proliferation effort to prevent circumvention of contribution limits.¹⁹ A 1989 Explanation and
8 Justification ("E&J") for revisions to the affiliation regulations, described three consequences
9 that flow from affiliation: (1) affiliated committees share a common contribution limit as to
10 contributions they make or receive; (2) there is no limit on transfers of funds between affiliated
11 committees; and (3) an affiliation determination affects the ability of a corporation or federation
12 of trade associations to solicit some categories of individuals.²⁰ The Commission is aware of an
13 argument asserting that the consequences discussed in the E&J are inapplicable to IEOPCs and,
14 accordingly, there is no valid reason for the Commission to apply the Act's affiliation reporting
15 requirements to them.²¹

16 These arguments, however, have a number of flaws. First, they contravene the Act's
17 express requirement that all political committees file a statement of organization that "shall
18 include" information on any affiliated committee, thereby urging the Commission to act contrary

¹⁸ 52 U.S.C. § 30103 (requiring that statements of organization "shall include," among other information, the "name, address, relationship, and type of any connected organization or affiliated committee"); 11 C.F.R. § 102.2 (same).

¹⁹ See Future45 Resp. at 3.

²⁰ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) ("Affiliation E&J").

²¹ See Future45 Resp. at 3.

1 to the plain text of the law passed by Congress.²² Future45 registered with the Commission as a
2 political committee, and neither the Act nor Commission regulations provide an exemption from
3 the statement of organization requirements based on committee type.

4 Second, the suggestion that affiliation reporting exists only to facilitate enforcement of
5 contribution limits is not supported by the historical record. The requirement to report affiliation
6 pre-dated the 1976 anti-proliferation amendments. The original 1971 Act, while not defining
7 affiliation, nevertheless required that political committees file a statement of organization
8 including “the names, addresses, and relationships of affiliated or connected organizations.”²³
9 Additionally, once the Commission promulgated a regulation defining affiliated committee, it
10 did not tie that definition exclusively to the anti-proliferation regulations, as Future45’s policy
11 arguments might suggest. Rather, the Commission created a free-standing definition of affiliated
12 committee and explained that it “parallels the definition in § 110.3,” which was the regulation

²² 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

²³ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. *See* Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

1 that implemented the anti-proliferation provisions.²⁴ Had the Commission understood the
2 concept of affiliation to have no purpose beyond its anti-proliferation goals, this second, parallel
3 definition, would have been superfluous.

4 Further, the Commission’s current regulations suggest that affiliation reporting for
5 statements of organization, in particular, is not dependent on a committee’s status under the anti-
6 proliferation provisions. The regulation governing statements of organization instructs
7 registrants to report their affiliated committees “in accordance with paragraph (b) of this
8 section.”²⁵ Paragraph (b), in turn, states that an affiliated committee includes any committee
9 defined in several specific provisions of the regulations.²⁶ These include 11 C.F.R. § 110.3,
10 which contains the anti-proliferation provisions and describes committees to which they apply,²⁷
11 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
12 “affiliated committee” that resides outside the anti-proliferation regulation.²⁸ Had the
13 Commission understood the Act to require affiliation reporting only when a committee’s
14 activities are affected by the anti-proliferation provisions, there would have been no need to also
15 reference Section 100.5(g).

16 Finally, the E&J does discuss certain “consequences” of affiliation, but the legal
17 determination of whether committees are affiliated does not depend on the downstream effects

²⁴ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); *see id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

²⁵ 11 C.F.R. § 102.2(a)(1)(ii).

²⁶ *Id.* § 102.2(b).

²⁷ *Id.* § 110.3(a), (b).

²⁸ *Id.* § 100.5(g).

1 that determination may have. Rather, as described above, the Commission’s regulations provide
2 the legal test to determine whether committees are affiliated, which includes a determination of
3 whether a committee is established, financed, maintained, or controlled by another committee.²⁹

4 Future45 also raises concerns about notice and due process because it asserts that the
5 Complaint concerns a “widespread” practice, and the Commission has not previously suggested
6 that the affiliation rules apply.³⁰ However, the notion that affiliation reporting among IEOPCs is
7 somehow unprecedented is not correct. In fact, a different Contributor Committee discussed in
8 the Complaint, SMP, reported being affiliated with two other IEOPCs in 2020.³¹ Additionally,
9 the U.S. Court of Appeals for the District of Columbia made clear in 2010 in *SpeechNow v. FEC*
10 that the reporting requirements of 52 U.S.C. § 30103, which includes the requirement to report
11 affiliation on a statement of organization, can constitutionally be applied to political committees
12 that make only independent expenditures.³²

13 Finally, the Commission is aware of arguments that, in prior advisory opinions, it
14 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
15 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
16 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs

²⁹ *Id.* § 100.5(g).

³⁰ *See* Future45 Resp. at 1.

³¹ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

³² *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

1 as affiliated with the SSFs.³³ This absence of discussion allegedly reflects the Commission’s
2 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
3 not indicate that the Commission considered the question of affiliation reporting, and each of the
4 cited opinions is clearly limited to “the specific transaction or activity set forth in [the]
5 request.”³⁴ Thus, the Commission’s silence on the issue of affiliation does not appear to have the
6 significance this argument suggests.

7 Accordingly, to the extent that Future45 was affiliated with Truth Still Matters PAC
8 based on the EFMC analysis, it was required to disclose Truth Still Matters PAC as an affiliated
9 organization and properly record the transfers it made and received.

10 **B. The Commission Dismisses the Allegations as to Future45**

11 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
12 Recipient Committees are largely based on the financial relationships between those two groups.
13 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
14 funds from specific Contributor Committees;³⁵ (2) Contributor Committees funding Recipient
15 Committees close in time to their registration with the Commission or the dates of their
16 independent expenditures;³⁶ and (3) Recipient Committees appearing to return unspent funds to
17 Contributor Committees after elections.³⁷ The Complaint alleges that these factors, considered

³³ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

³⁴ AO 2010-09 at 6; AO 2012-18 at 3.

³⁵ *E.g.*, Compl. ¶¶ 19, 25, 75.

³⁶ *E.g., id.* ¶¶ 25, 75, 87.

³⁷ *E.g., id.* ¶¶ 25, 81, 87.

1 in the context of the overall relationships between the Contributor and Recipient Committees, are
2 sufficient to establish affiliation through an EFMC analysis.³⁸

3 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
4 committee establishes, finances, maintains, *or* controls another.³⁹ As discussed above, there is
5 relatively little publicly available information about Truth Still Matters PAC that could inform an
6 EFMC analysis.⁴⁰ Therefore, the Commission’s analysis at this stage of the matter focuses on
7 Future45’s disclosed financial transactions.

8 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
9 the financial relationships between committees, specifically whether a committee (1) “provides
10 funds or goods in a significant amount or on an ongoing basis” to another committee, such as
11 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
12 significant amount or on an ongoing basis to be provided” to another committee.⁴¹

13 The Commission determines what constitutes a “significant amount” on a case-by-case
14 basis, considering all relevant circumstances.⁴² In MUR 5367 (Congressman Darrell Issa), the
15 Commission determined that a respondent had donated or caused to be donated funds in a
16 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
17 his company donated \$1.845 million through regular donations, ultimately providing more than

³⁸ *E.g., id.* ¶¶ 87, 94.

³⁹ 11 C.F.R. § 100.5(g)(2).

⁴⁰ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members” of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committee.

⁴¹ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

⁴² Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

1 60% of the ballot committee’s total reported receipts.⁴³ In Advisory Opinion 2006-04
2 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
3 committee’s total receipts at the time of the donation “must be considered ‘a significant
4 amount’” and would result in the donating candidate committee “financing” the committee.⁴⁴

5 At the outset, it appears that Truth Still Matters PAC received well in excess of 50% of
6 its contributions from Future45, not merely at the time of contribution, but over the life-to-date
7 of the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
Truth Still Matters PAC	Future45	100%	All time

8 The Commission’s regulations also state, however, that the Commission will consider the
9 “context of the overall relationship” between committees in determining if the “presence of any
10 factor or factors” is evidence that one committee has EFMC’d another.⁴⁵ Here, the available
11 information about the relationships between certain Contributor and Recipient Committees
12 described in the Complaint strongly suggests that the Recipient Committees were created and
13 funded for the limited purpose of carrying out a Contributor Committee’s goals in particular

⁴³ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

⁴⁴ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

⁴⁵ 11 C.F.R. § 100.5(g)(4)(ii).

1 elections — in effect, the Contributor Committees were acting through the Recipient
2 Committees. For example, in some instances the Recipient Committee was active in a single
3 election; received significant funds from the Contributor Committee relatively close in time to
4 that election; the available information does not indicate that the Recipient Committee solicited
5 contributions from other sources, such as through a committee website; and the Recipient
6 Committee appeared to return leftover funds, whether from vendor refunds or remaining cash on
7 hand, to the Contributor Committee after the relevant election took place. Although none of
8 these factors are individually necessary for a finding that one committee financed another, they
9 are suggestive of overall relationships in which the Contributor Committees had significant
10 responsibility for the finances of the Recipient Committees and, perhaps, may even have played
11 a role in establishing, maintaining, or controlling their operations.

12 As to Future45, some aspects of its relationship with Truth Still Matters PAC could point
13 to affiliation, but there is comparatively less compelling detail, which less strongly suggests that
14 Truth Still Matters PAC was merely a vehicle to quickly spend Future45's funds in a specific
15 election. In particular, it is notable that Truth Still Matters PAC did not report returning funds to
16 Future45 after the 2020 general election.

17 While it is possible that additional information about Truth Still Matters PAC's contacts
18 with Future45 would satisfy other factors in the EFMC analysis, in light of the minimal
19 information currently available, the Commission exercises its prosecutorial discretion to dismiss
20 the allegations that Future45 violated 52 U.S.C. § 30103(b) and 11 C.F.R. § 102.2(a) by failing
21 to report an affiliated committee on its Statement of Organization and 52 U.S.C. § 30104(b) and

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- 1 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements as transfers to and
- 2 from an affiliated committee.⁴⁶

⁴⁶ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Illinois Conservatives PAC and Kim Ledesma MUR 7912
in her official capacity as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures. The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Illinois Conservatives PAC, a Recipient Committee, denies violating the Act.

The available information indicates that Congressional Leadership Fund, a Contributor Committee, made significant contributions to Illinois Conservatives PAC, and that Illinois Conservatives PAC did not report affiliation with or transfers to and from Congressional Leadership Fund. However, after considering the available information, the Commission exercises its prosecutorial discretion to dismiss the allegations that Illinois Conservatives PAC violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated committee on its Statement of Organization, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements.

1 **II. FACTUAL BACKGROUND**

2 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
3 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
4 Complaint suggests that the Contributor Committees did so primarily by helping to form the
5 Recipient Committees and providing all or most of the funds the Recipient Committees raised
6 during the relevant election cycles, thus allowing the Contributor Committees to control
7 spending in elections but delay disclosing their own involvement.² In some instances, the
8 Complaint alleges that the contributions were “strategically timed” so that the public would not
9 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
10 voters of important information about who was spending to influence their votes.”³ The
11 Complaint focuses on the financial relationships between the Contributor and Recipient
12 Committees, and the degree to which the available information suggests that the Contributor
13 Committees played a role in the formation and governance of the Recipient Committees.

14 The Complaint alleges that Congressional Leadership Fund and Caleb Crosby in his
15 official capacity as treasurer (“CLF”) EFMC'd three Recipient Committees, among them Illinois
16 Conservatives PAC and Kim Ledesma in her official capacity as treasurer (“Illinois
17 Conservatives PAC”). As shown in the table below, Illinois Conservatives PAC received funds
18 from CLF in an election in which it also made independent expenditures.

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

³ *Id.* ¶ 2.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from CLF	First Independent Expenditure	Portion of Contributions from CLF	Active in Multiple Races or Cycles?
Illinois Conservatives PAC ⁴	Mar. 2, 2020	Mar. 17, 2020, primary, U.S. House (IL-14)	Mar. 4, 2020	Mar. 5, 2020	100% (\$911,000)	No

1 Illinois Conservatives PAC did not report affiliated committees on its Statement of
2 Organization, and little is known about its staff, structure, and whether it solicited contributions.⁵
3 For example, Illinois Conservatives PAC does not appear to have a website, did not report
4 contributing funds back to CLF, and there does not appear to be public reporting that further
5 illuminates the relationship between CLF and Illinois Conservatives PAC.

6 Illinois Conservatives PAC argues in response to the Complaint that the committee has
7 terminated and that it is inappropriate to pursue an enforcement action “concerning activity that
8 was fully disclosed on the public record.”⁶

9 III. LEGAL ANALYSIS

10 The Act and Commission regulations require every political committee to file a statement
11 of organization that includes “the name, address, relationship, and type of any connected
12 organization or affiliated committee.”⁷ Political committee treasurers must file reports of

⁴ Illinois Conservatives PAC, Statement of Organization at 1 (Mar. 2, 2020); Compl. ¶¶ 106-120; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00740662 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00740662&data_type=processed&q_spender=C00740662&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁵ Illinois Conservatives PAC, Statement of Organization at 3 (Mar. 2, 2020).

⁶ Illinois Conservatives PAC Resp. at 1 (Oct. 1, 2021).

⁷ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms->

1 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.⁸ The reports
2 must include, among other information, transfers to and from affiliated committees.⁹

3 Commission regulations identify certain entities that are per se affiliated, such as
4 organizations that are established, financed, maintained, or controlled by a single corporation or
5 its subsidiaries, or by the same person or group of persons.¹⁰ Outside of per se affiliation, the
6 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the
7 context of the overall relationship between committees, to determine if they are affiliated.¹¹ The
8 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
9 funds or goods in a significant amount or on an ongoing basis to another committee, such as
10 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
11 arranges for funds in a significant amount to be provided to another committee; (3) whether the
12 committees have similar patterns of contributions or contributors indicating a formal or ongoing
13 relationship between the committees; (4) whether a committee has authority or ability to direct or

[content/documents/fecfrm1i.pdf](https://www.fec.gov/content/documents/fecfrm1i.pdf) (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

⁸ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

⁹ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

¹⁰ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

¹¹ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

1 participate in the governance of another committee; and (5) whether a committee had an active
2 or significant role in the formation of another committee.¹²

3 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

4 The Act plainly states that every political committee must file a statement of
5 organization, which “shall include” information regarding any affiliated committees, and that
6 committee reports “shall disclose” transfers to and from affiliated committees.¹³ Nevertheless,
7 the Commission is aware of arguments that the affiliation reporting requirements do not apply,
8 either for policy reasons or because the Commission has not promulgated regulations on
9 reporting requirements for IEOPCs or the non-contribution accounts of hybrid PACs. Critically,
10 however, both the text of the Act and Commission regulations require affiliation reporting by all
11 political committees without exception, resulting in unambiguous legal requirements that directly
12 contravene these arguments.¹⁴

13 The Commission is aware of arguments asserting that the current concept of affiliation
14 was created in the 1976 amendments to the Act as part of Congress’s anti-proliferation effort to
15 prevent circumvention of contribution limits. A 1989 Explanation and Justification (“E&J”) for
16 revisions to the affiliation regulations described three consequences that flow from affiliation:

¹² 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

¹³ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

¹⁴ 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

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1 (1) affiliated committees share a common contribution limit as to contributions they make or
2 receive; (2) there is no limit on transfers of funds between affiliated committees; and (3) an
3 affiliation determination affects the ability of a corporation or federation of trade associations to
4 solicit some categories of individuals.¹⁵ The Commission is aware of an argument that the
5 consequences discussed in the E&J are inapplicable to IEOPCs and, accordingly, there is no
6 valid reason for the Commission to apply the Act’s affiliation reporting requirements to them.

7 These arguments, however, have a number of flaws. First, they contravene the Act’s
8 express requirement that all political committees file a statement of organization that “shall
9 include” information on any affiliated committee, thereby urging the Commission to act contrary
10 to the plain text of the law passed by Congress.¹⁶ Illinois Conservatives PAC registered with the
11 Commission as a political committee, and neither the Act nor Commission regulations provide
12 an exemption from the statement of organization requirements based on committee type.

13 Second, the suggestion that affiliation reporting exists only to facilitate enforcement of
14 contribution limits is not supported by the historical record. The requirement to report affiliation
15 pre-dated the 1976 anti-proliferation amendments. The original 1971 Act, while not defining
16 affiliation, nevertheless required that political committees file a statement of organization
17 including “the names, addresses, and relationships of affiliated or connected organizations.”¹⁷

¹⁵ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

¹⁶ 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

¹⁷ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees

1 Additionally, once the Commission promulgated a regulation defining affiliated committee, it
2 did not tie that definition exclusively to the anti-proliferation regulations. Rather, the
3 Commission created a free-standing definition of affiliated committee and explained that it
4 “parallels the definition in § 110.3,” which was the regulation that implemented the anti-
5 proliferation provisions.¹⁸ Had the Commission understood the concept of affiliation to have no
6 purpose beyond its anti-proliferation goals, this second, parallel definition, would have been
7 superfluous.

8 Further, the Commission’s current regulations suggest that affiliation reporting for
9 statements of organization, in particular, is not dependent on a committee’s status under the anti-
10 proliferation provisions. The regulation governing statements of organization instructs
11 registrants to report their affiliated committees “in accordance with paragraph (b) of this
12 section.”¹⁹ Paragraph (b), in turn, states that an affiliated committee includes any committee
13 defined in several specific provisions of the regulations.²⁰ These include 11 C.F.R. § 110.3,

other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. See Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

¹⁸ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); see *id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

¹⁹ 11 C.F.R. § 102.2(a)(1)(ii).

²⁰ *Id.* § 102.2(b).

1 which contains the anti-proliferation provisions and describes committees to which they apply,²¹
2 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
3 “affiliated committee” that resides outside the anti-proliferation regulation.²² Had the
4 Commission understood the Act to require affiliation reporting only when a committee’s
5 activities are affected by the anti-proliferation provisions, there would have been no need to also
6 reference Section 100.5(g).

7 Finally, the E&J does discuss certain “consequences” of affiliation, but the legal
8 determination of whether committees are affiliated does not depend on the downstream effects
9 that determination may have. Rather, as described above, the Commission’s regulations provide
10 the legal test to determine whether committees are affiliated, which includes a determination of
11 whether a committee is established, financed, maintained, or controlled by another committee.²³

12 The Commission is also aware of arguments asserting concerns about notice and due
13 process because allegedly it is a common and public practice for IEOPCs to contribute to each
14 other, in some cases providing a majority of the recipient’s funding, and the Commission has not
15 previously raised concerns or suggested that the affiliation rules apply. However, the notion that
16 affiliation reporting among IEOPCs is somehow unprecedented is not correct. In fact, a
17 Contributor Committee discussed in the Complaint, SMP, reported being affiliated with two
18 other IEOPCs in 2020.²⁴ Additionally, the U.S. Court of Appeals for the District of Columbia

²¹ *Id.* § 110.3(a), (b).

²² *Id.* § 100.5(g).

²³ *Id.* § 100.5(g).

²⁴ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

1 made clear in 2010 in *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C. § 30103,
2 which includes the requirement to report affiliation on a statement of organization, can
3 constitutionally be applied to political committees that make only independent expenditures.²⁵

4 Finally, the Commission is aware of arguments that, in prior, advisory opinions, it
5 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
6 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
7 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs
8 as affiliated with the SSFs.²⁶ This absence of discussion allegedly reflects the Commission’s
9 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
10 not indicate that the Commission considered the question of affiliation reporting, and each of the
11 cited opinions is clearly limited to “the specific transaction or activity set forth in [the]
12 request.”²⁷ Thus, the Commission’s silence on the issue of affiliation does not appear to have the
13 significance this argument suggests.

14 Accordingly, to the extent that Illinois Conservatives PAC was affiliated with CLF based
15 on the EFMC analysis, it was required to disclose CLF as an affiliated organization and properly
16 record the transfers it made and received.

17 **B. The Commission Dismisses the Allegations as to Illinois Conservatives PAC**

18 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
19 Recipient Committees are largely based on the financial relationships between those two groups.

²⁵ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

²⁶ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

²⁷ AO 2010-09 at 6; AO 2012-18 at 3.

1 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
2 funds from specific Contributor Committees;²⁸ (2) Contributor Committees funding Recipient
3 Committees close in time to their registration with the Commission or the dates of their
4 independent expenditures;²⁹ and (3) Recipient Committees appearing to return unspent funds to
5 Contributor Committees after elections.³⁰ The Complaint alleges that these factors, considered
6 in the context of the overall relationships between the Contributor and Recipient Committees, are
7 sufficient to establish affiliation through an EFMC analysis.³¹

8 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
9 committee establishes, finances, maintains, *or* controls another.³² As discussed above, there is
10 relatively little publicly available information about Illinois Conservatives PAC that could
11 inform an EFMC analysis.³³ Therefore, the Commission’s analysis at this stage of the matter
12 focuses on Illinois Conservatives PAC’s disclosed financial transactions.

13 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
14 the financial relationships between committees, specifically whether a committee (1) “provides
15 funds or goods in a significant amount or on an ongoing basis” to another committee, such as

²⁸ *E.g.*, Compl. ¶¶ 19, 25, 75.

²⁹ *E.g.*, *id.* ¶¶ 25, 75, 87.

³⁰ *E.g.*, *id.* ¶¶ 25, 81, 87.

³¹ *E.g.*, *id.* ¶¶ 87, 94.

³² 11 C.F.R. § 100.5(g)(2).

³³ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members” of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committee.

1 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
2 significant amount or on an ongoing basis to be provided” to another committee.³⁴

3 The Commission determines what constitutes a “significant amount” on a case-by-case
4 basis, considering all relevant circumstances.³⁵ In MUR 5367 (Congressman Darrell Issa), the
5 Commission determined that a respondent had donated or caused to be donated funds in a
6 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
7 his company donated \$1.845 million through regular donations, ultimately providing more than
8 60% of the ballot committee’s total reported receipts.³⁶ In Advisory Opinion 2006-04
9 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
10 committee’s total receipts at the time of the donation “must be considered ‘a significant
11 amount’” and would result in the donating candidate committee “financing” the committee.³⁷

³⁴ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

³⁵ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

³⁶ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

³⁷ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

1 At the outset, it appears that Illinois Conservatives PAC received well in excess of 50%
2 of its contributions from CLF, not merely at the time of contribution, but over the life-to-date of
3 the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
Illinois Conservatives PAC	CLF	100%	All time

4 The Commission’s regulations also state, however, that the Commission will consider the
5 “context of the overall relationship” between committees in determining if the “presence of any
6 factor or factors” is evidence that one committee has EFMC’d another.³⁸ Here, the available
7 information about the relationships between certain Contributor and Recipient Committees
8 described in the Complaint strongly suggests that the Recipient Committees were created and
9 funded for the limited purpose of carrying out a Contributor Committee’s goals in particular
10 elections — in effect, the Contributor Committees were acting through the Recipient
11 Committees. For example, in some instances the Recipient Committee was active in a single
12 election; received significant funds from the Contributor Committee relatively close in time to
13 that election; the available information does not indicate that the Recipient Committee solicited
14 contributions from other sources, such as through a committee website; and the Recipient
15 Committee appeared to return leftover funds, whether from vendor refunds or remaining cash on
16 hand, to the Contributor Committee after the relevant election took place. Although none of
17 these factors are individually necessary for a finding that one committee financed another, they
18 are suggestive of overall relationships in which the Contributor Committees had significant

³⁸ 11 C.F.R. § 100.5(g)(4)(ii).

1 responsibility for the finances of the Recipient Committees and, perhaps, may even have played
2 a role in establishing, maintaining, or controlling their operations.

3 As to Illinois Conservatives PAC, some aspects of its relationship with CLF could point
4 to affiliation, but there is comparatively less compelling detail, which less strongly suggests that
5 Illinois Conservatives PAC was merely a vehicle to quickly spend CLF's funds in a specific
6 election. In particular, it is notable that Illinois Conservatives PAC did not return funds to CLF
7 after the relevant election.³⁹

8 While it is possible that additional information about Illinois Conservatives PAC's
9 contacts with CLF would satisfy other factors in the EFMC analysis, in light of the minimal
10 information currently available, the Commission exercises its prosecutorial discretion to dismiss
11 the allegations that Illinois Conservatives PAC violated 52 U.S.C. § 30103(b) and 11 C.F.R.
12 § 102.2(a) by failing to report an affiliated committee on its Statement of Organization and 52
13 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements
14 as transfers to and from an affiliated committee.⁴⁰

³⁹ *Supra* Part II.

⁴⁰ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: American Future Fund Political Action and MUR 7912
Chris Marston in his official capacity as
treasurer

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures. The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

American Future Fund Political Action, a Recipient Committee and hybrid PAC, denies violating the Act and puts forward a variety of arguments, including that affiliation reporting requirements should not apply to it. American Future Fund Political Action contends that the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that such limits do not apply to IEOPCs or the non-contribution accounts of hybrid committees because they may solicit funds in unlimited amounts. It also disputes specific aspects of the Complaint’s EFMC analysis.

The available information indicates that Congressional Leadership Fund, a Contributor Committee, made significant contributions to American Future Fund Political Action, and that

1 American Future Fund Political Action did not report affiliation with or transfers to and from
2 Congressional Leadership Fund. However, after considering the available information, the
3 Commission exercises its prosecutorial discretion to dismiss the allegations that American Future
4 Fund Political Action violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to
5 report an affiliated committee on its Statement of Organization, and 52 U.S.C. § 30104(b) and
6 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements.

7 **II. FACTUAL BACKGROUND**

8 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
9 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
10 Complaint suggests that the Contributor Committees did so primarily by helping to form the
11 Recipient Committees and providing all or most of the funds the Recipient Committees raised
12 during the relevant election cycles, thus allowing the Contributor Committees to control
13 spending in elections but delay disclosing their own involvement.² In some instances, the
14 Complaint alleges that the contributions were “strategically timed” so that the public would not
15 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
16 voters of important information about who was spending to influence their votes.”³ The
17 Complaint focuses on the financial relationships between the Contributor and Recipient
18 Committees, and the degree to which the available information suggests that the Contributor
19 Committees played a role in the formation and governance of the Recipient Committees.

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

³ *Id.* ¶ 2.

1 The Complaint alleges that Congressional Leadership Fund and Caleb Crosby in his
2 official capacity as treasurer (“CLF”) EFMC’d three Recipient Committees, among them
3 American Future Fund Political Action and Chris Marston in his official capacity as treasurer
4 (“AFFPA”). As shown in the table below, AFFPA received funds from CLF in one or more
5 elections in which it also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC’d	First Contribution from CLF	First Independent Expenditure	Portion of Contributions from CLF	Active in Multiple Races or Cycles?
AFFPA ⁴	May 7, 2008	June 5, 2018, primary, U.S. House (CA-39, 48, 49) Aug. 2, 2018, primary, U.S. House (TN-06) Nov. 6, 2018, general, U.S. House (CA-10, 36, 39, 48; IA-03)	May 22, 2018	May 22, 2018	78% (\$1.4 million)	Yes

6 AFFPA did not report affiliated committees on its Statement of Organization.⁵ AFFPA’s
7 website contains a link to contribute to the committee, but neither the website nor other public
8 sources appear to provide information on AFFPA’s structure or staff.⁶ Public reporting provides
9 some information on the relationship between AFFPA and CLF. On June 5, 2018, *Politico*
10 reported that CLF was “secretly pick[ing] favorites” in three upcoming primaries in California

⁴ AFFPA, Statement of Organization at 1 (May 7, 2008); *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?two_year_transaction_period=2018&committee_id=C00449926&data_type=processed (last visited Nov. 1, 2022) (showing receipts for the period 2017-2018); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00449926&data_type=processed&q_spender=C00449926&cycle=2018&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures for the period 2017-2018).

⁵ AFFPA, Amended Statement of Organization at 3, (Mar. 12, 2014).

⁶ AFFPA, <https://affpa.com/> (last visited Nov. 1, 2022).

1 and that, according to a CLF official, the committee had “funneled” funds to AFFPA after seeing
2 polls indicating a risk that no Republicans would advance to the 2018 general election in certain
3 California congressional races.⁷ The next day, CLF tweeted that “[b]y partnering with American
4 Future Fund Political Action, CLF was able to boost Republican turnout in California” and
5 provided a link to the *Politico* story, stating “[r]ead more about the efforts here.”⁸ AFFPA did
6 not report contributing funds back to CLF after the relevant elections.

7 In response to the Complaint, AFFPA, a hybrid PAC, contends that the Complaint alleges
8 only “hyper-technical reporting violations” and asserts that AFFPA properly disclosed all
9 contributions received by its non-contribution account.⁹ It further argues that the Commission
10 has “never addressed, much less affirmatively required” affiliation reporting by the non-
11 contribution accounts of hybrid PACs.¹⁰ AFFPA asserts that such reporting is intended to
12 prevent circumvention of the Act’s contribution limits, which do not apply to non-contribution
13 accounts.¹¹ Moreover, it argues that AFFPA’s contribution and non-contribution accounts are
14 “legally distinct,” that CLF contributed only to the non-contribution account, and that the
15 Complaint offers no information suggesting a relationship between CLF and AFFPA’s non-
16 contribution account.¹² Finally, AFFPA contends that CLF’s non-contribution account has

⁷ Alex Isenstadt & Elena Schneider, *Republican Super PAC Secretly Promoted Candidates in California*, POLITICO (June 5, 2018), <https://www.politico.com/story/2018/06/05/house-republican-super-pac-california-candidates-625907> (cited in Compl. ¶¶ 118 n.150).

⁸ CLF (@CLFSuperPAC), TWITTER (June 6, 2018, 10:03 AM), <https://twitter.com/clfsuperpac/status/1004363064022654976>.

⁹ AFFPA Resp. at 1-2 (Nov. 8, 2021). AFFPA states that it first registered with the Commission as a non-connected political committee but became a hybrid PAC with a non-contribution account in 2014. *Id.* at 1.

¹⁰ *Id.* at 2, 4.

¹¹ *See id.* at 4-6.

¹² *Id.* at 7.

1 existed since 2014, and that CLF’s contributions in a single election cycle are not sufficient to
2 give rise to affiliation.¹³

3 III. LEGAL ANALYSIS

4 The Act and Commission regulations require every political committee to file a statement
5 of organization that includes “the name, address, relationship, and type of any connected
6 organization or affiliated committee.”¹⁴ Political committee treasurers must file reports of
7 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁵ The
8 reports must include, among other information, transfers to and from affiliated committees.¹⁶

9 Commission regulations identify certain entities that are per se affiliated, such as
10 organizations that are established, financed, maintained, or controlled by a single corporation or
11 its subsidiaries, or by the same person or group of persons.¹⁷ Outside of per se affiliation, the
12 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the

¹³ *Id.*

¹⁴ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

¹⁵ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁶ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

¹⁷ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

1 context of the overall relationship between committees, to determine if they are affiliated.¹⁸ The
 2 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
 3 funds or goods in a significant amount or on an ongoing basis to another committee, such as
 4 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
 5 arranges for funds in a significant amount to be provided to another committee; (3) whether the
 6 committees have similar patterns of contributions or contributors indicating a formal or ongoing
 7 relationship between the committees; (4) whether a committee has authority or ability to direct or
 8 participate in the governance of another committee; and (5) whether a committee had an active
 9 or significant role in the formation of another committee.¹⁹

10 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

11 The Act plainly states that every political committee must file a statement of
 12 organization, which “shall include” information regarding any affiliated committees, and that
 13 committee reports “shall disclose” transfers to and from affiliated committees.²⁰ Nevertheless,
 14 AFFPA argues that the affiliation reporting requirements do not apply. It contends that the
 15 Commission has not promulgated regulations on reporting requirements for IEOPCs or the non-
 16 contribution accounts of hybrid PACs, and that for policy reasons the existing affiliation

¹⁸ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

¹⁹ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

²⁰ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

1 reporting requirements are inapplicable to such committees.²¹ Critically, however, both the text
2 of the Act and Commission regulations require affiliation reporting by all political committees
3 without exception, resulting in unambiguous legal requirements that directly contravene
4 AFFPA’s policy arguments.²²

5 AFFPA contends that the current concept of affiliation was created in the 1976
6 amendments to the Act as part of Congress’s anti-proliferation effort to prevent circumvention of
7 contribution limits.²³ AFFPA points to a 1989 Explanation and Justification (“E&J”) for
8 revisions to the affiliation regulations, in which the Commission described three consequences
9 that flow from affiliation: (1) affiliated committees share a common contribution limit as to
10 contributions they make or receive; (2) there is no limit on transfers of funds between affiliated
11 committees; and (3) an affiliation determination affects the ability of a corporation or federation
12 of trade associations to solicit some categories of individuals.²⁴ AFFPA asserts that the
13 consequences discussed in the E&J are inapplicable to IEOPCs and the non-contribution
14 accounts of hybrid PACs, because they are “not subject to contribution limits . . . [,] may freely
15 ‘transfer’ funds to one another regardless of affiliation status, and . . . are not subject to restricted
16 class solicitation limitations.”²⁵ AFFPA further contends that the affiliation concept “has no

²¹ AFFPA Resp. at 2-6. AFFPA contends that the allegation that it failed to properly report transfers from affiliated committees is particularly inapposite because the Commission’s current reporting guidance does not permit hybrid PACs to record contributions to their non-contribution accounts on the line designated for showing transfers from affiliated committees. *Id.* at 4.

²² 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

²³ AFFPA Resp. at 4-6.

²⁴ *Id.* at 5 (citing Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

²⁵ *Id.*

1 separate public disclosure purpose or basis.”²⁶ Accordingly, AFFPA asserts that there is no valid
2 reason for the Commission to apply the Act’s affiliation reporting requirements to it.²⁷

3 These arguments, however, have a number of flaws. First, they contravene the Act’s
4 express requirement that all political committees file a statement of organization that “shall
5 include” information on any affiliated committee, thereby urging the Commission to act contrary
6 to the plain text of the law passed by Congress.²⁸ AFFPA registered with the Commission as a
7 political committee, and neither the Act nor Commission regulations provide an exemption from
8 the statement of organization requirements based on committee type.

9 Second, AFFPA’s suggestion that affiliation reporting exists only to facilitate
10 enforcement of contribution limits is not supported by the historical record. The requirement to
11 report affiliation pre-dated the 1976 anti-proliferation amendments referenced by AFFPA. The
12 original 1971 Act, while not defining affiliation, nevertheless required that political committees
13 file a statement of organization including “the names, addresses, and relationships of affiliated or
14 connected organizations.”²⁹ Additionally, once the Commission promulgated a regulation

²⁶ *Id.* at 6.

²⁷ *Id.* at 6-7.

²⁸ 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

²⁹ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the

1 defining affiliated committee, it did not tie that definition exclusively to the anti-proliferation
2 regulations, as AFFPA’s policy arguments might suggest. Rather, the Commission created a
3 free-standing definition of affiliated committee and explained that it “parallels the definition in
4 § 110.3,” which was the regulation that implemented the anti-proliferation provisions.³⁰ Had the
5 Commission understood the concept of affiliation to have no purpose beyond its anti-
6 proliferation goals, this second, parallel definition, would have been superfluous.

7 Further, the Commission’s current regulations suggest that affiliation reporting for
8 statements of organization, in particular, is not dependent on a committee’s status under the anti-
9 proliferation provisions. The regulation governing statements of organization instructs
10 registrants to report their affiliated committees “in accordance with paragraph (b) of this
11 section.”³¹ Paragraph (b), in turn, states that an affiliated committee includes any committee
12 defined in several specific provisions of the regulations.³² These include 11 C.F.R. § 110.3,
13 which contains the anti-proliferation provisions and describes committees to which they apply,³³
14 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
15 “affiliated committee” that resides outside the anti-proliferation regulation.³⁴ Had the

decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. See Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

³⁰ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); see *id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

³¹ 11 C.F.R. § 102.2(a)(1)(ii).

³² *Id.* § 102.2(b).

³³ *Id.* § 110.3(a), (b).

³⁴ *Id.* § 100.5(g).

1 Commission understood the Act to require affiliation reporting only when a committee’s
2 activities are affected by the anti-proliferation provisions, there would have been no need to also
3 reference Section 100.5(g).

4 Finally, the E&J that AFFPA relies on does discuss certain “consequences” of affiliation,
5 but the legal determination of whether committees are affiliated does not depend on the
6 downstream effects that determination may have. Rather, as described above, the Commission’s
7 regulations provide the legal test to determine whether committees are affiliated, which includes
8 a determination of whether a committee is established, financed, maintained, or controlled by
9 another committee.³⁵

10 The Commission is also aware of arguments asserting concerns about notice and due
11 process because allegedly it is a common and public practice for IEOPCs to contribute to each
12 other, in some cases providing a majority of the recipient’s funding, and the Commission has not
13 previously raised concerns or suggested that the affiliation rules apply. However, the notion that
14 affiliation reporting among IEOPCs is somehow unprecedented is not correct. In fact, a
15 Contributor Committee discussed in the Complaint, SMP, reported being affiliated with two
16 other IEOPCs in 2020.³⁶ Additionally, the U.S. Court of Appeals for the District of Columbia
17 made clear in 2010 in *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C. § 30103,

³⁵ *Id.* § 100.5(g).

³⁶ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

1 which includes the requirement to report affiliation on a statement of organization, can
2 constitutionally be applied to political committees that make only independent expenditures.³⁷

3 Finally, the Commission is aware of arguments that, in prior advisory opinions, it
4 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
5 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
6 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs
7 as affiliated with the SSFs.³⁸ This absence of discussion allegedly reflects the Commission’s
8 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
9 not indicate that the Commission considered the question of affiliation reporting, and each of the
10 cited opinions is clearly limited to “the specific transaction or activity set forth in [the]
11 request.”³⁹ Thus, the Commission’s silence on the issue of affiliation does not appear to have the
12 significance this argument suggests.

13 Accordingly, to the extent that AFFPA was affiliated with CLF based on the EFMC
14 analysis, it was required to disclose CLF as an affiliated organization and properly record the
15 transfers it made and received.

16 **B. The Commission Dismisses the Allegations as to AFFPA**

17 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
18 Recipient Committees are largely based on the financial relationships between those two groups.
19 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their

³⁷ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

³⁸ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

³⁹ AO 2010-09 at 6; AO 2012-18 at 3.

1 funds from specific Contributor Committees;⁴⁰ (2) Contributor Committees funding Recipient
2 Committees close in time to their registration with the Commission or the dates of their
3 independent expenditures;⁴¹ and (3) Recipient Committees appearing to return unspent funds to
4 Contributor Committees after elections.⁴² The Complaint alleges that these factors, considered
5 in the context of the overall relationships between the Contributor and Recipient Committees, are
6 sufficient to establish affiliation through an EFMC analysis.⁴³

7 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
8 committee establishes, finances, maintains, *or* controls another.⁴⁴ As discussed above, there is
9 relatively little publicly available information about AFFPA that could inform an EFMC
10 analysis.⁴⁵ Therefore, the Commission’s analysis at this stage of the matter focuses on AFFPA’s
11 disclosed financial transactions.

12 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
13 the financial relationships between committees, specifically whether a committee (1) “provides
14 funds or goods in a significant amount or on an ongoing basis” to another committee, such as
15 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
16 significant amount or on an ongoing basis to be provided” to another committee.⁴⁶

⁴⁰ *E.g.*, Compl. ¶¶ 19, 25, 75.

⁴¹ *E.g.*, *id.* ¶¶ 25, 75, 87.

⁴² *E.g.*, *id.* ¶¶ 25, 81, 87.

⁴³ *E.g.*, *id.* ¶¶ 87, 94.

⁴⁴ 11 C.F.R. § 100.5(g)(2).

⁴⁵ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members” of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committee.

⁴⁶ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

1 The Commission determines what constitutes a “significant amount” on a case-by-case
2 basis, considering all relevant circumstances.⁴⁷ In MUR 5367 (Congressman Darrell Issa), the
3 Commission determined that a respondent had donated or caused to be donated funds in a
4 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
5 his company donated \$1.845 million through regular donations, ultimately providing more than
6 60% of the ballot committee’s total reported receipts.⁴⁸ In Advisory Opinion 2006-04
7 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
8 committee’s total receipts at the time of the donation “must be considered ‘a significant
9 amount’” and would result in the donating candidate committee “financing” the committee.⁴⁹

10 At the outset, it appears that AFFPA received well in excess of 50% of its contributions
11 from CLF, not merely at the time of contribution, but over an entire election cycle, as
12 summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
AFFPA	CLF	78%	2018 cycle

⁴⁷ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

⁴⁸ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

⁴⁹ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

1 The Commission’s regulations also state, however, that the Commission will consider the
2 “context of the overall relationship” between committees in determining if the “presence of any
3 factor or factors” is evidence that one committee has EFMC’d another.⁵⁰ Here, the available
4 information about the relationships between certain Contributor and Recipient Committees
5 described in the Complaint strongly suggests that the Recipient Committees were created and
6 funded for the limited purpose of carrying out a Contributor Committee’s goals in particular
7 elections — in effect, the Contributor Committees were acting through the Recipient
8 Committees. For example, in some instances the Recipient Committee was active in a single
9 election; received significant funds from the Contributor Committee relatively close in time to
10 that election; the available information does not indicate that the Recipient Committee solicited
11 contributions from other sources, such as through a committee website; and the Recipient
12 Committee appeared to return leftover funds, whether from vendor refunds or remaining cash on
13 hand, to the Contributor Committee after the relevant election took place. Although none of
14 these factors are individually necessary for a finding that one committee financed another, they
15 are suggestive of overall relationships in which the Contributor Committees had significant
16 responsibility for the finances of the Recipient Committees and, perhaps, may even have played
17 a role in establishing, maintaining, or controlling their operations.

18 As to AFFPA, some aspects of its relationship with CLF could point to affiliation, but
19 there is comparatively less compelling detail, which less strongly suggests that AFFPA was
20 merely a vehicle to quickly spend CLF’s funds in a specific election. In particular, it is notable
21 that AFFPA has been active since 2008, long before the 2018 cycle for which it was allegedly

⁵⁰ 11 C.F.R. § 100.5(g)(4)(ii).

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1 EFMC'd, it made independent expenditures in multiple races in 2018, solicits contributions, and
2 did not return funds to CLF.⁵¹

3 While it is possible that additional information about AFFPA's contacts with CLF would
4 satisfy other factors in the EFMC analysis, in light of the minimal information currently
5 available, the Commission exercises its prosecutorial discretion to dismiss the allegations that
6 AFFPA violated 52 U.S.C. § 30103(b) and 11 C.F.R. § 102.2(a) by failing to report an affiliated
7 committee on its Statement of Organization and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by
8 failing to properly report receipts and disbursements as transfers to and from an affiliated
9 committee.⁵²

⁵¹ *Supra* Part II.

⁵² *See Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Lone Star Values PAC and MUR 7912
Maria Wojciechowski in her
official capacity as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures. The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

Lone Star Values PAC, a Recipient Committee, denies violating the Act and puts forward a variety of arguments, most prominently that affiliation reporting requirements should not apply to it. Lone Star Values PAC contends that the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that such limits do not apply to IEOPCs because they may solicit funds in unlimited amounts.

The available information indicates that Congressional Leadership Fund, a Contributor Committee, made significant contributions to Lone Star Values PAC, and that Lone Star Values PAC did not report affiliation with or transfers to and from Congressional Leadership Fund.

However, after considering the available information, the Commission exercises its prosecutorial

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1 discretion to dismiss the allegations that Lone Star Values PAC violated 52 U.S.C. § 30103(b)(2)
2 and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated committee on its Statement of
3 Organization, and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report
4 receipts and disbursements.

5 **II. FACTUAL BACKGROUND**

6 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
7 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
8 Complaint suggests that the Contributor Committees did so primarily by helping to form the
9 Recipient Committees and providing all or most of the funds the Recipient Committees raised
10 during the relevant election cycles, thus allowing the Contributor Committees to control
11 spending in elections but delay disclosing their own involvement.² In some instances, the
12 Complaint alleges that the contributions were “strategically timed” so that the public would not
13 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
14 voters of important information about who was spending to influence their votes.”³ The
15 Complaint focuses on the financial relationships between the Contributor and Recipient
16 Committees, and the degree to which the available information suggests that the Contributor
17 Committees played a role in the formation and governance of the Recipient Committees.

18 The Complaint alleges that Congressional Leadership Fund and Caleb Crosby in his
19 official capacity as treasurer (“CLF”) EFMC'd three Recipient Committees, among them Lone
20 Star Values PAC and Maria Wojciechowski in her official capacity as treasurer (“Lone Star

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

³ *Id.* ¶ 2.

- 1 Values PAC”). As shown in the table below, Lone Star Values PAC received funds from CLF in
2 an election in which it also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from CLF	First Independent Expenditure	Portion of Contributions from CLF	Active in Multiple Races or Cycles?
Lone Star Values PAC ⁴	Feb. 9, 2018	Mar. 3, 2020, primary, U.S. House (TX-7)	Feb. 24, 2020	Feb. 24, 2020	100% (\$75,000)	Yes

- 3 Lone Star Values PAC did not report affiliated committees on its Statement of
4 Organization,⁵ and little is known about its staff, structure, and whether it solicited contributions.
5 For example, Lone Star Values PAC does not appear to have a website, did not report
6 contributing funds back to CLF, and there does not appear to be public reporting that further
7 illuminates the relationship between CLF and Lone Star Values PAC.

- 8 In response to the Complaint, Lone Star Values PAC contends that the affiliation
9 reporting regulations should not apply to IEOPCs because the purpose of such reporting,
10 preventing circumvention of contribution limits, does not apply to committees that can accept
11 unlimited contributions.⁶ Additionally, the committee argues that, even if it is affiliated with
12 CLF, there is no “substantive legal violation,” only a failure to “check a box,” and accordingly
13 that the Commission should not expend further resources on this matter.⁷

⁴ Lone Star Values PAC, Statement of Organization at 1 (Feb. 9, 2018); Compl. ¶¶ 121-125; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00669325 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00669325&data_type=processed&q_spender=C00669325&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁵ Lone Star Values PAC, Statement of Organization at 3 (Feb. 9, 2018).

⁶ Lone Star Values Resp. at 2 (Sept. 22, 2021).

⁷ *Id.* at 2-3.

1 **III. LEGAL ANALYSIS**

2 The Act and Commission regulations require every political committee to file a statement
3 of organization that includes “the name, address, relationship, and type of any connected
4 organization or affiliated committee.”⁸ Political committee treasurers must file reports of
5 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.⁹ The reports
6 must include, among other information, transfers to and from affiliated committees.¹⁰

7 Commission regulations identify certain entities that are per se affiliated, such as
8 organizations that are established, financed, maintained, or controlled by a single corporation or
9 its subsidiaries, or by the same person or group of persons.¹¹ Outside of per se affiliation, the
10 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the
11 context of the overall relationship between committees, to determine if they are affiliated.¹² The
12 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
13 funds or goods in a significant amount or on an ongoing basis to another committee, such as

⁸ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

⁹ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁰ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

¹¹ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

¹² 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

1 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
2 arranges for funds in a significant amount to be provided to another committee; (3) whether the
3 committees have similar patterns of contributions or contributors indicating a formal or ongoing
4 relationship between the committees; (4) whether a committee has authority or ability to direct or
5 participate in the governance of another committee; and (5) whether a committee had an active
6 or significant role in the formation of another committee.¹³

7 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

8 The Act plainly states that every political committee must file a statement of
9 organization, which “shall include” information regarding any affiliated committees, and that
10 committee reports “shall disclose” transfers to and from affiliated committees.¹⁴ Nevertheless,
11 Lone Star Values PAC argues that, for policy reasons, the affiliation reporting requirements do
12 not apply.¹⁵ The Commission is also aware of an argument that the requirements do not apply
13 because it has not promulgated regulations on reporting requirements for IEOPCs or the non-
14 contribution accounts of hybrid PACs. Critically, however, both the text of the Act and
15 Commission regulations require affiliation reporting by all political committees without

¹³ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

¹⁴ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

¹⁵ Lone Star Values PAC Resp. at 1-2.

1 exception, resulting in unambiguous legal requirements that directly contravene these policy
2 arguments.¹⁶

3 The Commission is aware of arguments, some by Lone Star Values PAC, that the current
4 concept of affiliation was created in the 1976 amendments to the Act as part of Congress’s anti-
5 proliferation effort to prevent circumvention of contribution limits.¹⁷ A 1989 Explanation and
6 Justification (“E&J”) for revisions to the affiliation regulations, described three consequences
7 that flow from affiliation: (1) affiliated committees share a common contribution limit as to
8 contributions they make or receive; (2) there is no limit on transfers of funds between affiliated
9 committees; and (3) an affiliation determination affects the ability of a corporation or federation
10 of trade associations to solicit some categories of individuals.¹⁸ The Commission is aware of an
11 argument asserting that the consequences discussed in the E&J are inapplicable to IEOPCs and,
12 accordingly, there is no valid reason for the Commission to apply the Act’s affiliation reporting
13 requirements to them.¹⁹

14 These arguments, however, have a number of flaws. First, they contravene the Act’s
15 express requirement that all political committees file a statement of organization that “shall
16 include” information on any affiliated committee, thereby urging the Commission to act contrary
17 to the plain text of the law passed by Congress.²⁰ Lone Star Values PAC registered with the

¹⁶ 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

¹⁷ Lone Star Values PAC Resp. at 2.

¹⁸ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

¹⁹ See Lone Star Values PAC Resp. at 2.

²⁰ 52 U.S.C. § 30103(a), (b)(2); see *id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the

1 Commission as a political committee, and neither the Act nor Commission regulations provide
2 an exemption from the statement of organization requirements based on committee type.

3 Second, the suggestion that affiliation reporting exists only to facilitate enforcement of
4 contribution limits is not supported by the historical record. The requirement to report affiliation
5 pre-dated the 1976 anti-proliferation amendments. The original 1971 Act, while not defining
6 affiliation, nevertheless required that political committees file a statement of organization
7 including “the names, addresses, and relationships of affiliated or connected organizations.”²¹
8 Additionally, once the Commission promulgated a regulation defining affiliated committee, it
9 did not tie that definition exclusively to the anti-proliferation regulations, as Lone Star Values
10 PAC’s policy arguments might suggest. Rather, the Commission created a free-standing
11 definition of affiliated committee and explained that it “parallels the definition in § 110.3,”
12 which was the regulation that implemented the anti-proliferation provisions.²² Had the

alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

²¹ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. See Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

²² Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); see *id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

1 Commission understood the concept of affiliation to have no purpose beyond its anti-
2 proliferation goals, this second, parallel definition, would have been superfluous.

3 Further, the Commission’s current regulations suggest that affiliation reporting for
4 statements of organization, in particular, is not dependent on a committee’s status under the anti-
5 proliferation provisions. The regulation governing statements of organization instructs
6 registrants to report their affiliated committees “in accordance with paragraph (b) of this
7 section.”²³ Paragraph (b), in turn, states that an affiliated committee includes any committee
8 defined in several specific provisions of the regulations.²⁴ These include 11 C.F.R. § 110.3,
9 which contains the anti-proliferation provisions and describes committees to which they apply,²⁵
10 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
11 “affiliated committee” that resides outside the anti-proliferation regulation.²⁶ Had the
12 Commission understood the Act to require affiliation reporting only when a committee’s
13 activities are affected by the anti-proliferation provisions, there would have been no need to also
14 reference Section 100.5(g).

15 Finally, the E&J does discuss certain “consequences” of affiliation, but the legal
16 determination of whether committees are affiliated does not depend on the downstream effects
17 that determination may have. Rather, as described above, the Commission’s regulations provide
18 the legal test to determine whether committees are affiliated, which includes a determination of
19 whether a committee is established, financed, maintained, or controlled by another committee.²⁷

²³ 11 C.F.R. § 102.2(a)(1)(ii).

²⁴ *Id.* § 102.2(b).

²⁵ *Id.* § 110.3(a), (b).

²⁶ *Id.* § 100.5(g).

²⁷ *Id.* § 100.5(g).

1 The Commission is also aware of arguments asserting concerns about notice and due
2 process because allegedly it is a common and public practice for IEOPCs to contribute to each
3 other, in some cases providing a majority of the recipient’s funding, and the Commission has not
4 previously raised concerns or suggested that the affiliation rules apply. However, the notion that
5 affiliation reporting among IEOPCs is somehow unprecedented is not correct. In fact, a
6 Contributor Committee discussed in the Complaint, SMP, reported being affiliated with two
7 other IEOPCs in 2020.²⁸ Additionally, the U.S. Court of Appeals for the District of Columbia
8 made clear in 2010 in *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C. § 30103,
9 which includes the requirement to report affiliation on a statement of organization, can
10 constitutionally be applied to political committees that make only independent expenditures.²⁹

11 Finally, the Commission is aware of arguments that, in prior advisory opinions, it
12 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
13 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
14 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs
15 as affiliated with the SSFs.³⁰ This absence of discussion allegedly reflects the Commission’s
16 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
17 not indicate that the Commission considered the question of affiliation reporting, and each of the

²⁸ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

²⁹ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

³⁰ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

1 cited opinions is clearly limited to “the specific transaction or activity set forth in [the]
2 request.”³¹ Thus, the Commission’s silence on the issue of affiliation does not appear to have the
3 significance this argument suggests.

4 Accordingly, to the extent that Lone Star Values PAC was affiliated with CLF based on
5 the EFMC analysis, it was required to disclose CLF as an affiliated organization and properly
6 record the transfers it made and received.

7 **B. The Commission Dismisses the Allegations as to Lone Star Values PAC**

8 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
9 Recipient Committees are largely based on the financial relationships between those two groups.
10 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
11 funds from specific Contributor Committees;³² (2) Contributor Committees funding Recipient
12 Committees close in time to their registration with the Commission or the dates of their
13 independent expenditures;³³ and (3) Recipient Committees appearing to return unspent funds to
14 Contributor Committees after elections.³⁴ The Complaint alleges that these factors, considered
15 in the context of the overall relationships between the Contributor and Recipient Committees, are
16 sufficient to establish affiliation through an EFMC analysis.³⁵

17 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
18 committee establishes, finances, maintains, *or* controls another.³⁶ As discussed above, there is

³¹ AO 2010-09 at 6; AO 2012-18 at 3.

³² *E.g.*, Compl. ¶¶ 19, 25, 75.

³³ *E.g., id.* ¶¶ 25, 75, 87.

³⁴ *E.g., id.* ¶¶ 25, 81, 87.

³⁵ *E.g., id.* ¶¶ 87, 94.

³⁶ 11 C.F.R. § 100.5(g)(2).

1 relatively little publicly available information about Lone Star Values PAC that could inform an
2 EFMC analysis.³⁷ Therefore, the Commission’s analysis at this stage of the matter focuses on
3 Lone Star Values PAC’s disclosed financial transactions.

4 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
5 the financial relationships between committees, specifically whether a committee (1) “provides
6 funds or goods in a significant amount or on an ongoing basis” to another committee, such as
7 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
8 significant amount or on an ongoing basis to be provided” to another committee.³⁸

9 The Commission determines what constitutes a “significant amount” on a case-by-case
10 basis, considering all relevant circumstances.³⁹ In MUR 5367 (Congressman Darrell Issa), the
11 Commission determined that a respondent had donated or caused to be donated funds in a
12 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
13 his company donated \$1.845 million through regular donations, ultimately providing more than
14 60% of the ballot committee’s total reported receipts.⁴⁰ In Advisory Opinion 2006-04

³⁷ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members” of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committee.

³⁸ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

³⁹ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

⁴⁰ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

1 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
2 committee’s total receipts at the time of the donation “must be considered ‘a significant
3 amount’” and would result in the donating candidate committee “financing” the committee.⁴¹

4 At the outset, it appears that Lone Star Values PAC received well in excess of 50% of its
5 contributions from CLF, not merely at the time of contribution, but over an entire election cycle,
6 as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
Lone Star Values PAC	CLF	100%	2020 cycle

7 The Commission’s regulations also state, however, that the Commission will consider the
8 “context of the overall relationship” between committees in determining if the “presence of any
9 factor or factors” is evidence that one committee has EFMC’d another.⁴² Here, the available
10 information about the relationships between certain Contributor and Recipient Committees
11 described in the Complaint strongly suggests that the Recipient Committees were created and
12 funded for the limited purpose of carrying out a Contributor Committee’s goals in particular
13 elections — in effect, the Contributor Committees were acting through the Recipient
14 Committees. For example, in some instances the Recipient Committee was active in a single
15 election; received significant funds from the Contributor Committee relatively close in time to
16 that election; the available information does not indicate that the Recipient Committee solicited
17 contributions from other sources, such as through a committee website; and the Recipient
18 Committee appeared to return leftover funds, whether from vendor refunds or remaining cash on

⁴¹ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

⁴² 11 C.F.R. § 100.5(g)(4)(ii).

1 hand, to the Contributor Committee after the relevant election took place. Although none of
2 these factors are individually necessary for a finding that one committee financed another, they
3 are suggestive of overall relationships in which the Contributor Committees had significant
4 responsibility for the finances of the Recipient Committees and, perhaps, may even have played
5 a role in establishing, maintaining, or controlling their operations.

6 As to Lone Star Values PAC, some aspects of its relationship with CLF could point to
7 affiliation, but there is comparatively less compelling detail, which less strongly suggests that
8 Lone Star Values PAC was merely a vehicle to quickly spend CLF's funds in a specific election.
9 In particular, it is notable that Lone Star Values PAC was active in the 2018 election cycle, prior
10 to allegedly being EFMC'd by CLF, and it did not return funds to CLF after the 2020 primary
11 election.⁴³

12 While it is possible that additional information about Lone Star Values PAC's contacts
13 with CLF would satisfy other factors in the EFMC analysis, in light of the minimal information
14 currently available, the Commission exercises its prosecutorial discretion to dismiss the
15 allegations that Lone Star Values PAC violated 52 U.S.C. § 30103(b) and 11 C.F.R. § 102.2(a)
16 by failing to report an affiliated committee on its Statement of Organization and 52 U.S.C.
17 § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements as
18 transfers to and from an affiliated committee.⁴⁴

⁴³ *Supra* Part II.

⁴⁴ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Liberty SC and Lisa Pearson in her official capacity as treasurer MUR 7912

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures. The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

The available information indicates that one of the Contributor Committees, Hold Them Accountable, EFMC’d Recipient Committee Liberty SC, and that neither committee reported affiliation with or transfers to and from each other. Accordingly, the Commission finds reason to believe that Liberty SC violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii) by failing to report an affiliated committee on its Statement of Organization and 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements.

MUR 7912 (Liberty SC)
Factual and Legal Analysis
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1 **II. FACTUAL BACKGROUND**

2 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
3 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
4 Complaint suggests that the Contributor Committees did so primarily by helping to form the
5 Recipient Committees and providing all or most of the funds the Recipient Committees raised
6 during the relevant election cycles, thus allowing the Contributor Committees to control
7 spending in elections but delay disclosing their own involvement.² In some instances, the
8 Complaint alleges that the contributions were “strategically timed” so that the public would not
9 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
10 voters of important information about who was spending to influence their votes.”³ The
11 Complaint focuses on the financial relationships between the Contributor and Recipient
12 Committees, and the degree to which the available information suggests that the Contributor
13 Committees played a role in the formation and governance of the Recipient Committees.

14 The Complaint alleges that Hold Them Accountable and Taryn Vogel in her official
15 capacity as treasurer (f/k/a LMG PAC) (“Hold Them Accountable”) EFMC'd one Recipient
16 Committee, Liberty SC and Lisa Pearson in her official capacity as treasurer (“Liberty SC”). As
17 shown in the table below, Liberty SC received funds from Hold Them Accountable in a single
18 2020 election, in which Liberty SC also made independent expenditures.

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

³ *Id.* ¶ 2.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from Hold Them Accountable	First Independent Expenditure	Portion of Contributions from Hold Them Accountable	Active in Multiple Races or Cycles?
Liberty SC ⁴	Oct. 19, 2020	Nov. 3, 2020, general, U.S. Senate (SC)	Oct. 20, 2020	Oct. 21, 2020	100% (\$1.14 million)	No

1 Liberty SC reported no affiliated committees on its Statement of Organization,⁵ and little
2 information appears to be publicly available about the committee. Liberty SC appears to have
3 maintained a website during the 2020 elections, although the site is no longer available, and the
4 archived version does not show a means to contribute to the committee or any information on its
5 structure or staff.⁶ Public reporting prior to the election suggested a link between Liberty SC and
6 Democratic groups but did not provide specific details.⁷

7 Liberty SC made a single contribution back to Hold Them Accountable after the 2020
8 elections and before filing for termination, as shown in the chart below.

Recipient Committee	Relevant Election Dates	Post-Election Contributions to Hold Them Accountable	Post-Election Vendor Refunds	Post-Refund Contributions to Hold Them Accountable	Date of Termination Filing
Liberty SC ⁸	Nov. 3, 2020	\$191.64 (Mar. 8, 2021)	N/A	N/A	Mar. 8, 2021

9 Liberty SC did not respond to the Complaint in this matter.

⁴ Liberty SC, Statement of Organization at 1 (Oct. 19, 2020); Compl. ¶¶ 126-132; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00761494 (last visited Nov. 1, 2022) (showing receipts without date restriction); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00761494&data_type=processed&q_spender=C00761494&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restriction).

⁵ Liberty SC, Statement of Organization at 3 (Oct. 19, 2020).

⁶ LIBERTY SC (Nov. 7, 2020), <http://liberty-sc.com/> [<https://web.archive.org/web/20201107064635/https://www.liberty-sc.com/>].

⁷ Darren Samuelsohn (@dsamuelsohn), TWITTER (Oct. 28, 2020, 5:30 PM), <https://twitter.com/dsamuelsohn/status/1321565080505470976> (describing reporting on Liberty SC).

⁸ Liberty SC, 2021 Termination Report at 1-2, 6 (Mar. 8, 2021).

1 **III. LEGAL ANALYSIS**

2 The Act and Commission regulations require every political committee to file a statement
3 of organization that includes “the name, address, relationship, and type of any connected
4 organization or affiliated committee.”⁹ Political committee treasurers must file reports of
5 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁰ The
6 reports must include, among other information, transfers to and from affiliated committees.¹¹

7 Commission regulations identify certain entities that are per se affiliated, such as
8 organizations that are established, financed, maintained, or controlled by a single corporation or
9 its subsidiaries, or by the same person or group of persons.¹² Outside of per se affiliation, the
10 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the
11 context of the overall relationship between committees, to determine if they are affiliated.¹³ The
12 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
13 funds or goods in a significant amount or on an ongoing basis to another committee, such as

⁹ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

¹⁰ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹¹ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

¹² 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

¹³ 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

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1 payment for administrative, fundraising, or other costs; (2) whether a committee causes or
2 arranges for funds in a significant amount to be provided to another committee; (3) whether the
3 committees have similar patterns of contributions or contributors indicating a formal or ongoing
4 relationship between the committees; (4) whether a committee has authority or ability to direct or
5 participate in the governance of another committee; and (5) whether a committee had an active
6 or significant role in the formation of another committee.¹⁴

7 **A. Affiliation Reporting Requirements Apply to IEOPCs and Hybrid PACs**

8 The Act plainly states that every political committee must file a statement of
9 organization, which “shall include” information regarding any affiliated committees, and that
10 committee reports “shall disclose” transfers to and from affiliated committees.¹⁵ Nevertheless,
11 the Commission is aware of arguments that the affiliation reporting requirements do not apply,
12 either for policy reasons or because the Commission has not promulgated regulations on
13 reporting requirements for IEOPCs or the non-contribution accounts of hybrid PACs. Critically,
14 however, both the text of the Act and Commission regulations require affiliation reporting by all
15 political committees without exception, resulting in unambiguous legal requirements that directly
16 contravene these arguments.¹⁶

¹⁴ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

¹⁵ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

¹⁶ 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

1 The Commission is aware of arguments asserting that the current concept of affiliation
2 was created in the 1976 amendments to the Act as part of Congress’s anti-proliferation effort to
3 prevent circumvention of contribution limits. A 1989 Explanation and Justification (“E&J”) for
4 revisions to the affiliation regulations described three consequences that flow from affiliation:
5 (1) affiliated committees share a common contribution limit as to contributions they make or
6 receive; (2) there is no limit on transfers of funds between affiliated committees; and (3) an
7 affiliation determination affects the ability of a corporation or federation of trade associations to
8 solicit some categories of individuals.¹⁷ The Commission is aware of an argument asserting that
9 the consequences discussed in the E&J are inapplicable to IEOPCs and, accordingly, there is no
10 valid reason for the Commission to apply the Act’s affiliation reporting requirements to them.

11 These arguments, however, have a number of flaws. First, they contravene the Act’s
12 express requirement that all political committees file a statement of organization that “shall
13 include” information on any affiliated committee, thereby urging the Commission to act contrary
14 to the plain text of the law passed by Congress.¹⁸ Liberty SC registered with the Commission as
15 a political committee, and neither the Act nor Commission regulations provide an exemption
16 from the statement of organization requirements based on committee type.

17 Second, the suggestion that affiliation reporting exists only to facilitate enforcement of
18 contribution limits is not supported by the historical record. The requirement to report affiliation
19 pre-dated the 1976 anti-proliferation amendments. The original 1971 Act, while not defining

¹⁷ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

¹⁸ 52 U.S.C. § 30103(a), (b)(2); *see id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

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1 affiliation, nevertheless required that political committees file a statement of organization
2 including “the names, addresses, and relationships of affiliated or connected organizations.”¹⁹
3 Additionally, once the Commission promulgated a regulation defining affiliated committee, it
4 did not tie that definition exclusively to the anti-proliferation regulations. Rather, the
5 Commission created a free-standing definition of affiliated committee and explained that it
6 “parallels the definition in § 110.3,” which was the regulation that implemented the anti-
7 proliferation provisions.²⁰ Had the Commission understood the concept of affiliation to have no
8 purpose beyond its anti-proliferation goals, this second, parallel definition, would have been
9 superfluous.

10 Further, the Commission’s current regulations suggest that affiliation reporting for
11 statements of organization, in particular, is not dependent on a committee’s status under the anti-
12 proliferation provisions. The regulation governing statements of organization instructs
13 registrants to report their affiliated committees “in accordance with paragraph (b) of this

¹⁹ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. See Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

²⁰ Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); see *id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

1 section.”²¹ Paragraph (b), in turn, states that an affiliated committee includes any committee
2 defined in several specific provisions of the regulations.²² These include 11 C.F.R. § 110.3,
3 which contains the anti-proliferation provisions and describes committees to which they apply,²³
4 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
5 “affiliated committee” that resides outside the anti-proliferation regulation.²⁴ Had the
6 Commission understood the Act to require affiliation reporting only when a committee’s
7 activities are affected by the anti-proliferation provisions, there would have been no need to also
8 reference Section 100.5(g).

9 Finally, the E&J does discuss certain “consequences” of affiliation, but the legal
10 determination of whether committees are affiliated does not depend on the downstream effects
11 that determination may have. Rather, as described above, the Commission’s regulations provide
12 the legal test to determine whether committees are affiliated, which includes a determination of
13 whether a committee is established, financed, maintained, or controlled by another committee.²⁵

14 The Commission is also aware of arguments asserting concerns about notice and due
15 process because allegedly it is a common and public practice for IEOPCs to contribute to each
16 other, in some cases providing a majority of the recipient’s funding, and the Commission has not
17 previously raised concerns or suggested that the affiliation rules apply. However, the notion that
18 affiliation reporting among IEOPCs is somehow unprecedented is not correct. In fact, a
19 Contributor Committee discussed in the Complaint, SMP, reported being affiliated with two

²¹ 11 C.F.R. § 102.2(a)(1)(ii).

²² *Id.* § 102.2(b).

²³ *Id.* § 110.3(a), (b).

²⁴ *Id.* § 100.5(g).

²⁵ *Id.* § 100.5(g).

1 other IEOPCs in 2020.²⁶ Additionally, the U.S. Court of Appeals for the District of Columbia
2 made clear in 2010 in *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C. § 30103,
3 which includes the requirement to report affiliation on a statement of organization, can
4 constitutionally be applied to political committees that make only independent expenditures.²⁷

5 Finally, the Commission is aware of arguments that, in prior advisory opinions, it
6 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
7 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
8 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs
9 as affiliated with the SSFs.²⁸ This absence of discussion allegedly reflects the Commission’s
10 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
11 not indicate that the Commission considered the question of affiliation reporting, and each of the
12 opinions is clearly limited to “the specific transaction or activity set forth in [the] request.”²⁹
13 Thus, the Commission’s silence on the issue of affiliation does not appear to have the
14 significance this argument suggests.

15 Accordingly, to the extent that Liberty SC was affiliated with Hold Them Accountable
16 based on the EFMC analysis, it was required to disclose Hold Them Accountable as an affiliated
17 organization and properly record the transfers it made and received.

²⁶ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

²⁷ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

²⁸ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

²⁹ AO 2010-09 at 6; AO 2012-18 at 3.

1 **B. The Commission Finds Reason to Believe that Hold Them Accountable**
2 **EFMC'd Liberty SC**

3 The Complaint's allegations that the Contributor Committees EFMC'd the relevant
4 Recipient Committees are largely based on the financial relationships between those two groups.
5 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
6 funds from specific Contributor Committees;³⁰ (2) Contributor Committees funding Recipient
7 Committees close in time to their registration with the Commission or the dates of their
8 independent expenditures;³¹ and (3) Recipient Committees appearing to return unspent funds to
9 Contributor Committees after elections.³² The Complaint alleges that these factors, considered
10 in the context of the overall relationships between the Contributor and Recipient Committees, are
11 sufficient to establish affiliation through an EFMC analysis.³³

12 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
13 committee establishes, finances, maintains, *or* controls another.³⁴ As discussed above, there is
14 relatively little publicly available information about Liberty SC that could inform an EFMC
15 analysis.³⁵ Therefore, the Commission's analysis at this stage of the matter focuses on Liberty
16 SC's disclosed financial transactions. The available information indicates that the degree to

³⁰ *E.g.*, Compl. ¶¶ 19, 25, 75.

³¹ *E.g.*, *id.* ¶¶ 25, 75, 87.

³² *E.g.*, *id.* ¶¶ 25, 81, 87.

³³ *E.g.*, *id.* ¶¶ 87, 94.

³⁴ 11 C.F.R. § 100.5(g)(2).

³⁵ *Supra* Part II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has "the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members" of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committee.

1 which Hold Them Accountable funded Liberty SC, considering the overall context of their
2 relationship, was sufficient to trigger affiliation reporting requirements.

3 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
4 the financial relationships between committees, specifically whether a committee (1) “provides
5 funds or goods in a significant amount or on an ongoing basis” to another committee, such as
6 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
7 significant amount or on an ongoing basis to be provided” to another committee.³⁶

8 The Commission determines what constitutes a “significant amount” on a case-by-case
9 basis, considering all relevant circumstances.³⁷ In MUR 5367 (Congressman Darrell Issa), the
10 Commission determined that a respondent had donated or caused to be donated funds in a
11 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
12 his company donated \$1.845 million through regular donations, ultimately providing more than
13 60% of the ballot committee’s total reported receipts.³⁸ In Advisory Opinion 2006-04
14 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot

³⁶ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

³⁷ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

³⁸ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

1 committee’s total receipts at the time of the donation “must be considered ‘a significant
2 amount’” and would result in the donating candidate committee “financing” the committee.³⁹

3 At the outset, it appears that Liberty SC received well in excess of 50% of its
4 contributions from Hold Them Accountable, not merely at the time of contribution, but over the
5 life-to-date of the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
Liberty SC	Hold Them Accountable	100%	All time

6 The Commission’s regulations also state, however, that the Commission will consider the
7 “context of the overall relationship” between committees in determining if the “presence of any
8 factor or factors” is evidence that one committee has EFMC’d another.⁴⁰ Here, the available
9 information about the relationship between Liberty SC and Hold Them Accountable strongly
10 suggests that Liberty SC was created and funded for the limited purpose of carrying out Hold
11 Them Accountable’s goals in particular elections — in effect, Hold Them Accountable was
12 acting through Liberty SC. Specifically, Liberty SC was active in a single election; received
13 significant funds from Hold Them Accountable relatively close in time to that election; the
14 available information does not indicate that Liberty SC solicited contributions from other
15 sources, such as through a committee website; and Liberty SC appeared to return leftover funds
16 to Hold Them Accountable after the relevant election took place.⁴¹ Although none of these
17 factors are individually necessary for a finding that Hold Them Accountable financed Liberty

³⁹ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

⁴⁰ 11 C.F.R. § 100.5(g)(4)(ii).

⁴¹ *Supra* Part II.

1 SC, they are suggestive of an overall relationship in which Hold Them Accountable had
2 significant responsibility for the finances of Liberty SC and, perhaps, may even have played a
3 role in establishing, maintaining, or controlling its operations. Accordingly, these facts appear to
4 indicate that Hold Them Accountable EFMC'd Liberty SC. Therefore, the Commission finds
5 reason to believe that Liberty SC violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R. § 102.2(a)(ii)
6 by failing to report an affiliated committee on its Statement of Organization and violated 52
7 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and disbursements
8 as transfers to and from an affiliated committee.⁴²

⁴² Liberty SC has terminated its registration with the Commission. *Supra* note 8. The fact that a committee has terminated has not prevented the Commission from considering possible enforcement action. *See, e.g.*, First Gen. Counsel's Rpt. at 1 n.1, MUR 7343 (Highway 31, *et al.*); Certification ¶ 1 (July 29, 2019), MUR 7343 (Highway 31, *et al.*) (making reason-to-believe findings against terminated committee); *see also* First Gen. Counsel's Rpt. at 1 n.1, MUR 7336 (Mulvaney for Congress) (noting Commission's ability to consider allegations against a terminated committee); First Gen. Counsel's Rpt. at 7 n.4, MUR 6790 (Coakley for Senate) (discussing Commission's history of considering allegations against terminated committees). Termination signals the cessation of reporting obligations but does not deprive the Commission of jurisdiction. When a committee's termination is approved, the Commission advises that pursuant to 52 U.S.C. § 30102(d) and 11 C.F.R. §§ 102.9(c) and 104.14(b)(3) the terminating committee must maintain records and reports for inspection for at least three years and "may be required to respond to Commission requests for information regarding [its] federal election activity and previously filed reports." *See* Liberty SC, 2021 Termination Approval Ltr. (Mar. 10, 2021).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Truth Still Matters PAC and Devy Enz MUR 7912
in her official capacity as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that, during the 2018 and 2020 election cycles, five independent expenditure-only political committees (“IEOPCs”) (collectively “Contributor Committees”) established, financed, maintained, or controlled (“EFMC’d”) 17 other IEOPCs and one hybrid PAC (collectively “Recipient Committees”) with the intent of temporarily disguising the Contributor Committees’ roles in funding the Recipient Committees’ operations and independent expenditures. The Complaint alleges that the Contributor Committees and the EFMC’d Recipient Committees then failed to report each other as affiliated on their Statements of Organization and failed to report transactions between them as transfers to and from affiliated committees in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

Truth Still Matters PAC, a Recipient Committee, denies violating the Act and puts forward a variety of arguments, most prominently that affiliation reporting requirements should not apply to it. Truth Still Matters PAC contends that the purpose of reporting affiliation is to prevent circumvention of contribution limits, and that such limits do not apply to IEOPCs because they may solicit funds in unlimited amounts.

The available information indicates that Future45, a Contributor Committee, made significant contributions to Truth Still Matters PAC, and that Truth Still Matters PAC did not report affiliation with or transfers to and from Future45. However, after considering the available information, the Commission exercises its prosecutorial discretion to dismiss the allegations that Truth Still Matters PAC violated 52 U.S.C. § 30103(b)(2) and 11 C.F.R.

1 § 102.2(a)(ii) by failing to report an affiliated committee on its Statement of Organization, and
2 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
3 disbursements.

4 **II. FACTUAL BACKGROUND**

5 The Complaint names five Contributor Committees, each of which it alleges EFMC'd
6 one or more of the Recipient Committees during the 2018 or 2020 election cycles.¹ The
7 Complaint suggests that the Contributor Committees did so primarily by helping to form the
8 Recipient Committees and providing all or most of the funds the Recipient Committees raised
9 during the relevant election cycles, thus allowing the Contributor Committees to control
10 spending in elections but delay disclosing their own involvement.² In some instances, the
11 Complaint alleges that the contributions were “strategically timed” so that the public would not
12 learn of the Contributor Committee’s role until after the relevant election, thus “depriv[ing]
13 voters of important information about who was spending to influence their votes.”³ The
14 Complaint focuses on the financial relationships between the Contributor and Recipient
15 Committees, and the degree to which the available information suggests that the Contributor
16 Committees played a role in the formation and governance of the Recipient Committees.

17 The Complaint alleges that Future45 and Maria Wojciechowski in her official capacity as
18 treasurer (“Future45”) EFMC'd one Recipient Committee, Truth Still Matters PAC and Devy
19 Enz in her official capacity as treasurer (“Truth Still Matters PAC”). As shown in the table

¹ Compl. ¶¶ 1, 3 (July 15, 2021).

² *Id.* ¶¶ 1-3.

³ *Id.* ¶ 2.

- 1 below, Truth Still Matters PAC received funds from Future45 in a single 2020 election, in which
2 Truth Still Matters PAC also made independent expenditures.

Recipient Committee	Date Formed	Election(s) for which Allegedly EFMC'd	First Contribution from Future45	First Independent Expenditure	Portion of Contributions from Future45	Active in Multiple Races or Cycles?
Truth Still Matters PAC ⁴	Oct. 19, 2020	Nov. 3, 2020, general, U.S. Senate (NC)	Oct. 20, 2020	Oct. 20, 2020	100% (\$125,000)	No

3 Truth Still Matters PAC reported no affiliated committees on its Statement of
4 Organization,⁵ and little information appears to be publicly available about the committee. It
5 reportedly maintained a website during the 2020 elections, but it is currently unavailable and no
6 available information suggests that the website solicited contributions or contained information
7 on the committee's structure or staff.⁶ Truth Still Matters PAC did not make contributions back
8 to Future45 after the November 2020 general election.

9 In response to the Complaint, Truth Still Matters PAC contends that affiliation reporting
10 requirements do not apply to IEOPCs and, in any case, any violation would be de minimis.⁷

⁴ Truth Still Matters PAC, Statement of Organization at 1 (Oct. 19, 2020); Compl. ¶¶ 133-139; *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00761452 (last visited Nov. 1, 2022) (showing receipts without date restrictions); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00761452&data_type=processed&q_spender=C00761452&is_notice=false&most_recent=true (last visited Nov. 1, 2022) (showing independent expenditures without date restrictions).

⁵ Truth Still Matters PAC, Statement of Organization at 3 (Oct. 19, 2020).

⁶ *PAC Launches Website Soliciting Information on Cal Cunningham*, THE NORTH STATE JOURNAL (Oct. 28, 2020), <https://nsjonline.com/article/2020/10/pac-launches-website-soliciting-information-on-cal-cunningham/> (stating that a Truth Still Matters PAC billboard directed viewers to the website www.caltips.com). A Facebook page in the name Truth Still Matters PAC also links to the website www.CalTips.com, which is unavailable. Truth Still Matters PAC, FACEBOOK, <https://www.facebook.com/TruthStillMattersPAC> (last visited Nov. 1, 2022).

⁷ Truth Still Matters PAC Resp. at 1 (Sept. 9, 2021).

1 **III. LEGAL ANALYSIS**

2 The Act and Commission regulations require every political committee to file a statement
3 of organization that includes “the name, address, relationship, and type of any connected
4 organization or affiliated committee.”⁸ Political committee treasurers must file reports of
5 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.⁹ The reports
6 must include, among other information, transfers to and from affiliated committees.¹⁰

7 Commission regulations identify certain entities that are per se affiliated, such as
8 organizations that are established, financed, maintained, or controlled by a single corporation or
9 its subsidiaries, or by the same person or group of persons.¹¹ Outside of per se affiliation, the
10 Commission’s regulations provide that it will consider a non-exclusive list of ten factors, in the
11 context of the overall relationship between committees, to determine if they are affiliated.¹² The
12 Complaint in this matter focuses on five of the listed factors: (1) whether a committee provides
13 funds or goods in a significant amount or on an ongoing basis to another committee, such as

⁸ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a). FEC Form 1, Statement of Organization, requires political committees to list on Line 6 “all affiliated committees and connected organizations” and further instructs filers not to leave the line blank but instead to enter “None” if there are no affiliated committees. Statement of Organization, FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf> (last visited Nov. 1, 2022); Instructions for Statement of Organization (FEC FORM 1), FEC.GOV, <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (last visited Nov. 1, 2022). On March 10, 2022, the Commission approved an update to the Statement of Organization form to allow filers to indicate IEOPC or hybrid committee status as the committee type. The update does not change the instructions on affiliation reporting. *FEC Approves Advisory Opinion, Revised Statement of Organization Form, and Audit Division Recommendations*, FEC.GOV (Mar. 10, 2022), <https://www.fec.gov/updates/fec-approves-advisory-opinion-revised-statement-of-organization-form-and-audit-division-recommendations/>; Memorandum to the Commission at 8-10, 13, from The Forms Committee, FEC, Agenda Document 22-06-A (Mar. 3, 2022) (showing changes to instructions and indicating that, prior to the changes, the instructions were last updated in 2009).

⁹ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁰ 52 U.S.C. § 30104(b)(2)(F), (b)(4)(C).

¹¹ 11 C.F.R. § 100.5(g)(3)(i), (v); Advisory Opinion 2007-16 at 6-7 (American Kennel Club) (“AO 2007-16”).

¹² 11 C.F.R. § 100.5(g)(4)(ii); *see* AO 2007-16 at 8-9 (determining that the American Kennel Club (“AKC”) was affiliated with its “voting clubs” and “accredited clubs” considering, among other factors, that AKC had “an active or significant role in the formation” of the clubs).

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8 The Act plainly states that every political committee must file a statement of
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10 committee reports “shall disclose” transfers to and from affiliated committees.¹⁴ Nevertheless,
11 Truth Still Matters PAC argues that, for policy reasons, the affiliation reporting requirements do
12 not apply.¹⁵ The Commission is also aware of an argument that the requirements do not apply
13 because it has not promulgated regulations on reporting requirements for IEOPCs or the non-
14 contribution accounts of hybrid PACs. Critically, however, both the text of the Act and
15 Commission regulations require affiliation reporting by all political committees without

¹³ 11 C.F.R. § 100.5(g)(4)(ii)(B), (G)-(J); *e.g.*, Compl. ¶ 19. The other factors the Commission looks to are whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee; whether a committee can hire, appoint, demote, or otherwise control the officers or decisionmaking employees or members of another committee; whether a committee has common or overlapping membership with another committee which indicates a formal or ongoing relationship between them; whether a committee has common or overlapping employees with another committee which indicates a formal or ongoing relationship; and whether a committee has members, officers, or employees who held such positions in another committee which indicates a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. § 100.5(g)(4)(ii)(A), (C)-(F).

¹⁴ 52 U.S.C. § 30103; *id.* § 30104(b)(2), (4); *see Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) (stating that “it is elementary that an agency must adhere to its own rules and regulations”).

¹⁵ Truth Still Matters PAC Resp. at 2.

1 exception, resulting in unambiguous legal requirements that directly contravene these policy
2 arguments.¹⁶

3 The Commission is aware of arguments, some by Truth Still Matters PAC, that the
4 current concept of affiliation was created in the 1976 amendments to the Act as part of
5 Congress’s anti-proliferation effort to prevent circumvention of contribution limits.¹⁷ A 1989
6 Explanation and Justification (“E&J”) for revisions to the affiliation regulations, described three
7 consequences that flow from affiliation: (1) affiliated committees share a common contribution
8 limit as to contributions they make or receive; (2) there is no limit on transfers of funds between
9 affiliated committees; and (3) an affiliation determination affects the ability of a corporation or
10 federation of trade associations to solicit some categories of individuals.¹⁸ The Commission is
11 aware of an argument asserting that the consequences discussed in the E&J are inapplicable to
12 IEOPCs and, accordingly, there is no valid reason for the Commission to apply the Act’s
13 affiliation reporting requirements to them.¹⁹

14 These arguments, however, have a number of flaws. First, they contravene the Act’s
15 express requirement that all political committees file a statement of organization that “shall
16 include” information on any affiliated committee, thereby urging the Commission to act contrary
17 to the plain text of the law passed by Congress.²⁰ Truth Still Matters PAC registered with the

¹⁶ 52 U.S.C. § 30103 (requiring that statements of organization “shall include,” among other information, the “name, address, relationship, and type of any connected organization or affiliated committee”); 11 C.F.R. § 102.2 (same).

¹⁷ Truth Still Matters PAC Resp. at 2.

¹⁸ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,101 (Aug. 17, 1989) (“Affiliation E&J”).

¹⁹ See Truth Still Matters PAC Resp. at 2..

²⁰ 52 U.S.C. § 30103(a), (b)(2); see *id.* § 30109(a)(8) (providing that a court may declare the Commission’s dismissal of a complaint to be “contrary to law” and that a Complainant may bring a civil action regarding the

1 Commission as a political committee, and neither the Act nor Commission regulations provide
2 an exemption from the statement of organization requirements based on committee type.

3 Second, the suggestion that affiliation reporting exists only to facilitate enforcement of
4 contribution limits is not supported by the historical record. The requirement to report affiliation
5 pre-dated the 1976 anti-proliferation amendments. The original 1971 Act, while not defining
6 affiliation, nevertheless required that political committees file a statement of organization
7 including “the names, addresses, and relationships of affiliated or connected organizations.”²¹
8 Additionally, once the Commission promulgated a regulation defining affiliated committee, it
9 did not tie that definition exclusively to the anti-proliferation regulations, as Truth Still Matters
10 PAC’s policy arguments might suggest. Rather, the Commission created a free-standing
11 definition of affiliated committee and explained that it “parallels the definition in § 110.3,”
12 which was the regulation that implemented the anti-proliferation provisions.²² Had the

alleged violations if the Commission does not conform to the court’s declaration); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the Commission dismissed a complaint due to “unwillingness to enforce its own [regulation]” it would be “easy to establish that such agency action was contrary to law”).

²¹ *Legislative History of the Federal Election Campaign Act of 1971* at 921, FEC.GOV, https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf (last visited Nov. 1, 2022) (reproducing Section 303(b)(2) of the Act). The Commission initially proposed regulations that would have defined affiliated committees non-exclusively to include “[a]ll authorized committees of the same candidate” as well as “[m]ulticandidate committees other than national, state, or subordinate state party committees, and the House and Senate campaign committees of each party which are under common control.” Disclosure of Campaign Finances, 94th Cong., 1st Session at 8 (Dec. 4, 1975), https://www.fec.gov/resources/cms-content/documents/94-293_1.pdf#page=4 and https://www.fec.gov/resources/cms-content/documents/94-293_2.pdf (communication from the Chairman of the Commission conveying proposed regulations and proposing definition of affiliated committee under § 100.14(c)). The Commission’s proposed regulation was apparently not implemented, however, due to the issuance of the decision in *Buckley v. Valeo*, and as a result the Commission appears not to have implemented a regulation defining affiliated committee until after the 1976 amendments to the Act. See Federal Election Commission, Annual Report 1977 at 6 (Mar. 1978), <https://www.fec.gov/resources/cms-content/documents/ar77.pdf> (describing development of Commission’s regulations and the effect of *Buckley*).

²² Federal Election Regulations, 95th Cong., 1st Session at 42 (Jan. 12, 1977), <https://www.fec.gov/resources/cms-content/documents/95-44.pdf#page=7> (communication from the Chairman of the Commission conveying proposed regulations and explaining that the proposed definition follows the anti-proliferation language in then 2 U.S.C. § 441(a)(4), and parallels the definition of § 110.3); see *id.* at 69 (providing explanation for Commission’s regulation implementing anti-proliferation provisions of the Act).

1 Commission understood the concept of affiliation to have no purpose beyond its anti-
2 proliferation goals, this second, parallel definition, would have been superfluous.

3 Further, the Commission’s current regulations suggest that affiliation reporting for
4 statements of organization, in particular, is not dependent on a committee’s status under the anti-
5 proliferation provisions. The regulation governing statements of organization instructs
6 registrants to report their affiliated committees “in accordance with paragraph (b) of this
7 section.”²³ Paragraph (b), in turn, states that an affiliated committee includes any committee
8 defined in several specific provisions of the regulations.²⁴ These include 11 C.F.R. § 110.3,
9 which contains the anti-proliferation provisions and describes committees to which they apply,²⁵
10 but, importantly, they also include 11 C.F.R. § 100.5(g), which is the separate definition of
11 “affiliated committee” that resides outside the anti-proliferation regulation.²⁶ Had the
12 Commission understood the Act to require affiliation reporting only when a committee’s
13 activities are affected by the anti-proliferation provisions, there would have been no need to also
14 reference Section 100.5(g).

15 Finally, the E&J does discuss certain “consequences” of affiliation, but the legal
16 determination of whether committees are affiliated does not depend on the downstream effects
17 that determination may have. Rather, as described above, the Commission’s regulations provide
18 the legal test to determine whether committees are affiliated, which includes a determination of
19 whether a committee is established, financed, maintained, or controlled by another committee.²⁷

²³ 11 C.F.R. § 102.2(a)(1)(ii).

²⁴ *Id.* § 102.2(b).

²⁵ *Id.* § 110.3(a), (b).

²⁶ *Id.* § 100.5(g).

²⁷ *Id.* § 100.5(g).

1 The Commission is also aware of arguments asserting concerns about notice and due
2 process because allegedly it is a common and public practice for IEOPCs to contribute to each
3 other, in some cases providing a majority of the recipient’s funding, and the Commission has not
4 previously raised concerns or suggested that the affiliation rules apply. However, the notion that
5 affiliation reporting among IEOPCs is somehow unprecedented is not correct. In fact, a
6 Contributor Committee discussed in the Complaint, SMP, reported being affiliated with two
7 other IEOPCs in 2020.²⁸ Additionally, the U.S. Court of Appeals for the District of Columbia
8 made clear in 2010 in *SpeechNow v. FEC* that the reporting requirements of 52 U.S.C. § 30103,
9 which includes the requirement to report affiliation on a statement of organization, can
10 constitutionally be applied to political committees that make only independent expenditures.²⁹

11 Finally, the Commission is aware of arguments that, in prior advisory opinions, it
12 considered requests from 501(c)(4) non-profit organizations, with existing separate segregated
13 funds (“SSFs”), that were seeking to establish IEOPCs, and permitted those 501(c)(4)
14 organizations to establish and administer the IEOPCs without discussion of treating the IEOPCs
15 as affiliated with the SSFs.³⁰ This absence of discussion allegedly reflects the Commission’s
16 understanding that affiliation rules do not apply to IEOPCs. However, the advisory opinions do
17 not indicate that the Commission considered the question of affiliation reporting, and each of the

²⁸ SMP Amended Statement of Organization at 3, 5 (Nov. 24, 2020); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Nov. 1, 2022) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Nov. 1, 2022) (same).

²⁹ *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 698 (D.C. Cir. 2010) (*en banc*) (holding that the FEC may constitutionally require SpeechNow, a group operating as an IEOPC, to comply with the Act’s recordkeeping, registration, and reporting requirements); *see also Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (upholding disclaimer and disclosure requirements for electioneering communications).

³⁰ Advisory Opinion 2010-09 (Club for Growth) (“AO 2010-09”); Advisory Opinion 2012-18 (National Right to Life Committee) (“AO 2012-18”).

1 cited opinions is clearly limited to “the specific transaction or activity set forth in [the]
2 request.”³¹ Thus, the Commission’s silence on the issue of affiliation does not appear to have the
3 significance this argument suggests.

4 Accordingly, to the extent that Truth Still Matters PAC was affiliated with Future45
5 based on the EFMC analysis, it was required to disclose Future45 as an affiliated organization
6 and properly record the transfers it made and received.

7 **B. The Commission Dismisses the Allegations as to Truth Still Matters PAC**

8 The Complaint’s allegations that the Contributor Committees EFMC’d the relevant
9 Recipient Committees are largely based on the financial relationships between those two groups.
10 The Complaint points to factors such as (1) Recipient Committees receiving most or all of their
11 funds from specific Contributor Committees;³² (2) Contributor Committees funding Recipient
12 Committees close in time to their registration with the Commission or the dates of their
13 independent expenditures;³³ and (3) Recipient Committees appearing to return unspent funds to
14 Contributor Committees after elections.³⁴ The Complaint alleges that these factors, considered
15 in the context of the overall relationships between the Contributor and Recipient Committees, are
16 sufficient to establish affiliation through an EFMC analysis.³⁵

17 Because the EFMC analysis is disjunctive, the Commission may find affiliation when one
18 committee establishes, finances, maintains, *or* controls another.³⁶ As discussed above, there is

³¹ AO 2010-09 at 6; AO 2012-18 at 3.

³² *E.g.*, Compl. ¶¶ 19, 25, 75.

³³ *E.g., id.* ¶¶ 25, 75, 87.

³⁴ *E.g., id.* ¶¶ 25, 81, 87.

³⁵ *E.g., id.* ¶¶ 87, 94.

³⁶ 11 C.F.R. § 100.5(g)(2).

1 relatively little publicly available information about Truth Still Matters PAC that could inform an
2 EFMC analysis.³⁷ Therefore, the Commission’s analysis at this stage of the matter focuses on
3 Truth Still Matters PAC’s disclosed financial transactions.

4 Two of the factors the Commission may consider in an EFMC analysis speak expressly to
5 the financial relationships between committees, specifically whether a committee (1) “provides
6 funds or goods in a significant amount or on an ongoing basis” to another committee, such as
7 payment for administrative, fundraising, or other costs; or (2) “causes or arranges for funds in a
8 significant amount or on an ongoing basis to be provided” to another committee.³⁸

9 The Commission determines what constitutes a “significant amount” on a case-by-case
10 basis, considering all relevant circumstances.³⁹ In MUR 5367 (Congressman Darrell Issa), the
11 Commission determined that a respondent had donated or caused to be donated funds in a
12 “significant amount” to a state ballot measure committee, and thereby “financed” it, when he and
13 his company donated \$1.845 million through regular donations, ultimately providing more than
14 60% of the ballot committee’s total reported receipts.⁴⁰ In Advisory Opinion 2006-04

³⁷ *Supra* Parts II. For example, one factor the Commission considers in an EFMC analysis is whether a committee has “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members” of another committee. 11 C.F.R. § 100.5(g)(4)(ii)(C). This factor is difficult to assess without information about the operations and employees of the Recipient Committee.

³⁸ 11 C.F.R. § 100.5(g)(4)(ii)(G)-(H).

³⁹ Advisory Opinion 2006-04 at 3 (Tancredo) (“AO 2006-04”).

⁴⁰ Factual & Legal Analysis (“F&LA”) at 1, 5-6, MUR 5367 (U.S. Representative Darrell Issa). The Commission further stated that the facts “strongly indicate that in addition to financing [the ballot measure committee,]” the respondent also “maintained” it. *Id.* at 5-6. The EFMC analysis in MUR 5367 was conducted under the Bipartisan Campaign Reform Act of 2002 (“BCRA”). F&LA at 2, MUR 5367 (U.S. Representative Darrell Issa). However, the factors in the BCRA EFMC analysis closely parallel those under 11 C.F.R. § 100.5(g)(4)(ii). *See* 11 C.F.R. § 300.2(c); *id.* § 100.5(g)(4)(ii). Moreover, the Commission has explained that “the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA,” although the Commission “recast” those factors “in the terminology demanded by the BCRA context.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

1 (Tancredo), the Commission determined that a donation that represented 50% of a state ballot
2 committee’s total receipts at the time of the donation “must be considered ‘a significant
3 amount’” and would result in the donating candidate committee “financing” the committee.⁴¹

4 At the outset, it appears that Truth Still Matters PAC received well in excess of 50% of
5 its contributions from Future45, not merely at the time of contribution, but over the life-to-date
6 of the committee, as summarized below.

Recipient Committee	Contributor Committee	% Contributions from Contributor Committee	Time Period
Truth Still Matters PAC	Future45	100%	All time

7 The Commission’s regulations also state, however, that the Commission will consider the
8 “context of the overall relationship” between committees in determining if the “presence of any
9 factor or factors” is evidence that one committee has EFMC’d another.⁴² Here, the available
10 information about the relationships between certain Contributor and Recipient Committees
11 described in the Complaint strongly suggests that the Recipient Committees were created and
12 funded for the limited purpose of carrying out a Contributor Committee’s goals in particular
13 elections — in effect, the Contributor Committees were acting through the Recipient
14 Committees. For example, in some instances the Recipient Committee was active in a single
15 election; received significant funds from the Contributor Committee relatively close in time to
16 that election; the available information does not indicate that the Recipient Committee solicited
17 contributions from other sources, such as through a committee website; and the Recipient
18 Committee appeared to return leftover funds, whether from vendor refunds or remaining cash on

⁴¹ AO 2006-04 at 2-4. The Commission’s analysis in this opinion was also conducted using the EFMC factors in BCRA. *See id.* at 3.

⁴² 11 C.F.R. § 100.5(g)(4)(ii).

1 hand, to the Contributor Committee after the relevant election took place. Although none of
2 these factors are individually necessary for a finding that one committee financed another, they
3 are suggestive of overall relationships in which the Contributor Committees had significant
4 responsibility for the finances of the Recipient Committees and, perhaps, may even have played
5 a role in establishing, maintaining, or controlling their operations.

6 As to Truth Still Matters PAC, some aspects of its relationship with Future45 could point
7 to affiliation, but there is comparatively less compelling detail, which less strongly suggests that
8 Truth Still Matters PAC was merely a vehicle to quickly spend Future45's funds in a specific
9 election. In particular, it is notable that Truth Still Matters PAC did not report returning funds to
10 Future45 after the 2020 general election.

11 While it is possible that additional information about Truth Still Matters PAC's contacts
12 with Future45 would satisfy other factors in the EFMC analysis, in light of the minimal
13 information currently available, the Commission exercises its prosecutorial discretion to dismiss
14 the allegations that Truth Still Matters PAC violated 52 U.S.C. § 30103(b) and 11 C.F.R.
15 § 102.2(a) by failing to report an affiliated committee on its Statement of Organization and
16 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly report receipts and
17 disbursements as transfers to and from an affiliated committee.⁴³

⁴³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).