



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA EMAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

September 6, 2022

Tiffany Muller
End Citizens United
P.O. Box 66005
Washington, DC 20035
dorothy@endcitizensunited.com

RE: MUR 7933 (Alek for Oregon, *et al.*)

Dear Ms. Muller:

The Federal Election Commission has considered the allegations contained in your complaint dated October 13, 2021. The Commission dismissed the allegations that the 15:17 Fund made and Alek Skarlatos and Alek for Oregon and Chris Marston in his official capacity as treasurer knowingly accepted a prohibited corporate contribution in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b), (d). The Commission also dismissed the allegation that Alek Skarlatos and the 15:17 Fund violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by directing, transferring, spending, or disbursing funds that do not comply with the prohibitions of the Act. Accordingly, on August 30, 2022, the Commission closed the file in this matter. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact Laura Conley, the attorney assigned to this matter, at (202) 694-1475 or lconley@fec.gov.

Sincerely,

Ana J. Peña-Wallace
Ana J. Peña-Wallace
Assistant General Counsel

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Alek for Oregon and Chris Marston
in his official capacity as treasurer
Alek Skarlatos
15:17 Fund

MUR 7933

I. INTRODUCTION

11 The Complaint in this matter alleges that congressional candidate Alek Skarlatos, his
12 principal campaign committee, Alek for Oregon and Chris Marston in his official capacity as
13 treasurer (the “Committee”), and the 15:17 Fund, a corporation that Skarlatos founded, violated
14 the Federal Election Campaign Act of 1971, as amended (the “Act”), when the 15:17 Fund
15 purported to refund a donation it received from the Committee. The Complaint asserts that the
16 refund was actually a prohibited corporate contribution that the 15:17 Fund made and Skarlatos
17 and the Committee knowingly accepted. Further, the Complaint argues that the contribution was
18 not comprised of federally permissible funds, and therefore Skarlatos and the 15:17 Fund
19 violated the prohibition on candidates and entities they establish, finance, maintain, or control
20 (“EFMC”) directing, transferring, spending, or disbursing funds that do not comply with the
21 prohibitions and limitations of the Act.

22 Respondents deny the allegations, contending that the payment from the 15:17 Fund to
23 the Committee was a refund, not a contribution, and that it was comprised of the same federally
24 permissible funds the Committee had donated to the 15:17 Fund. Further, Respondents argue
25 that the refund was made within a reasonable timeframe under circumstances similar to those
26 which the Commission has previously permitted.

27 Based on the available information, it appears that the 15:17 Fund's payment to the
28 Committee is not a contribution, and that it was comprised of federally permissible funds.

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1 Accordingly, the Commission dismisses the allegation that the 15:17 Fund made, and Skarlatos
 2 and the Committee knowingly accepted, a prohibited corporate contribution in violation of 52
 3 U.S.C. § 30118 and 11 C.F.R. § 114.2. The Commission also dismisses the allegation that
 4 Skarlatos and the 15:17 Fund violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by
 5 directing, transferring, spending, or disbursing funds that do not comply with the prohibitions of
 6 the Act.

7 **II. FACTUAL BACKGROUND**

8 Alek Skarlatos was a candidate in the 2020 general election for Oregon’s Fourth
 9 Congressional District, and the Committee is his principal campaign committee.¹ On
 10 December 11, 2020, after losing the election, Skarlatos founded the 15:17 Fund, a 501(c)(4)
 11 corporation that shares a treasurer with the Committee.² On February 12, 2021, the Committee
 12 made a \$93,000 donation to the 15:17 Trust, a registered trade name of the 15:17 Fund.³
 13 Approximately three months later, on May 3, 2021, Skarlatos announced that he would be
 14 seeking the Fourth District seat in the 2022 election cycle.⁴ The 15:17 Trust then made a
 15 payment of \$65,000 back to the Committee, which the Committee reported having received on
 16 May 19, 2021, and identified as a “return of charitable contribution.”⁵

¹ Ballotpedia, *Oregon’s 4th Congressional District Election, 2020*, https://ballotpedia.org/Oregon%27s_4th_Congressional_District_election,_2020 (last visited June 10, 2022); Alek for Oregon, Statement of Organization at 2 (Aug. 15, 2019); Alek for Oregon, Amended Statement of Organization at 2 (Jan. 25, 2022).

² Compl. at 1-3 (Oct. 19, 2021) (discussing emails in which Skarlatos stated that he founded the 15:17 Fund).

³ Alek for Oregon, Amended 2021 April Quarterly Report at 8 (Sept. 2, 2021); State of Virginia, *State Corporation Commission Clerk’s Information System*, <https://cis.scc.virginia.gov/EntitySearch/Index> (last visited June 10, 2022) (“15:17 Fund Virginia Registration”) (search for “1517 Fund” in entity name field and on entity information page select “Name History”).

⁴ Compl. at 3 (citing KATU Staff, *Alek Skarlatos Announces Another Run for Congress in 2022*, KATU2 (May 4, 2021), <https://katu.com/news/local/alek-skarlatos-announces-another-run-for-congress-in-2022>).

⁵ *Id.* at 1-3; Alek for Oregon, Amended 2021 July 15 Quarterly Report at 190 (Sept. 2, 2021).

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1 There is limited public information available about the 15:17 Fund, its operations, and
 2 Skarlatos's role with the organization. Several fundraising emails that Skarlatos sent after he
 3 was no longer a 2020 candidate state that he was the "Founder [of the] 15:17 Trust" and that the
 4 organization would be "dedicated to advocating on behalf of and supporting our veterans."⁶
 5 Skarlatos has not disclosed any income from the 15:17 Fund or positions with that organization
 6 in the financial disclosure reports he has filed in connection with his 2022 campaign.⁷
 7 The IRS has a record of the "15-17 Fund," which appears to be the same organization, but that
 8 record reveals no information on individuals associated with the 15-17 Fund, and the only
 9 financial information the record includes is that the 15-17 Fund had gross receipts less than
 10 \$50,000 in 2020.⁸ The 15:17 Fund is also registered with the State of Virginia Corporation
 11 Commission, but the publicly available information does not provide any insight into the 15:17
 12 Fund's finances, lists no officers or members other than the treasurer it shares with the
 13 Committee — Chris Marston — and indicates that its status is inactive.⁹ The 15:17 Fund

⁶ Compl. at 2-3 n.6 (citing Email from Alek Skarlatos, Subject: Is This Acceptable to You (Mar. 25, 2021 15:39), <https://electionemails2020.org/email/fe8b83f9003b5c93a5035adae2f1afbc> (fundraising email stating Skarlatos's title and identifying the organization as a 501(c)(4)); Email from Alek Skarlatos, Subject: Help Me Help Veterans (Mar. 2, 2021 18:40), <https://electionemails2020.org/email/c5e3cd7f4b2f5ff28e48873bab50dd55> (Skarlatos stating he is "proud to announce that I am officially launching the 15:17 Trust")).

⁷ Alek Skarlatos, Financial Disclosure Report (Sept. 28, 2021), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2021/10043812.pdf; Alek Skarlatos, Financial Disclosure Report (Apr. 15, 2022), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2022/10046197.pdf.

⁸ IRS, *15-17 Fund*, <https://apps.irs.gov/app/eos/detailsPage?ein=854149445&name=15-17%20FUND&city=Alexandria&state=VA&countryAbbr=US&dba=%20&type=EPOSTCARD&orgTags=EPOSTCARD> (last visited June 10, 2022) (showing same address for entity registered in Virginia as 15:17 Fund); 15:17 Fund Virginia Registration (showing address in "Principal Office Address" section).

⁹ 15:17 Fund Virginia Registration (stating the reason for inactive status as "Automatically Terminated – Annual Report – Can Reinstate"). The treasurer information is accessible by selecting "Filing History" and clicking on the magnifying glass icon for the February 12, 2021, Fictitious Name Certificate. *Id.*

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1 similarly does not appear to have an active website, and its accounts on social media are largely
2 inactive.¹⁰

3 The Complaint alleges that the \$65,000 purported refund to the Committee violated the
4 Act and the Commission’s regulations in two ways. First, it asserts that the payment was a
5 prohibited corporate contribution because it was not made under the same circumstances
6 previously permitted by the Commission for making such refunds — namely, the 15:17 Fund’s
7 refund occurred too long after the initial donation; the Committee’s funds were likely comingled
8 with non-federal funds; and it does not appear that the 15:17 Fund materially altered its activities
9 in a way that impacted the Committee and would necessitate a refund.¹¹ Second, the Complaint
10 alleges that Skarlatos’s role as the founder and “public face” of the 15:17 Fund, the movement of
11 funds between the entities, and the overlapping staff between the Committee and the 15:17 Fund
12 all indicate Skarlatos EFMC’d the 15:17 Fund.¹² As a result, the Complaint argues that by
13 making the contribution Skarlatos and the 15:17 Fund also violated the prohibition in the Act and
14 the Commission’s regulations on candidates and entities they EFMC directing, transferring,
15 spending, or disbursing funds in connection with a federal election that do not comply with the
16 prohibitions of the Act.¹³

17 Respondents assert that the Committee requested a refund because the 15:17 Fund had
18 “done very little with the funds the Committee transferred” by the time that Skarlatos decided he

¹⁰ Compl. at 2.

¹¹ *Id.* at 4-7.

¹² *Id.* at 7.

¹³ *Id.*; see 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

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1 would run again in 2022.¹⁴ They contend that the refund was therefore due to changed
 2 circumstances, which they argue the Commission has allowed as the basis for a refund in past
 3 advisory opinions.¹⁵ They further contend that the refund was made within an appropriate period
 4 of time and that the funds were all federally permissible.¹⁶ Respondents state that, in the time
 5 the 15:17 Fund had the donation, it raised \$1,855 from individuals, all of which complied with
 6 the Act's source and limitation requirements, and spent \$14,760, "mostly on fundraising."¹⁷ As
 7 a result, they argue that, at the time of the refund, all of the money in the 15:17 Fund's account
 8 was federally permissible and the refund was "on a first in first out basis, comprised entirely of
 9 the very same [federally compliant] funds that were donated in the first instance."¹⁸ The
 10 Response does not analyze the allegation that Skarlatos EFMC'd the 15:17 Fund, but it does
 11 assert that he "had no governing or paid role" with the 15:17 Fund when the Committee made its
 12 donation.¹⁹

13 III. LEGAL ANALYSIS

14 Corporations are prohibited from making contributions to federal candidates, and the Act
 15 likewise bars candidates and their authorized committees from knowingly accepting or receiving
 16 corporate contributions.²⁰ In addition, the Act and Commission regulations prohibit federal

¹⁴ Committee, Skarlatos, and 15:17 Fund Resp. at 2 (Dec. 9, 2021) ("Resp.").

¹⁵ *Id.* (citing Advisory Opinion 2010-28 (Indiana Democratic Congressional Victory Committee, *et al.*), Advisory Opinion 2002-08 (Vitter), and Advisory Opinion 1995-43 (Packwood)).

¹⁶ *Id.* at 2-3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 2.

²⁰ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d).

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1 candidates and entities directly or indirectly established, financed, maintained, or controlled by
 2 or acting on behalf of federal candidates, from receiving, directing, transferring, spending, or
 3 disbursing funds in connection with a federal election “unless the funds are subject to the
 4 limitations, prohibitions, and reporting requirements” of the Act.²¹

5 The Commission determines whether a candidate has EFMC’d an entity by considering a
 6 non-exclusive list of factors set out in the Commission’s regulations in the context of the overall
 7 relationship between the candidate and the entity.²² The factors include whether the candidate
 8 “had an active or significant role in the formation of the entity,” has “the authority or ability to
 9 hire appoint, demote, or otherwise control the officers, or other decision-making employees or
 10 members of the entity,” provides the entity with “funds or goods in a significant amount or on an
 11 ongoing basis,” or if there are “common or overlapping officers or employees with the entity that
 12 indicates a formal or ongoing relationship.”

13 **A. The Commission Dismisses the Allegation that the 15:17 Fund Made, and the**
 14 **Committee and Skarlatos Knowingly Accepted, a Corporate Contribution**

15 As a corporation, the 15:17 Fund was not permitted to make a contribution to a federal
 16 candidate’s committee, and the Committee could not accept such a contribution.²³ Neither the
 17 Act nor Commission regulations set out criteria to distinguish a contribution from a permissible
 18 refund under the circumstances presented here.²⁴ However, the Commission has issued advisory

²¹ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.

²² 11 C.F.R. § 300.2(c)(2) (listing factors).

²³ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d).

²⁴ See Advisory Opinion 2010-28 at 2 (Indiana Democratic Congressional Victory Committee, *et al.*) (“AO 2010-28”) (stating in response to a question about a refund from a state committee of a political party to a federal committee that “[a]lthough the Act and Commission regulations provide for the refund of contributions, they do not address the specific question presented here”).

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1 opinions in analogous situations involving the return of funds to a political committee, and a
2 similar analysis on these facts indicates that the 15:17 Fund’s payment to the Committee was
3 likely a permissible refund.

4 Although the Commission has not set out a formal analysis for this type of transaction, it
5 has looked to the timing and justification of the purported refund, as well as whether the funds
6 are federally permissible. In Advisory Opinion 2010-28 (Indiana Democratic Congressional
7 Victory Committee, *et al.*) (“AO 2010-28”), a candidate’s principal campaign committee
8 transferred \$34,600 to the federal account of a state committee of a political party to “engage in
9 general party projects on behalf of its candidates in connection with the 2010 general election.”²⁵
10 However, the state committee did not engage in those activities, and the federal committee then
11 sought a refund of the full amount so that it could use the funds in the candidate’s general
12 election campaign.²⁶ The Commission’s opinion noted that there was no indication that the
13 funds were comingled with non-federal funds; the state committee’s failure to undertake the
14 expected activities resulted in “materially altered” circumstances; and the transfer to the state
15 committee had occurred “just weeks” before the submission of the advisory opinion request,
16 which “supports a determination that this is a refund rather than a contribution.”²⁷

17 In Advisory Opinion 2002-08 (Vitter) (“AO 2002-08”), a candidate’s federal committee
18 had transferred just over \$700,000 to his state exploratory committee and represented that the

²⁵ *Id.* at 1.

²⁶ *Id.* at 1-2.

²⁷ *Id.* at 3. The Commission advised that the funds could be refunded in whole or in part within ten days of receiving the advisory opinion, which would have been just under two months from the original transfer date. *See id.* at 1, 3 (showing initial transfer was made on September 14, 2010, and the advisory opinion was issued on October 27, 2010).

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1 funds were held, unspent, in a separate account, and were not comingled with nonfederal funds
 2 or used as security or collateral for a loan or line of credit.²⁸ The candidate decided not to seek
 3 state office and, approximately three months after making the first deposit with the state
 4 committee, he sought an advisory opinion from the Commission in order to have the full amount
 5 refunded to his federal committee.²⁹ The Commission determined that, because the available
 6 information indicated the money “effectively remained Federal funds at all times,” it could be
 7 redeposited into the candidate’s federal account.³⁰

8 Based on the available record, the circumstances in this matter do not differ meaningfully
 9 from those considered by the Commission in AOs 2010-28 and 2002-08. The 15:17 Fund
 10 apparently did not engage in the expected activities during the three months that it had the
 11 Committee’s \$93,000 donation. Without specifying what it had expected the 15:17 Fund to do
 12 with its donation, the Committee represents that the 15:17 Fund had “done very little” with the
 13 funds by the time Skarlatos decided to run again.³¹ Even the Complaint recognizes that the
 14 15:17 Fund does not appear to have engaged in “any activities other than fundraising,”³² through
 15 which it apparently raised only \$1,855 during that time.³³ Therefore, the circumstances appear
 16 to have been materially altered in a manner similar to those in AOs 2010-28 and 2002-08.

²⁸ AO 2002-08 at 1-2 (Vitter).

²⁹ *Id.* (showing that the first deposit was made in March 2002 and the opinion was requested in June 2002).

³⁰ *Id.* at 2-3. The Commission advised that the refund deposit should be made within ten days of receiving the advisory opinion, which would have been just under five months since the first transfer to the state committee. *Id.* at 1 (showing date of advisory opinion as August 1, 2002); David Vitter for Congress, 2002 April Quarterly Report at 23 (Apr. 15, 2002) (showing date of initial transfer to state committee as March 20, 2002).

³¹ Resp. at 2.

³² Compl. at 3.

³³ Resp. at 2. The 15:17 Fund contends that it spent only \$14,760, mostly for fundraising, while it had the Committee’s donation. *Id.*

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1 Additionally, Respondents have represented that the Committee's donation was not
 2 comingled with funds that were not federally permissible because the 15:17 Fund had no such
 3 funds in its account when it made the purported refund.³⁴ According to the Response, the 15:17
 4 Fund had raised only \$1,855, all in federally permissible funds, during the time it had the
 5 Committee's donation.³⁵ Finally, the Committee received the refund within a reasonable time
 6 frame — approximately three months after the donation was made, which was a slightly longer
 7 time period than the Commission approved in AO 2010-28 (*i.e.*, approximately two months), but
 8 less time than the transactions at issue in AO 2002-08 (*i.e.*, approximately five months).³⁶

9 Without information to indicate the contrary, the \$65,000 payment from the 15:17 Fund
 10 to the Committee was likely a *bona fide* refund. Accordingly, the Commission dismisses the
 11 allegation that the 15:17 Fund made, and Skarlatos and the Committee knowingly accepted, a
 12 prohibited corporate contribution in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2.

13 **B. The Commission Dismisses the Allegation that Skarlatos and the 15:17 Fund**
 14 **Impermissibly Directed, Transferred, Spent, or Disbursed Soft Money**

15 The Complaint also alleges that the purported refund contained funds that were not
 16 federally permissible (*i.e.*, soft money), and that Skarlatos and the entity he EFMC'd, the 15:17
 17 Fund, were therefore barred from directing, transferring, spending, or disbursing them in
 18 connection with a federal election.³⁷ The available information, however, suggests the funds
 19 were not soft money.

³⁴ *Id.* at 3.

³⁵ *Id.* at 2-3.

³⁶ *Supra* notes 27, 30. The 15:17 Fund's partial refund is also not at odds with the Commission's guidance, as the Commission in AO 2010-28 expressly approved of partial refunds. AO 2010-28 at 2.

³⁷ Compl. at 7.

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1 The Response indicates that, after receiving \$93,000 from the Committee, the 15:17 Fund
2 spent \$14,760,³⁸ which would have left it with \$78,240 of the initial amount. This was more
3 than sufficient to cover the \$65,000 refund, and Respondents have represented that, on a first-in-
4 first-out basis, the refund was comprised of the same funds the Committee had donated to the
5 15:17 Fund.³⁹ As discussed above, Respondents also state that the only money the 15:17 Fund
6 had raised consisted of \$1,855 in federally permissible funds.⁴⁰

7 Accordingly, because there is no available information to support the assertions in the
8 Complaint that the refund was comprised of soft money, there is no need to consider whether
9 Skarlatos EFMC'd the 15:17 Fund, and the Commission dismisses the allegations that Skarlatos
10 and the 15:17 Fund violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by directing,
11 transferring, spending, or disbursing funds that do not comply with the prohibitions of the Act.

³⁸ Resp. at 2.

³⁹ *Id.*; see AO 1996-52 at 2 (Andrews) (stating that it is the Commission's "general practice" to "treat[] the funds in a committee's account at any particular time as consisting of the funds most recently received" and that therefore disbursements "first deplete the funds that have been in the committee's account the longest").

⁴⁰ Resp. at 3.