

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 7938**

4 DATE COMPLAINT FILED: Oct. 28, 2021

5 DATE OF NOTIFICATIONS: Nov. 3, 2021

6 DATE OF LAST RESPONSE: Dec. 8, 2021

7 DATE ACTIVATED: Feb. 15, 2022

8 EXPIRATION OF SOL: Mar. 1, 2024 –

9 Apr. 15, 2026

10 ELECTION CYCLE: 2022

11 **COMPLAINANT:**

Brendan M. Fischer

12 Campaign Legal Center

13 **RESPONDENTS:**

14 Greitens for US Senate and Eric Greitens in his
15 official capacity as treasurer

16 Eric R. Greitens

17 Greitens for Missouri

18 Dylan Johnson

19 Octavian Group, LLC

20 **RELEVANT STATUTES**

21 **AND REGULATIONS:**

22 52 U.S.C. § 30104(b)

23 52 U.S.C. § 30122

24 52 U.S.C. § 30125(e)

25 11 C.F.R. § 100.72

26 11 C.F.R. § 100.131

11 C.F.R. § 110.3(d)

27 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

28 **AGENCIES CHECKED:**

Missouri Ethics Commission

29 **I. INTRODUCTION**

30 The Complaint alleges that Eric R. Greitens, a former Governor of Missouri and a former
31 candidate for U.S. Senate for Missouri in the 2022 Republican primary election, used funds from
32 his state campaign committee, Greitens for Missouri (the “State Committee”), to impermissibly
33 test the waters for his federal campaign. The Complaint further alleges that Greitens transferred
34 the State Committee’s website to his federal authorized campaign committee, Greitens for US

1 Senate and Eric Greitens in his official capacity as treasurer (the “Federal Committee”),¹ in
2 violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d), and that the Federal Committee
3 misreported the transfer as an in-kind contribution from Greitens, in violation of 52 U.S.C.
4 § 30104(b).

5 Greitens, the State Committee, and the Federal Committee (collectively, the “Greitens
6 Respondents”) filed a joint Response (the “Response”) denying the allegations and attaching
7 exhibits containing invoices and other documents to assert that some of the alleged testing-the-
8 waters expenses identified in the Complaint were for services unrelated to Greitens’s federal
9 campaign and were provided months before Greitens declared his candidacy for U.S. Senate.
10 The Response further attaches a signed licensing agreement to support the assertion that Greitens
11 owns the website personally and licensed its use to the Federal Committee. According to the
12 Response, the Federal Committee properly reported its licensing of the Greitens Website as an
13 \$18,000 in-kind contribution from Greitens to the Federal Committee.

14 Because the Response provides documentation to credibly explain most of the alleged
15 testing-the-waters expenses identified in the Complaint, we recommend that the Commission
16 find no reason to believe that the Greitens Respondents and Greitens’s federal campaign
17 manager, Dylan Johnson, violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d) by using State
18 Committee funds to pay for federal testing-the-waters expenses, or that the Federal Committee
19 violated 52s U.S.C. § 30104(b) by failing to report federal testing-the-waters expenses, with

¹ The Federal Committee’s treasurer beginning on March 23, 2021, and including the time of the activity relevant to this matter, was Jack Neyens. Greitens for US Senate, Statement of Organization at 3 (Mar. 23, 2021) [hereinafter GFUSS Original Statement of Organization], <https://docquery.fec.gov/pdf/332/202103239441842332/202103239441842332.pdf>; Greitens for US Senate, Amended Statement of Organization at 3 (Aug. 13, 2021), <https://docquery.fec.gov/pdf/911/202108139466259911/202108139466259911.pdf>. Greitens became the Federal Committee’s treasurer on October 15, 2022. Greitens for US Senate, Amended Statement of Organization at 3 (Mar. 23, 2021), <https://docquery.fec.gov/pdf/169/202210159533172169/202210159533172169.pdf>.

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1 respect to all the disbursements identified in the Complaint other than those to Octavian Group,
2 LLC (the "Octavian Group"), an LLC owned by Johnson. With respect to the \$2,400 of
3 disbursements to the Octavian Group, given the small potential amount in violation, we
4 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations
5 that the Greitens Respondents, Johnson, and the Octavian Group violated 52 U.S.C. § 30125 and
6 11 C.F.R. § 110.3(d) by using State Committee funds to pay for federal testing-the-waters
7 expenses and that the Federal Committee violated 52 U.S.C. § 30104(b) by failing to report
8 federal testing-the-waters expenses.

9 Next, we recommend that the Commission find reason to believe that the Greitens
10 Respondents violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by transferring the website
11 from the State Committee to the Federal Committee without paying fair market value and that
12 the Federal Committee violated 52 U.S.C. § 30104(b) by misreporting the transfer of the Greitens
13 Website as an in-kind contribution from Greitens in disclosure reports filed with the
14 Commission. We further recommend that the Commission authorize conciliation prior to a
15 finding of probable cause with the Greitens Respondents.

16 Finally, given the foregoing reason-to-believe recommendation, we recommend that the
17 Commission take no action at this time regarding the allegations that the Greitens Respondents
18 violated 52 U.S.C. § 30122 by making, allowing, and knowingly accepting a contribution in the
19 name of another related to the transfer of the Greitens Website.

1 II. FACTUAL BACKGROUND

2 Greitens is a former Governor of Missouri, who served from January 2017 until he
3 resigned in June 2018.² The State Committee was Greitens's state political committee for his
4 gubernatorial campaign.³ The State Committee remained an active state political committee
5 after Greitens's resignation in 2018,⁴ but Greitens did not ultimately run for Governor or other
6 statewide or federal elected office in 2020.⁵

7 On March 22, 2021, Greitens publicly announced his campaign for U.S. Senate for
8 Missouri, and the next day Greitens filed his Statement of Candidacy naming the Federal

² Compl. ¶¶ 1, 6 (Oct. 28, 2021) (citing Mitch Smith & Julie Bosman, *Missouri's Governor, a Rising G.O.P. Star, Resigns Amid Scandal*, N.Y. TIMES (May 29, 2018), <https://www.nytimes.com/2018/05/29/us/eric-greitens-resigns.html>).

³ *See, e.g.*, Greitens for Mo., Statement of Committee Organization (Feb. 24, 2015), <https://mec.mo.gov/Scanned/PDF/2015/110894.pdf>. On July 10, 2018, two complaints were filed against Greitens and the State Committee with the Missouri Ethics Commission alleging, *inter alia*, various state campaign finance violations. Mo. Ethics Comm'n, Final Action: MEC No. 18-0064-I — A New Missouri, Inc. & MEC No. 18-0065-I — Greitens for Missouri (Feb. 13, 2020) [hereinafter Mo. Ethics Comm'n Final Action], <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1473.pdf>; *see* Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Ethics Commission, and Consent Order with Joint Proposed Findings of Facts and Conclusions of Law, *Mo. Ethics Comm'n v. Greitens for Mo.*, Case No. 18-0064-I & 18-0065-I (Mo. Ethics Comm'n Feb. 13, 2020) [hereinafter Mo. Ethics Comm'n Consent Order], <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1474.pdf>. On February 13, 2020, the Missouri Ethics Commission released its findings in connection with those complaints. Mo. Ethics Comm'n Final Action; *see* Mo. Ethics Comm'n Consent Order.

⁴ After Greitens's election on November 8, 2016, the State Committee amended its Statement of Committee Organization with the Missouri Ethics Commission to reflect that it had become a committee to support Greitens as a gubernatorial candidate in 2020. Greitens for Mo., Amended Statement of Committee Organization (Nov. 28, 2016), <https://mec.mo.gov/Scanned/PDF/2016/123256.pdf>; *see also* Compl. ¶ 9 (contending that the State Committee "amended its statement of organization to describe Greitens as a 2020 gubernatorial candidate, apparently in order to retain its status as an 'active' campaign committee"). On June 9, 2020, the State Committee amended its Statement of Committee Organization to reflect it was a committee to support Greitens as a gubernatorial candidate in 2024. Greitens for Mo., Amended Statement of Committee Organization (June 9, 2020), <https://mec.mo.gov/Scanned/PDF/2020/157242.pdf>.

⁵ *Cf.* MO. SEC'Y OF STATE, ELECTION RESULTS: 2020 PRIMARY ELECTION (2020), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/All_Results_2020_Primary_8_4_2020.pdf (reflecting Greitens was not a statewide candidate in the August 4, 2020, primary election); *FEC Candidates: Filtered Results*, FEC.GOV, https://www.fec.gov/data/candidates/?q=greitens&election_year=2020 (last visited June 15, 2023) (reflecting Greitens was not a federal candidate in 2020).

1 Committee as his principal campaign committee.⁶ Greitens lost the Missouri Republican
 2 primary election for U.S. Senate on August 2, 2022.⁷ Dylan Johnson was Greitens's federal
 3 campaign manager and the principal of the Octavian Group.⁸ On November 16, 2022, the State
 4 Committee filed a Termination Report with the Missouri Ethics Commission.⁹

5 **A. Testing-the-Waters Activity**

6 According to the Complaint, Greitens began exploring his candidacy for U.S. Senate “no
 7 later than early 2021.”¹⁰ Specifically, the Complaint identifies an interview that took place on
 8 March 2, 2021, in which Greitens made the following statements: “I am evaluating right now
 9 what I am going to be doing this year”; “voters of Missouri deserve to have leaders in the US
 10 Senate who are going to fight for them”; and a Senate candidacy is “something that I am
 11 certainly going to keep the door open to, and take a look at, because the people of Missouri
 12 deserve a fighter.”¹¹

⁶ Compl. ¶ 20 (citing Charles Creitz, *Former Missouri Gov. Eric Greitens Announces Senate Bid on ‘Special Report,’* FOX NEWS (Mar. 22, 2021, 8:09 PM), <https://www.foxnews.com/politics/eric-greitens-running-for-senate-2022-roy-blunt-special-report>); Eric Greitens, Statement of Candidacy at 1 (Mar. 23, 2021), <https://docquery.fec.gov/pdf/597/202103239441842597/202103239441842597.pdf>; GFUSS Original Statement of Organization at 1.

⁷ MO. SEC’Y OF STATE, ELECTION RESULTS: 2022 PRIMARY ELECTION (2022), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/PrimaryElectionAugust2_2022.pdf.

⁸ Compl. ¶ 3 n. 4 (citing Dylan Johnson’s LinkedIn page and Bryan Lowry, *Eric Greitens Was Biggest Donor to Own Senate Campaign; State Filing Raises Red Flags*, KAN. CITY STAR (Apr. 16, 2021), <https://www.kansascity.com/news/politics-government/article250710984.html>); Dylan Johnson, LINKEDIN, <https://www.linkedin.com/in/dylan-johnson-2b76681bb/> (last visited June 15, 2023).

⁹ Greitens for Mo., Termination Report at 4-5 (Nov. 16, 2022), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GSHYjFPs5r60FQzXNS3s%2bhmJ3jRV4p1EYq9327cQy7Ys7pjUrFPhAzQY2vfng3%2bhP> (disclosing charitable donation of remaining funds, no surplus funds or debts upon termination, and certifying compliance with requirements for termination under Missouri law).

¹⁰ Compl. ¶ 38.

¹¹ *Id.* ¶ 38 & n.58 (citing Marc Cox Morning Show Podcast, *3-2-21 Hour 1: Eric Greitens*, at 22:18-23:23 (Mar. 2, 2021), <https://omny.fm/shows/the-marc-cox-show-podcast/3-2-21-hour-1-eric-greitens?msclid=ed2cf7fde9611ecbc608f8ad61d0a72> (responding to “People have said that there may be some interest in your part in running for Roy Blunt’s seat. Any comment on that?”)).

1 The Federal Committee did not report making any testing-the-waters disbursements prior
 2 to March 22, 2021, when Greitens announced his candidacy.¹² However, the Complaint alleges
 3 the following disbursements reported by the State Committee were for Greitens's federal testing-
 4 the-waters activity:¹³

Date	Recipient	Amount	Reported Purpose
Mar. 1, 2019 – Oct. 14, 2020	Dylan Johnson	\$54,746.87 ¹⁴	Campaign Worker Compensation ¹⁵
Apr. 27, 2020; Sept. 21, 2020	Status Labs.com	\$30,000.00 ¹⁶	Digital Media Services
May 7, 2020; June 8, 2020; July 20, 2020; Mar. 10, 2021	Driver Eight Media LLC	\$30,000.00 ¹⁷	Media Services

¹² Greitens for US Senate, 2021 April Quarterly Report at 12 (Apr. 15, 2021), <https://docquery.fec.gov/pdf/488/202104159443607488/202104159443607488.pdf> (showing first reported disbursement on March 23, 2021).

¹³ Compl. ¶¶ 8, 13, 15-17, 19 (citing the State Committee's disclosure reports).

¹⁴ Greitens for Mo., Amended 2019 April Quarterly Report at 8 (July 3, 2019) [hereinafter GFM Amended 2019 April Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GT9UBEtCegm7BNU10zXsa%2bMCHkhUFL8NGbc0mf42WbvXGO7HIAuggAvzYegpXCNV0> (reflecting first \$1,246.42 disbursement on March 1, 2019); *see* Greitens for Mo., Amended 2021 January Quarterly Report at 9 (Mar. 9, 2022) [hereinafter GFM Amended 2021 January Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GL0PbeJ692fmCu8qW85FkqwMNaVPQHohCLgWeUkH17WINo6Jffb%2bZMSWmlhvCk%2fel> (reflecting a \$2,672.54 disbursement on October 14, 2020, and an aggregate disbursement amount of \$54,746.87).

¹⁵ The Complaint identifies payments to other State Committee staffers but does not allege any violation as to those payments. *See* Compl. ¶ 7.

¹⁶ Greitens for Mo., 2020 July Quarterly Report at 8 (July 15, 2020) [hereinafter GFM 2020 July Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GCOdzubqxd661fVwtT7EhYZIR3Y9jm2N8YFw9tlSf5UAJ9GG2rsBELP7d98Cqg1f8> (reflecting a \$10,000 disbursement on April 27, 2020); Greitens for Mo., 2020 October Quarterly Report at 10 (Oct. 15, 2020) [hereinafter GFM 2020 October Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2Gb9XpsOp0sKD0XM8HuELxguNXishLG9rYrK4Y1u7ZwfHYHX0gkczYuvyH36O7ac%2ba> (reflecting a \$20,000 disbursement on September 21, 2020).

¹⁷ GFM 2020 July Quarterly Report at 8, 10 (reflecting two \$7,500 disbursements on May 7, 2020, and June 8, 2020); GFM 2020 October Quarterly Report at 8 (reflecting a \$7,500 disbursement on July 20, 2020); Greitens for Mo., Amended 2021 April Quarterly Report at 9 (Mar. 9, 2022) [hereinafter GFM Amended 2021 April Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GL0PbeJ692fnzw6U0Kx3IEAAbkNsK85%2bX%2b4Ds9gljaoxaZLhWm%2fcr4amTR7QQcIwN> (reflecting a \$7,500 disbursement on March 10, 2021). The State Committee disclosed the March 10, 2021 disbursement as to both “Drier Eight Media LLC” and “Driver Eight Media LLC.” GFM Amended 2021 April Quarterly Report at 9-10. Given that the dates and addresses are the same, the reference to “Drier Eight Media LLC” appears to be an error as noted by the Complaint. *See* Compl. ¶ 19.

Date	Recipient	Amount	Reported Purpose
June 17, 2020; July 20, 2020; Aug. 24, 2020	JK Public Relations	\$7,500.00 ¹⁸	Public Relations
May 13, 2020 – Aug. 26, 2020	Facebook	\$34,349.96 ¹⁹	Advertising
Nov. 20, 2020	Push Digital LLC	\$47,222.31 ²⁰	Digital Media
Dec. 31, 2020; Feb. 11, 2021	Octavian Group	\$2,400.00 ²¹	Strategic Planning
	TOTAL	\$206,219.14	

1 On the basis that Greitens had not campaigned or held state office since 2018, the
 2 Complaint alleges that “[t]he only reasonable inference” is that the \$7,500 payment to Driver
 3 Eight Media LLC (“Driver Eight Media”) on March 10, 2021, was to book the media appearance
 4 announcing Greitens’s federal candidacy on Fox News less than two weeks later.²² Similarly,
 5 the Complaint alleges that the “only reasonable inference is that” the \$2,400 in payments to the
 6 Octavian Group in December 2020 and February 2021 for “strategic planning” were testing-the-
 7 waters expenses in connection with Greitens’s soon-to-be-announced federal campaign.²³ Other
 8 than providing the amounts and timing of the other expenses, the Complaint does not allege why

¹⁸ GFM 2020 July Quarterly Report at 11 (reflecting a \$2,500 disbursement on June 17, 2020); GFM 2020 October Quarterly Report at 8-9 (reflecting two \$2,500 disbursements on July 20, 2020, and August 24, 2020).

¹⁹ The State Committee reported 41 disbursements to Facebook in amounts ranging from \$250 to \$1,417.35 on multiple occasions in the second and third quarters of 2020. *See* GFM 2020 July Quarterly Report at 9-11; GFM 2020 October Quarterly Report at 7-10. The Complaint alleges that the State Committee made \$34,400 in disbursements to Facebook for “advertising” in “the second and third quarters of 2020,” which appears to be a rounded figure for the \$34,349.96 in aggregate disbursements to Facebook the State Committee reported on its 2020 July and October Quarterly Reports. *See* Compl. ¶ 13(d).

²⁰ GFM Amended 2021 January Quarterly Report at 9 (reflecting a \$47,222.31 disbursement on November 20, 2020).

²¹ GFM Amended 2021 January Quarterly Report at 9 (reflecting a \$1,200 disbursement on December 31, 2020); GFM Amended 2021 April Quarterly Report at 9 (reflecting a \$1,200 disbursement on February 11, 2021). Johnson, the owner of the Octavian Group, was on the State Committee’s payroll as a “campaign worker” beginning in March 2019. Compl. ¶ 8.

²² Compl. ¶ 39(b). The Complaint alleges that Driver Eight Media is a “firm that specializes in booking clients on *Fox News*.” *Id.*

²³ *Id.* ¶ 39(a); GFM Amended 2021 January Quarterly Report at 9; GFM Amended 2021 April Quarterly Report at 9.

1 the State Committee's other disbursements constitute federal testing-the-waters expenses but
2 argues that they should be investigated.²⁴

3 The Response submitted by the Greitens Respondents denies that any of the State
4 Committee's disbursements were for Greitens's federal campaign and states that Greitens did not
5 decide to run for federal office until former Senator Roy Blunt announced his retirement on
6 March 8, 2021.²⁵ According to the Response, the State Committee's disbursements identified in
7 the Complaint during 2020 and early 2021 were related to efforts to publicize findings of the
8 Missouri Ethics Commission investigation into allegations of misconduct by Greitens and to
9 rehabilitate Greitens's reputation, "in full compliance with Missouri law."²⁶

10 In support, the Response attaches a copy of a check and an invoice reflecting that the
11 \$7,500 payment to Driver Eight Media on March 10, 2021, was a late payment for services
12 rendered to the State Committee in August 2020 for a "TV Booking," which the Response
13 contends was for "investigation[-]related media bookings."²⁷ The Response also attaches a copy
14 of a check and invoices reflecting a \$37,215.81 payment to Push Digital LLC on January 25,
15 2021, which appears to be the amount disbursed by the State Committee that the Response
16 contends was for services "related to [the State Committee's] ongoing efforts to publicize the

²⁴ Compl. ¶ 40 ("Throughout 2020, Greitens also paid tens of thousands of dollars to his future campaign manager, to public relations firms, and to media consulting firms, and spent tens of thousands more on digital advertising.").

²⁵ See Resp. at 2, 4 (Dec. 8, 2021); Roy Blunt, *Blunt Announcement on 2022 Election*, YOUTUBE (Mar. 8, 2021), <https://www.youtube.com/watch?v=o0tvkK689NY>. Dylan Johnson and the Octavian Group did not respond to the Complaint.

²⁶ Resp. at 2-3; *see supra* note 3; Mo. Ethics Comm'n Final Action; Mo. Ethics Comm'n Consent Order.

²⁷ Resp. at 5, Ex. B (attaching invoice for an "August '20" "TV Booking" and copy of the check).

1 [Missouri Ethics Commission's] investigative findings" in the "spring and summer of 2020."²⁸
 2 The Meta Ad Library²⁹ contains advertisements that the State Committee ran on Facebook
 3 between March and September 2020 concerning the results of the Missouri Ethics Commission's
 4 investigation.³⁰

5 The Greitens Respondents further assert that the two \$1,200 payments to the Octavian
 6 Group on December 31, 2020, and February 11, 2021, were related to Greitens's exploration of a
 7 potential Missouri gubernatorial run in 2024 that began "[o]n or around December 2020," not to
 8 his 2022 U.S. Senate candidacy, which he was allegedly "not weighing" at that time.³¹ The State
 9 Committee filed an amended disclosure report on March 9, 2022, after the filing of the
 10 Complaint and Response in this matter, stating that "Octavian Group Services included updating
 11 and maintaining social media assets owned or used by [the State Committee]; drafting

²⁸ *Id.* at 4, Ex. A (attaching invoices from Push Digital LLC for "media placement[s]" and "online advertising" in April and May 2020). The Response further states that the late payment for these services was "due to an internal dispute between the parties." *Id.* at 4. The State Committee reported a \$47,222.31 payment to Push Digital LLC on November 20, 2020, which corresponds to the invoiced amount and date. GFM Amended 2021 January Quarterly Report at 9; Resp., Ex. A at 2. However, the copy of the check attached to the Response is dated January 25, 2021, and reflects a \$10,006.50 credit applied to the \$47,222.31 outstanding balance for the ultimate check amount of \$37,215.81. Resp., Ex. A at 1. The State Committee's subsequent disclosure report reflects a "payment made or credit received" from Push Digital LLC in the amount of \$10,006.50 on January 25, 2021. GFM Amended 2021 April Quarterly Report at 6. It appears that the State Committee originally reported the outstanding balance due on its 2021 January Quarterly Report, in the midst of a dispute with Push Digital LLC regarding the amount, and later reported a credit on that amount on its 2021 April Quarterly Report to reach the ultimate payment made of \$37,215.81.

²⁹ The Meta Ad Library displays advertisements across Meta products. *What Is the Meta Ad Library and How Do I Search It?*, FACEBOOK: HELP CENTER, <https://www.facebook.com/help/259468828226154> (last visited June 15, 2023). Meta is the company brand for Facebook, Instagram, and other social media platforms that was introduced in 2021. *Introducing Meta: A Social Technology Company*, META (Oct. 28, 2021), <https://about.fb.com/news/2021/10/facebook-company-is-now-meta/>.

³⁰ META AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&page_ids\[0\]=253153019746&q=greitens&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&start_date\[min\]=2020-03-01&start_date\[max\]=2020-10-01&search_type=keyword_unordered&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&page_ids[0]=253153019746&q=greitens&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2020-03-01&start_date[max]=2020-10-01&search_type=keyword_unordered&media_type=all) (last visited June 15, 2023) (showing 47 advertisements paid for by the State Committee between March 1 and September 30, 2020). For example, one Facebook advertisement republished a Fox News clip about the "political weaponization of law enforcement" and stating that the charges against Greitens were "made up." Eric Greitens, META AD LIBRARY (May 3-18, 2020), <https://www.facebook.com/ads/library/?id=327138291598944>.

³¹ Resp. at 4.

1 communications for releases; strategic planning for potential state campaign, consult and manage
 2 [State Committee] related media appearances.”³²

3 **B. The Greitens Website**

4 The Complaint alleges that Greitens updated his website, www.ericgreitens.com (the
 5 “Greitens Website”), in May 2020, which then included at the bottom of the page a copyright
 6 symbol followed by “Greitens for Missouri. All Rights Reserved” and a statement that it was
 7 “created by Abrot Creative.”³³ Beginning around that time, the State Committee reported three
 8 disbursements to Abrot Creative totaling \$19,000 for “web services”: \$9,500 on May 14, 2020;
 9 \$4,750 on June 19, 2020; and \$4,750 on July 31, 2020.³⁴ According to the Complaint, on or
 10 around the time Greitens announced his federal candidacy on March 22, 2021, the disclaimer on
 11 the Greitens Website changed to “Paid for by Eric Greitens for U.S. Senate,” but the layout and
 12 design of the website was “otherwise unchanged.”³⁵ The Federal Committee reported the receipt

³² GFM Amended 2021 April Quarterly Report at 11.

³³ Compl. ¶ 11. The Complaint cites a tweet by Greitens on May 18, 2020, touting the Greitens Website, a news article that refers to his “new website” which initially said he was running again for Governor, and an archived version of the Greitens Website from May 18, 2020. *Id.* ¶ 11 & nn. 17-18; Eric Greitens (@EricGreitens), TWITTER (May 18, 2020, 11:38 PM), <https://twitter.com/EricGreitens/status/1262588461351079937?s=20> (“Check out our website: [link to the Greitens Website.]”); Chris Hayes, *Greitens Says He’s Not Running for Governor Despite Post on His Website*, FOX 2 NOW (May 19, 2020, 6:01PM), <https://fox2now.com/news/fox-files/greitens-says-hes-not-running-for-governor-despite-post-on-his-website/>; ERIC GREITENS (Mar. 23, 2021) [hereinafter May 19, 2020 Website], www.ericgreitens.com [<https://web.archive.org/web/20200519045445/https://www.ericgreitens.com/>]. The Internet Archive’s next most recent archived version of the Greitens Website was captured on June 12, 2018, and reflected Greitens’s 2018 gubernatorial campaign. ERIC GREITENS (Mar. 23, 2021) [hereinafter June 2018 Website], www.ericgreitens.com [<https://web.archive.org/web/20180612113003/https://ericgreitens.com/>].

³⁴ GFM 2020 July Quarterly Report at 9, 11; GFM 2020 October Quarterly Report at 8. The Complaint understates the State Committee’s payment to Abrot Creative on July 31, 2020, by \$250, erroneously stating the State Committee made \$18,750 in total payments to Abrot Creative. Compl. ¶¶ 12, 28.

³⁵ Compl. ¶¶ 28-29. Archived versions of the Greitens Website before and after March 22, 2021, demonstrate that the layout and design appear nearly identical, but some of the website content was changed. *Compare* ERIC GREITENS (Jan. 31, 2021) [hereinafter Jan. 31, 2021 Website], www.ericgreitens.com [<https://web.archive.org/web/20210131073145/https://www.ericgreitens.com/>], *with* ERIC GREITENS (Mar. 23, 2021) [hereinafter Mar. 23, 2021 Website], www.ericgreitens.com [<https://web.archive.org/web/20210323042825/https://www.ericgreitens.com/>].

1 of an \$18,000 in-kind contribution from Greitens individually for “IN-KIND: WEBSITE” on
2 March 23, 2021.³⁶

3 Given the similarities in the dollar figures and “that the website content was largely
4 unchanged after control was transferred to [the Federal Committee],” the Complaint infers that
5 the true contributor was the State Committee, not Greitens the candidate, resulting in multiple
6 alleged violations, including the ban on transfers between state and federal committees under
7 11 C.F.R. § 110.3(d), the reporting requirements under 52 U.S.C. § 30104(b), and the prohibition
8 on contributions in the name of another in 52 U.S.C. § 30122.³⁷

9 The Greitens Respondents contend that Greitens owns the Greitens Website personally
10 and licensed its use to the State and Federal Committees.³⁸ The Response provides no
11 documentation that Greitens purchased the domain name in 2007, though the Response asserts
12 that a “copy of purchase confirmation will be provided upon request.”³⁹ The Response attaches

³⁶ Greitens for US Senate, Amended 2021 April Quarterly Report at 11 (Sept. 8, 2021) [hereinafter GFUSS Amended 2021 April Quarterly Report], <https://docquery.fec.gov/pdf/563/202109089466634563/202109089466634563.pdf>; Compl. ¶ 30.

³⁷ Compl. ¶¶ 31-33. The Complaint also alleges that the State Committee raised nonfederal money, and specifically that it “received dozens of contributions of \$100,000 and above from individuals and corporations” in the 2016 election cycle. *Id.* ¶ 5.

³⁸ Resp. at 3, 5-6.

³⁹ *Id.* at 3, 5 & n.8. Information maintained by the Internet Corporation for Assigned Names and Numbers (“ICANN”) suggests that www.ericgreitens.com was first created in 2005. *See* ICANN LOOKUP, <https://lookup.icann.org/en/lookup> [hereinafter ICANN Lookup Page] (last visited June 15, 2023) (search for www.ericgreitens.com). The Internet Archive’s earliest screen capture of the Greitens Website is dated July 14, 2007. ERIC GREITENS (July 14, 2007) [hereinafter 2007 Website], <https://web.archive.org/web/20070714003225/http://www.ericgreitens.com/>. At that time, the Greitens Website stated that it would be hosting information concerning an upcoming novel and that users could contact eric.greitens@gmail.com for additional information. *Id.* By September 28, 2015, the Greitens Website contained content addressing Greitens’s gubernatorial candidacy. ERIC GREITENS (Sept. 28, 2015), <https://web.archive.org/web/20150928133330/https://ericgreitens.com/>. The ICANN database provides little information about the person who ultimately controls the domain name, identifying the registrant only as “Domains by Proxy, LLC.” ICANN Lookup Page; *see also Public vs. Private*, DOMAINS BY PROXY, LLC, <https://www.domainsbyproxy.com/PublicVsPrivate.aspx> (last visited June 15, 2023) (showing how registration through Domain by Proxy “shields . . . personal information from public display”).

1 an undated licensing agreement between Greitens and the Federal Committee purporting to value
2 the Greitens Website at \$18,000 and to license the Greitens Website to the Federal Committee
3 until December 31, 2022, in exchange for which the Federal committee would provide
4 “enhancements” to the Greitens Website which may have a market value of not less than
5 \$1,000.⁴⁰ Under the terms of the included licensing agreement, the Greitens Website would not
6 become property of the Federal Committee, and Greitens indefinitely retains any
7 “enhancements” to the Greitens Website.⁴¹ The Response alleges a similar licensing agreement
8 existed between Greitens and the State Committee but does not attach this agreement or describe
9 it beyond the foregoing characterization of it being similar to the agreement with the Federal
10 Committee.⁴²

11 **III. LEGAL ANALYSIS**

12 **A. Applicable Law**

13 The Act and Commission regulations define “contribution” as “any gift, subscription,
14 loan, advance, or deposit of money or anything of value made by any person for the purpose of
15 influencing any election for Federal office.”⁴³ “[A]nything of value” includes in-kind
16 contributions, such as “the provision of any goods or services without charge or at a charge that
17 is less than the usual and normal charge.”⁴⁴ Commission regulations define “usual and normal
18 charge” as “the price of those goods in the market from which they ordinarily would have been

⁴⁰ Resp., Ex. C. The Response asserts, without substantiation, that “[a]n independent third party valued the domain name at \$18,000.” Resp. at 5 n.16.

⁴¹ Resp., Ex. C.

⁴² *Id.* at 3.

⁴³ 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (adding that “contribution” includes “any direct or indirect payment, . . . gift of money, or any services, or anything of value”).

⁴⁴ 11 C.F.R. § 100.52(d)(1).

1 purchased at the time of the contribution,” or the charge for services “at a commercially
2 reasonable rate prevailing at the time the services were rendered.”⁴⁵ If a committee pays fair
3 market value for a good or service, then the transaction is not considered a contribution.⁴⁶

4 An individual becomes a candidate under the Act when: (a) such individual receives
5 contributions or makes expenditures in excess of \$5,000; or (b) such individual gives his or her
6 consent to another person to receive contributions or make expenditures on behalf of such
7 individual and if such person has received such contributions or has made such expenditures in
8 excess of \$5,000.⁴⁷ Once the \$5,000 threshold has been met, the candidate has 15 days to
9 designate a principal campaign committee by filing a Statement of Candidacy with the
10 Commission.⁴⁸ The principal campaign committee must file a Statement of Organization within
11 ten days of its designation,⁴⁹ and it must file disclosure reports with the Commission.⁵⁰

12 The Commission has established “testing-the-waters” regulations exempting from the
13 definitions of “contribution” and “expenditure” funds received and payments made solely to
14 determine whether an individual should become a candidate, thereby permitting an individual to
15 test the feasibility of a campaign for federal office without becoming a candidate under the Act.⁵¹
16 These testing-the-waters regulations seek to draw a distinction between activities directed to

⁴⁵ *Id.* § 100.52(d)(2).

⁴⁶ *See id.* § 100.52(d)(1).

⁴⁷ 52 U.S.C. § 30101(2).

⁴⁸ *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁴⁹ *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

⁵⁰ 52 U.S.C. § 30104(a), (b); *see, e.g.*, Factual and Legal Analysis (“F&LA”) at 6, MUR 6735 (Joseph A. Sestak, *et al.*); F&LA at 5, MUR 6449 (Jon Bruning, *et al.*); F&LA at 2, MUR 5363 (Alfred C. Sharpton, *et al.*).

⁵¹ *See* 11 C.F.R. §§ 100.72, 100.131; F&LA at 7, MUR 6775 (Hillary Clinton, *et al.*); F&LA at 8, MUR 6776 (Niger Innis, *et al.*); F&LA at 6, MUR 6735 (Joseph A. Sestak, *et al.*); *see also Ready for Ron v. FEC*, No. 22-3282, 2023 WL 3539633, at *19 (D.D.C. May 17, 2023) (finding litigant’s challenges to the testing-the-waters regulation under the Administrative Procedures Act “unavailing”).

1 evaluating the feasibility of one's candidacy and conduct signifying that a decision to become a
2 candidate has been made.⁵² Testing-the-waters activities include, but are not limited to,
3 payments for polling, telephone calls, and travel, and only funds subject to the Act's source and
4 amount restrictions may be used for such activities.⁵³

5 An individual who is testing the waters is not required to register or file disclosure reports
6 with the Commission unless and until the individual subsequently decides to run for federal
7 office.⁵⁴ However, an individual who tests the waters must keep financial records, and if the
8 person becomes a candidate, all funds received and payments made in connection with testing
9 the waters must be reported as contributions and expenditures in the first report filed by the
10 candidate's principal campaign committee.⁵⁵

11 The Act and Commission regulations prohibit federal candidates, federal officeholders,
12 their agents, and entities directly or indirectly established, financed, maintained, or controlled by
13 federal candidates or officeholders from soliciting, receiving, directing, transferring, or spending
14 funds in connection with any election unless the funds are subject to the limitations, prohibitions,
15 and reporting requirements of the Act.⁵⁶ Prior to December 8, 2016, Missouri law permitted
16 candidates to accept unlimited contributions and contributions from corporations and labor

⁵² See Advisory Opinion 1981-32 at 4 (Askew) ("AO 1981-32").

⁵³ 11 C.F.R. §§ 100.72, 100.131; AO 1981-32 at 3-4.

⁵⁴ See 11 C.F.R. §§ 100.72, 100.131; AO 1981-32 at 3; *see also* Advisory Opinion 2015-09 at 5 (Senate Maj. PAC, *et al.*) ("AO 2015-09"); F&LA at 5, MUR 6449 (Jon Bruning, *et al.*); F&LA at 8, MUR 6775 (Hillary Clinton, *et al.*).

⁵⁵ 11 C.F.R. § 101.3.

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

1 unions.⁵⁷ Missouri law now limits contributions to statewide candidates to \$2,825 per election,
 2 prohibits corporations and labor organizations from making contributions to candidate
 3 committees, and prohibits state committees from knowingly accepting contributions from foreign
 4 nationals, *inter alia*.⁵⁸

5 The Commission's regulations explicitly prohibit "[t]ransfers of funds or assets from a
 6 candidate's campaign committee or account for a nonfederal election to his or her principal
 7 campaign committee or other authorized committee for a federal election."⁵⁹ The Commission
 8 has explained that this prohibition on all transfers from a candidate's state or local committee to
 9 the candidate's federal committee is intended to prevent a federal committee's indirect use of
 10 soft money.⁶⁰

⁵⁷ See MO. REV. STAT. § 130.011-.160 (providing no contribution limit); *id.* § 130.029 (stating that corporations and labor organizations may make contributions); *cf.* Conciliation Agreement ("CA") ¶ IV.5, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*) ("[P]rior to December 2016, there were no contribution limits [under Missouri law]."); F&LA at 2 n.7, MUR 7106 (Chappelle-Nadal for Congress) (addressing conduct prior to December 2016 and noting that "[u]nder Missouri law, candidates can accept unlimited contributions and contributions from corporations and labor unions."). Missouri voters enacted a constitutional amendment on November 8, 2016, which imposed campaign finance limits and prohibitions, which became effective on December 8, 2016. CONSTITUTIONAL ARTICLE VIII, SECTION 23 at 1-2, MO. ETHICS COMM'N (2019) [hereinafter MEC Amendment 2 FAQs], <https://www.mec.mo.gov/WebDocs/PDF/CampaignFinance/Amendment%2020v24%204-25-19.pub.pdf>.

⁵⁸ MO. CODE REGS. ANN. tit. 15, § 30-14.010 (2023) (listing \$2,825 contribution limit); MO. CONST. art. VIII, § 23.3(1), (3)(a), (16); MEC Amendment 2 FAQs at 1. The constitutional amendment imposed a limit of \$2,600 — the applicable limit when the State Committee was receiving contributions — which was first adjusted in the first quarter of 2019 and will be adjusted every four years based upon the Consumer Price Index. MEC Amendment 2 FAQs at 3.

⁵⁹ 11 C.F.R. § 110.3(d).

⁶⁰ See *Transfers of Funds from State to Federal Campaigns*, 58 Fed. Reg. 3474, 3474-75 (Jan. 8, 1993) [hereinafter *Transfer of Funds E&J*], <https://www.govinfo.gov/content/pkg/FR-1993-01-08/pdf/FR-1993-01-08.pdf> (explaining also that the Commission was adopting total prohibition in this circumstance because of practical difficulty in linking or otherwise accounting for federally permissible funds available for transfer); see also F&LA at 3-4, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*) (describing 11 C.F.R. § 110.3(d) as "an extension of the Act's soft money ban"); First Gen. Counsel's Rpt. ("First GCR") at 10-11 & Certification ("Cert.") ¶¶ 1-2 (Feb. 11, 2005), MUR 5406 (Hynes for Senate) (approving First GCR's reason to believe recommendation that a dual candidate's federal and state committees violated 11 C.F.R. § 110.3(d) by making a direct contribution from a state to federal committee and requiring disgorgement of contribution amount to U.S. Treasury).

1 While the prohibition on transfers in 11 C.F.R. § 110.3(d) does not explicitly include
2 transfers made during the testing-the-waters phase of a federal campaign, the Commission
3 regulations on testing the waters make clear that only permissible funds may be used for testing-
4 the-waters activities.⁶¹ Thus, for example, the Commission has concluded that the “use of funds
5 raised outside of the Act’s limitations and prohibitions to pay for individuals’ testing-the-waters
6 activities would violate Commission regulations if those individuals decide to become
7 candidates.”⁶² Similarly, the Commission has concluded that individuals testing the waters may
8 not use the funds or assets of their nonfederal committees to fund federal testing-the-waters
9 activity because candidates are prohibited from transferring funds or assets from their nonfederal
10 campaigns to their federal campaigns.⁶³

11 The transfer of a nonfederal committee’s assets to the campaign committee of a candidate
12 for federal office is permissible, however, in instances in which the federal committee pays the
13 fair market value or the “usual and normal charge” for the use of such assets.⁶⁴ The Commission

⁶¹ See 11 C.F.R. §§ 100.72(a), 100.131(a); *see also* F&LA at 8, MUR 5722 (Friends for Lauzen, *et al.*).

⁶² AO 2015-09 at 5 (concluding that 527 organizations’ payment for testing-the-waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.131(a)).

⁶³ F&LA at 8, MUR 5722 (Friends for Lauzen, *et al.*) (“Thus, since candidates may not use money from their nonfederal campaigns to fund their federal campaigns, individuals testing the waters may not use money from their nonfederal campaigns to fund testing the waters activity.”); F&LA at 7-8, MUR 6773 (Brian Nestande, *et al.*) (“[T]he Commission has previously considered funds spent by a state candidate’s campaign committee for the purpose of exploring federal candidacy to be a transfer from the state committee to the subsequent candidate’s federal committee.”); F&LA at 4-5, MUR 6267 (Jonathan Paton, *et al.*) (finding reason to believe that a candidate violated [now] 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) where the candidate’s state committee advanced funds to pay “for survey and polling that benefitted the testing the waters phase of [the candidate’s] federal candidacy”); F&LA at 2-6, MUR 5480 (Liane Levetan for Congress) (finding reason to believe that a poll paid for by a state committee to evaluate a candidate’s options for future state and federal elections was a prohibited transfer in violation of [now] 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d)); *see also* CA ¶¶ IV.7, V.1, MUR 7076 (Richard Tisei, *et al.*) (conciliating violation of 52 U.S.C. § 30125 where candidate’s state committee made payments for “polling, fundraising data analysis and staff work designed to help [the candidate] decide whether to run for office,” some portion of which “qualified as federal testing the waters activity”).

⁶⁴ Transfer of Funds E&J, 58 Fed. Reg. at 3475 (“[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.”); *see also, e.g.*, Advisory Opinion 1992-19 at 2 (Mike Kreidler for Congress) (approving request to permit

1 has pursued matters where the federal candidate's committee does not pay the state committee
 2 for goods and services used by the federal committee.⁶⁵ When the state committee does not own
 3 the asset, the federal committee must pay the usual and normal charge for use of the asset to the
 4 proper owner.⁶⁶

5 The Act also prohibits making a contribution in the name of another, knowingly
 6 permitting one's name to be used to effect such a contribution, and knowingly accepting a
 7 contribution made in the name of another.⁶⁷

the lease of state campaign committee's computer equipment to candidate's federal campaign committee); Advisory Opinion 2014-06 at 8 (Ryan, *et al.*) (finding that a candidate could rent his committee's mailing list at fair market value to promote a book); Statement of Reasons ("SOR"), Comm'rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (finding no reason to believe where a candidate's federal committee paid her state committee for assets including fundraising database, website redesign, domain names, and promotional materials because there was "no information to suggest that the amount paid . . . for the assets was not fair market value"); F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe where a candidate's federal committee used a website domain name of his state committee because federal committee hired a third party to coordinate an arm's-length deal for state committee's website and domain name and there was no information to suggest the transfer was provided for less than its fair market value).

⁶⁵ See, e.g., CA ¶¶ IV.8-9, V.1, MUR 5426 (Dale Schultz for Congress, *et al.*) (campaign worker expenses); CA ¶¶ IV.10-11, V.1-2, MUR 5646 (Cohen for N.H.) (start-up expenses); CA ¶¶ IV.4-5, V.1, MUR 6257 (John Callahan, *et al.*) (feasibility research); CA ¶¶ IV.6-7, 12-13, V.2-4, MUR 6267 (Jonathan Paton for Congress, *et al.*) (polling and survey costs); CA ¶¶ IV.7, V.1-3, MUR 7076 (Richard Tisei, *et al.*) (polling and fundraising analysis); see also F&LA at 4, 6, MUR 5636 (Russ Diamond) (finding reason to believe candidate and his state committee violated 11 C.F.R. § 110.3(d) where, *inter alia*, the state committee paid for website-related expenses that featured both federal and state campaigns and the pro-rated reimbursement to the state committee appeared inadequate and no basis for the pro-rated portion was provided).

⁶⁶ See 11 C.F.R. § 100.52(d). Compare F&LA at 4-6, MUR 6784 (Lizbeth Benacquisto for Congress, *et al.*) (finding no reason to believe regarding a federal committee's use of images used in state campaign advertisement where the federal committee provided copies of invoices documenting payments to the vendor which retained ownership of the images and there was no information indicating the payments were below the usual and normal charges), F&LA at 10-11, MUR 6218 (Ball4NY, *et al.*) (finding no reason to believe regarding a federal committee's use of photographs of state officeholder and federal candidate where committee treasurer averred the federal committee purchased the rights to the photographs from the state legislature and provided supporting documentation and there was no information to the contrary), and SOR at 2, Comm'rs Walther, Petersen, Bauerly, Hunter, & Weintraub, MUR 5964 (Schock for Congress, *et al.*) (exercising prosecutorial discretion to dismiss regarding federal committee's use of footage of state officeholder and federal candidate where federal committee claimed it paid vendor for use rights and production of DVDs containing the footage), with F&LA at 2-4, 6-9, MUR 6792 (Sean Eldridge for Congress, *et al.*) (finding reason to believe that video footage committee received from corporation without payment was a prohibited corporate contribution).

⁶⁷ 52 U.S.C. § 30122; see also 11 C.F.R. § 110.4(b).

1 **B. The Commission Should Find No Reason to Believe Regarding the**
2 **Allegations That the State Committee Paid for Federal Testing-the-Waters**
3 **Expenses with Respect to the Disbursements Identified in the Complaint**
4 **Other Than Those to the Octavian Group**

5 The Complaint alleges that the State Committee made testing-the-waters disbursements
6 for Greitens's federal candidacy, based primarily on the nature of services provided by the
7 payees and the timing of the payments.⁶⁸ First, for example, the Complaint contends that the
8 \$7,500 the State Committee paid on March 10, 2021 to Driver Eight Media, which allegedly
9 helps its clients book appearances on Fox News, for "media services" was made to "book[] the
10 television appearance [on Fox News] where Greitens would announce his candidacy," 12 days
11 later.⁶⁹ However, the Response submits materials credibly providing another explanation.
12 Although no declaration or affidavit accompanies the Response, the Greitens Respondents state
13 the payment was "related to investigation[-]related media bookings in 2020," apparently
14 referring to the Missouri Ethics Commission investigation, that was "paid late as a result of a
15 miscommunication" between the vendor and the State Committee.⁷⁰ The Response attaches an
16 invoice and a copy of a check to Driver Eight Media indicating, that the March 10, 2021
17 payment was a late payment for "TV Booking" services provided in August 2020.⁷¹ There is no
18 available information to suggest that Greitens made any media appearances in or around August
19 2020 in which he discussed or referenced a potential federal candidacy. Thus, the Greitens
20 Respondents also credibly rebut the alleged temporal connection between the March 10, 2021
21 payment and Greitens's subsequent March 22, 2021 announcement and federal campaign.

⁶⁸ See Compl. ¶¶ 34-41; *id.* ¶ 39.

⁶⁹ *Id.* ¶¶ 19, 39(b).

⁷⁰ Resp. at 5.

⁷¹ *Id.*, Ex. B.

1 The Complaint similarly alleges that the \$47,222 the State Committee paid on
2 November 20, 2020 — four months before Greitens declared his candidacy for U.S. Senate and
3 years after Greitens resigned as Governor — to Push Digital LLC for “digital media” could only
4 have been a federal testing-the-waters expense.⁷² However, the Response again credibly
5 provides information that the fees were originally invoiced in March and April 2020 but were not
6 paid until November 2020 due to a billing dispute.⁷³ The Response asserts that this disbursement
7 was made in connection with “efforts to publicize the [Missouri Ethics Commission’s]
8 investigative findings” and to rehabilitate Greitens’s reputation.⁷⁴ Although not mentioned in
9 either the Complaint or the Response, materials in the Meta Ad Library support the Response’s
10 assertion that the State Committee disseminated materials addressing the Missouri Ethics
11 Commission’s investigation around the time the services were originally invoiced in March and
12 April 2020.⁷⁵

13 The Complaint does not set forth with any specificity why the State Committee’s
14 payments in 2019 and 2020 to Dylan Johnson, Status Labs.com, Facebook, or JK Public
15 Relations would constitute federal testing-the-waters activity beyond the amount and timing of
16 those expenses in the context of the information the Complaint identifies indicating that Greitens
17 was interested in running for U.S. Senate. Moreover, as discussed above, the Response credibly
18 asserts that the State Committee spent funds in 2020 to rehabilitate Greitens’s reputation

⁷² Compl. ¶ 40.

⁷³ Resp. at 3-4, Ex. A; *see supra* note 28.

⁷⁴ Resp. at 3-4.

⁷⁵ *See* META AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=253153019746&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&start_date\[min\]=2020-03-01&start_date\[max\]=2020-05-02&search_type=page&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=253153019746&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2020-03-01&start_date[max]=2020-05-02&search_type=page&media_type=all) (last visited June 15, 2023) (showing nine advertisements paid for by the State Committee in March and April 2020).

1 following the release of the Missouri Ethics Commission's investigative findings.⁷⁶ There is no
2 available information to indicate that Greitens was considering a federal candidacy at that time.
3 The earliest date that the Complaint identifies for when Greitens was considering running for
4 federal office was March 2, 2021, months or even years after the State Committee's
5 disbursements identified in the Complaint.⁷⁷

6 Accordingly, we recommend that the Commission find no reason to believe that the
7 Greitens Respondents and Johnson violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d) by
8 using State Committee funds to pay for federal testing-the-waters expenses, or that the Federal
9 Committee violated 52 U.S.C. § 30104(b) by failing to report federal testing-the-waters
10 expenses, with respect to the disbursements identified in the Complaint other than those to the
11 Octavian Group.

12 **C. The Commission Should Exercise Its Prosecutorial Discretion and Dismiss**
13 **the Allegations That the State Committee Paid for Testing-the-Waters**
14 **Expenses with Respect to the Disbursements to the Octavian Group**

15 The Complaint further alleges that the aggregate \$2,400 the State Committee paid on
16 December 31, 2020, and February 11, 2021, to the Octavian Group for "strategic planning" were
17 payments for testing-the-waters activities.⁷⁸ Johnson, whom the State Committee reportedly
18 paid \$54,747 in 2019 and 2020 for "campaign worker compensation" and who served as
19 Greitens's federal campaign manager, is the principal of the Octavian Group.⁷⁹ The Response

⁷⁶ See Resp. at 3-4; *supra* notes 71, 73-75 and accompanying text.

⁷⁷ Compl. ¶ 38 & n.58; *supra* note 11.

⁷⁸ Compl. ¶¶ 16-17, 39(a); GFM Amended 2021 January Quarterly Report at 9; GFM Amended 2021 April Quarterly Report at 9.

⁷⁹ *Supra* Part II.A (chart of payments); Compl. ¶ 7 (citing the State Committee's disclosure reports); *id.* ¶ 3 (describing Johnson as Greitens's campaign manager); Resp., Ex. C at 2 (including Johnson's signature as campaign manager).

1 asserts that the payments to the Octavian Group were to test the waters for a potential 2024
2 candidacy for Governor of Missouri.⁸⁰ In a disclosure report amended after the filing of the
3 Response in this matter, the State Committee disclosed that the payments to the Octavian Group
4 were for several services, one of which was strategic planning for a “potential state campaign.”⁸¹
5 However, to the extent that the Octavian Group’s services benefited both a potential federal and
6 state campaign, both of which were statewide races, the expenses should have been allocated
7 between the State Committee and the Federal Committee.⁸² Nevertheless, given the potential
8 amount in violation and the resources that would be required to investigate, we recommend that
9 the Commission exercise its prosecutorial discretion and dismiss the allegations that the Greitens
10 Respondents, Johnson, and the Octavian Group violated 52 U.S.C. § 30125 and 11 C.F.R.
11 § 110.3(d) by using State Committee funds to pay for federal testing-the-waters expenses, and
12 that the Federal Committee violated 52 U.S.C. § 30104(b) by failing to report federal testing-the-
13 waters expenses, with respect to the disbursements to the Octavian Group.⁸³

14 **D. The Commission Should Find Reason to Believe the State Committee**
15 **Impermissibly Transferred, and the Federal Committee Received and Failed**
16 **to Accurately Report, the Greitens Website Without Paying Fair Market**
17 **Value**

18 The Complaint alleges that the State Committee impermissibly transferred nonfederal
19 funds to the Federal Committee in the form of updates to and the use of the Greitens Website in
20 violation of 11 C.F.R. § 110.3(d) and that the Federal Committee misreported the in-kind

⁸⁰ Resp. at 4.

⁸¹ GFM Amended 2021 April Quarterly Report at 11 (“Octavian Group Services included updating and maintaining social media assets owned or used by GFM; drafting communications for releases; strategic planning for potential state campaign, consult and manage GFM related media appearances.”).

⁸² *See, e.g.*, F&LA at 5-6, MUR 5480 (Liane Levetan for Congress) (finding reason to believe where a state committee paid for the costs of a poll that was used to test the waters for both a state and a federal campaign).

⁸³ *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 contribution in violation of 52 U.S.C. § 30104(b).⁸⁴ The Greitens Respondents contend that
2 Greitens, and not the State Committee, owns the Greitens Website; the in-kind contribution from
3 Greitens to the Federal Committee for the use of the Greitens Website was promptly and
4 accurately reported; and the State Committee updated the Greitens Website to republish the
5 Missouri Ethics Commission's investigative findings, not to benefit Greitens's federal
6 candidacy.⁸⁵

7 The State Committee's disclosure reports filed with the Missouri Ethics Commission
8 reveal that the State Committee received contributions from individuals, corporations, and
9 entities in manners not subject to the Act's limitations, prohibitions, and reporting requirements
10 prior to, and in the days leading up to, December 8, 2016, the effective date of Missouri's new
11 campaign finance restrictions.⁸⁶ The State Committee reported its last itemized contribution on
12 June 4, 2018, following Greitens's resignation that month.⁸⁷ Thus, the State Committee's
13 expenditures for improvements to the Greitens Website in 2020 and subsequent transfer thereof
14 to the Federal Committee in 2021 may have derived from funds not subject to the Act's limits

⁸⁴ Compl. ¶¶ 23-32.

⁸⁵ Resp. at 6.

⁸⁶ See, e.g., Greitens for Mo., 2017 January Quarterly Report at 4-20 (Jan. 17, 2017), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKGI8cDcdGFsgJsm99XwPL2GdAqCpwA%2bFe7fWYsnTII7ST34muvS0qLAbGa53Zspm2hNIZz%2bTycoFOzvsK6hpK7> (reflecting contributions from individuals and PACs in excess of the Act's limits and corporations in violation of the Act's prohibition before December 8, 2016); Compl. ¶ 5 (citing *Greitens, Eric*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/entity-details?eid=26734933&default=candidate> (last visited June 15, 2023) (select "General Date," "As a candidate," and "Top Donors" tabs)) (alleging the State Committee "received dozens of contributions of \$100,00 and above from individuals and corporations" in the 2016 election cycle).

⁸⁷ Greitens for Mo., 2018 July Quarterly Report at 9 (July 16, 2018), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKGI8cDcdGFsgJsm99XwPL2G5wmG5AczP8Eertl2DyQtcD1tv%2bowEKDYPAAdGk1FWyqiMdJSGAEZwiczn1znjoazx>. The State Committee reported \$7 in unitemized monetary contributions on its subsequent report filed on October 15, 2018. Greitens for Mo., 2018 October Quarterly Report at 3 (Oct. 15, 2018), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKGI8cDcdGFsgJsm99XwPL2G5wmG5AczP8Eertl2DyQtcD1tv%2bowEKDYPAAdGk1FWyqiMdJSGAEZwiczn1znjoazx>. The State Committee did not report any additional monetary or in-kind contributions between October 15, 2018, and its termination on November 16, 2022.

1 and prohibitions. However, because of the intervening change in state law and the amount of
2 funds the State Committee raised thereafter, it is possible that the State Committee's funds, when
3 it disbursed \$19,000 to Abrot Creative between May and July 2020 for "web services,"⁸⁸ may
4 have consisted of permissible funds under the Act. Nevertheless, none of the State Committee's
5 funds at issue were subject to the Act's reporting provisions as required by 52 U.S.C.
6 § 30125(e)(1)(A), and in any case, 11 C.F.R. § 110.3(d) prohibits a candidate's state campaign
7 from transferring funds or assets to the candidate's federal campaign.⁸⁹

8 The available information suggests that the State Committee made an impermissible
9 transfer to the Federal Committee, which the Federal Committee accepted and failed to
10 accurately report, because the State Committee made disbursements for improvements to the
11 Greitens Website, which was then transferred to the Federal Committee.⁹⁰

⁸⁸ GFM 2020 July Quarterly Report at 9, 11; GFM 2020 October Quarterly Report at 8; *supra* note 34.

⁸⁹ F&LA at 4, MUR 5426 (Dale Schultz for Congress, *et al.*); F&LA at 14-15, MUR 5646 (Cohen for N.H.); *see also* F&LA at 7-8, MUR 5722 (Friends for Lauzen, *et al.*) (finding state committee made an in-kind contribution to a federal candidate for testing the waters expenses despite fact that state committee had sufficient permissible funds to cover the expenses based on prohibition in 11 C.F.R. § 110.3(d)); F&LA at 3, MUR 6219 (Kuhl for Congress) (stating that, in addition to state law allowing contributions in amounts and from sources not subject to the Act's limitations, "none of the state campaign funds at issue were subject to the Act's reporting provisions"); F&LA at 4, MUR 6253 (Trey Gowdy for Congress, *et al.*) (same). In MUR 7337 (Debbie Lesko, *et al.*), the Commission found reason to believe a federal candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A) by financing an independent expenditure-only political committee even though the relevant funds did not violate the Act's source prohibitions and contribution limits because, *inter alia*, "the nature of the funds and the funds being subject to the Act's reporting requirements are separate requirements." F&LA at 5-9, MUR 7337 (Debbie Lesko, *et al.*). The Commission subsequently reached a conciliation agreement with the independent expenditure-only political committee for its violation of 52 U.S.C. § 30125(e)(1)(A), but there was an insufficient number of votes to find probable cause to believe that the federal candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A). CA, MURs 7337, 7344 (Conservative Leadership for Arizona); Cert. (Sept. 30, 2022), MUR 7337 (Debbie Lesko, *et al.*).

⁹⁰ The available information does not indicate whether the State Committee transferred the Greitens Website directly to the Federal Committee, or first to Greitens, who then transferred the Greitens Website to the Federal Committee. Either scenario, however, would violate 11 C.F.R. § 110.3(d) because, as the Commission has explained, the prohibition on transfers between State and Federal Committees is concerned with the "indirect use" of funds raised from federally impermissible sources in state campaigns, as discussed *infra*. Transfer of Funds E&J, 58 Fed. Reg. at 3475.

1 The State Committee disbursed \$19,000 between May and July 2020 to make
2 improvements to and develop the Greitens Website.⁹¹ Control of the website was subsequently
3 transferred to the Federal Committee for its use by March 2021, when the disclaimer was
4 updated to indicate it was “paid for by” the Federal Committee, with little change to the website
5 design and layout and only modest changes to the content.⁹² The State Committee, however, did
6 not report receipt of compensation from Greitens or the Federal Committee for the improvements
7 to or use of the Greitens Website. Nor did the Federal Committee report disbursements to the
8 State Committee or Greitens as compensation for the improvements to or use of the Greitens
9 Website. Instead, the Federal Committee reported the receipt of an \$18,000 in-kind contribution
10 from Greitens for the Greitens Website on March 23, 2021.⁹³ Thus, in looking to the substance
11 of the transaction, the State Committee disbursed \$19,000 to develop the Greitens Website,
12 which was subsequently transferred to and used by the Federal Committee without compensating
13 the State Committee or Greitens at fair market value.

14 The Response argues that the State Committee did not transfer an asset to the Federal
15 Committee because the Greitens Website belongs to Greitens, who had only licensed it to the
16 State Committee, first, and then to the Federal Committee.⁹⁴ This argument is unpersuasive for
17 several reasons.

18 First, assuming that Greitens and the State Committee entered into a licensing agreement
19 containing terms materially similar to the exhibited agreement between Greitens and the Federal

⁹¹ GFM 2020 July Quarterly Report at 9, 11; GFM 2020 October Quarterly Report at 8; *supra* notes 34, 88.

⁹² Mar. 23, 2021 Website; *see supra* note 35.

⁹³ GFUSS Amended 2021 April Quarterly Report at 11; *see supra* note 36.

⁹⁴ Resp. at 3, 5.

1 Committee, as the Response suggests, it does not appear that Greitens and the State Committee
2 honored the terms of that agreement. The licensing agreement with the Federal Committee
3 provides that either party may terminate the license upon 30-days written notice.⁹⁵ The
4 Response asserts that Greitens ended the licensing agreement with the State Committee
5 “[w]hen Governor Greitens decided to run for U.S. Senate,” which, the Response also asserts,
6 did not occur until after incumbent Senator Roy Blunt announced his retirement, on March 8,
7 2021.⁹⁶ However, the Federal Committee reported receipt of an in-kind contribution from
8 Greitens in the form of the Greitens Website on March 23, 2021.⁹⁷ If the licensing agreement
9 between Greitens and the State Committee contained a similar 30-day notice period to terminate
10 the agreement, then Greitens failed to comply with the termination notice period, and
11 undermines the assertion that Greitens and the State Committee entered into a *bona fide* or
12 arm’s-length licensing agreement relating to use of the Greitens Website.

13 More importantly, in promulgating Section 110.3(d), the Commission expressly sought to
14 “more effectively prevent the *indirect* use of impermissible funds” in federal elections.⁹⁸ Under
15 the Response’s version of events, the State Committee received a license from Greitens to use
16 the Greitens Website “for campaign-related purposes” which allowed it to “make additions and
17 modifications” and to “modify and update the [Greitens W]ebsite for campaign purposes.”⁹⁹ The
18 State Committee disbursed \$19,000 of nonfederal funds to develop the Greitens Website in 2020,
19 pursuant to the licensing agreement that “allowed . . . Greitens to retain his ownership of the

⁹⁵ *Id.*, Ex. C ¶ 5.

⁹⁶ Resp. at 4-5.

⁹⁷ GFUSS Amended 2021 April Quarterly Report at 11; *supra* note 36.

⁹⁸ Transfer of Funds E&J, 58 Fed. Reg. at 3475.

⁹⁹ Resp. at 3, 5.

1 domain name.”¹⁰⁰ According to the Response, Greitens “ended” the licensing agreement with
2 the State Committee when he decided to run for the U.S. Senate in March 2021 and subsequently
3 “entered into a new licensing agreement with [the Federal Committee].”¹⁰¹ The Response and
4 the licensing agreement between Greitens and the Federal Committee attached to the Response
5 claim that the Greitens Website was valued at \$18,000 at the time of the licensing agreement
6 with the Federal Committee.¹⁰² The Federal Committee then reported receiving an \$18,000 in-
7 kind contribution from Greitens in the form of the Greitens Website on March 23, 2021 — the
8 day after Greitens announced his U.S. Senate campaign.¹⁰³ This information strongly suggests
9 that the improvements to the Greitens Website were funded with money not subject to the Act’s
10 reporting requirements or source and amount restrictions and were subsequently provided to the
11 Federal Committee at no cost.

12 The Greitens Respondents state that an “independent third party valued the domain name
13 at \$18,000,” but the Response provides no details about this valuation, such as the process or
14 timing of the valuation, or even the identity of the appraiser.¹⁰⁴ This valuation is at odds with
15 publicly available information about the costs of .com domain names. For example, GoDaddy
16 currently advertises domain registration services as low as \$22 for two years and GoDaddy’s
17 “Domain Appraisal” tool estimates the value of the Greitens Website domain name to be \$2,151
18 as of the date of this Report, based on comparable domains sold, the use of the .com extension,

¹⁰⁰ *Id.* at 5.

¹⁰¹ *Id.*

¹⁰² *Id.* at 5 & n.16, Ex. C.

¹⁰³ *Id.* at 5; GFUSS Amended 2021 April Quarterly Report at 11.

¹⁰⁴ Resp. at 5 n.16.

1 and its length.¹⁰⁵ The allegedly independent valuation of \$18,000 is nearly identical to the
2 \$19,000 the State Committee disbursed to Abrot Creative, the vendor that “created” and made
3 improvements to the Greitens Website, for “web services.” These circumstances further suggest
4 that the licensing agreement between Greitens and the Federal Committee was not a *bona fide* or
5 arm’s-length agreement with a fair market exchange and instead raise a reasonable inference that
6 the valuation of the Greitens Website described in the Response was based on the improvements
7 made by Abrot Creative that were paid for by the State Committee’s nonfederal funds.¹⁰⁶
8 Therefore, the available information indicates that the in-kind contribution of the Greitens
9 Website reflects an indirect use of nonfederal funds the Commission sought to prevent in
10 promulgating 11 C.F.R. § 110.3(d), akin to matters in which a state committee pays for goods or
11 services used by the federal committee.¹⁰⁷

¹⁰⁵ See, e.g., GODADDY, <https://www.godaddy.com/tlds/com-domain> (last visited June 15, 2023). *Domain Appraisals*, GODADDY <https://www.godaddy.com/domain-value-appraisal/appraisal/?checkAvail=1&domainToCheck=ericgreitens.com#> (last visited June 15, 2023).

¹⁰⁶ Cf. F&LA at 5, MUR 5572 (David W. Rogers, *et al.*) (finding reason to believe that a candidate converted an authorized committee’s mailing list to personal use despite a Memorandum of Understanding purporting to give co-ownership of the mailing list to the candidate where the circumstances “appear[ed] more like self-dealing than a fair market exchange”). The Commission has previously looked to “the facts and circumstances surrounding specific financial transactions to determine whether they are contributions.” See F&LA at 12-13, MUR 6824 (Wayne B. Brown) (finding reason to believe where the circumstances and terms of a purported real estate sales contract indicated that transaction was a loan to a candidate collateralized by real estate, not a sale of real estate for fair market value); F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe where federal committee hired a third party to coordinate an arm’s-length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value).

¹⁰⁷ Cf. Transfer of Funds E&J, 58 Fed. Reg. at 3475; see *supra* note 65. The Commission has also made reason-to-believe findings in matters in which a federal committee used another entity’s mailing list for less than fair market value. See, e.g., F&LA at 7, MUR 5181 (Ashcroft 2000) (finding reason to believe that an authorized committee received an excessive in-kind contribution where a multi-candidate political committee transferred a mailing list to a candidate’s federal committee without paying fair market value); F&LA at 5, MUR 5572 (David W. Rogers, *et al.*) (finding reason to believe that a candidate converted an authorized committee’s mailing list to personal use); see also F&LA at 9-11, MURs 7628, 7636, & 7992 (Kris Kobach, *et al.*) (finding reason to believe that an authorized committee received an in-kind corporate contribution where a 501(c)(4) non-profit organization rented an email list to a federal candidate’s federal committee at “significantly below market rate”).

1 As described above, the conflicting or lack of information about the alleged licensing
2 agreement between Greitens and the State Committee raises a reasonable inference that the State
3 Committee indirectly used nonfederal funds to improve the Greitens Website to the benefit of the
4 Federal Committee. Alternatively, if the Response's description of the licensing agreement
5 between Greitens and the State Committee is taken at face value, the State Committee's
6 expenditure of \$19,000 to improve the Greitens Website in exchange for use thereof may have
7 resulted in conversion of the State Committee's campaign funds to Greitens's personal use if he
8 retained ownership of the Greitens Website and all improvements thereto.¹⁰⁸

9 Finally, the Response does not explain why the Federal Committee reported receipt of the
10 Greitens Website as an \$18,000 in-kind *contribution*, that is, a "gift . . . of . . . anything of
11 value,"¹⁰⁹ from Greitens, if Greitens and the Federal Committee instead had entered into a fair
12 market exchange reflected in the licensing agreement attached to the Response, as opposed to a
13 transfer. Indeed, again, if the Greitens Website constituted an in-kind contribution from Greitens
14 to the Federal Committee as reported and asserted by the Response, then the return of the

¹⁰⁸ If the Response's description of the licensing agreement between Greitens and the State Committee is taken at face value as described, we would recommend, in alternative to proceeding against the Greitens Respondents for violations of 52 U.S.C. §§ 30104(b) and 30125(e) and 11 C.F.R. § 110.3(d), that the Commission refer the State Committee and Greitens to the Missouri Ethics Commission for a potential violation of Missouri law by converting the State Committee's funds to personal use when Greitens received the paid-for improvements to the Greitens Website without paying fair market value. *See* MO. REV. STAT. § 130.034(1) (West 2016) (prohibiting the conversion of campaign funds to personal use); 52 U.S.C. § 30107(a)(9) ("The Commission has the power . . . to report apparent violations to the appropriate law enforcement authorities.").

¹⁰⁹ 52 U.S.C. § 30101(8)(A)(i).

1 Greitens Website to Greitens, as contemplated in the licensing agreement upon termination or as
2 of December 31, 2022, may have resulted in conversion of a campaign asset to personal use.¹¹⁰

3 Accordingly, we recommend that the Commission find reason to believe that the Greitens
4 Respondents violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by transferring the Greitens
5 Website from the State Committee to the Federal Committee without paying fair market value.
6 We further recommend that the Commission find reason to believe that the Federal Committee
7 violated 52 U.S.C. § 30104(b) by misreporting the transfer of the Greitens Website as an in-kind
8 contribution from Greitens in disclosure reports filed with the Commission.

9 **E. The Commission Should Take No Action at This Time Regarding the**
10 **Contribution in the Name of Another Allegations**

11 The Complaint alleges that the State Committee made a contribution in the name of
12 another by transferring the Greitens Website to the Federal Committee, that Greitens knowingly
13 permitted his name to be used to effect the contribution, and that the Federal Committee
14 knowingly accepted the contribution from the State Committee in the name of Greitens.¹¹¹
15 Given the reason-to-believe recommendation above,¹¹² and because the recommended course of
16 pre-probable cause conciliation with the Greitens Respondents may reveal additional information
17 as to the contribution in the name of another allegations, we recommend that the Commission
18 take no action at this time regarding the allegations that the Greitens Respondents violated

¹¹⁰ The terms of the licensing agreement provide that the Federal Committee will “provide Greitens with enhancements to the website” of at least \$1,000, which he would “receive” on December 31, 2022, and “maintain . . . indefinitely.” Resp., Ex. C; *see* F&LA at 5, MUR 5572 (David W. Rogers, *et al.*) (finding reason to believe a candidate and his campaign committee converted funds to personal use where the committee used campaign funds to develop contributor mailing lists that were later sold to a vendor and the candidate retained the proceeds).

¹¹¹ Compl. ¶¶ 23, 33.

¹¹² *See supra* Section III.D.

1 52 U.S.C. § 30122 by making, allowing, and knowingly accepting a contribution in the name of
2 another related to the transfer of the Greitens Website.

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1 **V. RECOMMENDATIONS**

- 2 1. Find no reason to believe that Greitens for US Senate and Eric Greitens in his
3 official capacity as treasurer, Greitens for Missouri, Eric R. Greitens, and Dylan
4 Johnson violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d) by using State
5 Committee funds to pay for federal testing-the-waters expenses with respect to the
6 disbursements identified in the Complaint other than those to the Octavian Group,
7 LLC;
- 8 2. Find no reason to believe that Greitens for US Senate and Eric Greitens in his
9 official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to report
10 federal testing-the-waters expenses with respect to the disbursements identified in
11 the Complaint other than those to the Octavian Group, LLC;
- 12 3. Exercise its prosecutorial discretion and dismiss the allegations that Greitens for
13 US Senate and Eric Greitens in his official capacity as treasurer, Greitens for
14 Missouri, Eric R. Greitens, Dylan Johnson, and the Octavian Group, LLC violated
15 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d) by using State Committee funds to
16 pay for federal testing-the-waters expenses with respect to the disbursements to
17 the Octavian Group, LLC;
- 18 4. Exercise its prosecutorial discretion and dismiss the allegations that Greitens for
19 US Senate and Eric Greitens in his official capacity as treasurer violated
20 52 U.S.C. § 30104(b) by failing to report federal testing-the-waters expenses with
21 respect to the disbursements to the Octavian Group, LLC;
- 22 5. Find reason to believe that Eric R. Greitens, Greitens for US Senate and Eric
23 Greitens in his official capacity as treasurer, and Greitens for Missouri violated
24 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by transferring the Greitens
25 Website from Greitens for Missouri to Greitens for US Senate without paying fair
26 market value;
- 27 6. Find reason to believe that Greitens for US Senate and Eric Greitens in his official
28 capacity as treasurer violated 52 U.S.C. § 30104(b) by misreporting the transfer of
29 the Greitens Website as an in-kind contribution from Greitens in disclosure
30 reports filed with the Commission;

- 1 7. Take no action at this time regarding the allegations that the Greitens for US
- 2 Senate and Eric Greitens in his official capacity as treasurer, Eric Greitens, and
- 3 Greitens for Missouri violated 52 U.S.C. § 30122 by making, allowing, and
- 4 knowingly accepting a contribution in the name of another related to the transfer
- 5 of the Greitens Website;

- 6 8. Approve the attached Factual and Legal Analyses;

- 7 9. Authorize conciliation prior to a finding of probable cause with Greitens for US
- 8 Senate and Eric Greitens in his official capacity as treasurer, Greitens for
- 9 Missouri, and Eric R. Greitens;

- 10 10. Approve the attached Conciliation Agreement; and

- 11 11. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

14 June 15, 2023
15 Date
16

Charles Kitcher by ABR
Charles Kitcher
Associate General Counsel for Enforcement

17
18 
19 Anne B. Robinson
 Assistant General Counsel

20 
21 Thaddeus H. Ewald
22 Attorney

- 23 Attachments:
- 24 1. Factual and Legal Analysis for Greitens for US Senate, Greitens for Missouri, and
 - 25 Eric Greitens
 - 26 2. Factual and Legal Analysis for Dylan Johnson and Octavian Group, LLC
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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Greitens for US Senate and Eric R. Greitens MUR 7938
4 in his official capacity as treasurer
5 Greitens for Missouri
6 Eric R. Greitens

7 **I. INTRODUCTION**

8 The Complaint alleges that Eric R. Greitens, a former Governor of Missouri and a former
9 candidate for U.S. Senate for Missouri in the 2022 Republican primary election, used funds from
10 his state campaign committee, Greitens for Missouri (the “State Committee”), to impermissibly
11 test the waters for his federal campaign. The Complaint further alleges that Greitens transferred
12 the State Committee’s website to his federal authorized campaign committee, Greitens for US
13 Senate and Eric Greitens in his official capacity as treasurer (the “Federal Committee”),¹ in
14 violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d), and that the Federal Committee
15 misrepresented the transfer as an in-kind contribution from Greitens, in violation of 52 U.S.C.
16 § 30104(b).

17 Greitens, the State Committee, and the Federal Committee (collectively, the “Greitens
18 Respondents”) filed a joint Response (the “Response”) denying the allegations and attaching
19 exhibits containing invoices and other documents to assert that some of the alleged testing-the-
20 waters expenses identified in the Complaint were for services unrelated to Greitens’s federal
21 campaign and were provided months before Greitens declared his candidacy for U.S. Senate.

¹ The Federal Committee’s treasurer beginning on March 23, 2021, and including the time of the activity relevant to this matter, was Jack Neyens. Greitens for US Senate, Statement of Organization at 3 (Mar. 23, 2021) [hereinafter GFUSS Original Statement of Organization], <https://docquery.fec.gov/pdf/332/202103239441842332/202103239441842332.pdf>; Greitens for US Senate, Amended Statement of Organization at 3 (Aug. 13, 2021), <https://docquery.fec.gov/pdf/911/202108139466259911/202108139466259911.pdf>. Greitens became the Federal Committee’s treasurer on October 15, 2022. Greitens for US Senate, Amended Statement of Organization at 3 (Mar. 23, 2021), <https://docquery.fec.gov/pdf/169/202210159533172169/202210159533172169.pdf>.

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1 The Response further attaches a signed licensing agreement to support the assertion that Greitens
2 owns the website personally and licensed its use to the Federal Committee. According to the
3 Response, the Federal Committee properly reported its licensing of the Greitens Website as an
4 \$18,000 in-kind contribution from Greitens to the Federal Committee.

5 Because the Response provides documentation to credibly explain most of the alleged
6 testing-the-waters expenses identified in the Complaint, the Commission finds no reason to
7 believe that the Greitens Respondents violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d) by
8 using State Committee funds to pay for federal testing-the-waters expenses, or that the Federal
9 Committee violated 52 U.S.C. § 30104(b) by failing to report federal testing-the-waters
10 expenses, with respect to all the disbursements identified in the Complaint other than those to
11 Octavian Group, LLC (the “Octavian Group”), an LLC owned by Dylan Johnson, Greitens’s
12 federal campaign manager. With respect to the \$2,400 of disbursements to the Octavian Group,
13 given the small potential amount in violation, the Commission exercises its prosecutorial
14 discretion and dismisses the allegations that the Greitens Respondents violated 52 U.S.C.
15 § 30125 and 11 C.F.R. § 110.3(d) by using State Committee funds to pay for federal testing-the-
16 waters expenses and that the Federal Committee violated 52 U.S.C. § 30104(b) by failing to
17 report federal testing-the-waters expenses.

18 Next, the Commission finds reason to believe that the Greitens Respondents violated
19 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by transferring the website from the State
20 Committee to the Federal Committee without paying fair market value and that the Federal
21 Committee violated 52 U.S.C. § 30104(b) by misreporting the transfer of the Greitens Website as
22 an in-kind contribution from Greitens in disclosure reports filed with the Commission.

1 **II. FACTUAL BACKGROUND**

2 Greitens is a former Governor of Missouri, who served from January 2017 until he
3 resigned in June 2018.² The State Committee was Greitens’s state political committee for his
4 gubernatorial campaign.³ The State Committee remained an active state political committee
5 after Greitens’s resignation in 2018,⁴ but Greitens did not ultimately run for Governor or other
6 statewide or federal elected office in 2020.⁵

7 On March 22, 2021, Greitens publicly announced his campaign for U.S. Senate for
8 Missouri, and the next day Greitens filed his Statement of Candidacy naming the Federal

² Compl. ¶¶ 1, 6 (Oct. 28, 2021) (citing Mitch Smith & Julie Bosman, *Missouri’s Governor, a Rising G.O.P. Star, Resigns Amid Scandal*, N.Y. TIMES (May 29, 2018), <https://www.nytimes.com/2018/05/29/us/eric-greitens-resigns.html>).

³ *See, e.g.*, Greitens for Mo., Statement of Committee Organization (Feb. 24, 2015), <https://mec.mo.gov/Scanned/PDF/2015/110894.pdf>. On July 10, 2018, two complaints were filed against Greitens and the State Committee with the Missouri Ethics Commission alleging, *inter alia*, various state campaign finance violations. Mo. Ethics Comm’n, Final Action: MEC No. 18-0064-I — A New Missouri, Inc. & MEC No. 18-0065-I — Greitens for Missouri (Feb. 13, 2020) [hereinafter Mo. Ethics Comm’n Final Action], <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1473.pdf>; *see* Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Ethics Commission, and Consent Order with Joint Proposed Findings of Facts and Conclusions of Law, *Mo. Ethics Comm’n v. Greitens for Mo.*, Case No. 18-0064-I & 18-0065-I (Mo. Ethics Comm’n Feb. 13, 2020) [hereinafter Mo. Ethics Comm’n Consent Order], <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1474.pdf>. On February 13, 2020, the Missouri Ethics Commission released its findings in connection with those complaints. Mo. Ethics Comm’n Final Action; *see* Mo. Ethics Comm’n Consent Order.

⁴ After Greitens’s election on November 8, 2016, the State Committee amended its Statement of Committee Organization with the Missouri Ethics Commission to reflect that it had become a committee to support Greitens as a gubernatorial candidate in 2020. Greitens for Mo., Amended Statement of Committee Organization (Nov. 28, 2016), <https://mec.mo.gov/Scanned/PDF/2016/123256.pdf>; *see also* Compl. ¶ 9 (contending that the State Committee “amended its statement of organization to describe Greitens as a 2020 gubernatorial candidate, apparently in order to retain its status as an ‘active’ campaign committee”). On June 9, 2020, the State Committee amended its Statement of Committee Organization to reflect it was a committee to support Greitens as a gubernatorial candidate in 2024. Greitens for Mo., Amended Statement of Committee Organization (June 9, 2020), <https://mec.mo.gov/Scanned/PDF/2020/157242.pdf>.

⁵ *Cf.* MO. SEC’Y OF STATE, ELECTION RESULTS: 2020 PRIMARY ELECTION (2020), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/All_Results_2020_Primary_8_4_2020.pdf (reflecting Greitens was not a statewide candidate in the August 4, 2020, primary election); *FEC Candidates: Filtered Results*, FEC.GOV, https://www.fec.gov/data/candidates/?q=greitens&election_year=2020 (last visited June 15, 2023) (reflecting Greitens was not a federal candidate in 2020).

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1 Committee as his principal campaign committee.⁶ Greitens lost the Missouri Republican
2 primary election for U.S. Senate on August 2, 2022.⁷ Dylan Johnson was Greitens’s federal
3 campaign manager and the principal of the Octavian Group.⁸ On November 16, 2022, the State
4 Committee filed a Termination Report with the Missouri Ethics Commission.⁹

5 **A. Testing-the-Waters Activity**

6 According to the Complaint, Greitens began exploring his candidacy for U.S. Senate “no
7 later than early 2021.”¹⁰ Specifically, the Complaint identifies an interview that took place on
8 March 2, 2021, in which Greitens made the following statements: “I am evaluating right now
9 what I am going to be doing this year”; “voters of Missouri deserve to have leaders in the US
10 Senate who are going to fight for them”; and a Senate candidacy is “something that I am
11 certainly going to keep the door open to, and take a look at, because the people of Missouri
12 deserve a fighter.”¹¹

⁶ Compl. ¶ 20 (citing Charles Creitz, *Former Missouri Gov. Eric Greitens Announces Senate Bid on ‘Special Report,’* FOX NEWS (Mar. 22, 2021, 8:09 PM), <https://www.foxnews.com/politics/eric-greitens-running-for-senate-2022-roy-blunt-special-report>); Eric Greitens, Statement of Candidacy at 1 (Mar. 23, 2021), <https://docquery.fec.gov/pdf/597/202103239441842597/202103239441842597.pdf>; GFUSS Original Statement of Organization at 1.

⁷ MO. SEC’Y OF STATE, ELECTION RESULTS: 2022 PRIMARY ELECTION (2022), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/PrimaryElectionAugust2_2022.pdf.

⁸ Compl. ¶ 3 n. 4 (citing Dylan Johnson’s LinkedIn page and Bryan Lowry, *Eric Greitens Was Biggest Donor to Own Senate Campaign; State Filing Raises Red Flags*, KAN. CITY STAR (Apr. 16, 2021), <https://www.kansascity.com/news/politics-government/article250710984.html>); Dylan Johnson, LINKEDIN, <https://www.linkedin.com/in/dylan-johnson-2b76681bb/> (last visited June 15, 2023).

⁹ Greitens for Mo., Termination Report at 4-5 (Nov. 16, 2022), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GSHYjFPs5r60FQzXNS3s%2bhmJ3jRV4p1EYq9327cQy7Ys7pjUrFPhAzQY2vfng3%2bhP> (disclosing charitable donation of remaining funds, no surplus funds or debts upon termination, and certifying compliance with requirements for termination under Missouri law).

¹⁰ Compl. ¶ 38.

¹¹ *Id.* ¶ 38 & n.58 (citing Marc Cox Morning Show Podcast, *3-2-21 Hour 1: Eric Greitens*, at 22:18-23:23 (Mar. 2, 2021), <https://omny.fm/shows/the-marc-cox-show-podcast/3-2-21-hour-1-eric-greitens?msclkid=ed2cf7fde9611ecbc608f8ad61d0a72> (responding to “People have said that there may be some interest in your part in running for Roy Blunt’s seat. Any comment on that?”)).

1 The Federal Committee did not report making any testing-the-waters disbursements prior
2 to March 22, 2021, when Greitens announced his candidacy.¹² However, the Complaint alleges
3 the following disbursements reported by the State Committee were for Greitens’s federal testing-
4 the-waters activity:¹³

Date	Recipient	Amount	Reported Purpose
Mar. 1, 2019 – Oct. 14, 2020	Dylan Johnson	\$54,746.87 ¹⁴	Campaign Worker Compensation ¹⁵
Apr. 27, 2020; Sept. 21, 2020	Status Labs.com	\$30,000.00 ¹⁶	Digital Media Services
May 7, 2020; June 8, 2020; July 20, 2020; Mar. 10, 2021	Driver Eight Media LLC	\$30,000.00 ¹⁷	Media Services

¹² Greitens for US Senate, 2021 April Quarterly Report at 12 (Apr. 15, 2021), <https://docquery.fec.gov/pdf/488/202104159443607488/202104159443607488.pdf> (showing first reported disbursement on March 23, 2021).

¹³ Compl. ¶¶ 8, 13, 15-17, 19 (citing the State Committee’s disclosure reports).

¹⁴ Greitens for Mo., Amended 2019 April Quarterly Report at 8 (July 3, 2019) [hereinafter GFM Amended 2019 April Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GT9UBEtCegm7BNU10zXsa%2bMCHkhUFL8NGbc0mf42WbvXGO7HIAuggAvzYegpXCNVO> (reflecting first \$1,246.42 disbursement on March 1, 2019); *see* Greitens for Mo., Amended 2021 January Quarterly Report at 9 (Mar. 9, 2022) [hereinafter GFM Amended 2021 January Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GL0PbeJ692fmCu8qW85FkqwMNaVPQHohCLgWeUkH17WINo6Jffb%2bZMSWmlhvCk%2fel> (reflecting a \$2,672.54 disbursement on October 14, 2020, and an aggregate disbursement amount of \$54,746.87).

¹⁵ The Complaint identifies payments to other State Committee staffers but does not allege any violation as to those payments. *See* Compl. ¶ 7.

¹⁶ Greitens for Mo., 2020 July Quarterly Report at 8 (July 15, 2020) [hereinafter GFM 2020 July Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GCOdzubqxd661fVwtT7EhYZIR3Y9jm2N8YFw9tlSf5UAJ9GG2rsBEP7d98Cqg1f8> (reflecting a \$10,000 disbursement on April 27, 2020); Greitens for Mo., 2020 October Quarterly Report at 10 (Oct. 15, 2020) [hereinafter GFM 2020 October Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2Gb9XpsOp0sKD0XM8HuELxguNXishLG9rYrK4Y1u7ZwfHYHX0gkczYuvyH36O7ac%2ba> (reflecting a \$20,000 disbursement on September 21, 2020).

¹⁷ GFM 2020 July Quarterly Report at 8, 10 (reflecting two \$7,500 disbursements on May 7, 2020, and June 8, 2020); GFM 2020 October Quarterly Report at 8 (reflecting a \$7,500 disbursement on July 20, 2020); Greitens for Mo., Amended 2021 April Quarterly Report at 9 (Mar. 9, 2022) [hereinafter GFM Amended 2021 April Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GL0PbeJ692fnzw6U0Kx3IEAAbkNsK85%2bX%2b4Ds9gljaoxaZLhWm%2fcr4amTR7QQcIwN> (reflecting a \$7,500 disbursement on March 10, 2021). The State Committee disclosed the March 10, 2021 disbursement as to both “Drier Eight Media LLC” and “Driver Eight Media LLC.” GFM Amended 2021 April Quarterly Report at 9-10. Given that the dates and addresses are the same, the reference to “Drier Eight Media LLC” appears to be an error as noted by the Complaint. *See* Compl. ¶ 19.

Date	Recipient	Amount	Reported Purpose
June 17, 2020; July 20, 2020; Aug. 24, 2020	JK Public Relations	\$7,500.00 ¹⁸	Public Relations
May 13, 2020 – Aug. 26, 2020	Facebook	\$34,349.96 ¹⁹	Advertising
Nov. 20, 2020	Push Digital LLC	\$47,222.31 ²⁰	Digital Media
Dec. 31, 2020; Feb. 11, 2021	Octavian Group	\$2,400.00 ²¹	Strategic Planning
	TOTAL	\$206,219.14	

1 On the basis that Greitens had not campaigned or held state office since 2018, the
2 Complaint alleges that “[t]he only reasonable inference” is that the \$7,500 payment to Driver
3 Eight Media LLC (“Driver Eight Media”) on March 10, 2021, was to book the media appearance
4 announcing Greitens’s federal candidacy on Fox News less than two weeks later.²² Similarly,
5 the Complaint alleges that the “only reasonable inference is that” the \$2,400 in payments to the
6 Octavian Group in December 2020 and February 2021 for “strategic planning” were testing-the-
7 waters expenses in connection with Greitens’s soon-to-be-announced federal campaign.²³ Other
8 than providing the amounts and timing of the other expenses, the Complaint does not allege why

¹⁸ GFM 2020 July Quarterly Report at 11 (reflecting a \$2,500 disbursement on June 17, 2020); GFM 2020 October Quarterly Report at 8-9 (reflecting two \$2,500 disbursements on July 20, 2020, and August 24, 2020).

¹⁹ The State Committee reported 41 disbursements to Facebook in amounts ranging from \$250 to \$1,417.35 on multiple occasions in the second and third quarters of 2020. *See* GFM 2020 July Quarterly Report at 9-11; GFM 2020 October Quarterly Report at 7-10. The Complaint alleges that the State Committee made \$34,400 in disbursements to Facebook for “advertising” in “the second and third quarters of 2020,” which appears to be a rounded figure for the \$34,349.96 in aggregate disbursements to Facebook the State Committee reported on its 2020 July and October Quarterly Reports. *See* Compl. ¶ 13(d).

²⁰ GFM Amended 2021 January Quarterly Report at 9 (reflecting a \$47,222.31 disbursement on November 20, 2020).

²¹ GFM Amended 2021 January Quarterly Report at 9 (reflecting a \$1,200 disbursement on December 31, 2020); GFM Amended 2021 April Quarterly Report at 9 (reflecting a \$1,200 disbursement on February 11, 2021). Johnson, the owner of the Octavian Group, was on the State Committee’s payroll as a “campaign worker” beginning in March 2019. Compl. ¶ 8.

²² Compl. ¶ 39(b). The Complaint alleges that Driver Eight Media is a “firm that specializes in booking clients on *Fox News*.” *Id.*

²³ *Id.* ¶ 39(a); GFM Amended 2021 January Quarterly Report at 9; GFM Amended 2021 April Quarterly Report at 9.

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1 the State Committee’s other disbursements constitute federal testing-the-waters expenses but
2 argues that they should be investigated.²⁴

3 The Response submitted by the Greitens Respondents denies that any of the State
4 Committee’s disbursements were for Greitens’s federal campaign and states that Greitens did not
5 decide to run for federal office until former Senator Roy Blunt announced his retirement on
6 March 8, 2021.²⁵ According to the Response, the State Committee’s disbursements identified in
7 the Complaint during 2020 and early 2021 were related to efforts to publicize findings of the
8 Missouri Ethics Commission investigation into allegations of misconduct by Greitens and to
9 rehabilitate Greitens’s reputation, “in full compliance with Missouri law.”²⁶

10 In support, the Response attaches a copy of a check and an invoice reflecting that the
11 \$7,500 payment to Driver Eight Media on March 10, 2021, was a late payment for services
12 rendered to the State Committee in August 2020 for a “TV Booking,” which the Response
13 contends was for “investigation[-]related media bookings.”²⁷ The Response also attaches a copy
14 of a check and invoices reflecting a \$37,215.81 payment to Push Digital LLC on January 25,
15 2021, which appears to be the amount disbursed by the State Committee that the Response
16 contends was for services “related to [the State Committee’s] ongoing efforts to publicize the

²⁴ Compl. ¶ 40 (“Throughout 2020, Greitens also paid tens of thousands of dollars to his future campaign manager, to public relations firms, and to media consulting firms, and spent tens of thousands more on digital advertising.”).

²⁵ See Resp. at 2, 4 (Dec. 8, 2021); Roy Blunt, *Blunt Announcement on 2022 Election*, YOUTUBE (Mar. 8, 2021), <https://www.youtube.com/watch?v=o0tvkK689NY>.

²⁶ Resp. at 2-3; *see supra* note 3; Mo. Ethics Comm’n Final Action; Mo. Ethics Comm’n Consent Order.

²⁷ Resp. at 5, Ex. B (attaching invoice for an “August ’20” “TV Booking” and copy of the check).

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1 [Missouri Ethics Commission’s] investigative findings” in the “spring and summer of 2020.”²⁸
2 The Meta Ad Library²⁹ contains advertisements that the State Committee ran on Facebook
3 between March and September 2020 concerning the results of the Missouri Ethics Commission’s
4 investigation.³⁰

5 The Greitens Respondents further assert that the two \$1,200 payments to the Octavian
6 Group on December 31, 2020, and February 11, 2021, were related to Greitens’s exploration of a
7 potential Missouri gubernatorial run in 2024 that began “[o]n or around December 2020,” not to
8 his 2022 U.S. Senate candidacy, which he was allegedly “not weighing” at that time.³¹ The State
9 Committee filed an amended disclosure report on March 9, 2022, after the filing of the
10 Complaint and Response in this matter, stating that “Octavian Group Services included updating
11 and maintaining social media assets owned or used by [the State Committee]; drafting

²⁸ *Id.* at 4, Ex. A (attaching invoices from Push Digital LLC for “media placement[s]” and “online advertising” in April and May 2020). The Response further states that the late payment for these services was “due to an internal dispute between the parties.” *Id.* at 4. The State Committee reported a \$47,222.31 payment to Push Digital LLC on November 20, 2020, which corresponds to the invoiced amount and date. GFM Amended 2021 January Quarterly Report at 9; Resp., Ex. A at 2. However, the copy of the check attached to the Response is dated January 25, 2021, and reflects a \$10,006.50 credit applied to the \$47,222.31 outstanding balance for the ultimate check amount of \$37,215.81. Resp., Ex. A at 1. The State Committee’s subsequent disclosure report reflects a “payment made or credit received” from Push Digital LLC in the amount of \$10,006.50 on January 25, 2021. GFM Amended 2021 April Quarterly Report at 6. It appears that the State Committee originally reported the outstanding balance due on its 2021 January Quarterly Report, in the midst of a dispute with Push Digital LLC regarding the amount, and later reported a credit on that amount on its 2021 April Quarterly Report to reach the ultimate payment made of \$37,215.81.

²⁹ The Meta Ad Library displays advertisements across Meta products. *What Is the Meta Ad Library and How Do I Search It?*, FACEBOOK: HELP CENTER, <https://www.facebook.com/help/259468828226154> (last visited June 15, 2023). Meta is the company brand for Facebook, Instagram, and other social media platforms that was introduced in 2021. *Introducing Meta: A Social Technology Company*, META (Oct. 28, 2021), <https://about.fb.com/news/2021/10/facebook-company-is-now-meta/>.

³⁰ META AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&page_ids\[0\]=253153019746&q=greitens&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&start_date\[min\]=2020-03-01&start_date\[max\]=2020-10-01&search_type=keyword_unordered&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&page_ids[0]=253153019746&q=greitens&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2020-03-01&start_date[max]=2020-10-01&search_type=keyword_unordered&media_type=all) (last visited June 15, 2023) (showing 47 advertisements paid for by the State Committee between March 1 and September 30, 2020). For example, one Facebook advertisement republished a Fox News clip about the “political weaponization of law enforcement” and stating that the charges against Greitens were “made up.” Eric Greitens, META AD LIBRARY (May 3-18, 2020), <https://www.facebook.com/ads/library/?id=327138291598944>.

³¹ Resp. at 4.

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1 communications for releases; strategic planning for potential state campaign, consult and manage
2 [State Committee] related media appearances.”³²

3 **B. The Greitens Website**

4 The Complaint alleges that Greitens updated his website, www.ericgreitens.com (the
5 “Greitens Website”), in May 2020, which then included at the bottom of the page a copyright
6 symbol followed by “Greitens for Missouri. All Rights Reserved” and a statement that it was
7 “created by Abrot Creative.”³³ Beginning around that time, the State Committee reported three
8 disbursements to Abrot Creative totaling \$19,000 for “web services”: \$9,500 on May 14, 2020;
9 \$4,750 on June 19, 2020; and \$4,750 on July 31, 2020.³⁴ According to the Complaint, on or
10 around the time Greitens announced his federal candidacy on March 22, 2021, the disclaimer on
11 the Greitens Website changed to “Paid for by Eric Greitens for U.S. Senate,” but the layout and
12 design of the website was “otherwise unchanged.”³⁵ The Federal Committee reported the receipt

³² GFM Amended 2021 April Quarterly Report at 11.

³³ Compl. ¶ 11. The Complaint cites a tweet by Greitens on May 18, 2020, touting the Greitens Website, a news article that refers to his “new website” which initially said he was running again for Governor, and an archived version of the Greitens Website from May 18, 2020. *Id.* ¶ 11 & nn. 17-18; Eric Greitens (@EricGreitens), TWITTER (May 18, 2020, 11:38 PM), <https://twitter.com/EricGreitens/status/1262588461351079937?s=20> (“Check out our website: [link to the Greitens Website.]”); Chris Hayes, *Greitens Says He’s Not Running for Governor Despite Post on His Website*, FOX 2 NOW (May 19, 2020, 6:01PM), <https://fox2now.com/news/fox-files/greitens-says-hes-not-running-for-governor-despite-post-on-his-website/>; ERIC GREITENS (Mar. 23, 2021) [hereinafter May 19, 2020 Website], www.ericgreitens.com [<https://web.archive.org/web/20200519045445/https://www.ericgreitens.com/>]. The Internet Archive’s next most recent archived version of the Greitens Website was captured on June 12, 2018, and reflected Greitens’s 2018 gubernatorial campaign. ERIC GREITENS (Mar. 23, 2021) [hereinafter June 2018 Website], www.ericgreitens.com [<https://web.archive.org/web/20180612113003/https://ericgreitens.com/>].

³⁴ GFM 2020 July Quarterly Report at 9, 11; GFM 2020 October Quarterly Report at 8. The Complaint understates the State Committee’s payment to Abrot Creative on July 31, 2020, by \$250, erroneously stating the State Committee made \$18,750 in total payments to Abrot Creative. Compl. ¶¶ 12, 28.

³⁵ Compl. ¶¶ 28-29. Archived versions of the Greitens Website before and after March 22, 2021, demonstrate that the layout and design appear nearly identical, but some of the website content was changed. *Compare* ERIC GREITENS (Jan. 31, 2021) [hereinafter Jan. 31, 2021 Website], www.ericgreitens.com [<https://web.archive.org/web/20210131073145/https://www.ericgreitens.com/>], *with* ERIC GREITENS (Mar. 23, 2021) [hereinafter Mar. 23, 2021 Website], www.ericgreitens.com [<https://web.archive.org/web/20210323042825/https://www.ericgreitens.com/>].

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1 of an \$18,000 in-kind contribution from Greitens individually for “IN-KIND: WEBSITE” on
2 March 23, 2021.³⁶

3 Given the similarities in the dollar figures and “that the website content was largely
4 unchanged after control was transferred to [the Federal Committee],” the Complaint infers that
5 the true contributor was the State Committee, not Greitens the candidate, resulting in multiple
6 alleged violations, including the ban on transfers between state and federal committees under
7 11 C.F.R. § 110.3(d), the reporting requirements under 52 U.S.C. § 30104(b), and the prohibition
8 on contributions in the name of another in 52 U.S.C. § 30122.³⁷

9 The Greitens Respondents contend that Greitens owns the Greitens Website personally
10 and licensed its use to the State and Federal Committees.³⁸ The Response provides no
11 documentation that Greitens purchased the domain name in 2007, though the Response asserts
12 that a “copy of purchase confirmation will be provided upon request.”³⁹ The Response attaches

³⁶ Greitens for US Senate, Amended 2021 April Quarterly Report at 11 (Sept. 8, 2021) [hereinafter GFUSS Amended 2021 April Quarterly Report], <https://docquery.fec.gov/pdf/563/202109089466634563/202109089466634563.pdf>; Compl. ¶ 30.

³⁷ Compl. ¶¶ 31-33. The Complaint also alleges that the State Committee raised nonfederal money, and specifically that it “received dozens of contributions of \$100,000 and above from individuals and corporations” in the 2016 election cycle. *Id.* ¶ 5.

³⁸ Resp. at 3, 5-6.

³⁹ *Id.* at 3, 5 & n.8. Information maintained by the Internet Corporation for Assigned Names and Numbers (“ICANN”) suggests that www.ericgreitens.com was first created in 2005. *See* ICANN LOOKUP, <https://lookup.icann.org/en/lookup> [hereinafter ICANN Lookup Page] (last visited June 15, 2023) (search for www.ericgreitens.com). The Internet Archive’s earliest screen capture of the Greitens Website is dated July 14, 2007. ERIC GREITENS (July 14, 2007) [hereinafter 2007 Website], <https://web.archive.org/web/20070714003225/http://www.ericgreitens.com/>. At that time, the Greitens Website stated that it would be hosting information concerning an upcoming novel and that users could contact eric.greitens@gmail.com for additional information. *Id.* By September 28, 2015, the Greitens Website contained content addressing Greitens’s gubernatorial candidacy. ERIC GREITENS (Sept. 28, 2015), <https://web.archive.org/web/20150928133330/https://ericgreitens.com/>. The ICANN database provides little information about the person who ultimately controls the domain name, identifying the registrant only as “Domains by Proxy, LLC.” ICANN Lookup Page; *see also Public vs. Private*, DOMAINS BY PROXY, LLC, <https://www.domainsbyproxy.com/PublicVsPrivate.aspx> (last visited June 15, 2023) (showing how registration through Domain by Proxy “shields . . . personal information from public display”).

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1 an undated licensing agreement between Greitens and the Federal Committee purporting to value
2 the Greitens Website at \$18,000 and to license the Greitens Website to the Federal Committee
3 until December 31, 2022, in exchange for which the Federal committee would provide
4 “enhancements” to the Greitens Website which may have a market value of not less than
5 \$1,000.⁴⁰ Under the terms of the included licensing agreement, the Greitens Website would not
6 become property of the Federal Committee, and Greitens indefinitely retains any
7 “enhancements” to the Greitens Website.⁴¹ The Response alleges a similar licensing agreement
8 existed between Greitens and the State Committee but does not attach this agreement or describe
9 it beyond the foregoing characterization of it being similar to the agreement with the Federal
10 Committee.⁴²

11 **III. LEGAL ANALYSIS**

12 **A. Applicable Law**

13 The Act and Commission regulations define “contribution” as “any gift, subscription,
14 loan, advance, or deposit of money or anything of value made by any person for the purpose of
15 influencing any election for Federal office.”⁴³ “[A]nything of value” includes in-kind
16 contributions, such as “the provision of any goods or services without charge or at a charge that
17 is less than the usual and normal charge.”⁴⁴ Commission regulations define “usual and normal
18 charge” as “the price of those goods in the market from which they ordinarily would have been

⁴⁰ Resp., Ex. C. The Response asserts, without substantiation, that “[a]n independent third party valued the domain name at \$18,000.” Resp. at 5 n.16.

⁴¹ Resp., Ex. C.

⁴² *Id.* at 3.

⁴³ 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (adding that “contribution” includes “any direct or indirect payment, . . . gift of money, or any services, or anything of value”).

⁴⁴ 11 C.F.R. § 100.52(d)(1).

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1 purchased at the time of the contribution,” or the charge for services “at a commercially
2 reasonable rate prevailing at the time the services were rendered.”⁴⁵ If a committee pays fair
3 market value for a good or service, then the transaction is not considered a contribution.⁴⁶

4 An individual becomes a candidate under the Act when: (a) such individual receives
5 contributions or makes expenditures in excess of \$5,000; or (b) such individual gives his or her
6 consent to another person to receive contributions or make expenditures on behalf of such
7 individual and if such person has received such contributions or has made such expenditures in
8 excess of \$5,000.⁴⁷ Once the \$5,000 threshold has been met, the candidate has 15 days to
9 designate a principal campaign committee by filing a Statement of Candidacy with the
10 Commission.⁴⁸ The principal campaign committee must file a Statement of Organization within
11 ten days of its designation,⁴⁹ and it must file disclosure reports with the Commission.⁵⁰

12 The Commission has established “testing-the-waters” regulations exempting from the
13 definitions of “contribution” and “expenditure” funds received and payments made solely to
14 determine whether an individual should become a candidate, thereby permitting an individual to
15 test the feasibility of a campaign for federal office without becoming a candidate under the Act.⁵¹
16 These testing-the-waters regulations seek to draw a distinction between activities directed to

⁴⁵ *Id.* § 100.52(d)(2).

⁴⁶ *See id.* § 100.52(d)(1).

⁴⁷ 52 U.S.C. § 30101(2).

⁴⁸ *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁴⁹ *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

⁵⁰ 52 U.S.C. § 30104(a), (b); *see, e.g.*, Factual and Legal Analysis (“F&LA”) at 6, MUR 6735 (Joseph A. Sestak, *et al.*); F&LA at 5, MUR 6449 (Jon Bruning, *et al.*); F&LA at 2, MUR 5363 (Alfred C. Sharpton, *et al.*).

⁵¹ *See* 11 C.F.R. §§ 100.72, 100.131; F&LA at 7, MUR 6775 (Hillary Clinton, *et al.*); F&LA at 8, MUR 6776 (Niger Innis, *et al.*); F&LA at 6, MUR 6735 (Joseph A. Sestak, *et al.*); *see also Ready for Ron v. FEC*, No. 22-3282, 2023 WL 3539633, at *19 (D.D.C. May 17, 2023) (finding litigant’s challenges to the testing-the-waters regulation under the Administrative Procedures Act “unavailing”).

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1 evaluating the feasibility of one’s candidacy and conduct signifying that a decision to become a
2 candidate has been made.⁵² Testing-the-waters activities include, but are not limited to,
3 payments for polling, telephone calls, and travel, and only funds subject to the Act’s source and
4 amount restrictions may be used for such activities.⁵³

5 An individual who is testing the waters is not required to register or file disclosure reports
6 with the Commission unless and until the individual subsequently decides to run for federal
7 office.⁵⁴ However, an individual who tests the waters must keep financial records, and if the
8 person becomes a candidate, all funds received and payments made in connection with testing
9 the waters must be reported as contributions and expenditures in the first report filed by the
10 candidate’s principal campaign committee.⁵⁵

11 The Act and Commission regulations prohibit federal candidates, federal officeholders,
12 their agents, and entities directly or indirectly established, financed, maintained, or controlled by
13 federal candidates or officeholders from soliciting, receiving, directing, transferring, or spending
14 funds in connection with any election unless the funds are subject to the limitations, prohibitions,
15 and reporting requirements of the Act.⁵⁶ Prior to December 8, 2016, Missouri law permitted
16 candidates to accept unlimited contributions and contributions from corporations and labor

⁵² See Advisory Opinion 1981-32 at 4 (Askew) (“AO 1981-32”).

⁵³ 11 C.F.R. §§ 100.72, 100.131; AO 1981-32 at 3-4.

⁵⁴ See 11 C.F.R. §§ 100.72, 100.131; AO 1981-32 at 3; *see also* Advisory Opinion 2015-09 at 5 (Senate Maj. PAC, *et al.*) (“AO 2015-09”); F&LA at 5, MUR 6449 (Jon Bruning, *et al.*); F&LA at 8, MUR 6775 (Hillary Clinton, *et al.*).

⁵⁵ 11 C.F.R. § 101.3.

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

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1 unions.⁵⁷ Missouri law now limits contributions to statewide candidates to \$2,825 per election,
2 prohibits corporations and labor organizations from making contributions to candidate
3 committees, and prohibits state committees from knowingly accepting contributions from foreign
4 nationals, *inter alia*.⁵⁸

5 The Commission’s regulations explicitly prohibit “[t]ransfers of funds or assets from a
6 candidate’s campaign committee or account for a nonfederal election to his or her principal
7 campaign committee or other authorized committee for a federal election.”⁵⁹ The Commission
8 has explained that this prohibition on all transfers from a candidate’s state or local committee to
9 the candidate’s federal committee is intended to prevent a federal committee’s indirect use of
10 soft money.⁶⁰

⁵⁷ See MO. REV. STAT. § 130.011-.160 (providing no contribution limit); *id.* § 130.029 (stating that corporations and labor organizations may make contributions); *cf.* Conciliation Agreement (“CA”) ¶ IV.5, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*) (“[P]rior to December 2016, there were no contribution limits [under Missouri law.]”); F&LA at 2 n.7, MUR 7106 (Chappelle-Nadal for Congress) (addressing conduct prior to December 2016 and noting that “[u]nder Missouri law, candidates can accept unlimited contributions and contributions from corporations and labor unions.”). Missouri voters enacted a constitutional amendment on November 8, 2016, which imposed campaign finance limits and prohibitions, which became effective on December 8, 2016. CONSTITUTIONAL ARTICLE VIII, SECTION 23 at 1-2, MO. ETHICS COMM’N (2019) [hereinafter MEC Amendment 2 FAQs], <https://www.mec.mo.gov/WebDocs/PDF/CampaignFinance/Amendment%20%20v24%204-25-19.pub.pdf>.

⁵⁸ MO. CODE REGS. ANN. tit. 15, § 30-14.010 (2023) (listing \$2,825 contribution limit); MO. CONST. art. VIII, § 23.3(1), (3)(a), (16); MEC Amendment 2 FAQs at 1. The constitutional amendment imposed a limit of \$2,600 — the applicable limit when the State Committee was receiving contributions — which was first adjusted in the first quarter of 2019 and will be adjusted every four years based upon the Consumer Price Index. MEC Amendment 2 FAQs at 3.

⁵⁹ 11 C.F.R. § 110.3(d).

⁶⁰ See *Transfers of Funds from State to Federal Campaigns*, 58 Fed. Reg. 3474, 3474-75 (Jan. 8, 1993) [hereinafter *Transfer of Funds E&J*], <https://www.govinfo.gov/content/pkg/FR-1993-01-08/pdf/FR-1993-01-08.pdf> (explaining also that the Commission was adopting total prohibition in this circumstance because of practical difficulty in linking or otherwise accounting for federally permissible funds available for transfer); see also F&LA at 3-4, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*) (describing 11 C.F.R. § 110.3(d) as “an extension of the Act’s soft money ban”); First Gen. Counsel’s Rpt. (“First GCR”) at 10-11 & Certification (“Cert.”) ¶¶ 1-2 (Feb. 11, 2005), MUR 5406 (Hynes for Senate) (approving First GCR’s reason to believe recommendation that a dual candidate’s federal and state committees violated 11 C.F.R. § 110.3(d) by making a direct contribution from a state to federal committee and requiring disgorgement of contribution amount to U.S. Treasury).

1 While the prohibition on transfers in 11 C.F.R. § 110.3(d) does not explicitly include
2 transfers made during the testing-the-waters phase of a federal campaign, the Commission
3 regulations on testing the waters make clear that only permissible funds may be used for testing-
4 the-waters activities.⁶¹ Thus, for example, the Commission has concluded that the “use of funds
5 raised outside of the Act’s limitations and prohibitions to pay for individuals’ testing-the-waters
6 activities would violate Commission regulations if those individuals decide to become
7 candidates.”⁶² Similarly, the Commission has concluded that individuals testing the waters may
8 not use the funds or assets of their nonfederal committees to fund federal testing-the-waters
9 activity because candidates are prohibited from transferring funds or assets from their nonfederal
10 campaigns to their federal campaigns.⁶³

11 The transfer of a nonfederal committee’s assets to the campaign committee of a candidate
12 for federal office is permissible, however, in instances in which the federal committee pays the

⁶¹ See 11 C.F.R. §§ 100.72(a), 100.131(a); *see also* F&LA at 8, MUR 5722 (Friends for Lauzen, *et al.*).

⁶² AO 2015-09 at 5 (concluding that 527 organizations’ payment for testing-the-waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.131(a)).

⁶³ F&LA at 8, MUR 5722 (Friends for Lauzen, *et al.*) (“Thus, since candidates may not use money from their nonfederal campaigns to fund their federal campaigns, individuals testing the waters may not use money from their nonfederal campaigns to fund testing the waters activity.”); F&LA at 7-8, MUR 6773 (Brian Nestande, *et al.*) (“[T]he Commission has previously considered funds spent by a state candidate’s campaign committee for the purpose of exploring federal candidacy to be a transfer from the state committee to the subsequent candidate’s federal committee.”); F&LA at 4-5, MUR 6267 (Jonathan Paton, *et al.*) (finding reason to believe that a candidate violated [now] 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) where the candidate’s state committee advanced funds to pay “for survey and polling that benefitted the testing the waters phase of [the candidate’s] federal candidacy”); F&LA at 2-6, MUR 5480 (Liane Levetan for Congress) (finding reason to believe that a poll paid for by a state committee to evaluate a candidate’s options for future state and federal elections was a prohibited transfer in violation of [now] 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d)); *see also* CA ¶¶ IV.7, V.1, MUR 7076 (Richard Tisei, *et al.*) (conciliating violation of 52 U.S.C. § 30125 where candidate’s state committee made payments for “polling, fundraising data analysis and staff work designed to help [the candidate] decide whether to run for office,” some portion of which “qualified as federal testing the waters activity”).

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1 fair market value or the “usual and normal charge” for the use of such assets.⁶⁴ The Commission
2 has pursued matters where the federal candidate’s committee does not pay the state committee
3 for goods and services used by the federal committee.⁶⁵ When the state committee does not own
4 the asset, the federal committee must pay the usual and normal charge for use of the asset to the
5 proper owner.⁶⁶

⁶⁴ Transfer of Funds E&J, 58 Fed. Reg. at 3475 (“[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.”); *see also, e.g.*, Advisory Opinion 1992-19 at 2 (Mike Kreidler for Congress) (approving request to permit the lease of state campaign committee’s computer equipment to candidate’s federal campaign committee); Advisory Opinion 2014-06 at 8 (Ryan, *et al.*) (finding that a candidate could rent his committee’s mailing list at fair market value to promote a book); Statement of Reasons (“SOR”), Comm’rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (finding no reason to believe where a candidate’s federal committee paid her state committee for assets including fundraising database, website redesign, domain names, and promotional materials because there was “no information to suggest that the amount paid . . . for the assets was not fair market value”); F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe where a candidate’s federal committee used a website domain name of his state committee because federal committee hired a third party to coordinate an arm’s-length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value).

⁶⁵ *See, e.g.*, CA ¶¶ IV.8-9, V.1, MUR 5426 (Dale Schultz for Congress, *et al.*) (campaign worker expenses); CA ¶¶ IV.10-11, V.1-2, MUR 5646 (Cohen for N.H.) (start-up expenses); CA ¶¶ IV.4-5, V.1, MUR 6257 (John Callahan, *et al.*) (feasibility research); CA ¶¶ IV.6-7, 12-13, V.2-4, MUR 6267 (Jonathan Paton for Congress, *et al.*) (polling and survey costs); CA ¶¶ IV.7, V.1-3, MUR 7076 (Richard Tisei, *et al.*) (polling and fundraising analysis); *see also* F&LA at 4, 6, MUR 5636 (Russ Diamond) (finding reason to believe candidate and his state committee violated 11 C.F.R. § 110.3(d) where, *inter alia*, the state committee paid for website-related expenses that featured both federal and state campaigns and the pro-rated reimbursement to the state committee appeared inadequate and no basis for the pro-rated portion was provided).

⁶⁶ *See* 11 C.F.R. § 100.52(d). *Compare* F&LA at 4-6, MUR 6784 (Lizbeth Benacquisto for Congress, *et al.*) (finding no reason to believe regarding a federal committee’s use of images used in state campaign advertisement where the federal committee provided copies of invoices documenting payments to the vendor which retained ownership of the images and there was no information indicating the payments were below the usual and normal charges), F&LA at 10-11, MUR 6218 (Ball4NY, *et al.*) (finding no reason to believe regarding a federal committee’s use of photographs of state officeholder and federal candidate where committee treasurer averred the federal committee purchased the rights to the photographs from the state legislature and provided supporting documentation and there was no information to the contrary), *and* SOR at 2, Comm’rs Walther, Petersen, Bauerly, Hunter, & Weintraub, MUR 5964 (Schock for Congress, *et al.*) (exercising prosecutorial discretion to dismiss regarding federal committee’s use of footage of state officeholder and federal candidate where federal committee claimed it paid vendor for use rights and production of DVDs containing the footage), *with* F&LA at 2-4, 6-9, MUR 6792 (Sean Eldridge for Congress, *et al.*) (finding reason to believe that video footage committee received from corporation without payment was a prohibited corporate contribution).

1 The Act also prohibits making a contribution in the name of another, knowingly
2 permitting one’s name to be used to effect such a contribution, and knowingly accepting a
3 contribution made in the name of another.⁶⁷

4 **B. The Commission Finds No Reason to Believe Regarding the Allegations That**
5 **the State Committee Paid for Federal Testing-the-Waters Expenses with**
6 **Respect to the Disbursements Identified in the Complaint Other Than Those**
7 **to the Octavian Group**

8 The Complaint alleges that the State Committee made testing-the-waters disbursements
9 for Greitens’s federal candidacy, based primarily on the nature of services provided by the
10 payees and the timing of the payments.⁶⁸ First, for example, the Complaint contends that the
11 \$7,500 the State Committee paid on March 10, 2021 to Driver Eight Media, which allegedly
12 helps its clients book appearances on Fox News, for “media services” was made to “book[] the
13 television appearance [on Fox News] where Greitens would announce his candidacy,” 12 days
14 later.⁶⁹ However, the Response submits materials credibly providing another explanation.
15 Although no declaration or affidavit accompanies the Response, the Greitens Respondents state
16 the payment was “related to investigation[-]related media bookings in 2020,” apparently
17 referring to the Missouri Ethics Commission investigation, that was “paid late as a result of a
18 miscommunication” between the vendor and the State Committee.⁷⁰ The Response attaches an
19 invoice and a copy of a check to Driver Eight Media indicating, that the March 10, 2021
20 payment was a late payment for “TV Booking” services provided in August 2020.⁷¹ There is no
21 available information to suggest that Greitens made any media appearances in or around August

⁶⁷ 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b).

⁶⁸ *See* Compl. ¶¶ 34-41; *id.* ¶ 39.

⁶⁹ *Id.* ¶¶ 19, 39(b).

⁷⁰ Resp. at 5.

⁷¹ *Id.*, Ex. B.

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1 2020 in which he discussed or referenced a potential federal candidacy. Thus, the Greitens
2 Respondents also credibly rebut the alleged temporal connection between the March 10, 2021
3 payment and Greitens’s subsequent March 22, 2021 announcement and federal campaign.

4 The Complaint similarly alleges that the \$47,222 the State Committee paid on
5 November 20, 2020 — four months before Greitens declared his candidacy for U.S. Senate and
6 years after Greitens resigned as Governor — to Push Digital LLC for “digital media” could only
7 have been a federal testing-the-waters expense.⁷² However, the Response again credibly
8 provides information that the fees were originally invoiced in March and April 2020 but were not
9 paid until November 2020 due to a billing dispute.⁷³ The Response asserts that this disbursement
10 was made in connection with “efforts to publicize the [Missouri Ethics Commission’s]
11 investigative findings” and to rehabilitate Greitens’s reputation.⁷⁴ Although not mentioned in
12 either the Complaint or the Response, materials in the Meta Ad Library support the Response’s
13 assertion that the State Committee disseminated materials addressing the Missouri Ethics
14 Commission’s investigation around the time the services were originally invoiced in March and
15 April 2020.⁷⁵

16 The Complaint does not set forth with any specificity why the State Committee’s
17 payments in 2019 and 2020 to Dylan Johnson, Status Labs.com, Facebook, or JK Public
18 Relations would constitute federal testing-the-waters activity beyond the amount and timing of

⁷² Compl. ¶ 40.

⁷³ Resp. at 3-4, Ex. A; *see supra* note 28.

⁷⁴ Resp. at 3-4.

⁷⁵ *See* META AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=253153019746&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&start_date\[min\]=2020-03-01&start_date\[max\]=2020-05-02&search_type=page&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=253153019746&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2020-03-01&start_date[max]=2020-05-02&search_type=page&media_type=all) (last visited June 15, 2023) (showing nine advertisements paid for by the State Committee in March and April 2020).

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1 those expenses in the context of the information the Complaint identifies indicating that Greitens
2 was interested in running for U.S. Senate. Moreover, as discussed above, the Response credibly
3 asserts that the State Committee spent funds in 2020 to rehabilitate Greitens’s reputation
4 following the release of the Missouri Ethics Commission’s investigative findings.⁷⁶ There is no
5 available information to indicate that Greitens was considering a federal candidacy at that time.
6 The earliest date that the Complaint identifies for when Greitens was considering running for
7 federal office was March 2, 2021, months or even years after the State Committee’s
8 disbursements identified in the Complaint.⁷⁷

9 Accordingly, the Commission finds no reason to believe that the Greitens Respondents
10 violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d) by using State Committee funds to pay for
11 federal testing-the-waters expenses, or that the Federal Committee violated 52 U.S.C. § 30104(b)
12 by failing to report federal testing-the-waters expenses, with respect to the disbursements
13 identified in the Complaint other than those to the Octavian Group.

14 **C. The Commission Exercises Its Prosecutorial Discretion and Dismisses the**
15 **Allegations That the State Committee Paid for Testing-the-Waters Expenses**
16 **with Respect to the Disbursements to the Octavian Group**

17 The Complaint further alleges that the aggregate \$2,400 the State Committee paid on
18 December 31, 2020, and February 11, 2021, to the Octavian Group for “strategic planning” were
19 payments for testing-the-waters activities.⁷⁸ Johnson, whom the State Committee reportedly
20 paid \$54,747 in 2019 and 2020 for “campaign worker compensation” and who served as

⁷⁶ See Resp. at 3-4; *supra* notes 71, 73-75 and accompanying text.

⁷⁷ Compl. ¶ 38 & n.58; *supra* note 11.

⁷⁸ Compl. ¶¶ 16-17, 39(a); GFM Amended 2021 January Quarterly Report at 9; GFM Amended 2021 April Quarterly Report at 9.

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1 Greitens’s federal campaign manager, is the principal of the Octavian Group.⁷⁹ The Response
2 asserts that the payments to the Octavian Group were to test the waters for a potential 2024
3 candidacy for Governor of Missouri.⁸⁰ In a disclosure report amended after the filing of the
4 Response in this matter, the State Committee disclosed that the payments to the Octavian Group
5 were for several services, one of which was strategic planning for a “potential state campaign.”⁸¹
6 However, to the extent that the Octavian Group’s services benefited both a potential federal and
7 state campaign, both of which were statewide races, the expenses should have been allocated
8 between the State Committee and the Federal Committee.⁸² Nevertheless, given the potential
9 amount in violation, the Commission exercises its prosecutorial discretion and dismisses the
10 allegations that the Greitens Respondents violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d)
11 by using State Committee funds to pay for federal testing-the-waters expenses, and that the
12 Federal Committee violated 52 U.S.C. § 30104(b) by failing to report federal testing-the-waters
13 expenses, with respect to the disbursements to the Octavian Group.⁸³

14 **D. The Commission Finds Reason to Believe the State Committee Impermissibly**
15 **Transferred, and the Federal Committee Received and Failed to Accurately**
16 **Report, the Greitens Website Without Paying Fair Market Value**

17 The Complaint alleges that the State Committee impermissibly transferred nonfederal
18 funds to the Federal Committee in the form of updates to and the use of the Greitens Website in

⁷⁹ *Supra* Part II.A (chart of payments); Compl. ¶ 7 (citing the State Committee’s disclosure reports); *id.* ¶ 3 (describing Johnson as Greitens’s campaign manager); Resp., Ex. C at 2 (including Johnson’s signature as campaign manager).

⁸⁰ Resp. at 4.

⁸¹ GFM Amended 2021 April Quarterly Report at 11 (“Octavian Group Services included updating and maintaining social media assets owned or used by GFM; drafting communications for releases; strategic planning for potential state campaign, consult and manage GFM related media appearances.”).

⁸² *See, e.g.*, F&LA at 5-6, MUR 5480 (Liane Levetan for Congress) (finding reason to believe where a state committee paid for the costs of a poll that was used to test the waters for both a state and a federal campaign).

⁸³ *Heckler v. Chaney*, 470 U.S. 821 (1985).

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1 violation of 11 C.F.R. § 110.3(d) and that the Federal Committee misreported the in-kind
2 contribution in violation of 52 U.S.C. § 30104(b).⁸⁴ The Greitens Respondents contend that
3 Greitens, and not the State Committee, owns the Greitens Website; the in-kind contribution from
4 Greitens to the Federal Committee for the use of the Greitens Website was promptly and
5 accurately reported; and the State Committee updated the Greitens Website to republish the
6 Missouri Ethics Commission’s investigative findings, not to benefit Greitens’s federal
7 candidacy.⁸⁵

8 The State Committee’s disclosure reports filed with the Missouri Ethics Commission
9 reveal that the State Committee received contributions from individuals, corporations, and
10 entities in manners not subject to the Act’s limitations, prohibitions, and reporting requirements
11 prior to, and in the days leading up to, December 8, 2016, the effective date of Missouri’s new
12 campaign finance restrictions.⁸⁶ The State Committee reported its last itemized contribution on
13 June 4, 2018, following Greitens’s resignation that month.⁸⁷ Thus, the State Committee’s
14 expenditures for improvements to the Greitens Website in 2020 and subsequent transfer thereof

⁸⁴ Compl. ¶¶ 23-32.

⁸⁵ Resp. at 6.

⁸⁶ See, e.g., Greitens for Mo., 2017 January Quarterly Report at 4-20 (Jan. 17, 2017), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKGI8cDcdGFsgJsm99XwPL2GdAqCpwA%2bFe7fWYsnTII7ST34muvS0qLAbGa53Zspm2hNIZz%2bTycFOQzvsK6hpK7> (reflecting contributions from individuals and PACs in excess of the Act’s limits and corporations in violation of the Act’s prohibition before December 8, 2016); Compl. ¶ 5 (citing *Greitens, Eric*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/entity-details?eid=26734933&default=candidate> (last visited June 15, 2023) (select “General Date,” “As a candidate,” and “Top Donors” tabs)) (alleging the State Committee “received dozens of contributions of \$100,00 and above from individuals and corporations” in the 2016 election cycle).

⁸⁷ Greitens for Mo., 2018 July Quarterly Report at 9 (July 16, 2018), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKGI8cDcdGFsgJsm99XwPL2G5wmG5AczP8Eertl2DyQtcD1tv%2bowEKDYPAAdGk1FWyqiMdJSGAEZWicnz1znjoazx>. The State Committee reported \$7 in unitemized monetary contributions on its subsequent report filed on October 15, 2018. Greitens for Mo., 2018 October Quarterly Report at 3 (Oct. 15, 2018), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKGI8cDcdGFsgJsm99XwPL2G5wmG5AczP8Eertl2DyQtcD1tv%2bowEKDYPAAdGk1FWyqiMdJSGAEZWicnz1znjoazx>. The State Committee did not report any additional monetary or in-kind contributions between October 15, 2018, and its termination on November 16, 2022.

1 to the Federal Committee in 2021 may have derived from funds not subject to the Act’s limits
2 and prohibitions. However, because of the intervening change in state law and the amount of
3 funds the State Committee raised thereafter, it is possible that the State Committee’s funds, when
4 it disbursed \$19,000 to Abrot Creative between May and July 2020 for “web services,”⁸⁸ may
5 have consisted of permissible funds under the Act. Nevertheless, none of the State Committee’s
6 funds at issue were subject to the Act’s reporting provisions as required by 52 U.S.C.
7 § 30125(e)(1)(A), and in any case, 11 C.F.R. § 110.3(d) prohibits a candidate’s state campaign
8 from transferring funds or assets to the candidate’s federal campaign.⁸⁹

9 The available information suggests that the State Committee made an impermissible
10 transfer to the Federal Committee, which the Federal Committee accepted and failed to
11 accurately report, because the State Committee made disbursements for improvements to the
12 Greitens Website, which was then transferred to the Federal Committee.⁹⁰

⁸⁸ GFM 2020 July Quarterly Report at 9, 11; GFM 2020 October Quarterly Report at 8; *supra* note 34.

⁸⁹ F&LA at 4, MUR 5426 (Dale Schultz for Congress, *et al.*); F&LA at 14-15, MUR 5646 (Cohen for N.H.); *see also* F&LA at 7-8, MUR 5722 (Friends for Lauzen, *et al.*) (finding state committee made an in-kind contribution to a federal candidate for testing the waters expenses despite fact that state committee had sufficient permissible funds to cover the expenses based on prohibition in 11 C.F.R. § 110.3(d)); F&LA at 3, MUR 6219 (Kuhl for Congress) (stating that, in addition to state law allowing contributions in amounts and from sources not subject to the Act’s limitations, “none of the state campaign funds at issue were subject to the Act’s reporting provisions”); F&LA at 4, MUR 6253 (Trey Gowdy for Congress, *et al.*) (same). In MUR 7337 (Debbie Lesko, *et al.*), the Commission found reason to believe a federal candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A) by financing an independent expenditure-only political committee even though the relevant funds did not violate the Act’s source prohibitions and contribution limits because, *inter alia*, “the nature of the funds and the funds being subject to the Act’s reporting requirements are separate requirements.” F&LA at 5-9, MUR 7337 (Debbie Lesko, *et al.*). The Commission subsequently reached a conciliation agreement with the independent expenditure-only political committee for its violation of 52 U.S.C. § 30125(e)(1)(A), but there was an insufficient number of votes to find probable cause to believe that the federal candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A). CA, MURs 7337, 7344 (Conservative Leadership for Arizona); Cert. (Sept. 30, 2022), MUR 7337 (Debbie Lesko, *et al.*).

⁹⁰ The available information does not indicate whether the State Committee transferred the Greitens Website directly to the Federal Committee, or first to Greitens, who then transferred the Greitens Website to the Federal Committee. Either scenario, however, would violate 11 C.F.R. § 110.3(d) because, as the Commission has explained, the prohibition on transfers between State and Federal Committees is concerned with the “indirect use” of funds raised from federally impermissible sources in state campaigns, as discussed *infra*. Transfer of Funds E&J, 58 Fed. Reg. at 3475.

1 The State Committee disbursed \$19,000 between May and July 2020 to make
2 improvements to and develop the Greitens Website.⁹¹ Control of the website was subsequently
3 transferred to the Federal Committee for its use by March 2021, when the disclaimer was
4 updated to indicate it was “paid for by” the Federal Committee, with little change to the website
5 design and layout and only modest changes to the content.⁹² The State Committee, however, did
6 not report receipt of compensation from Greitens or the Federal Committee for the improvements
7 to or use of the Greitens Website. Nor did the Federal Committee report disbursements to the
8 State Committee or Greitens as compensation for the improvements to or use of the Greitens
9 Website. Instead, the Federal Committee reported the receipt of an \$18,000 in-kind contribution
10 from Greitens for the Greitens Website on March 23, 2021.⁹³ Thus, in looking to the substance
11 of the transaction, the State Committee disbursed \$19,000 to develop the Greitens Website,
12 which was subsequently transferred to and used by the Federal Committee without compensating
13 the State Committee or Greitens at fair market value.

14 The Response argues that the State Committee did not transfer an asset to the Federal
15 Committee because the Greitens Website belongs to Greitens, who had only licensed it to the
16 State Committee, first, and then to the Federal Committee.⁹⁴ This argument is unpersuasive for
17 several reasons.

18 First, assuming that Greitens and the State Committee entered into a licensing agreement
19 containing terms materially similar to the exhibited agreement between Greitens and the Federal
20 Committee, as the Response suggests, it does not appear that Greitens and the State Committee

⁹¹ GFM 2020 July Quarterly Report at 9, 11; GFM 2020 October Quarterly Report at 8; *supra* notes 34, 88.

⁹² Mar. 23, 2021 Website; *see supra* note 35.

⁹³ GFUSS Amended 2021 April Quarterly Report at 11; *see supra* note 36.

⁹⁴ Resp. at 3, 5.

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1 honored the terms of that agreement. The licensing agreement with the Federal Committee
2 provides that either party may terminate the license upon 30-days written notice.⁹⁵ The
3 Response asserts that Greitens ended the licensing agreement with the State Committee
4 “[w]hen Governor Greitens decided to run for U.S. Senate,” which, the Response also asserts,
5 did not occur until after incumbent Senator Roy Blunt announced his retirement, on March 8,
6 2021.⁹⁶ However, the Federal Committee reported receipt of an in-kind contribution from
7 Greitens in the form of the Greitens Website on March 23, 2021.⁹⁷ If the licensing agreement
8 between Greitens and the State Committee contained a similar 30-day notice period to terminate
9 the agreement, then Greitens failed to comply with the termination notice period, and
10 undermines the assertion that Greitens and the State Committee entered into a *bona fide* or
11 arm’s-length licensing agreement relating to use of the Greitens Website.

12 More importantly, in promulgating Section 110.3(d), the Commission expressly sought to
13 “more effectively prevent the *indirect* use of impermissible funds” in federal elections.⁹⁸ Under
14 the Response’s version of events, the State Committee received a license from Greitens to use
15 the Greitens Website “for campaign-related purposes” which allowed it to “make additions and
16 modifications” and to “modify and update the [Greitens W]ebsite for campaign purposes.”⁹⁹ The
17 State Committee disbursed \$19,000 of nonfederal funds to develop the Greitens Website in 2020,
18 pursuant to the licensing agreement that “allowed . . . Greitens to retain his ownership of the

⁹⁵ *Id.*, Ex. C ¶ 5.

⁹⁶ Resp. at 4-5.

⁹⁷ GFUSS Amended 2021 April Quarterly Report at 11; *supra* note 36.

⁹⁸ Transfer of Funds E&J, 58 Fed. Reg. at 3475.

⁹⁹ Resp. at 3, 5.

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1 domain name.”¹⁰⁰ According to the Response, Greitens “ended” the licensing agreement with
2 the State Committee when he decided to run for the U.S. Senate in March 2021 and subsequently
3 “entered into a new licensing agreement with [the Federal Committee].”¹⁰¹ The Response and
4 the licensing agreement between Greitens and the Federal Committee attached to the Response
5 claim that the Greitens Website was valued at \$18,000 at the time of the licensing agreement
6 with the Federal Committee.¹⁰² The Federal Committee then reported receiving an \$18,000 in-
7 kind contribution from Greitens in the form of the Greitens Website on March 23, 2021 — the
8 day after Greitens announced his U.S. Senate campaign.¹⁰³ This information strongly suggests
9 that the improvements to the Greitens Website were funded with money not subject to the Act’s
10 reporting requirements or source and amount restrictions and were subsequently provided to the
11 Federal Committee at no cost.

12 The Greitens Respondents state that an “independent third party valued the domain name
13 at \$18,000,” but the Response provides no details about this valuation, such as the process or
14 timing of the valuation, or even the identity of the appraiser.¹⁰⁴ This valuation is at odds with
15 publicly available information about the costs of .com domain names. For example, GoDaddy
16 currently advertises domain registration services as low as \$22 for two years and GoDaddy’s
17 “Domain Appraisal” tool estimates the value of the Greitens Website domain name to be \$2,151
18 as of the date of this Factual and Legal Analysis, based on comparable domains sold, the use of

¹⁰⁰ *Id.* at 5.

¹⁰¹ *Id.*

¹⁰² *Id.* at 5 & n.16, Ex. C.

¹⁰³ *Id.* at 5; GFUSS Amended 2021 April Quarterly Report at 11.

¹⁰⁴ Resp. at 5 n.16.

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1 the .com extension, and its length.¹⁰⁵ The allegedly independent valuation of \$18,000 is nearly
2 identical to the \$19,000 the State Committee disbursed to Abrot Creative, the vendor that
3 “created” and made improvements to the Greitens Website, for “web services.” These
4 circumstances further suggest that the licensing agreement between Greitens and the Federal
5 Committee was not a *bona fide* or arm’s-length agreement with a fair market exchange and
6 instead raise a reasonable inference that the valuation of the Greitens Website described in the
7 Response was based on the improvements made by Abrot Creative that were paid for by the
8 State Committee’s nonfederal funds.¹⁰⁶ Therefore, the available information indicates that the
9 in-kind contribution of the Greitens Website reflects an indirect use of nonfederal funds the
10 Commission sought to prevent in promulgating 11 C.F.R. § 110.3(d), akin to matters in which a
11 state committee pays for goods or services used by the federal committee.¹⁰⁷

¹⁰⁵ See, e.g., GODADDY, <https://www.godaddy.com/tlds/com-domain> (last visited June 15, 2023). *Domain Appraisals*, GODADDY <https://www.godaddy.com/domain-value-appraisal/appraisal/?checkAvail=1&domainToCheck=ericgreitens.com#> (last visited June 15, 2023).

¹⁰⁶ Cf. F&LA at 5, MUR 5572 (David W. Rogers, *et al.*) (finding reason to believe that a candidate converted an authorized committee’s mailing list to personal use despite a Memorandum of Understanding purporting to give co-ownership of the mailing list to the candidate where the circumstances “appear[ed] more like self-dealing than a fair market exchange”). The Commission has previously looked to “the facts and circumstances surrounding specific financial transactions to determine whether they are contributions.” See F&LA at 12-13, MUR 6824 (Wayne B. Brown) (finding reason to believe where the circumstances and terms of a purported real estate sales contract indicated that transaction was a loan to a candidate collateralized by real estate, not a sale of real estate for fair market value); F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe where federal committee hired a third party to coordinate an arm’s-length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value).

¹⁰⁷ Cf. Transfer of Funds E&J, 58 Fed. Reg. at 3475; see *supra* note 65. The Commission has also made reason-to-believe findings in matters in which a federal committee used another entity’s mailing list for less than fair market value. See, e.g., F&LA at 7, MUR 5181 (Ashcroft 2000) (finding reason to believe that an authorized committee received an excessive in-kind contribution where a multi-candidate political committee transferred a mailing list to a candidate’s federal committee without paying fair market value); F&LA at 5, MUR 5572 (David W. Rogers, *et al.*) (finding reason to believe that a candidate converted an authorized committee’s mailing list to personal use); see also F&LA at 9-11, MURs 7628, 7636, & 7992 (Kris Kobach, *et al.*) (finding reason to believe that an authorized committee received an in-kind corporate contribution where a 501(c)(4) non-profit organization rented an email list to a federal candidate’s federal committee at “significantly below market rate”).

1 As described above, the conflicting or lack of information about the alleged licensing
2 agreement between Greitens and the State Committee raises a reasonable inference that the State
3 Committee indirectly used nonfederal funds to improve the Greitens Website to the benefit of the
4 Federal Committee. Alternatively, if the Response’s description of the licensing agreement
5 between Greitens and the State Committee is taken at face value, the State Committee’s
6 expenditure of \$19,000 to improve the Greitens Website in exchange for use thereof may have
7 resulted in conversion of the State Committee’s campaign funds to Greitens’s personal use if he
8 retained ownership of the Greitens Website and all improvements thereto.

9 Finally, the Response does not explain why the Federal Committee reported receipt of the
10 Greitens Website as an \$18,000 in-kind *contribution*, that is, a “gift . . . of . . . anything of
11 value,”¹⁰⁸ from Greitens, if Greitens and the Federal Committee instead had entered into a fair
12 market exchange reflected in the licensing agreement attached to the Response, as opposed to a
13 transfer. Indeed, again, if the Greitens Website constituted an in-kind contribution from Greitens
14 to the Federal Committee as reported and asserted by the Response, then the return of the
15 Greitens Website to Greitens, as contemplated in the licensing agreement upon termination or as
16 of December 31, 2022, may have resulted in conversion of a campaign asset to personal use.¹⁰⁹

17 Accordingly, the Commission finds reason to believe that the Greitens Respondents
18 violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by transferring the Greitens Website
19 from the State Committee to the Federal Committee without paying fair market value. Further,

¹⁰⁸ 52 U.S.C. § 30101(8)(A)(i).

¹⁰⁹ The terms of the licensing agreement provide that the Federal Committee will “provide Greitens with enhancements to the website” of at least \$1,000, which he would “receive” on December 31, 2022, and “maintain . . . indefinitely.” Resp., Ex. C; see F&LA at 5, MUR 5572 (David W. Rogers, *et al.*) (finding reason to believe a candidate and his campaign committee converted funds to personal use where the committee used campaign funds to develop contributor mailing lists that were later sold to a vendor and the candidate retained the proceeds).

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- 1 the Commission finds reason to believe that the Federal Committee violated 52 U.S.C.
- 2 § 30104(b) by misreporting the transfer of the Greitens Website as an in-kind contribution from
- 3 Greitens in disclosure reports filed with the Commission.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Dylan Johnson
Octavian Group, LLC

MUR 7938

I. INTRODUCTION

The Complaint was filed in connection with disbursements that Eric R. Greitens, a former Governor of Missouri and a former candidate for U.S. Senate for Missouri in the 2022 Republican primary election, made from his state campaign committee, Greitens for Missouri (the “State Committee”), to Dylan Johnson, Greitens’s federal campaign manager, and Octavian Group, LLC (the “Octavian Group”), an LLC owned by Johnson. The disbursements were allegedly used to impermissibly test the waters for Greitens’s federal campaign and his federal authorized campaign committee, Greitens for US Senate and Eric Greitens in his official capacity as treasurer (the “Federal Committee”),¹ in violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d).

For the reasons set forth below, the Commission finds no reason to believe that Johnson violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d), with respect to the State Committee’s disbursements to Johnson. With respect to the \$2,400 of disbursements to the Octavian Group, given the small potential amount in violation, the Commission exercises its prosecutorial discretion and dismisses the allegations that Johnson and the Octavian Group violated 52 U.S.C.

¹ The Federal Committee’s treasurer beginning on March 23, 2021, and including the time of the activity relevant to this matter, was Jack Neyens. Greitens for US Senate, Statement of Organization at 3 (Mar. 23, 2021) [hereinafter GFUSS Original Statement of Organization], <https://docquery.fec.gov/pdf/332/202103239441842332/202103239441842332.pdf>; Greitens for US Senate, Amended Statement of Organization at 3 (Aug. 13, 2021), <https://docquery.fec.gov/pdf/911/202108139466259911/202108139466259911.pdf>. Greitens became the Federal Committee’s treasurer on October 15, 2022. Greitens for US Senate, Amended Statement of Organization at 3 (Mar. 23, 2021), <https://docquery.fec.gov/pdf/169/202210159533172169/202210159533172169.pdf>.

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1 § 30125 and 11 C.F.R. § 110.3(d) with respect to the State Committee’s disbursements to the
2 Octavian Group.

3 II. FACTUAL BACKGROUND

4 Greitens is a former Governor of Missouri, who served from January 2017 until he
5 resigned in June 2018.² The State Committee was Greitens’s state political committee for his
6 gubernatorial campaign.³ The State Committee remained an active state political committee
7 after Greitens’s resignation in 2018,⁴ but Greitens did not ultimately run for Governor or other
8 statewide or federal elected office in 2020.⁵

9 On March 22, 2021, Greitens publicly announced his campaign for U.S. Senate for
10 Missouri, and the next day Greitens filed his Statement of Candidacy naming the Federal

² Compl. ¶¶ 1, 6 (Oct. 28, 2021) (citing Mitch Smith & Julie Bosman, *Missouri’s Governor, a Rising G.O.P. Star, Resigns Amid Scandal*, N.Y. TIMES (May 29, 2018), <https://www.nytimes.com/2018/05/29/us/eric-greitens-resigns.html>).

³ *See, e.g.*, Greitens for Mo., Statement of Committee Organization (Feb. 24, 2015), <https://mec.mo.gov/Scanned/PDF/2015/110894.pdf>. On July 10, 2018, two complaints were filed against Greitens and the State Committee with the Missouri Ethics Commission alleging, *inter alia*, various state campaign finance violations. Mo. Ethics Comm’n, Final Action: MEC No. 18-0064-I — A New Missouri, Inc. & MEC No. 18-0065-I — Greitens for Missouri (Feb. 13, 2020) [hereinafter Mo. Ethics Comm’n Final Action], <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1473.pdf>; *see* Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Ethics Commission, and Consent Order with Joint Proposed Findings of Facts and Conclusions of Law, *Mo. Ethics Comm’n v. Greitens for Mo.*, Case No. 18-0064-I & 18-0065-I (Mo. Ethics Comm’n Feb. 13, 2020) [hereinafter Mo. Ethics Comm’n Consent Order], <https://mec.mo.gov/Scanned/CasedocsPDF/CMTS1474.pdf>. On February 13, 2020, the Missouri Ethics Commission released its findings in connection with those complaints. Mo. Ethics Comm’n Final Action; *see* Mo. Ethics Comm’n Consent Order.

⁴ After Greitens’s election on November 8, 2016, the State Committee amended its Statement of Committee Organization with the Missouri Ethics Commission to reflect that it had become a committee to support Greitens as a gubernatorial candidate in 2020. Greitens for Mo., Amended Statement of Committee Organization (Nov. 28, 2016), <https://mec.mo.gov/Scanned/PDF/2016/123256.pdf>; *see also* Compl. ¶ 9 (contending that the State Committee “amended its statement of organization to describe Greitens as a 2020 gubernatorial candidate, apparently in order to retain its status as an ‘active’ campaign committee”). On June 9, 2020, the State Committee amended its Statement of Committee Organization to reflect it was a committee to support Greitens as a gubernatorial candidate in 2024. Greitens for Mo., Amended Statement of Committee Organization (June 9, 2020), <https://mec.mo.gov/Scanned/PDF/2020/157242.pdf>.

⁵ *Cf.* MO. SEC’Y OF STATE, ELECTION RESULTS: 2020 PRIMARY ELECTION (2020), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/All_Results_2020_Primary_8_4_2020.pdf (reflecting Greitens was not a statewide candidate in the August 4, 2020, primary election); *FEC Candidates: Filtered Results*, FEC.GOV, https://www.fec.gov/data/candidates/?q=greitens&election_year=2020 (last visited June 15, 2023) (reflecting Greitens was not a federal candidate in 2020).

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1 Committee as his principal campaign committee.⁶ Greitens lost the Missouri Republican
2 primary election for U.S. Senate on August 2, 2022.⁷ Dylan Johnson was Greitens’s federal
3 campaign manager and the principal of the Octavian Group.⁸ On November 16, 2022, the State
4 Committee filed a Termination Report with the Missouri Ethics Commission.⁹

5 According to the Complaint, Greitens began exploring his candidacy for U.S. Senate “no
6 later than early 2021.”¹⁰ Specifically, the Complaint identifies an interview that took place on
7 March 2, 2021, in which Greitens made the following statements: “I am evaluating right now
8 what I am going to be doing this year”; “voters of Missouri deserve to have leaders in the US
9 Senate who are going to fight for them”; and a Senate candidacy is “something that I am
10 certainly going to keep the door open to, and take a look at, because the people of Missouri
11 deserve a fighter.”¹¹

⁶ Compl. ¶ 20 (citing Charles Creitz, *Former Missouri Gov. Eric Greitens Announces Senate Bid on ‘Special Report,’* FOX NEWS (Mar. 22, 2021, 8:09 PM), <https://www.foxnews.com/politics/eric-greitens-running-for-senate-2022-roy-blunt-special-report>); Eric Greitens, Statement of Candidacy at 1 (Mar. 23, 2021), <https://docquery.fec.gov/pdf/597/202103239441842597/202103239441842597.pdf>; GFUSS Original Statement of Organization at 1.

⁷ MO. SEC’Y OF STATE, ELECTION RESULTS: 2022 PRIMARY ELECTION (2022), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/PrimaryElectionAugust2_2022.pdf.

⁸ Compl. ¶ 3 n. 4 (citing Dylan Johnson’s LinkedIn page and Bryan Lowry, *Eric Greitens Was Biggest Donor to Own Senate Campaign; State Filing Raises Red Flags*, KAN. CITY STAR (Apr. 16, 2021), <https://www.kansascity.com/news/politics-government/article250710984.html>); Dylan Johnson, LINKEDIN, <https://www.linkedin.com/in/dylan-johnson-2b76681bb/> (last visited June 15, 2023).

⁹ Greitens for Mo., Termination Report at 4-5 (Nov. 16, 2022), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GSHYjFPs5r60FQzXNS3s%2bhmJ3jRV4p1EYq9327cQy7Ys7pjUrFPhAzQY2vfng3%2bhP> (disclosing charitable donation of remaining funds, no surplus funds or debts upon termination, and certifying compliance with requirements for termination under Missouri law).

¹⁰ Compl. ¶ 38.

¹¹ *Id.* ¶ 38 & n.58 (citing Marc Cox Morning Show Podcast, *3-2-21 Hour 1: Eric Greitens*, at 22:18-23:23 (Mar. 2, 2021), <https://omny.fm/shows/the-marc-cox-show-podcast/3-2-21-hour-1-eric-greitens?msclkid=ed2cf7fdc9611ecbc608f8ad61d0a72> (responding to “People have said that there may be some interest in your part in running for Roy Blunt’s seat. Any comment on that?”)).

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1 The Federal Committee did not report making any testing-the-waters disbursements prior
2 to March 22, 2021, when Greitens announced his candidacy.¹² However, the Complaint alleges
3 the following disbursements reported by the State Committee were for Greitens’s federal testing-
4 the-waters activity:¹³

Date	Recipient	Amount	Reported Purpose
Mar. 1, 2019 – Oct. 14, 2020	Dylan Johnson	\$54,746.87 ¹⁴	Campaign Worker Compensation ¹⁵
Dec. 31, 2020; Feb. 11, 2021	Octavian Group	\$2,400.00 ¹⁶	Strategic Planning
	TOTAL	\$57,146.87	

5 On the basis that Greitens had not campaigned or held state office since 2018, the
6 Complaint alleges that the “only reasonable inference is that” the \$2,400 in payments to the
7 Octavian Group in December 2020 and February 2021 for “strategic planning” were testing-the-
8 waters expenses in connection with Greitens’s soon-to-be-announced federal campaign.¹⁷ Other

¹² Greitens for US Senate, 2021 April Quarterly Report at 12 (Apr. 15, 2021), <https://docquery.fec.gov/pdf/488/202104159443607488/202104159443607488.pdf> (showing first reported disbursement on March 23, 2021).

¹³ Compl. ¶¶ 8, 13, 15-17, 19 (citing the State Committee’s disclosure reports).

¹⁴ Greitens for Mo., Amended 2019 April Quarterly Report at 8 (July 3, 2019), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GT9UBEtCegm7BNUl0zXsa%2bMCHkhUFL8NGbc0mf42WbvXGQ7HIAuggAvzYegpXCNV0> (reflecting first \$1,246.42 disbursement on March 1, 2019); *see* Greitens for Mo., Amended 2021 January Quarterly Report at 9 (Mar. 9, 2022) [hereinafter GFM Amended 2021 January Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GL0PbeJ692fmCu8qW85FkqwmNaVPQHohCLgWeUkH17WINo6JffB%2bZMSWmlhvCk%2fel> (reflecting a \$2,672.54 disbursement on October 14, 2020, and an aggregate disbursement amount of \$54,746.87).

¹⁵ The Complaint identifies payments to other State Committee staffers but does not allege any violation as to those payments. *See* Compl. ¶ 7.

¹⁶ GFM Amended 2021 January Quarterly Report at 9 (reflecting a \$1,200 disbursement on December 31, 2020); Greitens for Mo., Amended 2021 April Quarterly Report at 9 (Mar. 9, 2022) [hereinafter GFM Amended 2021 April Quarterly Report], <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GL0PbeJ692fnzw6U0Kx3IEAAbkNsK85%2bX%2b4Ds9gljaoxaZLhWm%2fcr4amTR7QQeIwN> (reflecting a \$1,200 disbursement on February 11, 2021). Johnson, the owner of the Octavian Group, was on the State Committee’s payroll as a “campaign worker” beginning in March 2019. Compl. ¶ 8.

¹⁷ Compl. ¶ 39(a); GFM Amended 2021 January Quarterly Report at 9; GFM Amended 2021 April Quarterly Report at 9.

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1 than providing the amounts and timing of the State Committee’s payments to Johnson, the
2 Complaint does not allege why those disbursements constitute federal testing-the-waters
3 expenses but argues that they should be investigated.¹⁸ Johnson and the Octavian Group did not
4 respond to the Complaint.

5 The Commission is in possession of information indicating that Greitens did not decide to
6 run for federal office until former Senator Roy Blunt announced his retirement on March 8,
7 2021.¹⁹ The Commission is also in possession of further information that the two \$1,200
8 payments to the Octavian Group on December 31, 2020, and February 11, 2021, were related to
9 Greitens’s exploration of a potential Missouri gubernatorial run in 2024 that began on or around
10 December 2020, not to his 2022 U.S. Senate candidacy, which he was allegedly not weighing at
11 that time. The State Committee filed an amended disclosure report on March 9, 2022, after the
12 filing of the Complaint in this matter, stating that “Octavian Group Services included updating
13 and maintaining social media assets owned or used by [the State Committee]; drafting
14 communications for releases; strategic planning for potential state campaign, consult and manage
15 [State Committee] related media appearances.”²⁰

16 III. LEGAL ANALYSIS

17 A. Applicable Law

18 The Act and Commission regulations define “contribution” as “any gift, subscription,
19 loan, advance, or deposit of money or anything of value made by any person for the purpose of

¹⁸ Compl. ¶¶ 8, 16; *id.* ¶ 40 (“Throughout 2020, Greitens also paid tens of thousands of dollars to [Johnson,] his future campaign manager . . .”).

¹⁹ See Roy Blunt, *Blunt Announcement on 2022 Election*, YOUTUBE (Mar. 8, 2021), <https://www.youtube.com/watch?v=o0tvkK689NY>.

²⁰ GFM Amended 2021 April Quarterly Report at 11.

1 influencing any election for Federal office.”²¹ “[A]nything of value” includes in-kind
2 contributions, such as “the provision of any goods or services without charge or at a charge that
3 is less than the usual and normal charge.”²² Commission regulations define “usual and normal
4 charge” as “the price of those goods in the market from which they ordinarily would have been
5 purchased at the time of the contribution,” or the charge for services “at a commercially
6 reasonable rate prevailing at the time the services were rendered.”²³ If a committee pays fair
7 market value for a good or service, then the transaction is not considered a contribution.²⁴

8 An individual becomes a candidate under the Act when: (a) such individual receives
9 contributions or makes expenditures in excess of \$5,000; or (b) such individual gives his or her
10 consent to another person to receive contributions or make expenditures on behalf of such
11 individual and if such person has received such contributions or has made such expenditures in
12 excess of \$5,000.²⁵ Once the \$5,000 threshold has been met, the candidate has 15 days to
13 designate a principal campaign committee by filing a Statement of Candidacy with the
14 Commission.²⁶ The principal campaign committee must file a Statement of Organization within
15 ten days of its designation,²⁷ and it must file disclosure reports with the Commission.²⁸

²¹ 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (adding that “contribution” includes “any direct or indirect payment, . . . gift of money, or any services, or anything of value”).

²² 11 C.F.R. § 100.52(d)(1).

²³ *Id.* § 100.52(d)(2).

²⁴ *See id.* § 100.52(d)(1).

²⁵ 52 U.S.C. § 30101(2).

²⁶ *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

²⁷ *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

²⁸ 52 U.S.C. § 30104(a), (b); *see, e.g.*, Factual and Legal Analysis (“F&LA”) at 6, MUR 6735 (Joseph A. Sestak, *et al.*); F&LA at 5, MUR 6449 (Jon Bruning, *et al.*); F&LA at 2, MUR 5363 (Alfred C. Sharpton, *et al.*).

1 The Commission has established “testing-the-waters” regulations exempting from the
2 definitions of “contribution” and “expenditure” funds received and payments made solely to
3 determine whether an individual should become a candidate, thereby permitting an individual to
4 test the feasibility of a campaign for federal office without becoming a candidate under the Act.²⁹
5 These testing-the-waters regulations seek to draw a distinction between activities directed to
6 evaluating the feasibility of one’s candidacy and conduct signifying that a decision to become a
7 candidate has been made.³⁰ Testing-the-waters activities include, but are not limited to,
8 payments for polling, telephone calls, and travel, and only funds subject to the Act’s source and
9 amount restrictions may be used for such activities.³¹

10 An individual who is testing the waters is not required to register or file disclosure reports
11 with the Commission unless and until the individual subsequently decides to run for federal
12 office.³² However, an individual who tests the waters must keep financial records, and if the
13 person becomes a candidate, all funds received and payments made in connection with testing
14 the waters must be reported as contributions and expenditures in the first report filed by the
15 candidate’s principal campaign committee.³³

16 The Act and Commission regulations prohibit federal candidates, federal officeholders,
17 their agents, and entities directly or indirectly established, financed, maintained, or controlled by

²⁹ See 11 C.F.R. §§ 100.72, 100.131; F&LA at 7, MUR 6775 (Hillary Clinton, *et al.*); F&LA at 8, MUR 6776 (Niger Innis, *et al.*); F&LA at 6, MUR 6735 (Joseph A. Sestak, *et al.*); *see also Ready for Ron v. FEC*, No. 22-3282, 2023 WL 3539633, at *19 (D.D.C. May 17, 2023) (finding litigant’s challenges to the testing-the-waters regulation under the Administrative Procedures Act “unavailing”).

³⁰ See Advisory Opinion 1981-32 at 4 (Askew) (“AO 1981-32”).

³¹ 11 C.F.R. §§ 100.72, 100.131; AO 1981-32 at 3-4.

³² See 11 C.F.R. §§ 100.72, 100.131; AO 1981-32 at 3; *see also* Advisory Opinion 2015-09 at 5 (Senate Maj. PAC, *et al.*) (“AO 2015-09”); F&LA at 5, MUR 6449 (Jon Bruning, *et al.*); F&LA at 8, MUR 6775 (Hillary Clinton, *et al.*).

³³ 11 C.F.R. § 101.3.

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1 federal candidates or officeholders from soliciting, receiving, directing, transferring, or spending
2 funds in connection with any election unless the funds are subject to the limitations, prohibitions,
3 and reporting requirements of the Act.³⁴ Prior to December 8, 2016, Missouri law permitted
4 candidates to accept unlimited contributions and contributions from corporations and labor
5 unions.³⁵ Missouri law now limits contributions to statewide candidates to \$2,825 per election,
6 prohibits corporations and labor organizations from making contributions to candidate
7 committees, and prohibits state committees from knowingly accepting contributions from foreign
8 nationals, *inter alia*.³⁶

9 The Commission’s regulations explicitly prohibit “[t]ransfers of funds or assets from a
10 candidate’s campaign committee or account for a nonfederal election to his or her principal
11 campaign committee or other authorized committee for a federal election.”³⁷ The Commission
12 has explained that this prohibition on all transfers from a candidate’s state or local committee to

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

³⁵ See MO. REV. STAT. § 130.011-.160 (providing no contribution limit); *id.* § 130.029 (stating that corporations and labor organizations may make contributions); *cf.* Conciliation Agreement (“CA”) ¶ IV.5, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*) (“[P]rior to December 2016, there were no contribution limits [under Missouri law.]”); F&LA at 2 n.7, MUR 7106 (Chappelle-Nadal for Congress) (addressing conduct prior to December 2016 and noting that “[u]nder Missouri law, candidates can accept unlimited contributions and contributions from corporations and labor unions.”). Missouri voters enacted a constitutional amendment on November 8, 2016, which imposed campaign finance limits and prohibitions, which became effective on December 8, 2016. CONSTITUTIONAL ARTICLE VIII, SECTION 23 at 1-2, MO. ETHICS COMM’N (2019) [hereinafter MEC Amendment 2 FAQs], <https://www.mec.mo.gov/WebDocs/PDF/CampaignFinance/Amendment%20%20v24%204-25-19.pub.pdf>.

³⁶ MO. CODE REGS. ANN. tit. 15, § 30-14.010 (2023) (listing \$2,825 contribution limit); MO. CONST. art. VIII, § 23.3(1), (3)(a), (16); MEC Amendment 2 FAQs at 1. The constitutional amendment imposed a limit of \$2,600 — the applicable limit when the State Committee was receiving contributions — which was first adjusted in the first quarter of 2019 and will be adjusted every four years based upon the Consumer Price Index. MEC Amendment 2 FAQs at 3.

³⁷ 11 C.F.R. § 110.3(d).

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1 the candidate’s federal committee is intended to prevent a federal committee’s indirect use of
2 soft money.³⁸

3 While the prohibition on transfers in 11 C.F.R. § 110.3(d) does not explicitly include
4 transfers made during the testing-the-waters phase of a federal campaign, the Commission
5 regulations on testing the waters make clear that only permissible funds may be used for testing-
6 the-waters activities.³⁹ Thus, for example, the Commission has concluded that the “use of funds
7 raised outside of the Act’s limitations and prohibitions to pay for individuals’ testing-the-waters
8 activities would violate Commission regulations if those individuals decide to become
9 candidates.”⁴⁰ Similarly, the Commission has concluded that individuals testing the waters may
10 not use the funds or assets of their nonfederal committees to fund federal testing-the-waters

³⁸ See Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3474-75 (Jan. 8, 1993) [hereinafter Transfer of Funds E&J], <https://www.govinfo.gov/content/pkg/FR-1993-01-08/pdf/FR-1993-01-08.pdf> (explaining also that the Commission was adopting total prohibition in this circumstance because of practical difficulty in linking or otherwise accounting for federally permissible funds available for transfer); see also F&LA at 3-4, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*) (describing 11 C.F.R. § 110.3(d) as “an extension of the Act’s soft money ban”); First Gen. Counsel’s Rpt. (“First GCR”) at 10-11 & Certification (“Cert.”) ¶¶ 1-2 (Feb. 11, 2005), MUR 5406 (Hynes for Senate) (approving First GCR’s reason to believe recommendation that a dual candidate’s federal and state committees violated 11 C.F.R. § 110.3(d) by making a direct contribution from a state to federal committee and requiring disgorgement of contribution amount to U.S. Treasury).

³⁹ See 11 C.F.R. §§ 100.72(a), 100.131(a); see also F&LA at 8, MUR 5722 (Friends for Lauzen, *et al.*).

⁴⁰ AO 2015-09 at 5 (concluding that 527 organizations’ payment for testing-the-waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.131(a)).

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1 activity because candidates are prohibited from transferring funds or assets from their nonfederal
2 campaigns to their federal campaigns.⁴¹

3 The transfer of a nonfederal committee’s assets to the campaign committee of a candidate
4 for federal office is permissible, however, in instances in which the federal committee pays the
5 fair market value or the “usual and normal charge” for the use of such assets.⁴² The Commission
6 has pursued matters where the federal candidate’s committee does not pay the state committee
7 for goods and services used by the federal committee.⁴³ When the state committee does not own

⁴¹ F&LA at 8, MUR 5722 (Friends for Lauzen, *et al.*) (“Thus, since candidates may not use money from their nonfederal campaigns to fund their federal campaigns, individuals testing the waters may not use money from their nonfederal campaigns to fund testing the waters activity.”); F&LA at 7-8, MUR 6773 (Brian Nestand, *et al.*) (“[T]he Commission has previously considered funds spent by a state candidate’s campaign committee for the purpose of exploring federal candidacy to be a transfer from the state committee to the subsequent candidate’s federal committee.”); F&LA at 4-5, MUR 6267 (Jonathan Paton, *et al.*) (finding reason to believe that a candidate violated [now] 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) where the candidate’s state committee advanced funds to pay “for survey and polling that benefitted the testing the waters phase of [the candidate’s] federal candidacy”); F&LA at 2-6, MUR 5480 (Liane Levetan for Congress) (finding reason to believe that a poll paid for by a state committee to evaluate a candidate’s options for future state and federal elections was a prohibited transfer in violation of [now] 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d)); *see also* CA ¶¶ IV.7, V.1, MUR 7076 (Richard Tisei, *et al.*) (conciliating violation of 52 U.S.C. § 30125 where candidate’s state committee made payments for “polling, fundraising data analysis and staff work designed to help [the candidate] decide whether to run for office,” some portion of which “qualified as federal testing the waters activity”).

⁴² Transfer of Funds E&J, 58 Fed. Reg. at 3475 (“[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.”); *see also, e.g.*, Advisory Opinion 1992-19 at 2 (Mike Kreidler for Congress) (approving request to permit the lease of state campaign committee’s computer equipment to candidate’s federal campaign committee); Advisory Opinion 2014-06 at 8 (Ryan, *et al.*) (finding that a candidate could rent his committee’s mailing list at fair market value to promote a book); Statement of Reasons (“SOR”), Comm’rs. Petersen, Bauerly, Hunter, McGahn & Weintraub at 5-6, MUR 6216 (Coakley for Senate, *et al.*) (finding no reason to believe where a candidate’s federal committee paid her state committee for assets including fundraising database, website redesign, domain names, and promotional materials because there was “no information to suggest that the amount paid . . . for the assets was not fair market value”); F&LA at 4-6, MURs 6474, 6534 (Citizens for Josh Mandel, *et al.*) (finding no reason to believe where a candidate’s federal committee used a website domain name of his state committee because federal committee hired a third party to coordinate an arm’s-length deal for state committee’s website and domain name and there was no information to suggest the transfer was provided for less than its fair market value).

⁴³ *See, e.g.*, CA ¶¶ IV.8-9, V.1, MUR 5426 (Dale Schultz for Congress, *et al.*) (campaign worker expenses); CA ¶¶ IV.10-11, V.1-2, MUR 5646 (Cohen for N.H.) (start-up expenses); CA ¶¶ IV.4-5, V.1, MUR 6257 (John Callahan, *et al.*) (feasibility research); CA ¶¶ IV.6-7, 12-13, V.2-4, MUR 6267 (Jonathan Paton for Congress, *et al.*) (polling and survey costs); CA ¶¶ IV.7, V.1-3, MUR 7076 (Richard Tisei, *et al.*) (polling and fundraising analysis); *see also* F&LA at 4, 6, MUR 5636 (Russ Diamond) (finding reason to believe candidate and his state committee violated 11 C.F.R. § 110.3(d) where, *inter alia*, the state committee paid for website-related expenses that featured both federal and state campaigns and the pro-rated reimbursement to the state committee appeared inadequate and no basis for the pro-rated portion was provided).

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1 the asset, the federal committee must pay the usual and normal charge for use of the asset to the
2 proper owner.⁴⁴

3 The Complaint alleges that the State Committee made testing-the-waters disbursements
4 for Greitens’s federal candidacy, based primarily on the nature of services provided by the
5 payees and the timing of the payments.⁴⁵ The State Committee’s disclosure reports filed with the
6 Missouri Ethics Commission reveal that the State Committee received contributions from
7 individuals, corporations, and entities in manners not subject to the Act’s limitations,
8 prohibitions, and reporting requirements prior to, and in the days leading up to, December 8,
9 2016, the effective date of Missouri’s new campaign finance restrictions.⁴⁶ The State Committee
10 reported its last itemized contribution on June 4, 2018, following Greitens’s resignation that

⁴⁴ See 11 C.F.R. § 100.52(d). Compare F&LA at 4-6, MUR 6784 (Lizbeth Benacquisto for Congress, *et al.*) (finding no reason to believe regarding a federal committee’s use of images used in state campaign advertisement where the federal committee provided copies of invoices documenting payments to the vendor which retained ownership of the images and there was no information indicating the payments were below the usual and normal charges), F&LA at 10-11, MUR 6218 (Ball4NY, *et al.*) (finding no reason to believe regarding a federal committee’s use of photographs of state officeholder and federal candidate where committee treasurer averred the federal committee purchased the rights to the photographs from the state legislature and provided supporting documentation and there was no information to the contrary), and SOR at 2, Comm’rs Walther, Petersen, Bauerly, Hunter, & Weintraub, MUR 5964 (Schock for Congress, *et al.*) (exercising prosecutorial discretion to dismiss regarding federal committee’s use of footage of state officeholder and federal candidate where federal committee claimed it paid vendor for use rights and production of DVDs containing the footage), with F&LA at 2-4, 6-9, MUR 6792 (Sean Eldridge for Congress, *et al.*) (finding reason to believe that video footage committee received from corporation without payment was a prohibited corporate contribution).

⁴⁵ See Compl. ¶¶ 34-41; *id.* ¶ 39.

⁴⁶ See, e.g., Greitens for Mo., 2017 January Quarterly Report at 4-20 (Jan. 17, 2017), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKGI8cDcdGFsgJsm99XwPL2GdAqCpWA%2bFe7fWYsnTII7ST34muvS0qLAbGa53Zspm2hNIZz%2bTycoFQzvsK6hpK7> (reflecting contributions from individuals and PACs in excess of the Act’s limits and corporations in violation of the Act’s prohibition before December 8, 2016); Compl. ¶ 5 (citing *Greitens, Eric*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/entity-details?eid=26734933&default=candidate> (last visited June 15, 2023) (select “General Date,” “As a candidate,” and “Top Donors” tabs)) (alleging the State Committee “received dozens of contributions of \$100,00 and above from individuals and corporations” in the 2016 election cycle).

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1 month.⁴⁷ Thus, the State Committee’s expenditures to Johnson in 2019 and 2020 and the
2 Octavian Group in 2020 and 2021 may have derived from funds not subject to the Act’s limits
3 and prohibitions. However, because of the intervening change in state law and the amount of
4 funds the State Committee raised thereafter, it is possible that the State Committee’s funds, when
5 it disbursed \$54,746.87 to Johnson between March 2019 and October 2020 for “campaign
6 worker compensation”⁴⁸ and \$2,400.00 to the Octavian Group between December 2020 and
7 January 2021 for “strategic planning,”⁴⁹ may have consisted of permissible funds under the Act.
8 Nevertheless, none of the State Committee’s funds at issue were subject to the Act’s reporting
9 provisions as required by 52 U.S.C. § 30125(e)(1)(A), and in any case, 11 C.F.R. § 110.3(d)
10 prohibits a candidate’s state campaign from transferring funds or assets to the candidate’s federal
11 campaign.⁵⁰

⁴⁷ Greitens for Mo., 2018 July Quarterly Report at 9 (July 16, 2018), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2G3dE592B6RmSsW%2fHoZfgzZKYv3cEPpDXhbLMe%2f5JPNqAIgeZaO4F1iRojJj6yT5Hq>. The State Committee reported \$7 in unitemized monetary contributions on its subsequent report filed on October 15, 2018. Greitens for Mo., 2018 October Quarterly Report at 3 (Oct. 15, 2018), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2G5wmG5AczP8Eertl2DyQtcD1tv%2bowEKDYPAAdGk1FWyqiMdJSGAEZWicnz1znjoazx>. The State Committee did not report any additional monetary or in-kind contributions between October 15, 2018, and its termination on November 16, 2022.

⁴⁸ GFM Amended 2021 January Quarterly Report at 9; *supra* note 14.

⁴⁹ GFM Amended 2021 January Quarterly Report at 9; GFM Amended 2021 April Quarterly Report at 9; *supra* note 16.

⁵⁰ F&LA at 4, MUR 5426 (Dale Schultz for Congress, *et al.*); F&LA at 14-15, MUR 5646 (Cohen for N.H.); *see also* F&LA at 7-8, MUR 5722 (Friends for Lauzen, *et al.*) (finding state committee made an in-kind contribution to a federal candidate for testing the waters expenses despite fact that state committee had sufficient permissible funds to cover the expenses based on prohibition in 11 C.F.R. § 110.3(d)); F&LA at 3, MUR 6219 (Kuhl for Congress) (stating that, in addition to state law allowing contributions in amounts and from sources not subject to the Act’s limitations, “none of the state campaign funds at issue were subject to the Act’s reporting provisions”); F&LA at 4, MUR 6253 (Trey Gowdy for Congress, *et al.*) (same). In MUR 7337 (Debbie Lesko, *et al.*), the Commission found reason to believe a federal candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A) by financing an independent expenditure-only political committee even though the relevant funds did not violate the Act’s source prohibitions and contribution limits because, *inter alia*, “the nature of the funds and the funds being subject to the Act’s reporting requirements are separate requirements.” F&LA at 5-9, MUR 7337 (Debbie Lesko, *et al.*). The Commission subsequently reached a conciliation agreement with the independent expenditure-only political committee for its violation of 52 U.S.C. § 30125(e)(1)(A), but there was an insufficient number of votes to find probable cause to believe that the federal candidate and her state committee violated

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1 **B. The Commission Finds No Reason to Believe the Allegations Regarding the**
2 **State Committee’s Disbursements to Johnson**

3 The Complaint does not set forth with any specificity why the State Committee’s
4 payments in 2019 and 2020 to Dylan Johnson would constitute federal testing-the-waters activity
5 beyond the amount and timing of those expenses in the context of the information the Complaint
6 identifies indicating that Greitens was interested in running for U.S. Senate. There is no
7 available information to indicate that Greitens was considering a federal candidacy at that time.
8 The earliest date that the Complaint identifies for when Greitens was considering running for
9 federal office was March 2, 2021, months or even years after the State Committee’s
10 disbursements to Johnson identified in the Complaint.⁵¹ Accordingly, the Commission finds no
11 reason to believe that Johnson violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d) with respect
12 to the State Committee’s disbursements to Johnson.

13 **C. The Commission Exercises Its Prosecutorial Discretion and Dismisses the**
14 **Allegations Regarding the State Committee’s Disbursements to the Octavian**
15 **Group**

16 The Complaint further alleges that the aggregate \$2,400 the State Committee paid on
17 December 31, 2020, and February 11, 2021, to the Octavian Group for “strategic planning” were
18 payments for testing-the-waters activities.⁵² Johnson, whom the State Committee reportedly
19 paid \$54,747 in 2019 and 2020 for “campaign worker compensation” and who served as
20 Greitens’s federal campaign manager, is the principal of the Octavian Group.⁵³ In a disclosure

52 U.S.C. § 30125(e)(1)(A). CA, MURs 7337, 7344 (Conservative Leadership for Arizona); Cert. (Sept. 30, 2022), MUR 7337 (Debbie Lesko, *et al.*).

⁵¹ Compl. ¶ 38 & n.58; *supra* note 11.

⁵² Compl. ¶¶ 16-17, 39(a); GFM Amended 2021 January Quarterly Report at 9; GFM Amended 2021 April Quarterly Report at 9.

⁵³ *Supra* Part II (chart of payments); Compl. ¶ 7 (citing the State Committee’s disclosure reports); *id.* ¶ 3 (describing Johnson as Greitens’s campaign manager).

1 report amended after the filing of the Complaint in this matter, the State Committee disclosed
2 that the payments to the Octavian Group were for several services, one of which was strategic
3 planning for a “potential state campaign.”⁵⁴ However, to the extent that the Octavian Group’s
4 services benefited both a potential federal and state campaign, both of which were statewide
5 races, the expenses should have been allocated between the State Committee and the Federal
6 Committee.⁵⁵ Nevertheless, given the potential amount in violation, the Commission exercises
7 its prosecutorial discretion and dismisses the allegations that Johnson and the Octavian Group
8 violated 52 U.S.C. § 30125 and 11 C.F.R. § 110.3(d) with respect to the State Committee’s
9 disbursements to the Octavian Group.⁵⁶

⁵⁴ GFM Amended 2021 April Quarterly Report at 11 (“Octavian Group Services included updating and maintaining social media assets owned or used by GFM; drafting communications for releases; strategic planning for potential state campaign, consult and manage GFM related media appearances.”).

⁵⁵ *See, e.g.*, F&LA at 5-6, MUR 5480 (Liane Levetan for Congress) (finding reason to believe where a state committee paid for the costs of a poll that was used to test the waters for both a state and a federal campaign).

⁵⁶ *Heckler v. Chaney*, 470 U.S. 821 (1985).