

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 8008

DATE COMPLAINT FILED: June 2, 2022

DATE OF NOTIFICATIONS: June 7, 2022

DATE OF LAST RESPONSE: Aug. 16, 2022

DATE ACTIVATED: Nov. 1, 2022

EXPIRATION OF SOL: Jan. 27, 2027

ELECTION CYCLE: 2022

COMPLAINANT:

Campaign Legal Center

RESPONDENTS:

Free Market, LLC

C.T. Fitzpatrick

Kelley Fitzpatrick

Alabama Conservatives Fund and Kaylen Melton in
her official capacity as treasurer**RELEVANT STATUTES****AND REGULATION:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30122

11 C.F.R. § 110.1(e), (g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter arises from a Complaint alleging that C.T. and Kelley Fitzpatrick made a contribution in the name of another through Free Market, LLC (“Free Market”), to Alabama Conservatives Fund and Kaylen Melton in her official capacity as treasurer (“ACF”) when Free Market purportedly contributed \$250,000 to ACF on January 27, 2022, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint bases the allegation on the temporal proximity between Free Market’s formation and the contribution, Free Market’s apparent lack of business operations or income, its lack of an online presence, and

1 public information suggesting that C.T. and Kelley Fitzpatrick supported the same candidate
2 supported by ACF. After receiving the Complaint, ACF amended its disclosure report to reflect
3 the contribution as coming from Free Market but attributable to C.T. Fitzpatrick. Free Market
4 and the Fitzpatricks respond that C.T. Fitzpatrick established Free Market to make the
5 contribution to ACF to protect his safety and that of his family at the advice of counsel; they
6 state that C.T. Fitzpatrick subsequently furnished Free Market with the funds that were used to
7 make the contribution to ACF. ACF's Response maintains that the burden to provide attribution
8 information is imposed on the contributor and not the recipient committee.

9 Given the information provided by C.T. Fitzpatrick and Free Market, we recommend that
10 the Commission find reason to believe that C.T. Fitzpatrick made, and Free Market knowingly
11 permitted its name to be used to make, a contribution in the name of another in violation of
12 52 U.S.C. § 30122. Because an investigation is not necessary to substantiate these violations or
13 complete the factual record, we recommend that the Commission authorize pre-probable cause
14 conciliation with C.T. Fitzpatrick and Free Market. Because there is no available information
15 indicating that ACF knew or should have known that Free Market was not the true source of the
16 contribution, we recommend that the Commission take no action at this time with respect to the
17 allegation that ACF violated 52 U.S.C § 30122 by knowingly accepting a contribution made in
18 the name of another. Because there is no available information indicating that Kelley Fitzpatrick
19 was in any way involved in the contribution, we recommend that the Commission find no reason
20 to believe that Kelley Fitzpatrick violated 52 U.S.C. § 30122. Finally, because the available
21 information indicates that C.T. Fitzpatrick was the true source of the contribution and not Free
22 Market, we recommend that the Commission find no reason to believe that Free Market violated

11 C.F.R. § 110.1(g)(5) and ACF violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 110.1(e) by failing to provide and report, respectively, attribution information regarding the contribution.

II. FACTUAL BACKGROUND

Free Market is an Alabama LLC incorporated on November 8, 2021; C.T. Fitzpatrick is its registered agent.¹

ACF is an independent expenditure-only political committee (“IEOPC”) that first registered with the Commission on August 2, 2021.² In its 2022 April Quarterly Report, ACF reported a \$250,000 contribution from Free Market, received on January 27, 2022, and it disclosed no attribution information associated with that contribution.³ During the 2022 election cycle, ACF made \$3,305,472.64 in independent expenditures, all of which supported Katie Britt, a candidate for U.S. Senate in Alabama.⁴

The Complaint in this matter alleges that Free Market served as a conduit for making the \$250,000 contribution to ACF, and that the true source of the contribution was either C.T. Fitzpatrick, Kelley Fitzpatrick, both, or some other, unknown individual or individuals.⁵ In support of this claim, the Complaint relies on the following facts: 1) Free Market was founded on November 8, 2021, and made the \$250,000 contribution on January 27, 2022, just over eleven

¹ Free Market, C.T. Fitzpatrick, & Kelley Fitzpatrick Resp. at 2 (Aug. 16, 2022) [hereinafter Free Market/Fitzpatrick Resp.]; see also *Business Entity Records — Free Market, LLC*, ALA. SEC’Y OF STATE, <https://arc-sos.state.al.us/cgi/corpdetail.mbr/detail?corp=000951755&page=name&file=&type=ALL&status=ALL&place=ALL&city=> (last visited Nov. 28, 2023).

² ACF, Statement of Organization (Aug. 2, 2021), <https://docquery.fec.gov/pdf/992/202108029465832992/202108029465832992.pdf>.

³ ACF, 2022 April Quarterly Report at 6 (Apr. 15, 2022), <https://docquery.fec.gov/pdf/243/202204159496531243/202204159496531243.pdf>.

⁴ *Alabama Conservatives Fund: Spending 2021-2022*, FEC.GOV, <https://www.fec.gov/data/committee/C00786152/?cycle=2022&tab=spending> (last visited Nov. 28, 2023); see Compl. ¶ 5 (June 2, 2022).

⁵ Compl. ¶ 2. The Complaint also makes allegations as to “unknown persons.” *Id.* ¶ 1. However, because the record makes clear that the C.T. Fitzpatrick was the sole source of funds into Free Market, discussed *infra*, we do not believe separate recommendations as to “unknown persons” are required in this matter.

1 weeks after its formation;⁶ 2) Free Market “has no known business operations, investments,
 2 assets, or commercial ventures from which it might generate income”;⁷ (3) Free Market does not
 3 have “any discernible public footprint,” including a website, social media accounts, or records
 4 with the Better Business Bureau, the U.S. Securities and Exchange Commission, or the U.S.
 5 Patent and Trademark Office;⁸ and 4) Free Market’s registered agent, C.T. Fitzpatrick, and his
 6 wife, Kelley Fitzpatrick, both made contributions of the maximum amount permitted by the Act
 7 to the authorized campaign of Katie Britt, the candidate whom all of ACF’s independent
 8 expenditures supported.⁹

9 The Fitzpatricks and Free Market filed a Joint Response asserting that C.T. Fitzpatrick
 10 established Free Market “to make a contribution to ACF.”¹⁰ They further explain that C.T.
 11 Fitzpatrick did so in order “to protect his and his family’s safety — not to evade the Act’s
 12 disclosure requirements.”¹¹ Their Response asserts that C.T. Fitzpatrick established Free Market
 13 on the advice of counsel, and encloses email correspondence between an employee of C.T.
 14 Fitzpatrick’s and counsel, whose name and law firm are redacted in the enclosure, to that
 15 effect.¹² The Response states that, in accord with this advice, C.T. Fitzpatrick withdrew
 16 \$250,000 from his personal bank account, held jointly with Kelley Fitzpatrick, and deposited that
 17 money into Free Market’s account to make the contribution.¹³ Finally, the Joint Response

⁶ *Id.* ¶¶ 6, 7.

⁷ *Id.* ¶ 10.

⁸ *Id.*

⁹ *Id.* ¶¶ 5, 9.

¹⁰ Free Market/Fitzpatrick Resp. at 1.

¹¹ *Id.*

¹² *Id.* at 2; *id.*, Ex. A.

¹³ Free Market/Fitzpatrick Resp. at 2.

asserts that, after receiving notification of the Complaint, C.T. Fitzpatrick instructed ACF to attribute the contribution to him and that, since ACF has already amended its report and so attributed the contribution, any “informational injury” has been mitigated.¹⁴

ACF states in its Response that it did not know that the contribution was supposed to be attributed to C.T. Fitzpatrick and that it had no obligation to seek out that information.¹⁵ ACF provided a copy of the contribution check, which displays “Free Market LLC” on the top left of the check, but has the signature redacted.¹⁶ After receiving the Complaint in this matter, ACF asserts that it contacted Free Market’s representative and amended its report “to identify and attribute Free Market’s contribution to Free Market’s underlying member” — C.T. Fitzpatrick.¹⁷

III. LEGAL ANALYSIS

A. The Commission Should Find Reason to Believe That C.T. Fitzpatrick and Free Market Violated 52 U.S.C. § 30122 by Making and Allowing One’s Name to Be Used to Make a Contribution in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹⁸ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”¹⁹ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or

¹⁴ *Id.* at 1, 2, 6.

¹⁵ ACF Resp. at 1 (July 25, 2022).

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 1, 5; Ala. Conservatives Fund, Amended 2022 April Quarterly Report at 7-8 (July 22, 2022), <https://docquery.fec.gov/pdf/215/202207229525038215/202207229525038215.pdf>.

¹⁸ 52 U.S.C. § 30101(8)(A).

¹⁹ *Id.* § 30101(11); *see* 11 C.F.R. § 100.10.

1 knowingly accepting such a contribution.²⁰ The Commission has included in its regulations
 2 illustrations of activities that constitute making a contribution in the name of another:

3 (i) Giving money or anything of value, all or part of which was
 4 provided to the contributor by another person (the true contributor)
 5 without disclosing the source of money or the thing of value to the
 6 recipient candidate or committee at the time the contribution is
 7 made; or

8 (ii) Making a contribution of money or anything of value and
 9 attributing as the source of the money or thing of value another
 10 person when in fact the contributor is the source.²¹

11 The requirement that a contribution be made in the name of its true source promotes
 12 Congress's objective of ensuring the complete and accurate disclosure by candidates and
 13 committees of the political contributions they receive.²² Courts therefore have uniformly
 14 rejected the assertion that "only the person who actually transmits funds . . . makes the
 15 contribution,"²³ recognizing that "it is implausible that Congress, in seeking to promote
 16 transparency, would have understood the relevant contributor to be [an] intermediary who
 17 merely transmitted the campaign gift."²⁴ Consequently, both the Act and the Commission's
 18 implementing regulations provide that a person who furnishes another with funds for the purpose

²⁰ 52 U.S.C. § 30122.

²¹ 11 C.F.R. § 110.4(b)(2) (internal citations omitted).

²² *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [§ 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain." (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775-76 (3d Cir. 2000) (rejecting constitutional challenge to § 30122 in light of compelling governmental interest in disclosure).

²³ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

²⁴ *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

of contributing to a candidate or committee “makes” the resulting contribution.²⁵ This is true whether funds are advanced to another person to make a contribution in that person’s name or promised as reimbursement of a solicited contribution.²⁶

Because the concern of the law is reporting the true source from which a contribution to a candidate or committee originates, regardless of the mechanism by which the funds are transmitted, the Commission will examine the structure of the transaction itself and the arrangement between the parties to determine who in fact “made” a given contribution. The D.C. Circuit has found that Section 30122’s prohibition of contributions in the name of another applies to LLCs²⁷ — such that an LLC cannot be used as a “straw donor” to transmit the funds of another.²⁸

Here, the available information indicates that the contribution made in Free Market’s name was, in fact, made by C.T. Fitzpatrick, because C.T. Fitzpatrick states in his Response that

²⁵ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee” (emphasis added)); *O’Donnell*, 608 F.3d at 550 (“To identify the individual who has made the contribution, we must look past the intermediary’s essentially ministerial role to the substance of the transaction.”); *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent [the Act’s reporting and recordkeeping] restrictions . . .”).

²⁶ *O’Donnell*, 608 F.3d at 555 (“We therefore hold that § [30122] unambiguously applies to a defendant who solicits others to donate to a candidate for federal office in their own names and either advances the money or promises to—and does—reimburse them for the gifts.”). Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of § [30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (emphasis in original).

²⁷ *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (“The controlling commissioners did not dispute that [52 U.S.C.] § 30122 applies to closely held corporations and corporate LLCs. *We agree that it does.*” (emphasis added)). The Court nevertheless held that the Commission’s dismissal of several matters involving alleged LLC conduits — based on the rationale that the matters presented an issue of first impression, which raised fair notice and due process concerns — was reasonable. *Id.* at 357-58.

²⁸ Factual & Legal Analysis (“F&LA”) at 4, MUR 7903 (Tomfoolery, LLC).

he created the LLC and furnished it with funds for the express purpose of making the \$250,000 contribution to ACF.²⁹ Accordingly, C.T. Fitzpatrick, not Free Market, was the true contributor.

Although C.T. Fitzpatrick apparently relied on the advice of counsel, and asserts in his Response that he did not intend to evade the Act's disclosure requirements, his entire objective appears to have been to conceal the true source of the contribution and information about his identity as the contributor, which he states was in order to protect his own personal privacy and security interests.³⁰ Although ACF amended its disclosure report to attribute the Free Market contribution to C.T. Fitzpatrick, ACF did not file the amendment until July 22, 2022,³¹ which was 1) six months after the January 27, 2022 contribution; 2) after the May 24, 2022 primary and June 21, 2022 primary runoff elections in Alabama³² — the elections in which ACF was primarily involved;³³ and 3) after the Respondents were notified of the Complaint.³⁴ Moreover,

²⁹ Free Market/Fitzpatrick Resp. at 1.

³⁰ *Id.* at 5-6. The argument that C.T. Fitzpatrick “had no qualms about having his *name* publicly disclosed” because he listed himself as the registered agent for Free Market, *id.* at 1-2 (emphasis in original), is unpersuasive. The fact that a theoretical member of the public could possibly look up Free Market's business registration information and potentially deduce from such information that C.T. Fitzpatrick was involved in Free Market's political contributions does not counter his clear and expressed intent to place a conduit entity between himself and ACF specifically to obscure information about himself in connection with the contribution. Moreover, the fact that Fitzpatrick was the registered agent does not convey the crucial information, which is that Fitzpatrick himself, and not Free Market, was the true source of the contribution.

³¹ Ala. Conservatives Fund, 2022 Amended April Quarterly Report at 7-8 (July 22, 2022), <https://docquery.fec.gov/pdf/215/202207229525038215/202207229525038215.pdf>.

³² FEC, 2022 CONGRESSIONAL PRIMARY DATES AND CANDIDATE FILING DEADLINES FOR BALLOT ACCESS at 1 (May 19, 2022), <https://www.fec.gov/resources/cms-content/documents/2022pdates.pdf>.

³³ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00786152&data_type=processed&q_spender=C00786152&is_notice=true&support_oppose_indicator=S&min_date=01%2F01%2F2021&max_date=12%2F31%2F2022 (last visited Nov. 28, 2023) (showing all independent expenditure reports by ACF during the 2022 election cycle).

³⁴ *E.g.*, Compl. Notif. Letter (June 7, 2022) (Ala. Conservatives Fund); Compl. Notif. Letter (June 7, 2022) (C.T. Fitzpatrick & Free Market LLC). The Commission has not previously viewed such action as weighing against a finding of reason to believe: In MUR 7903 (Tomfoolery, LLC), the Commission found reason to believe that an LLC had violated 52 U.S.C. § 30122 where, after receiving notice of the complaint, the recipient committee attributed the contribution to the appropriate individual. *See Factual & Legal Analysis (“F&LA”) at 5-7*, MUR 7903 (Tomfoolery LLC) (finding reason to believe that an LLC violated section 30122 where, after receiving notice of the complaint, the recipient committee attributed the contributions to an individual).

because Free Market was not the true source of the contribution, the attribution reporting regulation, which applies to contributions actually made by LLCs, is inapposite.³⁵ Accordingly, the contribution should have been reported as from C.T. Fitzpatrick individually, rather than attributed to him as the sole member of Free Market.

Thus, the available information, including the statements provided in the Fitzpatricks' and Free Market's Joint Response, establishes that C.T. Fitzpatrick, not Free Market, was the true source of the \$250,000 in contribution to ACF.³⁶ Therefore, we recommend that the Commission find reason to believe that C.T. Fitzpatrick and Free Market violated 52 U.S.C. § 30122 by making and allowing its name to be used to effect a contribution in the name of another.

B. The Commission Should Find No Reason to Believe That Kelley Fitzpatrick Violated 52 U.S.C. § 30122

After the Complaint was filed, ACF amended its disclosure report to attribute the Free Market contribution to C.T. Fitzpatrick.³⁷ The available information indicates that C.T. Fitzpatrick alone made the contribution to ACF via Free Market. Although he withdrew the money from a joint bank account held with Kelley Fitzpatrick, there is no indication that she was otherwise involved in making the contribution, nor that she should be considered the true source

³⁵ Statement of Reasons ("SOR") of Chairman Petersen & Comm'rs. Hunter & Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487, 6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Invs. Grp., Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*); SOR of Vice Chairman Walther & Comm'rs Ravel & Weintraub, MUR 6485 (W Spann LLC, *et al.*), MURs 6487, 6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Invs. Grp., Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) ("Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.").

³⁶ See F&LA at 5-6, MUR 7903 (Tomfoolery LLC) (finding that an LLC and the single member of the LLC violated Section 30122 because the overall record supported the conclusion that the LLC was not the true source of the contribution that it facially appeared to give to an IEOPC, but instead served as an instrument to convey the LLC's member's funds to the IEOPC without publicly disclosing his identity).

³⁷ Alabama Conservatives Fund, Amended 2022 April Quarterly Report at 7-8 (July 22, 2022), <https://docquery.fec.gov/pdf/215/202207229525038215/202207229525038215.pdf>.

1 of the contribution. The Fitzpatricks' and Free Market's Joint Response indicates that C.T.
2 Fitzpatrick incorporated Free Market, made the contribution, and consulted with counsel.³⁸
3 Based on the Joint Response's information and the lack of any further information regarding
4 Kelley Fitzpatrick's involvement in the contribution, we recommend that the Commission find
5 no reason to believe that Kelley Fitzpatrick violated 52 U.S.C. § 30122 by making a contribution
6 in the name of another.

7 **C. The Commission Should Take No Action at This Time with Respect to the**
8 **Allegation That ACF Violated 52 U.S.C. § 30122 by Knowingly Accepting a**
9 **Contribution in the Name of Another**

10 There is no available information suggesting that ACF knew C.T. Fitzpatrick to be the
11 true source of the contribution made in the name of Free Market. While ACF provided a copy of
12 the contribution check, it is unclear whether a donor/contributor card was provided with the
13 contribution check or if any additional correspondence was included. The Office of General
14 Counsel is not aware of any communications between ACF and C.T. Fitzpatrick or Free Market,
15 and ACF specifically denies that it knew C.T. Fitzpatrick was the true source of the
16 contribution.³⁹ Therefore, based on the lack of available information, we recommend that the
17 Commission take no action at this time with respect to the allegation that ACF violated

³⁸ See generally Free Market/Fitzpatrick Resp.

³⁹ ACF Resp. at 5.

52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another pending the conclusion of conciliation with C.T. Fitzpatrick.

D. The Commission Should Find No Reason to Believe That Free Market and ACF Violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 110.1(e), (g)(5) by Failing to Provide and Report Attribution Information

Under the Act, all political committees, including IEOPCs, are required to file periodic disclosure reports with the Commission which accurately report all contributions received and disbursements made.⁴⁰ Contributions by an LLC that has a single natural-person member and is not taxed as a corporation, *i.e.*, a tax-disregarded entity, must be attributed only to the LLC's single natural-person member.⁴¹ Furthermore, when such an LLC makes a contribution, it must affirm to the recipient, at the time it makes the contribution, that it is eligible to make a contribution and indicate how the contribution is to be attributed.⁴²

The Commission's regulations concerning the attribution of LLC contributions apply on their face to all LLC contributions irrespective of recipient.⁴³ These regulations uphold the Act's reporting framework, which serves important transparency interests,⁴⁴ and inhibit attempts to circumvent the Act's contribution source prohibitions and amount limitations, including

⁴⁰ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4).

⁴¹ 11 C.F.R. § 110.1(g)(4).

⁴² *Id.* § 110.1(g)(5).

⁴³ See SOR, Comm'rs Hunter & Petersen, at 2, 5, MURs 6969, 7031, 7034 (stating that "the Commission's existing attribution regulations . . . apply to the reporting" of contributions by LLCs that are not taxed as corporations and that, "[b]y operation of the Commission's attribution rules, MMWP12's contributions should have been attributed to K2M and each of its owners, Mark and Megan Kvamme. Similarly, Children of Israel's contributions should have been attributed to Saul Fox"); SOR, Comm'r Weintraub at 2, MURs 6969, 7031, 7034 ("Under Commission regulations, contributions from LLCs that are disregarded entities are not considered corporate contributions, but partnership contributions." (citing 11 C.F.R. §§ 110.1(g)(2) and (4))).

⁴⁴ See, e.g., *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("[D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.").

1 prohibitions applicable to IEOPCs.⁴⁵ The Commission has recognized that recipient committees
 2 must seek attribution information so that the recipient committees can accurately disclose those
 3 contributions.⁴⁶

4 When a treasurer of a political committee shows that the committee used “best efforts” to
 5 obtain, maintain, and submit the information required by the Act, the committee’s reports will be
 6 considered in compliance with the Act.⁴⁷ Best efforts require, among other things, that all
 7 written solicitations contain a clear request for the necessary information and that, “[f]or each
 8 contribution . . . which lacks required contributor information,” the recipient committee must
 9 make at least one effort to obtain the missing information within 30 days after the receipt of the
 10 contribution, in either a written request or a documented oral request.⁴⁸ If the treasurer receives
 11 missing contributor information after submitting a report, the treasurer must either file an
 12 amendment to the report originally disclosing the contribution to provide the missing contributor
 13 information or include the missing contributor information on an amended memo Schedule A
 14 with the next regularly scheduled report.⁴⁹ The best efforts standard is an affirmative defense;
 15 the burden rests with the political committee and its treasurer to present evidence sufficient to

⁴⁵ See 52 U.S.C. §§ 30116(a)(1), 30118(a); Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,398-99 (July 12, 1999) [hereinafter LLC E&J] (discussing role of LLC attribution rules in identifying prohibited contributions from foreign national or government contractor sources, concerns that apply to all LLC contributions).

⁴⁶ LLC E&J, 64 Fed. Reg. at 37,399 (“The Commission further notes that the recipient committee would have no way of knowing how to attribute a contribution made by an eligible multi-member or single member LLC, unless that information was provided.”); F&LA at 5, MUR7454 (DefendArizona) (finding that the recipient IEOPC failed to seek attribution information so that it could accurately disclose the contribution, as required under 11 C.F.R. § 110.1(e)).

⁴⁷ 52 U.S.C. § 30102(i); 11 C.F.R. § 104.7(a).

⁴⁸ 11 C.F.R. § 104.7(b).

⁴⁹ *Id.* § 104.7(b)(4)(i).

1 demonstrate that best efforts were exercised to obtain, maintain, and submit the required
2 information.⁵⁰

3 Here, because the contribution made in Free Market's name to ACF was, in fact, a
4 contribution from C.T. Fitzpatrick, an individual, the attribution rules applicable to LLC
5 contributions do not apply.⁵¹ Accordingly, we recommend the Commission find no reason to
6 believe that Free Market and ACF violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 110.1(e),
7 (g)(5) by failing to provide and report attribution information.

8
9
10
11
12
13
14
15
16
17
18

⁵⁰ E.g., F&LA at 7, MUR 7616 (Oakland County Democratic Party) (citing Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007)).

⁵¹ See *supra* note 35 and accompanying text.

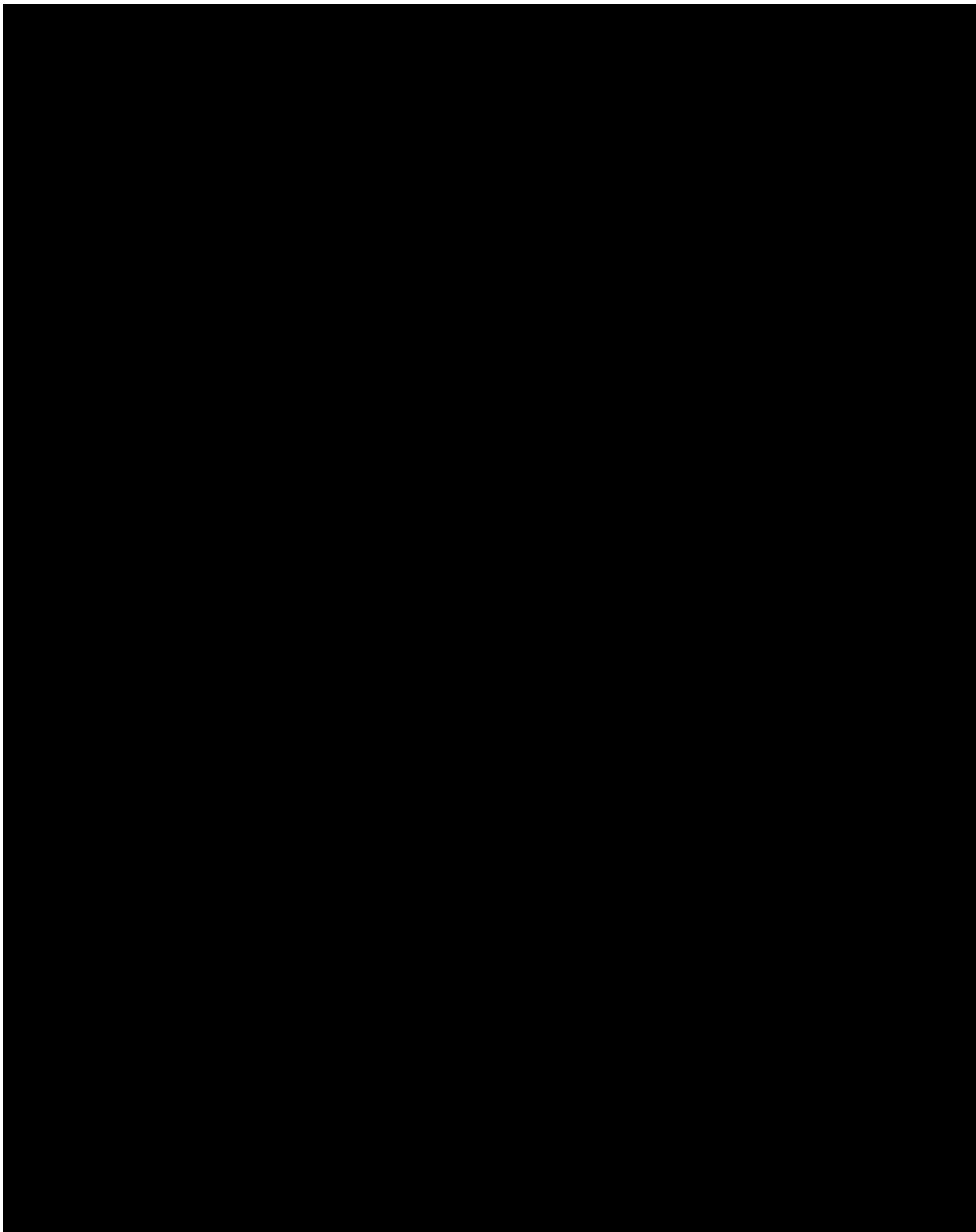
[REDACTED]

MUR 8008 (Free Market, LLC, *et al.*)

First General Counsel's Report

Page 14 of 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16



MUR 8008 (Free Market, LLC, *et al.*)

First General Counsel's Report

Page 15 of 17

1

2

3

4

5

6

7

8

9

10

11

12

13

14

V. RECOMMENDATIONS

1. Find reason to believe that C.T. Fitzpatrick and Free Market, LLC, violated 52 U.S.C. § 30122 by making and knowingly permitting one's name to be used to effect a contribution in the name of another;
2. Find no reason to believe that Kelley Fitzpatrick violated 52 U.S.C. § 30122 by making a contribution in the name of another;
3. Take no action at this time with respect to the allegation that Alabama Conservatives Fund and Kaylen Melton in her official capacity as treasurer violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another;
4. Find no reason to believe that Free Market, LLC, violated 11 C.F.R. § 110.1(g)(5) by failing to provide attribution information;
5. Find no reason to believe that Alabama Conservatives Fund and Kaylen Melton in her official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 110.1(e) by failing to report attribution information;
6. Enter into conciliation with C.T. Fitzpatrick and Free Market, LLC, prior to a finding of probable cause to believe;
7. Approve the attached Conciliation Agreement;
8. Approve the attached Factual and Legal Analyses; and

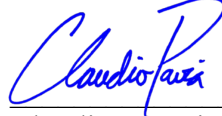
9. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel


Charles Kitcher
Associate General Counsel for Enforcement

December 6, 2023

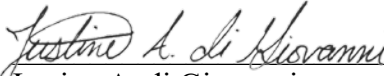
Date



Claudio J. Pavia
Deputy Associate General Counsel for Enforcement



Mark Allen
Assistant General Counsel



Justine A. di Giovanni
Attorney

