

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 8027**

4 DATE COMPLAINT FILED: July 12, 2022

5 DATE OF NOTIFICATION: July 18, 2022

6 DATE OF LAST RESPONSE: Sept. 1, 2022

7 DATE ACTIVATED: Jan. 4, 2023

8
9 EXPIRATION OF SOL: March 11, 2026-
10 May 7, 2027

11 ELECTION CYCLE: 2022

12 **COMPLAINANT:**

Dennis Lynn Sweet

13
14 **RESPONDENTS:**

Schmitt for Senate and Janna Rutland in her official
15 capacity as treasurer

16 Schmitt for Missouri

17 Eric Schmitt

18 Save Missouri Values and Cabell Hobbs in his
19 official capacity as treasurer

20 Axiom Strategies, LLC

21 Remington Research Group, LLC

22
23 **RELEVANT STATUTES**
24 **AND REGULATIONS:**

25 52 U.S.C. § 30104(b)

26 52 U.S.C. § 30116(a), (f)

27 52 U.S.C. § 30118(a)

28 52 U.S.C. § 30125(e)(1)(A)

29 11 C.F.R. § 104.3

30 11 C.F.R. § 109.21

31 11 C.F.R. § 110.1

32 11 C.F.R. § 110.3(d)

33 11 C.F.R. § 110.9

34 11 C.F.R. § 114.2(a), (d)

35 11 C.F.R. § 300.61

36 11 C.F.R. § 300.62

37
38 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

39 **STATE AGENCIES CHECKED:**

Missouri Ethics Commission, State Committee
40 Disclosure Reports

1 **I. INTRODUCTION**

2 This matter involves alleged violations of the federal soft money ban arising from the
3 alleged use of assets from a federal candidate's state campaign and the receipt of possible
4 excessive and prohibited in-kind contributions from an independent expenditure-only committee
5 ("IEOPC") and two research companies. The Complaint alleges that Eric Schmitt, a U.S.
6 Senator from Missouri and former Missouri Attorney General, State Treasurer, and State
7 Senator, used assets from his state committee, Schmitt for Missouri (the "State Committee"), to
8 support his federal committee, Schmitt for Senate and Janna Rutland in her official capacity as
9 treasurer (the "Federal Committee"), in connection with Schmitt's 2022 campaign for U.S.
10 Senate, in violation of 52 U.S.C. § 30125(e)(1)(A).

11 Specifically, the Complaint alleges that by posting on his personal social media accounts
12 promoting his federal and state candidacies and his official acts as Missouri Attorney General,
13 Schmitt was improperly making prohibited in-kind contributions to the Federal Committee; that
14 the State Committee donated its website to the Federal Committee resulting in the making and
15 acceptance of an in-kind contribution that the Federal Committee did not report; and that the
16 Federal Committee republished photographs owned by the State Committee to aid Schmitt's
17 federal campaign. The Complaint further alleges that the Federal Committee expended resources
18 from Schmitt's state Attorney General office to promote his federal campaign in connection with
19 a photograph used in a federal campaign mailer, and the use of state funds for a trip to the U.S.
20 border.

21 In addition, the Complaint alleges that Save Missouri Values ("SMV"), an IEOPC, and
22 the Federal Committee coordinated their communications using common vendors, which
23 resulted in SMV making, and the Federal Committee accepting, excessive and prohibited in-kind

1 contributions in violation of 52 U.S.C. §§ 30116(a), (f), and 30118(a). The Complaint further
2 alleges that research consultant company Axiom Strategies, LLC, and its subsidiary, Remington
3 Research Group, LLC, made, and Schmitt and the Federal Committee accepted, prohibited in-
4 kind corporate contributions in violation of 52 U.S.C. § 30118(a) when the research groups
5 published polling results that appeared favorable to Schmitt, purportedly for the purpose of
6 aiding Schmitt's election in the 2022 Republican primary for U.S. Senate.

7 Schmitt, the Federal Committee, and the State Committee deny the allegations, asserting
8 that Schmitt personally created the social media accounts at issue and posted on those accounts
9 himself, thus rendering this conduct permissible pursuant to the volunteer and internet
10 exemptions. Respondents further maintain that the website domain name that Schmitt used in
11 2008 for his campaign for Missouri state senator, www.schmittforsenate.com, was purchased by
12 the Federal Committee through a broker, resulting in no contribution from the State Committee
13 to the Federal Committee. Respondents also state that Schmitt was not responsible for the mailer
14 at issue and that his federal campaign paid all of Schmitt's travel and lodging expenses for his
15 trip to the U.S. border.

16 SMV, Schmitt, and the Federal Committee maintain that, during the 2022 election cycle,
17 they retained three common vendors, but that no in-kind contribution resulted because the
18 vendors were not employed to, and did not, produce any communications. Finally, Schmitt, the
19 Federal Committee, Axiom Strategies, and Remington Research Group assert that the polls at
20 issue were not commissioned by either the Federal or State Committees, but rather that *Missouri*
21 *Scout*, a news service, commissioned Remington Research to conduct the polls independent of
22 Schmitt and his Federal Committee.

1 Based on the available information, we recommend that the Commission exercise its
2 prosecutorial discretion to dismiss the allegations that Schmitt, the Federal Committee, and the
3 State Committee violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) by using or
4 transferring non-federal assets in connection with a federal campaign and that the Federal
5 Committee failed to report receipt of the resulting in-kind contributions in violation of 52 U.S.C.
6 § 30104(b).¹ We further recommend that the Commission find no reason to believe that SMV
7 made, or the Federal Committee accepted, excessive and prohibited in-kind contributions by
8 producing coordinated communications through the use of common vendors or that the Federal
9 Committee failed to report receipt of those in-kind contributions, in violation of 52 U.S.C.
10 §§ 30104(b), 30116(a),(f) and 30118(a). Lastly, we recommend that the Commission find no
11 reason to believe that Axiom Strategies, LLC, and Remington Research Group, LLC, made, and
12 the Federal Committee accepted, prohibited or excessive in-kind corporate contributions in
13 violation of 52 U.S.C. §§ 30116(a)(1)(A), (f), or 30118(a) in connection with the publication of
14 polling results and no reason to believe that the Federal Committee violated 52 U.S.C.
15 § 30104(b) by failing to report those in-kind contributions.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 **A. Background**

18 Eric Schmitt is a current U.S. Senator from Missouri. Schmitt won the Republican
19 primary on August 2, 2022, and the general election on November 8, 2022.²

¹ *Heckler v. Chaney*, 470 U.S. 821 (1985).

² *Election Results* at 1, MO. SEC'Y OF STATE (Dec. 9, 2022), <https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/2022GeneralElection.pdf> (showing official election results for the November 8, 2022 Missouri general election); *Election Results* at 1, MO. SEC'Y OF STATE (Aug. 26, 2022), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/PrimaryElectionAugust2_2022.pdf (showing official election results for the August 2, 2022 Missouri primary election).

1 During the time Schmitt was campaigning for federal office, he was Attorney General of
2 Missouri, a position he had held since January 2019.³ Prior to that, from January 2017 to
3 January 2019, Schmitt served as Missouri State Treasurer, and from 2009 to 2017, Schmitt
4 served in the Missouri State Senate representing the 15th District.⁴ Schmitt for Missouri was
5 Schmitt's state committee registered with the Missouri Ethics Commission and currently remains
6 active.⁵

7 During Schmitt's state senate campaign and tenure, the State Committee maintained a
8 website with the domain name, www.schmittforsenate.com (the "Schmitt website"), from 2008
9 to 2016.⁶ The website went dormant and was not available on the internet from 2016 until
10 March 2021, when the Federal Committee purchased the domain name from a third-party broker
11 and began maintaining the website.⁷ While the Federal Committee maintained its own social

³ See Compl. at 1 (July 12, 2022). Schmitt was appointed as Attorney General in January 2019 and later won the general election to that office. See *Eric Schmitt, Senator for Missouri: Biography*, U.S. SENATE, <https://www.schmitt.senate.gov/about/> (last visited Sept. 19, 2023); see also *Election Results* at 2, MO. SEC'Y OF STATE (Jan. 26, 2021), https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/November3_2020GeneralElection.pdf (showing election results for the November 3, 2020 Missouri general election).

⁴ *Id.*; see also *Election Results* at 2, MO. SEC'Y OF STATE (Dec. 7, 2017), <https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/2016GeneralElection.pdf> (showing election results for the November 8, 2016 Missouri general election); see also *All Results* at 3, MO. SEC'Y OF STATE (Dec. 2, 2008), <https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/AllRacesGeneralNovember2008.pdf> (showing election results for the November 4, 2008 Missouri general election).

⁵ Schmitt for Missouri, Amended Statement of Committee Organization at 1, Missouri Ethics Commission (Aug. 25, 2023), <https://mec.mo.gov/DMS/DOC/V/630365>.

⁶ Compl. at 4.

⁷ See *id.*; see also Schmitt, Schmitt for Senate & Schmitt for Mo. Resp. at 3 (Sept. 1, 2022) [hereinafter Schmitt Resp.]. The Internet Archive shows that in 2008, the website was paid for by the State Committee. See ERIC SCHMITT STATE SENATE (Oct. 31, 2008), www.schmittforsenate.com [<https://web.archive.org/web/20081031234324/https://schmittforsenate.com/>] (displaying a disclaimer that it was "Paid for by Schmitt for Senate, John Hessel, Treasurer"). Beginning in 2011, the website was copyrighted by the State Committee. See ERIC SCHMITT STATE SENATE (Feb. 22, 2012), www.schmittforsenate.com [<https://web.archive.org/web/20120222162729/https://schmittforsenate.com/>]. Beginning in 2016, the Internet Archive shows that website is no longer accessible on the internet — two snapshots from 2017 direct to a downloadable file that indicates that the domain name "www.schmittforsenate.com" is "coming soon." See *Calendar 2017*: <https://schmittforsenate.com/>, INTERNET ARCHIVE, https://web.archive.org/web/20170601000000*/https://schmittforsenate.com/ (last visited Sept. 19, 2023) (click July 6 or September 20; open the downloaded file with a web browser application). A snapshot from March 11, 2021

1 media accounts on Twitter and Instagram,⁸ which were managed by campaign staff and
 2 consultants, Schmitt personally created his own Facebook, Twitter and Instagram social media
 3 accounts on which the Respondents allege that he posted the vast majority of content.⁹ In
 4 addition, Schmitt maintained a Twitter account in his official capacity as Missouri Attorney
 5 General.¹⁰

6 The State Committee has not disclosed any payments or transfers to the Federal
 7 Committee, but it reported the receipt of payments from the Federal Committee totaling
 8 \$12,544.46, for a vehicle and a tax reimbursement.¹¹ In addition, the Federal Committee has
 9 disclosed debts owed to the State Committee totaling \$538 as follows: \$310 for digital

also shows the website not operating, displaying a statement that “schmittforsenate.com is parked free, courtesy of GoDaddy.com.” See GODADDY (Mar. 11, 2021), www.schmittfor senate.com [<http://web.archive.org/web/20210311085624/http://schmittforsenate.com>]. Beginning March 24, 2021, the Internet Archive shows that the website was paid for and copyrighted by the Federal Committee. See ERIC SCHMITT U.S. SENATE (Mar. 24, 2021), www.schmittforsenate.com [<https://web.archive.org/web/20210324122132/http://www.schmittforsenate.com/>].

⁸ Team Schmitt for US Senate (@Schmitt4Senate), TWITTER, <https://twitter.com/schmitt4senate> (last visited Sept. 19, 2023); Eric Schmitt for U.S. Senate (@schmittforsenate), INSTAGRAM, <https://www.instagram.com/schmittforsenate/> (last visited Sept. 19, 2023). Twitter is now known as “X,” but for purposes of this report we will continue to refer to the relevant accounts discussed in this report as “Twitter accounts.” See, Elon Musk (@elonmusk), X (July 23, 2023, 1:44 PM), <https://twitter.com/elonmusk/status/1683171310388535296>.

⁹ Eric Schmitt, FACEBOOK, <https://www.facebook.com/SchmittForSenate/> (last visited Sept. 19, 2023) (showing that “Schmitt for Senate is responsible for this Page”); Eric Schmitt (@Eric_Schmitt), TWITTER https://twitter.com/Eric_Schmitt (last visited Sept. 19, 2023); Eric Schmitt (@ericschmittmo), INSTAGRAM, <https://www.instagram.com/ericschmittmo> (last visited Sept. 19, 2023); see Schmitt Resp. at 1-2, n.6; Compl. at 1-2.

¹⁰ Compl. at 3 n.16 (citing Attorney General Eric Schmitt (@AGEricSchmitt), TWITTER, <https://twitter.com/AGEricSchmitt> (last visited Sept. 19, 2023).

¹¹ Schmitt for Missouri, 2022 October Quarterly Report, Addendum Statement (Oct. 17, 2022) (disclosing receipt of \$12,500 on September 26, 2022, from the Federal Committee for a vehicle), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2GpGRD81yuIYXtK7%2fv4vGsedZkf4XLdLmSEYj5srtMhN2QpgzCCPVgfQ5sRgA9ZPW>; Schmitt for Missouri, 2023 April Quarterly Report, Addendum Statement (Apr. 15, 2023) (disclosing \$44.47 received on December 29, 2022, from the Federal Committee as reimbursement for tax payment), <https://www.mec.mo.gov/CampaignFinanceReports/Generator.aspx?Keys=B2G41dEVPKgl8cDcdGFsgJsm99XwPL2Gns%2f53MRE%2fCbE8OQYeSgUx72z0kHB4ExXigvfAs7J5%2bkZ8lsfii2N1zaFZ%2btAjNrw>. The Federal Committee disclosed the \$12,500 vehicle payment as a disbursement to the State Committee for “travel: other.” Schmitt for Senate, Amended 2022 October Quarterly Report at 409 (Dec. 19, 2022), <https://docquery.fec.gov/pdf/496/202212199574181496/202212199574181496.pdf>. The Federal Committee has not disclosed the \$44.47 payment to the State Committee on its reports filed with the Commission.

1 fundraising list rental; \$162 for direct mail fundraising list rental; and \$66 for campaign phone
2 service.¹²

3 SMV is an IEOPC that first registered with the Commission in 2021.¹³ During the 2022
4 election cycle, SMV disclosed making \$3,413,964 in independent expenditures in support of
5 Schmitt's federal candidacy: \$750,380 was spent to oppose Schmitt's opponent in the general
6 election and \$2,767,125 was spent to oppose his opponents in the primary election.¹⁴

7 According to Missouri Secretary of State filings, both Axiom Strategies and Remington
8 Research Group are limited liability companies ("LLCs").¹⁵ Axiom Strategies is a political
9 consulting firm specializing in general campaign strategy, direct voter contact, field strategy,
10 political polling and analysis, media buying, campaign compliance, fundraising, opposition
11 research, and public affairs.¹⁶ Axiom's subsidiary company, Remington Research Group, is a
12 campaign consulting firm that primarily conducts polls.¹⁷ During the 2022 election cycle,

¹² Schmitt for Senate, 2021 July Quarterly Report at 222 (July 15, 2021), <https://docquery.fec.gov/pdf/660/202107159451648660/202107159451648660.pdf>; Schmitt for Senate, Amended 2021 October Quarterly Report at 173 (Jan. 7, 2022) <https://docquery.fec.gov/pdf/735/202201079474889735/202201079474889735.pdf>; Schmitt for Senate, Amended 2021 Year-End Report at 104-05 (Mar. 23, 2022) <https://docquery.fec.gov/pdf/867/202203239495889867.pdf>; Schmitt for Senate, Amended 2022 April Quarterly Report at 202-03 (July 7, 2022) <https://docquery.fec.gov/pdf/361/202207079517840361/202207079517840361.pdf>; Schmitt for Senate, Amended 2022 July Quarterly Report at 259 (July 18, 2022) <https://docquery.fec.gov/pdf/318/202207189522169318/202207189522169318.pdf>; Schmitt for Senate, 2022 Pre-Primary Report at 36 (July 18, 2022) <https://docquery.fec.gov/pdf/204/202207219525035204/202207219525035204.pdf>.

¹³ Save Missouri Values, Statement of Organization at 5 (Apr. 9, 2021).

¹⁴ *Save Missouri Values: Spending 2021-2022*, FEC.GOV <https://www.fec.gov/data/committee/C00776385/?tab=spending&cycle=2022> (last visited Sept. 19, 2023).

¹⁵ STATE OF MO., AMENDED ARTICLES OF ORGANIZATION, AXIOM STRATEGIES, LLC (Dec. 9, 2005), <https://bsd.sos.mo.gov/Common/CorrespondenceItemViewHandler.ashx?IsTIFF=true&filedDocumentid=3698361&version=1>; REMINGTON RSCH. GRP., LLC, ARTICLES OF ORGANIZATION (July 23, 2014), <https://bsd.sos.mo.gov/Common/CorrespondenceItemViewHandler.ashx?IsTIFF=true&filedDocumentid=10493557&version=2>.

¹⁶ AXIOM STRATEGIES, <https://axiomstrategies.com/> (last visited Sept. 19, 2023).

¹⁷ REMINGTON RSCH. GRP., <https://remingtonresearchgroup.com/> (last visited Sept. 19, 2023).

1 Schmitt's federal committee disbursed a total of \$1,111,130 to Axiom for consulting, travel, and
2 advertising services, and \$87,701 to Remington Research for digital advertising services.¹⁸

3 **B. The Commission Should Exercise Its Prosecutorial Discretion to Dismiss the**
4 **Allegations that Schmitt, Schmitt for Senate, and Schmitt for Missouri**
5 **Violated the Act's Soft Money Ban**

6 The Complaint alleges that Schmitt and the State Committee used non-federal funds to
7 support his Federal Committee in violation of 52 U.S.C. § 30125(e)(1)(A) and that the Federal
8 Committee failed to report the resulting in-kind contributions in violation of 52 U.S.C.
9 § 30104(b). The alleged soft money violations fall under two general categories. The first is the
10 Federal Committee's alleged use of State Committee assets without charge, *i.e.*, the State
11 Committee's domain name www.schmittforsenate.com, the use of State Committee-owned
12 photographs of Schmitt in support of the federal campaign, and Schmitt's use of his personal
13 social media accounts to promote both his acts as state Attorney General and his federal and state
14 candidacies.¹⁹ The second category is Schmitt and the Federal Committee's alleged use of his
15 state Attorney General office's resources to aid his federal candidacy through the use of
16 photographs of Schmitt as Attorney General on a federal campaign mailer and the promotion of
17 his trip to the U.S. border in his official capacity as Missouri Attorney General on the Federal
18 Committee's Twitter account and Schmitt's personal Facebook account.²⁰ Schmitt, the Federal

¹⁸ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?committee_id=C00775015&two_year_transaction_period=2022&recipient_name=AXIOM+STRATEGIES&data_type=processed (last visited Sept. 19, 2023) (showing all disbursements by the Federal Committee to Axiom Strategies in the 2022 election cycle); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?committee_id=C00775015&two_year_transaction_period=2022&recipient_name=REMINGTON+RESEARCH+GROUPOUP&data_type=processed (last visited Sept. 19, 2023) (showing all disbursements by the Federal Committee to Remington Research Group in the 2022 election cycle).

¹⁹ Compl. at 2-4.

²⁰ *Id.* at 5-8.

1 Committee, and the State Committee (collectively the “Schmitt Respondents”) filed a joint
2 response denying the allegations.²¹ We discuss both categories in turn below.

3 The Act prohibits federal candidates, their agents, and entities, such as state committees,
4 that are established, financed, maintained, or controlled (“EFMC’d”) by federal candidates from
5 soliciting, receiving, directing, transferring, or spending funds in connection with any federal or
6 non-federal election “unless the funds are subject to the limitations, prohibitions, and reporting
7 requirements of this Act.”²² The Commission has determined that the state campaign committee
8 of a federal candidate is EFMC’d by the federal candidate as a matter of law and is acting on the
9 candidate’s behalf.²³

10 Further, the Commission’s regulations prohibit “[t]ransfers of funds or assets from a
11 candidate’s campaign committee or account for a non[-]federal election to his or her principal
12 campaign committee or other authorized committee for a federal election.”²⁴ The prohibition on
13 transferring funds applies broadly and includes payment by the state committee for services
14 received by the federal committee.²⁵ Nonetheless, the Commission has permitted the transfer of

²¹ Schmitt Resp.

²² 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.61, 300.62; *see also* 52 U.S.C. §§ 30116(a), 30118(a) (setting out contribution limitation and corporate contribution prohibition, respectively).

²³ Advisory Opinion (“AO”) 2009-26 at 5 (Coulson); AO 2007-26 (Schock) at 4; AO 2007-01 at 3 (McCaskill); AO 2006-38 (Casey State Comm.) at 4; *see, e.g.*, Factual & Legal Analysis (“F&LA”) at 6, MUR 7337 (Debbie Lesko, *et al.*).

²⁴ 11 C.F.R. § 110.3(d); *see also* Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3474-75 (Jan. 8, 1993) (“1993 E&J”) (explaining that Commission was adopting total prohibition in this circumstance because of practical difficulty in linking or otherwise accounting for federally permissible funds available for transfer).

²⁵ *See, e.g.*, Conciliation Agreement (“CA”) at IV.2-3,7, V.1, MUR 7076 (Pre-MUR 574) (Richard Tisei, *et al.*) (resolving violations of receipt of non-federal funds when candidate’s state committee paid for polling, fundraising data analysis, and staff work designed to help Tisei decide whether to run for federal office); CA at IV.6-7, 12-14, V.2-4, MUR 6267 (Paton for Senate, *et al.*) (noting that, by using non-federal funds to pay for the candidate’s federal committee’s polling and survey costs, the candidate’s state committee transferred, and the federal committee received, a prohibited transfer of funds in violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d)); CA at IV.9-11, V.1, MUR 5646 (Cohen for N.H.) (noting that candidate’s federal committee received

1 a non-federal committee's assets to the campaign committee of a candidate for federal office
 2 where the federal committee pays the fair market value or the "usual and normal charge" for the
 3 use of such assets.²⁶ When the state committee does not own the asset, the federal committee
 4 must pay the usual and normal charge for use of the asset from the proper owner.²⁷ If a
 5 committee pays fair market value for a good or service, then the transaction is not considered a
 6 contribution.²⁸

7 Political committees must report their financial activity, including their receipts and
 8 disbursements, in accordance with the provisions of the Act and Commission regulations.²⁹
 9 Each political committee must report the name, mailing address, occupation, and employer of
 10 any individual who contributes more than \$200 to the committee in a calendar year, along with
 11 the amount and date of the individual's contributions.³⁰ Among other required itemizations, the
 12 report must include the identification of each political committee making a contribution to the

prohibited transfer of funds when he used state campaign funds to pay for federal campaign start-up expenses, which included payments to fundraising and speech writing consultants, payments for salaries and housing allowances for federal campaign staff, as stamps, supplies, phone and printing expenses); CA at IV.11, V.1-2, MUR 4974 (Friends of Tiberi, *et al.*) (noting that candidate's federal and state committees violated 11 C.F.R. § 110.3(d) when his state committee paid for expenses incurred on behalf of his federal committee).

²⁶ See, e.g., F&LA at 5, MUR 6784 (Lizabeth Benacquisto for Congress, *et al.*); see also 1993 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 Statement of Reasons of Comm'rs. Walther, Petersen, Bauerly, Hunter, & Weintraub, MUR 5964 (Schock for Congress) [hereinafter Schock SOR] (explaining their vote to dismiss as a matter of prosecutorial discretion the allegations that non-federal committee transferred assets to the campaign committee of a candidate for federal office at less than the usual and normal charge, and not open an investigation to determine the actual cost of the assets, given the relatively small amount of the potential violation). The Commission's regulations define "usual and normal charge" as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." 11 C.F.R. § 100.52(d)(2).

²⁷ See 11 C.F.R. § 100.52(d); see also, F&LA at 5, MUR 6784 (Lizabeth Benacquisto for Congress, *et al.*); see also First Gen. Counsel's Rpt. at 7, MUR 5964 (Schock for Congress).

²⁸ See 11 C.F.R. § 100.52(d)(1).

²⁹ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

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

1 reporting committee, together with the date and amount of the contribution.³¹

2 1. Federal Committee's Use of State Committee Assets

3 a. Federal Committee's Use of the Schmitt Website

4 The Complaint alleges that the State Committee transferred the Schmitt website domain
5 name to the Federal Committee without charge, resulting in an in-kind contribution and that the
6 Federal Committee failed to disclose the receipt of this in-kind contribution.³² According to the
7 Complaint, the State Committee owned the Schmitt website and used it to promote Schmitt's
8 2008 state senate candidacy.³³ The Complaint claims that the Schmitt website "was no longer
9 publicly available" by 2016, and that in March 2021, 12 days prior to Schmitt's U.S. Senate
10 candidacy announcement, the Schmitt website "went live" again and was fully redesigned to
11 promote Schmitt's federal candidacy.³⁴ The Complaint alleges that while the Federal Committee
12 paid the Prosper Group for website design and maintenance on May 19, 2021, it failed to pay for
13 purchase of the domain name.³⁵

14 The Schmitt Respondents acknowledge that the Schmitt website was used by Schmitt in
15 2008 for his Missouri State Senate race, but assert that on March 11, 2021, the domain name
16 registration for that website changed ownership from the State Committee to the Federal
17 Committee and that The Prosper Group acted as the broker for the sale.³⁶ According to the
18 Response, the Federal Committee paid \$1,500 to the broker to purchase the domain name at fair

³¹ 52 U.S.C. § 30104(b)(3)(B); 11 C.F.R. § 104.3(a)(4)(ii).

³² Compl. at 4.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Schmitt Resp. at 3.

1 market value; a copy of a receipt dated March 29, 2021, provided with the Response shows a
2 \$1,500 charge for “Dev: Website” “AG Website.”³⁷ The Federal Committee states that the paid
3 invoice “was for the purchase of the website domain name” and that “[a]ctual work on
4 developing the website was billed separately.”³⁸

5 The transfer of the Schmitt website from the State Committee to the Federal Committee
6 would not constitute a contribution to the Federal Committee if the Federal Committee paid the
7 State Committee the fair market value or the “usual and normal charge” for the asset.³⁹ Here, the
8 Federal Committee’s disclosure reports filed with the Commission do not reflect a \$1,500
9 payment in March 2021, but do show that, on May 19, 2021, the Federal Committee disclosed a
10 payment of \$3,640 to The Prosper Group for “website design and maintenance.”⁴⁰ Although the
11 Federal Committee states that the Prosper Group “acted as the broker for the acquisition of the
12 website domain name from [the State Committee],” there is no corresponding receipt of funds
13 disclosed on the State Committee’s reports, making it unclear whether the State Committee still
14 owned the website domain name at that point.⁴¹ Indeed, according to the Complaint, the State

³⁷ *Id.* at 3; *id.*, attach. A.

³⁸ *Id.* at 3, n. 9.

³⁹ Transfers of Funds from State to Federal Campaigns; Final Rule, 57 Fed. Reg. 36,344, 36,345 (Aug. 12, 1992) (“1992 E&J”) (“[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.”); 1993 E&J, 58 Fed. Reg. at 3,475 (same); *see also* AO 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); F&LA at 5-6, MUR 6784 (Lizabeth Benacquisto for Congress, *et al.*) (finding no reason to believe respondents violated 11 C.F.R. § 110.3(d) where the federal committee used certain images that the state committee also used, but which were owned by a third-party vendor, and where respondents provided copies of the invoices reflecting the federal committee’s payment to the third party and disclosed the payment on the federal committee’s reports filed with the Commission).

⁴⁰ Schmitt for Senate, July 2021 Quarterly Report at 216 (July 15, 2021), <https://docquery.fec.gov/pdf/660/202107159451648660/202107159451648660.pdf>; Schmitt Resp. at 3 n.9.

⁴¹ Respondents state that the “website domain was purchased from the Schmitt for Missouri state committee, which Mr. Schmitt used for his most recent state Attorney General campaign,” but does not explain why a payment was not disclosed by the State Committee. Schmitt Resp. at 3. n.9.

1 Committee may have ceased maintaining the website around 2016, and therefore, it is possible
2 that it no longer owned the domain page registration by 2021.⁴²

3 Nevertheless, if the \$1,500 cost to acquire the domain name was part of the \$3,640
4 payment disclosed by the Federal Committee, it appears that the website was acquired at fair
5 market value. Publicly available information about the value of websites can be found at
6 GoDaddy's "Domain Appraisal Tool," which currently values the Schmitt Website domain name
7 at \$1,036.⁴³ Given that this amount is only slightly lower than the amount allegedly actually
8 paid, it appears that the Federal Committee may have paid the fair market value for the domain
9 name; therefore, there is insufficient information to justify a reasonable inference that the
10 transfer constituted an improper transfer of assets in violation of 11 C.F.R. § 110.3(d).⁴⁴

11 b. Federal Committee's Use of State Committee's Images of Schmitt
12 The Complaint alleges that Respondents violated the soft money ban when the Federal

⁴² Compl. at 4. Information maintained by the Internet Corporation for Assigned Names and Numbers ("ICANN") indicates that www.schmittforsenate.com was first created in March 2021, which may suggest that the domain name may no longer have been registered with the State Committee at the time that the Federal Committee acquired it. *See Lookup*, ICANN, <https://lookup.icann.org/en/lookup> (last visited Sept. 19, 2023) [hereinafter ICANN Lookup Page] (search for www.schmittforsenate.com). *See also supra* notes 6-7 and accompanying text.

⁴³ *Domain Appraisals*, GODADDY, <https://www.godaddy.com/domain-value-appraisal/appraisal/?domainToCheck=www.schmittforsenate.com> (last visited June 15, 2023).

⁴⁴ *See, e.g.*, F&LA at 5, MUR 6784 (Lizabeth Benacquisto for Congress, *et al.*) (finding no reason to believe the candidate and her federal committee violated 11 C.F.R. § 110.3(d) in connection with the use of certain images that the State Committee used as well, noting that the images were owned by a third-party vendor); F&LA at 5-6, MURs 6474, 6534 (Citizens for Mandel) (finding no reason to believe respondents violated now 52 U.S.C. § 30125(e)(1)) and 11 C.F.R. § 110.3(d) as a result of a candidate's federal committee's use of a website domain obtained from his state committee where the federal committee paid a third party to negotiate the transfer from the state committee, host design, and maintain content of the website and reported the payments on its disclosure reports and where there was no information on which to conclude that the transfer of the website was made at less than fair market value); *see also* Certification ("Cert.") ¶ 2.e (July 13, 2023), MUR 7938 (Greitens for U.S. Senate, *et al.*) (finding no reason to believe that respondents violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d) by transferring the state committee's website to the federal committee without paying without fair market value); Statement of Reasons, Chair Lindenbaum, Vice Chair Cooksey, & Comm'rs. Dickerson & Trainor at 4-6, MUR 7938 (Greitens for U.S. Senate, *et al.*) (noting that to the extent state committee funds were used to improve the website, which was personally owned by the candidate and subsequently licensed to the federal committee for its use, there is no violation where the information did not indicate that the state committee disbursed funds with the intent to support the federal committee or to circumvent the Act's limitations or prohibitions).

1 Committee used three state campaign photos to support Schmitt's federal candidacy: (1) a
2 photograph originally distributed on June 1, 2017, by Schmitt's campaign for state treasurer that
3 was later prominently displayed on the Federal Committee's Facebook page; (2) a photograph
4 from November 4, 2016, originally paid for by the State Committee, posted on Schmitt's state
5 campaign Facebook page, used in a August 13, 2020, state campaign advertisement promoting
6 Schmitt's candidacy for Attorney General and later featured on Schmitt's website promoting his
7 federal candidacy; and (3) a photograph from October 19, 2019, displaying the disclaimer "Paid
8 for by Schmitt for Missouri, John Hessel, Treasurer," which was also featured on Schmitt's U.S.
9 Senate campaign website.⁴⁵

10 The Schmitt Respondents admit that the photographs identified in the Complaint were
11 originally used by the State Committee as early as June 1, 2017, and no later than October 19,
12 2019, but they also contend that those photographs became publicly available on social media by
13 the time the Federal Committee used them on its website and Facebook page and that they
14 comprised a small portion of the content on the federal campaign website and social media
15 pages.⁴⁶ The Schmitt Respondents further argue that the Federal Committee's use of the State
16 Committee photographs was *de minimis*.⁴⁷

17 Contrary to the Complaint's allegation, the Federal Committee's use of the State

⁴⁵ Compl. at 9 nn.63-68. We note that there are two distinct photographs in question: one taken of Schmitt as state treasurer and the other taken of Schmitt as state Attorney General. The Complaint's allegations are that the Federal Committee used the state treasurer photograph once, and the state Attorney General photograph twice in connection with Schmitt's campaign for U.S. Senate.

⁴⁶ Schmitt Resp. at 7-8. The Federal Committee admits that it used these State Committee photographs of Schmitt in three ways. On the Federal Committee's website, the Federal Committee used the photograph of Schmitt as state treasurer on its homepage, and the photograph of Schmitt as state Attorney General on its "About" page. *See* Schmitt Resp. at 7 & n.28; *see* Compl. at 9, nn.62, 67. The Federal Committee used the same photograph of Schmitt as state treasurer again on its Facebook page in a video posting on August 13, 2020. *See* Schmitt Resp. at 7 & n.28; Compl. at 9 & n.66.

⁴⁷ Schmitt Resp. at 8-9.

1 Committee's images of Schmitt does not appear to constitute "republication" of campaign
2 materials under the Act. Republication is defined as the "financing by any person of the
3 dissemination, distribution, or republication, in whole or in part, of any broadcast or any written,
4 graphic, or other form of campaign materials prepared by the candidate, his campaign
5 committees, or their authorized agents."⁴⁸ The republication provisions in the Act and
6 Commission regulations apply to materials prepared by candidates for federal office and
7 republished by third parties, while the images at issue here were prepared for the candidate's
8 state campaign years before Schmitt became a federal candidate and were later used by the
9 Federal Committee.⁴⁹

10 However, the Complaint's allegation raises the question whether the Federal Committee
11 properly paid for use of the photographs as a State Committee asset. The Federal Committee
12 explains that the two photographs used during 2020 on its website and the Federal Committee's
13 Facebook page, which were previously used in State Committee's campaign materials published
14 in 2017 and 2019, were publicly available on social media at the time the Federal Committee
15 used them.⁵⁰ In addition, the Federal Committee asserts that the photographs constitute only a
16 "very small" portion of the content on its website and Facebook page.⁵¹ The photograph of
17 Schmitt originally published by the State Committee in 2017 appears on the Federal

⁴⁸ 52 U.S.C. § 30116(a)(7)(B)(iii); *see also* 11 C.F.R. § 109.23(a).

⁴⁹ *See* 52 U.S.C. § 30101(2) (defining the term "candidate" as "an individual who seeks nomination for election, or election, to Federal office"); *see also* F&LA at 6 & n.23, MUR 7080 (Paul Babeu for Congress, *et al.*) (concluding there was no republication of campaign materials under the Act where the federal committee used a candidate's headshot from an associational webpage pre-dating the federal candidacy); F&LA at 7 n.23, MUR 6792 (Sean Eldridge for Congress, *et al.*) (rejecting respondents' comparisons to republication matters where "the video footage at issue . . . was produced and distributed by a private entity and subsequently used by a campaign committee," but finding reason to believe that the committee accepted a prohibited corporate contribution where it appeared the committee had access to the raw video footage that was unlikely obtained from the public domain).

⁵⁰ Schmitt Resp. at 7-8.

⁵¹ *Id.* at 7-9.

1 Committee's website in the top third of the website's homepage and comprises five seconds of a
2 federal campaign video featured on the Federal Committee's Facebook page that lasted 1 minute
3 and 45 seconds.

4 Setting aside the questions of the value of the photographs and confirmation of their
5 ownership, in the past the Commission has declined to pursue matters where it appeared that the
6 amount in violation was low.⁵² Given the available information showing that the Federal
7 Committee's use of the two photographs from the State Committee constituted a small portion of
8 its website and Facebook page, and that the use of the photograph in the video was *de minimis*,
9 declining to further pursue this allegation as an exercise of prosecutorial discretion would be
10 consistent with similar prior matters.⁵³

11 c. Use of Schmitt's Personal Social Media Accounts

12 According to the Complaint, Schmitt's personal Facebook, Twitter, and Instagram
13 accounts regularly promoted his official acts as state Attorney General and his candidacies for

⁵² 11 C.F.R. § 109.21(d)(1); *see, e.g.*, Cert. ¶ 2.d, e (Sept. 30, 2022), MUR 7670 (Hickenlooper for Colo., *et al.*) (exercising prosecutorial discretion and dismissing allegations that the state committee made, and the candidate and federal committee received, an impermissible transfer of a state committee's asset where an investigation would be necessary to determine whether the state committee or a third party owned the video footage, which was already publicly available when it was used by the federal committee; the federal committee's use of the video footage "formed a minimal and incidental part" of its advertisement (approximately six seconds out of a 90-second advertisement); and the amount in violation was likely low). Additionally, here, if the use of photographs from the State Campaign was coordinated with Schmitt's federal campaign, an investigation would be necessary to determine whether the conduct prong of the coordination analysis is satisfied, *i.e.*, whether the State Committee approved, authorized, agreed to, or otherwise consented to the use of Schmitt's photograph on the Federal Committee's website.

⁵³ *See* F&LA at 3, MUR 6514 (Make Us Great Again) (exercising prosecutorial discretion to dismiss where "the footage at issue was a minimal part of the advertisement (less than 10 seconds of the Committee's almost three-minute-long advertisement) and was used as an incidental part of the advertisement"); Schock SOR at 2-3 (exercising prosecutorial discretion to dismiss "given the relatively small amount potentially in violation" and after determining "that further use of the Commission's limited resources" was not warranted); Cert. ¶ 2.d, e (Sept. 30, 2022), MUR 7670 (Hickenlooper for Colo., *et al.*) (exercising prosecutorial discretion to dismiss where video footage was only an incidental part of the advertisement and had been publicly available).

1 state and federal office.⁵⁴ The Complaint further alleges that the Federal Committee failed to
2 disclose the use of Schmitt's "campaign and official social media accounts" as in-kind
3 contributions to the Federal Committee on its reports filed with the Commission.⁵⁵ To the extent
4 that the Complaint's general allegations can be read to allege that the State Committee's social
5 media accounts (instead of Schmitt's separate, personal accounts) promoted Schmitt's federal
6 candidacy, it does not point to any specific facts supporting such an allegation. Each of the
7 examples provided in the Complaint are of Schmitt's use of his personal social media accounts.⁵⁶

8 The Complaint alleges that Schmitt's personal "official" Facebook account was used to
9 promote his official acts as State Attorney General, his campaigns for multiple state offices, and
10 his federal candidacy.⁵⁷ Schmitt's personal Facebook account states that it is an official account
11 of a public figure and that "Schmitt for Senate" is responsible for the page.⁵⁸

12 Similarly, the Complaint alleges that Schmitt's verified Twitter account was used to
13 promote his candidacy for multiple state offices, his official acts as Attorney General, and his
14 federal candidacy.⁵⁹ Specifically, the Complaint identifies posts on Schmitt's personal Twitter
15 account, which contain the some of the same photos and videos taken from his official Missouri
16 state Attorney General Twitter account.⁶⁰ The Complaint further alleges that Schmitt used his
17 personal Instagram account to promote his candidacy for multiple state offices and his federal
18 candidacy by posting a campaign sign from his state campaign for treasurer, a photograph of him

⁵⁴ Compl. at 2-3.

⁵⁵ *Id.* at 2.

⁵⁶ *Id.* at 2 & nn.6, 10, 3 nn.14, 17- 22.

⁵⁷ *Id.* at 2 & nn.6-10.

⁵⁸ *Id.* at 2 & n.6.

⁵⁹ *Id.* at 3 & nn.12-14, 16-19.

⁶⁰ *Id.* at 3 & nn.16-19.

1 being sworn in a Missouri state Attorney General, and a photograph of him next to campaign
2 signs for his U.S. Senate campaign.⁶¹

3 The Schmitt Respondents deny the allegations and maintain that Schmitt “personally
4 created” the Facebook, Twitter and Instagram accounts referenced in the complaint, and that “he
5 personally posts the vast majority of content on these accounts.”⁶² Therefore, Respondents
6 maintain that under the volunteer and internet exemptions, the content and use of the accounts do
7 not constitute in-kind contributions.⁶³ The Schmitt Respondents argue that because the State
8 Committee made no expenditures for any of the social media content appearing on those
9 accounts, Schmitt’s social media posts on these accounts are not unreported in-kind contributions
10 from the State Committee to the Federal Committee.⁶⁴ In addition, the Schmitt Respondents
11 assert that these accounts are free to create and do not cost any fees to maintain.⁶⁵

12 Commission regulations provide that the value of services provided without
13 compensation by any individual who volunteers on behalf of a candidate or political committee
14 is not a contribution.⁶⁶ Additionally, an individual’s uncompensated personal services related to
15 internet activities for the purpose of influencing a federal election are not a contribution.⁶⁷
16 Commission regulations further provide that the definition of “public communication” “shall not

⁶¹ *Id.* at 3 & nn.20-22.

⁶² Schmitt Resp. at 1- 2.

⁶³ *Id.* at 2.

⁶⁴ *Id.*

⁶⁵ *Id.* at 2 & n.3.

⁶⁶ The Act defines “contribution” to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 52 U.S.C. § 30101(8); 11 C.F.R. § 100.52(d)(1); *see also* 52 U.S.C. § 30101(8)(B)(i) (excluding from the definition of contribution “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee”); 11 C.F.R. § 100.74 (same).

⁶⁷ 11 C.F.R. § 100.94.

1 include communications over the Internet, except for communications placed for a fee on another
2 person's [website]," a provision referred to as the "internet exemption."⁶⁸

3 Here, the Complaint's allegations that posts on Schmitt's personal social media accounts
4 constitute contributions or transfers of assets from either himself or the State Committee to the
5 Federal Committee appear to be sufficiently rebutted by the Schmitt Respondents' response that
6 Schmitt himself created and regularly posted the "vast majority of content" on those social media
7 account without compensation.⁶⁹ With regard to Schmitt's personal Facebook page (which
8 states that it is operated by the Federal Committee), there is no other information available
9 indicating that Schmitt or the Federal Committee paid a fee to any third party to place posts on
10 the internet. The Federal Committee's disclosure reports for the 2022 election cycle do not
11 include any apparent disbursement for posting on Schmitt's social media accounts, though the
12 Response asserts that the Federal Committee has separate Twitter and Instagram accounts that
13 are maintained by campaign staff and consultants and the available information shows that
14 campaign staff may have posted on Schmitt's Facebook page.⁷⁰

15 The allegations in the Complaint, however, are not directed to the Federal Committee's
16 social media accounts, only to those largely operated by Schmitt personally. We have no
17 information contradicting the Response's assertions that the Federal Committee did not make
18 any expenditures in connection with Schmitt's personal social media accounts, other than
19 possibly paying its own campaign staff to post on those accounts. Therefore, Schmitt's personal

⁶⁸ *Id.* § 100.26.

⁶⁹ Schmitt Resp. at 2.

⁷⁰ *Schmitt for Senate: Spending 2021-2022*, FEC.GOV, <https://www.fec.gov/data/committee/C00775015/?tab=spending&cycle=2022> (last visited Sept. 19, 2023); Schmitt Resp. at 2 n. 6; Team Schmitt for US Senate (@Schmitt4Senate), TWITTER, <https://twitter.com/schmitt4senate> (last visited Sept. 19, 2023); Eric Schmitt for U.S. Senate (@schmittforsenate), INSTAGRAM, <https://www.instagram.com/schmittforsenate/> (last visited Sept. 19, 2023).

1 posts to the social media accounts do not appear to constitute contributions from the State
2 Committee to his Federal Committee. Furthermore, to the extent that the Response
3 acknowledges that a small portion of the content on the Schmitt's personal social media accounts
4 was posted by someone other than Schmitt, the Response's contention that this effort was *de*
5 *minimis* appears to be reasonable given that the posts generally are of a personal nature, which is
6 consistent with the Response's assertion that he authored those posts.⁷¹

7 2. Use of State Attorney General's Office to Aid Federal Candidacy

8 The second manner by which the Complaint alleges Respondents violated the soft money
9 ban is through the use of the state Attorney General's office to promote Schmitt's federal
10 candidacy. First, the Complaint alleges that in June 2022, the Federal Committee distributed a
11 campaign mailer using a photograph taken by a member of the Attorney General Schmitt's staff,
12 depicting Schmitt in his Attorney General capacity appearing with three judges from the
13 Missouri Supreme Court at a state bicentennial celebration in August 2021.⁷² Second, the
14 Complaint alleges that in October 2021, Schmitt used state resources to pay for a trip to the U.S.
15 southern border that Schmitt took in his capacity as Attorney General, along with a member of
16 the Attorney General's staff, and then published photographs of the event on his Twitter and
17 Facebook campaign accounts in support of his federal candidacy.⁷³ According to the Complaint,
18 state funds were used to pay the expenses of the trip, and the use of photographs and videos of

⁷¹ See Schmitt Resp. at 2; *see also* Eric Schmitt, FACEBOOK, <https://www.facebook.com/SchmittForSenate/> (last visited Sept. 19, 2023) (displaying many posts that appear to be from a personal perspective); Eric Schmitt (@Eric_Schmitt), TWITTER https://twitter.com/Eric_Schmitt (last visited Sept. 19, 2023) (same).

⁷² Compl. at 5. In an official statement, the Supreme Court of Missouri renounced the use of the photograph for political purposes, stating that the "photograph was used without [the judges'] knowledge or consent" and that "none of the judges did – or ever would – consent to their names, titles or likenesses being used in any political context." Press Release, Mo. Courts, Supreme Court of Missouri Renounces Use of Photograph for Political Purposes (June 17, 2022), <https://www.courts.mo.gov/page.jsp?id=89434>.

⁷³ Compl. at 6.

1 the trip on Schmitt's personal and federal campaign's social media accounts may have violated
2 Missouri law prohibiting the use of state funds by a state officer to advocate, support, or oppose
3 a candidate for public office.⁷⁴

4 According to the Schmitt Respondents, the Federal Committee was not responsible for
5 the campaign mailer containing the photograph of Schmitt and the Missouri Supreme Court
6 judges, but rather, the mailer was distributed by an independent group, Americans for Prosperity
7 Action, supporting Schmitt's bid in the Republican primary election.⁷⁵ Regarding Schmitt's
8 2021 trip to the border, the Schmitt Respondents state that the Federal Committee paid for
9 Schmitt's travel expenses and provided copies of receipts for air travel and hotel stays along with
10 the Response.⁷⁶ The Federal Committee appears to have reimbursed Axiom Strategies, its
11 campaign consulting firm, which processed the invoices for those costs, and disclosed those
12 payments on its 2022 April Quarterly Report.⁷⁷ The Schmitt Respondents further explain that
13 Chris Nuelle, a spokesperson from the state Attorney General's office, accompanied Schmitt on
14 the trip to the border in connection with a lawsuit Schmitt filed in his official capacity as state
15 Attorney General on behalf of the state of Missouri to compel the Biden Administration to
16 resume construction of the border wall.⁷⁸ According to the Response, while Nuelle was on the
17 trip, he did not conduct any campaign-related activities and the only expenses the state of
18 Missouri paid in connection with the border trip were those associated with sending Nuelle as a

⁷⁴ *Id.* at 6-7 (citing MO. ETHICS COMM'N, THE MEC GUIDE TO ETHICS LAWS: A PLAIN ENGLISH SUMMARY at 31(2020), <https://www.mec.mo.gov/WebDocs/PDF/Misc/EthicsGuide2020.pdf>).

⁷⁵ Schmitt Resp. at 4-5.

⁷⁶ *Id.* at 5; *id.* attach. C.

⁷⁷ *Id.* at 5; *id.* attach. C.

⁷⁸ *Id.* at 6.

1 spokesman for the state office.⁷⁹ Respondents argue that Nuelle's presence was not campaign-
2 related because he did not "ask for support" for Schmitt as a federal candidate during the trip,
3 and accordingly, that Nuelle's travel expenses are not required to be allocated to the Federal
4 Committee.⁸⁰

5 The Act prohibits any person from making, and any candidate or committee from
6 knowingly accepting, an excessive contribution.⁸¹ Expenditures made by any person in
7 cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his
8 authorized political committees, or their agents, shall be considered to be a contribution to such
9 candidate.⁸²

10 The available information does not appear to support the Complaint's allegations that
11 Schmitt used state government resources from the Missouri state Attorney General's office in a
12 manner that would benefit his federal campaign and violate the Act.⁸³ As to the photograph of

⁷⁹ *Id.* at 5-6.

⁸⁰ *Id.* at 6 (citing 11 C.F.R. § 106.3(c)(1)).

⁸¹ 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

⁸² 52 U.S.C. § 30116(a)(7)(B)(i). The Act and Commission regulations define the terms "contribution" and "expenditure" to include the gift of "anything of value" for the purpose of influencing a federal election. 52 U.S.C. § 30101(8)(A)(i), 9(A)(i).

⁸³ We make no recommendation as to whether Schmitt, the Federal Committee, or the State Committee violated state law. Additionally, while the Commission has determined that states can be considered a "person" under the Act and Commission regulations, the Complaint in this matter is directed at Schmitt's individual actions and there is no allegation or information here that the Missouri state government committed a violation. *See* AO 2000-05 at 2 n.3 (Oneida Nation of N.Y.) ("[T]he Commission has made clear that State governments and municipal corporations are persons under the Act and are subject to its contribution provisions."); AO 1999-07 (Minn. Sec'y of State) at 2 n.3 ("[T]he Act's definition of person does not include the Federal government or any authority of the Federal government; the Commission has not extended this exclusion to State governments or their instrumentalities."); *see also* First Gen. Counsel's Rpt. at 6, MUR 5082 (Sherwood) (Mar. 26, 2001); Cert. ¶ 3 (May 8, 2002) (naming the Commonwealth of Pennsylvania as a respondent where state employee claimed that part of his official duties were to work for Sherwood's congressional campaign; the Commission admonished the committee, took no action as to the state, and voted to report the matter to the Pennsylvania State Ethics Commission, Pennsylvania State Senate Ethics Commission and the Pennsylvania Attorney General's Office); First Gen. Counsel's Rpt. at 6-9, MUR 5815 (Madrid) (July 10, 2007), Cert. ¶2.a (July 26, 2007), Cert. ¶ 2 (Nov. 13, 2008) (addressing allegation that, while a federal candidate, the Attorney General for New Mexico had the state office

1 Schmitt in his capacity as state Attorney General with three judges of the Missouri Supreme
2 Court, it appears that Americans for Prosperity Action, a group independent of Schmitt and his
3 committee, is responsible for the mailer's production and distribution and used the photograph
4 without Schmitt's knowledge or consent.⁸⁴ While the Complaint does not provide a copy of the
5 mailer in question, publicly available photos of the mailer show that the front of the mailer
6 includes the described photograph of Schmitt with the state judges, while the back of the mailer
7 states that it was distributed by Americans for Prosperity Action.⁸⁵ Further, Schmitt and his
8 Federal Committee deny any responsibility for the mailer.⁸⁶ Therefore, it does not appear that
9 either the State or Federal Committee was responsible for the mailer.

10 With regard to Schmitt's trip to the U.S. border, the Commission's regulations require that
11 candidate committees disclose expenses for campaign-related travel "paid for . . . from a source
12 other than a political committee."⁸⁷ The regulations further require that where an individual,
13 other than the candidate, conducts campaign-related activities on a trip, the costs relating to the
14 trip attributable to campaign-related activities shall be allocated on a reasonable basis.⁸⁸ Here,

disseminate a mailer expressly advocating for the federal campaign, resulting in in-kind contributions in the form of a coordinated communication, the Commission initially took no action as to the state and, after an investigation, dismissed allegations as to it).

⁸⁴ Schmitt Resp. at 4-5.

⁸⁵ *Id.* at 5; Rudi Keller, *Missouri Supreme Court "Renounces" Use of Photo with Judges to Promote Schmitt*, MO. INDEP. (Jun. 17, 2022), <https://missouriindependent.com/2022/06/17/missouri-supreme-court-renounces-use-of-photo-with-judges-to-promote-schmitt/>; April McDonald (@aemcd), TWITTER, (June 17, 2022 5:17 PM), <https://twitter.com/aemcd/status/1537907422798352387> (displaying front of mailer); April McDonald (@aemcd), TWITTER (June 17, 2022 5:54 PM), <https://twitter.com/aemcd/status/1537916729426268162> (displaying back of mailer).

⁸⁶ Schmitt Resp. at 4-5. On June 16, 2022, Americans for Prosperity Action filed a 48-Hour Report of independent expenditures, which disclosed an expenditure for "mailer production" with a distribution date of June 14, 2022, in support of Eric Schmitt for U.S. Senate in the amount of \$35,299.84, which it amended on June 21, 2022. *See* Ams. for Prosperity Action, Amended 48-Hour Report of Independent Expenditures (June 16, 2022), <https://docquery.fec.gov/pdf/313/202206219517751313/202206219517751313.pdf>.

⁸⁷ 11 C.F.R. § 106.3(b)(1).

⁸⁸ *Id.* § 106.3(c)(1).

1 the available information shows that Schmitt took the October 2021 trip to the U.S. border along
2 with another state Attorney General to announce the lawsuit they jointly filed in federal court on
3 behalf of their respective states to compel the Biden Administration to resume construction of a
4 wall along the southern U.S. border.⁸⁹ While on the trip, the Federal Committee's Twitter
5 account and Schmitt's personal Facebook account announced Schmitt's trip to the border and
6 discussed the lawsuit he filed as Missouri Attorney General, and posted photos and videos of
7 Schmitt from his trip.⁹⁰ Neither the photo nor the video contains any campaign message.⁹¹ To
8 the extent that the border trip is campaign-related, the Federal Committee has provided copies of
9 paid invoices for Schmitt's travel and lodging, which show that the Federal Committee paid for,
10 and reported, those expenses; specifically, the Federal Committee's 2022 April Quarterly Report
11 shows that it reimbursed Axiom Strategies for expenses totaling \$9,146.71, which included the
12 travel and lodging invoices.⁹²

13 It further appears that the only expenses paid by the Missouri Attorney General's office
14 are those travel expenses associated with sending Nuelle, a spokesman for the state Attorney
15 General's office, on the same trip.⁹³ As an individual accompanying a candidate, any campaign-

⁸⁹ Compl. at 6; Schmitt Resp. at 6; Jeanne Kuang, *Missouri Taxpayers Foot Bill for AG Eric Schmitt's Trip to the U.S.-Mexico Border*, KAN. CITY STAR (Oct. 22, 2021), <https://www.kansascity.com/news/politics-government/article255211321.html>.

⁹⁰ Compl. at 6 & nn.37, 39; *see* Team Schmitt for US Senate (@Schmitt4Senate), TWITTER (Oct. 21, 2021 9:57 AM), <https://twitter.com/Schmitt4Senate/status/1451185765547864065>; *see also* Eric Schmitt, FACEBOOK (Oct. 21, 2021), <https://www.facebook.com/watch/?v=1289966921447545>.

⁹¹ *See* Compl. at 6 & nn.37, 39.

⁹² Schmitt Resp. at 5; *id.*, attach. C. The actual invoices for travel and lodging paid by Axiom on behalf of the Federal Committee total \$935.12. *Id.*, attach. C. According to the Response, the reported reimbursements to Axiom as disclosed on the Federal Committee's 2022 April Quarterly Report include amounts paid to Axiom for other expenses not related to the U.S. border trip. Schmitt Resp. at 5 n.18; *see also* Schmitt for Senate, Amended 2022 April Quarterly Report at 160 (July 7, 2022), <https://docquery.fec.gov/pdf/361/202207079517840361/202207079517840361.pdf>.

⁹³ Schmitt Resp. at 5-6.

1 Respondent's *de minimis* use of state campaign assets (*i.e.*, the use of two photographs owned by
2 the State Committee), we recommend that the Commission exercise its prosecutorial discretion
3 pursuant to *Heckler v. Chaney* to dismiss the allegations that Schmitt, the Federal Committee,
4 and the State Committee violated the Act's soft money ban at 52 U.S.C. § 30125(e)(1)(A) in
5 connection with the social media accounts, website, State Committee photographs of Schmitt,
6 and the use of state resources to aid the federal campaign. We further recommend that the
7 Commission dismiss as a matter of prosecutorial discretion the allegations that the Federal
8 Committee failed to report in-kind contributions in violation of 52 U.S.C. § 30104(b).

9 **C. The Commission Should Find No Reason to Believe Schmitt, Schmitt for**
10 **Senate, and Save Missouri Values Violated the Coordination Provisions**

11 According to the Complaint, SMV, which is an IEOPC, coordinated expenditures with
12 the Federal Committee through the use of common vendors resulting in the making and
13 acceptance of contributions exceeding the Act's source and amount limitations in violation of
14 52 U.S.C. §§ 30116(a), (f), 30118(a), and that the Federal Committee failed to report those in-
15 kinds in violation of 52 U.S.C. § 30104(b).⁹⁸ The Complaint alleges that the Federal Committee
16 and the IEOPC each separately paid three of the same vendors — MGS Consulting, Holloway
17 Consulting, and Gober Group, LLC — during the 2021 election cycle.⁹⁹ While SMV
18 acknowledges using the common vendors with the Federal Committee, it denies that it engaged
19 in impermissible coordination with the Federal Committee because none of the common vendors
20 employed by the IEOPC and the Federal Committee produced communications for SMV.¹⁰⁰
21 Schmitt and the Federal Committee also assert that none of the three common vendors identified

⁹⁸ Compl. at 8-9.

⁹⁹ *Id.*

¹⁰⁰ Save Missouri Values Resp. at 1-2 (July 25, 2022).

1 in the Complaint created, produced, or distributed communications as a commercial venture for
2 the Federal Committee or SMV.¹⁰¹ Each of the relevant Respondents argues that, because none
3 of the common vendors produced communications for either the Federal Committee or the
4 IEOPC, the conduct prong of the coordination rules is not satisfied.¹⁰²

5 The Act prohibits corporations from making contributions to federal candidates, and
6 likewise bars candidates, political committees (other than independent expenditure-only
7 political committees and committees with hybrid accounts), and other persons, from knowingly
8 accepting or receiving corporate contributions.¹⁰³ The Act prohibits any person from making
9 contributions to any candidate and the candidate's authorized political committee in excess of
10 the limits at 52 U.S.C. § 30116(a), and candidate committees are prohibited from knowingly
11 accepting excessive contributions.¹⁰⁴

12 Under the Act, a "contribution" includes "any gift, subscription, loan, advance, or deposit
13 of money or anything of value made by any person for the purpose of influencing any election
14 for Federal office."¹⁰⁵ The phrase "anything of value" includes "all in-kind contributions,"
15 which in turn include "coordinated expenditures," that is, expenditures "made by any person in
16 cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate, his
17 [or her] authorized committees, or their agents."¹⁰⁶

¹⁰¹ Schmitt Resp. at 7.

¹⁰² *Id.*; Save Missouri Values Resp. at 1.

¹⁰³ 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(a), (d).

¹⁰⁴ 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(b), 110.9. For the 2021-2022 election cycle, individuals were permitted to contribute a maximum of \$2,900 to a candidate or candidate committee per election. Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021).

¹⁰⁵ 52 U.S.C. § 30101(8)(A); *accord* 11 C.F.R. § 100.52.

¹⁰⁶ 11 C.F.R. § 100.52(d); *see also* 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

1 The Commission's regulations provide a three-part test for determining when a
 2 communication is a coordinated expenditure.¹⁰⁷ The communication must: (1) be paid for by a
 3 third party; (2) satisfy one of five "content" standards listed in 11 C.F.R. § 109.21(c); and
 4 (3) satisfy one of six "conduct" standards listed in 11 C.F.R. § 109.21(d).¹⁰⁸ All three prongs
 5 must be satisfied for a communication to be considered coordinated.¹⁰⁹ Any person who is
 6 otherwise prohibited from making contributions or expenditures under any part of the Act or
 7 Commission regulations is prohibited from paying for a coordinated communication.¹¹⁰ IEOPCs
 8 are prohibited from making contributions to candidates and their authorized committees.¹¹¹

9 Here, the first two parts of the coordination test do not appear to be satisfied. Although
 10 SMV made payments to three common vendors, the Complaint does not identify any specific
 11 communications for which SMV paid that may have been coordinated with the Federal
 12 Committee, thereby failing both the payment and content prongs of the coordinated
 13 communications test. Therefore, there is no need to reach the conduct prong of the coordination
 14 analysis.¹¹²

¹⁰⁷ 11 C.F.R. § 109.21(a)-(b).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*; *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

¹¹⁰ 11 C.F.R. § 109.22.

¹¹¹ *See* 52 U.S.C. §§ 30116(f), 30118(a); AO 2010-11 at 2-3 (Commonsense Ten).

¹¹² The conduct standards listed in 11 C.F.R. § 109.21(d) are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. While the Complaint identifies three common vendors, it presents no information that they were employed to create, produce, or distribute any communication for either SMV or the Federal Committee. Compl. at 8-9; 11 C.F.R. § 109.21(d)(4)(i) (requiring that the "person paying for the communication . . . contracts with or employs a commercial vendor . . . to create, produce, or distribute the communication"). Both SMV and the Federal Committee specifically deny that these three common vendors were retained for those types of services. Schmitt Resp. at 6-7; SMV Resp. at 1-2. Further, these denials are supported by a review of both SMV's and the Federal Committee's expenditures during the 2022 election cycle: SMV's payments made to MGS Consulting and Holloway Consulting are described for the purpose of "finance consulting," and its expenditures to The Gober Group were made for "legal consulting," while the Federal Committee reported disbursements to MGS Consulting

1 Accordingly, we recommend that the Commission find no reason to believe that Save
 2 Missouri Values violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and failing
 3 to report excessive and prohibited in-kind contributions in the form of coordinated
 4 communications, and that the Federal Committee violated §§ 30104(b), 30116(f), and 30118(a)
 5 by knowingly accepting and failing to report the in-kind contributions.

6 **D. The Commission Should Find No Reason to Believe Axiom Research and**
 7 **Remington Research Made, and Schmitt for Senate Received, Prohibited or**
 8 **Excessive In-Kind Contributions Through the Publication of Polling Results**

9 The Complaint alleges that Axiom Strategies and its subsidiary, Remington Research
 10 Group, distributed at least five polls of Missouri's 2022 Republican senate primary "repeatedly"
 11 showing Schmitt in first place, as part of an effort to directly benefit Schmitt and Schmitt for
 12 Senate.¹¹³ According to the Complaint, Axiom and Remington Research consistently showing
 13 the polling results in a light favorable to Schmitt, resulting in the companies making, and Schmitt
 14 and the Federal Committee receiving, prohibited in-kind contributions in violation of 52 U.S.C.
 15 § 30118(a).¹¹⁴ While the Federal Committee disclosed 49 payments totaling \$150,000 to Axiom
 16 Strategies since May 19, 2021, the Complaint alleges that it failed to report in-kind contributions
 17 from Axiom Strategies or Remington Research for the publication of the favorable polling in

as "fundraising commission," disbursements to Holloway Consulting as "fundraising services," and disbursements to The Gober Group as "legal fees." See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?recipient&data_type=processed&committee_id=C00776385&recipient_name=Gober&recipient_name=Holloway&recipient_name=MGS&two_year_transaction_period=2022 (last visited Sept. 19, 2023) (showing all disbursements by Save Missouri Values to MGS Consulting, Holloway Consulting, and The Gober Group during the 2022 election cycle); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00775015&recipient_name=MGS+CONSULTING&recipient_name=The+Gober+Group&recipient_name=holloway+consulting&two_year_transaction_period=2022 (last visited Sept. 19, 2023) (showing all disbursements by the Federal Committee to MGS Consulting, Holloway Consulting, and The Gober Group during the 2022 election cycle).

¹¹³ Compl. at 4-5.

¹¹⁴ *Id.* at 5.

1 violation of 52 U.S.C. § 30104(b).¹¹⁵

2 Respondents assert that the polls were conducted independently of Schmitt and the
3 Federal Committee.¹¹⁶ Axiom and Remington Research Group deny that the polling services in
4 question constitute in-kind contributions to Schmitt and the Federal Committee because another
5 client, *Missouri Scout*, commissioned the polls in its capacity as a press entity, and therefore the
6 press exemption applies.¹¹⁷ Schmitt and the Federal Committee likewise deny that the Federal
7 Committee conducted the polling identified in the Complaint, stating that the polls were all
8 conducted by Remington Research Group and were commissioned by *Missouri Scout*, which
9 they describe as “a private news service covering Missouri state politics.”¹¹⁸ The Responses also
10 provide a link to the *RealClearPolitics* webpage displaying the poll results, along with the results
11 of 26 polls conducted by five entities (*Missouri Scout*, Remington Research Group, the Trafalgar
12 Group, Survey USA, and Emerson College) in connection with the 2022 Missouri Senate
13 Election; clicking on the polls listed under the Remington Research Group name opens up
14 detailed poll results and language stating that it was a “[s]urvey conducted by Remington
15 Research Group on behalf of [t]he *Missouri Scout*.”¹¹⁹

16 As discussed above, the Act prohibits corporations from making contributions to federal
17 candidates or their committees, and likewise bars federal candidates or their committees from

¹¹⁵ *Id.* at 4.

¹¹⁶ Axiom Resp. at 1 (Aug. 24, 2022); Remington Rsch. Grp. Resp. at 1 (Aug. 25, 2022); Schmitt Resp. at 3-4.

¹¹⁷ Axiom and Remington Research Group filed separate responses; however, Remington Research Group adopted the response submitted by Axiom Strategies. Axiom Resp. at 1; Remington Rsch. Grp. Resp. at 1.

¹¹⁸ Schmitt Resp. at 3-4; *see also MO Scout Polling*, MO. SCOUT, <https://moscout.com/polls> (last visited Sept. 19, 2023) (linking to polls dating back to 2018).

¹¹⁹ Axiom Resp. at 1.; attach. A (including link and copy of poll result); Schmitt Resp. at 3, attach. B (same); REALCLEARPOLITICS.COM, Polls, 2022 Missouri Senate Primary, <https://www.realclearpolitics.com/epolls/2022/senate/Missouri.html> (last visited Apr. 25, 2023).

1 knowingly accepting or receiving corporate contributions.¹²⁰ The Act also prohibits
2 contributions in excess of the limits at 52 U.S.C. § 30116(a).¹²¹ Further, under Commission
3 regulations, a contribution from an LLC is permissible if the LLC is treated as a partnership for
4 tax purposes and has not elected to be treated as a corporation by the Internal Revenue Service
5 (“IRS”).¹²² LLCs that claim corporate status or those that are publicly traded are treated as
6 corporations for purposes of the Act.¹²³ A contribution by an LLC with a single natural person
7 member that does not elect to be treated as a corporation by the IRS shall be attributed only to
8 that single member.¹²⁴

9 In light of their status as LLCs, if Axiom Strategies or Remington Research Group
10 coordinated their publication of the primary election results with the Federal Committee to
11 support Schmitt’s federal candidacy, then the published polling results could potentially
12 constitute prohibited or excessive in-kind contributions from Axiom Strategies or Remington
13 Research Group to the Federal Committee, depending on whether Axiom Strategies and
14 Remington Research Group, as LLCs, elect to be treated as corporations for tax purposes or are
15 LLCs with a single natural person member. It is unnecessary to establish the LLCs’ corporate
16 tax status or analyze whether the polling was coordinated with the Federal Committee, however,
17 because the available information provides credible information that the published polling in
18 question was commissioned by *Missouri Scout*, which describes itself as a private news service

¹²⁰ 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(a), (d).

¹²¹ 52 U.S.C. § 30116(a);(1)(A); *accord* 11 C.F.R. § 110.1(b).

¹²² 11 C.F.R. § 110.1(g).

¹²³ *Id.* § 110.1(g)(3).

¹²⁴ *Id.* § 110.1(g)(4).

1 covering Missouri state politics.¹²⁵ *Missouri Scout*'s polls posted on the RealClearPolitics
 2 website, and the copies of the polling survey results provided by Axiom Strategies and the
 3 Federal Committee, clearly show a disclaimer stating: "Survey conducted by Remington
 4 Research Group on behalf of [t]he *Missouri Scout*."¹²⁶ Further, the RealClearPolitics webpage
 5 published the results of polling conducted by five other entities, some which also show Schmitt
 6 in the lead in the polls.¹²⁷ Finally, it appears that the Federal Committee paid two other
 7 companies, Cannon Research Group and WPAI, for polling services.¹²⁸ Therefore, there is no
 8 information available showing that the Federal Committee engaged either Axiom Strategies or
 9 Remington Research Group to conduct polling on its behalf, or that it coordinated the polling or
 10 its release with either company.¹²⁹

¹²⁵ According to its website, *Missouri Scout* is a political news service covering Missouri State politics and has been operated by Dave Drebes since 2007. *About Dave*, MO. SCOUT, <https://moscout.com/about> (last visited Sept. 19, 2023). According to filings with the Missouri Secretary of State, "Missouri Scout" is a fictitious name filed by NextFlood Publishing LLC, whose organizer is David Drebes. Mo. Sec'y of State, *Registration of Fictitious Name* (July 11, 2007), <https://bsd.sos.mo.gov/Common/CorrespondenceItemViewHandler.ashx?IsTIFF=true&filedDocumentid=4755381&version=1> (reflecting registration of "Missouri Scout" as a fictitious name by NextFlood Publishing LLC, signed by David Drebes, and that the registration expired July 11, 2012).

¹²⁶ *Polls: 2022 Missouri Senate Primary*, REALCLEARPOLITICS, <https://www.realclearpolitics.com/epolls/2022/senate/Missouri.html> (last visited Sept. 19, 2023); Schmitt Resp., attach. B; Axiom Strategies Resp., attach. A.

¹²⁷ *Polls: 2022 Missouri Senate Primary*, REALCLEARPOLITICS, <https://www.realclearpolitics.com/epolls/2022/senate/Missouri.html> (last visited Sept. 19, 2023).

¹²⁸ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00775015&two_year_transaction_period=2022&disbursement_description=polling (last visited Sept. 19, 2023) (showing all disbursements by the Federal Committee for "polling" during the 2022 election cycle).

¹²⁹ Compl. at 4. Furthermore, there is no information indicating that *Missouri Scout* was not acting within its legitimate press functions when it commissioned the polling or distributed them on the RealClearPolitics website or that the Federal Committee coordinated the published polling results with *Missouri Scout*. See, e.g., F&LA at 2, MUR 7148 (Liberty Principles PAC, *et al.*) (dismissing a coordinated communication allegation without determining whether the publisher of a local community newspaper was covered by the press exemption, because even if the exemption did not apply, the record did not contain sufficient information to give rise to a reasonable inference that the publisher coordinated the content of its publications with an IEOPC and a state and federal committee). The Act and Commission regulations exempt from the definition of "contribution" and "expenditure" "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station . . . unless the facility is owned or controlled by any political party, political committee, or candidate. 11 C.F.R. §§ 100.73, 100.132; see also 52 U.S.C. § 30101(9)(B)(i). This exclusion is generally referred to as the "press

1 Accordingly, we recommend that the Commission find no reason to believe that Axiom
 2 Strategies and Remington Research Group made, and the Federal Committee knowingly
 3 accepted, prohibited in-kind corporate or excessive contributions in violation of 52 U.S.C.
 4 §§ 30118(a), 30116(a)(1)(A), (f) in connection with the publication of the polling results, and no
 5 reason to believe that the Federal Committee failed to report such contributions in violation of
 6 52 U.S.C. § 30104(b).

7 **III. RECOMMENDATIONS**

- 8 1. Dismiss as a matter of prosecutorial discretion the allegations that Eric Schmitt,
 9 Schmitt for Senate and Janna Rutland in her official capacity as treasurer, and
 10 Schmitt for Missouri violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R.
 11 § 110.3(d) in connection with the use of non-federal funds and transfer of non-
 12 federal assets in connection with a federal election;
- 13 2. Dismiss as a matter of prosecutorial discretion the allegations that Schmitt for
 14 Senate and Janna Rutland in her official capacity as treasurer failed to report
 15 receipt of excessive or prohibited in-kind contributions in connection with the use
 16 of non-federal funds and transfer of non-federal assets in violation of 52 U.S.C.
 17 § 30104(b);
- 18 3. Find no reason to believe that Schmitt for Senate and Janna Rutland in her official
 19 capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a) by
 20 knowingly accepting and failing to report excessive and prohibited in-kind
 21 contributions in the form of coordinated communications;
 22
- 23 4. Find no reason to believe that Save Missouri Values and Cabell Hobbs in his
 24 official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(a), and
 25 30118(a) by making and failing to report excessive and prohibited in-kind
 26 contributions in the form of coordinated communications;
- 27 5. Find no reason to believe that Axiom Strategies, LLC, violated 52 U.S.C.
 28 §§ 30116(a)(1)(A) or 30118(a) or by making excessive or prohibited in-kind
 29 contributions to Schmitt for Senate and Janna Rutland in her official capacity as
 30 treasurer in connection with the publication of polling results;
- 31 6. Find no reason to believe that Remington Research Group, LLC, violated
 32

exemption” or “media exemption.” See AO 2010-08 at 3 (Citizens United). Whether *Missouri Scout* was acting within its legitimate press functions when it commissioned political polls is not at issue in this matter.

