



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

October 30, 2023

**VIA EMAIL**

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RE: MUR 8027  
Schmitt for Senate, *et al.*

Dear Messrs. Gober and Wang:

On July 18, 2022, the Federal Election Commission notified your clients, Schmitt for Senate and Janna Rutland in her official capacity as treasurer (“Schmitt for Senate”), Schmitt for Missouri, Eric Schmitt, Save Missouri Values and Cabell Hobbs in his official capacity as treasurer, Axiom Strategies, LLC, and Remington Research Group, LLC, of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the Complaint was included in that notification. On July 25, August 24 and 26, and September 1, 2022, we received your clients’ Responses to the Complaint.

Upon review of the allegations in the Complaint and information provided by your clients, on October 19, 2023, the Commission determined to dismiss as a matter of prosecutorial discretion the allegations that Eric Schmitt, Schmitt for Senate, and Schmitt for Missouri violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with the use of non-federal funds and transfer of non-federal assets in connection with a federal election. In addition, the Commission determined to dismiss as a matter of prosecutorial discretion the allegation that Schmitt for Senate failed to report receipt of excessive or prohibited in-kind contributions in connection with the use of non-federal funds and transfer of non-federal assets in violation of 52 U.S.C. § 30104(b).

Further, the Commission found that there is no reason to believe that Schmitt for Senate violated 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a) by knowingly accepting and failing to report excessive and prohibited in-kind contributions in the form of coordinated communications. In addition, the Commission found no reason to believe that Save Missouri Values violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a) by making and failing to report excessive and prohibited in-kind contributions in the form of coordinated communications. The Commission also found no reason to believe that Axiom Strategies, LLC, and Remington

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Letter to Messrs. Gober and Wang  
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Research Group, LLC, violated 52 U.S.C. §§ 30116(a)(1)(A) or 30118(a) by making excessive or prohibited in-kind contributions to Schmitt for Senate in connection with the publication of polling results. Finally, the Commission found no reason to believe that Schmitt for Senate violated 52 U.S.C. §§ 30116(f), 30118(a), and 30104(b) by knowingly accepting and failing to report excessive or prohibited in-kind contributions in connection with the publication of polling results. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's findings is enclosed.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650 or [cgallagher@fec.gov](mailto:cgallagher@fec.gov).

Sincerely,



Ana J. Peña-Wallace  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Schmitt for Senate and Janna Rutland  
4 in her official capacity as treasurer  
5 Schmitt for Missouri  
6 Eric Schmitt  
7 Save Missouri Values and Cabell Hobbs  
8 in his official capacity as treasurer  
9 Axiom Strategies, LLC  
10 Remington Research Group, LLC

**MUR 8027**

11  
12 **I. INTRODUCTION**

13 This matter involves alleged violations of the federal soft money ban arising from the  
14 alleged use of assets from a federal candidate’s state campaign and the receipt of possible  
15 excessive and prohibited in-kind contributions from an independent expenditure-only committee  
16 (“IEOPC”) and two research companies. The Complaint alleges that Eric Schmitt, a U.S.  
17 Senator from Missouri and former Missouri Attorney General, State Treasurer, and State  
18 Senator, used assets from his state committee, Schmitt for Missouri (the “State Committee”), to  
19 support his federal committee, Schmitt for Senate and Janna Rutland in her official capacity as  
20 treasurer (the “Federal Committee”), in connection with Schmitt’s 2022 campaign for U.S.  
21 Senate, in violation of 52 U.S.C. § 30125(e)(1)(A).

22 Specifically, the Complaint alleges that by posting on his personal social media accounts  
23 promoting his federal and state candidacies and his official acts as Missouri Attorney General,  
24 Schmitt was improperly making prohibited in-kind contributions to the Federal Committee; that  
25 the State Committee donated its website to the Federal Committee resulting in the making and  
26 acceptance of an in-kind contribution that the Federal Committee did not report; and that the  
27 Federal Committee republished photographs owned by the State Committee to aid Schmitt’s  
28 federal campaign. The Complaint further alleges that the Federal Committee expended resources

1 from Schmitt’s state Attorney General office to promote his federal campaign in connection with  
2 a photograph used in a federal campaign mailer, and the use of state funds for a trip to the U.S.  
3 border.

4 In addition, the Complaint alleges that Save Missouri Values (“SMV”), an IEOPC, and  
5 the Federal Committee coordinated their communications using common vendors, which  
6 resulted in SMV making, and the Federal Committee accepting, excessive and prohibited in-kind  
7 contributions in violation of 52 U.S.C. §§ 30116(a), (f), and 30118(a). The Complaint further  
8 alleges that research consultant company Axiom Strategies, LLC, and its subsidiary, Remington  
9 Research Group, LLC, made, and Schmitt and the Federal Committee accepted, prohibited in-  
10 kind corporate contributions in violation of 52 U.S.C. § 30118(a) when the research groups  
11 published polling results that appeared favorable to Schmitt, purportedly for the purpose of  
12 aiding Schmitt’s election in the 2022 Republican primary for U.S. Senate.

13 Schmitt, the Federal Committee, and the State Committee deny the allegations, asserting  
14 that Schmitt personally created the social media accounts at issue and posted on those accounts  
15 himself, thus rendering this conduct permissible pursuant to the volunteer and internet  
16 exemptions. Respondents further maintain that the website domain name that Schmitt used in  
17 2008 for his campaign for Missouri state senator, [www.schmittforsenate.com](http://www.schmittforsenate.com), was purchased by  
18 the Federal Committee through a broker, resulting in no contribution from the State Committee  
19 to the Federal Committee. Respondents also state that Schmitt was not responsible for the mailer  
20 at issue and that his federal campaign paid all of Schmitt’s travel and lodging expenses for his  
21 trip to the U.S. border.

22 SMV, Schmitt, and the Federal Committee maintain that, during the 2022 election cycle,  
23 they retained three common vendors, but that no in-kind contribution resulted because the

1 vendors were not employed to, and did not, produce any communications. Finally, Schmitt, the  
2 Federal Committee, Axiom Strategies, and Remington Research Group assert that the polls at  
3 issue were not commissioned by either the Federal or State Committees, but rather that *Missouri*  
4 *Scout*, a news service, commissioned Remington Research to conduct the polls independent of  
5 Schmitt and his Federal Committee.

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

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<sup>1</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

## 1 II. FACTUAL AND LEGAL ANALYSIS

### 2 A. Background

3 Eric Schmitt is a current U.S. Senator from Missouri. Schmitt won the Republican  
4 primary on August 2, 2022, and the general election on November 8, 2022.<sup>2</sup>

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

11 During Schmitt's state senate campaign and tenure, the State Committee maintained a  
12 website with the domain name, [www.schmittforsenate.com](http://www.schmittforsenate.com) (the "Schmitt website"), from 2008  
13 to 2016.<sup>5</sup> The website went dormant and was not available on the internet from 2016 until  
14 March 2021, when the Federal Committee purchased the domain name from a third-party broker

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<sup>2</sup> *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](https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/PrimaryElectionAugust2_2022.pdf) (showing official election results for the August 2, 2022 Missouri primary election).

<sup>3</sup> *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](https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/November3_2020GeneralElection.pdf) (showing election results for the November 3, 2020 Missouri general election).

<sup>4</sup> Schmitt for Missouri, Amended Statement of Committee Organization at 1, Missouri Ethics Commission (Aug. 25, 2023), <https://mec.mo.gov/DMS/DOC/V/630365>.

<sup>5</sup> Compl. at 4.

1 and began maintaining the website.<sup>6</sup> While the Federal Committee maintained its own social  
 2 media accounts on Twitter and Instagram, which were managed by campaign staff and  
 3 consultants, Schmitt personally created his own Facebook, Twitter and Instagram social media  
 4 accounts on which the Respondents assert that he posted the vast majority of content.<sup>7</sup> In  
 5 addition, Schmitt maintained a Twitter account in his official capacity as Missouri Attorney  
 6 General. The State Committee has not disclosed any payments or transfers to the Federal  
 7 Committee.

8 SMV is an IEOPC that first registered with the Commission in 2021. During the 2022  
 9 election cycle, SMV disclosed making \$3,413,964 in independent expenditures in support of  
 10 Schmitt's federal candidacy: \$750,380 was spent to oppose Schmitt's opponent in the general  
 11 election and \$2,767,125 was spent to oppose his opponents in the primary election.<sup>8</sup>

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<sup>6</sup> 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/](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 also shows that the website was 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 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/>].

<sup>7</sup> 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](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.

<sup>8</sup> *Save Missouri Values: Spending 2021-2022*, FEC.GOV <https://www.fec.gov/data/committee/C00776385/?tab=spending&cycle=2022> (last visited Sept. 19, 2023).

1           Axiom Strategies is a political consulting firm specializing in general campaign strategy,  
2 direct voter contact, field strategy, political polling and analysis, media buying, campaign  
3 compliance, fundraising, opposition research, and public affairs.<sup>9</sup> Axiom’s subsidiary company,  
4 Remington Research Group, is a campaign consulting firm that primarily conducts polls.<sup>10</sup>  
5 During the 2022 election cycle, Schmitt’s federal committee disbursed a total of \$1,111,130 to  
6 Axiom for consulting, travel, and advertising services, and \$87,701 to Remington Research for  
7 digital advertising services.<sup>11</sup>

8           **B.     The Commission Exercises Its Prosecutorial Discretion to Dismiss the**  
9           **Allegations that Schmitt, Schmitt for Senate, and Schmitt for Missouri**  
10           **Violated the Act’s Soft Money Ban**

11           The Complaint alleges that Schmitt and the State Committee used non-federal funds to  
12 support his Federal Committee in violation of 52 U.S.C. § 30125(e)(1)(A) and that the Federal  
13 Committee failed to report the resulting in-kind contributions in violation of 52 U.S.C.  
14 § 30104(b). The alleged soft money violations fall under two general categories. The first is the  
15 Federal Committee’s alleged use of State Committee assets without charge, *i.e.*, the State  
16 Committee’s domain name [www.schmittforsenate.com](http://www.schmittforsenate.com), the use of State Committee-owned  
17 photographs of Schmitt in support of the federal campaign, and Schmitt’s use of his personal  
18 social media accounts to promote both his acts as state Attorney General and his federal and state

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<sup>9</sup> AXIOM STRATEGIES, <https://axiomstrategies.com/> (last visited Sept. 19, 2023).

<sup>10</sup> REMINGTON RSCH. GRP., <https://remingtonresearchgroup.com/> (last visited Sept. 19, 2023).

<sup>11</sup> *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](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](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).



1 candidacies.<sup>12</sup> The second category is Schmitt and the Federal Committee’s alleged use of his  
2 state Attorney General office’s resources to aid his federal candidacy through the use of  
3 photographs of Schmitt as Attorney General on a federal campaign mailer and the promotion of  
4 his trip to the U.S. border in his official capacity as Missouri Attorney General on the Federal  
5 Committee’s Twitter account and Schmitt’s personal Facebook account.<sup>13</sup> Schmitt, the Federal  
6 Committee, and the State Committee (collectively the “Schmitt Respondents”) filed a joint  
7 response denying the allegations.<sup>14</sup> We discuss both categories in turn below.

8         The Act prohibits federal candidates, their agents, and entities, such as state committees,  
9 that are established, financed, maintained, or controlled (“EFMC’d”) by federal candidates from  
10 soliciting, receiving, directing, transferring, or spending funds in connection with any federal or  
11 non-federal election “unless the funds are subject to the limitations, prohibitions, and reporting  
12 requirements of this Act.”<sup>15</sup> The Commission has determined that the state campaign committee  
13 of a federal candidate is EFMC’d by the federal candidate as a matter of law and is acting on the  
14 candidate’s behalf.<sup>16</sup>

15         Further, the Commission’s regulations prohibit “[t]ransfers of funds or assets from a  
16 candidate’s campaign committee or account for a non[-]federal election to his or her principal

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<sup>12</sup> Compl. at 2-4.

<sup>13</sup> *Id.* at 5-8.

<sup>14</sup> Schmitt Resp.

<sup>15</sup> 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).

<sup>16</sup> 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.*).

1 campaign committee or other authorized committee for a federal election.”<sup>17</sup> The prohibition on  
2 transferring funds applies broadly and includes payment by the state committee for services  
3 received by the federal committee.<sup>18</sup> Nonetheless, the Commission has permitted the transfer of  
4 a non-federal committee’s assets to the campaign committee of a candidate for federal office  
5 where the federal committee pays the fair market value or the “usual and normal charge” for the  
6 use of such assets.<sup>19</sup> When the state committee does not own the asset, the federal committee  
7 must pay the usual and normal charge for use of the asset from the proper owner.<sup>20</sup> If a  
8 committee pays fair market value for a good or service, then the transaction is not considered a  
9 contribution.<sup>21</sup>

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<sup>17</sup> 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).

<sup>18</sup> *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 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, 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).

<sup>19</sup> *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).

<sup>20</sup> *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).

<sup>21</sup> *See* 11 C.F.R. § 100.52(d)(1).

1 Political committees must report their financial activity, including their receipts and  
2 disbursements, in accordance with the provisions of the Act and Commission regulations.<sup>22</sup>  
3 Each political committee must report the name, mailing address, occupation, and employer of  
4 any individual who contributes more than \$200 to the committee in a calendar year, along with  
5 the amount and date of the individual’s contributions.<sup>23</sup> Among other required itemizations, the  
6 report must include the identification of each political committee making a contribution to the  
7 reporting committee, together with the date and amount of the contribution.<sup>24</sup>

8 1. Federal Committee’s Use of State Committee Assets

9 a. Federal Committee’s Use of the Schmitt Website

10 The Complaint alleges that the State Committee transferred the Schmitt website domain  
11 name to the Federal Committee without charge, resulting in an in-kind contribution and that the  
12 Federal Committee failed to disclose the receipt of this in-kind contribution.<sup>25</sup> According to the  
13 Complaint, the State Committee owned the Schmitt website and used it to promote Schmitt’s  
14 2008 state senate candidacy.<sup>26</sup> The Complaint claims that the Schmitt website “was no longer  
15 publicly available” by 2016, and that in March 2021, 12 days prior to Schmitt’s U.S. Senate  
16 candidacy announcement, the Schmitt website “went live” again and was fully redesigned to  
17 promote Schmitt’s federal candidacy.<sup>27</sup> The Complaint alleges that while the Federal Committee  
18 paid the Prosper Group for website design and maintenance on May 19, 2021, it failed to pay for

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<sup>22</sup> 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

<sup>23</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

<sup>24</sup> 52 U.S.C. § 30104(b)(3)(B); 11 C.F.R. § 104.3(a)(4)(ii).

<sup>25</sup> Compl. at 4.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

1 purchase of the domain name.<sup>28</sup>

2           The Schmitt Respondents acknowledge that the Schmitt website was used by Schmitt in  
3 2008 for his Missouri State Senate race, but assert that on March 11, 2021, the domain name  
4 registration for that website changed ownership from the State Committee to the Federal  
5 Committee and that The Prosper Group acted as the broker for the sale.<sup>29</sup> According to the  
6 Response, the Federal Committee paid \$1,500 to the broker to purchase the domain name at fair  
7 market value; a copy of a receipt dated March 29, 2021, provided with the Response shows a  
8 \$1,500 charge for “Dev: Website” “AG Website.”<sup>30</sup> The Federal Committee states that the paid  
9 invoice “was for the purchase of the website domain name” and that “[a]ctual work on  
10 developing the website was billed separately.”<sup>31</sup>

11           The transfer of the Schmitt website from the State Committee to the Federal Committee  
12 would not constitute a contribution to the Federal Committee if the Federal Committee paid the  
13 State Committee the fair market value or the “usual and normal charge” for the asset.<sup>32</sup> Here, the  
14 Federal Committee’s disclosure reports filed with the Commission do not reflect a \$1,500  
15 payment in March 2021, but do show that, on May 19, 2021, the Federal Committee disclosed a

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<sup>28</sup> *Id.*

<sup>29</sup> Schmitt Resp. at 3.

<sup>30</sup> *Id.* at 3; *id.*, attach. A.

<sup>31</sup> *Id.* at 3 n.9.

<sup>32</sup> 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).

1 payment of \$3,640 to The Prosper Group for “website design and maintenance.”<sup>33</sup> If the \$1,500  
2 cost to acquire the domain name was part of the \$3,640 payment disclosed by the Federal  
3 Committee, it appears that the website was acquired at fair market value. Publicly available  
4 information about the value of websites can be found at GoDaddy’s “Domain Appraisal Tool,”  
5 which currently values the Schmitt website domain name at \$1,036.<sup>34</sup> Given that this amount is  
6 only slightly lower than the amount allegedly actually paid, it appears that the Federal  
7 Committee may have paid the fair market value for the domain name; therefore, there is  
8 insufficient information to justify a reasonable inference that the transfer constituted an improper  
9 transfer of assets in violation of 11 C.F.R. § 110.3(d).<sup>35</sup>

10 b. Federal Committee’s Use of State Committee’s Images of Schmitt

11 The Complaint alleges that Respondents violated the soft money ban when the Federal  
12 Committee used three state campaign photos to support Schmitt’s federal candidacy: (1) a  
13 photograph originally distributed on June 1, 2017, by Schmitt’s campaign for state treasurer that  
14 was later prominently displayed on the Federal Committee’s Facebook page; (2) a photograph  
15 from November 4, 2016, originally paid for by the State Committee, posted on Schmitt’s state  
16 campaign Facebook page, used in an August 13, 2020, state campaign advertisement promoting  
17 Schmitt’s candidacy for Attorney General and later featured on Schmitt’s website promoting his  
18 federal candidacy; and (3) a photograph from October 19, 2019, displaying the disclaimer “Paid

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<sup>33</sup> 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.

<sup>34</sup> *Domain Appraisals*, GODADDY, <https://www.godaddy.com/domain-value-appraisal/appraisal/?domainToCheck=www.schmittforsenate.com> (last visited June 15, 2023).

<sup>35</sup> See F&LA at 5-6, MURs 6474 and 6534 (Citizens for Mandel) (finding no reason to believe 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 and where there was no information on which to conclude that the transfer of the website was made at less than fair market value).

1 for by Schmitt for Missouri, John Hessel, Treasurer,” which was also featured on Schmitt’s U.S.  
2 Senate campaign website.<sup>36</sup>

3           The Federal Committee explains that the two photographs used during 2020 on its  
4 website and the Federal Committee’s Facebook page, which were previously used in the State  
5 Committee’s campaign materials published in 2017 and 2019, were publicly available on social  
6 media at the time the Federal Committee used them.<sup>37</sup> In addition, the Federal Committee  
7 asserts that the photographs constitute only a “very small” portion of the content on its website  
8 and Facebook page.<sup>38</sup> The photograph of Schmitt originally published by the State Committee in  
9 2017 appears on the Federal Committee’s website in the top third of the website’s homepage and  
10 comprises five seconds of a federal campaign video featured on the Federal Committee’s  
11 Facebook page that lasted 1 minute and 45 seconds.

12           In the past the Commission has declined to pursue matters where it appeared that the  
13 amount in violation was low.<sup>39</sup> Given the available information showing that the Federal  
14 Committee’s use of the two photographs from the State Committee constituted a small portion of  
15 its website and Facebook page, and that the use of the photograph in the video was *de minimis*,  
16 declining to further pursue this allegation as an exercise of prosecutorial discretion would be

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<sup>36</sup> Compl. at 9 nn.63-68. 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.

<sup>37</sup> Schmitt Resp. at 7-8.

<sup>38</sup> *Id.* at 7-9.

<sup>39</sup> 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).

1 consistent with similar prior matters.<sup>40</sup>

2 c. Use of Schmitt’s Personal Social Media Accounts

3 According to the Complaint, Schmitt’s personal Facebook, Twitter, and Instagram  
4 accounts regularly promoted his official acts as state Attorney General and his candidacies for  
5 state and federal office.<sup>41</sup> The Complaint further alleges that the Federal Committee failed to  
6 disclose the use of Schmitt’s “campaign and official social media accounts” as in-kind  
7 contributions to the Federal Committee on its reports filed with the Commission.<sup>42</sup>

8 The Schmitt Respondents deny the allegations and maintain that Schmitt “personally  
9 created” the Facebook, Twitter and Instagram accounts referenced in the complaint, and that “he  
10 personally posts the vast majority of content on these accounts.”<sup>43</sup> Therefore, Respondents  
11 maintain that under the volunteer and internet exemptions, the content and use of the accounts do  
12 not constitute in-kind contributions.<sup>44</sup> The Schmitt Respondents argue that because the State  
13 Committee made no expenditures for any of the social media content appearing on those  
14 accounts, Schmitt’s social media posts on these accounts are not unreported in-kind contributions  
15 from the State Committee to the Federal Committee.<sup>45</sup>

16 Commission regulations provide that the value of services provided without

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<sup>40</sup> 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).

<sup>41</sup> Compl. at 2-3.

<sup>42</sup> *Id.* at 2.

<sup>43</sup> Schmitt Resp. at 1- 2.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Id.*

1 compensation by any individual who volunteers on behalf of a candidate or political committee  
2 is not a contribution.<sup>46</sup> Additionally, an individual’s uncompensated personal services related to  
3 internet activities for the purpose of influencing a federal election are not a contribution.<sup>47</sup>  
4 Commission regulations further provide that the definition of “public communication” “shall not  
5 include communications over the Internet, except for communications placed for a fee on another  
6 person’s [website],” a provision referred to as the “internet exemption.”<sup>48</sup>

7 Here, the Complaint’s allegations that posts on Schmitt’s personal social media accounts  
8 constitute contributions or transfers of assets from either himself or the State Committee to the  
9 Federal Committee appear to be sufficiently rebutted by the Schmitt Respondents’ response that  
10 Schmitt himself created and regularly posted the “vast majority of content” on those social media  
11 accounts without compensation.<sup>49</sup> With regard to Schmitt’s personal Facebook page (which  
12 states that it is operated by the Federal Committee), there is no other information available  
13 indicating that Schmitt or the Federal Committee paid a fee to any third party to place posts on  
14 the internet.

15 Therefore, Schmitt’s personal posts to the social media accounts do not appear to  
16 constitute contributions from the State Committee to his Federal Committee.

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<sup>46</sup> 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); *accord* 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).

<sup>47</sup> 11 C.F.R. § 100.94.

<sup>48</sup> *Id.* § 100.26.

<sup>49</sup> Schmitt Resp. at 2.



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

2                   The second manner by which the Complaint alleges Respondents violated the soft money  
3 ban is through the use of the state Attorney General's office to promote Schmitt's federal  
4 candidacy. First, the Complaint alleges that in June 2022, the Federal Committee distributed a  
5 campaign mailer using a photograph taken by a member of the Attorney General Schmitt's staff,  
6 depicting Schmitt in his Attorney General capacity appearing with three judges from the  
7 Missouri Supreme Court at a state bicentennial celebration in August 2021.<sup>50</sup> Second, the  
8 Complaint alleges that in October 2021, Schmitt used state resources to pay for a trip to the U.S.  
9 southern border that Schmitt took in his capacity as Attorney General, along with a member of  
10 the Attorney General's staff, and then published photographs of the event on his Twitter and  
11 Facebook campaign accounts in support of his federal candidacy.<sup>51</sup> According to the Complaint,  
12 state funds were used to pay the expenses of the trip, and the use of photographs and videos of  
13 the trip on Schmitt's personal and federal campaign's social media accounts may have violated  
14 Missouri law prohibiting the use of state funds by a state officer to advocate, support, or oppose  
15 a candidate for public office.<sup>52</sup>

16                   According to the Schmitt Respondents, the Federal Committee was not responsible for  
17 the campaign mailer containing the photograph of Schmitt and the Missouri Supreme Court  
18 judges, but rather, the mailer was distributed by an independent group, Americans for Prosperity  
19 Action, supporting Schmitt's bid in the Republican primary election.<sup>53</sup> Regarding Schmitt's

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<sup>50</sup> Compl. at 5.

<sup>51</sup> Compl. at 6.

<sup>52</sup> *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>).

<sup>53</sup> Schmitt Resp. at 4-5.

1 2021 trip to the border, the Schmitt Respondents state that the Federal Committee paid for  
2 Schmitt’s travel expenses and provided copies of receipts for air travel and hotel stays along with  
3 the Response.<sup>54</sup> The Federal Committee appears to have reimbursed Axiom Strategies, its  
4 campaign consulting firm, which processed the invoices for those costs, and disclosed those  
5 payments on its 2022 April Quarterly Report.<sup>55</sup>

6 The Act prohibits any person from making, and any candidate or committee from  
7 knowingly accepting, an excessive contribution.<sup>56</sup> Expenditures made by any person in  
8 cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his  
9 authorized political committees, or their agents, shall be considered to be a contribution to such  
10 candidate.<sup>57</sup>

11 The available information does not appear to support the Complaint’s allegations that  
12 Schmitt used state government resources from the Missouri state Attorney General’s office in a  
13 manner that would benefit his federal campaign and violate the Act. As to the photograph of  
14 Schmitt in his capacity as state Attorney General with three judges of the Missouri Supreme  
15 Court, it appears that Americans for Prosperity Action, a group independent of Schmitt and his  
16 committee, is responsible for the mailer’s production and distribution and used the photograph  
17 without Schmitt’s knowledge or consent.<sup>58</sup>

18 With regard to Schmitt’s trip to the U.S. border, the Commission’s regulations require that

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<sup>54</sup> *Id.* at 5; *id.* attach. C.

<sup>55</sup> *Id.* at 5; *id.* attach. C.

<sup>56</sup> 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9.

<sup>57</sup> 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).

<sup>58</sup> Schmitt Resp. at 4-5.

1 candidate committees disclose expenses for campaign-related travel “paid for . . . from a source  
2 other than a political committee.”<sup>59</sup> The regulations further require that where an individual,  
3 other than the candidate, conducts campaign-related activities on a trip, the costs relating to the  
4 trip attributable to campaign-related activities shall be allocated on a reasonable basis.<sup>60</sup> Here,  
5 the available information shows that Schmitt took the October 2021 trip to the U.S. border along  
6 with another state Attorney General to announce the lawsuit they jointly filed in federal court on  
7 behalf of their respective states to compel the Biden Administration to resume construction of a  
8 wall along the southern U.S. border.<sup>61</sup> While on the trip, the Federal Committee’s Twitter  
9 account and Schmitt’s personal Facebook account announced Schmitt’s trip to the border and  
10 discussed the lawsuit he filed as Missouri Attorney General, and posted photos and videos of  
11 Schmitt from his trip.<sup>62</sup> Neither the photo nor the video contains any campaign message.<sup>63</sup> To  
12 the extent that the border trip is campaign-related, the Federal Committee has provided copies of  
13 paid invoices for Schmitt’s travel and lodging, which show that the Federal Committee paid for,  
14 and reported, those expenses; specifically, the Federal Committee’s 2022 April Quarterly Report  
15 shows that it reimbursed Axiom Strategies for expenses totaling \$9,146.71, which included the  
16 travel and lodging invoices.<sup>64</sup>

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<sup>59</sup> 11 C.F.R. § 106.3(b)(1).

<sup>60</sup> *Id.* § 106.3(c)(1).

<sup>61</sup> 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>.

<sup>62</sup> 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>.

<sup>63</sup> *See* Compl. at 6 & nn.37, 39.

<sup>64</sup> 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

1           The allegation that the Federal Committee used state resources in connection with  
 2 Schmitt’s travel to the U.S. border is not supported by the available information and there is an  
 3 insufficient basis to find reason to believe that the Respondents violated the Act in this regard.

4   \*   \*   \*

5           The Commission exercises its prosecutorial discretion pursuant to *Heckler v. Chaney* and  
 6 dismisses the allegations that Schmitt, the Federal Committee, and the State Committee violated  
 7 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with the use of non-federal  
 8 funds and transfer of non-federal assets in connection with a federal election. In addition, the  
 9 Commission dismisses as a matter of prosecutorial discretion the allegations that the Federal  
 10 Committee failed to report receipt of excessive or prohibited in-kind contributions in connection  
 11 with the use of non-federal funds and transfer of non-federal assets in violation of 52 U.S.C.  
 12 § 30104(b).

13           **C.       The Commission Finds No Reason to Believe Schmitt, Schmitt for Senate,**  
 14                   **and Save Missouri Values Violated the Coordination Provisions**

15           According to the Complaint, SMV, which is an IEOPC, coordinated expenditures with  
 16 the Federal Committee through the use of common vendors resulting in the making and  
 17 acceptance of contributions exceeding the Act’s source and amount limitations in violation of  
 18 52 U.S.C. §§ 30116(a), (f), 30118(a), and that the Federal Committee failed to report those in-  
 19 kinds in violation of 52 U.S.C. § 30104(b).<sup>65</sup> The Complaint alleges that the Federal Committee  
 20 and the IEOPC each separately paid three of the same vendors — MGS Consulting, Holloway

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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>.

<sup>65</sup> Compl. at 8-9.

1 Consulting, and Gober Group, LLC — during the 2021 election cycle.<sup>66</sup> While SMV  
2 acknowledges using the common vendors with the Federal Committee, it denies that it engaged  
3 in impermissible coordination with the Federal Committee because none of the common vendors  
4 employed by the IEOPC and the Federal Committee produced communications for SMV.<sup>67</sup>  
5 Schmitt and the Federal Committee also assert that none of the three common vendors identified  
6 in the Complaint created, produced, or distributed communications as a commercial venture for  
7 the Federal Committee or SMV.<sup>68</sup> Each of the relevant Respondents argues that, because none  
8 of the common vendors produced communications for either the Federal Committee or the  
9 IEOPC, the conduct prong of the coordination rules is not satisfied.<sup>69</sup>

10 The Act prohibits corporations from making contributions to federal candidates, and  
11 likewise bars candidates, political committees (other than independent expenditure-only  
12 political committees and committees with hybrid accounts), and other persons, from knowingly  
13 accepting or receiving corporate contributions.<sup>70</sup> The Act prohibits any person from making  
14 contributions to any candidate and the candidate’s authorized political committee in excess of  
15 the limits at 52 U.S.C. § 30116(a), and candidate committees are prohibited from knowingly  
16 accepting excessive contributions.<sup>71</sup>

17 Under the Act, a “contribution” includes “any gift, subscription, loan, advance, or deposit

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<sup>66</sup> *Id.*

<sup>67</sup> Save Missouri Values Resp. at 1-2 (July 25, 2022).

<sup>68</sup> Schmitt Resp. at 7.

<sup>69</sup> *Id.*; Save Missouri Values Resp. at 1.

<sup>70</sup> 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(a), (d).

<sup>71</sup> 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).

1 of money or anything of value made by any person for the purpose of influencing any election  
2 for Federal office.”<sup>72</sup> The phrase “anything of value” includes “all in-kind contributions,”  
3 which in turn include “coordinated expenditures,” that is, expenditures “made by any person in  
4 cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate, his  
5 [or her] authorized committees, or their agents.”<sup>73</sup>

6 The Commission’s regulations provide a three-part test for determining when a  
7 communication is a coordinated expenditure.<sup>74</sup> The communication must: (1) be paid for by a  
8 third party; (2) satisfy one of five “content” standards listed in 11 C.F.R. § 109.21(c); and  
9 (3) satisfy one of six “conduct” standards listed in 11 C.F.R. § 109.21(d).<sup>75</sup> All three prongs  
10 must be satisfied for a communication to be considered coordinated.<sup>76</sup> Any person who is  
11 otherwise prohibited from making contributions or expenditures under any part of the Act or  
12 Commission regulations is prohibited from paying for a coordinated communication.<sup>77</sup> IEOPCs  
13 are prohibited from making contributions to candidates and their authorized committees.<sup>78</sup>

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

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<sup>72</sup> 52 U.S.C. § 30101(8)(A); *accord* 11 C.F.R. § 100.52.

<sup>73</sup> 11 C.F.R. § 100.52(d); *see also* 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

<sup>74</sup> 11 C.F.R. § 109.21(a)-(b).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*; *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

<sup>77</sup> 11 C.F.R. § 109.22.

<sup>78</sup> *See* 52 U.S.C. §§ 30116(f), 30118(a); AO 2010-11 at 2-3 (Commonsense Ten).

1 analysis.

2 Accordingly, the Commission finds no reason to believe that SMV violated 52 U.S.C.  
3 §§ 30104(b), 30116(a), and 30118(a) by making and failing to report excessive and prohibited  
4 in-kind contributions in the form of coordinated communications. In addition, the Commission  
5 finds no reason to believe that the Federal Committee violated §§ 30104(b), 30116(f), and  
6 30118(a) by knowingly accepting and failing to report excessive and prohibited in-kind  
7 contributions in the form of coordinated communications.

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

11 The Complaint alleges that Axiom Strategies and its subsidiary, Remington Research  
12 Group, distributed at least five polls of Missouri’s 2022 Republican senate primary “repeatedly”  
13 showing Schmitt in first place, as part of an effort to directly benefit Schmitt and Schmitt for  
14 Senate.<sup>79</sup> According to the Complaint, Axiom and Remington Research consistently showed the  
15 polling results in a light favorable to Schmitt, resulting in the companies making, and Schmitt  
16 and the Federal Committee receiving, prohibited in-kind contributions in violation of 52 U.S.C.  
17 § 30118(a).<sup>80</sup> The Complaint alleges that the Federal Committee failed to report in-kind  
18 contributions from Axiom Strategies or Remington Research for the publication of the favorable  
19 polling in violation of 52 U.S.C. § 30104(b).<sup>81</sup>

20 Axiom and Remington Research Group deny that the polling services in question  
21 constitute in-kind contributions to Schmitt and the Federal Committee because another client,

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<sup>79</sup> Compl. at 4-5.

<sup>80</sup> *Id.* at 5.

<sup>81</sup> *Id.* at 4.

1 *Missouri Scout*, commissioned the polls in its capacity as a press entity, and therefore the press  
2 exemption applies.<sup>82</sup> Schmitt and the Federal Committee likewise deny that the Federal  
3 Committee conducted the polling identified in the Complaint, stating that the polls were all  
4 conducted by Remington Research Group and were commissioned by *Missouri Scout*, which  
5 they describe as “a private news service covering Missouri state politics.”<sup>83</sup> The Responses also  
6 provide a link to the *RealClearPolitics* webpage displaying the poll results, along with the results  
7 of 26 polls conducted by five entities (*Missouri Scout*, Remington Research Group, the Trafalgar  
8 Group, Survey USA, and Emerson College) in connection with the 2022 Missouri Senate  
9 Election; clicking on the polls listed under the Remington Research Group name opens up  
10 detailed poll results and language stating that it was a “[s]urvey conducted by Remington  
11 Research Group on behalf of [t]he *Missouri Scout*.”<sup>84</sup>

12 As discussed above, the Act prohibits corporations from making contributions to federal  
13 candidates or their committees, and likewise bars federal candidates or their committees from  
14 knowingly accepting or receiving corporate contributions.<sup>85</sup>

15 The available information provides credible information that the published polling in  
16 question was commissioned by *Missouri Scout*, which describes itself as a private news service

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<sup>82</sup> Axiom and Remington Research Group filed separate responses; however, Remington Research Group adopted the response submitted by Axiom Strategies. Axiom Resp. at 1 (Aug. 24, 2022); Remington Rsch. Grp. Resp. at 1 (Aug. 25, 2022).

<sup>83</sup> 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).

<sup>84</sup> 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).

<sup>85</sup> 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(a), (d).



1 covering Missouri state politics.<sup>86</sup> *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*."<sup>87</sup> 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.<sup>88</sup> Finally, it appears that the Federal Committee paid two other  
7 companies, Cannon Research Group and WPAI, for polling services.<sup>89</sup> 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.<sup>90</sup>

11 Accordingly, the Commission finds no reason to believe that Axiom Strategies and  
12 Remington Research Group violated 52 U.S.C. §§ 30116(a)(1)(A) or 30118(a) by making  
13 prohibited in-kind contributions in connection with the publication of polling results. In  
14 addition, the Commission finds no reason to believe that the Federal Committee violated

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<sup>86</sup> 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).

<sup>87</sup> *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.

<sup>88</sup> *Polls: 2022 Missouri Senate Primary*, REALCLEARPOLITICS, <https://www.realclearpolitics.com/epolls/2022/senate/Missouri.html> (last visited Sept. 19, 2023).

<sup>89</sup> *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](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).

<sup>90</sup> Compl. at 4.

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- 1 52 U.S.C. §§ 30116(f), 30118(a), and 30104(b) by knowingly accepting and failing to report
- 2 excessive or prohibited in-kind contributions in connection with the publication of polling
- 3 results.