

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **RAD REFERRAL: 21L-63**

6 DATE REFERRED: Nov. 3, 2021

7 DATES OF NOTIFICATION: Nov. 4, 2021;
8 Apr. 4 and 6, 2022¹

9 DATE OF LAST RESPONSE: N/A

10 DATE ACTIVATED: Feb. 25, 2022

11 EXPIRATION OF SOL: Feb. 7-June 30, 2024

12 ELECTION CYCLE: 2020

13
14
15 **SOURCE:** Internally Generated

16
17 **RESPONDENT:** Women Vote Smart and Amy S. Kremer in her
18 official capacity as treasurer

19
20 **RELEVANT STATUTE**

21 **AND REGULATION:**

22 52 U.S.C. § 30118(a)

23 11 C.F.R. § 114.2(b), (d)

24 **INTERNAL REPORTS CHECKED:** Disclosure Reports

25
26 **FEDERAL AGENCIES CHECKED:** None

27 **I. INTRODUCTION**

28 The Reports Analysis Division (“RAD”) referred Women Vote Smart and Amy S. Kremer
29 in her official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for the receipt of prohibited contributions during the 2019 calendar year totaling \$37,575.74.²

30 The Committee did not respond to the Referral and has not amended its disclosure reports to
31 reflect refunds or corrections.
32

¹ On March 21, 2022, RAD amended RR 21L-63 to remove a duplicate listing for the “Republican Women of Cary” in the chart on Attachment 2 to the referral. On April 4, 2022, Complaints Examination & Legal Administration (“CELA”) emailed a notification of the Amended Referral to the Respondent, and on April 6 mailed the notification to the mailing address for the Committee and Committee treasurer. See Email from Christal Dennis, CELA, FEC, to Amy S. Kremer, Treasurer, Women Vote Smart (Apr. 4, 2022, 7:00 PM EDT).

² Referral (Nov. 3, 2021); Amended Referral (Nov. 3, 2021). This Report will refer to the Amended Referral as the “Referral.”

1 For the reasons discussed below, we recommend that the Commission open a MUR, find
2 reason to believe that the Committee violated 52 U.S.C. § 30118(a), authorize pre-probable cause
3 conciliation with the Committee, and approve the attached conciliation agreement containing a
4 civil penalty

5 **II. FACTUAL BACKGROUND**

6 Women Vote Smart is registered with the Commission as a non-connected multicandidate
7 hybrid committee.³ Amy S. Kremer has been the Committee's treasurer since February 20,
8 2019.⁴ On its Amended Statement of Organization, the Committee notified the Commission of its
9 intent to operate as a hybrid committee and that it would maintain a separate "non-contribution"
10 account in accordance with the stipulated order and consent judgment in *Carey v. FEC*⁵ for the
11 purpose of making independent expenditures.⁶ The Committee's notice further indicated that
12 "[t]he funds maintained in this separate account will not be used to make contributions, whether
13 direct, in-kind, or via coordinated communications, or coordinated expenditures, to federal
14 candidates or committees."⁷

15 According to the Referral, the Committee received apparent prohibited contributions
16 totaling \$37,575.74 from four corporations, two limited liability companies ("LLCs"), and two
17 unregistered organizations as disclosed on its 2019 Mid-Year Report.⁸ Because the Committee

³ Women Vote Smart, Amended Statement of Organization at 2 (June 26, 2019); *see also* 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(e)(3).

⁴ Women Vote Smart, Amended Statement of Organization at 1 (Feb. 20, 2019).

⁵ Stipulated Order and Consent Judgment, Civ. No. 11-259 RMC (D.D.C. Aug. 29, 2011).

⁶ *See* Women Vote Smart, Amended Statement of Organization at 5 (Dec. 3, 2018) (FEC Miscellaneous Text Related to a Report, Schedule or Itemization (FEC Form F1A) (stating intent to establish a separate account "to deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and/or other political committees").

⁷ *Id.*

⁸ Amended Referral, Attach. 2.

1 did not indicate that these contributions were deposited into its non-contribution account, either as
 2 memo text or in the description field,⁹ it appeared that the contributions were improperly
 3 deposited into the Committee's federal account.

4 The chart below itemizes the apparent impermissible contributions.

Contribution From	Date	Amount	Prohibited Amount
Corporations:			
America First Policies, Inc.	3/4/2019	\$450.74	
Event Bright	6/6/2019	\$805	
Event Bright	6/13/2019	\$360	
Event Bright	6/20/2019	\$420	
Square, Inc.	6/30/2019	\$8,540	
Watson's, Inc.	5/14/2019	\$500	
Watson's, Inc.	6/24/2019	\$2,000	
Subtotal:			\$13,075.74
LLCs:			
Joyce Properties LLC	5/14/2019	\$1,000	
Sellers Real Estate LLC	5/28/2019	\$1,000	
Subtotal:			\$2,000
Unregistered Organizations:			
Republican Women of Cary	3/12/2019	\$3,500	
Women For America First	2/7/2019	\$19,000	
Subtotal:			\$22,500
Grand Total Prohibited Amount Not Refunded:			\$37,575.74

5
 6 On May 19, 2020, RAD sent the Committee a Request for Additional Information
 7 ("RFAI") referencing the questionable contributions appearing on the 2019 Mid-Year Report.¹⁰
 8 The RFAI included a list of the possible prohibited contributions and suggested that "[i]f the
 9 amounts in question were deposited into [the] Committee's Non-Contribution Account" the

⁹ See *infra* pages 6-7 (discussing Commission guidance regarding proper reporting by hybrid committees); Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, FEC.GOV (Oct. 5, 2011). We note that the Committee's 2019 Mid-Year Report shows that it added the contribution amounts from prohibited sources to the Detailed Summary Page Form 3X, Line 17 "Other Receipts" as it should have, however, when itemizing those contributions on Schedule A, the report failed to state "Non-Contribution Account" in the description for those receipts. See Women Vote Smart, 2019 Mid-Year Report at 10, 15-16, 19, 21-23 (July 31, 2019).

¹⁰ Amended Referral at 2; Women Vote Smart, RFAI (May 19, 2020) (referencing 2019 Mid-Year Report).

1 Committee should amend its report listing “Non-Contribution Account in the description field or
2 in memo text.”¹¹ Between July 2020 and November 2021, the RAD analyst attempted to contact
3 the Committee’s current and past treasurers by telephone and email to obtain a response to the
4 RFAI.¹² During two phone calls before the Referral, the Committee’s current treasurer, Kremer,
5 acknowledged receiving a voicemail regarding the referrable issue, and indicated that the
6 Committee abruptly shut down and has been inactive since filing its 2019 Mid-Year Report.¹³
7 After the Referral, Kremer spoke with RAD by phone about the 2019 Mid-Year Report and
8 indicated that the contributions from Eventbrite and Square, Inc., were aggregated receipts from
9 the sale of tickets and merchandise, and that she would work on identifying the sources of the
10 receipts identified in the RFAI.¹⁴ To date, the Committee has not responded to the RFAI or to the
11 notifications of the Referral by amending its disclosure reports or refunding the contributions.¹⁵

¹¹ Women Vote Smart, RFAI at 1 (May 19, 2020) (referencing the Commission’s “Reporting Guidance for Political Committees that Maintain a Non-Contribution Account”).

¹² Amended Referral at 2-4

¹³

The Committee’s website, www.womenvotetrump.com, is no longer active and a search of the internet archive indicates that the website has not been functioning since January 24, 2021. *See* Women Vote Smart, Amended Statement of Organization at 1 (June 26, 2019); *see* 401 Authorization Required, WOMEN FOR TRUMP, <https://womenfortrump.com> (Jan. 24, 2021) [[https://web.archive.org/web/20210101000000*/ https://womenfortrump.com/](https://web.archive.org/web/20210101000000*/https://womenfortrump.com/)].

¹⁴

¹⁵ OGC sent the Committee a notification of the Referral on November 4, 2021, by email to the Committee’s last known email address listed on its Statement of Organization. Letter from Roy Q. Lockett, Acting Assistant Gen. Couns., CELA, FEC, to Amy S. Kremer, Treasurer, Women Vote Smart (Nov. 4, 2021). On April 4 and 6, 2022, OGC sent a copy of the Amended Referral to the Committee’s email and post office box addresses, and mailed a copy to the treasurer’s address. *See* Email from Christal Dennis, CELA, FEC, to Amy S. Kremer, Treasurer, Women Vote Smart (Apr. 4, 2022, 7:00 PM EDT). Additional attempts by RAD to reach the treasurer by phone and email from November 12, 2021, through March 21, 2022, regarding its administrative fines matters have been unsuccessful.

1 Consistent with the treasurer's statement that the Committee is inactive,¹⁶ the Committee
2 has not filed any additional reports since its 2019 Year-End Report. The Committee has since
3 been subject to numerous Administrative Fine ("AF") matters for failure to file disclosure reports
4 and has \$49,214 in outstanding penalties assessed through the AF program that have yet to be
5 paid.¹⁷

6 **III. LEGAL ANALYSIS**

7 Under the Federal Election Campaign Act of 1971, as amended (the "Act"), corporations
8 are prohibited from making contributions to federal candidates or their authorized committees,
9 and candidates and authorized committees are prohibited from knowingly receiving or accepting
10 such contributions.¹⁸ Under Commission regulations, a contribution from an LLC is permissible
11 if the LLC is treated as a partnership for tax purposes and has not elected to be treated as a
12 corporation by the Internal Revenue Service.¹⁹ LLCs that claim corporate status or those that are
13 publicly traded are treated as corporations for purposes of the Act.²⁰

14 A political committee's treasurer is responsible for examining all contributions received
15 for evidence of illegality.²¹ Treasurers must make their best efforts to determine the legality of

¹⁶ *Supra* note 13 and accompanying text.

¹⁷ Women Vote Smart, AF 4244 (Mar. 23, 2022) (\$11,786 civil penalty for non-filing 2021 Mid-Year); AF 4199 (Dec. 2, 2021) (\$8,418 civil penalty for non-filing 2020 Year-End); AF 4101 (Oct. 22, 2021) (\$8,418 civil penalty for non-filing 2020 Post-General); AF 3952 (Aug. 12, 2021) (\$7,395 civil penalty for non-filing 2020 October Quarterly); AF 3907 (July 16, 2021) (\$6,656 civil penalty for non-filing 2020 July Quarterly); AF 3833 (Jan. 7, 2021) (\$6,541 civil penalty for non-filing 2020 April Quarterly). Four of the AF matters have since been sent to the U.S. Treasury Department for collection. *See* AF 3833, 3907, 3952, and 4101. In addition, the Committee continues to be subject to additional pending AF matters for failing to file disclosure reports. *See* AF 4284 (non-filing 2021 Year-End Report), AF 4324 (non-filing 2022 April Quarterly Report).

¹⁸ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (b)(1).

¹⁹ 11 C.F.R. § 110.1(g).

²⁰ *Id.* § 110.1(g)(3).

²¹ *Id.* § 103.3(b).

1 the contribution.²² If the legality of the contribution cannot be determined, the treasurer must
2 refund the contribution within 30 days of receipt.²³

3 Pursuant to *Carey v. FEC*, a hybrid political committee, which makes both independent
4 expenditures and direct contributions, can accept unlimited and corporate contributions but must
5 maintain a separate non-contribution account for the purpose of making independent expenditures
6 and a separate contribution account that is subject to the Act's amount and source limitations from
7 which to make contributions to federal candidates.²⁴ The Commission has also issued guidance
8 on the formation and operation of hybrid political committees²⁵ and explained that the
9 Commission would not enforce the corporate contribution ban and the limitation amounts against
10 non-connected political committees for the purpose of making contributions to candidates and
11 political parties as long as: (1) the political committee deposits such contributions in a "Non-
12 Contribution Account," which is for "the purpose of financing independent expenditures, other
13 advertisements that refer to a Federal candidate, and generic voter drives"; (2) that account is
14 "segregated from any accounts that receive source-restricted and amount-limited contributions";
15 and (3) each account pays a percentage of administrative expenses that closely corresponds to the

²² *Id.* § 103.3(b)(1).

²³ *Id.* The Commission's regulation further states that if the treasurer later discovers that a contribution is illegal based on new evidence, the treasurer shall refund the contribution within thirty days of the date the illegality is discovered. *Id.* § 103.3(b)(2).

²⁴ *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011) (granting limited preliminary injunction enjoining Commission from enforcing 52 U.S.C. § 30116(a)(1)(C) and (a)(3) with regard to contributions received for independent expenditures by a non-connected political committee if such committee: (1) maintains a "soft money" account for use in making independent expenditures in federal elections and a separate "hard money" account that accepts contributions subject to "statutory contribution limits" for making contributions to "candidates, candidates' committees, or national parties"; and (2) "proportionally pays related administrative costs from those accounts").

²⁵ See Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, FEC.GOV (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/> (requiring non-connected committees that make independent expenditures to maintain a separate "contribution" account to be able to make contributions to federal candidates from receipts that are subject to the Act's limitations and source prohibitions).

1 percentage of activity for that account.²⁶ The guidance also provided instructions for reporting
2 the receipt of contributions deposited into a Non-Contribution Account, stating that a committee:
3 (1) should disclose such contributions on “Line 17 of Form 3X, titled ‘Other Federal
4 Receipts,’” and (2) “when itemizing on Schedule A, electronic filers should identify those receipts
5 by entering ‘Non-Contribution Account’ as memo text or in the description field.”²⁷

6 Accordingly, the Committee, as a hybrid committee, could not accept contributions from
7 prohibited sources unless they were designated for its non-contribution account. But as set forth
8 in the Referral, the Committee’s 2019 Mid-Year Report disclosed that, from February through
9 June 2019, the Committee received \$37,575.74 in apparent prohibited contributions that were not
10 designated for its non-contribution account. That amount included contributions from four
11 corporations, which were apparently prohibited from the face of the contributions.²⁸ Further,
12 RAD identified contributions from two LLCs whose tax status was unknown and contributions
13 from two unregistered organizations, Republican Women of Cary and Women for America First,
14 where there was no information as to whether the contributions were made with permissible
15 funds, such as from political party committees or PACs.

16 Pursuant to the Commission’s guidance, RAD sent the Committee an RFAI specifically
17 addressing contributions from apparent prohibited sources disclosed on the Committee’s 2019
18 Mid-Year Report, but the Committee has not provided any clarification or correction of the issue
19 in response.²⁹ Without further clarification that these receipts were actually deposited into the

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Supra* page 3.

²⁹ The Commission has provided the Committee with numerous opportunities to address the receipt of the apparent prohibited contributions, including the May 2020 RFAI and the notice of the Referral. *Supra* pages 3-4; *see*

1 Committee's non-contribution account, it appears that the Committee deposited contributions
2 from prohibited sources into its federal account. The Committee has not, to date, reported having
3 issued any refunds for those contributions.³⁰

4 Accordingly, under the circumstances described above, we recommend that the
5 Commission open a MUR and find reason to believe that the Committee violated 52 U.S.C.
6 § 30118(a) by knowingly accepting prohibited contributions.³¹

7

8

9

10

11

12

13

14

also Amended Referral at 4;

³⁰ We note that the Committee appears aware of the procedures for designating contributions into its non-contribution account because it did so in previous reports filed with the Commission. *See, e.g.*, Women Vote Smart, Amended 2018 Year-End Report at 15 (Feb. 15, 2019) (designating an individual contribution for non-contribution account); Women Vote Smart, Amended 2018 October Quarterly Report at 6-15 (Oct. 16, 2018) (designating various individual contributions for the non-contribution account).

³¹ The Commission recently accepted negotiated settlement agreements with two hybrid committees with non-contribution accounts for, among other things, various reporting errors. *See* Certification, ADR Case # 1064 (Latino Victory Fund) (Mar. 31, 2022) (The committee disclosed direct contributions to federal candidates and committees while it did not appear to have sufficient funds in its federal account to support the contributions, but later clarified that it did, in fact, have sufficient funds in the federal account at the time to make the direct contributions.); Certification, ADR # 1063 (Grassroots Democrats HQ) (Mar. 31, 2022) (The committee received excessive contributions from individuals and other political committees and did not indicate on its original reports that the contributions were deposited into its non-contribution account, but subsequently amended its reports to clarify that the allegedly excessive contributions were actually made to its non-contribution account).

1

2

3

4 **IV. RECOMMENDATIONS**

5 1. Open a Matter Under Review;

6 2. Find reason to believe that Women Vote Smart and Amy S. Kremer in her official
7 capacity as treasurer violated 52 U.S.C. § 30118(a) by knowingly accepting
8 prohibited contributions;

9 3. Approve the attached Factual and Legal Analysis;

10 4. Authorize conciliation prior to a finding of probable cause to believe;

11 5. Approve the attached Conciliation Agreement; and

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Women Vote Smart and Amy S. Kremer
in her official capacity as treasurer

MUR _____

I. INTRODUCTION

This matter arises from a Reports Analysis Division (“RAD”) Referral stating that Women Vote Smart and Amy S. Kremer in her official capacity as treasurer (the “Committee”) accepted prohibited contributions during the 2019 calendar year totaling \$37,575.74, which have not been refunded, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Committee did not respond to the Referral.

For the reasons discussed below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30118(a).

II. FACTUAL BACKGROUND

Women Vote Smart is registered with the Commission as a non-connected multicandidate hybrid committee.² Amy S. Kremer has been the Committee’s treasurer since February 20, 2019.³ On its Amended Statement of Organization, the Committee notified the Commission of its intent to operate as a hybrid committee and that it would maintain a separate “non-contribution” account in accordance with the stipulated order and consent judgment in *Carey v. FEC*⁴ for the purpose of making independent expenditures.⁵ The Committee’s notice further indicated that

¹ RAD Referral 21L-63 and Amended Referral (Nov. 3, 2021) (Women Vote Smart).

² Women Vote Smart, Amended Statement of Organization at 2 (June 26, 2019); *see also* 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(e)(3).

³ Women Vote Smart, Amended Statement of Organization at 1 (Feb. 20, 2019).

⁴ Stipulated Order and Consent Judgment, Civ. No. 11-259 RMC (D.D.C. Aug. 29, 2011).

⁵ *See* Women Vote Smart, Amended Statement of Organization at 5 (Dec. 3, 2018) (FEC Miscellaneous Text Related to a Report, Schedule or Itemization (FEC Form F1A) (stating intent to establish a separate account “to

1 “[t]he funds maintained in this separate account will not be used to make contributions, whether
2 direct, in-kind, or via coordinated communications, or coordinated expenditures, to federal
3 candidates or committees.”⁶

4 According to the Referral, the Committee received apparent prohibited contributions
5 totaling \$37,575.74 from four corporations, two limited liability companies (“LLCs”), and two
6 unregistered organizations as disclosed on its 2019 Mid-Year Report.⁷ Because the Committee
7 did not indicate that these contributions were deposited into its non-contribution account, either as
8 memo text or in the description field,⁸ it appeared that the contributions were improperly
9 deposited into the Committee’s federal account.

10 The chart below itemizes the apparent impermissible contributions.

deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and/or other political committees”).

⁶ *Id.*

⁷ Amended Referral, Attach. 2.

⁸ *See infra* page 6 (discussing Commission guidance regarding proper reporting by hybrid committees); Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, FEC.GOV (Oct. 5, 2011). We note that the Committee’s 2019 Mid-Year Report shows that it added the contribution amounts from prohibited sources to the Detailed Summary Page Form 3X, Line 17 “Other Receipts” as it should have, however, when itemizing those contributions on Schedule A, the report failed to state “Non-Contribution Account” in the description for those receipts. *See Women Vote Smart, 2019 Mid-Year Report at 10, 15-16, 19, 21-23 (July 31, 2019).*

Contribution From	Date	Prohibited Amount	Prohibited Amount
Corporations:			
America First Policies, Inc.	3/4/2019	\$450.74	
Event Bright	6/6/2019	\$805	
Event Bright	6/13/2019	\$360	
Event Bright	6/20/2019	\$420	
Square, Inc.	6/30/2019	\$8,540	
Watson's, Inc.	5/14/2019	\$500	
Watson's, Inc.	6/24/2019	\$2,000	
Subtotal:		\$13,075.74	\$13,075.74
LLCs:			
Joyce Properties LLC	5/14/2019	\$1,000	
Sellers Real Estate LLC	5/28/2019	\$1,000	
Subtotal:		\$2,000	\$2,000
Unregistered Organizations:			
Republican Women of Cary	3/12/2019	\$3,500	
Women For America First	2/7/2019	\$19,000	
Subtotal:			\$22,500
Grand Total Prohibited Amount Not Refunded:			\$37,575.74

1
 2 On May 19, 2020, RAD sent the Committee a Request for Additional Information
 3 (“RFAI”) referencing the questionable contributions appearing on the 2019 Mid-Year Report.⁹
 4 The RFAI included a list of the possible prohibited contributions and suggested that “[i]f the
 5 amounts in question were deposited into [the] Committee’s Non-Contribution Account” the
 6 Committee should amend its report listing “Non-Contribution Account in the description field or
 7 in memo text.”¹⁰ Between July 2020 and November 2021, the RAD analyst attempted to contact
 8 the Committee’s current and past treasurers by telephone and email to obtain a response to the
 9 RFAI.¹¹ During two phone calls before the Referral, the Committee’s current treasurer, Kremer,
 10 acknowledged receiving a voicemail regarding the referable issue, and indicated that the

⁹ Amended Referral at 2; Women Vote Smart, RFAI (May 19, 2020) (referencing 2019 Mid-Year Report).

¹⁰ Women Vote Smart, RFAI at 1 (May 19, 2020) (referencing the Commission’s “Reporting Guidance for Political Committees that Maintain a Non-Contribution Account”).

¹¹ Amended Referral at 2-4.

1 Committee abruptly shut down and has been inactive since filing its 2019 Mid-Year Report.¹²
2 After the Referral, Kremer spoke with RAD by phone about the 2019 Mid-Year Report and
3 indicated that the contributions from Eventbrite and Square, Inc., were aggregated receipts from
4 the sale of tickets and merchandise, and that she would work on identifying the sources of the
5 receipts identified in the RFAI. To date, the Committee has not responded to the RFAI or to the
6 notifications of the Referral by amending its disclosure reports or refunding the contributions.¹³

7 Consistent with the treasurer's statement that the Committee is inactive,¹⁴ the Committee
8 has not filed any additional reports since its 2019 Year-End Report. The Committee has since
9 been subject to numerous Administrative Fine ("AF") matters for failure to file disclosure reports
10 and has \$49,214 in outstanding penalties assessed through the AF program that have yet to be
11 paid.¹⁵

¹² The Committee's website, www.womenvotetrump.com, is no longer active and a search of the internet archive indicates that the website has not been functioning since January 24, 2021. *See* Women Vote Smart, Amended Statement of Organization at 1 (June 26, 2019); *see* 401 Authorization Required, WOMEN FOR TRUMP, <https://womenfortrump.com> (Jan. 24, 2021) [https://web.archive.org/web/20210101000000*/https://womenfortrump.com/].

¹³ OGC sent the Committee a notification of the Referral on November 4, 2021, by email to the Committee's last known email address listed on its Statement of Organization. Letter from Roy Q. Lockett, Acting Assistant Gen. Couns., CELA, FEC, to Amy S. Kremer, Treasurer, Women Vote Smart (Nov. 4, 2021). On April 4 and 6, 2022, OGC sent a copy of the Amended Referral to the Committee's email and post office box addresses, and mailed a copy to the treasurer's address. *See* Email from Christal Dennis, CELA, FEC, to Amy S. Kremer, Treasurer, Women Vote Smart (Apr. 4, 2022, 7:00 PM EDT). Additional attempts by RAD to reach the treasurer by phone and email from November 12, 2021, through March 21, 2022, regarding its administrative fines matters have been unsuccessful.

¹⁴ *Supra* note 12 and accompanying text.

¹⁵ Women Vote Smart, AF 4244 (Mar. 23, 2022) (\$11,786 civil penalty for non-filing 2021 Mid-Year); AF 4199 (Dec. 2, 2021) (\$8,418 civil penalty for non-filing 2020 Year-End); AF 4101 (Oct. 22, 2021) (\$8,418 civil penalty for non-filing 2020 Post-General); AF 3952 (Aug. 12, 2021) (\$7,395 civil penalty for non-filing 2020 October Quarterly); AF 3907 (July 16, 2021) (\$6,656 civil penalty for non-filing 2020 July Quarterly); AF 3833 (Jan. 7, 2021) (\$6,541 civil penalty for non-filing 2020 April Quarterly). Four of the AF matters have since been sent to the U.S. Treasury Department for collection. *See* AF 3833, 3907, 3952, and 4101.

1 **III. LEGAL ANALYSIS**

2 Under the Federal Election Campaign Act of 1971, as amended (the “Act”), corporations
3 are prohibited from making contributions to federal candidates or their authorized committees,
4 and candidates and authorized committees are prohibited from knowingly receiving or accepting
5 such contributions.¹⁶ Under Commission regulations, a contribution from an LLC is permissible
6 if the LLC is treated as a partnership for tax purposes and has not elected to be treated as a
7 corporation by the Internal Revenue Service.¹⁷ LLCs that claim corporate status or those that are
8 publicly traded are treated as corporations for purposes of the Act.¹⁸

9 A political committee’s treasurer is responsible for examining all contributions received
10 for evidence of illegality.¹⁹ Treasurers must make their best efforts to determine the legality of
11 the contribution.²⁰ If the legality of the contribution cannot be determined, the treasurer must
12 refund the contribution within 30 days of receipt.²¹

13 Pursuant to *Carey v. FEC*, a hybrid political committee, which makes both independent
14 expenditures and direct contributions, can accept unlimited and corporate contributions but must
15 maintain a separate non-contribution account for the purpose of making independent expenditures
16 and a separate contribution account that is subject to the Act’s amount and source limitations from

¹⁶ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (b)(1).

¹⁷ 11 C.F.R. § 110.1(g).

¹⁸ *Id.* § 110.1(g)(3).

¹⁹ *Id.* § 103.3(b).

²⁰ *Id.* § 103.3(b)(1).

²¹ *Id.* The Commission’s regulation further states that if the treasurer later discovers that a contribution is illegal based on new evidence, the treasurer shall refund the contribution within thirty days of the date the illegality is discovered. *Id.* § 103.3(b)(2).

1 which to make contributions to federal candidates.²² The Commission has also issued guidance
2 on the formation and operation of hybrid political committees²³ and explained that the
3 Commission would not enforce the corporate contribution ban and the limitation amounts against
4 non-connected political committees for the purpose of making contributions to candidates and
5 political parties as long as: (1) the political committee deposits such contributions in a “Non-
6 Contribution Account,” which is for “the purpose of financing independent expenditures, other
7 advertisements that refer to a Federal candidate, and generic voter drives”; (2) that account is
8 “segregated from any accounts that receive source-restricted and amount-limited contributions”;
9 and (3) each account pays a percentage of administrative expenses that closely corresponds to the
10 percentage of activity for that account.²⁴ The guidance also provided instructions for reporting
11 the receipt of contributions deposited into a Non-Contribution Account, stating that a committee:
12 (1) should disclose such contributions on “Line 17 of Form 3X, titled ‘Other Federal
13 Receipts,’” and (2) “when itemizing on Schedule A, electronic filers should identify those receipts
14 by entering ‘Non-Contribution Account’ as memo text or in the description field.”²⁵

15 Accordingly, the Committee, as a hybrid committee, could not accept contributions from
16 prohibited sources unless they were designated for its non-contribution account. But as set forth

²² *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011) (granting limited preliminary injunction enjoining Commission from enforcing 52 U.S.C. § 30116(a)(1)(C) and (a)(3) with regard to contributions received for independent expenditures by a non-connected political committee if such committee: (1) maintains a “soft money” account for use in making independent expenditures in federal elections and a separate “hard money” account that accepts contributions subject to “statutory contribution limits” for making contributions to “candidates, candidates’ committees, or national parties”; and (2) “proportionally pays related administrative costs from those accounts”).

²³ See Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, FEC.GOV (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/> (requiring non-connected committees that make independent expenditures to maintain a separate “contribution” account to be able to make contributions to federal candidates from receipts that are subject to the Act’s limitations and source prohibitions).

²⁴ *Id.*

²⁵ *Id.*

1 in the Referral, the Committee’s 2019 Mid-Year Report disclosed that, from February through
2 June 2019, the Committee received \$37,575.74 in apparent prohibited contributions that were not
3 designated for its non-contribution account. That amount included contributions from four
4 corporations, which were apparently prohibited from the face of the contributions.²⁶ Further,
5 RAD identified contributions from two LLCs whose tax status was unknown and contributions
6 from two unregistered organizations, Republican Women of Cary and Women for America First,
7 where there was no information as to whether the contributions were made with permissible
8 funds, such as from political party committees or PACs.

9 Pursuant to the Commission’s guidance, RAD sent the Committee an RFAI specifically
10 addressing contributions from apparent prohibited sources disclosed on the Committee’s 2019
11 Mid-Year Report, but the Committee has not provided any clarification or correction of the issue
12 in response.²⁷ Without further clarification that these receipts were actually deposited into the
13 Committee’s non-contribution account, it appears that the Committee deposited contributions
14 from prohibited sources into its federal account. The Committee has not, to date, reported having
15 issued any refunds for those contributions.²⁸

16 Therefore, the Commission finds reason to believe that Women Vote Smart and Amy S.
17 Kremer in her official capacity as treasurer violated 52 U.S.C. § 30118(a) by knowingly accepting
18 prohibited contributions.

²⁶ *Supra* page 2.

²⁷ The Commission has provided the Committee with numerous opportunities to address the receipt of the apparent prohibited contributions, including the May 2020 RFAI and the notice of the Referral. *Supra* pages 3-4; *see also* Amended Referral at 4.

²⁸ We note that the Committee appears aware of the procedures for designating contributions into its non-contribution account because it did so in previous reports filed with the Commission. *See, e.g.*, Women Vote Smart, Amended 2018 Year-End Report at 15 (Feb. 15, 2019) (designating an individual contribution for non-contribution account); Women Vote Smart, Amended 2018 October Quarterly Report at 6-15 (Oct. 16, 2018) (designating various individual contributions for the non-contribution account).