

1 **FEDERAL ELECTION COMMISSION**

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3 **FIRST GENERAL COUNSEL'S REPORT**

4  
5 **MUR 8058**

6 DATE COMPLAINT FILED: Aug. 24, 2022

7 DATE OF NOTIFICATIONS: Aug. 26, 2022

8 LAST RESPONSE RECEIVED: Nov. 16, 2022

9 DATE ACTIVATED: June 7, 2023

10  
11 STATUTE OF LIMITATIONS: Aug. 10, 2027<sup>1</sup>

12 ELECTION CYCLE: 2022

13  
14 **COMPLAINANT:**

Roger G. Wieand

Campaign Legal Center

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16  
17 **RESPONDENTS:**

SQI Limited, LLC

Save Missouri Values and Cabell Hobbs in his

official capacity as treasurer

Herzog Contracting Corp.

Herzog Technologies, Inc.

Herzog Transit Services, Inc.

Unknown Respondents

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25 **RELEVANT STATUTE  
AND REGULATION:**

52 U.S.C. § 30122

11 C.F.R. § 110.4(b)(2)(i), (ii)

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29 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

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31 **FEDERAL AGENCIES CHECKED:**

None

32 **I. INTRODUCTION**

33 The Complaint in this matter alleges that on July 11, 2022, SQI Limited, LLC (“SQI”),  
34 allowed its name to be used to effect a \$300,000 contribution to Save Missouri Values and  
35 Cabell Hobbs in his official capacity as treasurer (“Save Missouri”) on behalf of a true  
36 contributor or contributors in violation of the Federal Election Campaign Act of 1971, as  
37 amended (the “Act”). The Complaint bases this allegation on the following: (1) The

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<sup>1</sup> On October 6, 2022, Save Missouri Values signed a 30-day tolling agreement to allow for additional time to submit a response. On October 7, 2022, SQI Limited, LLC, Herzog Contracting Corp., Herzog Technologies, Inc., and Herzog Transit Services, Inc., did the same.

1 contribution was made three months after SQI's founding; (2) SQI's address disclosed in Save  
2 Missouri's 2022 Pre-Primary Report filed with the Commission is that of corporate entities  
3 affiliated with "Herzog,"<sup>2</sup> a Missouri company whose corporate entities include Herzog  
4 Technologies, Inc., Herzog Contracting Corp., and Herzog Transit Services, Inc. (collectively,  
5 the "Herzog Affiliates"); (3) SQI's apparent lack of business activity, investments, assets, or  
6 income; and (4) SQI's lack of public footprint including web presence or records with entities  
7 such as the Better Business Bureau and the U.S. Securities and Exchange Commission. The  
8 Complaint alleges that SQI was used for the sole purpose of allowing unknown persons —  
9 potentially, the Herzog Affiliates or their owners, executives, or employees — to funnel a  
10 \$300,000 contribution to Save Missouri without revealing the true contributors' identities.

11 SQI and the Herzog Affiliates deny the allegation and state that SQI was formed to hold  
12 and manage quarry operations for the benefit of the Herzog Affiliates. SQI and the Herzog  
13 Affiliates provide documentation regarding business transactions apparently aligned with this  
14 purpose, all of which post-date the contribution to Save Missouri. SQI and the Herzog Affiliates  
15 further state that SQI was originally funded by its affiliated companies, though it does not  
16 specify when this funding occurred. According to these Respondents, the Chief Executive  
17 Officer of Herzog Enterprises, which the Respondents state is the "member manager" of SQI,  
18 directed the contribution by SQI to Save Missouri, and that he made no attempt to conceal his  
19 identity or his affiliation with Herzog Enterprises when making the contribution. Separately,  
20 Save Missouri asks that the Commission find no reason to believe that it violated the Act because  
21 it properly vetted, attributed, and reported the contribution based on information provided by  
22 SQI that it elects to be taxed as a corporation.

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<sup>2</sup> "Herzog" appears to refer to Herzog Enterprises, discussed *infra*.

1           Because the available information raises questions as to whether SQI received funds for  
2 the purpose of making a political contribution such that it was a conduit rather than the true  
3 source of the contribution, namely the short temporal proximity between when SQI was formed  
4 and when the contribution was made as well as the lack of known business activities pre-dating  
5 the contribution, we recommend that the Commission find reason to believe that Unknown  
6 Respondents and SQI violated 52 U.S.C. § 30122 by making and knowingly permitting one's  
7 name to be used to make a contribution in the name of another. We further recommend that the  
8 Commission authorize the use of compulsory process as to these potential violations. Finally, we  
9 recommend that the Commission take no action at this time as to the Herzog Affiliates and Save  
10 Missouri pending the results of the investigation.

## 11 **II. FACTUAL BACKGROUND**

12           SQI is a limited liability company ("LLC") organized in Missouri on April 13, 2022; it is  
13 wholly owned by Herzog Enterprises, which is also a Missouri corporation.<sup>3</sup> In addition to SQI,  
14 Herzog Enterprises also wholly owns the Herzog Affiliates, three Missouri corporations formed  
15 between 1969 and 2010.<sup>4</sup>

16           Save Missouri is an independent expenditure-only political committee that registered  
17 with the Commission on April 9, 2021.<sup>5</sup> In its 2022 Pre-Primary Election Report, Save Missouri  
18 reported a \$300,000 contribution from SQI dated July 11, 2022.<sup>6</sup>

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<sup>3</sup> SQI & Herzog Affiliates Resp. at 2 (Nov. 16, 2022) [hereinafter SQI Joint Resp.].

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

<sup>5</sup> Save Missouri Values, Statement of Organization (Apr. 9, 2021), <https://docquery.fec.gov/pdf/032/202104099443159032/202104099443159032.pdf>.

<sup>6</sup> Save Missouri Values, 2022 Pre-Primary Election Report at 7 (July 21, 2022), <https://docquery.fec.gov/pdf/664/202207219525012664/202207219525012664.pdf>.

1           The Complaint in this matter alleges that SQI served as a conduit for making the  
2 \$300,000 contribution to Save Missouri, and that the true source of the contribution was one or  
3 more of the Herzog Affiliates or other, Unknown Respondents.<sup>7</sup> In support of this claim, the  
4 Complaint relies on the following facts: (1) SQI was founded on April 13, 2022, and made the  
5 \$300,000 contribution on July 11, 2022, just under three months after its formation;<sup>8</sup> (2) the  
6 address Save Missouri reported in connection with this contribution is the same as that of the  
7 Herzog Affiliates listed on Herzog Enterprises's website, which does not name SQI;<sup>9</sup> (3) SQI  
8 "has no known business operations, investments, assets, or commercial ventures from which it  
9 might generate its own income;"<sup>10</sup> and (4) SQI does not have "any discernible public footprint,"  
10 including a website, social media accounts, or records with the Better Business Bureau, the U.S.  
11 Securities and Exchange Commission, the U.S. Patent and Trademark Office, or Lee's Summit  
12 Chamber of Commerce.<sup>11</sup>

13           SQI and the Herzog Affiliates deny the allegations and submitted a Joint Response (the  
14 "SQI Joint Response").<sup>12</sup> The SQI Joint Response states that SQI was formed for liability and  
15 business purposes, specifically to "purchase, hold, lease, and manage quarry operations upon  
16 land owned or leased by SQI" "for the benefit of its affiliated companies," and that "SQI" is an  
17 acronym for "Strategic Quarry Investments."<sup>13</sup> The SQI Joint Response states that SQI "owns

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<sup>7</sup> Compl. ¶¶ 1-2, 17-22 (Aug. 24, 2022).

<sup>8</sup> *Id.* ¶¶ 5-6.

<sup>9</sup> *Id.* ¶ 7.

<sup>10</sup> *Id.* ¶ 8.

<sup>11</sup> *Id.*

<sup>12</sup> SQI Joint Resp.

<sup>13</sup> *Id.* at 2 & n.5, 6. SQI and the Herzog Affiliates state that the attachments to the Response, including the formation minutes for SQI, demonstrate that SQI was formed for the purpose stated in their Response. *Id.*, Ex. A.

1 and manages approximately 310 acres, more or less, and is in the process of finalizing the  
2 purchase or acquisition of an additional . . . 700 acres of land, portions of which have previously  
3 been quarried and portions of which will be quarried by SQI.”<sup>14</sup> SQI and the Herzog Affiliates  
4 attach to the SQI Joint Response a number of corporation special warranty deeds, each of which  
5 was executed on November 8, 2022, and a real estate sales agreement dated October 28, 2022;<sup>15</sup>  
6 both dates are subsequent to the date of the July 11, 2022 contribution at issue in this matter, the  
7 filing of the Complaint,<sup>16</sup> and the Respondents’ notifications thereof.<sup>17</sup>

8           According to the SQI Joint Response, SQI’s initial capital contributions “came from its  
9 affiliated companies in the form of inter-company transfers. No owners, executives, or  
10 employees of either Herzog Enterprises, [SQI], or any other affiliated company made any  
11 contributions to [SQI] whatsoever.”<sup>18</sup> It does not specify when these inter-company transfers  
12 occurred or their purpose.<sup>19</sup> The SQI Joint Response states that “on or around July 11, 2022,  
13 Brad Lager, the Chief Executive Officer for Herzog Enterprises,” which it calls the “member  
14 manager of SQI,” “directed the expenditure of [SQI] funds for the purpose of contributing to”  
15 Save Missouri.<sup>20</sup> The SQI Joint Response states that the contribution was completed “through  
16 communication with a fundraising consultant, and Mr. Lager made no attempt to conceal his  
17 identity,”<sup>21</sup> which it supports by providing an email from Save Missouri to Lager thanking him

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<sup>14</sup> SQI Joint Resp. at 2.

<sup>15</sup> *See id.*, Exs. E-G.

<sup>16</sup> *See* Compl. (bearing stamp reflecting that it was received by the Commission on August 24, 2022).

<sup>17</sup> *See* Notif. Letter (Aug. 26, 2022) (SQI Limited, LLC); Notif. Letter (Aug. 26, 2022) (Herzog Contracting Corp., *et al.*).

<sup>18</sup> SQI Joint Resp. at 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 4.

1 for the donation and to which Save Missouri attached wire instructions to make the  
2 contribution.<sup>22</sup> SQI and the Herzog Affiliates further state that SQI, Herzog Enterprises, and the  
3 Herzog Affiliates are neither foreign nationals nor government contractors, and, as Save  
4 Missouri is an independent expenditure-only political committee, it is free to accept  
5 contributions from any corporation except “foreign nationals, federal contractors, national banks,  
6 or federally chartered operations.”<sup>23</sup> For these reasons, SQI and the Herzog Affiliates argue that  
7 the Commission should find no reason to believe that a violation of the Act occurred and close  
8 the file.<sup>24</sup>

9 Save Missouri asks that the Commission find no reason to believe that it violated the Act  
10 because it properly vetted, attributed, and reported the contribution based on information  
11 provided by SQI that it elects to be taxed as a corporation.<sup>25</sup>

### 12 **III. LEGAL ANALYSIS**

13 The Act provides that a contribution includes “any gift, subscription, loan, advance, or  
14 deposit of money or anything of value made by any person for the purpose of influencing any  
15 election for Federal office.”<sup>26</sup> The term “person” for purposes of the Act and Commission  
16 regulations includes partnerships, corporations, and “any other organization or group of  
17 persons.”<sup>27</sup> The Act prohibits a person from making a contribution in the name of another  
18 person, knowingly permitting his or her name to be used to effect such a contribution, or

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<sup>22</sup> *Id.* at 3; *id.*, Ex. I.

<sup>23</sup> SQI Joint Resp. at 3.

<sup>24</sup> *Id.* at 9.

<sup>25</sup> Save Missouri Resp. at 1 (Nov. 10, 2022). In its Response, Save Missouri argues that it should not have been named a Respondent in this matter because the Complaint does not specifically allege violations against it, and that, as a result, it is challenging to respond to the Complaint. Save Missouri Resp. at 1-2.

<sup>26</sup> 52 U.S.C. § 30101(8)(A).

<sup>27</sup> *Id.* § 30101(11); 11 C.F.R. § 100.10.

1 knowingly accepting such a contribution.<sup>28</sup> The Commission has included in its regulations  
 2 illustrations of activities that constitute making a contribution in the name of another:

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

8 (ii) Making a contribution of money or anything of value and  
 9 attributing as the source of the money or thing of value another  
 10 person when in fact the contributor is the source.<sup>29</sup>

11 The requirement that a contribution be made in the name of its true source promotes  
 12 Congress's objective of ensuring the complete and accurate disclosure by candidates and  
 13 committees of the political contributions they receive.<sup>30</sup> Courts therefore have uniformly  
 14 rejected the assertion that "only the person who actually transmits funds . . . makes the  
 15 contribution,"<sup>31</sup> recognizing that "it is implausible that Congress, in seeking to promote  
 16 transparency, would have understood the relevant contributor to be [an] intermediary who  
 17 merely transmitted the campaign gift."<sup>32</sup> Consequently, both the Act and the Commission's  
 18 implementing regulations provide that a person who furnishes another with funds for the purpose  
 19 of contributing to a candidate or committee "makes" the resulting contribution.<sup>33</sup> This is true

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<sup>28</sup> 52 U.S.C. § 30122.

<sup>29</sup> 11 C.F.R. § 110.4(b)(2)(i), (ii).

<sup>30</sup> *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain." (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

<sup>31</sup> *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

<sup>32</sup> *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

<sup>33</sup> *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee") (emphasis

1 whether funds are advanced to another person to make a contribution in that person's name or  
2 promised as reimbursement of a solicited contribution.<sup>34</sup>

3 Because the concern of the law is reporting the true source from which a contribution to a  
4 candidate or committee originates, regardless of the mechanism by which the funds are  
5 transmitted, the Commission will examine the structure of the transaction itself and the  
6 arrangement between the parties to determine who in fact "made" a given contribution. The  
7 D.C. Circuit has found that Section 30122's prohibition of contributions in the name of another  
8 applies to LLCs<sup>35</sup> — such that an LLC cannot be used as a "straw donor" to transmit the funds of  
9 another.<sup>36</sup>

10 In this matter, the temporal proximity between when SQI was formed and when the  
11 contribution was made, the absence of information concerning when SQI was funded, and the  
12 fact that SQI's business operations identified in the Response post-date the contribution to Save  
13 Missouri raise questions regarding the possibility that funds were provided to SQI for the  
14 purpose of making a contribution.

15 As stated above, the Complaint premises its allegation on four factors: (1) the temporal  
16 proximity between SQI's formation and the contribution in its name; (2) the fact that SQI shares

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added); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent [the Act's reporting] restrictions[.]").

<sup>34</sup> *O'Donnell*, 608 F.3d at 555. Moreover, the "key issue . . . is the *source* of the funds" and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is "irrelevant to a determination of who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant's "unconditional gifts" to relatives and employees, along with a suggestion that they contribute the funds to a specific political committee, violated section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

<sup>35</sup> *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) ("The controlling commissioners did not dispute that [52 U.S.C.] § 30122 applies to closely held corporations and corporate LLCs. *We agree that it does.*" (emphasis added)). The Court nevertheless held that the Commission's dismissal of several matters involving alleged LLC conduits — based on the rationale that the matters presented an issue of first impression, which raised fair notice and due process concerns — was reasonable. *Id.* at 357-58.

<sup>36</sup> Factual & Legal Analysis ("F&LA") at 4, MUR 7903 (Tomfoolery, LLC).



1 an address with the Herzog Affiliates; (3) SQI's lack of known business activities; and (4) SQI's  
2 lack of any discernible public footprint. In prior matters, the Commission has stated that, when  
3 an LLC makes a political contribution without evidence of activity suggesting it had the means  
4 to make the contribution absent an infusion of funds provided for that purpose, the circumstances  
5 may raise a reasonable inference that the LLC was used as a conduit to hide the identity of the  
6 true contributor.<sup>37</sup> In determining whether such an inference is warranted, the Commission  
7 considers the overall record, including specific factors such as the amount of the contribution  
8 relative to other activities, the LLC's known activities prior to making the contribution, and  
9 whether any other information suggests an attempt to circumvent the Act's disclosure  
10 requirements.<sup>38</sup> Specifically, the temporal proximity between the LLC's formation date and the  
11 contribution may raise an inference about the purpose of the donation to the LLC.<sup>39</sup>

12 Here, the temporal proximity between SQI's formation and the date of the contribution  
13 made in its name — approximately 3 months — raises a question about whether SQI received  
14 funds for the purpose of making a contribution, especially given that SQI's known business  
15 activities post-date the contribution. Though the Commission has not expressed a bright-line  
16 rule regarding when the timing of an organization's founding leads to an inference that it was  
17 created for the purpose of making a contribution, in

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<sup>37</sup> *see* Statement of Reasons of Chairman Petersen & Comm'rs. Hunter & Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487 & 6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Invs. Grp., Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) [hereinafter Republican SOR, MURs 6485, *et al.*] (“Where direct evidence of this purpose is lacking, the Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or *bona fide* capital investments . . . . These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”).

<sup>38</sup> SOR at 12, MURs 6485, *et al.*

<sup>39</sup> *Id.*

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3 By contrast, in MUR 7965 (Saving Arizona PAC), the  
4 Commission found no reason to believe that the respondents violated the Act where an LLC  
5 established as a long-term estate planning vehicle for two individuals, and which had received  
6 funds from a venture capital firm for which one of the founding individuals was a general  
7 partner, made a contribution five months after its organization.<sup>41</sup> The Commission found that  
8 “[t]he information presented in the Complaint as support for a conduit scheme — a five-month  
9 period between the LLC’s formation and its contribution and the lack of an online presence —  
10 [wa]s insufficient to warrant a finding of reason to believe that a violation occurred given the  
11 length of time at issue and the available information to the contrary.”<sup>42</sup> In these circumstances,  
12 three months falls between the Commission’s precedent of five weeks to five months, and is  
13 temporally proximate enough to raise questions about a nexus between the LLC’s funding and  
14 the subsequent political contribution.<sup>43</sup> Further, unlike in MUR 7965, the available information

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<sup>41</sup> F&LA at 8, MUR 7965 (Iho Araise LLC, *et al.*).

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

<sup>43</sup> These circumstances also fall between prior recommendations by this Office where the Commission did not muster four votes for reasons unrelated to the merits of the case. *Compare* First Gen. Counsel’s Rpt. (“FGCR”) at 4-5, 9 MUR 6485 (W Spann LLC, *et al.*) (recommending the Commission find reason to believe in matter where the LLC was formed six and a half weeks prior to the contribution at issue where the true contributor had stated that he had formed the LLC to obscure that he was making the contribution), *and* FGCR at 10, MUR 6968 (Tread Standard LLC, *et al.*) (recommending that the Commission find reason to believe where LLC was formed seven weeks before the relevant contribution and “at the tail end of a series of contributions by [related individuals] to the Committee and its closely[ ] associated multicandidate PAC”), *with* FGCR at 5, 10, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (recommending the Commission find no reason to believe in matter where the LLC was formed fifteen weeks prior to the contribution at issue for a valid business purpose and the information suggested that the money used to make the contribution was the product of income from the assets, investments, and businesses that it was created to own and operate). The Commission split and voted to close the file in each of MUR 6485, MUR 6968, and MUR 6940 based on the rationale that the given matters presented an issue of first impression, which raised fair notice and due process concerns. *See* Certification (“Cert.”) (Feb. 25, 2016), MUR 6485; Cert. (May 11, 2018), MUR 6968; Cert. (Feb. 25, 2016), MUR 6930.

1 does not otherwise suggest there was no conduit contribution: There, the Commission concluded  
2 that there was “sizeable information to the contrary.”<sup>44</sup>

3       Taken together with the temporal proximity discussed above, SQI’s lack of any identified  
4 business activity pre-dating the contribution to Save Missouri supports a reasonable inference  
5 that SQI served as a conduit for a contribution made on another’s behalf. The Complaint states  
6 that SQI has “no known business operations, investments, assets, or commercial ventures from  
7 which it might generate its own income.”<sup>45</sup> The SQI Joint Response provides information  
8 stating that SQI has the business purpose of holding land for the operation of Herzog quarries;  
9 however, as noted above, the documents enclosed with the SQI Joint Response as evidence of  
10 this business purpose all post-date the contribution here at issue. The Commission has  
11 previously found reason to believe under similar circumstances:

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16       Further, the SQI Joint Response states that SQI’s initial capital contributions “came from  
17 its affiliated companies in the form of inter-company transfers.”<sup>47</sup> It does not specify when these  
18 inter-company transfers occurred or their purpose,<sup>48</sup> but it is reasonable to infer that the transfer  
19 of these funds pre-dated the contribution to Save Missouri and were used to make the  
20 contribution, given, as discussed above, that SQI does not appear to have conducted any business

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<sup>44</sup> F&LA at 8, MUR 7965 (*Saving Arizona PAC, et al.*).

<sup>45</sup> Compl. ¶ 8.

<sup>47</sup> SQI Joint Resp. at 3.

<sup>48</sup> *Id.*

1 activity prior to the contribution that could have generated independent funds. While this  
2 sequence of events does not conclusively establish that the funds were transferred for the purpose  
3 of making the relevant contribution, if, as the available information appears to suggest, one of  
4 SQI's first actions as an incorporated entity was to make a \$300,000 contribution before it  
5 engaged in its stated business activities, the available information supports a reasonable  
6 inference that SQI may have been funded for this purpose.

7       The remaining facts relied on by the Complaint neither support nor refute the allegation  
8 that SQI served as a conduit for the Save Missouri contribution: First, the Complaint notes that  
9 SQI lacks an online presence or other "public footprint."<sup>49</sup> In this case, the lack of an online  
10 presence or public footprint is unsurprising given SQI's stated purpose of holding land for the  
11 operation of Herzog quarries; as an entity that provides services solely to its affiliates, there is no  
12 reason for it to advertise itself to the general public. Second and likewise, although the  
13 Complaint points out that SQI shares an address with the Herzog Affiliates,<sup>50</sup> this also does not  
14 itself raise questions about SQI's status as a legitimate business enterprise. The shared address  
15 simply suggests that SQI, like the Herzog Affiliates, which the Complaint does not allege are  
16 anything other than legitimate business entities, is run by Herzog Enterprises, which operates  
17 from a central hub location. This conclusion accords with the SQI Joint Response:  
18 "Management of [SQI] is vested in its sole member, Herzog Enterprises."<sup>51</sup>

19       Nonetheless, the temporal proximity between SQI's founding and its \$300,000  
20 contribution to Save Missouri, together with its lack of apparent business activity pre-dating the  
21 contribution and the absence of information regarding when SQI received its funding, support a

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<sup>49</sup> Compl. ¶ 8.

<sup>50</sup> *Id.* ¶ 7.

<sup>51</sup> SQI Joint Resp. at 3.

1 reasonable inference that SQI served as a conduit rather than the true source of the contribution.  
2 Accordingly, we recommend that the Commission find reason to believe that Unknown  
3 Respondents and SQI violated 52 U.S.C. § 30122 by making and knowingly permitting one's  
4 name to be used to make a contribution in the name of another, respectively. Because the  
5 available information does not establish entity or entities funded SQI and whether they did so  
6 prior to SQI's contribution, and because we recommend an investigation, discussed below, we  
7 recommend that the Commission take no action at this time as to the Herzog Affiliates. More  
8 specifically, regarding the Herzog Affiliates, although the SQI Joint Response states that SQI  
9 was funded by "affiliated companies," it does not state the names of the affiliated companies or  
10 whether they were the same as the Respondent Herzog Affiliates. We expect that the identities  
11 of SQI's funders will be readily obtainable through the investigation and we will make the  
12 appropriate notifications or recommendations at that time.

13 As for Save Missouri, consistent with its Response, there is currently no available  
14 information indicating that it knew or should have known that the contributions at issue were  
15 made in the name of another. However, as we recommend an investigation into the potential  
16 violation discussed above, it is possible that the Herzog Affiliates, SQI, or individuals with  
17 knowledge of the facts here at issue may provide additional information regarding interactions  
18 between those entities and Save Missouri that may indicate that it was aware of the true source of  
19 the funds used to make the contribution. We therefore recommend the Commission take no  
20 action at this time as to the allegation that Save Missouri knowingly accepted contributions in the  
21 name of another in violation of 52 U.S.C. § 30122.

#### 22 **IV. INVESTIGATION**

23 We plan to seek information regarding the source of the funds used to make the  
24 contribution in SQI's name to Save Missouri to determine whether SQI used funds that it had

1 received for the purpose of making the contribution or whether SQI received or generated the  
2 funds for some purpose unrelated to political contributions.

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15 **V. RECOMMENDATIONS**

16 1. Find reason to believe that Unknown Respondents violated 52 U.S.C. § 30122 by  
17 making a contribution in the name of another;

18 2. Find reason to believe that SQI Limited, LLC, violated 52 U.S.C. § 30122 by  
19 knowingly permitting its name to be used to make a contribution in the name of  
20 another;

21 3. Take no action at this time with respect to the allegation that Herzog  
22 Technologies, Inc., Herzog Contracting Corp., and Herzog Transit Services, Inc.,  
23 violated 52 U.S.C. § 30122 by making a contribution in the name of another;

24 4. Take no action at this time with respect to the allegation that Save Missouri  
25 Values and Cabell Hobbs in his official capacity as treasurer violated 52 U.S.C.  
26 § 30122 by knowingly accepting a contribution in the name of another;

27 5. Approve the attached Factual and Legal Analyses;

28 6. Authorize compulsory process; and



**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** SQI Limited, LLC**MUR 8058****I. INTRODUCTION**

This matter arose from a Complaint alleging that on July 11, 2022, SQI Limited, LLC (“SQI”), allowed its name to be used to effect a \$300,000 contribution to Save Missouri Values (“Save Missouri”) on behalf of a true contributor or contributors in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint bases this allegation on the following: (1) The contribution was made three months after SQI’s founding; (2) SQI’s address disclosed in Save Missouri’s 2022 Pre-Primary Report filed with the Commission is that of corporate entities affiliated with “Herzog,”<sup>1</sup> a Missouri company whose corporate entities include Herzog Technologies, Inc., Herzog Contracting Corp., and Herzog Transit Services, Inc. (collectively, the “Herzog Affiliates”); (3) SQI’s apparent lack of business activity, investments, assets, or income; and (4) SQI’s lack of public footprint including web presence or records with entities such as the Better Business Bureau and the U.S. Securities and Exchange Commission. The Complaint alleges that SQI was used for the sole purpose of allowing unknown persons — potentially, the Herzog Affiliates or their owners, executives, or employees — to funnel a \$300,000 contribution to Save Missouri without revealing the true contributors’ identities.

SQI denies the allegation and states that SQI was formed to hold and manage quarry operations for the benefit of the Herzog Affiliates. SQI provides documentation regarding business transactions apparently aligned with this purpose, all of which post-date the contribution to Save Missouri. SQI further states that SQI was originally funded by its affiliated

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<sup>1</sup> “Herzog” appears to refer to Herzog Enterprises, discussed *infra*.



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1 companies, though it does not specify when this funding occurred. According to SQI, the Chief  
2 Executive Officer of Herzog Enterprises, which the Respondents state is the “member manager”  
3 of SQI, directed the contribution by SQI to Save Missouri, and that he made no attempt to  
4 conceal his identity or his affiliation with Herzog Enterprises when making the contribution.

5 Because the available information raises questions as to whether SQI received funds for  
6 the purpose of making a political contribution such that it was a conduit rather than the true  
7 source of the contribution, namely the short temporal proximity between when SQI was formed  
8 and when the contribution was made as well as the lack of known business activities pre-dating  
9 the contribution, the Commission finds reason to believe that SQI violated 52 U.S.C. § 30122 by  
10 knowingly permitting its name to be used to make a contribution in the name of another.

## 11 **II. FACTUAL BACKGROUND**

12 SQI is a limited liability company (“LLC”) organized in Missouri on April 13, 2022; it is  
13 wholly owned by Herzog Enterprises, which is also a Missouri corporation.<sup>2</sup> In addition to SQI,  
14 Herzog Enterprises also wholly owns the Herzog Affiliates, three Missouri corporations formed  
15 between 1969 and 2010.<sup>3</sup>

16 Save Missouri is an independent expenditure-only political committee that registered  
17 with the Commission on April 9, 2021.<sup>4</sup> In its 2022 Pre-Primary Election Report, Save Missouri  
18 reported a \$300,000 contribution from SQI dated July 11, 2022.<sup>5</sup>

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<sup>2</sup> SQI Resp. at 2 (Nov. 16, 2022) [hereinafter SQI Resp.].

<sup>3</sup> *Id.*

<sup>4</sup> Save Missouri Values, Statement of Organization (Apr. 9, 2021), <https://docquery.fec.gov/pdf/032/202104099443159032/202104099443159032.pdf>.

<sup>5</sup> Save Missouri Values, 2022 Pre-Primary Election Report at 7 (July 21, 2022), <https://docquery.fec.gov/pdf/664/202207219525012664/202207219525012664.pdf>.

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1           The Complaint in this matter alleges that SQI served as a conduit for making the  
2 \$300,000 contribution to Save Missouri, and that the true source of the contribution was one or  
3 more of the Herzog Affiliates or other, unknown respondents.<sup>6</sup> In support of this claim, the  
4 Complaint relies on the following facts: (1) SQI was founded on April 13, 2022, and made the  
5 \$300,000 contribution on July 11, 2022, just under three months after its formation;<sup>7</sup> (2) the  
6 address Save Missouri reported in connection with this contribution is the same as that of the  
7 Herzog Affiliates listed on Herzog Enterprises’s website, which does not name SQI;<sup>8</sup> (3) SQI  
8 “has no known business operations, investments, assets, or commercial ventures from which it  
9 might generate its own income;”<sup>9</sup> and (4) SQI does not have “any discernible public footprint,”  
10 including a website, social media accounts, or records with the Better Business Bureau, the U.S.  
11 Securities and Exchange Commission, the U.S. Patent and Trademark Office, or Lee’s Summit  
12 Chamber of Commerce.<sup>10</sup>

13           SQI denies the allegations.<sup>11</sup> The SQI Response states that SQI was formed for liability  
14 and business purposes, specifically to “purchase, hold, lease, and manage quarry operations upon  
15 land owned or leased by SQI” “for the benefit of its affiliated companies,” and that “SQI” is an  
16 acronym for “Strategic Quarry Investments.”<sup>12</sup> The SQI Response states that SQI “owns and  
17 manages approximately 310 acres, more or less, and is in the process of finalizing the purchase

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<sup>6</sup> Compl. ¶¶ 1-2, 17-22 (Aug. 24, 2022).

<sup>7</sup> *Id.* ¶¶ 5-6.

<sup>8</sup> *Id.* ¶ 7.

<sup>9</sup> *Id.* ¶ 8.

<sup>10</sup> *Id.*

<sup>11</sup> SQI Resp.

<sup>12</sup> *Id.* at 2 & n.5, 6. SQI states that the attachments to the Response, including the formation minutes for SQI, demonstrate that SQI was formed for the purpose stated in their Response. *Id.*, Ex. A.

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1 or acquisition of an additional . . . 700 acres of land, portions of which have previously been  
2 quarried and portions of which will be quarried by SQI.”<sup>13</sup> SQI attaches to its Response a  
3 number of corporation special warranty deeds, each of which was executed on November 8,  
4 2022, and a real estate sales agreement dated October 28, 2022;<sup>14</sup> both dates are subsequent to  
5 the date of the July 11, 2022 contribution at issue in this matter, the filing of the Complaint,<sup>15</sup>  
6 and the Respondent’s notification thereof.<sup>16</sup>

7 According to the SQI Response, SQI’s initial capital contributions “came from its  
8 affiliated companies in the form of inter-company transfers. No owners, executives, or  
9 employees of either Herzog Enterprises, [SQI], or any other affiliated company made any  
10 contributions to [SQI] whatsoever.”<sup>17</sup> It does not specify when these inter-company transfers  
11 occurred or their purpose.<sup>18</sup> The SQI Response states that “on or around July 11, 2022, Brad  
12 Lager, the Chief Executive Officer for Herzog Enterprises,” which it calls the “member manager  
13 of SQI,” “directed the expenditure of [SQI] funds for the purpose of contributing to” Save  
14 Missouri.<sup>19</sup> The SQI Response states that the contribution was completed “through  
15 communication with a fundraising consultant, and Mr. Lager made no attempt to conceal his  
16 identity,”<sup>20</sup> which it supports by providing an email from Save Missouri to Lager thanking him  
17 for the donation and to which Save Missouri attached wire instructions to make the

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<sup>13</sup> SQI Resp. at 2.

<sup>14</sup> *See id.*, Exs. E-G.

<sup>15</sup> *See* Compl. (bearing stamp reflecting that it was received by the Commission on August 24, 2022).

<sup>16</sup> *See* Notif. Letter (Aug. 26, 2022) (SQI Limited, LLC).

<sup>17</sup> SQI Resp. at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 4.

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1 contribution.<sup>21</sup> SQI further states that SQI, Herzog Enterprises, and the Herzog Affiliates are  
2 neither foreign nationals nor government contractors, and, as Save Missouri is an independent  
3 expenditure-only political committee, it is free to accept contributions from any corporation  
4 except “foreign nationals, federal contractors, national banks, or federally chartered  
5 operations.”<sup>22</sup> For these reasons, SQI argues that the Commission should find no reason to  
6 believe that a violation of the Act occurred and close the file.<sup>23</sup>

### 7 **III. LEGAL ANALYSIS**

8 The Act provides that a contribution includes “any gift, subscription, loan, advance, or  
9 deposit of money or anything of value made by any person for the purpose of influencing any  
10 election for Federal office.”<sup>24</sup> The term “person” for purposes of the Act and Commission  
11 regulations includes partnerships, corporations, and “any other organization or group of  
12 persons.”<sup>25</sup> The Act prohibits a person from making a contribution in the name of another  
13 person, knowingly permitting his or her name to be used to effect such a contribution, or  
14 knowingly accepting such a contribution.<sup>26</sup> The Commission has included in its regulations  
15 illustrations of activities that constitute making a contribution in the name of another:

16 (i) Giving money or anything of value, all or part of which was  
17 provided to the contributor by another person (the true  
18 contributor) without disclosing the source of money or the  
19 thing of value to the recipient candidate or committee at the  
20 time the contribution is made; or

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<sup>21</sup> *Id.* at 3; *id.*, Ex. I.

<sup>22</sup> SQI Resp. at 3.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> 52 U.S.C. § 30101(8)(A).

<sup>25</sup> *Id.* § 30101(11); 11 C.F.R. § 100.10.

<sup>26</sup> 52 U.S.C. § 30122.

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(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.<sup>27</sup>

The requirement that a contribution be made in the name of its true source promotes Congress’s objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.<sup>28</sup> Courts therefore have uniformly rejected the assertion that “only the person who actually transmits funds . . . makes the contribution,”<sup>29</sup> recognizing that “it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift.”<sup>30</sup> Consequently, both the Act and the Commission’s implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee “makes” the resulting contribution.<sup>31</sup> This is true

<sup>27</sup> 11 C.F.R. § 110.4(b)(2)(i), (ii).

<sup>28</sup> *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

<sup>29</sup> *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

<sup>30</sup> *O’Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

<sup>31</sup> *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee”) (emphasis added); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent [the Act’s reporting] restrictions[.]”).

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1 whether funds are advanced to another person to make a contribution in that person’s name or  
2 promised as reimbursement of a solicited contribution.<sup>32</sup>

3 Because the concern of the law is reporting the true source from which a contribution to a  
4 candidate or committee originates, regardless of the mechanism by which the funds are  
5 transmitted, the Commission will examine the structure of the transaction itself and the  
6 arrangement between the parties to determine who in fact “made” a given contribution.<sup>33</sup> The  
7 D.C. Circuit has found that Section 30122’s prohibition of contributions in the name of another  
8 applies to LLCs<sup>34</sup> — such that an LLC cannot be used as a “straw donor” to transmit the funds of  
9 another.<sup>35</sup>

10 In this matter, the temporal proximity between when SQI was formed and when the  
11 contribution was made, the absence of information concerning when SQI was funded, and the  
12 fact that SQI’s business operations identified in the Response post-date the contribution to Save  
13 Missouri raise questions regarding the possibility that funds were provided to SQI for the  
14 purpose of making a contribution.

15 As stated above, the Complaint premises its allegation on four factors: (1) the temporal  
16 proximity between SQI’s formation and the contribution in its name; (2) the fact that SQI shares

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<sup>32</sup> *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with a suggestion that they contribute the funds to a specific political committee, violated section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

<sup>33</sup> Factual & Legal Analysis (“F&LA”) at 4, MUR 7903 (Tomfoolery, LLC).

<sup>34</sup> *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (“The controlling commissioners did not dispute that [52 U.S.C.] § 30122 applies to closely held corporations and corporate LLCs. *We agree that it does.*” (emphasis added)). The Court nevertheless held that the Commission’s dismissal of several matters involving alleged LLC conduits — based on the rationale that the matters presented an issue of first impression, which raised fair notice and due process concerns — was reasonable. *Id.* at 357-58.

<sup>35</sup> F&LA at 4, MUR 7903 (Tomfoolery, LLC).

1 an address with the Herzog Affiliates; (3) SQI’s lack of known business activities; and (4) SQI’s  
2 lack of any discernible public footprint. When an LLC makes a political contribution without  
3 evidence of activity suggesting it had the means to make the contribution absent an infusion of  
4 funds provided for that purpose, the circumstances may raise a reasonable inference that the LLC  
5 was used as a conduit to hide the identity of the true contributor.<sup>36</sup> In determining whether such  
6 an inference is warranted, the Commission considers the overall record, including specific  
7 factors such as the amount of the contribution relative to other activities, the LLC’s known  
8 activities prior to making the contribution, and whether any other information suggests an  
9 attempt to circumvent the Act’s disclosure requirements. Specifically, the temporal proximity  
10 between the LLC’s formation date and the contribution may raise an inference about the purpose  
11 of the donation to the LLC.

12 Here, the temporal proximity between SQI’s formation and the date of the contribution  
13 made in its name — approximately 3 months — raises a question about whether SQI received  
14 funds for the purpose of making a contribution, especially given that SQI’s known business  
15 activities post-date the contribution. Though the Commission has not expressed a bright-line  
16 rule regarding when the timing of an organization’s founding leads to an inference that it was  
17 created for the purpose of making a contribution, in MUR 7965 (Saving Arizona PAC), the  
18 Commission found no reason to believe that the respondents violated the Act where an LLC  
19 established as a long-term estate planning vehicle for two individuals, and which had received

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<sup>36</sup> See Statement of Reasons of Chairman Petersen & Comm’rs. Hunter & Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487 & 6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Invs. Grp., Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) [hereinafter Republican SOR, MURs 6485, *et al.*] (“Where direct evidence of this purpose is lacking, the Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or *bona fide* capital investments . . . . These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”).

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1 funds from a venture capital firm for which one of the founding individuals was a general  
2 partner, made a contribution five months after its organization.<sup>37</sup> The Commission found that  
3 “[t]he information presented in the Complaint as support for a conduit scheme — a five-month  
4 period between the LLC’s formation and its contribution and the lack of an online presence —  
5 [wa]s insufficient to warrant a finding of reason to believe that a violation occurred given the  
6 length of time at issue and the available information to the contrary.”<sup>38</sup> In these circumstances,  
7 three months is well under the Commission’s precedent of five months and is temporally  
8 proximate enough to raise questions about a nexus between the LLC’s funding and the  
9 subsequent political contribution.<sup>39</sup> Further, unlike in MUR 7965, the available information does  
10 not otherwise suggest there was no conduit contribution: There, the Commission concluded that  
11 there was “sizeable information to the contrary.”<sup>40</sup>

12 Taken together with the temporal proximity discussed above, SQI’s lack of any identified  
13 business activity pre-dating the contribution to Save Missouri supports a reasonable inference  
14 that SQI served as a conduit for a contribution made on another’s behalf. The Complaint states

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<sup>37</sup> F&LA at 8, MUR 7965 (Iho Araise LLC, *et al.*).

<sup>38</sup> *Id.* at 2.

<sup>39</sup> These circumstances also fall between prior recommendations by this Office where the Commission did not muster four votes for reasons unrelated to the merits of the case. *Compare* First Gen. Counsel’s Rpt. (“FGCR”) at 4-5, 9 MUR 6485 (W Spann LLC, *et al.*) (recommending the Commission find reason to believe in matter where the LLC was formed six and a half weeks prior to the contribution at issue where the true contributor had stated that he had formed the LLC to obscure that he was making the contribution), *and* FGCR at 10, MUR 6968 (Tread Standard LLC, *et al.*) (recommending that the Commission find reason to believe where LLC was formed seven weeks before the relevant contribution and “at the tail end of a series of contributions by [related individuals] to the Committee and its closely[ ] associated multicandidate PAC”), *with* FGCR at 5, 10, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (recommending the Commission find no reason to believe in matter where the LLC was formed fifteen weeks prior to the contribution at issue for a valid business purpose and the information suggested that the money used to make the contribution was the product of income from the assets, investments, and businesses that it was created to own and operate). The Commission split and voted to close the file in each of MUR 6485, MUR 6968, and MUR 6940 based on the rationale that the given matters presented an issue of first impression, which raised fair notice and due process concerns. *See* Certification (“Cert.”) (Feb. 25, 2016), MUR 6485; Cert. (May 11, 2018), MUR 6968; Cert. (Feb. 25, 2016), MUR 6930.

<sup>40</sup> F&LA at 8, MUR 7965 (Saving Arizona PAC, *et al.*).



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1 that SQI has “no known business operations, investments, assets, or commercial ventures from  
2 which it might generate its own income.”<sup>41</sup> The SQI Response provides information stating that  
3 SQI has the business purpose of holding land for the operation of Herzog quarries; however, as  
4 noted above, the documents enclosed with the SQI Response as evidence of this business  
5 purpose all post-date the contribution here at issue.

6 Further, the SQI Response states that SQI’s initial capital contributions “came from its  
7 affiliated companies in the form of inter-company transfers.”<sup>42</sup> It does not specify when these  
8 inter-company transfers occurred or their purpose,<sup>43</sup> but it is reasonable to infer that the transfer  
9 of these funds pre-dated the contribution to Save Missouri and were used to make the  
10 contribution, given, as discussed above, that SQI does not appear to have conducted any business  
11 activity prior to the contribution that could have generated independent funds. While this  
12 sequence of events does not conclusively establish that the funds were transferred for the purpose  
13 of making the relevant contribution, if, as the available information appears to suggest, one of  
14 SQI’s first actions as an incorporated entity was to make a \$300,000 contribution before it  
15 engaged in its stated business activities, the available information supports a reasonable  
16 inference that SQI may have been funded for this purpose.

17 The remaining facts relied on by the Complaint neither support nor refute the allegation  
18 that SQI served as a conduit for the Save Missouri contribution: First, the Complaint notes that  
19 SQI lacks an online presence or other “public footprint.”<sup>44</sup> In this case, the lack of an online  
20 presence or public footprint is unsurprising given SQI’s stated purpose of holding land for the

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<sup>41</sup> Compl. ¶ 8.

<sup>42</sup> SQI Resp. at 3.

<sup>43</sup> *Id.*

<sup>44</sup> Compl. ¶ 8.

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1 operation of Herzog quarries; as an entity that provides services solely to its affiliates, there is no  
2 reason for it to advertise itself to the general public. Second and likewise, although the  
3 Complaint points out that SQI shares an address with the Herzog Affiliates,<sup>45</sup> this also does not  
4 itself raise questions about SQI's status as a legitimate business enterprise. The shared address  
5 simply suggests that SQI, like the Herzog Affiliates, which the Complaint does not allege are  
6 anything other than legitimate business entities, is run by Herzog Enterprises, which operates  
7 from a central hub location. This conclusion accords with the SQI Response: "Management of  
8 [SQI] is vested in its sole member, Herzog Enterprises."<sup>46</sup>

9           Nonetheless, the temporal proximity between SQI's founding and its \$300,000  
10 contribution to Save Missouri, together with its lack of apparent business activity pre-dating the  
11 contribution and the absence of information regarding when SQI received its funding, support a  
12 reasonable inference that SQI served as a conduit rather than the true source of the contribution.  
13 Accordingly, the Commission finds reason to believe that SQI violated 52 U.S.C. § 30122 by  
14 knowingly permitting its name to be used to make a contribution in the name of another.

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<sup>45</sup> *Id.* ¶ 7.

<sup>46</sup> SQI Resp. at 3.

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** Unknown Respondents**MUR 8058****I. INTRODUCTION**

This matter arose from a Complaint alleging that on July 11, 2022, one or more Unknown Respondents made a \$300,000 contribution in the name of SQI Limited, LLC (“SQI”), to Save Missouri Values (“Save Missouri”) in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint bases this allegation on the following: (1) The contribution was made three months after SQI’s founding; (2) SQI’s address disclosed in Save Missouri’s 2022 Pre-Primary Report filed with the Commission is that of corporate entities affiliated with “Herzog,”<sup>1</sup> a Missouri company whose corporate entities include Herzog Technologies, Inc., Herzog Contracting Corp., and Herzog Transit Services, Inc. (collectively, the “Herzog Affiliates”); (3) SQI’s apparent lack of business activity, investments, assets, or income; and (4) SQI’s lack of public footprint including web presence or records with entities such as the Better Business Bureau and the U.S. Securities and Exchange Commission. The Complaint alleges that SQI was used for the sole purpose of allowing Unknown Respondents to funnel a \$300,000 contribution to Save Missouri without revealing the true contributors’ identities.

Because the available information raises questions as to whether Unknown Respondents provided SQI with funds for the purpose of making a political contribution such that it was a conduit rather than the true source of the contribution, namely the short temporal proximity between when SQI was formed and when the contribution was made as well as the lack of

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<sup>1</sup> “Herzog” appears to refer to Herzog Enterprises, discussed *infra*.

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1 known business activities pre-dating the contribution, the Commission finds reason to believe  
2 that Unknown Respondents violated 52 U.S.C. § 30122 by making a contribution in the name of  
3 another.

## 4 **II. FACTUAL BACKGROUND**

5 SQI is a limited liability company (“LLC”) organized in Missouri on April 13, 2022; it is  
6 wholly owned by Herzog Enterprises, which is also a Missouri corporation. In addition to SQI,  
7 Herzog Enterprises also wholly owns the Herzog Affiliates, three Missouri corporations formed  
8 between 1969 and 2010.

9 Save Missouri is an independent expenditure-only political committee that registered  
10 with the Commission on April 9, 2021.<sup>2</sup> In its 2022 Pre-Primary Election Report, Save Missouri  
11 reported a \$300,000 contribution from SQI dated July 11, 2022.<sup>3</sup>

12 The Complaint in this matter alleges that SQI served as a conduit for making the  
13 \$300,000 contribution to Save Missouri, and that the true source of the contribution was one or  
14 more Unknown Respondents.<sup>4</sup> In support of this claim, the Complaint relies on the following  
15 facts: (1) SQI was founded on April 13, 2022, and made the \$300,000 contribution on July 11,  
16 2022, just under three months after its formation;<sup>5</sup> (2) the address Save Missouri reported in  
17 connection with this contribution is the same as that of the Herzog Affiliates listed on Herzog  
18 Enterprises’s website, which does not name SQI;<sup>6</sup> (3) SQI “has no known business operations,

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<sup>2</sup> Save Missouri Values, Statement of Organization (Apr. 9, 2021), <https://docquery.fec.gov/pdf/032/202104099443159032/202104099443159032.pdf>.

<sup>3</sup> Save Missouri Values, 2022 Pre-Primary Election Report at 7 (July 21, 2022), <https://docquery.fec.gov/pdf/664/202207219525012664/202207219525012664.pdf>.

<sup>4</sup> Compl. ¶¶ 1-2, 17-22 (Aug. 24, 2022).

<sup>5</sup> *Id.* ¶¶ 5-6.

<sup>6</sup> *Id.* ¶ 7.

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1 investments, assets, or commercial ventures from which it might generate its own income;”<sup>7</sup> and  
2 (4) SQI does not have “any discernible public footprint,” including a website, social media  
3 accounts, or records with the Better Business Bureau, the U.S. Securities and Exchange  
4 Commission, the U.S. Patent and Trademark Office, or Lee’s Summit Chamber of Commerce.<sup>8</sup>

5         The Commission is aware of information suggesting that SQI was formed for liability  
6 and business purposes, specifically to purchase and manage quarry operations on land it owned  
7 or leased for the benefit of its affiliates. The Commission is aware that SQI owns, leases, or is  
8 attempting to acquire approximately 1,000 acres of land, portions of which have been quarried or  
9 will be quarried by SQI. The information in the Commission’s possession includes corporation  
10 special warranty deeds and a real estate sales agreement for some of these holdings, all of which  
11 post-date the July 11, 2022 contribution at issue in this matter, the filing of the Complaint,<sup>9</sup> and  
12 any notification thereof sent to any Respondent in this matter.

13         The Commission is aware of information indicating that SQI’s initial funding came via  
14 inter-company transfers from its affiliated companies. The Commission is not aware of when  
15 these inter-company transfers occurred or their purpose. The available information indicates that  
16 Brad Lager, the Chief Executive Officer for Herzog Enterprises, directed the contribution to  
17 Save Missouri by SQI. The Commission is aware that the contribution was completed through  
18 communication with a fundraising consultant.

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<sup>7</sup> *Id.* ¶ 8.

<sup>8</sup> *Id.*

<sup>9</sup> *See* Compl. (bearing stamp reflecting that it was received by the Commission on August 24, 2022).

1 **III. LEGAL ANALYSIS**

2 The Act provides that a contribution includes “any gift, subscription, loan, advance, or  
3 deposit of money or anything of value made by any person for the purpose of influencing any  
4 election for Federal office.”<sup>10</sup> The term “person” for purposes of the Act and Commission  
5 regulations includes partnerships, corporations, and “any other organization or group of  
6 persons.”<sup>11</sup> The Act prohibits a person from making a contribution in the name of another  
7 person, knowingly permitting his or her name to be used to effect such a contribution, or  
8 knowingly accepting such a contribution.<sup>12</sup> The Commission has included in its regulations  
9 illustrations of activities that constitute making a contribution in the name of another:

10 (i) Giving money or anything of value, all or part of which was  
11 provided to the contributor by another person (the true  
12 contributor) without disclosing the source of money or the  
13 thing of value to the recipient candidate or committee at the  
14 time the contribution is made; or

15 (ii) Making a contribution of money or anything of value and  
16 attributing as the source of the money or thing of value another  
17 person when in fact the contributor is the source.<sup>13</sup>

18 The requirement that a contribution be made in the name of its true source promotes  
19 Congress’s objective of ensuring the complete and accurate disclosure by candidates and  
20 committees of the political contributions they receive.<sup>14</sup> Courts therefore have uniformly  
21 rejected the assertion that “only the person who actually transmits funds . . . makes the

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<sup>10</sup> 52 U.S.C. § 30101(8)(A).

<sup>11</sup> *Id.* § 30101(11); 11 C.F.R. § 100.10.

<sup>12</sup> 52 U.S.C. § 30122.

<sup>13</sup> 11 C.F.R. § 110.4(b)(2)(i), (ii).

<sup>14</sup> *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

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1 contribution,”<sup>15</sup> recognizing that “it is implausible that Congress, in seeking to promote  
2 transparency, would have understood the relevant contributor to be [an] intermediary who  
3 merely transmitted the campaign gift.”<sup>16</sup> Consequently, both the Act and the Commission’s  
4 implementing regulations provide that a person who furnishes another with funds for the purpose  
5 of contributing to a candidate or committee “makes” the resulting contribution.<sup>17</sup> This is true  
6 whether funds are advanced to another person to make a contribution in that person’s name or  
7 promised as reimbursement of a solicited contribution.<sup>18</sup>

8 Because the concern of the law is reporting the true source from which a contribution to a  
9 candidate or committee originates, regardless of the mechanism by which the funds are  
10 transmitted, the Commission will examine the structure of the transaction itself and the  
11 arrangement between the parties to determine who in fact “made” a given contribution.<sup>19</sup> The  
12 D.C. Circuit has found that Section 30122’s prohibition of contributions in the name of another

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<sup>15</sup> *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

<sup>16</sup> *O’Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

<sup>17</sup> *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee”) (emphasis added); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent [the Act’s reporting] restrictions[.]”).

<sup>18</sup> *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with a suggestion that they contribute the funds to a specific political committee, violated section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

<sup>19</sup> Factual & Legal Analysis (“F&LA”) at 4, MUR 7903 (Tomfoolery, LLC).

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1 applies to LLCs<sup>20</sup> — such that an LLC cannot be used as a “straw donor” to transmit the funds of  
2 another.<sup>21</sup>

3 In this matter, the temporal proximity between when SQI was formed and when the  
4 contribution was made, the absence of information concerning when SQI was funded, and the  
5 fact that SQI’s business operations appear to post-date the contribution to Save Missouri raise  
6 questions regarding the possibility that Unknown Respondents provided funds to SQI for the  
7 purpose of making a contribution.

8 As stated above, the Complaint premises its allegation on four factors: (1) the temporal  
9 proximity between SQI’s formation and the contribution in its name; (2) the fact that SQI shares  
10 an address with the Herzog Affiliates; (3) SQI’s lack of known business activities; and (4) SQI’s  
11 lack of any discernible public footprint. When an LLC makes a political contribution without  
12 evidence of activity suggesting it had the means to make the contribution absent an infusion of  
13 funds provided for that purpose, the circumstances may raise a reasonable inference that the LLC  
14 was used as a conduit to hide the identity of the true contributor.<sup>22</sup> In determining whether such  
15 an inference is warranted, the Commission considers the overall record, including specific  
16 factors such as the amount of the contribution relative to other activities, the LLC’s known

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<sup>20</sup> *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (“The controlling commissioners did not dispute that [52 U.S.C.] § 30122 applies to closely held corporations and corporate LLCs. *We agree that it does.*” (emphasis added)). The Court nevertheless held that the Commission’s dismissal of several matters involving alleged LLC conduits — based on the rationale that the matters presented an issue of first impression, which raised fair notice and due process concerns — was reasonable. *Id.* at 357-58.

<sup>21</sup> F&LA at 4, MUR 7903 (Tomfoolery, LLC).

<sup>22</sup> *See* Statement of Reasons of Chairman Petersen & Comm’rs. Hunter & Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487 & 6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Invs. Grp., Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) [hereinafter Republican SOR, MURs 6485, *et al.*] (“Where direct evidence of this purpose is lacking, the Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or *bona fide* capital investments . . . . These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”).



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1 activities prior to making the contribution, and whether any other information suggests an  
2 attempt to circumvent the Act’s disclosure requirements. Specifically, the temporal proximity  
3 between the LLC’s formation date and the contribution may raise an inference about the purpose  
4 of the donation to the LLC.

5 Here, the temporal proximity between SQI’s formation and the date of the contribution  
6 made in its name — approximately 3 months — raises a question about whether Unknown  
7 Respondents funded SQI for the purpose of making a contribution, especially given that SQI’s  
8 known business activities post-date the contribution. Though the Commission has not expressed  
9 a bright-line rule regarding when the timing of an organization’s founding leads to an inference  
10 that it was created for the purpose of making a contribution, in MUR 7965 (Saving Arizona  
11 PAC), the Commission found no reason to believe that the respondents violated the Act where an  
12 LLC established as a long-term estate planning vehicle for two individuals, and which had  
13 received funds from a venture capital firm for which one of the founding individuals was a  
14 general partner, made a contribution five months after its organization.<sup>23</sup> The Commission found  
15 that “[t]he information presented in the Complaint as support for a conduit scheme — a five-  
16 month period between the LLC’s formation and its contribution and the lack of an online  
17 presence — [wa]s insufficient to warrant a finding of reason to believe that a violation occurred  
18 given the length of time at issue and the available information to the contrary.”<sup>24</sup> In these  
19 circumstances, three months is well under the Commission’s precedent of five months and is  
20 temporally proximate enough to raise questions about a nexus between the LLC’s funding and

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<sup>23</sup> F&LA at 8, MUR 7965 (Iho Araise LLC, *et al.*).

<sup>24</sup> *Id.* at 2.

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1 the subsequent political contribution.<sup>25</sup> Further, unlike in MUR 7965, the available information  
2 does not otherwise suggest there was no conduit contribution: There, the Commission concluded  
3 that there was “sizeable information to the contrary.”<sup>26</sup>

4 Taken together with the temporal proximity discussed above, SQI’s lack of any identified  
5 business activity pre-dating the contribution to Save Missouri supports a reasonable inference  
6 that SQI served as a conduit for a contribution made on behalf of Unknown Respondents. The  
7 Complaint states that SQI has “no known business operations, investments, assets, or  
8 commercial ventures from which it might generate its own income.”<sup>27</sup> The Commission is aware  
9 of information indicating that SQI has the business purpose of holding land for the operation of  
10 Herzog quarries; however, as noted above, the information in the Commission’s possession  
11 indicates that agreements relating to this business purpose all post-date the contribution here at  
12 issue.

13 Further, the available information indicates that SQI was originally funded via inter-  
14 company transfers, but does not include when those transfers occurred or for what purposes. It is

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<sup>25</sup> These circumstances also fall between prior recommendations by this Office where the Commission did not muster four votes for reasons unrelated to the merits of the case. *Compare* First Gen. Counsel’s Rpt. (“FGCR”) at 4-5, 9 MUR 6485 (W Spann LLC, *et al.*) (recommending the Commission find reason to believe in matter where the LLC was formed six and a half weeks prior to the contribution at issue where the true contributor had stated that he had formed the LLC to obscure that he was making the contribution), *and* FGCR at 10, MUR 6968 (Tread Standard LLC, *et al.*) (recommending that the Commission find reason to believe where LLC was formed seven weeks before the relevant contribution and “at the tail end of a series of contributions by [related individuals] to the Committee and its closely[ ]associated multicandidate PAC”), *with* FGCR at 5, 10, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (recommending the Commission find no reason to believe in matter where the LLC was formed fifteen weeks prior to the contribution at issue for a valid business purpose and the information suggested that the money used to make the contribution was the product of income from the assets, investments, and businesses that it was created to own and operate). The Commission split and voted to close the file in each of MUR 6485, MUR 6968, and MUR 6940 based on the rationale that the given matters presented an issue of first impression, which raised fair notice and due process concerns. *See* Certification (“Cert.”) (Feb. 25, 2016), MUR 6485; Cert. (May 11, 2018), MUR 6968; Cert. (Feb. 25, 2016), MUR 6930.

<sup>26</sup> F&LA at 8, MUR 7965 (Saving Arizona PAC, *et al.*).

<sup>27</sup> Compl. ¶ 8.

1 reasonable to infer that the transfer of these funds pre-dated the contribution to Save Missouri  
2 and were used to make the contribution, given, as discussed above, that SQI does not appear to  
3 have conducted any business activity prior to the contribution that could have generated  
4 independent funds. While this sequence of events does not conclusively establish that the funds  
5 were transferred for the purpose of making the relevant contribution, if, as the available  
6 information appears to suggest, one of SQI's first actions as an incorporated entity was to make a  
7 \$300,000 contribution before it engaged in its stated business activities, the available information  
8 supports a reasonable inference that Unknown Respondents may have funded SQI for this  
9 purpose.

10 The remaining facts relied on by the Complaint neither support nor refute the allegation  
11 that SQI served as a conduit for Unknown Respondents to make the Save Missouri contribution:  
12 First, the Complaint notes that SQI lacks an online presence or other "public footprint."<sup>28</sup> In this  
13 case, the lack of an online presence or public footprint is unsurprising given information  
14 indicating that SQI's purpose is to hold land for the operation of Herzog quarries; as an entity  
15 that provides services solely to its affiliates, there is no reason for it to advertise itself to the  
16 general public. Second and likewise, although the Complaint points out that SQI shares an  
17 address with the Herzog Affiliates,<sup>29</sup> this also does not itself raise questions about SQI's status as  
18 a legitimate business enterprise. The shared address simply suggests that SQI, like the Herzog  
19 Affiliates, which the Complaint does not allege are anything other than legitimate business  
20 entities, is run by Herzog Enterprises, which operates from a central hub location.

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<sup>28</sup> *Id.* ¶ 8.

<sup>29</sup> *Id.* ¶ 7.

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1           Nonetheless, the temporal proximity between SQI's founding and its \$300,000  
2 contribution to Save Missouri, together with its lack of apparent business activity pre-dating the  
3 contribution and the absence of information regarding when SQI received its funding, support a  
4 reasonable inference that SQI served as a conduit for a contribution by Unknown Respondents  
5 rather than as the true source of the contribution. Accordingly, the Commission finds reason to  
6 believe that Unknown Respondents violated 52 U.S.C. § 30122 by making a contribution in the  
7 name of another.