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By OGC/CELA at 6:27 pm, Jan 24, 2023

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

January 24, 2023

Federal Election Commission
Office of General Counsel
Attn: Aaron Rabinowitz
1050 First Street, NE
Washington, DC 20463

Re: MUR 7464

Dear Mr. Rabinowitz:

This response is submitted by the undersigned counsel on behalf of
in response to your letter dated November 30, 2022, with respect to the
enforcement matter designated Matter Under Review 7464 (the “Notification Letter”).

The first part of the Notification Letter is apparently intended to serve as the notification referenced in 52 U.S.C. § 30109(a)(1).¹ The second portion of the Notification Letter, beginning with the first full paragraph on page 2, presents ten specific investigatory questions and includes a document production demand. OGC writes, “Please provide written answers to, and information or documents requested in, the following questions.” OGC’s investigatory request is improper; the Act does not allow the conflation of initial notification and investigation.

In subsequent conversations with OGC staff, it was made clear to the undersigned counsel that OGC is treating [redacted] as a respondent in this matter. Furthermore, it appears that OGC is proceeding *as if* the Commission had made an actual RTB finding specifically against [redacted].

While we understand that the Commission routinely makes reason to believe findings against “unknown respondents,” notwithstanding its inherent illogic and questionable statutory basis, we have serious concerns with OGC’s attempt to conduct an investigation of a newly identified respondent at the same time it notifies that respondent of the allegations against it. Under the Act and Commission regulations, [redacted] is entitled to submit a response *before* it is subjected to the investigation set forth in the Notification Letter.

The Commission’s “unknown respondents” process is not set forth in the Act or Commission regulations. To the best of our knowledge, it is not referenced in any publicly available enforcement manuals or procedures. As authority for its actions, OGC referred us to

¹ The Notification Letter indicates that during its investigation, the Office of General Counsel (“OGC”) received information indicating [redacted] “may be one of the Unknown Respondents as to which the Commission” made a reason to believe (“RTB”) finding in this matter. The Notification Letter explains that OGC is “continuing to conduct an investigation into this matter, after which we will prepare to make a recommendation to the Commission. Prior to making our recommendation, we offer a respondent an opportunity to provide in writing a response to the Complaint and the Commission’s Factual and Legal Analysis.”

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MUR 6838 (Aossey) and MUR 6642 (Kauffman). In MUR 6838, the Commission made its initial reason to believe finding against an unknown respondent. After OGC's investigation revealed the apparent source of a mailer that lacked a disclaimer, OGC advised the Commission that it would notify Mr. Aossey of its findings.² OGC then sent a letter of notification to Mr. Aossey along with the Factual and Legal Analysis. Notably, this letter of notification did *not* include any specific investigatory questions that OGC expected Mr. Aossey to answer, nor did it include a document request.³ Rather, it was simply a letter of notification that apprised Mr. Aossey of the Commission's findings and offered him an opportunity to respond. Mr. Aossey submitted a response six days later, and approximately three months after that, OGC submitted a Second General Counsel's Report that recommended substituting Mr. Aossey in place of the Unknown Respondent in the Commission's previous findings and taking no further action.⁴ The matter was ultimately dismissed pursuant to *Heckler v. Chaney*.⁵

In MUR 6642 (Kauffman), the Commission and OGC followed the same process. After the Commission found reason to believe against an unknown respondent, OGC determined the apparent funding source for a billboard that lacked a disclaimer. OGC then issued a letter of notification to Mr. Kauffman; this letter did not include specific investigatory questions, nor did it include a document request.⁶

MURs 6838 and 6642 do not offer any support for the inclusion of specific investigatory questions and a demand for documents in the Notification Letter in this matter. Rather, in both prior MURs, the respondents were given the opportunity to respond to the complaint and OGC's findings after their identities became known. No additional investigation of either respondent was expected or authorized simultaneous with the respondent's initial response, the letters of notification that were issued did not contain specific investigatory questions or document demands, and no further action was considered or taken against either respondent until the Commission acted on a Second General Counsel's Report.⁷ To the extent that OGC contends that no additional investigation was required in MURs 6838 and 6642 once the identity of the payor was discovered, that distinction cannot justify the attempt here to combine notification with further investigation. The Notification Letter issued to _____ in this matter is an obvious expansion of the process reflected in MURs 6838 and 6642, and a violation of the Act.

² See MUR 6838, Memorandum of Jan. 19, 2016 (Notification of Respondent), <https://www.fec.gov/files/legal/murs/6838/16044402187.pdf>, ("As such, consistent with previous Commission practice in complaint-generated matters involving initially unknown respondents, now that we have become aware of the identity of the apparent respondent, we intend to notify Aossey about the allegations made in the Complaint and offer him an opportunity to respond.").

³ See MUR 6838, Letter of Notification (Feb. 2, 2016), <https://www.fec.gov/files/legal/murs/6838/16044402189.pdf>.

⁴ See MUR 6838, Second General Counsel's Report (May 26, 2016), <https://www.fec.gov/files/legal/murs/6838/16044402203.pdf>.

⁵ See MUR 6838, Certification (Sept. 13, 2016), <https://www.fec.gov/files/legal/murs/6838/16044402211.pdf>.

⁶ See MUR 6642, Letter of Notification (Nov. 12, 2013), <https://www.fec.gov/files/legal/murs/6642/14044353810.pdf>.

⁷ The Commission has also acted to add respondents after OGC becomes aware of additional information in the course of an authorized investigation. To the best of our knowledge, additional respondents are afforded an opportunity to respond before being subjected to further investigation. See, e.g., MURs 7226 (Fleck) and 7901 (Owens).

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Under the Act, “any person alleged in the complaint to have committed such a violation ... shall have the opportunity to demonstrate, in writing, to the Commission ... that no action should be taken against such person on the basis of the complaint.”⁸ This opportunity must be afforded “[b]efore the Commission conducts any vote on the complaint, other than a vote to dismiss.”⁹ Commission regulations mandate that it “*shall not* take any action, or make any finding, against a respondent other than action dismissing a complaint, *unless it has considered such response* or unless no such response has been served upon the Commission within the fifteen (15) day period specified in 11 CFR 111.6(a).”¹⁰ Then, “[i]f the Commission ... determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of the Act ... the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation.”¹¹ Finally, and only after this process is followed, “[t]he Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.”¹²

In other words, the Act does not permit the Commission to conduct an investigation of absent a proper reason to believe finding made by the Commissioners, which may be made only *after* considering response to a proper notification of the allegations against it. In the present matter, while the Commissioners apparently found reason to believe that “unknown respondents” may have violated the Act, the Commission, as of now, cannot have any reason to believe that committed any violation because the Commissioners have *never* considered any evidence specific to or any response of . is not mentioned in the Complaint or the Commission’s Factual and Legal Analysis and could only have become known to OGC as a result of its investigation into “unknown respondents.” OGC’s combination of notification and investigation is inconsistent with the Act, and an impending statute of limitations deadline cannot justify noncompliance with statutory mandates.

In light of these due process concerns, we request that this Response be treated as our client’s initial response to the Complaint. Our client was first made aware of the allegations against it in OGC’s Notification Letter of November 30, 2022, and we are responding accordingly. At this time, we are not responding to OGC’s premature investigatory questions and demand for documents, although this Response does address certain issues raised by OGC in those questions. After considering this Response and other available information, if *the Commission* believes further investigation of is warranted, a proper reason to believe finding should be made. If the Commission makes such a finding and authorizes further investigation, our client will respond to OGC’s specific investigatory questions and document

⁸ 52 U.S.C. § 30109(a)(1).

⁹ *Id.*

¹⁰ 11 C.F.R. § 111.6(b) (emphasis added).

¹¹ 52 U.S.C. § 30109(a)(2). The Act refers to the target of a complaint and the subject of a reason to believe finding as “a person,” which is a defined term of art. Whether an “unknown respondent” is a “person” under the Act is unclear. However, both the Act and Commission regulations contemplate that the Commission will consider the written response of such “person” or “respondent” before finding reason to believe, which, of course, requires such “person” or “respondent” to be identifiable.

¹² *Id.*

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requests. However, as the information presented below demonstrates, there is no reason to believe that [redacted] in any way violated the Act and no further investigation is warranted.

I. CREW’s Complaint and the Commission’s Investigation

On August 9, 2018, Citizens for Responsibility and Ethics in Washington (“CREW”) and its Executive Director, Noah Bookbinder, filed a complaint with the FEC alleging that LZP, LLC, Honor and Principles PAC, and “an Unknown Respondent (or Respondents)” violated the Act by making and accepting contributions in the name of another.¹³ As noted above, [redacted] is not mentioned in the Complaint or the Commission’s Factual and Legal Analysis.

The basis of the Complaint centers on what CREW claims was “a remarkable four-day period in late March 2018,” specifically March 26 to March 29, 2018, during which the Complainant alleges Honor and Principles PAC and LZP, LLC were established, and LZP, LLC made a \$175,000 contribution to Honor and Principles PAC.¹⁴ Honor and Principles PAC then “spent \$163,838 on an independent expenditure advertisement criticizing an Ohio state representative and endorsing his primary opponent.”¹⁵ While Honor and Principles PAC is registered with the Commission, the advertisement at issue concerned a state election and was reported to the Commission as a “non federal IE-Media Buy.”¹⁶ The Complaint speculates that LZP, LLC “did not generate sufficient income in the one day between its formation and the date on which it contributed \$175,000 to Honor and Principles PAC to account for the contribution” and that “it appears an Unknown Respondent (or Respondents) provided the \$175,000 to LZP to make the contribution to Honor and Principles PAC.”¹⁷

According to OGC’s Notification Letter, on May 20, 2021 the Commission “found reason to believe that Unknown Respondents violated 52 U.S.C. § 30122 by making contributions in the name of another in relation to contributions reported as having been made by LZP, LLC to Honor and Principles PAC on the following dates and in the following amounts: \$175,000 on March 28, 2018; \$50,000 on April 6, 2018; \$10,000 on April 18, 2018; and \$35,000 on October 19, 2018.” Subsequently, OGC began an investigation into “the original source of the funds in question.” OGC’s Notification Letter then explains:

During our investigation thus far, we have obtained information indicating that [redacted] may be one of the Unknown Respondents as to which the Commission made findings. It appears that [redacted] provided funds to Ohio Works in the following amounts and on the following dates: \$150,000 on March 27, 2018, and \$50,000 on January 26, 2018. It further appears that all or some portion of those funds were then transferred to Independence and Freedom Network Inc. (“IFN”). It further appears that a portion of the funds provided by Ohio Works to IFN were

¹³ Complaint ¶¶ 1, 17-23.

¹⁴ *Id.* ¶ 2.

¹⁵ *Id.*

¹⁶ Factual and Legal Analysis at 3.

¹⁷ Complaint ¶ 16.

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then transferred to LZP and used to make the contributions to Honor and Principles PAC at issue in this matter.

Additional information about OGC's investigation and findings that does not appear in OGC's November 30, 2022 Notification Letter, or the Commission's Factual and Legal Analysis, was conveyed by OGC via email. Specifically, counsel informed us that "[w]e know from our investigations thus far that [redacted] received its funding from American Electric Power, whose executives form [redacted] board, and then used those funds to make a donation to Ohio Works. Ohio Works understood that it was receiving a donation from AEP, and communicated with AEP regarding the donation. Those funds were then used to make the March 28 contribution to Honor and Principles PAC by first routing the funds through IFN and LZP, as outlined in the complaint and FLA. These transfers all occurred within a few days of one another."¹⁸

Had we simply responded to OGC's Notification Letter, and not followed up with OGC directly, we would have no knowledge of these additional claims, some of which are incorrect. This serves only to heighten our serious concerns with the procedures being applied in this matter.

II. Contributions to Ohio Works

Beginning in late 2017 and continuing to late 2018, [redacted] board of directors authorized and made four donations to Ohio Works totaling \$350,000.¹⁹ Each donation was made in accordance with written representations provided by Ohio Works in an October 5, 2017, assurance letter describing Ohio Works' activities and the manner in which donations would be used.²⁰ In this letter, Ohio Works represented that it "is organized under Section 501(c)(4) of the Internal Revenue Code to educate citizens in communities across the state of Ohio on policies that promote economic growth through job creation and lower taxes. Ohio Works' mission is to foster public awareness of job and economic friendly policies for Ohio."²¹

Ohio Works further represented that it was "not registered or acting as a political committee under federal election law or any state or local election law," that it "has not been established and is not maintained, financed or controlled by a national, state, or local party committee or a federal, state, or local candidate or officeholder," and that it "does not coordinate its activities with a national, state, or local party committee; federal, state, or local candidate or candidate's campaign; or a federal, state, or local PAC."²²

Ohio Works' assurance letter also specified that "[t]he solicitation for this donation did not contain language that funds would be used to promote, support, oppose, or attack any clearly identified federal, state, or local candidate and was not intended to suggest such activity," and

¹⁸ Email correspondence from Aaron Rabinowitz to Drew Watkins, Dec. 9, 2022.

¹⁹ See Affidavit of JB Hadden ¶ 2-4.

²⁰ *Id.* ¶ 5, 7; Letter from Tod Bowen, Ohio Works (October 5, 2017) (attached).

²¹ Letter from Tod Bowen, Ohio Works (October 5, 2017).

²² *Id.*

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that “[d]onations to Ohio Works will not be used in any way that is directly or indirectly prohibited under applicable federal, state, or local law.”²³

In light of these representations made by Ohio Works, [redacted] board approved its first grant to Ohio Works on November 21, 2017, in the amount of \$50,000. A check was issued on December 6, 2017, to fulfill that donation. However, this check was not immediately deposited, and funds were not drawn from [redacted] bank account until January 26, 2018. [redacted] reported this grant to Ohio Works on its 2017 annual Form 990, Return of Organization Exempt from Income Tax, filed with the Internal Revenue Service (“IRS”).

[redacted] board of directors approved and made three additional grants to Ohio Works in 2018. [redacted] donated \$150,000 to Ohio Works on March 22, 2018, \$100,000 on May 1, 2018, and \$50,000 on October 24, 2018. [redacted] reported these three grants to Ohio Works, totaling \$300,000, on its 2018 Form 990 filed with the IRS. (Please note that [redacted] filed amended 2017 and 2018 Form 990 returns on November 25, 2020, both of which are available here:

As disclosed in Schedule O

of these amended returns, [redacted] amended details regarding certain grants made in 2017 and 2018. These amendments did not impact any previously disclosed information pertaining to grants made to Ohio Works.)

The grants provided by [redacted] to Ohio Works during 2017 and 2018 were not earmarked for any specific purpose. Rather, each grant was issued as a general grant of funds to be used by Ohio Works in support of its tax-exempt purposes.²⁴ When the grants referenced above were made to Ohio Works, [redacted] board of directors was generally aware that Ohio Works was supportive of Ohio Representative Ryan Smith and his legislative agenda. However, Board of Directors did not discuss or correspond with any agents of Ohio Works regarding any subsequent transfer of funds provided by [redacted] to Independence and Freedom Network, Inc., LZIP, LLC, or Honor and Principles PAC.²⁵

Portions of the additional information conveyed by OGC via email appear to be inconsistent with publicly available information. [redacted] Form 990 returns for calendar years 2017 and 2018 both indicate that EOE did not receive contributions or grants in either of those years. [redacted] reported receiving contributions in 2015 and 2016. (Those returns are also available at the link noted above.) Thus, any funds that [redacted] provided to Ohio Works had been the property of [redacted] for well over one year or more.

It is also incorrect that American Electric Power’s “executives form [redacted] board.” In 2018, [redacted] board was comprised of Jo Ann Davidson, JB Hadden, David Hobson, Michael Blankenbecler, and Tom Froehle. Of these Board members, only Mr. Froehle was employed by American Electric Power. Thus, any decisions made by the Board of Directors of [redacted] were necessarily made independent of American Electric Power.

²³ *Id.*

²⁴ *See* Affidavit of JB Hadden ¶ 6.

²⁵ *Id.* ¶ 8.

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC**III. Conclusion**

As described above, _____ Board of Directors approved, and the organization made, a series of grants to Ohio Works subject to the assurances and understandings set forth in Ohio Works' letter of October 5, 2017. There is no evidence that _____ in any way earmarked its grants to Ohio Works, and no evidence that _____ made any contributions in the name of another in violation of 52 U.S.C. § 30122.

As set forth above, there is no basis for finding reason to believe that _____ has committed a violation of the Act. Accordingly, the Commission should dismiss _____ from this matter and direct its Office of General Counsel to cease its investigation into _____

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Josefiak', with a long horizontal flourish extending to the right.

Thomas J. Josefiak
Michael Bayes
Andrew D. Watkins
Counsel to

Attachments

AFFIDAVIT OF JB HADDEN

PERSONALLY came and appeared before me, the undersigned Notary, the within named JB HADDEN, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am JB Hadden. I currently serve as the President of _____ and am a member of that organization's Board of Directors. I have served in those capacities since 2016.
2. During calendar year 2017, _____ made grants to other organizations totaling \$950,000. Of this sum, \$50,000 was granted to Ohio Works, a Section 501(c)(4) organization.
3. During calendar year 2018, _____ made grants to other organizations totaling \$1,280,000. Of this sum, \$300,000 was granted to Ohio Works, a Section 501(c)(4) organization.
4. The Board of Directors of _____ approved all grants made to Ohio Works during the period 2017-2018. To the best of my recollection, there was no discussion among members of the Board of Directors at any time with respect to any specific uses to which Ohio Works would direct this funding.
5. All grants made by _____ to Ohio Works during the period 2017-2018 were made on the basis of an assurance letter issued by Ohio Works and dated October 5, 2017, a copy of which was obtained by Empowering Ohio's Economy Inc. This assurance letter describes Ohio Works' purposes and specifies how donated funds will and will not be used.
6. Grants provided by _____ to Ohio Works during the period 2017-2018 were not earmarked for any specific purpose. Rather, each grant was issued as a general grant of funds to be used by Ohio Works in support of its tax-exempt purposes.

7. In providing grants to Ohio Works, the Board of Directors of]
relied on Ohio Works' written assurances that "[d]onations to Ohio Works will
not be used in any way that is directly or indirectly prohibited under applicable federal, state, or
local law."
8. The Board of Directors of] did not discuss or
correspond with any agents of Ohio Works regarding any subsequent transfer of funds provided
by Empowering Ohio's Economy Inc. to Independence and Freedom Network, Inc., LZP, LLC,
or Honor and Principles PAC.

DATED this the 24th day of January 2023.



Signature of Affiant, JB Hadden

SWORN to subscribed before me, this 24th day of January 2023.



TIFFANY C. KIELY
Notary Public, State of Ohio
My Commission Expires 03-05-2025


NOTARY PUBLIC

My Commission Expires:

3/5/2025

OHIO WORKS

October 5, 2017

Maria Haberman
AEP
1 Riverside Plaza, 23rd Floor
Columbus, OH 43215

Dear Maria:

Thank you for your interest in supporting Ohio Works. This is to provide you with some basic information about the organization and the manner in which donations to Ohio Works will be used. Ohio Works hereby represents to you as follows:

- Ohio Works is organized under Section 501(c)(4) of the Internal Revenue Code to educate citizens in communities across the state of Ohio on policies that promote economic growth through job creation and lower taxes. Ohio Works' mission is to foster public awareness of job and economic friendly policies for Ohio.
- Ohio Works is permitted to accept donations from any source, including individuals, corporations, PACs or other political committees. Donations are not tax deductible.
- Ohio Works is not registered or acting as a political committee under federal election law or any state or local election law.
- Ohio Works has not been established and is not maintained, financed or controlled by a national, state, or local party committee or a federal, state, or local candidate or officeholder.
- Ohio Works does not coordinate its activities with a national, state, or local party committee; federal, state, or local candidate or candidate's campaign; or a federal, state, or local PAC.
- The solicitation for this donation did not contain language that funds would be used to promote, support, oppose, or attack any clearly identified federal, state, or local candidate and was not intended to suggest such activity.
- Donations to Ohio Works will not be used in any way that is directly or indirectly prohibited under applicable federal, state, or local law.
- Donations to Ohio Works will not be used to pay for any expenses or events that violate applicable gift and entertainment rules for public officials.

Sincerely,


Tod Bowen

OHIO WORKS
2931 E. DUBLIN-GRANVILLE ROAD, SUITE 190
COLUMBUS, OH 43231
614-895-0942



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 30, 2022

VIA EXPRESS CERTIFIED MAIL

Jo Ann Davidson
Director

RE: MUR 7464

Dear Ms. Davidson:

The Federal Election Commission ("Commission") is the regulatory agency that administers and enforces the Federal Election Campaign Act of 1971, as amended (the "Act"). Based on a complaint filed by Citizens for Responsibility and Ethics in Washington and Noah Bookbinder, the Commission on May 20, 2021, found reason to believe that Unknown Respondents violated 52 U.S.C. § 30122 by making contributions in the name of another in relation to contributions reported as having been made by LZP, LLC to Honor and Principles PAC on the following dates and in the following amounts: \$175,000 on March 28, 2018; \$50,000 on April 6, 2018; \$10,000 on April 18, 2018; and \$35,000 on October 19, 2018. The Complaint and the Factual and Legal Analysis, which formed the basis for the Commission's finding, is attached for your information.

The Commission authorized the Office of the General Counsel to conduct an investigation concerning the original source of the funds in question. During our investigation thus far, we have obtained information indicating that ("EOE") may be one of the Unknown Respondents as to which the Commission made findings. It appears that provided funds to Ohio Works in the following amounts and on the following dates: \$150,000 on March 27, 2018 and \$50,000 on January 26, 2018. It further appears that all or some portion of those funds were then transferred to Independence and Freedom Network Inc. ("IFN"). It further appears that a portion of the funds provided by Ohio Works to IFN were then transferred to LZP and used to make the contributions to Honor and Principles PAC at issue in this matter. We are continuing to conduct an investigation into this matter, after which we will prepare to make a recommendation to the Commission. Prior to making our recommendation, we offer a respondent an opportunity to provide in writing a response to the Complaint and the Commission's Factual and Legal Analysis. Should you choose to respond, you may also submit any materials — including documents or affidavits from persons with relevant knowledge — that you believe may be relevant or useful to the

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 Ms. Davidson,
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Commission's consideration of this matter. Your submission, if you choose to make one, must be submitted within 15 days of receipt of this letter. You should address any response to the Office of the General Counsel, and the response should reference MUR 7464.

In addition, we need information from [redacted] to complete the Commission's investigation into the alleged violations of section 30122 discussed above and in the attached Factual and Legal Analysis. In order to complete the record, we will need detailed answers to the questions set forth below. For the purpose of these questions [redacted] means I Inc., and its agents, employees, officers, and directors, including, but not limited to, Maria Haberman, JB Hadden, Tom Froehle Michael Blankenbecler, David Hobson, and Jo Ann Davidson. Please provide written answers to, and information or documents requested in, the following questions:

1. Who did [redacted] communicate with regarding the donation to Ohio Works?
2. Did [redacted] provide any instruction or direction to any person regarding the donation to Ohio Works, including, but not limited to providing a letter of intent to Ohio Works? If so, to whom and what was provided or said?
3. Was [redacted] told by any person that the donation to Ohio Works would be used for any purpose? If so, who communicated that and what was written or said?
4. Did [redacted] believe or expect that the donation to Ohio Works would be used for any purpose? If so, what purpose and why?
5. Did any person communicate to [redacted], that donating to Ohio Works would or could result in a contribution to Honor and Principles PAC or to a federal PAC generally? If so, who communicated that and what was written or said?
6. Did any person communicate to [redacted] that donating to Ohio Works would or could result in any activity (such as the creation and distribution of an advertisement) relating to the 2018 Ohio State Representative primary race between Larry Householder and Kevin Black? If so, who communicated that and what was written or said?
7. Did [redacted] including JB Hadden, understand that Ohio Works was an entity that was supportive of Representative Ryan Smith? If so, what was the basis of that understanding? Who did [redacted] communicate with to develop that understanding?
8. Did I [redacted] receive any instruction or direction from American Electric Power, AEP Ohio, or any of their agents, employees, officers, directors, subsidiaries, or related entities, regarding how it should use the funds that [redacted] received from American Electric Power? If so, who communicated that and what was written or said?
9. Did [redacted] receive any instruction or direction from American Electric Power, AEP Ohio, or any of their agents, employees, officers, directors, subsidiaries, or related entities,

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 Ms. Davidson,
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regarding donation to Ohio Works? If so, who communicated that and what was written or said?

10. Did communicate with American Electric Power, AEP Ohio, or any of their agents, employees, officers, directors, subsidiaries, or related entities, regarding IFN, LZP, LLC, or Honor and Principles PAC? If so, who communicated that and what was written or said?
11. Please provide all documents regarding Ohio Works; IFN; LZP, LLC; Honor and Principles PAC; and the responses to the above questions.

Provide all communications and documents in the possession, custody, or control of and any of its agents, employees, officers, or directors that relate to ...

This includes, but is not limited to, Maria Haberman, JB Hadden, Michael Blankenbecler, and Jo Ann Davidson

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

For your information, enforcement procedures and options are discussed in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

If you have any questions, please contact Aaron Rabinowitz, the attorney handling this matter, at (202) 694-1476 or arabinowitz@fec.gov.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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Sincerely,

Charles Kitcher

Charles Kitcher
Associate General Counsel for
Enforcement

By: *AR*

Enclosures:
Complaint
Factual and Legal Analysis

OFFICE OF
GENERAL COUNSEL
FEDERAL ELECTION COMMISSION

2018 AUG -9 PM 2:11

In the matter of:

LZP, LLC
Honor and Principles PAC
Lisa Lisker, as treasurer, Honor and Principles PAC
Unknown Respondent (or Respondents)

MUR 7464

COMPLAINT

1. Citizens for Responsibility and Ethics in Washington ("CREW") and Noah Bookbinder bring this complaint before the Federal Election Commission ("FEC") seeking an immediate investigation and enforcement action against LZP, LLC, Honor and Principles PAC, its treasurer, Lisa Lisker, and an Unknown Respondent (or Respondents) for direct and serious violations of the Federal Election Campaign Act ("FECA").

Summary

2. The FECA prohibits making and knowingly accepting a contribution in the name of another person, as well as knowingly permitting one's name to be used to effect a contribution in the name of another person. This complaint concerns a remarkable four-day period in late March 2018 in which a conduit contribution scheme that violated the FECA seemingly took place. Those four days started with the formation of a federal super PAC called Honor and Principles PAC, followed the next day by the establishment in Ohio of a nonprofit limited liability company, LZP, LLC ("LZP"). The day after that, LZP made a \$175,000 contribution to Honor and Principles PAC, even though it has no known business activity and it is virtually impossible that it generated sufficient income to pay for the contribution in just one day.

Completing the cycle, the day after Honor and Principles PAC received the money (the only contribution it has ever reported), it spent \$163,838 on an independent expenditure advertisement criticizing an Ohio state representative and endorsing his primary opponent. This appears to be a prototypical example of a conduit contribution scheme in which an Unknown Respondent (or Unknown Respondents) used LZIP as a conduit to make a contribution to Honor and Principles PAC, which then spent the money on political ads. These apparent violations of law deprive the public of important information and should be investigated.

Complainants

3. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

4. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and those who make expenditures to influence federal elections, and publicizes those who violate federal campaign finance laws through its website, press releases, and other methods of distribution. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing campaign finance violations and filing complaints with the FEC serves CREW's mission of keeping the

public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance law.

5. In order to assess whether an individual or entity is complying with federal campaign finance law, CREW needs the information contained in disclosure reports political committees must file pursuant to the FECA, 52 U.S.C. § 30104; 11 C.F.R. § 104.1 *et seq.* CREW is hindered in its programmatic activity when an individual or entity fails to disclose campaign finance information in reports required by the FECA.

6. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated disclosure reports are the only source of information CREW can use to determine if an individual or entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all disclosure reports required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

7. Complainant Noah Bookbinder is the executive director of Citizens for Responsibility and Ethics in Washington. At all times relevant to the complaint, he has been and remains a citizen of the United States and a registered voter and resident of Maryland. As a registered voter, Mr. Bookbinder is entitled to receive information contained in disclosure reports required by the FECA, 52 U.S.C. § 30104; 11 C.F.R. § 104.1 *et seq.* Mr. Bookbinder is harmed when an individual, candidate, political committee, or other entity fails to report campaign finance activity as required by the FECA. Mr. Bookbinder is further harmed when the FEC fails

to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

Respondents

8. L郑, LLC is a Domestic Nonprofit Limited Liability Company organized and registered in Ohio. L郑, LLC, Articles of Organization for a Domestic Limited Liability Company, <https://bit.ly/2HCJKAY> (attached as Exhibit A). L郑 was formed and/or incorporated on March 27, 2018. *Id.* It is not known if L郑 conducts any business or has generated any income.

9. Honor and Principles PAC is an independent expenditure-only committee ("super PAC") established on March 26, 2018. Honor and Principles PAC, FEC Form 1, Statement of Organization (Mar. 26, 2018) (excerpts attached as Exhibit B).

10. Lisa Lisker is treasurer of Honor and Principles PAC. Exhibit B.

11. Unknown respondent (or respondents) are the true source or sources of funds L郑 transferred to Honor and Principles PAC, as well as the conduit or conduits, if any, through which such funds passed before being contributed to L郑.

Factual Allegations

12. Honor and Principles PAC was established on March 26, 2018. One day later, on March 27, L郑 was formed and/or incorporated.

13. The next day, March 28, L郑 made a \$175,000 contribution to Honor and Principles PAC. Honor and Principles PAC, FEC Form 3X, 2018 April Quarterly Report, at 6 (Apr. 15, 2018) (excerpts attached as Exhibit C). L郑 is the only contributor reported by Honor and Principles PAC. *Id.*

14. On March 29, 2018, LZP's contribution to Honor and Principles PAC was used to pay \$163,838 to Target Enterprises, LLC, a "strategic media placement company," for a "Non Federal IE-Media Buy." *Id.*; Target Enterprises, About, <https://bit.ly/2J8IjJG>. Soon after, an ad criticizing Ohio state Representative Larry Householder (R-72) and endorsing his primary opponent, Kevin Black, began airing on Ohio television stations. Twitter, Medium Buying, Apr. 1, 2018, <https://bit.ly/2qwXSUD>; Ohio House of Representatives, Representative Larry Householder (R), <https://bit.ly/2HNB2PV>; Black announces for 72nd House District, *Coshocton Tribune*, Feb. 9, 2018, <https://ohne.ws/2J1d01A>.

15. Honor and Principles PAC's disclosure report provides little information about LZP. The only information provided is that LZP's address is 10 West Broad St., Columbus, OH 43215. *Id.* As LZP's Ohio registration indicates, that is also the address of LZP's registered agent, James G. Ryan, a lawyer at the firm Bailey Cavalieri in Columbus. Exhibit A. Bailey Cavalieri, James G. Ryan, Member, <https://bit.ly/2qMoZKu>.

16. On information and belief, LZP did not generate sufficient income in the one day between its formation and the date on which it contributed \$175,000 to Honor and Principles PAC to account for the contribution. LZP does not appear to conduct any business, and it does not have a presence on the Internet. Rather, it appears an Unknown Respondent (or Respondents) provided the \$175,000 to LZP to make the contribution to Honor and Principles PAC.

Count I

17. The FECA and FEC regulations prohibit making a contribution in the name of another person and knowingly permitting one's name to be used to effect a contribution in the name of another person. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

18. An Unknown Respondent (or Respondents) appears to have made a \$175,000 contribution to Honor and Principles PAC in the name of LZP in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b).

19. LZP appears to have correspondingly violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b) by knowingly permitting its name to be used to effect a \$175,000 contribution by Unknown Respondent (or Respondents) to Honor and Principles PAC.

20. If these violations were knowing and willful, they are subject to criminal penalties and should be referred to the Department of Justice for investigation. 52 U.S.C. §§ 30109(a)(5)(C), 30109(d)(1).

Count II

21. The FECA and FEC regulations also prohibit knowingly accepting a contribution made by one person in the name of another person. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

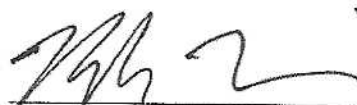
22. Honor and Principles PAC and Ms. Lisker appears to have violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b) by knowingly accepting a contribution made by Unknown Respondent (or Respondents) in the name of LZP.

23. If these violations were knowing and willful, they are subject to criminal penalties and should be referred to the Department of Justice for investigation. 52 U.S.C. §§ 30109(a)(5)(C), 30109(d)(1).

Conclusion

WHEREFORE, Citizens for Responsibility and Ethics in Washington and Noah Bookbinder request that the FEC conduct an investigation into these allegations, declare the respondents to have violated the FECA and applicable FEC regulations, and order respondents to

correct these violations by amending Honor and Principles PAC's disclosures to identify and make public the source(s) of the contribution to the PAC. In addition, respondents request that the FEC impose sanctions appropriate to these violations and take such further action as may be appropriate, including referring this case to the Department of Justice for criminal prosecution.

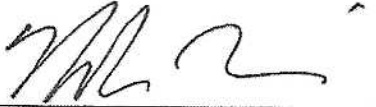


ON BEHALF OF COMPLAINANTS

Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in
Washington
455 Massachusetts Ave. N.W.
Washington, D.C. 20001
(202) 408-5565 (phone)
(202) 588-5020 (fax)

VERIFICATION

Citizens for Responsibility and Ethics in Washington and Noah Bookbinder verify that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

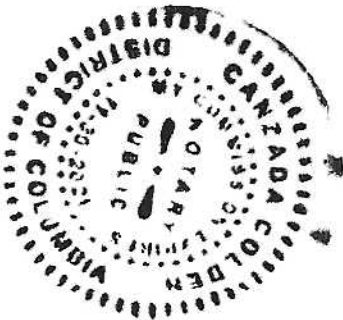


Noah Bookbinder

Sworn to and subscribed before me this 8 day of aug, 2018



Notary Public



FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENTS:** Unknown Respondents**MUR 7464****I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as amended, (the "Act") that Unknown Respondents made \$270,000 in contributions in the name of another through LZP, LLC ("LZP"), a newly created LLC, which is a disregarded member of the Independence and Freedom Network, Inc. ("IFN"), a 501(c)(4) organization, to Honor and Principles PAC ("Honor PAC"), a federal independent expenditure-only political committee ("IEOPC"). The events at issue took place over the course of a four-day period: both LZP and Honor PAC were formed in the same week, then LZP made its first contribution to Honor PAC, which subsequently made its first disbursement.

LZP represents that it received the funds for the federal contributions from its sole nonprofit corporate member, but does not provide any details regarding the name of the entity that funded the contributions to Honor PAC. For the reasons explained below, the Commission finds reason to believe that Unknown Respondents violated 52 U.S.C. § 30122 by making, and allowing LZP's name to be used to make, contributions in the name of another.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The key events in this matter took place during a four-day period in March 2018. Honor PAC registered as an IEOPC with the Commission on March 26, 2018.¹ LZP registered as a nonprofit LLC with the state of Ohio on March 27, 2018.² LZP made its first contribution in the amount of \$175,000, to Honor PAC on March 28, 2018.³ Honor PAC made its first disbursements for political advertising in a nonfederal race on March 29, 2018.⁴

Honor PAC filed reports with the Commission disclosing \$270,000 in receipts for 2018, all from LZP: \$175,000 on March 28, 2018, \$50,000 on April 6, 2018, \$10,000 on April 18, 2018, and \$35,000 on October 19, 2018.⁵ It has not reported any receipts for 2019 and 2020. Its reports also disclose \$252,607.92 in disbursements in 2018: \$24,769.92 for operating expenditures (for legal fees and compliance consulting) and \$227,838 for “other disbursements” to media vendors for “non-federal-direct mail,” “non- federal-media buys,” and “non- federal

¹ Honor and Principles PAC, FEC Form 1, *Statement of Organization* (Mar. 26, 2018). As an IEOPC, Honor PAC accepts unlimited contributions from individuals and sources that are otherwise prohibited for authorized campaign committees. See Advisory Opinion 2010-11(Commonsense Ten).

² See *LZP, LLC Articles of Organization* (eff. date Mar. 27, 2018), Business Search, Ohio Sec. of State, <https://businesssearch.ohiosos.gov?=businessDetails/4158880>.

³ See 2018 April Quarterly Report at 6, Honor and Principles PAC (Apr. 15, 2018) (disclosing only one receipt for the entire reporting period). According to the Commission’s databases, LZP has made federal contributions to only Honor PAC.

⁴ *Id.* at 7 (disclosing only one disbursement for the reporting period).

⁵ See 2018 April Quarterly, July Quarterly, and Post-Election Reports, Honor and Principles PAC (Apr. 15, 2018, July 14, 2018, and Dec. 6, 2018). Honor PAC also filed 2018 October Quarterly and Year-End Reports and a 2019 Mid-Year Report but did not disclose any receipts for those time periods.

voter calls.”⁶ Honor PAC reported that it made its first disbursement on March 29, 2018, in the amount of \$163,838 to Target Enterprises LLC for a “non federal IE-Media Buy.”⁷ According to the Complaint, Honor PAC paid for an ad attacking Ohio State Representative Larry Householder and supporting his opponent, Kevin Black, in the May 8, 2018 primary election for that state office.⁸ In 2019 and 2020, Honor PAC reported making \$17,392.08 in disbursements for legal fees and compliance consulting.⁹

Based in large part on the proximity between the dates of Honor PAC (March 26) and LZP’s (March 27) formations, along with the March 28 contribution from LZP and Honor PAC’s March 29 disbursement to Target Enterprises, the Complaint alleges that LZP made, and Honor PAC knowingly accepted, a contribution in the name of another.¹⁰ The Complaint states that LZP “does not appear to conduct any business” and has no presence on the internet, and argues that it was “virtually impossible that [LZP] generated sufficient income to pay for the

⁶ 2018 April Quarterly, July Quarterly, and Post-Election Reports, Honor and Principles PAC. Honor PAC is also registered as a SuperPAC with the state of Ohio, but has only filed one report with the state (a Statement of Organization filed on March 29, 2018) and has disclosed no receipts or disbursements. *See* Honor and Principles PAC (Super PAC) filings, Ohio Sec. of State, https://www6.ohiosos.gov/ords/f?p=CFDISCLOSURE:39:::NO:RP:P39_ENTITY_ID,P39_LISTTYPE:14969,simpl e.

⁷ 2018 April Quarterly Report at 7, Honor and Principles PAC.

⁸ *See* Compl. at 5 (Aug. 9, 2018) (citing, Medium Buying, TWITTER (Apr. 1, 2018, 8:37 PM), <https://twitter.com/MediumBuying/status/980605173247758336>). It appears that Honor PAC paid for at least two other ads supporting Black and advocating the defeat of Householder that aired on April 23 and May 6, 2018. *See* Medium Buying, TWITTER (Apr. 23, 2018, 10:18 AM), <https://twitter.com/MediumBuying/status/988421940326162435>; Medium Buying, TWITTER (May 6, 2018, 4:43 PM), <https://twitter.com/MediumBuying/status/993229755343409153>.

⁹ *See* 2019 Mid-Year and Year-End Reports, 2020 April Quarterly Report, and Termination Reports (Jul. 13, 2020, Oct. 15, 2020, and Dec. 4, 2020), Honor and Principles PAC. Honor PAC’s requests to terminate has been denied while this MUR remains pending.

¹⁰ Compl. at 4-5.

1 contribution in just one day.”¹¹ Therefore, the Complaint also alleges that Unknown
 2 Respondents must have provided the \$175,000 to LZP to make the initial contribution to Honor
 3 PAC and, as a result, LZP acted as a conduit by knowingly permitting its name to be used to
 4 effect that contribution.¹²

5 On May 29, 2020, the Complainant filed a Supplement alleging the same activity by IFN,
 6 a 501(c)(4) organization that controls LZP, and its director, Ray McVeigh.¹³ IFN filed articles of
 7 incorporation with the Ohio Secretary of State on April 13, 2017, listing Ryan as its registered
 8 agent, but it dissolved on December 31, 2020.¹⁴ IFN’s 2018 Form 990 filed with the IRS lists
 9 LZP as a disregarded entity with a total income of \$271,000 for 2018.¹⁵ The same form also lists
 10 an unnamed contributor who gave \$271,000 to IFN, which the Supplemental Complaint states
 11 supports the allegation that LZP’s contribution was derived from a single source.¹⁶

12 IFN’s IRS filing discloses that it made \$1,120,000 in political campaign activity
 13 expenditures to “other organizations for section 527 exempt function activities,” and lists “Honor

¹¹ *Id.* at 1, 5.

¹² *Id.* at 6.

¹³ Supp. Compl. at 4 (May 29, 2020) (citing IFN 2018 Form 990 (Nov. 2019) (“IFN 2018 Form 990”), <https://www.documentcloud.org/documents/6773070-Independence-and-Freedom-Network-Inc-2018-990.html>). IFN’s Internal Revenue Service (“IRS”) form lists McVeigh as its only officer and states that he did not receive any compensation for his work for IFN, which averaged two hours a week. IFN 2018 Form 990 at 7.

¹⁴ See IFN, *Articles of Incorporation*, Business Search, Ohio Sec. of State (Apr. 13, 2017), <https://bizimage.ohiosos.gov/api/image/pdf/202036405238>; IFN, *Certificate of Dissolution*, Business Search, Ohio Sec. of State (Dec. 31, 2020), <https://bizimage.ohiosos.gov/api/image/pdf/202036405238>. Unlike with its articles of incorporation, IFN’s certificate of dissolution was not filed by Ryan’s law firm. Additionally, it appears that the dissolution was filed in an expedited manner, through payment of an additional expedited service fee.

¹⁵ See IFN 2018 Form 990 at 5 (answering “Yes” to question 33 asking “Did the organization own 100% of an entity disregarded as separate from the organization?”); *id.* at Schedule R (listing LZP as IFN’s only disregarded entity and noting that IFN is the “Direct controlling entity”).

¹⁶ See IFN 2018 Form 990 at 20. The form lists six additional contributions that it received from individuals in the following amounts: \$352,000, \$950,000, \$800,000, \$183,702, \$105,000, and \$275,000.

and Principles PAC” and “Onward Ohio Inc.” as those 527 organizations receiving funds from IFN.¹⁷ According to its filing, IFN provided \$270,000 to Honor and Principles PAC and \$850,000 to Onward Ohio Inc.¹⁸ On a separate schedule requiring a list of “Grants and Other Assistance to Organizations, Governments and Individuals in the United States,” IFN again lists Honor PAC, Onward Ohio Inc., as well as two other groups, MORCC and Security is Strength LLC.¹⁹ Onward Ohio is registered as an IEOPC with the Commission and disclosed receiving an \$850,000 contribution from IFN on March 16, 2018.²⁰ Honor PAC did not disclose any contributions from IFN on its disclosure reports filed with the Commission.

LZP has not indicated whether IFN was its nonprofit corporate member that provided the assets used to make the contributions to Honor PAC. James Ryan is both IFN and LZP’s registered agent and, according to publicly available information, has been the registered agent

¹⁷ *Id.* at Schedule C.

¹⁸ *Id.* The IRS’s Tax Exempt Organization database does not show a record of Honor PAC ever having registered as a 527 organization. *See* Tax Exempt and Organization Search, IRS, <https://apps.irs.gov/app/eos/allSearch> (entering search terms “Honor and Principles” and EIN 82-4933172, the employer identification number listed for Honor PAC on IFN’s 2018 Form 990, does not yield any results). There is an “Onward Ohio Policy Institute” registered as a 527 organization with the IRS, but its filings do not list an \$850,000 contribution from IFN. *See* 2018 Form 990EZ and 2019 Form 990-N, IRS, <https://apps.irs.gov/app/eos/allSearch> (reporting \$10,000 in receipts in 2018 and less than \$25,000 in 2019).

¹⁹ IFN 2018 Form 990 at Schedule I. As of the date of this report, IFN has not made any other filings with the IRS.

²⁰ *See* 2018 April Quarterly Report, Onward Ohio. During the 2018 election cycle, Onward Ohio disclosed \$877,300 in receipts and \$1,803,448.23 in total disbursements, and an ending cash on hand of \$650.72. The committee terminated in 2020. *See* Termination Approval Ltr. (Oct. 20, 2020), Onward Ohio. Onward Ohio was also registered as nonprofit corporation with the state of Ohio but its articles of incorporation were canceled in October 2020 for its failure to file a statement of continued existence. *See* Onward Ohio filings, Ohio Sec. of State <https://businesssearch.ohiosos.gov/?=businessDetails/2436941> (indicating a cancellation date of Oct. 20, 2020).

Security is Strength LLC and MORCC are not listed as 527 organization with the IRS, but there is a Security is Strength PAC registered with the Commission. That PAC has not disclosed contributions from IFN.

for approximately 151 entities in Ohio.²¹ During the 2018 and 2020 election cycles, Ryan registered three nonprofit corporations (IFN, CHTFA, Inc., and American Exceptionalism Institute, Inc.) and fifty LLCs, including LZP and Security is Strength LLC.²²

B. Legal Analysis

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”²³ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”²⁴ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.²⁵ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing

²¹ See *LZP, LLC Articles of Organization* (eff. date Mar. 27, 2018), Business Search, Ohio Sec. of State, <https://businesssearch.ohiosos.gov?=businessDetails/4158880> (listing attorney James G. Ryan of Columbus, OH as its registered agent); *Agent or Registrant Name Search*, Ohio Sec. of State, <https://businesssearch.ohiosos.gov/#> (enter “James G. Ryan” in Agent/Registrant search field).

²² IFN and American Exceptionalism Institute Inc., which Ryan registered and incorporated on the same date, have been the subject of press reports concerning contributions they made to IEOPCs. See, e.g., Eliana Johnson, *New ad accuses Paul of siding with terrorists* (Apr. 24, 2018), POLITICO, <https://www.politico.com/story/2018/04/24/dark-money-group-pressures-paul-cia-haspel-546043> (discussing \$100,000 ad campaign paid for by American Exceptionalism Institute, Inc.) and Jim Provance, *“Dark Money” makes way into governor campaigns* (Apr. 17, 2018), THE BLADE, <https://www.toledoblade.com/local/politics/2018/04/17/Dark-money-makes-way-into-governor-campaigns/stories/20180417150> (discussing IFN’s \$850,000 contribution to Onward Ohio in 2018). See also Andrew J. Tobias, *Dark Money flowing into 2018 Ohio Republican Primary Elections* (Apr. 16, 2018), CLEVELAND.COM, https://www.cleveland.com/open/2018/04/dark_money_flow_into_2018_o.html (discussing IFN and LZP’s contributions to IEOPCs).

²³ 52 U.S.C. § 30101(8)(A).

²⁴ *Id.* § 30101(11); 11 C.F.R. § 100.10.

²⁵ 52 U.S.C. § 30122.

the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or

- (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.²⁶

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.²⁷ Courts therefore have uniformly rejected the assertion that "only the person who actually transmits funds . . . makes the contribution,"²⁸ 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."²⁹ 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.³⁰ This is true whether funds are advanced to another person to make a contribution in that person's name or

²⁶ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

²⁷ *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).

²⁸ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

²⁹ *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.").

³⁰ *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." (quoting then-Section 441f)).

1 promised as reimbursement of a solicited contribution.³¹ Because the concern of the law is the
2 true source from which a contribution to a candidate or committee originates, we look to the
3 structure of the transaction itself and the arrangement between the parties to determine who in
4 fact “made” a given contribution.

5 The Complaint’s allegation that LZP was used to make contributions by other persons is
6 supported by the fact that LZP purported to make a \$175,000 contribution in its own name to
7 Honor PAC two days after Honor PAC was formed and one day after LZP was formed, and by
8 the lack of public information regarding the LLC’s activities or evidence indicating that LZP
9 could make such a contribution without an infusion of funds provided to it for that purpose.

10 When an LLC purports to make a political contribution in close temporal proximity to its
11 formation date, without evidence of activity or any specific information regarding the
12 provenance of its funds, the circumstances may support a reasonable inference that the LLC was
13 provided funds for the purpose of making a contribution, *i.e.*, that the LLC was used as a conduit
14 to mask the identity of the true contributor. However, in determining whether such an inference
15 is supported, the Commission considers the overall record, including the amount of the
16 contribution, the LLC’s stated purposes and activity, and whether other information, such as the
17 attribution of the LLC contribution, suggests an attempt to circumvent the Act’s disclosure
18 requirements.

³¹ *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 suggestion 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).

1 The record in this matter supports a finding that there is reason to believe that Unknown
2 Respondents violated the Act's prohibition against contributions in the name of another by
3 making contributions through LZP to Honor PAC. LZP implies that it was provided funds by its
4 purported single member to make the contributions to Honor PAC and does not dispute the
5 assertion that it appears to have engaged in no activity other than making the contributions at
6 issue and appears to have been formed solely to make contributions using the funds of another.
7 The record supports a conclusion that that was, indeed, the case.

8 First, the temporal proximity between LZP's formation and its first contribution to Honor
9 PAC just two days later supports a conclusion that LZP was likely created to effect a
10 contribution, and that LZP was not the true contributor to Honor PAC but was, instead, provided
11 funds for the purpose of making the contribution. LZP has not explained the reason for the
12 LLC's formation, the quick turnaround for making its first political contribution as a newly
13 formed entity, or how the making of that contribution almost immediately after the LLC's
14 organization was consistent with the LLC's organizational purpose or governing documents.
15 The absence of any public information of LZP's activity other than the making of contributions,
16 considered in conjunction with the timing between LZP's creation and first contribution, tend to
17 support a conclusion that funds were directed to LZP for the purpose of making a political
18 contribution.

19 Second, while LZP states that its corporate member had sufficient assets from which to
20 make the contribution to Honor PAC, it does not reveal the identity of that corporate member or
21 describe the origin of those assets. There is no available information concerning the nature of
22 the company, or how its corporate member procured the assets that LZP used for its
23 contributions to Honor PAC totaling \$270,000. Instead, information from the Supplemental

1 Complaint reveals that IFN directly controlled LZP's activities, and it is possible that IFN was
2 actually LZP's nonprofit corporate member. IFN's IRS filing states that it owned 100% of LZP
3 and further discloses that it received a \$271,000 contribution from an individual, which could
4 have been the source of LZP's \$270,000 in total contributions to Honor PAC.³² Indeed, IFN's
5 2018 Form 990 lists LZP's total income as only \$271,000.³³ Additionally, in disclosing its
6 "Political campaign activity expenditures" IFN's IRS filing lists contributions to purported 527
7 organizations; however, both of those entities, Honor PAC and Onward Ohio, were actually
8 committees registered with the Commission.³⁴ In fact, both committees disclosed those
9 contributions in their reports filed with the Commission, albeit Honor PAC listed the
10 contributions as coming from LZP and not IFN. Therefore, we are unable to conclude that those
11 assets were provided to LZP for any other lawful purpose and not for the purpose of making a
12 political contribution.³⁵

13 Third, the timing of Honor PAC's formation and its first disbursement, in relation to
14 LZP's formation and first contribution, also raises an inference that the IEOPC may have been
15 involved in the alleged conduit contribution scheme. As described above, Honor PAC's
16 registration with the Commission, LZP's registration as an LLC, LZP's first contribution to
17 Honor PAC, and Honor PAC's first independent expenditure all took place within a four-day
18 time period.³⁶ All of Honor PAC's receipts came exclusively from IFN, through LZP, and the

³² IFN 2018 Form 990 at 5, Schedule B, and Schedule R.

³³ *Id.* at Schedule R.

³⁴ *Id.* at Schedule C.

³⁵ Without information about LZP's single member we cannot determine whether the funds came from a lawful or prohibited source, such as from a foreign national in violation of 52 U.S.C. § 30121.

³⁶ *Supra* at 2.

MUR 7464 (Unknown Respondents)

Factual and Legal Analysis

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1 political committee apparently failed to seek information from either entity for the proper
2 attribution of any of the contributions on its disclosure reports. These facts support an inference
3 that Honor PAC was aware of the true purpose behind LZP's creation, namely, concealing the
4 identity of the true contributor.

5 The available information suggests that LZP's creation was an attempt to circumvent the
6 Act's disclosure requirements. Based on the foregoing, the Commission finds reason to believe
7 that Unknown Respondents violated 52 U.S.C. § 30122 by making,, and allowing LZP's name to
8 be used to make, contributions in the name of another.