



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Senate Leadership Fund, et al.) MUR 7912
)

**STATEMENT OF REASONS OF COMMISSIONERS
SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB**

This matter concerned the failure by twenty-two independent expenditure-only political committees (“IEOPCs” – commonly referred to as super PACs) and one hybrid PAC¹ to report their affiliations among one another and subsequent transfers between them. The Complaint alleged that combined, the twenty-three Respondent committees infused the 2018 and 2020 elections with more than \$200 million,² disguising their operations as local efforts despite indications the IEOPCs funded expenditures and/or the formations of the purportedly local committees. Almost uniformly, Respondents maintained that the affiliation reporting requirements do not apply to IEOPCs.

The Office of General Counsel (“OGC”) recommended finding reason to believe against 1) Senate Leadership Fund for its affiliation with Faith and Power PAC, Maine Way PC, Mountain Families PAC, and Peachtree PAC; 2) SMP for its affiliation with Carolina Blue, Red and Gold, and Sunflower State; and 3) Hold Them Accountable for its affiliation with Liberty SC.³ Because the available information about the remaining committees was insufficient to verify the extent of their relationships, OGC recommended the Commission exercise its prosecutorial discretion to dismiss allegations against them.⁴ Finally, in the absence of reporting their affiliations, and the concomitant

¹ A hybrid PAC is a committee that maintains separate accounts for (a) making direct contributions (with funds subject to the amount limits and source restrictions of the Federal Election Campaign Act, as amended) and (b) making independent expenditures with unlimited contributions. *See* Press Release, *FEC Statement on Carey v. FEC, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>; *Registering As a Hybrid PAC*, Fed. Election Comm’n, <https://www.fec.gov/help-candidates-and-committees/filing-pac-reports/registering-hybrid-pac/>.

² *See* MUR 7912 (Senate Leadership Fund, *et al.*) Complaint at 3-5; First Gen. Counsel’s Rep. (“FGCR”) at 5-7, 9-10, 11-12, 14, 16, 20, 21 (charts).

³ *See* FGCR at 33-34.

⁴ *See id.* at 35-36 (recommending the Commission exercise its prosecutorial discretion to dismiss allegations against American Crossroads, Defend Arizona, Keep Kentucky Great, Plains PAC, Highway 31, CLF, AFFPA, Illinois Conservatives PAC, Lone Star Values PAC, Future45, and Truth Still Matters PAC).

obligation to report receipts and disbursements between them, OGC recommended against pursuing Respondents for their collective failure to report transfers.⁵

We supported OGC’s recommendations⁶ and write to explain why the nearly unanimous explanation by Respondents – that the affiliation regulations do *not* apply to IEOPCs – is erroneous based on 1) the plain language of the Federal Election Campaign Act (“FECA” or “the Act”), 2) the authoritative case law that supports a reading of the application of the reporting requirements to IEOPCs, and 3) the practice by some IEOPCs, including one that is a Respondent here, to report affiliated committees.

First, the plain language of the Act requires political committees to file a statement of organization that includes “any connected organization or affiliated committee”⁷ and to file reports of receipts and disbursements, including transfers between affiliated committees.⁸ Line 6 of FEC Form 1, “Statement of Organization,” also requires committees to “Name [] Any Connected Organization, Affiliated Committees, Joint Fundraising Representative, or Leadership PAC Sponsor.” Thus, by registering as political committees, Respondents have the obligation to report affiliated committees *and* the transfers between them.⁹ Second, in *SpeechNow v. FEC*,¹⁰ the U.S. Court of Appeals for the District of Columbia held that the public’s informational interest is not overly burdensome¹¹ and that the Commission may constitutionally impose reporting requirements,¹² which would include reporting affiliations. Finally, concerns that application of the affiliation regulations to IEOPCs raise issues of notice and due process,¹³ ignore the practice by some committees to report affiliations, as Respondent SMP itself did in 2020 when it reported affiliation to two IEOPCs who were not part of this Complaint.¹⁴

⁵ *See id.* at 37 (stating that “Respondents’ failure to report each other as affiliated committees likely prevented them from complying with the reporting requirements” for transfers between them).

⁶ Indeed, we thought there was reason to believe that most of the remaining committees also were affiliated, based on the substantial amount of their funding – in some cases, 100% – that they received from the IEOPCs. *See* Cert. ¶ 1, MUR 7912 (Senate Leadership Fund, *et al.*), dated Jan. 24, 2023; FGCR at 32.

⁷ 52 U.S.C. § 30103(b)(2); 11 C.F.R. § 102.2(a).

⁸ *Id.* § 30104(b)(2)(F), (b)(4)(C).

⁹ *See id.*

¹⁰ 599 F.3d 686 (D.C. Cir. 2010).

¹¹ *See id.* at 698 (stating, “But the public has an interest in knowing who is speaking about a candidate and who is funding that speech, no matter whether the contributions were made towards administrative expenses or independent expenditures.”).

¹² *See id.*

¹³ *See* Statement of Reasons of Vice Chairman Sean J. Cooksey and Commissioners Allen J. Dickerson and James E. “Trey” Trainor, III in MUR 7912 (Senate Leadership Fund, *et al.*) at 6 (stating “even if the affiliation rules applied . . . the lack of Commission guidance . . . deprived Respondents of fair notice that they were obligated to report in this manner.”).

¹⁴ *See* SMP Joint Resp. at 4 (acknowledging affiliation status with two other committees in its Statement of Organization); Georgia Honor, About This Committee, <https://www.fec.gov/data/committee/C00763193/?tab=about-committee> (last visited Feb. 23, 2023) (stating that the committee is an IEOPC); The Georgia Way, About This Committee, <https://www.fec.gov/data/committee/C00763185/?tab=about-committee> (last visited Feb. 23, 2023) (same).

Notwithstanding the plain language of the registration and reporting requirements of the Act and the holding in *SpeechNow*, the understanding by some in the regulated community – that IEOPCs like Respondents need not report affiliated committees – reinforces the need for the Commission to address the issue through a formal rulemaking.¹⁵ These cases arise amidst a growing concern about persons and entities routing substantial amounts of money through other entities – 501(c)(4) organizations, intermediate vendors, consultants, and other political committees,¹⁶ to name a few – in ways that undermine the core disclosure goals of the Act by obscuring “who is speaking about a candidate and who is funding that speech.”¹⁷

March 3, 2023

Date



Shana M. Broussard
 Commissioner

March 3, 2023

Date



Ellen L. Weintraub
 Commissioner

¹⁵ To address concerns by our colleagues that the relevant forms have not been “updated in a manner relevant to this matter,” we likewise welcome any parallel effort to provide clear instructions to the regulated community, including IEOPCs, about reporting affiliations on Form 1. *See* Statement of Reasons of Vice Chairman Sean J. Cooksey and Commissioners Allen J. Dickerson and James E. “Trey” Trainor, III in MUR 7912 (Senate Leadership Fund, *et al.*) at 3.

¹⁶ *See, e.g.*, MUR 7784 (Make America Great Again PAC, *et al.*) (allegations that hundreds of millions of dollars in campaign spending was obscured when made through two vendors controlled by campaign staff); MUR 6920 (American Conservative Union) (money funneled through web of organizations including a trust, an LLC, and a 501(c)(4) organization to hide the true source of a \$1.7 million contribution to a super PAC). After many years, the Commission addressed this problem in the LLC context. *See* MUR 7454 (Blue Magnolia Investments, LLC); MUR 7903 (Tomfoolery, LLC, *et al.*) (Oct. 3, 2022). We need to ensure that other entities are similarly transparent in their political spending.

¹⁷ *SpeechNow*, 599 F.3d at 698.