

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 8110

DATE COMPLAINTS¹ FILED: Feb. 6, 2023
Nov. 14, 2023
DATE OF NOTIFICATIONS: Feb. 10, 2023
Nov. 22, 2023
LAST RESPONSE RECEIVED: Jan. 12, 2024
DATE ACTIVATED: Aug. 8, 2023
EXPIRATION OF SOL: July 14, 2025
(earliest)
Jan. 5, 2026
(latest)
ELECTION CYCLE: 2020

COMPLAINANTS:

Vladimir Shklovsky
David Lewicki

RESPONDENTS:

American Coalition for Conservative Policies
Policies, Solutions, and Action for America
RightOn Issues, Inc.
Georgia United Victory and Paul Kilgore in his
official capacity as treasurer (terminated)
RightOn Time and Paul Kilgore in his official
capacity as treasurer (terminated)
Georgia Action Fund and Kayla Glaze in her
official capacity as treasurer
John Fogarty, Jr., in his personal capacity
Christopher Marston in his personal capacity
Moses Ayala in his personal capacity
Caleb Crosby in his personal capacity
Paul Kilgore in his personal capacity
Kayla Glaze in her personal capacity
Unknown Respondent(s)

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30103
52 U.S.C. § 30104
52 U.S.C. § 30122
11 C.F.R. § 102.1(d)
11 C.F.R. § 104.1
11 C.F.R. § 104.2

¹ Because the Amended Complaint encompasses all the original allegations and all original respondents, in addition to the new allegations and new respondents, we refer to the Amended Complaint throughout this Report.

1 11 C.F.R. § 104.3
2 11 C.F.R. § 104.8
3 11 C.F.R. § 110.4
4

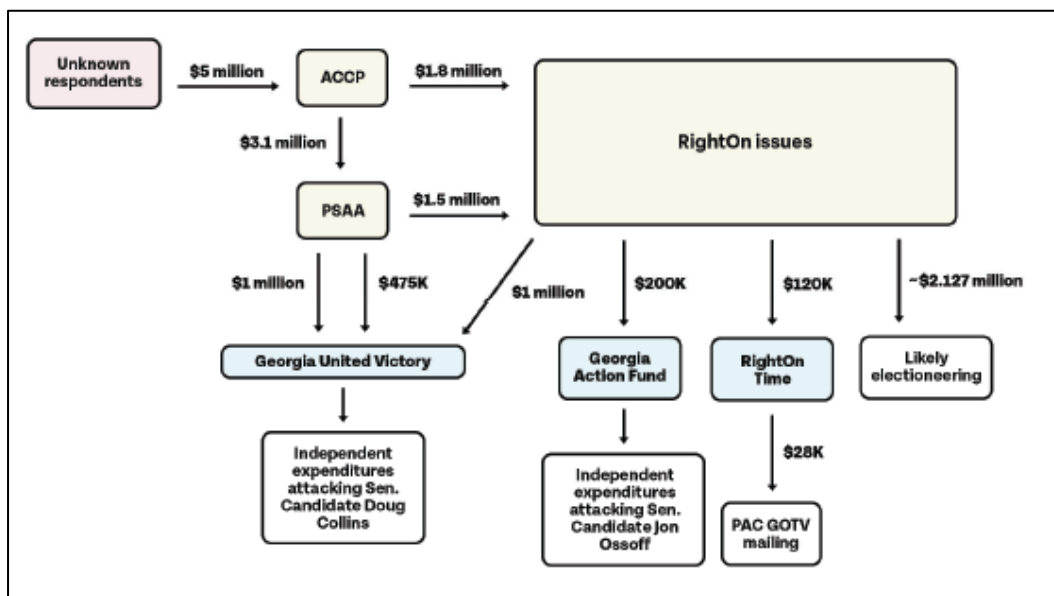
5 **INTERNAL REPORTS CHECKED:** Disclosure Reports
6

7 **FEDERAL AGENCIES CHECKED:** 
8

9 **OTHER AGENCIES CHECKED:** 
10
11

12 I. INTRODUCTION

13 This matter involves allegations of a complex scheme to make conduit contributions
14 through a series of intermediaries in order to disguise the identities of the true source or sources
15 of the funds in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).
16 According to the Amended Complaint, Unknown Respondent(s) gave five million dollars to one
17 nonprofit corporation, American Coalition for Conservative Policies (“ACCP”), which in turn
18 made transfers to two intermediary nonprofit corporations, Policies, Solutions, and Action for
19 America (“PSAA”) and to RightOn Issues, entities which then allegedly made electioneering
20 expenditures and various transfers to three independent expenditure-only political committees,
21 Georgia United Victory, Georgia Action Fund, and RightOn Time (“RightOn Time”; collectively
22 with Georgia United Victory and Georgia Action Fund, the “super PACs”). The below chart,
23 included in the Amended Complaint, details the alleged transactions:



1
 2 These transactions all occurred within a period of approximately three months, as
 3 detailed in the following chart:

Source	Amount	Recipient	Date
Unknown Respondent(s)	\$5,000,000	ACCP	On or before July 14, 2020
ACCP	\$3,100,000	PSAA	Between July 14 and 16, 2020
ACCP	\$1,800,000	RightOn Issues	Unknown
PSAA	\$1,500,000	RightOn Issues	On or after July 14, 2020
PSAA	\$1,000,000	Georgia United Victory	July 16, 2020
PSAA	\$475,000	Georgia United Victory	August 31, 2020
RightOn Issues	\$1,000,000	Georgia United Victory	September 21, 2020
RightOn Issues	\$200,000	Georgia Action Fund	September 21, 2020
RightOn Issues	\$120,000	RightOn Time	September 23, 2020

4 Additionally, the Amended Complaint contends that RightOn Issues spent another
 5 \$2,166,506 on payments to two vendors located in Georgia with ties to the Georgia Republican
 6 Party and David Perdue, the Republican Party candidate to represent Georgia in the U.S. Senate.

7 The Amended Complaint alleges that these transactions violated the Act's prohibition on
 8 the making and knowing receipt of contributions in the name of another. The Amended
 9 Complaint also alleges that the treasurers of the super PACs violated the Act's prohibition on

1 contributions in the name of another and the Act's reporting provisions in their personal
2 capacities. The Amended Complaint further alleges that ACCP, PSAA, and RightOn Issues
3 violated the Act by failing to register and report as political committees and that various officers
4 of these nonprofit corporations should be held personally liable. Finally, the Amended
5 Complaint alleges that RightOn Issues failed to file an independent expenditure report in
6 connection with payments for a mailer and a January 5, 2021 Facebook ad.

7 The Response of ACCP and its treasurer, John Fogarty, Jr., argues that the allegations fail
8 to meet the Act's reason-to-believe standard and that the Commission should dismiss the
9 Amended Complaint because ACCP has dissolved as a corporate entity. PSAA's Response,
10 submitted jointly with its treasurer, Christopher Martson, and its vice president and secretary,
11 Moses Ayala, argues that the Commission should find no reason to believe because the
12 Complaint lacks evidence of a violation of the conduit contribution prohibition or exercise its
13 prosecutorial discretion and dismiss the matter because PSAA dissolved in 2022. RightOn
14 Issues's Response, filed jointly with its treasurer, Caleb Crosby, makes a similar argument. The
15 Joint Response of Georgia United Victory and RightOn Time, and their treasurer, Paul Kilgore,
16 states that the Complaint's allegations are meritless. The Response submitted by Georgia Action
17 Fund and its treasurer, Kayla Glaze, argues that the Complaint lacks facts to support a reason-to-
18 believe finding.

19 Because the record indicates that ACCP, PSAA, and RightOn Issues may have been
20 conduits through which Unknown Respondent(s) contributed \$2.795 million to the three super
21 PACs, we recommend that the Commission find reason to believe that Unknown Respondent(s)
22 made, and that PSAA and RightOn Issues knowingly permitted their names to be used to effect,
23 contributions in the name of another person in violation of 52 U.S.C. § 30122 and 11 C.F.R.

1 § 110.4(b). We recommend that the Commission take no action at this time with respect to
2 ACCP because, while it appears to have been a conduit through which Unknown Respondent(s)
3 made a contribution in the name of another, it did not itself make or permit its name to be used to
4 effect a contribution in the name of another. Because there is insufficient information in the
5 record at this time as to the knowledge of the three super PACs, we recommend that the
6 Commission take no action at this time with respect to the allegation that Georgia United Victory
7 and Paul Kilgore in his official capacity as treasurer, Georgia Action Fund and Kayla Glaze in
8 her official capacity as treasurer, and RightOn Time and Paul Kilgore in his official capacity as
9 treasurer violated 52 U.S.C. §§ 30104, 30122 and 11 C.F.R. §§ 104.1-.3, 104.8, 110.4(b) by
10 knowingly accepting a contribution in the name of another person and failing to report the
11 contribution's true source. We also recommend that the Commission take no action with respect
12 to the allegations that the super PAC treasurers, Paul Kilgore and Kayla Glaze, violated
13 52 U.S.C. §§ 30104, 30122, and 11 C.F.R. §§ 102.1(d), 104.1-.3, 104.8, 110.4(b) in their
14 personal capacities in connection with the super PAC's acceptance of contributions from PSAA
15 and RightOn Issues.

16 Because a "person" can either be the true source of a contribution or a conduit that
17 transmits the funds of another — but not both — we recommend that the Commission take no
18 action at this time with respect to the Complaint's allegations that ACCP, PSAA, and RightOn
19 Issues failed to register and report as political committees in violation of 52 U.S.C. §§ 30102,
20 30103, and 30104. For the same reason, we recommend that the Commission take no action at
21 this time against Fogarty, Crosby, Marston, and Ayala with respect to the alleged failure of
22 ACCP, PSAA, and RightOn Issues to register and report as political committees. We further
23 recommend that the Commission dismiss the allegation that RightOn Issues failed to file an

1 independent expenditure report in violation of 52 U.S.C. § 30104(b), (c), (g) in connection with
2 its payment for the mailer described in the Complaint and a January 5, 2021 Facebook ad.

3 **II. BACKGROUND**

4 **A. Known Respondents**

5 1. American Coalition for Conservative Policies

6 ACCP organized as a nonprofit corporation in the District of Columbia on March 23,
7 2020.² It classified itself as a social welfare organization under section 501(c)(4) of the Internal
8 Revenue Code (the “Code”).³ Its self-described mission was to “[i]dentify social problems and
9 advance solutions through public policies that unite the Nation and defend capitalism, freedom,
10 and liberty.”⁴

11 On its 2020 tax return, ACCP disclosed that it received \$5,060,000 in contributions and
12 grants in calendar year 2020.⁵ ACCP also disclosed that it made a \$3.1 million grant to PSAA to
13 “promote public policies that defend capitalism and promote freedom” and a \$1.8 million grant
14 to RightOn Issues to “promote nonpartisan voter engagement.”⁶ The combined \$4.9 million in
15 grants to PSAA and RightOn Issues represented ACCP’s total grantmaking in 2020. On its 2021
16 tax return, ACCP reported that it had no revenue and spent a total of \$49,697, consisting of

² D.C. Dep’t of Licensing & Consumer Prot., *CorpOnline*, DC.GOV, <https://corponline.dcrd.dc.gov/Home.aspx> (search “American Coalition for Conservative Policies”; a free account is required to access this database).

³ Code section 501(c)(4) provides, in part, for the exemption from federal income taxation of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. *See* 26 U.S.C. § 501(c)(4). ACCP does not appear to have sought recognition from the Internal Revenue Service (“IRS”) of its tax-exempt status under section 501(c)(4) of the Code. *See* IRS, Exempt Organizations Business Master File Extract (EO BMF), <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-bmf> (last visited Apr. 30, 2024) (select “DC”; “American Coalition for Conservative Policies” does not appear in the document).

⁴ IRS Form 990, American Coalition for Conservative Policies, 2020 Return of Organization Exempt from Income Tax (Nov. 15, 2021) [hereinafter ACCP 2020 Form 990].

⁵ ACCP 2020 Form 990 at 1, 9.

⁶ ACCP 2020 Form 990, Sched. I.

1 salaries for its officers, professional fees, bank fees, and insurance.⁷ ACCP's "entity status" was
 2 eventually revoked by the District of Columbia and it dissolved in 2023.⁸

3 2. Policies, Solutions and Action for America

4 PSAA organized as a nonprofit corporation in the District of Columbia on May 6, 2020.⁹

5 PSAA filed its Form 1024-A, Application for Recognition of Exemption Under Section

6 501(c)(4) of the Code on September 10, 2020.¹⁰ The form described PSAA's planned activities:

7 [PSAA] anticipates that its tax-exempt purposes will be carried out
 8 through promoting the common good and general welfare of the
 9 people of the community for the purpose of bringing about civic
 10 betterments and social improvements[,] . . . that it will shape the
 11 presentation of views related to a variety of topics, including free
 12 markets, competitive capitalism and private enterprise, tax
 13 minimization, limited government, personal responsibility, and
 14 traditional American values[,] . . . that this work will result in the
 15 identification of "legislation" within the meaning of Section
 16 4911(e)(2) of the Code that is salient to the [PSAA's] operations
 17 and that [PSAA] will take an 'action' with respect to such
 18 legislation.¹¹

⁷ IRS Form 990 EZ, American Coalition for Conservative Policies, 2021 Short Form Return of Organization Exempt from Income Tax (Nov. 1, 2022) [hereinafter ACCP 2021 Form 990 EZ].

⁸ ACCP Resp. at 1, 3 (Jan. 12, 2024); D.C. Dep't of Licensing & Consumer Prot., *CorpOnline*, DC.GOV, <https://corponline.dcrd.dc.gov/Home.aspx> (search "American Coalition for Conservative Policies").

⁹ D.C. Dep't of Licensing & Consumer Prot., *CorpOnline*, DC.GOV, <https://corponline.dcrd.dc.gov/Home.aspx> (search "Policies, Solutions and Action for America"); IRS Form 1024-A, Policies, Solutions, and Actions for America, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code, Ex. A, (Sept. 10, 2020) [hereinafter PSAA IRS Form 1024-A] (attaching PSAA's articles of incorporation).

¹⁰ PSAA IRS Form 1024-A. Applications for tax exemption under Code section 501(c)(4) must include copies of the applicants' organizing documents and bylaws in addition to a "full description of the proposed activities of [the] organization." IRS, Publication 557: Tax-Exempt Status for Your Organization at 4 (Feb. 6, 2024), <https://www.irs.gov/pub/irs-pdf/p557.pdf>. Form 1024-A applications must be signed and dated under penalty of perjury by an officer, director, trustee, or other official authorized to sign by the organization. *See* IRS, Instructions for Form 1024-A at 4, 13 (Dec. 29, 2020), <https://www.irs.gov/pub/irs-pdf/i1024a.pdf>.

¹¹ PSAA IRS Form 1024-A at Statement III.

1 PSAA reported no assets or liabilities as of July 13, 2020.¹² Then, between July 14,
2 2020, and July 16, 2020, PSAA received one \$3.1 million contribution.¹³ On July 16, 2020,
3 PSAA contributed \$1 million to Georgia United Victory and contributed another \$475,000 to
4 Georgia United Victory on August 31, 2020.¹⁴ PSAA also contributed \$1.5 million dollars to
5 RightOn Issues, Inc., at some point between July 14, 2020, and September 21, 2020.¹⁵

6 On April 13, 2021, the IRS recognized PSAA as tax-exempt organization under section
7 501(c)(4) of the Code with an effective date of May 6, 2020.¹⁶ On its 2021 tax return, PSAA
8 reported that it had no revenue and spent a total of \$62,203, consisting of salaries for its officers,
9 legal and accounting fees, and insurance.¹⁷ PSAA filed a Form 990-N for its 2022 tax return,
10 indicating only that it received less than \$50,000.¹⁸ PSAA dissolved in 2022.¹⁹

¹² PSAA IRS Form 1024-A at 3 (reporting PSAA's balance sheet with year-end date of "7/13/2020").

¹³ IRS Form 990, Policies, Solutions, and Action for America, 2020 Return of Organization Exempt from Income Tax, Sched. B (Nov. 9, 2021) [hereinafter PSAA 2020 Form 990] (disclosing a \$3.1 million contribution); IRS Form 990, Policies, Solutions, and Action for America, 2021 Return of Organization Exempt from Income Tax, Sched. B (Nov. 6, 2022) [hereinafter PSAA 2021 Form 990]; *Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos/> (last visited Apr. 30, 2024) (search "Policies, Solutions, and Action for America") (showing PSAA's IRS Form 990-N (e-Postcard) for the 2022 tax period).

¹⁴ Georgia United Victory, 2020 October Quarterly Report at 9 (Oct. 15, 2020), <https://docquery.fec.gov/pdf/339/202010159295076339/202010159295076339.pdf>. Georgia United Victory, in turn, used PSAA's contributions to make independent expenditures opposing Doug Collins in the 2020 Georgia special election for U.S. Senate. *Id.*

¹⁵ PSAA 2020 Form 990, Sched. I (disclosing \$1.5 million "general support grant" to RightOn Issues).

¹⁶ *Tax Exempt Organization Search*, IRS.GOV, <https://apps.irs.gov/app/eos/> (last visited Apr. 30, 2024) (search "Policies Solutions and Action for America").

¹⁷ IRS Form 990, Policies, Solutions and Action for America, 2021 Return of Organization Exempt from Income Tax (Nov. 6, 2022) [hereinafter PSAA 2021 Form 990].

¹⁸ IRS Form 990-N (e-Postcard), Policies, Solutions and Action for America, Tax Period: 2022 [hereinafter PSAA 2022 Form 990-N].

¹⁹ *Id.*; PSAA Resp. at 2-3 (June 12, 2023).

1 3. RightOn Issues, Inc.

2 RightOn Issues organized as a nonprofit corporation in the District of Columbia on July
 3 3, 2020.²⁰ It also classified itself as a social welfare organization under section 501(c)(4) of the
 4 Code.²¹ RightOn Issues's address on its tax return is a P.O. box in Athens, Georgia, but ACCP's
 5 2020 tax return listed RightOn Issues's address as 210 Cedar Valley Road, Blue Ridge,
 6 Georgia.²² The latter address corresponds with the address for Republiclick, LLC, and Dickey
 7 Strategic Relations — two entities with ties to 2022 U.S. Senate candidate David Perdue.²³ On
 8 September 21, 2020, RightOn Issues contributed \$1 million to Georgia United Victory, as well
 9 as \$200,000 to Georgia Action Fund.²⁴ Two days later, RightOn Issues contributed \$120,00 to
 10 RightOn Time.²⁵ For calendar year 2020, RightOn Issues reported that it received \$5,670,000 in

²⁰ D.C. Dep't of Licensing & Consumer Prot., *CorpOnline*, DC.GOV, <https://corponline.dcrd.dc.gov/Home.aspx> (search "RightOn Issues").

²¹ See IRS Form 990, RightOn Issues, Inc., 2020 Return of Organization Exempt from Income Tax (Nov. 15, 2021) [hereinafter RightOn Issues 2020 Form 990]. The IRS's most recent data does not include RightOn Issues among recognized tax-exempt organizations located in D.C. or Georgia See IRS, Exempt Organizations Business Master File Extract (EO BMF), <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-BMF> (last visited Apr. 30, 2024) (select "DC"; "RightOn Issues" does not appear in the document).

²² ACCP 2020 Form 990, Sched. I.

²³ Right on Issues 2020 Form 990 at 2; *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00547570&recipient_name=repubclick&two_year_transaction_period=2020 (reflecting payments by Perdue for Senate to Republiclick LLC for "digital consultant"); *PPP Loan Data — Dickey Strategic Relations, Blue Ridge, GA*, FEDERALPAY.ORG, <https://www.federalpay.org/paycheck-protection-program/dickey-strategic-relations-blue-ridge-ga> (last visited Apr. 30, 2024). In addition to being a digital consultant for David Perdue's 2020 campaign, Republiclick LLC appears to be controlled by Katie Dickey, the spouse of Republican candidate David Perdue's campaign manager, Derrick Dickey. See *Business Search: Republiclick, LLC*, GA. CORPS. DIV., <https://ecorp.sos.ga.gov/BusinessSearch> (last visited Apr. 30, 2024) (search "Republiclick") (reflecting 2020 annual report disclosing Katie Dickey as organizer); *Derrick Dickey*, LEGISTORM, https://www.legistorm.com/person/bio/231062/Derrick_L_Dickey.html (last visited Apr. 30, 2024) (showing Derrick Dickey as Perdue's campaign manager from March 2019 until January 2021); *Perdue Announces Campaign Team*, CHATTANOOGAN (Apr. 12, 2006), <https://www.chattanooga.com/2006/4/12/83638/Perdue-Announces-Campaign-Team.aspx> (describing Derrick Dickey's history working on Sonny Perdue's staff and identifies "Katie" as his spouse).

²⁴ Georgia United Victory, 2020 October Quarterly Report at 9 (Oct. 15, 2020), <https://docquery.fec.gov/pdf/339/202010159295076339/202010159295076339.pdf>; Georgia Action Fund, 2020 October Quarterly Report at 13 (Oct. 15, 2020), <https://docquery.fec.gov/pdf/345/202010159294240345/202010159294240345.pdf>.

²⁵ RightOn Time, 2020 October Quarterly Report at 6 (Oct. 15, 2020), <https://docquery.fec.gov/pdf/344/202010159294140344/202010159294140344.pdf>

1 contributions and spent a total of \$3,926,986.²⁶ Of the amount spent, RightOn Issues contributed
 2 \$1.32 million (33.6%) to the super PACs, paid Paces Direct LLC²⁷ \$1,789,105 for “direct mail
 3 services,” and paid Repubclick LLC for \$377,401 for “advertising services.”²⁸

4 On its 2021 tax return, RightOn Issues reported that it had no revenue and spent
 5 \$1,648,861, mostly on advertising, data and list rental, political contributions, compensation for
 6 its officers and directors, and “other.”²⁹ RightOn Issues dissolved in 2022.³⁰

7 4. The Super PACs

8 Georgia United Victory registered with the Commission on July 1, 2020.³¹ It
 9 administratively terminated on May 4, 2021.³² For the 2020 election cycle, it received
 10 contributions totaling \$21,556,929 and made independent expenditures totaling \$19,187,774.³³

²⁶ RightOn Issues 2020 Form 990 at 1.

²⁷ Paces Direct appears to be controlled by Marshall Klein, a former director of the Georgia Republican party. *See Business Search: Repubclick, LLC*, GA. CORPS. DIV., <https://ecorp.sos.ga.gov/BusinessSearch> (last visited Apr. 30, 2024) (search “Paces Direct”) (reflecting annual reports disclosing Marshall Klein as member and organizer); Tom Crawford, *Political Roundup: February 2008*, GeorgiaTrend (Feb. 1, 2008), <https://www.georgiatrend.com/2008/02/01/political-roundup-february-2008/> (reporting Georgia Republican Party executive director Marty Klein left the party organization to establish his own consulting firm).

²⁸ The Amended Complaint alleges, and RightOn Issues does not contest, that the \$1,789,105 payment to Paces Direct was for the mail piece at Figure 1, *infra*, and that the \$377,401 payment to Repubclick was for RightOn Issues’s Facebook ads. *See Amended Compl.* at 27-30, 55-59.

²⁹ IRS Form 990, RightOn Issues, Inc., 2021 Return of Organization Exempt from Income Tax (Nov. 14, 2022) [hereinafter “RightOn Issues 2021 Form 990”].

³⁰ D.C. Dep’t of Licensing & Consumer Prot., *CorpOnline*, DC.GOV, <https://corponline.dcrd.dc.gov/Home.aspx> (search “RightOn Issues”); RightOn Issues Resp. at 2-3 (Apr. 26, 2023).

³¹ Georgia United Victory, Statement of Organization (July 1, 2020), [https://docquery.fec.gov/pdf/952/202007019244230952.pdf](https://docquery.fec.gov/pdf/952/202007019244230952/202007019244230952.pdf).

³² Letter from Abigail Capps, Senior Campaign Fin. Analyst, FEC to Paul Kilgore, Treasurer, Georgia United Victory (May 4, 2021), <https://docquery.fec.gov/pdf/613/202105040300117613/202105040300117613.pdf> (accepting termination report).

³³ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00750323&two_year_transaction_period=2020 (last visited Apr. 30, 2024) (reflecting all contributions received by Georgia United Victory during the 2020 election cycle); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00750323&is_notice=false&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Apr. 30, 2024) (reflecting all independent expenditures by Georgia United Victory during the 2020 election cycle).

1 All of its independent expenditures for the 2020 cycle supported or opposed candidates to
2 represent Georgia in the U.S. Senate.³⁴ For the 2021 U.S. Senate special election in Georgia,
3 Georgia United Victory reported spending \$14,710,782 between August 3 and October 27, 2020,
4 opposing republican Doug Collins and democrat Raphael Warnock.³⁵ For the 2022 election
5 cycle, Georgia United Victory received \$1,665,000 in contributions and spent \$2,076,236.³⁶
6 Georgia United Victory filed for termination on April 19, 2021.³⁷

7 Georgia Action Fund registered with the Commission on January 9, 2019.³⁸ For the 2020
8 election cycle, it received contributions totaling \$8,020,146.77 and made independent
9 expenditures totaling \$5,028,673.³⁹ Georgia Action Fund spent \$4,609,094 opposing democratic
10 candidate for U.S. Senate for Georgia Jon Ossoff and another \$419,579 opposing democratic
11 presidential candidate Joe Biden.⁴⁰ For the 2022 election cycle, Georgia Action Fund received

³⁴ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00750323&is_notice=false&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Apr. 30, 2024) (reflecting all independent expenditures by Georgia United Victory during the 2020 election cycle).

³⁵ *Id.*

³⁶ *Georgia United Victory Financial Summary: 2021-2022*, FEC.GOV, <https://www.fec.gov/data/committee/C00750323/?tab=summary&cycle=2022> (last visited Apr. 30, 2024).

³⁷ Georgia United Victory, Termination Report (Apr. 19, 2021), <https://docquery.fec.gov/pdf/696/202104199443809696/202104199443809696.pdf>.

³⁸ Georgia Action Fund, Statement of Organization (Jan. 9, 2019), <https://docquery.fec.gov/pdf/482/201901099143774482/201901099143774482.pdf>.

³⁹ *FEC Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00693606&two_year_transaction_period=2020 (last visited Apr. 30, 2024) (reflecting all individual contributions to Georgia Action Fund during the 2020 election cycle); *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00693606&is_notice=false&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Apr. 30, 2024) (reflecting all independent expenditures by Georgia Action Cycle during the 2020 election cycle).

⁴⁰ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00693606&is_notice=false&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Apr. 30, 2024) (reflecting all independent expenditures by Georgia Action Fund during the 2020 election cycle).

1 \$2,052,000 in contributions and spent \$2,207,547.⁴¹ It has spent \$26,465 on operating
2 expenditures in the 2024 election cycle so far.⁴²

3 RightOn Time registered with the Commission on May 5, 2020.⁴³ RightOn Issues's
4 \$120,000 contribution on September 23, 2020, represented RightOn Time's only received
5 contribution for the 2020 election cycle.⁴⁴ RightOn Time did not report any independent
6 expenditures for the 2020 cycle. Instead, it reported disbursements totaling \$94,423, with
7 \$28,125 identified for the purpose of "PAC GOTV Mailing" and the remainder identified as for
8 "strategy," "compliance," or "legal" consulting.⁴⁵ For the 2022 election cycle, RightOn Time
9 received \$250,000 in contributions and spent \$275,576.⁴⁶ RightOn Time terminated on
10 December 13, 2022.⁴⁷

11 B. The Amended Complaint

12 1. 52 U.S.C. § 30122 Allegations: Contributions in the Name of Another
13 The Amended Complaint alleges that Unknown Respondent(s) made, and that ACCP,
14 PSAA, and RightOn Issues knowingly permitted their names to effect, contributions in the name

⁴¹ *Georgia Action Fund Financial Summary: 2021-2022*, FEC.GOV, <https://www.fec.gov/data/committee/C00693606/?tab=summary&cycle=2022> (last visited Apr. 30, 2024).

⁴² *Georgia Action Fund Financial Summary: 2023-2024*, FEC.GOV, <https://www.fec.gov/data/committee/C00693606/?tab=summary&cycle=2024> (last visited Apr. 30, 2024) (disclosing payments for "legal consulting" and "compliance consulting").

⁴³ RightOn Time, Statement of Organization (May 5, 2020) (<https://docquery.fec.gov/pdf/959/202005059232366959/202005059232366959.pdf>).

⁴⁴ *FEC Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00745554&two_year_transaction_period=2020 (last visited Apr. 30, 2024) (reflecting all individual contributions received by RightOn Time in the 2020 election cycle).

⁴⁵ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?committee_id=C00745554&two_year_transaction_period=2020&data_type=processed (last visited Apr. 30, 2024) (reflecting all disbursements by RightOn Time during the 2020 election cycle).

⁴⁶ *RightOn Time Financial Summary: 2021-2022*, FEC.GOV, <https://www.fec.gov/data/committee/C00745554/?tab=summary&cycle=2022> (last visited Apr. 30, 2024).

⁴⁷ Letter from Andrea Chamorro, Senior Campaign Fin. Analyst, FEC to Paul Kilgore, Treasurer, RightOn Time (Dec. 13, 2022), <https://docquery.fec.gov/pdf/372/202212130300163372/202212130300163372.pdf>.

1 of another person in violation of 52 U.S.C. § 30122.⁴⁸ The Amended Complaint alternatively
2 alleges that ACCP made, and that PSAA and RightOn Issues knowingly permitted their names to
3 effect, contributions in the name of another person in violation of 52 U.S.C. § 30122.⁴⁹

4 The Amended Complaint also alleges that the super PACs violated 52 U.S.C. §§ 30104,
5 30122 and 11 C.F.R. §§ 104.1-.3, 104.8, 110.4 by knowingly accepting contributions in the name
6 of another person and failing to report the true source of these contributions.⁵⁰ The Amended
7 Complaint further alleges that Georgia United Victory and RightOn Time treasurer, Paul
8 Kilgore, and Georgia Action Fund treasurer, Kayla Glaze, violated 52 U.S.C. §§ 30104, 30122
9 and 11 C.F.R. §§ 102.1(d), 104.1-.3, 104.8, 110.4 in their personal capacities by acting
10 knowingly and willfully.⁵¹

11 The Amended Complaint cites the following in support of its name of another
12 allegations: (1) the structure of the transactions, which it says permitted ACCP, PSAA, and
13 RightOn Issues to evade the Act's reporting requirements;⁵² (2) ACCP, PSAA, and RightOn
14 Issues were all incorporated in 2020, and, in the case of PSAA, incorporated shortly before
15 receiving funds from ACCP;⁵³ (3) ACCP and PSAA's activities consisted solely of giving funds
16 to other groups;⁵⁴ (4) PSAA and RightOn Issues's spending "nearly equaled" the amounts they

⁴⁸ Amended Compl. at 31, 41.

⁴⁹ *Id.* at 39-40.

⁵⁰ *Id.* at 42, 49.

⁵¹ *Id.*

⁵² *Id.* at 33-34, 41.

⁵³ *Id.* at 34, 38 (stating that "the three nonprofits involved were all created in 2020," and that ACCP and PSAA were "incorporated within two months of each other and shortly before ACCP transferred the [\$3.1 million] to PSAA").

⁵⁴ *Id.* at 34 ("ACCP and PSAA's nearly singular activities comprised transferring the Unknown Respondents' funds to other groups."); *id.* at 41 (noting "PSAA's lack of any activities other than transferring the funds it received from ACCP before dissolving").

1 received;⁵⁵ (5) PSAA and RightOn Issues both contributed to the same super PAC;⁵⁶ (6) the size
2 of PSAA and RightOn Issues's contributions to each super PAC relative to those super PACs'
3 other receipts;⁵⁷ (7) the "shared end" that PSAA and RightOn Issues's super PAC contributions
4 advanced (influencing the 2020 U.S. Senate elections in Georgia);⁵⁸ (8) ACCP and PSAA's
5 overlapping personnel and shared office space;⁵⁹ (9) ACCP, PSAA, and RightOn Issues received
6 no contributions after 2020;⁶⁰ and (10) PSAA and RightOn Issues dissolved in 2022.⁶¹ The
7 Amended Complaint also points to Part VI.B of PSAA's IRS Form 1024-A, in which PSAA
8 reported zero assets as of July 13, 2020.⁶² The Amended Complaint reasons that the (at most)
9 three-day time period from when PSAA received a \$3.1 million contribution and when it
10 contributed \$1 million to Georgia United Victory indicates that PSAA served as a conduit and
11 was therefore not the contribution's true source.⁶³

12 2. 52 U.S.C. §§ 30102, 30103, 30104 Allegations: Failing to Organize,
13 Register, and Report as Political Committees

14 Alternatively, the Amended Complaint alleges that ACCP, PSAA, and RightOn Issues
15 failed to organize, register, and report as political committees.⁶⁴ The Amended Complaint also

⁵⁵ *Id.* at 41.

⁵⁶ *Id.* at 38 ("RightOn Issues transferred \$1 million to the same super PAC to which its donor, PSAA, had contributed"); *id.* at 40-41.

⁵⁷ *Id.* at 35.

⁵⁸ *Id.* at 40 (stating that Georgia United Victory "used the funds to oppose the same candidate in the 2020 federal elections in Georgia"); *id.* at 41 (noting the "shared end to which the funds were used"); *id.* at 43 ("[T]he rest of the funds were likely used by RightOn Issues to influence the 2020 federal State elections in Georgia.").

⁵⁹ *Id.* at 38, 40-41.

⁶⁰ *Id.* at 34.

⁶¹ *Id.* at 34-35, 41.

⁶² PSAA IRS Form 1024-A at 22.

⁶³ *See* Amended Compl. at 23, 31-32, 34-35, 37-38, 41.

⁶⁴ *Id.* at 42-44, 52-53 (discussing ACCP); *id.* at 46-50 (discussing PSAA); *id.* at 53-61 (discussing RightOn Issues).

1 argues that Chris Marston and Caleb Crosby, as treasurers of ACCP, PSAA, and RightOn Issues,
2 as well ACCP's President and Director, John Fogarty, Jr., and PSAA's vice president and
3 secretary, Moses Ayala, should be held personally liable for ACCP, PSAA, and RightOn Issues's
4 respective failures to organize, register, and report as political committees.⁶⁵

5 3. 52 U.S.C. § 30104 Allegations: Failing to Report Independent
6 Expenditures

7 The Amended Complaint also alleges that RightOn Issues failed to report two
8 independent expenditures in violation of 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10.⁶⁶ First,
9 the Amended Complaint cites to an October 20, 2020 Twitter post from @TuxedoGeorge10
10 which states "Paid for by RightOn Issues" and shows the mailer at Figure 1, below.⁶⁷ The
11 Complaint asserts that the mailer may have cost \$1,789,105 because that is the amount RightOn
12 Issues reported paying Paces Direct LLC for "direct mail services" on its 2020 tax return.⁶⁸

⁶⁵ *Id.* at 51-53.

⁶⁶ *Id.* at 56-58.

⁶⁷ *Id.* at 27-28, 56.

⁶⁸ *Id.*

1

Fig. 1



2

3 Next, the Complaint asserts that RightOn Issues paid for, but did not report as an
 4 independent expenditure, a Facebook ad disseminated shortly before Georgia's January 5, 2021
 5 runoff election.⁶⁹ The text of the Facebook ad says "Georgia Voter Alert!" and "Don't let
 6 Socialists take your healthcare! — Election day January 5th — make a plan to VOTE."⁷⁰ The ad
 7 also included video text saying "Radical Liberals will take your health care and close hospitals"
 8 along with images of Senator Chuck Shumer, and Representatives Nancy Pelosi and Alexandria
 9 Ocasio-Cortez.⁷¹

⁶⁹ *Id.* at 28-30, 57-58.

⁷⁰ *Id.*; RightOn Issues, META AD LIBRARY, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=105436934818398&search_type=page&media_type=all (last visited Apr. 30, 2024) (showing all ads placed by RightOn Issues, each of which was identical, launched in January 2021, and subsequently "removed because the disclaimer didn't follow" Meta's "policy for ads about social issues, elections or politics").

⁷¹ RightOn Issues, META AD LIBRARY, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=105436934818398&search_type=page&media_type=all (last visited Apr. 30, 2024)

1 **B. The Responses**

2 The Commission received separate Responses on behalf of ACCP and Fogarty (the
3 “ACCP Response”); PSAA, Chris Marston, and Moses Ayala (the “PSAA Response”); RightOn
4 Issues and Caleb Crosby (the “RightOn Issues Response”); Georgia Action Fund and Kayla
5 Glaze (the “Georgia Action Fund Response”); Georgia United Victory and Paul Kilgore (the
6 “Georgia United Victory Response”); and RightOn Time and Paul Kilgore (the “RightOn Time
7 Response”).⁷²

8 The ACCP Response includes an affidavit from its Director and President, John Fogarty,
9 Jr. The affidavit includes, *inter alia*, statements by Fogarty that he is not aware of, nor has
10 reason to believe that (1) there are “any facts or factual circumstances that would make illegal
11 any donation to or by ACCP”; (2) there was “any directive by any donor to ACCP as to
12 specifically how any donation to ACCP was to be utilized” and, with respect to the complained-
13 of donation, ACCP “warranted to the donor that the ‘contribution is not designated for, and has
14 not been solicited for, any specific use or support of any third-party entity. The American
15 Coalition for Conservative Policies will determine how to use your contribution in its sole
16 discretion and in compliance with applicable law’”; and (3) there was, “any specific directive by
17 ACCP or any of its officers or agents to PSAA or Right On Issues, Inc., or any of its officers or
18 agents, with respect to how PSAA or Right On Issues, Inc. was to utilize the funds donated by
19 ACCP.”⁷³ ACCP argues that the affidavit refutes the Amended Complaint’s allegations, which it

⁷² The Georgia United Victory Response was on behalf of Paul Kilgore in his official capacity and in his personal capacity. Georgia United Victory Resp. at 1 (Sept. 18, 2023). The RightOn Time Response was on behalf of Kilgore in his official capacity as RightOn Time’s treasurer. RightOn Time Resp. at 1 (Oct. 4, 2023).

⁷³ ACCP Resp., Attach ¶¶ 7, 10-11 (Fogarty Aff.) [hereinafter Fogarty Aff.]. Fogarty also states he is not aware of any intent by ACCP’s officers or agents to violate the Act, including the prohibition on contributions in the name of another. *Id.* ¶¶ 8-9.

1 says consist of “innuendo and legal conclusions.”⁷⁴ ACCP did not address the Amended
2 Complaint’s political committee status allegations.

3 The PSAA Response included affidavits by Marston and Ayala in which they each state
4 that there was no “directive” on how PSAA was to use contributed funds and that there was no
5 “specific directive” by PSAA regarding how its contributions to others should be used.⁷⁵ The
6 RightOn Issues Response included an affidavit from Crosby in which he attests that he is not
7 aware of any facts or circumstances that would make any contribution received or disbursement
8 made by RightOn Issues illegal.⁷⁶ PSAA and RightOn Issues’s legal arguments are practically
9 identical, contending that the Amended Complaint offers “no evidence” that PSAA or RightOn
10 Issues “engaged in or otherwise facilitated a straw transaction” and that the Commission should
11 dismiss the Amended Complaint in an exercise of prosecutorial discretion given their dissolved
12 status.⁷⁷ Neither PSAA nor RightOn Issues addressed the Amended Complaint’s political
13 committee status and independent expenditure reporting allegations.

14 The Georgia Action Fund Response argues that Kayla Glaze’s role as RightOn Issues’s
15 custodian of records was merely ministerial and that she did not have knowledge of PSAA’s \$1.5
16 million contribution to RightOn Issues or PSAA’s internal business.⁷⁸ All of the super PAC
17 Responses argued that the allegations fail to meet the Act’s reason-to-believe standard because it

⁷⁴ *Id.* at 1-3.

⁷⁵ PSAA Supp. Resp. (Jan. 12, 2024), Attach 1 ¶¶ 10-11 (Marston Aff.) [hereinafter Marston Aff.]; PSAA Supp. Resp., Attach 2 ¶¶ 11-12 (Ayala Aff.) [hereinafter Ayala Aff.].

⁷⁶ RightOn Issues Supp. Resp. (Jan. 12, 2024), Crosby Aff. ¶¶ 10-11; *id.* at 9, 13 (attesting that he is not aware of facts or factual circumstances that PSAA’s contribution to it was made in the name of another person or that there was any specific directive from PSAA to RightOn issues with respect to the use of PSAA’s contribution).

⁷⁷ PSAA Resp. at 2-3; RightOn Issues Resp. at 2-3. Their responses also argue that the “knowing and willful” standard for violations of 52 U.S.C. § 30122 was not met. PSAA Resp. at 4; RightOn Issues Resp. at 3-4.

⁷⁸ Georgia Action Fund Resp. at 2-3 (Mar. 27, 2023).

1 lacks evidence that the super PACs or their treasurers *knowingly* accepted a contribution in the
 2 name of another.⁷⁹

3 **III. LEGAL ANALYSIS**

4 A “reason to believe” finding is a “threshold determination” that an investigation *may*
 5 demonstrate liability.⁸⁰ The Commission has reiterated that finding reason to believe is
 6 appropriate when a complaint “credibly alleges that a significant violation may have occurred,
 7 but further investigation is required to determine whether a violation in fact occurred and, if so,
 8 its exact scope.”⁸¹ Accordingly, “reason to believe” represents a “very low evidentiary bar.”⁸²

9 **A. The Commission Should Find Reason to Believe That Unknown** 10 **Respondent(s), PSAA, and RightOn Issues Violated 52 U.S.C. § 30122**

11 1. Legal Standard

12 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
 13 deposit of money or anything of value made by any person for the purpose of influencing any
 14 election for Federal office.”⁸³ The term “person” for purposes of the Act and Commission
 15 regulations includes partnerships, corporations, and “any other organization or group of

⁷⁹ Georgia United Victory Resp. at 2; RightOn Time Resp. at 2; Georgia Action Fund Resp. at 1-2; Georgia Action Fund Supp. Resp. at 1 (Dec. 13, 2023).

⁸⁰ *CREW v. FEC*, 993 F.3d 880, 892 (D.C. Cir. 2021); *FEC v. Rose*, 806 F.2d 1081, 1091 (D.C. Cir. 1986).

⁸¹ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 89 Fed. Reg. 19,729, 19,730 (Mar. 20, 2024).

⁸² *Campaign Legal Center v. FEC*, 646 F. Supp. 3d 57, 67 (D.D.C. Dec. 8, 2022) (reason to believe is a “very low evidentiary bar”); see also *Common Cause Ga. v. FEC*, 2023 WL 6388883 at *6 (D.D.C. 2023) (viewing probable cause as “not a high bar” and “reason to believe” as “less than the standard for finding probable cause”) (internal citations and quotations omitted); *DSCC v. FEC*, 745 F. Supp. 742, 746 (D.D.C. 1990) (quoting then-Commissioner Josefiak that “complaints certainly do not have to *prove* violations occurred, rendering investigation unnecessary”); *Spannaus v. FEC*, 641 F. Supp. 1520, 1525-29 (S.D.N.Y. 1986) (noting Commission opened an investigation because there “might” have been a violation, and analogizing such determinations to the FTC’s “threshold determination[s] that further inquiry is warranted”), *aff’d*, 816 F.2d 670 (2d Cir. 1987); Order at 6, *Wis. Democrats for Change v. FEC*, 80-C-124, (W.D. Wis. Apr. 24, 1980) (“The language, structure, and purpose of the Act support the inference that investigations are to be taken readily, upon a minimal showing. . . . The Act does not require probable cause or substantial evidence at this initial stage.”).

⁸³ 52 U.S.C. § 30101(8)(A).

1 persons.”⁸⁴ The Act prohibits a person from making a contribution in the name of another
 2 person, knowingly permitting their name to be used to effect such a contribution, or knowingly
 3 accepting such a contribution.⁸⁵

4 Commission regulations provide examples of “contributions in the name of another,”
 5 including:

- 6 (i) Giving money or anything of value, all or part of which
 7 was provided to the contributor by another person (the true
 8 contributor) without disclosing the source of money or the
 9 thing of value to the recipient candidate or committee at the
 10 time the contribution is made; or
- 11 (ii) Making a contribution of money or anything of value and
 12 attributing as the source of the money or thing of value
 13 another person when in fact the contributor is the source.⁸⁶

14 Because the concern of the law is the true source from which a contribution to a candidate or
 15 committee originates, the Commission will look to the structure of the transaction itself and the
 16 arrangement between the parties to determine who in fact “made” a given contribution.⁸⁷

17 The Commission considers the “overall record” to determine whether an alleged conduit
 18 may have been used to conceal the identity of the contribution’s true source.⁸⁸ At the reason-to-
 19 believe stage specifically, the Commission has considered the presence of certain information as
 20 indicative of a possible conduit contribution scheme, such as: (1) a short timespan between an

⁸⁴ *Id.* § 30101(11); 11 C.F.R. § 100.10.

⁸⁵ 52 U.S.C. § 30122.

⁸⁶ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

⁸⁷ As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *United States v. O'Donnell*, 608 F.3d, 546, 550 n.2 (9th Cir. 2010). Those regulations, however, do not apply to contributions made to an independent expenditure-only political committee.

⁸⁸ See Factual & Legal Analysis (“F&LA”) at 2, 7, MUR 7903 (Tomfoolery, LLC, *et al.*); F&LA at 10, MUR 7464 (LZP, LLC).

- 1 entity's formation and the contribution(s) in question;⁸⁹ (2) a short timespan between an entity's
 2 receipt of funds and the contribution(s) in question;⁹⁰ (3) lack of activity preceding the
 3 contribution in question;⁹¹ (4) the size of the contribution(s) in question relative other spending; ■

⁸⁹ The timespans between an entity's formation and its subsequent conduit contribution can range from the same day to several months. ■

■ F&LA at 11, MUR 7464 (LZP, LLC) (finding reason to believe where LLC formed two days before contributing \$270,000 to a super PAC); First Gen. Counsel's Rpt. ("First GCR") at 10 n.36, MUR 6930 (Prakazrel "Pras" Michel, *et al.*) (recommending no reason to believe where conduit LLC contributed 3 months after formation); *but see* Indictment at 15, *United States v. Prakazrel Michel et al.*, Case No. 1:19-CR-148 (D.D.C. May 3, 2019) (involving conduct at issue in MUR 6930); *see also* First GCR at 3-4, MUR 6485 (W Spann LLC) (recommending finding reason to believe where individual retained counsel to create conduit in February 2011 in order to shield his identity; the conduit was formed March 15, 2011, and the contribution occurred on April 28, 2011).

⁹⁰ The timespans between an entity's receipt of funds and its subsequent conduit contribution can range from the same day to several months, depending on the circumstances. *See, e.g.*, F&LA at 5, MUR 7903 (Tomfoolery, LLC, *et al.*) (finding reason to believe where the record indicated that individual "transferred [funds] into the LLC on the days the contributions [to a super PAC] were made in order to cover the full contribution amounts"); F&LA at 4-5, MURs 7005, 7056 (Adam H. Victor, *et al.*) (finding reason to believe where businessman's personal assistant contributed \$2,500 to a candidate two months after receiving \$2,500 from one of his businesses); F&LA at 2, MUR 6920 (Am. Conservative Union) (finding reason to believe where nonprofit corporation's tax return disclosed that that it had "received" and "promptly and directly delivered to a separate political organization" a \$1.71 million contribution).

⁹¹ ■ F&LA at 9, 11, MURs 7005, 7056 (Adam H. Victor, *et al.*) (finding that lack of contribution histories by alleged conduits supported finding reason to believe as to the alleged true source).
 ■ ■

1 (5) the degree of overlap between the amount of funds received versus the amount subsequently
 2 contributed;⁹³ and (6) an entity's lack of online presence.⁹⁴

3 2. PSAA's Receipt of Funds from ACCP and Subsequent Contributions to
 4 Georgia United Victory

5 Based on the overall record at this stage, PSAA's receipt of funds from ACCP and its
 6 subsequent contribution to Georgia United Victory appear to reflect numerous circumstances
 7 analogous to those the Commission has previously recognized as indicating a possible conduit
 8 contribution scheme.

9 *First*, the two-month gap between PSAA's May 6, 2020 formation and its July 13, 2020
 10 contribution to Georgia United Victory is a short span of time.⁹⁵ *Second*, PSAA reported to the
 11 IRS that it had zero assets as of July 13, 2020, yet PSAA contributed \$1 million to Georgia
 12 United Victory on July 16, 2020.⁹⁶ The (at most) three-day timespan between PSAA's receipt of

⁹³ See F&LA at 4-5, MURs 7005, 7056 (Adam H. Victor, *et al.*) (relying on, among other things, the "match between the amounts [the true source] or his companies paid the contributors and the amount of their contributions"). However, the Commission has not required a perfect overlap between the amount received and later contributed in order to find reason to believe. See, e.g., Conciliation Agreement ¶¶ IV.7-9, VI.1-4, MUR 6920 (Am. Conservative Union, *et al.*) (finding violation of § 30122 when LLC received \$1.8 million and later the same day contributed \$1.71 million (95%) to a super PAC); F&LA at 10, MUR 4634 (John Stauffer, *et al.*) (finding reason to believe in part because the amounts received and later contributed were identical or *nearly* identical); F&LA at 5, 8-9, MUR 4633 (Robert Riley, Jr.) (same); F&LA at 8, 10, MUR 4633 (Faith, Family & Freedom PAC) (finding reason to believe PAC violated § 30122 when it received \$1,000 and passed on \$500 (50%) the next day to a candidate's campaign); GC Brief at 6, MUR 2071 (Jerry Harris, *et al.*) (recommending probable cause to believe where individual received \$1,500 bonus and contributed \$500 (33%) two days later; Cert. ¶ 1, MUR 2071 (finding probable cause to believe); see also Third GCR at 4, 10-11, MUR 6920 (Am. Conservative Union, *et al.*) (LLC formed by IDT Trust to distribute political contributions, and which engaged in no other business, received \$2.5 million from IDT Trust and on the same day or very shortly after wired \$1.8 million (72%) to a 501(c)(4), which then "promptly and directly" contributed \$1.7 million to a super PAC).

⁹⁴ See F&LA at 7-8, MUR 7965 (Iho Araise, LLC, *et al.*) ("[T]he Commission has considered the lack of an online presence . . . probative in conduit contribution cases . . .").

⁹⁵ [REDACTED] First GCR at 10 n.36, MUR 6930 (Prakazrel "Pras" Michel, *et al.*) (recommending no reason to believe where conduit LLC contributed three months after formation); *but see* Indictment at 15, *United States v. Prakazrel Michel et al.*, Case No. 1:19-CR-148 (D.D.C. May 3, 2019) (involving conduct at issue in MUR 6930).

⁹⁶ PSAA Form 1024-A at 3; Georgia United Victory, 2020 October Quarterly Report at 9 (Oct. 15, 2020), <https://docquery.fec.gov/pdf/339/202010159295076339/202010159295076339.pdf>.

1 by ACCP.¹⁰¹ *Sixth*, PSAA does not appear to have had a website, social media page, or any
2 other online presence.¹⁰²

3 In addition to the foregoing indicia, the structure of the transactions at issue appears
4 calculated to avoid the Act's disclosure requirements associated with regulation as a political
5 committee. PSAA's \$1.475 million in direct contributions to Georgia United Victory and its
6 \$1.5 million contribution to RightOn Issues all appear to have been spent influencing the
7 Georgia U.S. Senate election, with \$2.475 million contributed to a single super PAC, Georgia
8 United Victory. Had PSAA directly contributed the \$1.5 million to Georgia United Victory, the
9 proportion of PSAA's spending on federal campaign activity would have constituted a majority
10 of its spending, increasing the chances of being deemed a political committee under the Act.¹⁰³
11 Moreover, that the funds at issue were part of a three-, and even four-step transfer — from
12 Unknown Respondent(s) to ACCP, from ACCP to PSAA and RightOn Issues, from PSAA to
13 RightOn Issues, and finally from PSAA and RightOn Issues to the super PACs — suggests that
14 PSAA was part of an effort to disguise the true source of funds contributed to the super PACs.¹⁰⁴

15 Additionally, other information in the overall record before the Commission calls into
16 question whether PSAA was the true source of its contributions to Georgia United Victory. For

¹⁰¹ See generally MUR 6920 (Am. Conservative Union) (Commission found reason to believe, investigated, and conciliated matter where an LLC transferred \$1.8 million to a nonprofit corporation which, in turn, contributed \$1.71 million (95%) to a super PAC).

¹⁰² See F&LA at 7-8, MUR 7965 (Iho Araise, LLC, *et al.*) (“[T]he Commission has considered the lack of an online presence . . . probative in conduit contribution cases . . .”).

¹⁰³ See, e.g. F&LA at 8-10, MUR 7465 (Freedom Vote, Inc.) (finding reason to believe 501(c)(4) failed to register and report as a political committee in part because its tax returns indicated that more than 50% of its expenses in 2014 was for federal campaign activity and reporting irregularities in 2016 and 2017 made it impossible to determine whether it crossed the “50% threshold” in those years).

¹⁰⁴ See Third GCR at 11, MUR 6920 (Am. Conservative Union, *et al.*) (“[T]hat the contribution required a *three*-step transfer — from IDT to GI LLC, from GI LLC to ACU, and finally from ACU to Now or Never PAC — suggests that the parties went through significant lengths to disguise the true source of the funds.”); Conciliation Agreement ¶¶ IV.6-13, VI., MUR 6920.

1 instance, PSAA's lack of activity *after* its contributions to Georgia United Victory and RightOn
2 Issues, and its dissolution in 2022, suggests it may have been a "pop-up" entity created solely to
3 make the complained-of contributions and shield the true contributor from disclosure.¹⁰⁵ The
4 \$3.1 million PSAA disclosed on its 2020 tax return appears to be the only contribution PSAA
5 *ever* received and the \$3.1 million consisted of funds contributed solely by ACCP.¹⁰⁶ An entity
6 funded by a single contributor would presumably be more likely to act in accordance with a
7 contributor's direction than if it had received funds from many different smaller contributors.

8 PSAA's narrative description of activities in its IRS Form 1024-A also suggests that it
9 was a conduit. IRS Form 1024-A instructs applicants for recognition of tax-exempt status to
10 "[u]se an attachment to describe all of your past, present, and planned activities."¹⁰⁷ It also asks
11 applicants whether they have spent or plan to spend money attempting to influence the selection,
12 nomination, election, or appointment of any person to any federal, state, or local public office;
13 and if the answer is "yes," to "explain in detail and list the amounts spent or to be spent in each
14 case."¹⁰⁸ PSAA's 1024-A did not disclose that it had already received \$3.1 million from ACCP
15 and had already contributed at least \$1.475 million to Georgia United Victory more than a month
16 before PSAA's 1024-A was filed.¹⁰⁹ Instead, PSAA's Form 1024-A stated that "[PSAA] does
17 not anticipate investing more than an insubstantial amount of its time or resources in activities
18 attempting to influence the selection, nomination, election, or appointment of any person to any

¹⁰⁵ See Resp. at 3-5 & First GCR at 9, MUR 6485 (W Spann LLC) (LLC that was admittedly established to hide true source's identity dissolved shortly after its contribution); [REDACTED]

¹⁰⁶ PSAA 2020 Form 990, Sched. B; ACCP 2020 Form 990, Sched. I (\$3.1 million grant to PSAA).

¹⁰⁷ PSAA IRS Form 1024-A at 1, Statement III.

¹⁰⁸ *Id.* at 2, Statement VI.

¹⁰⁹ *Id.* at 3.

1 Federal . . . office.”¹¹⁰ At this stage, the appearance of concealment in a filing to the IRS is
2 suggestive of the likelihood of concealment with respect to the true source of PSAA’s
3 contributions to Georgia United Victory.

4 Here, PSAA “receiv[ed] funds and then ma[de] a political contribution shortly
5 thereafter.”¹¹¹ Almost the entire amount PSAA contributed to Georgia United Victory and
6 RightOn Issues appears to have been contributed to super PACs—with the overwhelming
7 majority going to a single super PAC. PSAA did not engage in *any* grantmaking to other
8 organizations.¹¹² PSAA’s Response provides no details about PSAA’s internal governance, due
9 diligence, or grantmaking processes. Nor does PSAA’s Response address the Amended
10 Complaint’s reliance on PSAA’s Form 1024-A, the most important source of contemporaneous
11 factual support for the Amended Complaint’s allegations.¹¹³ Consequently, the record at this
12 stage closely resembles MUR 6920, where the Commission found reason to believe the
13 respondent 501(c)(4) corporation’s tax return indicated that it had received a contribution and
14 passed most of that contribution on to a super PAC in a very short span of time and where the
15 501(c)(4)’s response did not include information regarding the circumstances surrounding that
16 transaction.¹¹⁴

¹¹⁰ *Id.* at Statement V.

¹¹¹ SOR at 6, Commr’s Dickerson, Cooksey, and Trainor, MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

¹¹² *See* F&LA at 11, MURs 7005 & 7056 (Adam H. Victor, *et al.*) (in addition to other information in the record, the “paucity of other contributions by the alleged conduits” was indicative of a conduit contribution scheme).

¹¹³ *See id.* (together with other indicia of a contribution in the name of another, such as the degree of overlap between funds received and subsequently contributed and timing, the “lack of information in the Respondents’ denials” was indicative of a conduit contribution scheme).

¹¹⁴ *See* F&LA at 2, MUR 6920 (American Conservative Union, *et al.*).

1 Finally, PSAA and RightOn Issues both incorporated in Washington, D.C., in 2020,
2 funded the same activities (including through the same entity Georgia United Victory), dissolved
3 in 2022, retained the same counsel, and submitted nearly identical responses, which failed to
4 address the circumstances surrounding the alleged conduit contributions. These facts suggest
5 that PSAA may have been operating in tandem with RightOn Issues. And when considered in
6 the context of the overall record described above, as well as information indicating that RightOn
7 itself was not the true source of its contributions to Georgia United Victory, the overall record
8 suggests that PSAA may also have been a conduit.

9 3. RightOn Issues's Receipt of Contributions from ACCP and PSAA and its
10 Contributions to the Super PACs

11 Like the analysis of PSAA's contributions, a straightforward application of the
12 Commission's conduit contribution indicia, based on the Commission's experience and
13 expertise, supports the Amended Complaint's allegation that RightOn Issues was part of a
14 conduit contribution scheme.

15 *First*, the less than 3-month gap between RightOn Issues's July 3, 2020 formation and its
16 September 21 and 23 contributions to the super PACs is a short span of time. *Second*, PSAA's
17 IRS Form 1024-A indicates that RightOn Issues must have received the \$1.5 million from PSAA
18 on or after July 14, 2020. Additionally, because the total amount of funds RightOn Issues spent
19 influencing the U.S. Senate elections in Georgia corresponds with the amount ACCP contributed
20 to PSAA and RightOn Issues (\$4.9 million), it appears that RightOn Issues's contributions to the
21 super PACs were funded by PSAA and ACCP; meaning that RightOn Issues must have received
22 the \$1.8 million from ACCP prior to September 21, 2020 (the date of RightOn Issues's first
23 contribution to Georgia United Victory). Thus, RightOn Issues's contributions to the super
24 PACs began, at most, 69 days after receiving funds from PSAA and ACCP (July 14, 2020 to

1 September 21, 2020). The Commission has previously found reason to believe where the gap
2 between an alleged conduit's receipt of funds and the reported contribution spanned exactly that
3 length of time.¹¹⁵

4 *Third*, RightOn Issues does not appear to have engaged in any activity between its
5 formation and its contributions to the super PACs. ■ This is because RightOn Issues's other
6 spending in 2020 appears to have taken place well *after* its super PAC contributions. An
7 October 20, 2020 Twitter post identified by the Amended Complaint bears the legend "Paid for
8 by RightOn Issues" and displays a mail piece telling readers to "'Vote Now to stop' the
9 'Democratic Socialists of America.'"¹¹⁷ RightOn Issues's website was registered on December
10 28, 2020 and displays a similar visual theme.¹¹⁸ Finally, RightOn Issues's Facebook ads were
11 displayed in early January 2021, indicating the expenses to produce and place them were most
12 likely incurred in late 2020.¹¹⁹ The Amended Complaint alleges, and RightOn Issues's Response
13 does not deny, that RightOn Issues's payments to Paces Direct LLC (\$1,789,105) for "direct
14 mail services" and Republick LLC for "advertising services" (\$377,401) funded these

¹¹⁵ See F&LA at 11, MURs 7005 & 7056 (Adam H. Victor, *et al.*) (reason to believe individual was a conduit because she received \$2,500 on November 9, 2011, and contributed \$2,500 on January 17, 2012, which was 69 days exactly).



¹¹⁷ Amended Compl. at 28, 56.

¹¹⁸ ICANN | Lookup, <https://lookup.icann.org/en> (search "www.rightonissues.com"); RightOn Issues, www.rightonissues.com (last visited Jan. 19, 2024).

¹¹⁹ Meta, Ad Library, https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&media_type=all (search "RightOn Issues").

1 activities.¹²⁰ The combined \$2,166,506 paid to Paces Direct and Republick is close to the
 2 amount identified in the Amended Complaint as being for “[l]ikely electioneering.”¹²¹

3 *Fourth*, the \$1.32 million RightOn Issues contributed to the super PACs is a large
 4 amount, especially for a newly formed entity with no history of activity. ■ Considered together
 5 with the other circumstances, the large size of RightOn Issues’ combined contributions to the
 6 super PACs suggests that it was not the true source of those contributions.

7 *Fifth*, the total amount of funds alleged to have been spent by PSAA and RightOn Issues
 8 influencing the U.S. Senate elections in Georgia (\$4,961,506) is almost the exact amount ACCP
 9 contributed to PSAA and RightOn Issues (\$4.9 million). This close overlap indicates that
 10 ACCP, PSAA, and RightOn Issues may have been part of a conduit contribution scheme.¹²³
 11 Additionally, the \$1.5 million RightOn Issues received from PSAA roughly corresponds with the
 12 combined total of \$1.32 million RightOn Issues contributed to the super PACs, suggesting that
 13 RightOn Issues was a pass through for PSAA’s \$1.32 million. That the \$1.32 million RightOn
 14 Issues received from PSAA was also used for the same ends as PSAA’s direct spending —
 15 influencing the U.S. Senate elections in Georgia, with \$1 million contributed to the same super
 16 PAC PSAA itself contributed to in July and August 2020 — further supports the conclusion that
 17 RightOn Issues was not the true source of its contributions to the super PACs.

¹²⁰ Amended Compl. at 27-30, 55-59.

¹²¹ *Id.* at 4.

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¹²³ See F&LA at 4-5, MURs 7005 & 7056 (Adam H. Victor, *et al.*) (relying on, among other things, the “match between the amounts [the true source] or his companies paid the contributors and the amount of their contributions”); Conciliation Agreement ¶¶ IV.7-9, VI.1-4, MUR 6920 (American Conservative Union, *et al.*) (finding violation of Section 30122 when LLC received \$1.8 million and later the same day contributed \$1.71 million (95%) to a super PAC); F&LA at 10, MUR 4634 (John and Ruth Stauffer) (finding reason to believe, in part, because the amounts received and later contributed were identical or *nearly* identical).

1 *Sixth*, while RightOn Issues does have a website and a Facebook page, neither appears to
2 have existed at the time of RightOn Issues' contributions to the super PACs.¹²⁴ *Seventh*, the
3 funds at issue were part of a three-, and even four-step transfer — from Unknown Respondent(s)
4 to ACCP, from ACCP to PSAA and RightOn Issues, from PSAA to RightOn Issues, and finally
5 from PSAA and RightOn Issues to the super PACs. This multi-step transfer structure suggests
6 that RightOn Issues was part of a conduit contribution scheme.¹²⁵

7 Finally, the similarities discussed above between RightOn Issues and PSAA in terms of
8 their incorporation, contributions, dissolution, counsel, and responses to the Amended Complaint
9 suggests that they were acting in tandem, which, when considered with the overall record,
10 indicates that RightOn Issues served as a conduit.¹²⁶

11 4. ACCP's Receipt of Funds from Unknown Respondent(s) and
12 Contributions to PSAA and RightOn Issues

13 Because PSAA and RightOn Issues appear to have been conduits, the available
14 information is sufficient to find that ACCP, as the direct contributor of funds to PSAA and
15 RightOn Issues, was part of a conduit contribution scheme. But even if that were not the case,
16 the overall record as to ACCP's receipt and subsequent contribution of funds from Unknown
17 Respondent(s) raises many of the above-described indicia of being a conduit.

18 *First*, the length of time between ACCP's formation and contribution to PSAA was a
19 little more than three and a half months, short enough — given the overall record in this matter

¹²⁴ See F&LA at 7-8, MUR 7965 (Iho Araise, LLC, *et al.*) (“[T]he Commission has considered the lack of an online presence . . . probative in conduit contribution cases . . .”). RightOn Issues's website was registered on December 28, 2020 and its two Facebook posts both occurred in January 2021. See *supra* p. 28.

¹²⁵ See *supra* note 104.

¹²⁶ See *supra* pp. 26-27.

1 — to raise questions about the nexus between ACCP's funding and its subsequent contributions
 2 to PSAA and RightOn Issues.¹²⁷

3 *Second*, ACCP's contributions to PSAA and RightOn Issues represented 99% of ACCP's
 4 2020 activity. Its only other reported activity was spending \$54,913 on "advocat[ing] for public
 5 policies to lower the cost of prescription drugs."¹²⁸ The lack of other activity supports the
 6 conclusion that ACCP's overarching purpose was to serve as a conduit. ■ *Third*, and relatedly,
 7 ACCP's \$4.9 million in contributions to PSAA and RightOn Issues dwarfs the size of its other
 8 spending, which, apart from its overhead expenses just described, consisted of \$54,913 for direct
 9 advertising and promotion. ■

10 *Fourth*, the \$5 million ACCP received from Unknown Respondent(s) overlaps with the
 11 \$4.9 million contributed to PSAA and RightOn Issues, which was subsequently used to influence
 12 federal elections.¹³¹ The Amended Complaint alleges, and ACCP's Response concedes, that
 13 ACCP received two contributions in 2020 from two different sources: one \$60,000 contribution
 14 from the State Government Leadership Foundation and one \$5 million contribution from

¹²⁷ See First GCR at 10 n.36, MUR 6930 (Prakazrel "Pras" Michel, *et al.*) (recommending no reason to believe where conduit LLC contributed 3 months after formation); *but see* Indictment at 15, *United States v. Prakazrel Michel et al.*, Case No. 1:19-CR-148 (D.D.C. May 3, 2019) (involving conduct at issue in MUR 6930); *see also* Resp. at 3-5 & First GCR at 3-4, MUR 6485 (W Spann LLC) (individual retained counsel to create conduit in February 2011 in order to shield his identity, the conduit was formed in March 15, 2011, and the contribution occurred on April 28, 2011).

¹²⁸ ACCP 2020 Form 990 at 2.

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¹³¹ See F&LA at 4-5, MURs 7005 & 7056 (Adam H. Victor, *et al.*) (relying on, among other things, the "match between the amounts [the true source] or his companies paid the contributors and the amount of their contributions"); Conciliation Agreement ¶¶ IV.7-9, VI.1-4, MUR 6920 (*American Conservative Union, et al.*) (finding violation of Section 30122 when LLC received \$1.8 million and later the same day contributed \$1.71 million (95%) to a super PAC); F&LA at 10, MUR 4634 (John Stauffer, *et al.*) (finding reason to believe, in part, because the amounts received and later contributed were identical or *nearly* identical).

1 Unknown Respondent(s).¹³² The State Government Leadership Foundation's own IRS filings
2 indicate that the Foundation "requires that grant funds not [] be used for political campaign
3 activity."¹³³ Thus, it appears unlikely that the State Government Leadership Foundation's
4 \$60,000 contribution was part of the \$4.9 million ACCP contributed to PSAA and RightOn
5 Issues, since the \$4.9 million appears to have been spent influencing the 2020 U.S. Senate
6 elections in Georgia.¹³⁴

7 *Fifth*, ACCP does not have a website, social media page, or any other online presence.¹³⁵

8 *Sixth*, ACCP's actions appear designed to evade the Act's disclosure requirements. Had
9 ACCP contributed directly to the super PACs, the proportion of ACCP's 2020 spending on
10 federal campaign activity would have been 57% (\$2,795,000 out of \$4,961,506). RightOn
11 Issues's non-super PAC spending also focused on influencing the 2020 U.S. Senate elections in
12 Georgia.¹³⁶ Therefore, had ACCP contributed directly to the super PACs and directly paid for
13 RightOn Issues's "electioneering" as alleged in the Amended Complaint, the proportion of
14 ACCP's spending on federal campaign activity may have been even higher than 57%, which
15 increases the likelihood that ACCP could have been required to register and report as a political
16 committee.¹³⁷

¹³² See Amended Compl. at 2, 21; Fogarty Aff. ¶10 (linking a single donor to "the only donation of which the Complainants complain").

¹³³ IRS Form 990, Sched. I, State Government Leadership Foundation, 2020 Return of Organization Exempt from Income Tax (Nov. 15, 2021).

¹³⁴ See *supra* pp. 3, 6-12.

¹³⁵ See F&LA at 7-8, MUR 7965 (Iho Araise, LLC, *et al.*) ("[T]he Commission has considered the lack of an online presence . . . probative in conduit contribution cases . . .").

¹³⁶ See *supra* pp. 9-10, 15-16; see *infra* 39-41.

¹³⁷ See, e.g. F&LA at 8-10, MUR 7465 (Freedom Vote, Inc.) (finding reason to believe 501(c)(4) failed to register and report as a political committee, in part, because its tax returns indicated that more than 50% of its expenses in 2014 was for federal campaign activity and reporting irregularities in 2016 and 2017 made it impossible to determine whether it crossed the "50% threshold" in those years).

1 ACCP's Response also does not discuss the circumstances surrounding its receipt of
2 funds from Unknown Respondent(s) and subsequent contributions to PSAA and RightOn Issues.
3 This absence of contrary information in the Responses, coupled with the affirmative information
4 indicative of a conduit scheme that is detailed above, further supports the conclusion that ACCP
5 may have been a conduit.¹³⁸

6 5. Unknown Respondent(s)' Contribution to ACCP

7 For the reasons set forth above, the record indicates that PSAA, RightOn Issues, and
8 ACCP were conduits for Unknown Respondent(s). Thus, Unknown Respondent(s) appear to
9 have made a contribution in the name of another.¹³⁹ Other information in the record supports
10 this conclusion. For instance, Unknown Respondent(s) contributed \$5 million to ACCP in
11 2020.¹⁴⁰ ACCP then contributed ninety-eight percent (\$4.9 million) to PSAA and RightOn
12 Issues, which then, either contributed to the super PACs or, in the case of RightOn Issues, paid
13 vendors with connections to the Georgia Republican Party and U.S. Senate candidate David
14 Perdue to influence the 2020 U.S. Senate elections in Georgia.¹⁴¹ The almost complete overlap
15 between the amount contributed by Unknown Respondent(s) to ACCP and the amount ultimately
16 spent influencing the 2020 U.S. Senate elections in Georgia suggests that Unknown
17 Respondent(s) was the true source of the funds contributed to the super PACs.¹⁴²

¹³⁸ See F&LA at 11, MURs 7005 & 7056 (Adam H. Victor, *et al.*) (together with other indicia of a contribution in the name of another, such as the degree of overlap between funds received and subsequently contributed and timing, the "lack of information in the Respondents' denials" was indicative of a conduit contribution scheme).

¹³⁹ See *id.* at 9, 11 (evidence as to the alleged conduits (lack of contribution histories) supported finding reason to believe as to the true source that allegedly *made* contributions in the name of other persons).

¹⁴⁰ ACCP 2020 Form 990; Fogarty Aff. ¶ 10 (discussing representations made by ACCP to "the donor" associated with the complained-of \$5 million contribution).

¹⁴¹ See *supra* pp. 3, 6-12.

¹⁴² See F&LA at 4-5, MURs 7005 & 7056 (Adam H. Victor, *et al.*) (relying on, among other things, the "match between the amounts [the true source] or his companies paid the contributors and the amount of their

1 That the funds at issue were part of a three-, and even four-step transfer involving
 2 recently incorporated (and since dissolved) entities with no prior contribution histories — from
 3 Unknown Respondent(s) to ACCP, from ACCP to PSAA and RightOn Issues, from PSAA to
 4 RightOn Issues, and finally from PSAA and RightOn Issues to the super PACs — further
 5 indicates that Unknown Respondent(s) made a contribution in the name of another person.¹⁴³
 6 Additionally, the responses of the alleged conduits ACCP, PSAA, and RightOn Issues did not
 7 address the circumstances surrounding the contributions. This absence of contrary information
 8 in the Responses, coupled with the affirmative information indicative of a conduit scheme that is
 9 detailed above, further supports the conclusion that Unknown Respondent(s) made a contribution
 10 in the name of another.¹⁴⁴

11 * * *

12 The record indicates that ACCP, PSAA, and RightOn Issues were conduits through
 13 which Unknown Respondent(s) contributed to the super PACs. Accordingly, we recommend
 14 that the Commission find reason to believe that Unknown Respondent(s) made, and that PSAA
 15 and RightOn Issues knowingly permitted their names to be used to effect, contributions in the
 16 name of another person in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4.¹⁴⁵ In light of

contributions”); Conciliation Agreement ¶¶ IV.7-9, VI.1-4, MUR 6920 (*American Conservative Union, et al.*) (finding violation of Section 30122 when LLC received \$1.8 million and later the same day contributed \$1.71 million (95%) to a super PAC); F&LA at 10, MUR 4634 (*John and Ruth Stauffer*) (finding reason to believe, in part, because the amounts received and later contributed were identical or *nearly* identical).

¹⁴³ See Third GCR at 11 (“that the contribution required a *three*-step transfer—from IDT to GI LLC, from GI LLC to ACU, and finally from ACU to Now or Never PAC—suggests that the parties went through significant lengths to disguise the true source of the funds”) & Conciliation Agreement ¶¶ IV.6-13, VI., MUR 6920 (*American Conservative Union, et al.*).

¹⁴⁴ F&LA at 9, 11, MURs 7005 & 7056 (*Adam H. Victor, et al.*) (together with other indicia of a contribution in the name of another, such as the degree of overlap between funds received and subsequently contributed and timing, the “lack of information in the Respondents’ denials” was indicative of a conduit contribution scheme).

¹⁴⁵ Affidavits attached to the ACCP Response, PSAA Response, and RightOn Issues Response focus on their asserted lack of awareness of any “directive” on how contributed funds should be utilized. *Fogarty Aff.* ¶¶ 7, 10-11;

1 the decision in *FEC v. Swallow*, which invalidated the Commission's regulation at 11 C.F.R.
 2 § 110.4(b)(1)(iii) prohibiting "knowingly help[ing] or assist[ing] any person in making a
 3 contribution in the name of another" we recommend that the Commission take no action at this
 4 time with respect to ACCP.¹⁴⁶

5 **B. The Commission Should Take No Action at this Time with Respect to the**
 6 **Super PACs**

7 The Act prohibits a committee from knowingly accepting a contribution made in the
 8 name of another person.¹⁴⁷ The Act also requires political committees, such as Georgia United
 9 Victory, Georgia Action Fund, and RightOn Time, to file regular disclosure reports.¹⁴⁸
 10 Committees must disclose itemized breakdowns of receipts and disbursements, including the
 11 name and address of each person who has made any contribution or received any disbursement
 12 in an aggregate amount or value in excess of \$200 within the calendar year, together with the
 13 date and amount of any such contribution or disbursement.¹⁴⁹ In addition, if a committee

Marston Aff. ¶¶ 10-11; Ayala Aff. ¶¶ 11-12; Crosby Aff. ¶ 13. That there must be a "directive" finds some support in the legislative history. *See* H.R. Rep. No. 93-1239 at 5 (1974) ("The bill prohibits contributions in the name of another and provides that, for the purposes of limitations and reporting requirements, any contribution by a person which is earmarked or directed through an intermediary or conduit to a candidate shall be treated as a contribution from such person."). However, the Commission has repeatedly cited *United States v. Whittemore*, which found that a contributor's "unconditional gifts" to relatives and employees, along with the *suggestion* they contribute the funds to a specific political committee, violated Section 30122. *See* 776 F.3d 1074, 1080 (9th Cir. 2015). Therefore, it appears that § 30122 is sufficiently broad to encompass situations involving something less than an explicit directive from the true source regarding the use of contributed funds.

¹⁴⁶ 304 F. Supp. 3d 1113, 1115 (D. Utah 2018). We stress, however, that the facts of this matter as it relates to ACCP differ significantly from the facts at issue in *Swallow*, where the defendant successfully argued that he was not an intermediary and therefore outside the scope of the Act's name of another prohibition. *See* Defendant John Swallow's Motion to Dismiss, Motion for Judgment on the Pleadings, and Memorandum in Support at 9, No. 15-0439 (D. Utah Oct. 23, 2017). By contrast, ACCP appears to have received and contributed funds as part of a contribution scheme. Thus, it is possible that a court would view the Commission's enforcement of 52 U.S.C. § 30122 against ACCP in these circumstances as a reasonable interpretation of 52 U.S.C. § 30122.

¹⁴⁷ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

¹⁴⁸ 52 U.S.C. § 30104.

¹⁴⁹ *Id.* § 30104(b)(2)-(6); 11 C.F.R. § 104.3(a)(3)-(4), (b)(2)-(4).

1 treasurer discovers after receipt of an apparently legitimate contribution that it was made in the
2 name of another, the treasurer must refund the contribution within 30 days.¹⁵⁰

3 The current record does not establish that Georgia United Victory, Georgia Action Fund,
4 and RightOn Time knew or should have known that the contributions they received from PSAA
5 and RightOn Issues actually came from a different person. However, information received in
6 connection with our proposed investigation may indicate that one or more of the super PACs
7 knew or should have known that the contributions were, in fact, from another person. Given the
8 strong indication of an unlawful straw donor scheme and the possibility that knowledge of the
9 scheme extended to the recipients, it makes sense to await further developments regarding the
10 recipients' liability. We therefore recommend the Commission take no action at this time as to
11 the allegation that the super PACs knowingly accepted contributions in the name of another
12 person in violation of 52 U.S.C. § 30122, or that they violated 52 U.S.C. 30104(b) by failing to
13 report the true source of the contributions received from PSAA and RightOn Issues.

14 **C. The Commission Should Take No Action at this Time as to Paul Kilgore and**
15 **Kayla Glaze**

16 The Commission has issued a Statement of Policy under which it will decline to hold a
17 current or former treasurer personally liable in an enforcement matter unless the available
18 information suggests that the treasurer “(a) knowingly and willfully violated the Act or
19 regulations, (b) recklessly failed to fulfill the duties imposed by a provision of the Act or
20 regulations that specifically applies to treasurers, or (c) intentionally deprived himself or herself
21 of operative facts giving rise to a violation.”¹⁵¹ The current record of this matter contains no

¹⁵⁰ 11 C.F.R. § 103.3(b)(2).

¹⁵¹ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 6 (Jan. 3, 2005).

1 information indicating that Georgia United Victory's and RightOn Time treasurer Paul Kilgore
2 or Georgia Action Fund treasurer Kayla Glaze met any of these standards. However, for the
3 same reason just described, information received in connection with our proposed investigation
4 may reveal that Kilgore and Glaze's conduct met the Commission's standards for personal
5 liability of committee treasurers. Accordingly, we recommend the Commission take no action at
6 this time as to the allegation that the Paul Kilgore and Kayla Glaze violated of 52 U.S.C.
7 §§ 30104 and 30122 in their personal capacities.

8 **D. The Commission Should Take No Action on the Allegation that ACCP,**
9 **PSAA, and RightOn Issues Failed to Register and Report as Political**
10 **Committees**

11 An organization that is not controlled by a candidate must register as a political
12 committee only if (1) it makes expenditures aggregating in excess of \$1,000 in a calendar year or
13 receives contributions aggregating in excess of \$1,000 in a calendar year and (2) it has as its
14 "major purpose" the nomination or election of federal candidates.¹⁵² Political committees must
15 register with the Commission, meet organizational and recordkeeping requirements, and file
16 reports.¹⁵³

17 In addition to its name of another allegations, the Amended Complaint argues that ACCP,
18 PSAA, and RightOn Issues were unregistered political committees.¹⁵⁴ In MUR 7690, which also
19 involved allegations that an organization was both a conduit and a political committee, this
20 Office reasoned that by definition, a "person" can be the true source of a contribution or a

¹⁵² Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("Supplemental E&J").

¹⁵³ See 52 U.S.C. §§ 30102; 30103; 30104.

¹⁵⁴ Amended Compl. at 5-10, 30-44, 46-50, 53-60.

1 conduit that transmits the funds of another — but not both. ■ Because the record in MUR 7690
2 indicated that the respondent entity was a conduit, we stated that it could not also have the
3 requisite “major purpose” to be deemed a political committee and recommended that the
4 Commission take no action on the political committee status allegation.¹⁵⁶ The Commission
5 found reason to believe that the entity permitted its name to be used to effect a contribution in the
6 name of another and took no action with respect to the allegation that the entity failed to register
7 and report as a political committee. ■

8 For the reasons set forth above, available information indicates that ACCP, PSAA, and
9 RightOn Issues were conduits transmitting the Unknown Respondent(s)' funds. Therefore,
10 ACCP, PSAA, and RightOn Issues do not appear to have had the requisite “major purpose” to be
11 deemed political committees (or any of them a single political committee). As such, we
12 recommend taking no action as to the allegation that ACCP, PSAA, and RightOn Issues violated
13 52 U.S.C. §§ 30102, 30103, and 30104 and 11 C.F.R. §§ 102.1(d), 104.1, 104.2, 104.3, 104.8 by
14 failing to register and report as political committees.¹⁵⁸ If our proposed investigation reveals that
15 either ACCP, PSAA, or RightOn Issues was the true source of the contributions at issue, we will
16 make the appropriate recommendations regarding whether they satisfy the criteria for political
17 committee status, as well as make the appropriate recommendations in connection with the
18 Amended Complaint's allegation that Moses Ayala, Christopher Marston, and Caleb Crosby,

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Id.

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Id. at 21.

1 violated 52 U.S.C. § 30103 and 30104 and 11 C.F.R. §§ 102.1(d), 104.1, 104.2, 104.3, and 104.8
2 in their personal capacities.

3 **E. The Commission Should Dismiss the Allegation that RightOn Issues Violated**
4 **52 U.S.C. § 30104(b), (c), and/or (g) by Failing to File an Independent**
5 **Expenditure Reports**

6 Any person other than a political committee that makes independent expenditures
7 aggregating in excess of \$250 during a calendar year must file an independent expenditure report
8 with the Commission.¹⁵⁹ Additionally, political committees and other persons that make
9 independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24
10 hours before, the date of an election, must report the expenditures by filing a 24-hour notice.¹⁶⁰
11 Political committees and other persons that make independent expenditures aggregating \$10,000
12 or more for an election in any calendar year, up to and including the 20th day before an election,
13 must report the expenditures by filing a 48-hour notice.¹⁶¹

14 An “independent expenditure” means an expenditure by a person “expressly advocating
15 the election or defeat of a clearly identified candidate; and . . . that is not made in concert or
16 cooperation with or at the request or suggestion of such candidate, the candidate’s authorized
17 political committee, or their agents, or a political party committee or its agents.”¹⁶² “Clearly
18 identified” means the candidate’s “name, nickname, photograph, or drawing appears, or the
19 identity of the candidate is otherwise apparent through an unambiguous reference, such as ‘the
20 President,’ ‘your Congressman,’ or ‘the incumbent,’ or through an unambiguous reference to his

¹⁵⁹ 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10(b).

¹⁶⁰ *See* 52 U.S.C. § 30104(g)(1)(A); 11 C.F.R. § 104.4(b)(1).

¹⁶¹ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

¹⁶² 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

1 or her status as a candidate such as ‘the Democratic presidential nominee’ or ‘the Republican
2 candidate for the Senate in the State of Georgia.’”¹⁶³

3 The Complaint alleges, and RightOn Issues does not deny, that RightOn Issues paid
4 Paces Direct LLC \$1,789,105 for “direct mail services” and that some or all of that amount
5 funded the mail piece depicted in Figure 1.¹⁶⁴ Using some special characters, the top of the
6 mailer bears the text “SOCIALISM IS ON THE MARCH LIBERALS WANT TO BRING IT TO
7 GEORGIA.”¹⁶⁵ The bottom says “Vote NOW to stop them. Find your early voting locations
8 inside.”¹⁶⁶ The mailer in Figure 1 is the only mailer identified in the record and the available
9 image and text do not clearly identify a candidate. A communication cannot be an independent
10 expenditure without a clearly identified candidate.¹⁶⁷

11 Facebook’s political ad database shows that RightOn Issues spent a total of \$8,416 to
12 disseminate a Facebook ad on January 5, 2021. That ad said “Georgia Voter Alert!” and “Don’t
13 let Socialists take your healthcare! – Election day January 5th – make a plan to VOTE,” and
14 included video text saying “Radical Liberals will take your health care and close hospitals” along
15 with images of Senator Chuck Schumer, and Representatives Nancy Pelosi and Alexandria
16 Ocasio-Cortez. But even assuming that any one of the Democratic officeholders identified in the
17 ad were also candidates at that time, the Facebook ad does not expressly advocate their election
18 or defeat because the ad exhorts reader to vote on January 5th — which, when considered in

¹⁶³ *Id.* § 100.17.

¹⁶⁴ Amended Compl. at 28, 55-56.

¹⁶⁵ Figure 1.

¹⁶⁶ *Id.*

¹⁶⁷ 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16; *see also* F&LA at 2, 4, MUR 6080 (The Clarion Fund, Inc.) (film that made no reference to federal candidates but was shown in battleground states was not an independent expenditure).

1 context (*i.e.*, the timing of the ad and the apparent area of its distribution, namely Georgia), is a
2 clear reference to the January 5, 2021 runoff election in Georgia, where Schumer, Pelosi, or
3 Ocasio-Cortez were not on the ballot. Thus, RightOn Issues's Facebook ad did not expressly
4 advocate the election or defeat of those candidates.¹⁶⁸

5 Because the mailer at Figure 1 and the January 5, 2021 Facebook ad fails to meet the
6 definition of "independent expenditure," we recommend that the Commission dismiss the
7 allegation that RightOn Issues violated 52 U.S.C. § 30104(b), (c), and/or (g) by failing to file an
8 independent expenditure report in connection with those communications.

9 **IV. PRUDENTIAL CONSIDERATIONS**

10 The alleged conduits, ACCP, PSAA, and RightOn Issues, argue that the Commission
11 should dismiss the Amended Complaint's allegations against them because they have dissolved
12 as corporate entities.¹⁶⁹ In support, they cite a three-Commissioner statement of reasons in MUR
13 6391 (Commission on Hope, Growth and Opportunity).¹⁷⁰ Their argument is not persuasive.
14 Dismissal of complaints involving alleged violations of 52 U.S.C. § 30122 solely on the ground
15 that the alleged corporate conduits have since dissolved would reward such conduct and establish
16 a roadmap to others on how to evade Commission enforcement of the Act's name of another
17 prohibition. Nor does ACCP, PSAA, and RightOn Issues's dissolved status constitute an

¹⁶⁸ RightOn Issues's Facebook ad does not use the sorts of phrases, campaign slogans, or individual words that constitute express advocacy under 11 C.F.R. § 100.22(a). Accordingly, we analyzed whether the mailers expressly advocate under 11 C.F.R. § 100.22(b).


¹⁶⁹ ACCP Resp. at 3; PSAA Resp. at 2; RightOn Issues Resp. at 2.

¹⁷⁰ ACCP Resp. at 3; PSAA Resp. at 2; RightOn Issues Resp. at 2. ACCP, PSAA, and RightOn Issues's citation to MUR 6391 is off point since the Commission *did* find reason to believe and authorized an investigation in that matter, which did not involve an alleged name of another violation. *See* Cert. ¶2 (Sept. 16, 2014), MUR 6391 (Commission on Hope, Growth and Opportunity). In any event, a three-commissioner statement "[is] 'not [] binding legal precedent or authority for future cases.'" *Campaign Legal Center v. FEC*, 312 F. Supp. 3d 153, 166 (D.D.C. 2018) (quoting *Common Cause v. FEC*, 842 F.2d 436, 449 n.32 (D.C. Cir. 1988)).

1 insurmountable hurdle to the resolution of this matter as to them, since, under D.C. law, the
2 dissolution of a corporation does not discontinue its corporate existence, nor render it incapable
3 of being sued.¹⁷¹ The Commission has previously pursued (and conciliated with) dissolved
4 entities, including a D.C. nonprofit corporation.¹⁷²

5 In our view, there are compelling reasons *not* to dismiss this matter. Violations of the
6 Act's prohibition on contributions in the name of another are among the most serious violations
7 within the Commission's jurisdiction, evidenced by the comprehensive prohibition of the
8 practice and Congress' judgment in the Bipartisan Campaign Reform Act to create a separate
9 felony penalty with a lower monetary threshold than for all other violations of the Act.¹⁷³ The
10 amount in violation is substantial and the Commission has found reason to believe and
11 investigated alleged name of another violations involving far smaller sums.¹⁷⁴ Finally, the multi-
12 level structuring of the transactions also suggests that the true source went to significant lengths
13 to hide its identity or their identities.

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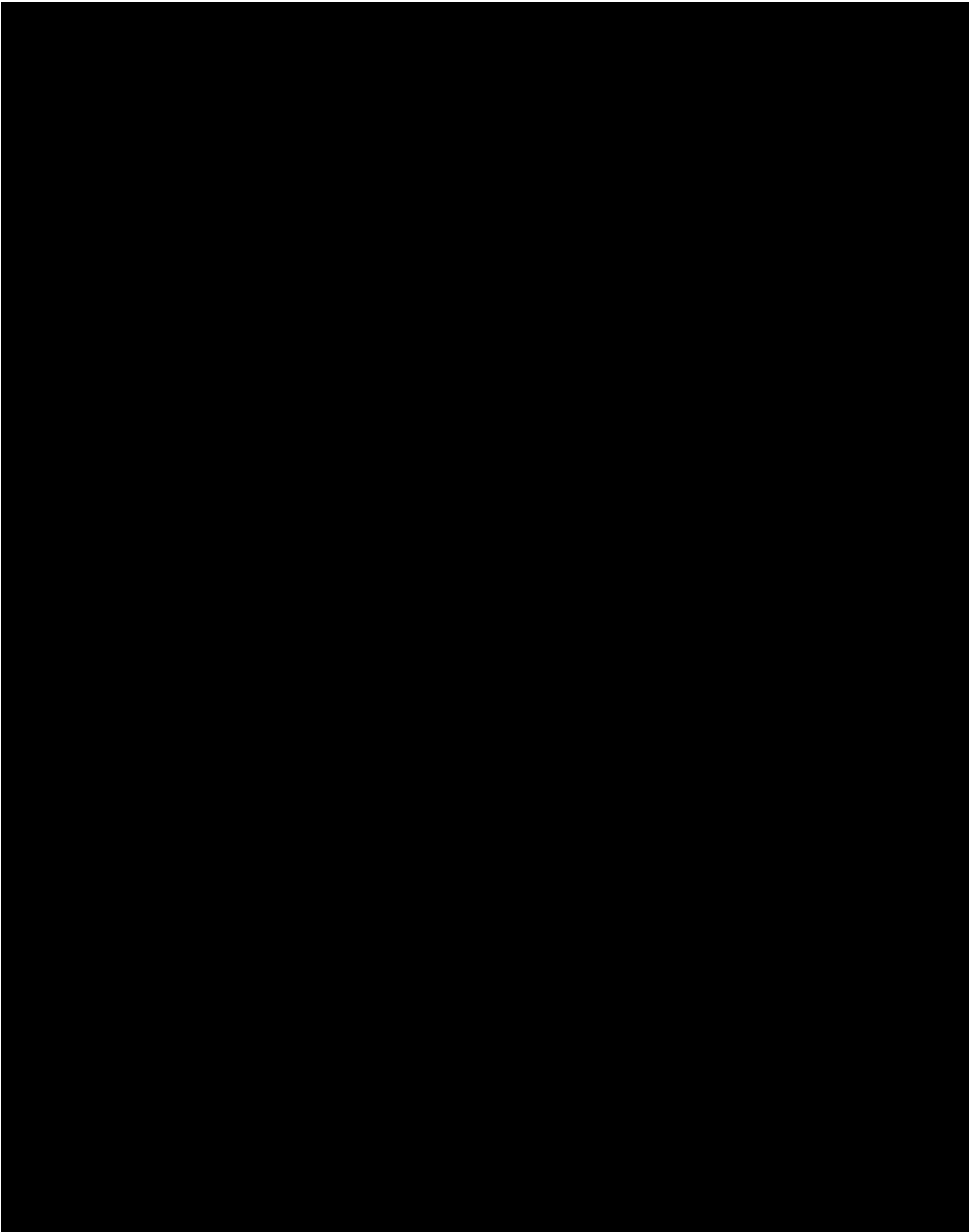


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First General Counsel's Report

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VI. RECOMMENDATIONS

Contributions in the Name of Another

1. Find reason to believe that Unknown Respondent(s) violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b) by making a contribution in the name of another person;
2. Take no action at this time as to the allegation that American Coalition for Conservative Policies 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 contribution in the name of another person;
3. Find reason to believe Policies, Solutions and Action for America 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 contribution in the name of another person;
4. Find reason to believe RightOn Issues, Inc. 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 contribution in the name of another person;
5. Take no action at this time with respect to the allegations that Georgia United Victory and Paul Kilgore in his official capacity as treasurer, RightOn Time and Paul Kilgore in his official capacity as treasurer, and Georgia Action Fund and Kayla Glaze in her official capacity as treasurer violated 52 U.S.C. §§ 30104, 30122 and 11 C.F.R. §§ 104.1, 104.2, 104.3, 104.8, and 110.4(b) by knowingly accepting, and failing to report, a contribution in the name of another person;
6. Take no action at this time with respect to the allegations that Kayla Glaze and Paul Kilgore, in their personal capacities, violated 52 U.S.C. §§ 30104, 30122 and 11 C.F.R. § 104.1, 104.2, 104.3, 104.8, and 110.4(b) by knowingly accepting, and failing to report, a contribution in the name of another person;

Political Committee Status

7. Take no action at this time as to the allegation that American Coalition for Conservative Policies, Policies, Solutions and Action for America, and RightOn Issues, Inc. violated 52 U.S.C. §§ 30103, 30104 and 11 C.F.R. §§ 102.1(d) and 104.1 by failing to register and report as political committees;
8. Take no action at this time as to the allegations that John Fogarty, Jr., Christopher Marston, Moses Ayala, and Caleb Crosby, in their personal capacities, violated 52 U.S.C. §§ 30103, 30104 and 11 C.F.R. §§ 102.1(d), 104.1, 104.2, 104.3, and 104.8 by

causing American Coalition for Conservative Policies, Policies, Solutions and Action for America, RightOn Issues to fail to register and report as political committees;

Unreported Independent Expenditures

- 9. Dismiss the allegation that RightOn Issues violated 52 U.S.C. § 30104(b), (c), and/or (g) by failing to file an independent expenditure report in connection with its payment for a January 5, 2021 Facebook ad;
- 10. Dismiss the allegation that RightOn Issues failed to report independent expenditures in violation of 52 U.S.C. § 30104 and 11 C.F.R. § 109.10 in connection with the mailer at Figure 1.

Administrative

- 11. Direct the Office of General Counsel to circulate an Investigative Plan pursuant to Directive 74 following the receipt of a response to the Reason-to-Believe letters or in the event it appears no response will be made;
- 12. Approve the attached Factual and Legal Analyses; and
- 13. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

5/3/2024
DATE

Charles Kitcher by: *AR*
Charles Kitcher
Associate General Counsel for Enforcement

Aaron Rabinowitz
Aaron Rabinowitz
Assistant General Counsel

Christopher S. Curran
Christopher S. Curran
Attorney

Attachments:

