



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

August 2, 2024

VIA EMAIL

James E. Tyrrell III
Dickinson Wright PLLC
1825 Eye Street NW, Suite 900
Washington, DC 20006
jtyrrell@dickinsonwright.com

RE: MUR 8110 (RightOn Time, *et al.*)

Dear Mr. Tyrrell:

On November 22, 2023, the Federal Election Commission (the “Commission”) notified your clients, Georgia United Victory, RightOn Time, Inc., and Paul Kilgore, of an amended complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (“the Act”). A copy of the amended complaint was forwarded to your clients at that time.

On June 25, the Commission considered the amended complaint, but there was an insufficient number of votes to take the following actions:

- Take no action at this time with respect to the allegations that Georgia United Victory and Paul Kilgore in his official capacity as treasurer and RightOn Time and Paul Kilgore in his 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; and
- Take no action at this time with respect to the allegation that Paul Kilgore, in his personal capacity, 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.

Also on June 25, 2024, there was an insufficient number of votes to dismiss the amended complaint. On July 3, 2024, the Commission voted to close the file effective 30 days after the date the certification of this vote is signed (or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday). Any applicable Statements of Reasons available at the time of this letter’s transmittal are enclosed.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

MUR 8110
James E. Tyrrell III
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If you have any questions, please contact Christopher Curran, the attorney assigned to this matter, at (202) 694-1362.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aaron Rabinowitz".

Aaron Rabinowitz
Assistant General Counsel



FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 8110
Am. Coal. for Conservative Policies, *et al.*)
)

**STATEMENT OF REASONS OF
CHAIRMAN SEAN J. COOKSEY AND
COMMISSIONERS ALLEN J. DICKERSON AND JAMES E. “TREY” TRAINOR, III**

INTRODUCTION

Under the Federal Election Campaign Act (“Act” or “FECA”) the Commission will find reason-to-believe (“RTB”) when there is “sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred”¹

This Matter involves a complaint that alleged a complex scheme to violate 52 U.S.C. § 30122, the prohibition against conduit contributions in the name of another. We voted to dismiss the complaint² because the Commission is “forbidden from invoking the powers of the federal government based on drive-by analysis or mere insinuation.”³

I. Standard of Review

Both the Act and Commission policy provide that, at the initial stage of enforcement, the Commission must either dismiss the complaint or find reason-to-

¹ Fed. Election Comm’n, “Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process,” 89 Fed. Reg. 19729, 19730, Mar. 20, 2024; 52 U.S.C. § 30109(a)(1-2).

² The original complaint was amended, and the First General Counsel’s Report analyzed that amended complaint. For clarity, we refer to the later, controlling document as the “complaint.”

³ Statement of Reasons of Chairman Cooksey and Comm’rs Dickerson and Trainor at 1, MUR 8082 (“Unknown Respondents”), Apr. 8, 2024 (“8082 Statement”).

believe a violation has occurred. Where it finds RTB, the Commission will either authorize an investigation or engage in efforts to negotiate an end to the Matter through conciliation.⁴

The Commission will find reason-to-believe when a complaint (1) fairly invokes its jurisdiction,⁵ (2) is credible, and not merely a bare accusation of wrongdoing,⁶ (3) the response has not sufficiently answered the complaint,⁷ and (4) it determines that enforcement is a judicious use of the Commission's scarce resources.⁸ This is not a loose standard, and “[w]e are forbidden” from merely providing a “rubber stamp” to a complaint's allegations, or “proceed[ing] on an ‘RTB-of-the-gaps’ approach to law enforcement.”⁹

In urging us to find RTB, however, the Office of General Counsel (“OGC”) did not apply that standard of review. Rather, OGC posited that reason-to-believe is a “very low evidentiary bar” which may be cleared by mere speculation.¹⁰ OGC is mistaken. It derived its novel standard from truncated citations, including to a case where the Commission was unrepresented (due to our colleagues' decision to default the agency)¹¹ and a judicial decision involving efforts to draft Ted Kennedy for

⁴ Fed. Election Comm'n, Dir. 74.

⁵ Statement of Reasons of Comm'rs Mason, Sandstrom, Smith, and Thomas at 1, MUR 4960 (Clinton for U.S. Senate Exploratory Comm.), Dec. 21, 2000 (“Clinton Statement”).

⁶ Clinton Statement at 2 (“Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true”) (internal citations omitted); 89 Fed. Reg. at 19730 (“A ‘reason to believe’ finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope”).

⁷ See Statement of Reasons of Chair Lindenbaum, Vice Chairman Cooksey, and Comm'rs Dickerson and Trainor, MUR 7897 (Ted Cruz for Senate), Aug. 14, 2023.

⁸ 89 Fed. Reg. at 19730; cf. *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁹ 8082 Statement at 1-2 (quoting Statement of Reasons of Vice Chair Dickerson and Comm'r Trainor at 3, 10, MURs 7427 *et al.* (Nat'l Rifle Ass'n), Dec. 23, 2021).

¹⁰ First Gen'l Counsel's Report (“FGCR”) at 19, MUR 8110 (“Am. Coal. for Conservative Policies”), May 3, 2024 (internal citation and quotation marks omitted).

¹¹ See Statement of Chairman Dickerson and Comm'rs Cooksey and Trainor Regarding Concluded Enforcement Matters, May 13, 2022.

President in the 1980 election.¹² These cases do not undo the Commission's longstanding approach to the RTB standard.

To the contrary, these cases held that complaints must provide “a credible allegation” of wrongdoing,¹³ and that “speculation is not enough” to support an RTB finding because “[t]he Commission requires a concrete and plausible factual basis for finding reason to believe.”¹⁴ Indeed, while “complaints certainly do not have to *prove* violations occurred, rendering investigation unnecessary,” the “alleged facts must present something that is, in the broad sense, ‘incriminating’ and not satisfactorily answered by the respondents.”¹⁵

OGC's remaining citations are no better. *Spannaus v. Federal Election Commission* never opined on the RTB standard, instead holding that “[t]he strength of the factual support for the Commission's findings” when opening a MUR and finding RTB on the basis of an audit referral was “not ripe for review by th[e] court.”¹⁶ And the *Wisconsin Democrats for Change* case upheld the Commission's use of a subpoena because the district judge understood that “in determining whether a subpoena issued by a federal administrative agency should be enforced, a district court is limited to determining whether the subpoena relates to an inquiry within the authority of the agency; whether the demand by the subpoena is not overly vague or indefinite; and whether the information sought by the subpoena is reasonably relevant to the inquiry.”¹⁷

In short, properly understood, OGC's citations state that the Commission will only find RTB when the complaint credibly alleges a violation, and that the Commission is forbidden from finding RTB on the basis of assertion, insinuation, speculation, or conjecture. That was the standard adopted by a four-vote majority of

¹² FGCR at 19, n.82 (citing *Campaign Legal Ctr. v. Fed. Election Comm'n*, 646 F. Supp. 3d 57, 67 (D.D.C. 2022) (“*Correct the Record*”), *Common Cause Ga. v. Fed. Election Comm'n*, 2023 WL 6388883 at *6 (D.D.C. 2023) (“*True the Vote*”); *Democratic Senatorial Campaign Comm. v. Fed. Election Comm'n*, 745 F. Supp. 742, 746 (D.D.C. 1990) (“*DSCC*”); *Spannaus v. Fed. Election Comm'n*, 641 F. Supp. 1520, 1525-1529 (S.D.N.Y. 1986); Order at 6, *Fed. Election Comm'n v. Wis. Democrats for Change in 1980*, Case No. 80-C-124 (W.D. Wis. Apr. 24, 1980) (“*Wisconsin Democrats for Change*”).

¹³ *Correct the Record* at 67 (citation to Dissenting Statement of Reasons omitted).

¹⁴ *True the Vote* at *6 (internal citation and quotation marks omitted, cleaned up).

¹⁵ *DSCC*, 745 F. Supp. at 746 (emphasis in original, internal citations omitted).

¹⁶ *Spannaus*, 641 F. Supp. at 1529.

¹⁷ Order at 2, *Wisconsin Democrats for Change*, Case No. 80-C-124 (W.D. Wis. Apr. 24, 1980).

this Commission years ago,¹⁸ and it is the standard that continues to bind OGC despite its effort to refashion decades-old caselaw.

II. Relevant Statute

FECA provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.”¹⁹

Under this provision, “[t]he legal question is whether the[] contributions were in fact made by others, using the titular contributors as mere conduits” who “made their contributions at the direction of another.”²⁰

III. The Commission Dismissed The Complaint

The complaint’s allegations were wide-ranging and speculative.²¹ OGC provided a helpful chart summarizing its case:²²

¹⁸ Clinton Statement at 1-2.

¹⁹ 52 U.S.C. § 30122. *See also* 11 C.F.R. § 110.4(b)(2) (implementing the statute and providing examples); *Fed. Election Comm’n v. Swallow*, 304 F. Supp. 3d 1113, 1115 (D. Utah 2018) (“A false name contribution occurs when a person contributes to a candidate but falsely attributes another person as the source of the contribution. A conduit contribution reaches the same result when a person provides funds to another person (the conduit) who contributes the funds to the candidate...There is no question this 1974 regulation is a proper reflection of the law passed by Congress”).

²⁰ 8082 Statement at 6, 10. As we have explained elsewhere, “the statute reaches so-called ‘straw donor’ arrangements: where *A* gives a contribution to *B* with the intention that *B* immediately transfer those funds to *C*, but *C*, whether unknowingly or corruptly, reports the donation as coming from *B*, rather than *A*.” Statement of Reasons of Vice Chairman Cooksey and Comm’rs Dickerson and Trainor at 2, MUR 7464 (LZP), July 7, 2023 (citing *United States v. O’Donnell*, 608 F.3d 546 (9th Cir. 2010); *United States v. Boender*, 649 F.3d 650 (7th Cir. 2011); *United States v. Whittemore*, 776 F.3d 1074 (9th Cir. 2015)).

²¹ But it did articulate a theory of wrongdoing which, if true, would plausibly be illegal. There is no question that the Commission had jurisdiction over the complaint.

²² OGC also noted that “[a]dditionally, the Amended Complaint contends RightOn Issues spent another \$2,166,506 on payments to two vendors located in Georgia with ties to the Georgia Republican Party and David Perdue, the Republican Party candidate to represent Georgia in the U.S. Senate.” FGCR at 3.

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

As the chart shows, OGC recommended RTB on a conspiracy which began when an anonymous donor or donors gave five million dollars to a § 501(c)(4) nonprofit corporation, American Coalition for Conservative Policies (“ACCP”).²³ OGC contended that the anonymous donor to ACCP was the “true contributor”²⁴ of funds that ultimately landed with RightOn Issues, another such nonprofit, and three Super PACs: Georgia United Victory, Georgia Action Fund, and RightOn Time. As the chart shows, OGC theorized that the money delivered to the end recipients first spent some amount of time in the bank accounts of RightOn Issues and yet another § 501(c)(4) nonprofit corporation: Policies, Solutions, and Action for America (“PSAA”).

We determined that the complaint did not “credibl[y] alleg[e]”²⁵ “a concrete and plausible factual basis for finding reason to believe.”²⁶ As noted above, in conduit contribution cases “there must be” credible, evidence-based reasons – and not mere speculation – to believe that the relevant contributors all “made their contributions at the direction of another.”²⁷ We require this evidence of control to distinguish complaints brought on a concrete and plausible basis from conspiracy theories

²³ FGCR at 3 (charts displaying the alleged conduit scheme); *id.* at 44 (“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”). It bears notice that ACCP was formed in March 2020, several months before the first known transaction from ACCP to PSAA. *Id.* at 6.

²⁴ Throughout its Report, OGC uses the phrase “true source” to describe the alleged true contributor. This term is imprecise and ungrounded in either the statute or the regulation. 11 C.F.R. § 110.4(b), by contrast, refers to the “true contributor.” We follow the regulation.

²⁵ *Correct the Record* at 67 (citation to Dissenting Statement of Reasons omitted).

²⁶ *True the Vote* at 6 (internal citations and quotation marks omitted).

²⁷ 8082 Statement at 10.

positing that all transfers among politically-active organizations are in fact masterminded by some nefarious individual hiding in the wings.

Accordingly, the critical question for the Commission was what evidence existed for the allegation that an unknown respondent contributed to ACCP with the direction that those funds be ultimately contributed to RightOn Issues, Georgia United Victory, RightOn Time, and Georgia Action Fund after being transferred through intermediaries?

The alert reader might have noticed a significant problem stemming from OGC's own chart. It is "[u]nknown" when ACCP made its \$1.8 million contribution to RightOn Issues. RightOn Issues raised just over \$5.6 million in 2020.²⁸ There is no evidence in the complaint or publicly available government documents that tells us whether ACCP gave that money before or after RightOn Issues made its contributions to the three Super PACs.²⁹ Nor is there any evidence, aside from OGC's speculation, that PSAA gave \$1,500,000 to RightOn Issues before RightOn Issues contributed to the Super PACs.³⁰ In other words, there is no evidence – none – that the bulk of the money given to the complaint's principal intermediary was even given before that supposed-intermediary made its eventual contributions.

OGC's entire theory hangs on assuming that the sequencing of transfers is evidence that the original "Unknown Contributor" directed the flow of money through intermediaries to ultimate recipients. But there is no evidence that ACCP or PSAA gave those funds prior to September 21, 2020, and so OGC's enforcement theory falls apart.

There are other problems with OGC's approach. Again, the majority of spending the complaint finds suspect was undertaken by RightOn Issues. But that entity received more than two million dollars in completely unrelated contributions from third parties, which strongly suggests that it was not being used as a mere pass-through for a complex name-of-another contribution scheme masterminded by a shadowy "true contributor." Moreover, RightOn Issues was the only source of contributions to two of the Super PACs OGC considers recipients of conduit funds:

²⁸ RightOn Issues 2020 IRS Form 990.

²⁹ According to FEC records, in the 2020 election cycle, Georgia United Victory took in just over \$21.5 million in contributions, Georgia Action Fund raised just over \$8 million, and RightOn Time received merely the \$120,000 at issue here.

³⁰ It is obviously impossible to prove the negative, but even OGC's own chart simply notes that PSAA's \$1.5 million contribution happened "[o]n or *after* July 14, 2020." FGCR at 3 (emphasis supplied).

Georgia Action Fund and RightOn Time.³¹ If OGC is correct that an unknown “true contributor” directed funds to various Super PACs, why were these contributions only made through a clearly-independent entity (RightOn Issues)?³² And what should the Commission make of a pass-through scheme that devotes \$2.127 million, more than 40% of the total, to amorphous “likely electioneering”?³³ Finally, even if we chose to credit OGC’s theorizing concerning these various issues, we would have to engage with Respondents’ denials, which are categorical, albeit imprecise.

At bottom, the complaint and OGC’s recommendation is based upon a vague sense that, by throwing enough variables at the wall, a coherent theory of a violation will emerge. But none of the variables OGC points to hold up under scrutiny, as the illustrative examples above show. We suspect that much of OGC’s confusion stems from a disagreement with the legal standard: that a name-of-another-contribution is made “at the direction of another.”³⁴ But OGC fails to articulate an alternative legal theory, and its marshaled evidence is insufficient to establish reason-to-believe that anyone “directed” the complex scheme the complaint asserts.

Perhaps it is for this reason that OGC chose to pitch a watered-down RTB standard in this particular MUR.

³¹ FGCR at 3.

³² *Id.*

³³ *Id.*

³⁴ 8082 Statement at 10.

CONCLUSION

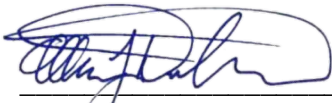
In this Matter, the Complainant and OGC again fell into the familiar trap of “unreliable pattern-seeking for which humans are justifiably infamous.”³⁵ Upon scrutiny of the available information, and application of the correct legal standards, we voted to dismiss the complaint.



Sean J. Cooksey
Chairman

July 29, 2024

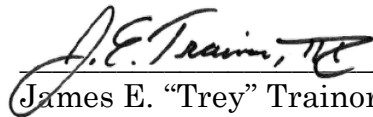
Date



Allen J. Dickerson
Commissioner

July 29, 2024

Date



James E. “Trey” Trainor, III
Commissioner

July 29, 2024

Date

³⁵ *Id.* at 13.