



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Pacific Atlantic Action Coalition; Pacific)	MUR 7754
Environmental Coalition; SMP and Rebecca)	
Lambe in her official capacity as treasurer; Unite)	
the Country and Michael Morris in his official)	
capacity as treasurer; VoteVets PAC and Rick)	
Hegdahl in his official capacity as treasurer;)	
Tom Van Loben Sels; Melissa Carrig; Matt)	
Cohler; James P. Joseph)	

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

I. INTRODUCTION

The Complaint in this matter alleged that Pacific Atlantic Action Coalition (“PAAC”) and Pacific Environmental Coalition (“PEC”), two 501(c)(4) public benefit corporations, violated the Federal Election Campaign Act of 1971, as amended (“the Act”), by making contributions in the name of one or more unidentified persons to three independent expenditure-only political committees (IEOPCs), also known as “super PACs.” The available information indicates that Matt Cohler, both organizations’ CEO, may have been the true source of the contributions.

Consistent with the Office of General Counsel’s recommendations, we voted to find reason to believe that PAAC and PEC knowingly permitted their names to be used to make a contribution in the name of another, reason to believe that Matt Cohler made contributions in the name of another, and to authorize an investigation.¹ “Reason to believe” is a threshold determination that does not itself establish that the law has been violated. The Commission has stated that it will find reason to believe “in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation.”² That threshold was met here. An investigation

¹ See Certification in MUR 7754 (Pacific Atlantic Action Coalition, *et al.*), dated Oct. 29, 2021. We also voted to take no action at this time with respect to other individuals and the three IEOPCs pending an investigation.

² 72 Fed. Reg. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (Mar. 16, 2007).

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was warranted to conclusively determine whether a serious violation of the law occurred, but once again, the Commission could not muster the requisite four affirmative votes to move forward in this matter.³

Instead, our colleagues claim that any investigation would require the Office of General Counsel to “ransack” these organizations’ records in a “bleak” and “likely doomed effort.”⁴ We disagree. Their refusal to look behind respondents’ conclusory denials certainly dooms any effort to determine the facts here. We believe a targeted investigation could have done just that, without an undue investment of Commission resources. Their histrionic language distracts from a simple fact: investigating credible allegations of serious violations of the Act is a basic law enforcement function and part of the Commission’s core mission as the exclusive civil enforcement authority under the Act. It is a part of our mission that we regret to say the Commission too rarely fulfills.

II. FACTUAL BACKGROUND⁵

PAAC and PEC are public benefit corporations organized under California law and recognized as 501(c)(4) organizations by the Internal Revenue Service (“IRS”).⁶ PAAC represents that its organizational mission is to promote certain public policy positions, including regarding “economic development, voting rights, criminal justice reform and gun violence.”⁷ PEC’s stated purpose is to promote reforms “in a broad range of environmental policy areas.”⁸ PAAC and PEC each have two officers and directors. Matt Cohler is the Chief Executive Officer (“CEO”) and a Director of both organizations.⁹ Tom Van Loben Sels is the Secretary, Treasurer, and a Director of PAAC, while Melissa Carrig serves in those same roles at PEC.¹⁰

PAAC was incorporated on May 21, 2018, and received one donation of approximately \$430,000 in stock by the end of its first fiscal year on June 30, 2018.¹¹ Within weeks of its formation and after the close of its fiscal year, PAAC made a \$200,000 contribution to SMP on July 18, 2018,

³ See Certification in MUR 7754 (Pacific Atlantic Action Coalition, *et al.*), dated Oct. 29, 2021.

⁴ See Statement of Reasons of Vice Chair Allen Dickerson and Comm’rs Sean J. Cooksey and James E. “Trey” Trainor, III at 2, 7, MUR 7754 (Pacific Atlantic Action Coalition, *et al.*).

⁵ Our statement incorporates much of the factual and legal analysis submitted to the Commission by the Office of General Counsel. See First Gen. Counsel’s Report in MUR 7754 (Pacific Atlantic Action Coalition, *et al.*), dated Dec. 21, 2020.

⁶ Response of PAAC, PEC, Van Loben Sels, and Cohler at 2 (“PAAC & PEC Resp.”) (Sept. 4, 2020).

⁷ PAAC & PEC Resp. Ex G, PAAC Response to Form 1024-A Supplemental Information Request at 2 (Apr. 26, 2019).

⁸ PAAC & PEC Resp. Ex. E, PEC Form 1024-A Exemption Application, Narrative Attachment at 2 (Mar. 6, 2019).

⁹ PAAC & PEC Resp. at 3, 5.

¹⁰ *Id.*

¹¹ PAAC & PEC Resp. at 5; PAAC & PEC Resp. Ex. F, PAAC IRS Form 1024-A Exemption Application, Application for Recognition of Exemption at 3 (Aug. 20, 2018).

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and then made donations totaling \$483,000 to two 501(c)(4) organizations in late July and August of that year.¹² PAAC represents that it has received a total of \$1,612,459 from “over ten donations” since its formation, which includes \$510,000 that it received from PEC in June and August of 2020.¹³

PEC was incorporated on September 23, 2019, and received six donations totaling \$22,840,920 in the following seven weeks.¹⁴ PEC then made contributions to Unite the Country and VoteVets on February 13, 2020, a contribution to SMP on May 14, 2020, and donations to nine different 501(c)(4) organizations, including PAAC, between February 21 and August 18, 2020.¹⁵ In total, between February 13 and August 18, 2020, PEC contributed \$1,050,000 to the three IEOPCs and approximately \$6,000,000 to the various 501(c)(4) organizations.¹⁶

The available information indicates that Van Loben Sels and Carrig may have connections to Cohler outside of their roles for PAAC and PEC that would allow Cohler to exercise control over the decisions of the organizations. Cohler is one of the founding employees and a former executive at Facebook and is estimated by Forbes to have a net worth of \$670,000,000 as of 2016.¹⁷ At least one press report suggests that Cohler solely funded both PAAC and PEC.¹⁸ Van Loben Sels and Carrig are partners at Apercen Partners LLC, which describes itself as a tax consulting firm specializing in “high net-worth individual clients.”¹⁹ Apercen previously represented Cohler in at least one public

¹² PAAC & PEC Resp. Ex. K, PAAC Grant Summary Chart. Specifically, PAAC contributed \$233,000 to New Nation Rising Action Fund on July 31, 2018, and \$250,000 to Govern for California on August 13, 2020. *Id.*

¹³ Declaration of Tom Van Loben Sels ¶ 8 (Sept. 4, 2020); PAAC & PEC Resp. Ex. J, PEC Grant Summary Chart.

¹⁴ PAAC & PEC Resp. at 2–3. Since then it has received only \$23,451 in additional donations. *Id.* at 3.

¹⁵ PAAC & PEC Resp. Ex. J, PEC Grant Summary Chart. Specifically, PEC made the following contributions: Unite the Country for \$300,000 on February 13, 2020; VoteVets for \$250,000 on February 13, 2020; ACRONYM for \$1,500,000 on February 21, 2020; Big Tent Project Fund for \$100,000 on February 21, 2020; Center for Voter Information for \$337,500 on March 5, 2020; SMP for \$500,000 on May 14, 2020; PAAC for \$10,000 on June 1, 2020; SilverLining Policy, Inc. for \$1,000,000 on July 23, 2020; Environmental Defense Action Fund for \$500,000 on August 3, 2020; PAAC for \$500,000 on August 12, 2020; Defending Democracy Together for \$1,000,000 on August 18, 2020; and WorkMoney Inc. for \$1,000,000 on August 18, 2020. *Id.*

¹⁶ *Id.*

¹⁷ Luisa Kroll, *America’s Richest Entrepreneurs Under 40 2016*, FORBES (Dec. 12, 2016), <https://www.forbes.com/sites/luisakroll/2016/12/12/americas-richest-entrepreneurs-under-40-2016/#6c844c6967c3>; FORBES, Profile of Matt Cohler, <https://www.forbes.com/profile/matt-cohler/#1546815c6576>.

¹⁸ Lachlan Markay, *Revealed: Silicon Valley Bigwig Sent a Million Dollars to Dem Groups*, THE DAILY BEAST (June 23, 2020) <https://www.thedailybeast.com/revealed-silicon-valley-bigwig-matt-cohler-sent-a-million-dollars-to-dem-groups?ref=scroll>.

¹⁹ Apercen Partners, “Apercen Defined,” <https://www.apercen.com/> (last visited Dec. 21, 2020); LinkedIn, Tom Van Loben Sels, <https://www.linkedin.com/in/tom-van-loben-sels-83455010/> (last visited Dec. 21, 2020); LinkedIn, Melissa Carrig, <https://www.linkedin.com/in/melissa-carrig-592b326/> (last visited Dec. 21, 2020).

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transaction, a purchase of real estate,²⁰ and Van Loben Sels serves as the Secretary and Chief Financial Officer of another Cohler-owned entity, the Sommerfeldt Cohler Foundation.²¹

According to PAAC and PEC, neither organization has conducted any publicly-facing outreach and, instead, both have “focused thus far on supporting existing organizations that are aligned with [their] mission[s].”²² PAAC and PEC do not describe who proposes their grant targets or how they are selected. They represent that, once grant targets are chosen, Carrig and Van Loben Sels, “assisted by Apercen Partners,” then vet these targets,²³ although they do not describe what this vetting process entails. The two-member boards of PAAC and PEC, consisting in each case of Cohler and one of the Apercen partners, then vote on whether to issue the grant, and Apercen coordinates grant payments and reporting.²⁴ PAAC and PEC submitted sworn declarations from Van Loben Sels and Carrig, respectively, attesting that they had “not determined what nonprofit organizations or other groups [they] would support” at the time PAAC and PEC were incorporated, and that the groups’ donations were not directed towards specific activities.²⁵ Cohler did not submit a declaration.

Other available information also casts doubt on PAAC and PEC’s representations regarding their overall purposes and activities. PAAC and PEC’s activities, based on the current information, reflects a sole focus on grant-making, contradicting their representation to the IRS in their requests for 501(c)(4) status recognition that grant-making would be only a portion of their overall conduct.²⁶ In addition, a number of their grants, including to the IEOPCs, are to organizations that appear not to further the causes PAAC and PEC purport to promote;²⁷ their grants appear to be functionally

²⁰ Compare David Jeans, *Penthouse at Tadao Ando’s 152 Elizabeth sells for \$30M*, THE REAL DEAL (July 24, 2018), <https://therealdeal.com/2018/07/24/penthouse-at-152-elizabeth-street-sells-for-30m> (reporting that public records showed that Cohler was under contract to purchase property before it was purchased by an LLC under the care of an attorney with Apercen); with Katherine Clarke, *Matt Cohler Lists Swanky Manhattan Penthouse for \$29.5 Million*, WALL STREET J. (Oct. 10, 2019), <https://www.wsj.com/articles/matt-cohler-lists-swanky-manhattan-penthouse-for-29-5-million-11570718184>.

²¹ See Statement of Information filed with California Secretary of State (Dec. 18, 2019) (listing Cohler as CEO and Van Loben Sels as Secretary, CFO, and process agent).

²² PAAC & PEC Resp. at 3–4, 6.

²³ *Id.* at 4, 6.

²⁴ *Id.*

²⁵ Van Loben Sels Decl. ¶¶ 4–8; Decl. of Melissa Carrig ¶¶ 5–9.

²⁶ Compare PAAC & PEC Resp. Ex. E, PEC Form 1024-A Exemption Application, Narrative Attachment at 6 (Mar. 6, 2019) (“The Organization expects to devote the following percentage of time and/or resources to the following activities, in each case in furtherance of the Organization’s tax-exempt mission: 30 percent to supporting organizations working to change environmental policy and protect our environment; 30 percent to grantmaking; 20 percent to advocacy; and 20 percent to public education.”); PAAC & PEC Resp. Ex. F, PAAC Form 1024-A Exemption Application, Narrative Attachment at 6 (Aug. 20, 2018) (“With respect to the activities described in this Part III, the Organization expects to devote the following percentage of time and/or funds to each activity: 40 percent to grantmaking; 40 percent to advocacy; and 20 percent to public education.”); with PAAC & PEC Resp. at 12–13 (“Respondents determined that during the initial stages of formation, they could best advance their respective missions by making grants to other, more established organizations, rather than conducting their own programmatic activities.”).

²⁷ Of the eleven organizations to which PEC has given money, only two describe themselves as promoting environmental policy. See PAAC & PEC Resp. Ex. J. Three of the supported organizations are political committees.

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indistinguishable from direct donations;²⁸ and there does not appear to be public information regarding PAAC and PEC’s officers and directors indicating that these individuals have significant prior experience managing charitable organizations or in promoting PAAC and PEC’s purported causes.

The Complaint alleges that PAAC and PEC were used to funnel contributions from other, unnamed sources in violation of 52 U.S.C. § 30122.²⁹ The Complaint bases its allegations on the following: (1) PAAC received a \$430,000 contribution from a single source within weeks of its incorporation “and then weeks later contributed \$200,000 to the super PAC [SMP];” (2) PEC, similarly, was formed in September 2019 and thereafter contributed to Unite the Country and VoteVets in February 2020 and SMP in May 2020; (3) PAAC and PEC’s officers and directors are also employed with the tax consulting firm Apercen Partners, “which represents high net-worth individual clients;” and (4) PAAC and PEC do not appear to have an online presence.³⁰

PAAC, PEC, and Cohler filed a Response contending that: (1) corporate donors like PAAC and PEC have a recognized right to make contributions to IEOPCs; (2) the Complaint fails to allege facts establishing that PAAC or PEC made contributions in the name of another; (3) the sworn declarations of Van Loben Sels and Carrig demonstrate that PAAC and PEC did not have specific grant targets in mind when formed and did not receive donations directed to any specific purpose; (4) PAAC and PEC’s grants were made weeks or months after their incorporation; and (5) PAAC and PEC’s lack of an online presence is merely a result of their decision not to engage in their own independent education and advocacy activities at this time.³¹

Id. Another is PAAC. *Id.* Another four are 501(c)(4) organizations that do not describe themselves as promoting environmental causes. See ACRONYM, <https://www.anotheracronym.org/#theplaybook> (describing ACRONYM’s activities as engaging in get-out-the-vote efforts, “fighting misinformation online with facts + local journalism,” and “creating a framework to move the needle among key audiences”); Center for Voter Information, <https://www.centerforvoterinformation.org/> (describing itself as “a non-profit, non-partisan partner organization to Voter Participation Center, both founded to provide resources and tools to help voting-eligible citizens register and vote in upcoming elections”); Defending Democracy Together, <https://www.defendingdemocracytogether.org/about-us/> (describing itself as an “advocacy organization created by lifelong conservatives and Republicans . . . dedicated to defending America’s democratic norms, values, and institutions and fighting for consistent conservative principles like rule of law, free trade, and expanding legal immigration”); WorkMoney, <https://www.facebook.com/WorkMoney.org/> (describing itself as “a not-for-profit group that helps Americans figure out how to navigate the worst economic catastrophe of our lifetimes”).

²⁸ The example grant provided by PEC simply states that the grantee “will use the grant to support the expansion of the Grantee’s budget over a 3 year period” and requires no particular reporting or monitoring. Ex. I, Grant Agreement between PEC and SilverLining Policy, Inc. at 2. PAAC and PEC also represent that each of their grants has been “general support” for the grant target, rather than funding towards any specific project. PAAC & PEC Resp. Exs. J, K.

²⁹ Compl. at 2, 11 (June 25, 2020).

³⁰ *Id.* at 2–6.

³¹ PAAC & PEC Resp. at 8–13; Van Loben Sels Decl. ¶¶ 6–8; Carrig Decl. ¶¶ 7–9.

III. LEGAL ANALYSIS

A. The Law Regarding Contributions in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”³² The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”³³ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.³⁴ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.³⁵

The requirement that a contribution be made in the name of its true source promotes Congress’s objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.³⁶ Courts therefore have uniformly rejected the assertion that “only the person who actually transmits funds . . . makes the contribution,”³⁷ recognizing that “it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift.”³⁸ Consequently, both the Act and the Commission’s implementing regulations provide that a person who furnishes another

³² 52 U.S.C. § 30101(8)(A).

³³ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³⁴ 52 U.S.C. § 30122.

³⁵ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³⁶ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³⁷ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁸ *O’Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

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with funds for the purpose of contributing to a candidate or committee “makes” the resulting contribution.³⁹ This is true whether funds are advanced to another person to make a contribution in that person’s name or promised as reimbursement of a solicited contribution.⁴⁰

Because the concern of the law is the true source from which a contribution to a candidate or committee originates, regardless of the mechanism by which the funds are transmitted, the Commission will evaluate the structure of the transaction itself and the arrangement between the parties to determine who in fact, “made” a given contribution.

Accordingly, in previous conduit contribution cases involving LLCs and closely held corporations, although the Commission split evenly in most of these prior matters due to a dispute over notice,⁴¹ Commissioners separately expressed agreement that Section 30122’s prohibition of

³⁹ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent [the Act’s reporting] restrictions.”).

⁴⁰ *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

⁴¹ Certification, MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (June 7, 2018); Certification, MURs 7014, 7017, 7019, and 7090 (DE First Holdings, *et al.*) (May 10, 2018); Certification, MURs 7013 and 7015 (IGX, LLC, *et al.*) (Apr. 10, 2018); Certification, MUR 6995 (Right to Rise, *et al.*) (May 8, 2018); Certification, MUR 6969 (MMWP12, LLC, *et al.*) (June 7, 2018); Certification, MUR 6968 (Tread Standard, LLC, *et al.*) (May 8, 2018); Certification, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Feb. 23, 2016); *but see* Certification, MUR 6920 (Am. Conservative Union, *et al.*) (Jan. 24, 2017) (finding reason to believe 501(c)(4) social welfare organization violated 52 U.S.C. § 30122).

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contributions in the name of another applies to LLCs and closely held corporations,⁴² a conclusion approved of by a panel of the U.S. Court of Appeals for the D.C. Circuit.⁴³

B. The Available Information Supports an Inference that PAAC and PEC Were Not the True Source of the Contributions to the IEOPCs

The factual record in this matter supports finding reason to believe that PAAC and PEC were not the true source of the contributions to the IEOPCs, and that Cohler was, in fact, the true contributor. Significant unknowns plague the record regarding the source or sources of PAAC and PEC's funds and their operations, which are made no clearer by PAAC and PEC's representations in their Response. What information is available, however, including the timing and nature of PAAC's and PEC's contributions, is consistent with the Complaint's allegation that the contributions to the IEOPCs were made in the name of another. The available information suggests, moreover, that Cohler may have been the source of their funds and exercised control over them such that PAAC and PEC operated to make contributions — and provide other charitable grants not relevant here — on his behalf.

Though PAAC and PEC were able to raise significant sums in short time, there is little to no information about how they obtained their funds or from whom. PAAC received a single donation of approximately \$430,000 in stock in its first five weeks after incorporation, which appears to be the sole funding it received before making its contribution to SMP.⁴⁴ PEC, meanwhile, received six donations totaling approximately \$22 million in the seven weeks between its incorporation and the

⁴² See Statement of Reasons of Vice Chairman Steven T. Walther and Comm'rs Ann M. Ravel and Ellen L. Weintraub at 3–4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“Although the ability of individuals and corporations to make unlimited contributions to super PACs is a post-*Citizens United* and *SpeechNow* phenomenon, the longstanding prohibition against making contributions in the name of another remains unchanged and squarely applies to these [LLC] cases Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.” (citations omitted)); Statement of Reasons of Chairman Matthew S. Petersen and Comm'rs Caroline C. Hunter and Lee E. Goodman at 8, 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“Upon thorough consideration of these matters, we conclude that closely held corporations and corporate LLCs may be considered straw donors in violation of section 30122 under certain circumstances. . . . [W]hen enforcing section 30122 in similar future matters, the proper focus will be on whether funds were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements. If they were, then the true source of the funds is the person who funneled them through the corporate entity for this purpose. Where direct evidence of this purpose is lacking, the Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”).

⁴³ *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (“The controlling commissioners did not dispute that [52 U.S.C.] § 30122 applies to closely held corporations and corporate LLCs. We agree that it does.”).

⁴⁴ Compare PAAC & PEC Resp. at 5 (“In its initial fiscal year (May 21, 2018 through June 30, 2018), PAAC received donations of appreciated publicly traded securities in the amount of \$434,400.”), with PAAC & PEC Resp. Ex. K, PAAC Grant Summary Chart (reflecting \$200,000 contribution to SMP on July 18, 2018).

end of its first fiscal year and, since then, has largely stopped receiving donations.⁴⁵ Though PAAC and PEC tout the number of donations each has received,⁴⁶ notably, neither has addressed how many distinct *donors* have given to them and neither has represented that the donations they received prior to making the relevant contributions came from more than one source.⁴⁷ PAAC and PEC also have not provided information explaining how they were able to obtain these sizeable donations. Publicly available information sheds no more light on the situation; PAAC and PEC have no online presence.⁴⁸ Furthermore, while ostensibly explaining the roles of Van Loben Sels, Carrig, and Apercen in the contributions of PAAC and PEC, Respondents fail to give similar attention to Cohler’s role and conspicuously sidestep the question of whether Cohler provided any of the funds for these organizations.

The timing of the transactions at issue also suggests that the contributions from PAAC and PEC to the IEOPCs may have been straw donor contributions. PAAC received one infusion of stocks worth approximately \$434,000 during its first five weeks after incorporation — between May 21 and June 30, 2018 — and shortly thereafter made a \$200,000 contribution to SMP on July 18, 2018, along with a donation of \$233,000 to a 501(c)(4) on July 31, 2018.⁴⁹ It thus appears that PAAC received a single infusion of funds and, in as few as 18 days, used that influx of funding to contribute to SMP. The Commission has previously found that close temporal proximity between an entity’s receipt of funds and its subsequent contribution may indicate that it is not the true source of the contribution.⁵⁰ While PEC’s timeline is more extended — it was formed in late September 2019, received over \$22 million in donations by year-end, and made contributions to the IEOPCs in February and May of 2020⁵¹ — its pattern of activity is likewise consistent with the use of the entity as a conduit for contributions in the name of another.⁵²

In addition, the available information is in tension with some of PAAC and PEC’s representations regarding the manner in which they operate and their purposes. Although both organizations stated in their IRS filings that grant-making would only be a subset of their overall

⁴⁵ PAAC & PEC Resp. at 3–5; Carrig Decl. ¶ 9.

⁴⁶ PAAC & PEC Resp. at 3–6.

⁴⁷ *See supra* nn. 1313–144 and accompanying text.

⁴⁸ *See* Compl. ¶¶ 9, 12 (discussing lack of public footprint of PAAC and PEC).

⁴⁹ PAAC & PEC Resp. at 5; PAAC & PEC Resp. Ex. K, PAAC Grant Summary Chart.

⁵⁰ Factual & Legal Analysis at 3, MUR 6920 (Now or Never PAC) (transfer of funds from respondent to entity who then made contribution to PAC “on the same day” indicative of conduit contribution); *accord* First Gen. Counsel’s Report at 9–10, MUR 6968 (Tread Standard, LLC, *et al.*) (\$150,000 contribution to an IEOPC approximately seven weeks after the LLC was formed).

⁵¹ PAAC & PEC Resp. at 3–5.

⁵² *Accord* First Gen. Counsel’s Report at 10–11, MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (contributions made over a nine-month period).

practices, both represent that they have not engaged in any public-facing outreach and do not describe any activity beyond grant-making.⁵³

The available information indicates that Cohler may be the source of PAAC and PEC's funds and may exercise control over the organizations. As described above, there is no available information that explains how PAAC and PEC raised the sizeable funds they received in the short time after their formation from third parties, supporting an inference that Cohler, the CEO of both organizations, is the source of PAAC's and PEC's funds.⁵⁴ Given this and the apparent relationship between Apercen, its partners, Van Loben Sels and Carrig, and Cohler,⁵⁵ it appears likely that Cohler is an Apercen client and the source of PAAC and PEC's funds. If so, then Van Loben Sels and Carrig have an incentive to follow Cohler's direction in voting to approve grants such that Cohler may also have exercised *de facto* control over those organizations' decision-making in contributing to the IEOPCs. This is consistent with the organizations' making straw donor contributions and contradicts PAAC and PEC's representations that there is sufficient separation between their source of funds and their decision-making to ameliorate concerns of the same.⁵⁶

More specifically, Van Loben Sels and Carrig submitted sworn declarations representing that the funds PAAC and PEC received "were not received for the purpose of making subsequent political contributions to super PACs in the name of another" and did not include a "designation, instruction, or encumbrance to any super PACs."⁵⁷ However, that the funds received were not encumbered or designated towards a specific purpose at the time they were received does not exclude a possible violation of Section 30122. For example, the court in *United States v. Whittemore* upheld a jury verdict finding that an individual had violated 52 U.S.C. § 30122 when he made a series of unconditional gifts to friends and employees while encouraging them to use those funds to contribute to a candidate.⁵⁸ Van Loben Sels and Carrig's carefully worded attestations that the funds "were not received for the purpose of making subsequent political contributions to super PACs in the name of another"⁵⁹ are nevertheless consistent with the Complaint's allegation that funds were provided to enable PAAC and PEC to make political contributions, as they merely make the conclusory legal claim that such contributions were not to be given in the name of another. And, in any event, if Cohler

⁵³ PAAC & PEC Resp. at 3–6; *accord* First Gen. Counsel's Report at 9–10, MUR 6995 (Right to Rise, *et al.*) (recommending finding reason to believe an LLC made conduit contributions where it ambiguously stated that it had plans to do business in the future).

⁵⁴ *See supra* nn. 44–48 and accompanying text.

⁵⁵ *See supra* nn.17–2121 and accompanying text.

⁵⁶ Moreover, although Van Loben Sels and Carrig discuss the process of vetting and approving grants, *see* Van Loben Sels Decl. ¶ 7 ("[a]ll grants awarded by PAAC, [sic] were reviewed and vetted through PAAC's diligence process"); Carrig Decl. ¶ 8 ("[a]ll grants awarded by PEC were reviewed and vetted through PEC's diligence process"), neither provide any details regarding what this process entails or how grant targets are selected in the first instance.

⁵⁷ Van Loben Sels Decl. ¶ 8; Carrig Decl. ¶ 9.

⁵⁸ 776 F.3d 1074, 1079 (9th Cir. 2015).

⁵⁹ Van Loben Sels Decl. ¶ 8; Carrig Decl. ¶ 9.

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funded PAAC and PEC, then Van Loben Sels and Carrig may lack personal knowledge of the purpose of the funding.⁶⁰ As noted earlier, Cohler did not submit a declaration.

The Response of PAAC, PEC, and their officers contends that this matter is distinguishable from prior matters before the Commission that involved alleged LLC conduits because PAAC and PEC are public benefit corporations that lack stockholders or other beneficial owners and, thus, “PAAC and PEC’s funds are legally distinct from the funds of any donor.”⁶¹ The legal separation between PAAC and PEC and the source or sources of their funds, however, does not preclude their engaging in specific transactions that violate Section 30122. For example, the Commission found reason to believe that a closely held corporation violated Section 30122 in MUR 6920 (American Conservative Union, *et al.*).⁶²

* * *

In sum, if Matt Cohler (1) is the source of PAAC and PEC’s funds, (2) proposes which organizations PAAC and PEC should support, and (3) holds sway over how PAAC and PEC’s boards vote — all of which are reasonable inferences from the information currently available — then it would appear that PAAC and PEC were not the true contributors to the IEOPCs. Accordingly, we voted to find reason to believe that PAAC, PEC, and Cohler violated 52 U.S.C. § 30122 and supported an investigation to get to the bottom of these serious allegations.⁶³

December 1, 2021
Date



Shana M. Broussard
Chair

December 1, 2021
Date



Ellen L. Weintraub
Commissioner

⁶⁰ And neither Van Loben Sels nor Carrig make any representations about whether those who funded PAAC and PEC did so with the purpose of making political contributions.

⁶¹ PAAC & PEC Resp. at 11.

⁶² Certification, MUR 6920 (Am. Conservative Union, *et al.*) (Sept. 20, 2017); *see also* Conciliation Agreement § IV.2, MUR 6920 (Am. Conservative Union, *et al.*) (explaining that respondent “American Conservative Union is registered with the IRS as a social welfare organization under section 501(c)(4) of the Internal Revenue Code”).

⁶³ *See* Certification in MUR 7754 (Pacific Atlantic Action Coalition, *et al.*), dated October 29, 2021.