

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEC MAIL CENTER
2017 JUN 21 AM 11:22

CAMPAIGN LEGAL CENTER
1411 K Street NW Suite 1400
Washington, DC 20005
(202) 736-2200

DEMOCRACY 21
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600

SANDHYA BATHIJA
1411 K Street NW, Suite 1400
Washington, DC 20005
(202) 736-2200

v.

MUR No. _____

KELSEY FOR CONGRESS
William H. Watkins III, Treasurer
110 E. Mulberry St., Suite 200
Collierville, TN 38017

BRIAN K. KELSEY FOR TENNESSEE STATE SENATE
William H. Watkins III, Treasurer
1661 Aaron Brenner Dr., Suite 300
Memphis, TN 38120

AMERICAN CONSERVATIVE UNION
Amanda C. Bunning, Treasurer
1331 H St. NW, Suite 500
Washington D.C. 20005

CITIZENS 4 ETHICS IN GOVERNMENT
Clyde Bright, Treasurer
4117 Hillsboro Pike, Suite 300-315
Nashville, TN 37215

STANDARD CLUB PAC
Troy Brewer, Treasurer
6213 Charlotte Ave. #112
Nashville, TN 37209

RED STATE PAC
William H. Watkins, III, Treasurer
1661 Aaron Brenner Dr., Suite 300
Memphis, TN 38120

GLEN CASADA
4893 Bethesda-Duplex Road
College Grove, TN 37046

STEVE DICKERSON
P.O. Box 120931
Nashville, TN 37212

RON GANT
P.O. Box 491
Rossville, TN 38066

DOLORES GRESHAM
P.O. Box 877
Somerville, TN 38068

MARTIN DANIEL
1834 Duncan Woods Lane
Knoxville, TN 37919

STEVE GLOVER,
4576 Raccoon Tr.
Hermitage, TN 37076

JOHN DOE, JANE DOE,
and other unknown straw contributors to
Kelsey for Congress.

COMPLAINT

Pursuant to 52 U.S.C. § 30109(a)(1) and 11 C.F.R. § 111.4, Complainants Campaign Legal Center, Democracy 21, and Sandhya Bathija, on information and belief, allege that Brian Kelsey's federal campaign committee, Kelsey for Congress; Kelsey's state campaign committee, Brian K. Kelsey for Tennessee State Senate; American Conservative Union (ACU); Citizens 4 Ethics in Government; Standard Club PAC; Kelsey's state political committee, Red State PAC;

and straw donors including Glen Casada, Steve Dickerson, Ron Gant, Dolores Gresham, Martin Daniel, Steve Glover, and John and Jane Doe (collectively “Straw Donors”) have violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.* as follows.

1. According to published reports and reports filed with the Commission and Tennessee state authorities, in 2016, Brian Kelsey and entities under his control developed and executed at least two schemes to knowingly and willfully funnel illegal soft money from Kelsey’s state campaign to his federal campaign through straw donor intermediaries.
2. First, as described in more detail below, Kelsey’s state campaign committee transferred more than \$100,000 to a state PAC, which days later transferred most of those funds (in part through an intermediary) to a corporation to pay for advertising that expressly advocated Kelsey’s election to Congress.
3. Second, as described in more detail below, Kelsey used funds from his state campaign committee and state political committee to unlawfully reimburse state legislators who contributed to Kelsey for Congress.
4. “If the Commission, upon receiving a complaint ... has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] ... [t]he Commission shall make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

5. Brian Kelsey is a Tennessee state senator and an attorney who, among other responsibilities, is Chairman of the Judiciary Committee for the Tennessee State Senate.¹

¹ *See Tenn. Gen. Assembly*, “Senator Brian Kelsey,” <http://www.capitol.tn.gov/senate/members/s31.html> (accessed June 9, 2017).

6. Kelsey ran for Congress in the Republican primary for Tennessee's 8th Congressional District in 2016. Kelsey filed a Statement of Candidacy with the Commission on February 2, 2016,² and designated Kelsey for Congress (ID: C00607937) as his federal campaign committee.
7. Kelsey for Congress' treasurer is William H. Watkins III.³ Watkins is also the treasurer for Kelsey's state campaign committee,⁴ and for Kelsey's state political committee, Red State PAC.⁵
8. The American Conservative Union (ACU) is a nonprofit corporation exempt from taxation under section 501(c)(4) of the Internal Revenue Code. ACU reports independent expenditures to the Commission under ID: C90013236.
9. On June 2, 2016, ACU endorsed Kelsey for Congress.⁶
10. On July 11, 2016, Kelsey's state campaign committee transferred \$106,341 to a Tennessee state political committee called Standard Club PAC, according to reports filed with Tennessee state authorities.⁷ Before this transfer, Standard Club PAC had only \$27,792 on hand in its campaign account.⁸

² Brian Kelsey, FEC Form 2 Statement of Candidacy (Feb. 2, 2016), <http://docquery.fec.gov/pdf/889/201602029008435889/201602029008435889.pdf>; see also Dave Boucher, *Rep. Fincher Won't Seek Reelection; Kelsey to Run*, The Tennessean (Feb. 1, 2016), <http://www.tennessean.com/story/news/politics/2016/02/01/us-rep-fincher-wont-seek-re-election/79650574/>.

³ Kelsey for Congress, FEC Form 3 Statement of Organization (Mar. 9, 2016), <http://docquery.fec.gov/pdf/957/201603099009708957/201603099009708957.pdf>.

⁴ See Exhibit A (Tenn. Online Campaign Finance, "Brian K. Kelsey," accessed June 19, 2017).

⁵ See Exhibit B (Tenn. Online Campaign Finance, "Red State PAC," accessed June 19, 2017).

⁶ Press release, *ACU Endorses Brian Kelsey*, American Conservative Union (June 2, 2016), <http://acustaging.com/acu-endorses-brian-kelsey/>

⁷ See Exhibit C at 8 (Brian K. Kelsey, Early Year-End Supplemental 2016, Tenn. Online Campaign Finance (Jan 30, 2017), also available at https://apps.tn.gov/tncamp-app/search/pub/report_full.htm?reportId=70530).

⁸ See Exhibit D at 7-9 (Standard Club PAC, Amended Pre-Primary 2016, Tenn. Online Campaign Finance (Jan. 30, 2017), also available at https://apps.tn.gov/tncamp-app/search/pub/report_full.htm?reportId=70277).

11. Four days later, on July 15, Standard Club PAC transferred \$30,000 to ACU at the address 1331 H St. NW in Washington D.C., according to Standard Club PAC's reports filed with Tennessee state authorities.⁹
12. On July 13, Standard Club PAC contributed \$60,000 to the federal political committee Citizens 4 Ethics in Government (ID: C00524082) at the address 30 Burton Hills Blvd. in Nashville, Tennessee; the federal committee refunded that contribution on the same day, according to Standard Club PAC's reports filed with Tennessee state authorities.¹⁰
13. On July 15, Standard Club PAC contributed \$30,000 to Citizens 4 Ethics in Government, and contributed another \$7,000 on July 20, for a total of \$37,000.¹¹
14. The \$106,341 that Standard Club PAC received from Kelsey's state committee constituted more than 90% of Standard Club PAC's income for 2016.¹² Standard Club PAC's \$67,000 in contributions to Citizens 4 Ethics in Government and ACU constituted 75% of Standard Club PAC's total spending for 2016.¹³
15. Citizens 4 Ethics in Government reported receiving the \$30,000 and \$7,000 contributions from Standard Club PAC on its reports filed with the Commission; however, it did not report receiving and refunding the \$60,000 that Standard Club PAC reported to state authorities.¹⁴ The \$37,000 in reported contributions from Standard Club PAC constituted the entirety of the contributions Citizens 4 Ethics in Government received over the

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Exhibit D (Standard Club PAC's 2016 reports filed with Tennessee state election authorities). Besides Kelsey's \$106,341 contribution, Standard Club PAC received only three other contributions in 2016: \$5,000 on Feb. 18, \$4,600 on Apr. 1, and \$2,000 on Apr. 5. *Id.*

¹³ Standard Club PAC reported only \$22,047 in disbursements in 2016, besides the \$67,000 in disbursements to ACU and Citizens 4 Ethics in Washington. *Id.*

¹⁴ Citizens 4 Ethics in Government, October Quarterly (reporting period 07/01/2016 to 09/31/2016) at 6, <http://docquery.fec.gov/pdf/125/201610139032411125/201610139032411125.pdf>.

reporting period, and almost the entirety of contributions it received during the entire 2015-2016 election cycle.¹⁵

16. The treasurer of the Standard Club PAC is Troy Brewer. The email address listed on Citizens 4 Ethics in Government's FEC Form 1 begins with "tbrewer,"¹⁶ and that organization's only reported disbursement for accounting services in the 2015-2016 cycle was to "Troy Brewer CPA Inc."¹⁷
17. On July 21, 2016—less than a week after receiving \$37,000 in Standard Club PAC contributions—Citizens 4 Ethics in Government transferred \$36,000 to ACU, at the address 1331 H. ST. NW, Suite 500 in Washington D.C.¹⁸ This constituted almost the entirety of Citizens 4 Ethics in Government's disbursements for the 2015-2016 cycle.¹⁹
18. On July 20, 2016, ACU reported a \$30,000 independent expenditure for a "radio media buy," followed by another \$19,480 independent expenditure for radio on July 22, and a \$30,520 independent expenditure for "radio/digital media" on July 26 — all in support of

¹⁵ *Id.* at 2. Prior to the Standard Club PAC contributions, Citizens 4 Ethics in Government had only \$6,141 cash on hand, and the only other itemized contribution it received during 2016 was from a corporation that shares its address and has an almost identical name. *See id.*

¹⁶ Citizens 4 Ethics in Government, FEC Form 1 Statement of Organization (July 31, 2014), <http://docquery.fec.gov/pdf/486/14962169486/14962169486.pdf>.

¹⁷ Citizens 4 Ethics in Government, Post-General Report (reporting period 10/01/2016 to 09/31/2016) at 6, <http://docquery.fec.gov/pdf/738/201612089039927738/201612089039927738.pdf>.

¹⁸ *Id.* at 7. The report lists the state as "CA" but this appears to be a reporting error because the zip code, 20005, is in the District of Columbia.

¹⁹ Citizens 4 Ethics in Government only reported \$5,330 in other disbursements in 2016, for consulting and compliance costs. Citizens 4 Ethics in Government, Post-General Report (reporting period 10/01/2016 to 09/31/2016) at 2, 6, <http://docquery.fec.gov/pdf/738/201612089039927738/201612089039927738.pdf>.

Kelsey's federal campaign.²⁰ Thus, between July 20 and 26, ACU spent \$80,000 on independent expenditures in support of Kelsey.²¹

19. In summary, on July 11, Brian Kelsey's state campaign committee transferred \$106,341 to Standard Club PAC, and then:

- On July 15, the Standard Club PAC transferred \$30,000 to ACU;
- On July 20, ACU reported making a \$30,000 independent expenditure in support of Kelsey.

Additionally:

- On July 15 and 20, the Standard Club PAC transferred a total of \$37,000 to Citizens 4 Ethics in Government;
- On July 21, Citizens 4 Ethics in Government transferred \$36,000 to ACU;
- On July 22, ACU reported making a \$19,480 independent expenditure in support of Kelsey, and on July 26, reported a \$30,520 independent expenditure in support of Kelsey.

20. On its reports filed with the Commission, ACU did not report the identities of any contributors who gave for the purpose of furthering those independent expenditures. On April 5, 2017, the Commission's Reports Analysis Division sent a request for additional information to ACU, directing ACU to identify any contributors who had given to further

²⁰ American Conservative Union, FEC Form 5 Report of Independent Expenditures Made and Contributions Received, October Quarterly (reporting period 07/01 to 09/31) at 2, <http://docquery.fec.gov/pdf/046/201610139032405046/201610139032405046.pdf>.

²¹ *Id.* This constituted the entirety of American Conservative Union's independent expenditures in 2016, save for one \$5,100 expenditure in support of a House candidate in New York on June 21, 2016. See American Conservative Union, FEC Form 5 Report of Independent Expenditures Made and Contributions Received, July Quarterly (reporting period 04/01 to 06/30) at 2, <http://docquery.fec.gov/pdf/464/201607309021962464/201607309021962464.pdf>.

these independent expenditures by May 10, 2017.²² As of June 18, 2017, ACU has not responded to the request.

21. Citizens 4 Ethics in Government was founded by Andy Miller, a major donor who also provided almost the entirety of Standard Club PAC's contributions for the first year of its existence.²³ Additionally, Thomas A. "Thomsen" Smith was a fundraiser for Kelsey for Congress and, according to published reports, has helped raise funds for Standard Club PAC.²⁴
22. On June 5, 2017, *The Tennessean* reported on "questionable money transfers in which Kelsey gave thousands of dollars from his state campaign fund to legislative colleagues. About the same time, several of those state lawmakers made contributions to Kelsey's congressional campaign."²⁵

On March 22, 2016, House Majority Leader Glen Casada's personal campaign account donated \$1,000 to Kelsey's congressional campaign account. On the same exact day, Casada's PAC gave another \$1,000 to Kelsey's congressional campaign account, Casada's records indicate. Kelsey's federal disclosures only show one contribution from Casada. Thirty-eight days later, Kelsey's state

²² RFAI from Jill Sugarman, Sr. Campaign Finance & Reviewing Analyst, Reports Analysis Division, to ACU (Apr. 5, 2017), <http://docquery.fec.gov/pdf/749/201704060300083749/201704060300083749.pdf>.

²³ See Dave Boucher and Joel Ebert, *Nashville's Private Club with a PAC*, THE TENNESSEAN (Apr. 2, 2017), <http://www.tennessean.com/story/news/politics/2017/04/02/campaign-finance-investigation-the-standard-club-nashville/99734196/>; see also Tom Humphrey, *Political Notebook: One PAC Resolves Violation, Another to Be Investigated*, KNOXVILLE NEWS SENTINEL (Aug. 14, 2012), <http://archive.knoxnews.com/news/political-notebook-one-pac-resolves-violation-another-to-be-investigated-ep-360253057-356763061.html> (noting that \$10,000 of the \$10,100 raised by Standard Club PAC had come from Miller).

²⁴ Dave Boucher and Joel Ebert, *Expert: Money Trail Shows Possible Misconduct by State Sen. Brian Kelsey*, THE TENNESSEAN (Jun. 2, 2017), <http://www.tennessean.com/story/news/2017/06/02/expert-money-trail-shows-possible-misconduct-state-sen-brian-kelsey/362453001/>.

²⁵ Dave Boucher and Joel Ebert, *More Sen. Brian Kelsey Campaign Transactions Hint at Possible Straw Donor Issues*, THE TENNESSEAN (Jun. 5, 2017), <http://www.tennessean.com/story/news/politics/2017/06/05/more-sen-brian-kelsey-campaign-transactions-hint-possible-straw-donor-issues/365529001/>.

political action committee — Red State PAC —gave Casada’s state PAC \$2,500, according to state disclosures.²⁶

23. *The Tennessean* also reported that:

- On April 29, Kelsey’s state PAC gave \$1,000 to the campaign of Sen. Todd Gardenhire, R-Chattanooga. On May 3, Gardenhire personally gave \$1,000 to Kelsey for Congress.
- On December 28, 2015, Kelsey’s state PAC gave \$1,000 to Sen. Steve Dickerson, R-Nashville. On February 10, Dickerson personally gave \$1,000 to Kelsey for Congress. On April 27, Kelsey’s state campaign committee gave \$3,000 to Dickerson's campaign. On June 23, Dickerson personally gave \$500 to Kelsey’s federal campaign committee.
- On April 22, 2016, Kelsey’s state PAC records show a \$1,000 contribution to Rep. Ron Gant, R-Rossville. On June 23, Gant personally gave \$1,000 to Kelsey for Congress.
- On December 29, 2015, Kelsey’s state campaign committee gave \$175 to Sen. Dolores Gresham, R-Somerville. On March 18, Gresham personally gave \$1,000 to Kelsey for Congress. On April 29, Kelsey’s state PAC report states it gave Gresham's campaign \$2,500.
- On March 27, Rep. Martin Daniel, R-Knoxville personally gave \$500 to Kelsey for Congress. On April 27, Kelsey’s state PAC gave Daniel's campaign committee \$1,000.
- On April 29, Kelsey’s state PAC gave \$500 to the campaign of Steve Glover. On July 19, Glover personally gave \$250 to Kelsey’s federal PAC.²⁷

CAUSES OF ACTION

I. ACU MADE \$80,000 IN PROHIBITED AND EXCESSIVE CONTRIBUTIONS TO KELSEY FOR CONGRESS IN THE FORM OF COORDINATED COMMUNICATIONS

24. There is reason to believe that ACU has made \$80,000 in in-kind contributions to Kelsey for Congress in the form of coordinated communications, 11 CFR § 109.21, in violation of FECA’s prohibition on corporate contributions to a candidate committee, 52 U.S.C. §

²⁶ *Id.*

²⁷ *Id.*

30118(a) and (b)(2), and in excess of FECA's \$2,700 individual contribution limit, *id.* § 30116(a)(1).

25. Federal law limits to \$2,700 the amount of a contribution that a Congressional candidate or his authorized campaign committee may accept from an individual donor. 52 U.S.C § 30116(a)(1). FECA also prohibits a corporation or labor union from making a contribution to a federal candidate. 52 U.S.C. § 30118(a).
26. FECA makes clear that any expenditure made in coordination with a candidate is a contribution to such candidate. FECA states: “[E]xpenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents *shall be considered to be a contribution to such candidate.*” 52 U.S.C. § 30116(a)(7)(B)(i) (emphasis added). This statutory coordination provision is implemented by the nearly identical regulation defining “coordination” to mean “in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.” 11 C.F.R. § 109.20(a).²⁸
27. Additionally, under the Commission’s “coordinated communications” regulations at 11 C.F.R. § 109.21, a communication is coordinated with a candidate and/or that candidate’s authorized committee, and is thus a contribution to that candidate’s committee, when the communication (1) is paid for, in whole or in part, by a person other than the candidate or committee; (2) satisfies at least one of the “content standards” in the regulation, such as

²⁸ Any expenditure that is “coordinated” within the meaning of this regulation, “but that is not made for a coordinated communication under 11 CFR 109.21” is treated as an in-kind contribution to the candidate with whom it was coordinated. 11 C.F.R. § 109.20(b) (emphasis added). Similarly, the Commission regulation defining “independent expenditure” makes clear that an expenditure is not “independent” if it is “made in cooperation, consultation, or concert, with, or at the request or suggestion of,” a candidate, authorized committee, or a political party committee. 11 C.F.R. § 100.16.

expressly advocating the election or defeat of a federal candidate;²⁹ and (3) satisfies at least one of the “conduct standards” in the regulation. *Id.* § 109.21(a).

28. The activities that satisfy the “conduct standard” are described at 11 C.F.R. § 109.21(d). Among other things, the conduct prong can be satisfied if a communication is created, produced, or distributed at the “request or suggestion” of a candidate or his agent, *id.* § 109.21(d)(1), or as the result of substantial discussions between the candidate and spender, *id.* § 109.21(d)(3), or if the candidate or his agent was materially involved in decisions about the communication, *id.* § 109.21(d)(2). A communication is distributed at the request or suggestion of a candidate if the entity financing the communication “suggest[s]” the communication and the candidate “assents to the suggestion.” *Id.* § 109.21(d)(1)(ii).
29. ACU’s \$80,000 in radio and digital communications in support of Kelsey satisfied the “payment” prong of the regulation, since they were paid for by a person other than Kelsey for Congress, and satisfied the “content” prong by expressly advocating for Kelsey’s election.
30. There is reason to believe that ACU’s expenditures satisfied the “conduct” prong. As discussed below, the timing and amount of the transfers from Kelsey's state account to Standard Club PAC and ultimately to ACU (in part through Citizens 4 Ethics in Government), strongly indicate that ACU’s expenditures were — at a minimum — made at the request or suggestion of Kelsey (or his agents) within the meaning of section 109.21(d)(1).

a. ACU’s July 20 Expenditures

²⁹ *Id.* § 109.21(c)(3).

31. On July 11, Kelsey’s state campaign committee transferred \$106,341 to Standard Club PAC, which on July 15 transferred \$30,000 to ACU, which on July 20 reported \$30,000 in independent expenditures for radio ads in support of Kelsey.
32. To assert that this rapid series of events was mere coincidence — that Kelsey *just happened* to transfer funds to Standard Club PAC which days later *just happened* to channel \$30,000 to ACU immediately before ACU *just happened* to spend \$30,000 on advertising supporting Kelsey — would defy belief. The much simpler and more plausible inference is that Kelsey (or his agents) routed the funds to ACU to pay for the advertising. It is irrelevant whether this transfer was conducted in response to an express request from ACU or initiated by Kelsey; section 109.21(d)(1) provides that either such action would meet the “request or suggestion” conduct standard.³⁰ In other words, there is reason to believe that the conduct standard was met, regardless of whether Kelsey expressly requested the advertising or ACU expressly informed Kelsey of its planned advertising and Kelsey assented by paying for it. Therefore, there is reason to believe that ACU’s communications were made at the request or suggestion of Kelsey (or his agents).
33. The fact that Kelsey’s transfers so closely match ACU’s spending in both time and amount also strongly suggests that Kelsey (or his agents) were aware of that intended timing and/or amount. Accordingly, there is also reason to believe that Kelsey (or his agents) met the conduct standard by being materially involved in ACU’s planning or by

³⁰ See also 11 C.F.R. § 109.21(e) (“Agreement or formal collaboration between the [payor] and the [candidate] is not required for a communication to be a coordinated communication.”); Coordinated and Independent Expenditures, 68 Fed. Reg. at 432 (explaining that section 109.21(d)(1)(ii) “is intended to prevent circumvention of the statutory ‘request or suggestion’ test . . . by, for example, the expedient of implicit understandings without a formal request or suggestion”).

engaging in substantial discussions with ACU about ACU's communications. 11 C.F.R. § 109.21(d)(2)-(3).

b. ACU's July 22 and July 26 Expenditures

34. Additionally, following Kelsey's state campaign committee's July 11 transfer of funds to Standard Club PAC, on July 15 and 20, the Standard Club PAC transferred a total of \$37,000 to Citizens 4 Ethics in Washington, and on July 21, Citizens 4 Ethics in Government transferred \$36,000 to ACU. The next day, July 22, ACU reported making a \$19,480 independent expenditure in support of Kelsey, and on July 26, reported an additional \$30,520 independent expenditure in support of Kelsey.
35. Standard Club PAC and Citizens 4 Ethics in Government are closely connected: Troy Brewer is Standard Club PAC's treasurer, the email address listed on Citizens 4 Ethics in Government's filings begins with "tbrewer," and its only reported disbursement for accounting services in the 2015-2016 cycle was to "Troy Brewer CPA Inc."³¹
36. As above, there is reason to believe that ACU did not merely have funds fortuitously drop into its lap from the very candidate for whom it was preparing to advertise. For these funds to be quickly transferred from Kelsey's state campaign committee, to Standard Club PAC, to Citizens 4 Ethics in Government, and ultimately to ACU, which spent the funds on pro-Kelsey communications, strongly suggests coordination and discussion among these entities. There is therefore reason to believe that ACU's communications were made at the request or suggestion of Kelsey (or his agents) within the meaning of 11 C.F.R. § 109.21(d)(1). Similarly, the rapid sequence of transfers and spending also provides reason to believe that Kelsey (or his agents) engaged in substantial discussions

³¹ See sources cited *supra* ¶ 16; see also ¶ 21.

with ACU, *id.* § 109.21(d)(3), and/or that there was material involvement by Kelsey (or his agents) in ACU's communication, *id.* § 109.21(d)(2).

37. Because ACU's \$80,000 in independent expenditures satisfied the three prongs of the coordinated communications test, 11 CFR § 109.21, ACU made as much as \$80,000 in in-kind contributions to Kelsey for Congress, in violation of FECA's prohibition on contributions to a candidate committee from a corporation, 52 U.S.C. § 30118(a) and (b)(2), and in excess of FECA's \$2,700 contribution limit, *id.* § 30116(a)(1).

II. KELSEY FOR CONGRESS ACCEPTED PROHIBITED AND EXCESSIVE CONTRIBUTIONS FROM ACU AND FAILED TO REPORT THOSE CONTRIBUTIONS

38. Candidates and their campaign committees may not accept contributions in excess of federal limits, 52 U.S.C § 30116(a)(1), or from prohibited sources such as corporations, *id.* § 30118(a); *see also* 11 C.F.R. § 110.9. A candidate's campaign committee must also report the identity of all persons who contribute more than \$200. 52 U.S.C § 30104(b).
39. As described in Count I, there is reason to believe that ACU made \$80,000 in in-kind contributions to Kelsey for Congress in the form of coordinated communications, *see supra* ¶¶21-33, and therefore there is also reason to believe that Kelsey for Congress accepted in-kind contributions from ACU in excess of FECA's \$2,700 limit, 52 U.S.C. § 30116(a)(1); in violation of FECA's prohibition on contributions to a candidate committee using corporate funds, 52 U.S.C. § 30118(a) and (b)(2); and in violation of FECA's requirement that candidates report and disclose all contributions received, 52 U.S.C. § 30104(b).

III. RESPONDENTS KNOWINGLY AND WILLFULLY VIOLATED FECA'S STRAW DONOR PROHIBITION

40. There is reason to believe that the transfers between Kelsey’s state committee, Standard Club PAC, and Citizens 4 Ethics in Government all violated FECA’s “straw donor” prohibition, which 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.” 52 U.S.C. § 30122. There is also reason to believe that Kelsey’s state committee and associated Red State PAC, respondent Tennessee state lawmakers, and Kelsey for Congress violated the straw donor ban by arranging for Kelsey’s state committee and Red State PAC to reimburse the lawmakers for their contributions to Kelsey for Congress. *Id.*
41. The Commission regulation implementing the statutory prohibition on “contributions in the name of another” provides the following examples of “contributions in the name of another”:
- “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.” 11 C.F.R. § 110.4(b)(2)(i).
 - “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.” 11 C.F.R. § 110.4(b)(2)(ii).
- a. Straw Donor Contributions to Citizens 4 Ethics in Government and ACU*
42. On July 11, Kelsey’s state committee transferred \$106,341 to Standard Club PAC (which at the time had only \$27,792 in funds in its account), and on July 15 Standard Club PAC

transferred \$30,000 to ACU and \$30,000 to Citizens 4 Ethics in Government, plus an additional \$7,000 on July 20.³² On July 21, Citizens for Ethics in Government then transferred \$36,000 of the \$37,000 it received from Standard Club PAC to ACU.

43. Given the timing and amount of these transfers, there is reason to believe that Kelsey's state committee violated 52 U.S.C. § 30122 by "[m]aking a contribution of money" to ACU and Citizens 4 Ethics in Government "and attributing as the source of the money" Standard Club PAC, "when in fact" Kelsey's state committee "was the source." *See* 11 C.F.R. § 110.4(b)(2)(ii).
44. There is additionally reason to believe that Standard Club PAC violated 52 U.S.C. § 30122 by knowingly permitting its name to be used to effect the Kelsey state committee's straw donor contributions to ACU and Citizens for Ethics in Government, and by "[g]iving money . . . , all or part of which was provided to" Standard Club PAC by Kelsey's state committee (i.e., the true contributor) without disclosing the source of money at the time the contribution was made. *See* 11 C.F.R. § 110.4(b)(2)(i).
45. There is additionally reason to believe that Citizens 4 Ethics in Government violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of Standard Club PAC when it knew that the true contributor was Kelsey's state committee.³³ And there is reason to believe Citizens 4 Ethics in Government violated 52 U.S.C. § 30122 by

³² The \$37,000 from Standard Club PAC constituted the entirety of the contributions Citizens 4 Ethics in Government received over the reporting period, and almost the entirety of contributions it received during the year. *See* Exhibit D.

³³ In addition to the timing of the contributions, Standard Club PAC's treasurer, Troy Brewer, was also paid by Citizens 4 Ethics in Government for compliance/accounting services, and Citizens 4 Ethics in Government was founded by Andy Miller, who is also a major supporter of the Standard Club PAC. And the receipts from Standard Club PAC, and disbursements to ACU, constituted almost the entirety of the committee's activities for 2016. *See* sources cited *supra* ¶¶ 16, 21.

permitting its name to be used to effect a straw donor contribution to ACU, when the true contributor was Kelsey's state committee. *See* 11 C.F.R. § 110.4(b)(2)(i).³⁴

46. Further, based on the elaborate nature of this coordinated effort to disguise the true source of contributions, there is reason to believe the violations were knowing and willful, 52 U.S.C. § 30109(a)(6)(C).

b. Straw Donor Contributions to Kelsey for Congress

47. Published reports also indicate that that Kelsey's state committee and state PAC, Red State PAC, reimbursed certain Tennessee state lawmakers for their contributions to Kelsey for Congress.³⁵ On April 29, 2016, Red State PAC donated \$1,000 to state Sen. Todd Gardenhire's campaign committee, and on May 3, Gardenhire personally contributed \$1,000 to Kelsey for Congress.³⁶ On December 28, 2015, Red State PAC gave \$1,000 to state Sen. Steve Dickerson; on February 10, 2016, Dickerson personally contributed \$1,000 to Kelsey for Congress.³⁷ On April 22, 2016, Red State PAC gave \$1,000 to Rep. Ron Gant; on June 23, 2016, Gant contributed \$1,000 to Kelsey for Congress.³⁸ On March 22, 2016, Glen Casada gave \$1,000 to Kelsey for Congress; shortly thereafter, Red State PAC gave Casada's state PAC \$2,500.³⁹ On March 18, Dolores Gresham gave \$1,000 to Kelsey for Congress; on April 29, Red State PAC gave

³⁴ Citizens 4 Ethics in Government's report described its transfer to ACU as a "contribution," and on its reports filed with the Commission described the contribution as coming from its own funds, rather than from Kelsey's state committee. Citizens 4 Ethics in Government, October Quarterly, *supra* note 14, at 7.

³⁵ Boucher and Ebert, *More Sen. Brian Kelsey Campaign Transactions Hint at Possible Straw Donor Issues*, THE TENNESSEAN, *supra* note 24.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* On Mar. 22, 2016, Casada's state PAC also reported to Tennessee authorities the making of an additional \$1,000 contribution to Kelsey for Congress that never appeared on Kelsey for Congress' reports filed with the Commission. *Id.*

Gresham’s committee \$2,500.⁴⁰ On March 27, Martin Daniel gave Kelsey for Congress \$500; on April 27, Red State PAC gave Daniel’s committee \$1,000.⁴¹ On April 29, Red State PAC gave Steve Glover’s committee \$500; on July 19, Glover gave Kelsey for Congress \$500.⁴² Using these reimbursements, Kelsey laundered his state committee funds — which he could not lawfully transfer to his federal campaign, 11 C.F.R. § 110.3(d) — by exchanging them for individual hard-money contributions from individual state legislators.⁴³

48. Commission precedent makes clear that the straw donor ban prohibits a third party from reimbursing a contributor, in whole or in part, for a contribution to a federal candidate’s committee. *See, e.g.* MUR 5903 (PBSJ Corporation); MUR 5927 (Solomon); MUR 5955 (Valdez); MUR 6184 (Skyway Concession); MUR 6186 (Leggio); MUR 6465 (Fiesta Bowl). For example, in MUR 5948 (Critical Health Systems of North Carolina), the Commission found reason to believe the straw donor ban had been violated based on a pattern of “bonus” payments from a corporation to partners who had made contributions, even if the amount and timing of the reimbursements did not precisely align with the amount and timing of the contributions. *Id.*
49. Therefore, there is reason to believe that Kelsey’s state committee and Red State PAC violated 52 U.S.C. § 30122 by making contributions of money to Kelsey for Congress “and attributing as the source of the money” certain Tennessee state legislators, “when in

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ There are likely additional straw donors, and if the Commission finds any in its investigation it should add those individuals as respondents.

fact” Kelsey’s state committee and Red State PAC were the sources. *See*

11 C.F.R. § 110.4(b)(2)(ii).

50. There is additionally reason to believe that certain Tennessee state legislators violated 52 U.S.C. § 30122 by knowingly permitting their names to be used to effect the Kelsey state committee’s and Red State PAC’s straw donor contributions to Kelsey for Congress. *See* 11 C.F.R. § 110.4(b)(2)(i).
51. Finally, given that Kelsey’s state committee, Red State PAC, and Kelsey for Congress all employed the same treasurer, there is reason to believe that Kelsey for Congress violated 52 U.S.C. § 30122 by knowingly accepting contributions in the names of certain Tennessee lawmakers when it knew that the true contributors were Kelsey’s state committee and Red State PAC, and additionally violated 52 U.S.C. § 30104(b) by failing to accurately report the identity of its contributors.
52. Further, given that Kelsey is an attorney and the Chair of the Senate Judiciary Committee in the Tennessee State Senate, and given the extensive nature of this coordinated effort to disguise the true sources of contributions and the fact that *three* distinct committees under Kelsey’s control all engaged in the scheme, there is reason to believe that the violations by Kelsey’s state committee, Red State PAC, and Kelsey for Congress were knowing and willful, 52 U.S.C. § 30109(a)(6)(C).

IV. KELSEY KNOWINGLY AND WILLFULLY VIOLATED FECA’S SOFT MONEY PROHIBITION

53. Because Kelsey’s state campaign committee made contributions to his federal committee through the schemes described above, there is reason to believe that Kelsey violated the soft money bans on a federal candidate “transfer[ring]” non-federal funds in connection

with a federal election, 52 U.S.C. § 30125(e)(1)(A), and on transferring non-federal funds from a candidate's state campaign to his federal campaign, 11 CFR § 110.3(d).

54. Tennessee allows state candidate committees to accept donations in amounts and from sources prohibited by federal law. In 2015-2016, the campaign committee for a Tennessee state senate candidate like Kelsey could accept donations of up to \$11,500 per election (\$23,000 per cycle) from corporations, unions, and state PACs.⁴⁴ A federal candidate's committee, in contrast, is prohibited from accepting contributions from corporations and unions, and cannot accept contributions from multicandidate PACs in excess of \$5,000 per election. Additionally, Tennessee imposes no limits on the amount an individual may donate to a PAC,⁴⁵ and a PAC receiving such unlimited donations may then donate up to \$11,500 per election to candidates;⁴⁶ in contrast, federal law limits to \$5,000 the amount that an individual may contribute to a PAC, and a PAC may contribute no more than \$5,000 per election to a candidate (\$2,700 for a non-multicandidate PAC).
55. The Commission has long recognized that many “[c]ontributions to state candidates . . . would be impermissible if given to a federal candidate,” and accordingly the Commission's regulations prohibit all transfers from a candidate's state campaign account to that candidate's federal campaign committee. 11 CFR 110.3(d); *see also*

⁴⁴ Tenn. Code Ann. § 2-10-302(b)(1) (West); *see also* Tenn. Bureau of Ethics and Campaign Finance, *2015/16 Contribution Limit Changes*, http://www.tn.gov/assets/entities/tref/attachments/Campaign_Finance_Limit_Changes_for_2015_and_2016.pdf.

⁴⁵ *See, e.g.* Tenn. Bureau of Ethics and Campaign Finance, *Campaign Finance Guide for PACs* at 8, <https://www.tn.gov/assets/entities/tref/attachments/PACCFDBooklet8x11.pdf>.

⁴⁶ Tenn. Bureau of Ethics and Campaign Finance, *2015/16 Contribution Limit Changes*, *supra* note 44.

Explanation and Justification for Transfer of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474 (January 8, 1993) (noting that some states allow “contributions to state candidates that would exceed FECA limits . . . [and] allow corporations and labor organizations to make contributions to state candidates”).

56. More generally, federal law contains a “soft money” prohibition to prevent the circumvention of the base \$2,700 candidate contribution limit, and of the prohibition on corporate and union contributions to federal candidates. Section 30125(e)(1) states:

A candidate, individual holding Federal office, agent of a candidate or individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not —

(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act....

52 U.S.C. § 30125(e)(1) (emphasis added).

57. This soft money prohibition is broadly drafted. It applies, *inter alia*, to any candidate for federal office, to any agent of a candidate, and to any “entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of” a candidate. *Id.*; *see also* 11 C.F.R. §§ 300.60, 300.61. Candidates and their agents cannot “solicit, receive, direct, transfer or spend funds in connection with an election for Federal office” unless those funds comply with federal law’s contribution limits, prohibitions and reporting requirements. *Id.*
58. As the Commission recently observed, together these soft money provisions “are designed to prevent the use of funds that are outside the limitations and prohibitions of

the Act in federal elections, and to ensure that all funds used in federal elections are reported.” MUR 7109 (Portantino), Factual and Legal Analysis at 4.⁴⁷

59. Kelsey’s state senate campaign committee raised funds under non-federal limits and from prohibited non-federal sources. After Kelsey became a federal candidate, Kelsey’s state campaign committee—which was an entity “established” and “controlled by or acting on behalf of” Kelsey—transferred \$106,347 to Standard Club PAC, which promptly transferred \$67,000 to Citizens 4 Ethics in Government and ACU, which ultimately aired independent expenditures supporting Kelsey’s federal candidacy.
60. At a minimum, the timing and amounts of the transfers provide reason to believe that Brian Kelsey violated the soft money ban on a federal candidate “transfer[ring]” non-federal funds in connection with a federal election. 52 U.S.C. § 30125(e)(1)(A).
61. Additionally, because ACU’s expenditures constituted coordinated communications and should have been reported as in-kind contributions to Kelsey for Congress, *see* Count I, and because Kelsey’s state campaign committee was the true source of those funds, *see* Count III(a), there is reason to believe that Kelsey additionally violated 52 U.S.C. § 30125(e)(1)(A) by “receiv[ing]” those soft money funds, and violated 11 CFR § 110.3(d) by, in effect, transferring funds from his nonfederal state committee to his principal federal campaign committee, *id.* § 110.3(d).⁴⁸
62. Also, because Kelsey’s state campaign committee and Red State PAC reimbursed Tennessee state legislators for their contributions to Kelsey for Congress, *see* Count III(b), there is reason to believe Kelsey violated 11 CFR § 110.3(d) by transferring funds

⁴⁷ Available at <http://eqs.fec.gov/eqsdocsMUR/17044415960.pdf>.

⁴⁸ The conduct at issue here falls outside of the exception at 52 U.S.C. § 30125(e)(2), since Kelsey’s state campaign funds were not spent “solely in connection with [an] election for State or local office.”

from his state campaign committee to his federal campaign committee through those straw donors, and violated 11 CFR § 300.63 by spending non-federal funds from his state campaign committee for his federal election.⁴⁹ To the extent that Red State PAC is distinct from Kelsey’s state campaign committee, or used funds not derived from that committee, Kelsey also violated 52 U.S.C. § 30125(e)(1)(A) by transferring soft money from Red State PAC to his federal campaign committee through those straw donors.

63. Kelsey and Kelsey for Congress also violated section 30125(e)(1)(A) by “receiv[ing]” soft money funds from Kelsey’s state campaign committee and from Red State PAC, as described *supra* ¶51.

64. Further, given that Kelsey is an attorney and the Chair of the Tennessee state senate Judiciary Committee, and given the elaborate nature of this coordinated effort to use funds in his state campaign account to support his federal campaign, there is reason to believe that Kelsey’s violations of the soft money ban were knowing and willful, 52 U.S.C. § 30109(a)(6)(C).

V. ACU FAILED TO REPORT CONTRIBUTIONS FOR INDEPENDENT EXPENDITURES

65. Even if the Commission were to find that ACU’s expenditures were not coordinated with Kelsey for Congress, there would nonetheless be reason to believe that ACU violated FECA by failing to disclose all contributions made for the purpose of furthering its \$80,000 in reported independent expenditures. 52 U.S.C. §§ 30104(c)(1), 30104(c)(2)(C); 11 C.F.R. § 109.10(e)(1)(vi).

⁴⁹ Reports indicate that Kelsey also transferred substantial funds from his state campaign committee to Red State PAC: approximately \$45,249 in the first half of 2016, according to reports filed with state authorities. *See* Exhibit E (Brian K. Kelsey, Early Mid-Year Supplemental 2016, Tenn. Online Campaign Finance (July 14, 2016), also available at https://apps.tn.gov/tncamp-app/search/pub/report_full.htm?reportId=70530).

66. An "independent expenditure" is an expenditure by a person for a communication "expressly advocating the election or defeat of a clearly identified candidate" that is not coordinated with a candidate or a political party. 2 U.S.C. § 30101(17); 11 C.F.R. § 100.16(a).
67. FECA requires every person (other than a political committee) who expends more than \$250 on independent expenditures to file a report with the Commission identifying each person who makes contributions totaling more than \$200 in a calendar year to the person making the independent expenditure. 52 U.S.C. § 30104(c)(1) (referencing *id.* § 30104(b)(3)(A)). FECA further requires that reports filed under these provisions identify each person who made a contribution in excess of \$200 to the person filing the report that "was made for the purpose of furthering an independent expenditure." *Id.* § 30104(c)(2)(C). The Commission by regulation has interpreted these provisions to require the reports identify each person who made a contribution in excess of \$200 to the person filing the report that "was made for the purpose of furthering the reported independent expenditure." 11 C.F.R. § 109.10(e)(1)(vi).
68. ACU's FEC Form 5, Report of Independent Expenditures Made and Contributions Received, did not report the identity of any person(s) who had contributed for the purpose of furthering its independent expenditures in support of Kelsey. However, the timing and amount of the contributions that ACU received in advance of those expenditures indicate that ACU did in fact receive contributions for the purpose of furthering those expenditures.
69. For example, the amount and timing of Standard Club PAC's \$30,000 contribution to ACU on July 15 — as well as the fact that those funds originated from Kelsey — provide

reason to believe the contribution was made for the purpose of furthering ACU's \$30,000 independent expenditure on July 20. There is similar reason to believe that Citizens 4 Ethics in Government's \$36,000 contribution to ACU on July 21 was made for the purpose of furthering ACU's \$19,480 independent expenditure on July 22 and its \$30,520 independent expenditure on July 26.

70. By failing to report all contributions made for the purpose of funding ACU's independent expenditures, there is reason to believe that ACU violated FECA's disclosure and reporting requirements. 52 U.S.C. §§ 30104(c)(1), 30104(c)(2)(C); 11 C.F.R. § 109.10(e)(1)(vi).⁵⁰

PRAYER FOR RELIEF

71. Wherefore, the Commission should find reason to believe that respondents have violated 52 U.S.C. § 30101 *et seq.*, and should conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
72. Further, the Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from future violations, and should seek such additional remedies as are necessary and appropriate to ensure compliance with FECA.

Respectfully submitted,

⁵⁰ At a minimum, ACU should have reported Citizens 4 Ethics in Government and Standard Club PAC as having contributed for the purpose of funding its \$80,000 in independent expenditures. And, because there is reason to believe that ACU knew that Kelsey's state campaign committee was the original source of the contributions, *see* Count III, ACU should have reported Kelsey's state committee as the source of the contributions.

VERIFICATION

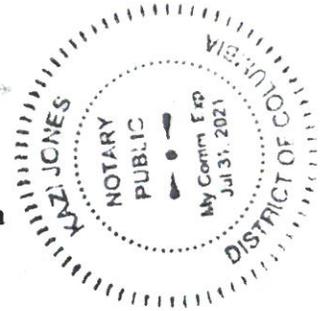
The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

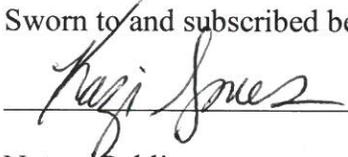
For Complainant Sandhya Bathija



Sandhya Bathija



Sworn to and subscribed before me this ____ day of June 2017.



Notary Public

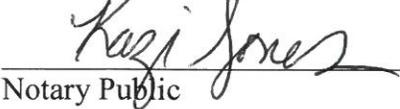


For Complainant Campaign Legal Center



Brendan Fischer

Sworn to and subscribed before me this ____ day of June 2017.



Notary Public

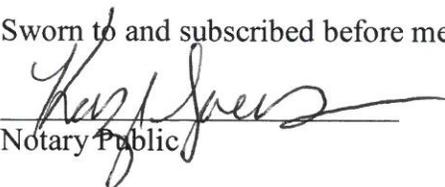


For Complainant Democracy 21



Fred Wertheimer

Sworn to and subscribed before me this 20 day of June 2017.



Notary Public

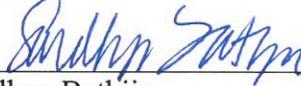


Campaign Legal Center, by
Brendan M. Fischer*
1411 K Street, NW, Suite 1400
Washington, DC 20005
(202) 736-2200

**Admitted in Wisconsin only;
practice limited to U.S. courts and federal agencies*



Democracy 21, by
Fred Wertheimer
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600



Sandhya Bathija
1411 K Street NW, Suite 1400
Washington, DC 20005
(202) 736-2200

Brendan Fischer*
The Campaign Legal Center
1411 K Street, NW, Suite 1400
Washington, DC 20002
Counsel to the Campaign Legal Center,
Sandhya Bathija
**Admitted in Wisconsin only;
practice limited to U.S. courts and federal agencies*

Donald J. Simon
Sonosky, Chambers, Sachse
Endreson & Perry LLP
1425 K Street, NW – Suite 600
Washington, DC 20005
Counsel to Democracy 21

June 21, 2017