

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **AR 23-01**

6 DATE COMPLAINT FILED: Jan. 6, 2023¹

7 DATE OF NOTIFICATION: Jan. 25, 2023¹

8 LAST RESPONSE RECEIVED: None

9 DATE ACTIVATED: Apr. 21, 2023

10
11 STATUTE OF LIMITATIONS: Oct. 24, 2024-
12 Jan. 13, 2027

13 ELECTION CYCLE: 2020

14
15 **COMPLAINANT:** Internally Generated

16
17 **RESPONDENT:** Support American Leaders PAC and Matthew
18 Tunstall in his official capacity as treasurer

19
20 **RELEVANT STATUTES**
21 **AND REGULATIONS:**

22 52 U.S.C. § 30104(b)

23 52 U.S.C. § 30116(f)

24 11 C.F.R. § 104.1

25 11 C.F.R. § 104.3

26 11 C.F.R. § 104.4(b)(2), (c)

27 11 C.F.R. § 110.9

28 **INTERNAL REPORTS CHECKED:** Disclosure Reports

29
30 **AGENCIES CHECKED:**

¹ The dates listed reflect the activation of the matter as a result of its most recent transfer to the Office of General Counsel ("OGC"). This matter originated via an Audit Referral circulated to the Commission in 2021, which was transferred to the Alternative Dispute Resolution Office ("ADRO"). Certification ("Cert.") ¶ 5(a)(i) (Nov. 1, 2021) (2019-2020 Audit Referrals — Unauthorized Committees). The matter was subsequently transferred to OGC in 2022, due to the concurrent enforcement matter involving Matthew Tunstall,

Memorandum from Krista J. Roche, Dir., ADRO, & Rosa Marshall, Ass't Dir., ADRO, to Roy Luckett, Ass't Gen. Couns., Complaints Examination & Legal Administration ("CELA"), re: ADR 1059 (AD A21-13) — Support American Leaders PAC (C00688069) and Matthew Nelson Tunstall, Treasurer (Apr. 26, 2022); *see* Second Gen. Counsel's Rpt. at 17-19, MUR 7468 (Progressive Priorities PAC, *et al.*). Following the abatement period, the matter was transferred back to ADRO. Memorandum from Leroy Rhinehart, CELA, to Krista Roche, ADRO, re: Transferred Case (Aug. 25, 2022). Finally, following Tunstall's guilty plea in the Western District of Texas, discussed *infra*, ADRO transferred the matter back to OGC in 2023. Memorandum from Patricia C. Orrock, Chief Compliance Off., Krista J. Roche, Dir., ADRO, & Rosa Marshall, Ass't Dir., ADRO, to the Comm'n, re: Notification of Transfer to OGC ADR 1086 (AD A21-23) — Support American Leaders PAC (C00688069) and Matthew Nelson Tunstall, Treasurer (Jan. 5, 2023); Memorandum from Krista J. Roche, Dir., ADRO, & Rosa Marshall, Ass't Dir., ADRO, to Roy Luckett, CELA, re: ADR 1086 (AD A21-13) — Support American Leaders PAC (C00688069) and Matthew Nelson Tunstall, Treasurer (Jan. 6, 2023). As the transfer back to OGC constitutes the initiation of a new matter, the information in the caption above relates to this most recent transfer.

1 **I. INTRODUCTION**

2 The Reports Analysis Division (“RAD”) referred Support American Leaders PAC and
3 Matthew Tunstall in his official capacity as treasurer (“Support American Leaders” or the
4 “Committee”) to the Office of General Counsel (“OGC”) for three apparent violations of the
5 Federal Election Campaign Act of 1971, as amended (the “Act”). The three violations include:
6 (1) receipt of apparent excessive contributions totaling \$173,240.00; (2) a mathematical
7 discrepancy of \$421,579.84 between the ending cash-on-hand balance of the Committee’s 2019
8 October Quarterly Report and the starting cash-on-hand balance of the Committee’s 2019 Year-
9 End Report; and (3) failing to disclose the presidential primary state for independent
10 expenditures (“IEs”) totaling \$372,534.67.

11 The Committee’s treasurer was a respondent in another matter recently resolved by the
12 Commission and was sentenced to prison in connection with a related criminal prosecution
13 earlier this year. Under these circumstances, and as discussed in further detail below, we
14 recommend that the Commission (1) open a MUR; (2) dismiss as a matter of prosecutorial
15 discretion the allegation that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9
16 by accepting excessive contributions; (3) dismiss as a matter of prosecutorial discretion the
17 allegation that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.1 and 104.3
18 by failing to file accurate reports of its cash on hand; (4) dismiss as a matter of prosecutorial
19 discretion the allegation that the Committee violated 52 U.S.C. § 30104(b)(4), (g)(2) and
20 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(b)(2), (c) by failing to indicate the state in which its IEs
21 were disseminated in connection with a presidential primary election; (5) issue an admonishment
22 letter to Tunstall on behalf of the Committee; and (6) direct RAD to administratively terminate
23 the Committee.

1 **II. FACTUAL BACKGROUND**

2 **A. Support American Leaders PAC and the Referral**

3 Support American Leaders is a non-connected multicandidate hybrid committee that first
 4 registered with the Commission on September 24, 2018.² Other than from January 24, 2020,
 5 through July 19, 2020,³ Matthew Tunstall has been the Committee's treasurer since its initial
 6 registration.⁴ Between its inception and its last reported receipt on April 20, 2021, the
 7 Committee reported raising \$1,807,552.45.⁵ Within the same time period, it reported spending a
 8 total of \$2,991,320.12,⁶ \$393,371.49 of which the Committee reported as being for IEs.⁷

9 On July 13, 2021, RAD referred Support American Leaders to OGC for three findings.⁸
 10 First, RAD referred the Committee's receipt of apparent excessive contributions totaling
 11 \$173,240.00.⁹ The Committee subsequently amended its reports in January 2022, clarifying that
 12 all of the originally reported excessive or prohibited contributions should have been reported as

² Support American Leaders, Statement of Organization at 1 (Sept. 24, 2018) [hereinafter Original Statement of Organization], <https://docquery.fec.gov/pdf/240/201809249124236240/201809249124236240.pdf>; Support American Leaders, Amended Statement of Organization at 2 (Jan. 4, 2022) [hereinafter Current Statement of Organization], <https://docquery.fec.gov/pdf/959/202201049474866959/202201049474866959.pdf>; *see also* 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(e)(3).

³ Support American Leaders, Amended Statement of Organization at 1 (Jan. 24, 2020), <https://docquery.fec.gov/pdf/822/202001249167339822/202001249167339822.pdf>; Support American Leaders, Amended Statement of Organization at 1 (July 20, 2020), <https://docquery.fec.gov/pdf/125/202007209250469125/202007209250469125.pdf>.

⁴ Current Statement of Organization at 1; Original Statement of Organization at 1.

⁵ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00688069 (last visited August 16, 2023) (showing all receipts reported by the Committee).

⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00688069 (last visited August 16, 2023) (showing all disbursements reported by the Committee).

⁷ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00688069&is_notice=false&most_recent=true (last visited August 16, 2023) (showing all IEs reported by the Committee).

⁸ Referral at 4-5 (July 13, 2021). Though the Committee appears to have committed further violations, only those discussed herein warranted referral to OGC. *See id.* at 2-5.

⁹ *Id.* at 4.

- 1 non-contribution *Carey* funds, but also introducing new excessive contributions totaling
 2 \$7,040.00, as shown below:

Source	Date	Amount	Aggregate Year-to-Date	Amount Excessive — Original ¹⁰	Amount Excessive — Amended ¹¹
Adams, Elmer W	Nov. 19, 2020	\$4,000.00	\$4,000.00	\$14,000.00	\$0.00
	Nov. 19, 2020	\$5,000.00	\$9,000.00		
	Nov. 19, 2020	\$5,000.00	\$14,000.00		
	Nov. 19, 2020	\$5,000.00	\$19,000.00		
Baker, Edward	Nov. 4, 2020	\$5,000.00	\$5,000.00	\$5,000	\$0.00
	Nov. 4, 2020	\$5,000.00	\$10,000.00		
Branch, Edward	Nov. 4, 2020	\$100.00	\$5,100.00	N/A	\$130.00
	Nov. 4, 2020	\$5,000.00	\$5,100.00		
	Nov. 12, 2020	\$30.00	\$5,130.00		
Chaves, Kathleen	Nov. 13, 2020	\$200.00	\$6,095.00	N/A	\$400
	Nov. 17, 2020	\$100.00	\$6,195.00		
	Nov. 17, 2020	\$100.00	\$6,195.00		
Hair, Gail	Nov. 9, 2020	\$1,000.00	\$6,000.00	N/A	\$1,000.00
Hair, Gale ¹²	Nov. 7, 2020	\$5,000.00	\$5,000.00	\$5,000.00	\$0.00
	Nov. 7, 2020	\$5,000.00	\$10,000.00		
Hair, Robert	Nov. 7, 2020	\$500.00	\$500.00	\$15,000.00	\$0.00
	Nov. 7, 2020	\$1,000.00	\$1,500.00		
	Nov. 7, 2020	\$2,000.00	\$3,500.00		
	Nov. 7, 2020	\$1,500.00	\$5,000.00		
	Nov. 7, 2020	\$5,000.00	\$10,000.00		
	Nov. 7, 2020	\$500.00	\$10,500.00		
	Nov. 7, 2020	\$1,000.00	\$11,500.00		
	Nov. 7, 2020	\$1,500.00	\$13,000.00		
	Nov. 7, 2020	\$2,000.00	\$15,000.00		
Nov. 7, 2020	\$5,000.00	\$20,000.00			

¹⁰ Support American Leaders, 2019 February Monthly Report (Feb. 8, 2019) [hereinafter Original 2019 February Monthly Report], <https://docquery.fec.gov/pdf/776/201902089145478776/201902089145478776.pdf>; Support American Leaders, 2020 30-Day Post-General Report (Dec. 14, 2020), <https://docquery.fec.gov/pdf/553/202012159387342553/202012159387342553.pdf>.

¹¹ Support American Leaders, Amended 2019 February Monthly Report (Jan. 12, 2022) [hereinafter Amended 2019 February Monthly Report], <https://docquery.fec.gov/pdf/485/202201129474974485/202201129474974485.pdf>; Support American Leaders, Amended 2020 30-Day Post-General Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/818/202201139474976818/202201139474976818.pdf>.

¹² Despite similar names and dates of contribution, based on the address information associated with the contributions, “Hair, Gail” and “Hair, Gale” appear to be distinct individuals.

Source	Date	Amount	Aggregate Year-to-Date	Amount Excessive — Original ¹⁰	Amount Excessive — Amended ¹¹
Hoelscher, Robert W	Nov. 7, 2020	\$5,000.00	\$10,000.00	N/A	\$5,310.00
	Nov. 7, 2020	\$2,000.00	\$10,000.00		
	Nov. 7, 2020	\$1,500.00	\$10,000.00		
	Nov. 7, 2020	\$1,000.00	\$10,000.00		
	Nov. 7, 2020	\$500.00	\$10,000.00		
	Nov. 10, 2020	\$100.00	\$10,135.00		
	Nov. 10, 2020	\$35.00	\$10,135.00		
	Nov. 13, 2020	\$35.00	\$10,185.00		
	Nov. 13, 2020	\$15.00	\$10,185.00		
	Nov. 17, 2020	\$100.00	\$10,285.00		
	Nov. 19, 2020	\$25.00	\$10,310.00		
Maffett, James	Nov. 6, 2020	\$200.00	\$5,800.00	N/A	\$200.00
Renal, Joe	Nov. 5, 2020	\$5,000.00	\$5,000.00	\$15,000.00	\$0.00
	Nov. 5, 2020	\$5,000.00	\$10,000.00		
	Nov. 5, 2020	\$5,000.00	\$15,000.00		
	Nov. 5, 2020	\$5,000.00	\$20,000.00		
Reynal, Joe ¹³	Nov. 5, 2020	\$5,000.00	\$5,000.00	\$5,000	\$0.00
	Nov. 5, 2020	\$5,000.00	\$10,000.00		
Support America ¹⁴	Jan. 31, 2019	\$114,240.00	\$114,240.00	\$114,240.00	\$0.00
Totals:				\$173,240.00	\$7,040.00

1 Second, RAD referred Support American Leaders for a mathematical discrepancy of
 2 \$421,579.84 between the ending cash-on-hand balance of the Committee's 2019 October
 3 Quarterly Report (\$423,034.51) and the starting cash-on-hand balance of the Committee's 2019
 4 Year-End Report (\$1,454.67).¹⁵ The Committee subsequently amended both its 2019 October
 5 Quarterly and 2019 Year-End Reports on January 13, 2022, to eliminate this discrepancy.¹⁶

¹³ Despite similar names and dates of contribution, based on the address information associated with the contributions, "Renal, Joe" and "Reynal, Joe" appear to be distinct individuals.

¹⁴ Amended 2019 February Monthly Report, sched. A at 6. The Committee originally reported this contribution as coming from "Support America" with no address information provided, but amended its report to reflect that the funds came from Support American Leaders PAC, without further explanation. *See* Original 2019 February Monthly Report, sched. A at 6.

¹⁵ Referral at 2-3, 5; *see* Support American Leaders, 2019 October Quarterly Report at 2 (Sept. 30, 2019), <https://docquery.fec.gov/pdf/457/201910249165293457/201910249165293457.pdf> (reporting cash on hand at close of the reporting period of \$423,034.51); Support American Leaders, 2019 Year-End Report at 2 (Jan. 21, 2020), <https://docquery.fec.gov/pdf/635/202001219167294635/202001219167294635.pdf> (reporting cash on hand at beginning of the reporting period of \$1,454.67).

¹⁶ *See* Support American Leaders, Amended 2019 October Quarterly Report at 2 (Jan. 13, 2022), <https://docquery.fec.gov/pdf/565/202201139474982565/202201139474982565.pdf> (reporting closing cash on hand of

1 Third and finally, RAD referred Support American Leaders for failing to disclose the
 2 Presidential Primary state for IEs totaling \$372,534.67 in the reports detailed below:¹⁷

Report	Date	# IEs	Total Amount
24-Hour Report	Dec. 27, 2019	4	\$116,184.81
24-Hour Report	Dec. 31, 2019	4	\$19,589.50
Original 2019 Year-End Report, Sched. E	Jan. 21, 2020	8	\$135,774.31 ¹⁸
24-Hour Report	Jan. 15, 2020	6	\$65,104.93
24-Hour Report	Jan. 24, 2020	4	\$33,255.43
24-Hour Report	Feb. 7, 2020	5	\$69,869.40
24-Hour Report	Feb. 21, 2020	4	\$68,519.60
			\$372,534.67¹⁹

3 The Committee subsequently amended its reports to indicate that the IEs were for the 2020
 4 General Election rather than the Primary.²⁰

5 **B. RAD's Communications with Tunstall**

6 In the course of developing the Referral and in connection with separate Administrative
 7 Fines matters, RAD communicated or attempted to communicate with Tunstall 76 separate
 8 times, with the last successful attempt occurring on January 27, 2022. Support American

\$309,569.45); Support American Leaders, Amended 2019 Year-End Report at 2 (Jan. 13, 2022), <https://docquery.fec.gov/pdf/712/202201139474982712/202201139474982712.pdf> (showing opening cash on hand of \$309,569.45).

¹⁷ Referral at 3-5.

¹⁸ These IEs are the same as those disclosed on the December 27 and December 31, 2019 24-Hour Reports.

¹⁹ This total only counts the IEs disclosed on both the December 27 and December 31, 2019 24-Hour Reports and the 2019 Year-End Report once.

²⁰ Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/858/202201129474975858/202201129474975858.pdf> (amending December 27, 2019 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/671/202201129474976671/202201129474976671.pdf> (amending December 31, 2019 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/762/202201129474976762/202201129474976762.pdf> (amending January 15, 2020 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/776/202201129474976776/202201129474976776.pdf> (amending January 24, 2020 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/783/202201129474976783/202201129474976783.pdf> (amending February 7, 2020 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/790/202201129474976790/202201129474976790.pdf> (amending February 21, 2020 24-Hour Report).

1 Leaders has been a respondent in nine Administrative Fines matters, and \$76,500.00 in fines has
2 been assessed against it. Of this amount, the Committee has paid a total of \$25.00, and four of
3 the matters have been transferred to the Treasury Department for collection.²³ During his last
4 communication with RAD, Tunstall expressed that the Committee would be unable to make any
5 further payments, and its last-reported cash on hand was negative \$267,554.80.²⁵ Since its
6 initial registration with the Commission, Support American Leaders received 23 Requests for
7 Additional Information (“RFAIs”) from RAD regarding apparent errors and violations in its
8 reports and, in many cases, its failure to file them.²⁶

9 C. Tunstall and Relevant Legal Proceedings

10 Tunstall formed and led a series of other political committees, including Progressive
11 Priorities PAC and Liberty Action Group.²⁷ In November 2021, the Department of Justice
12 indicted Tunstall and his associates, Robert Reyes and Kyle Davies, on numerous criminal
13 charges including conspiracy, wire fraud, and money laundering in connection with their

22

23 *Id.*, Attach. at sheet 2 (AF List and Payments).

25 Support American Leaders, 2020 Year-End Report at 2 (Jan. 4, 2022), <https://docquery.fec.gov/pdf/952/202201049474866952/202201049474866952.pdf>.

26 See *Support American Leaders PAC: Committee Filings 2017-2018*, FEC.GOV, <https://www.fec.gov/data/committee/C00688069/?tab=filings&cycle=2018> (last visited August 16, 2023) (showing one RFAI during the 2018 election cycle); See *Support American Leaders PAC: Committee Filings 2019-2020*, FEC.GOV, <https://www.fec.gov/data/committee/C00688069/?tab=filings&cycle=2020> (last visited August 16, 2023) (showing 13 RFAIs during the 2020 election cycle); See *Support American Leaders PAC: Committee Filings 2021-2022*, FEC.GOV, <https://www.fec.gov/data/committee/C00688069/?tab=filings&cycle=2022> (last visited August 16, 2023) (showing nine RFAIs during the 2022 election cycle).

27 Progressive Priorities PAC, Amended Statement of Organization at 1 (Oct. 22, 2019), <https://docquery.fec.gov/pdf/671/201910229165266671/201910229165266671.pdf> (showing Tunstall as treasurer); Factual Basis for Plea of Guilt ¶ 2, *United States v. Tunstall*, No. 21-CR-223-LY (W.D. Tex. Dec. 7, 2022) [hereinafter Tunstall Plea] (“TUNSTALL . . . founded Liberty Action Group Political Action Committee . . .”).

1 activities conducted via Progressive Priorities PAC and Liberty Action Group, alleging that the
2 three defendants fraudulently solicited and obtained over \$3.5 million in contributions via the
3 two political committees, with only \$19.00 distributed to “any candidate’s authorized campaign
4 committee or to any political cause.”²⁸ Tunstall and each of his associates pleaded guilty to,
5 among other counts, conspiracy to cause false statements to the Commission, and on April 24,
6 2023, Tunstall was sentenced to ten years in prison and ordered to forfeit \$789,818.00 and pay a
7 special assessment of \$200.00.²⁹ Tunstall was a respondent in his individual capacity and in his
8 official capacity as treasurer in MUR 7468 (Progressive Priorities PAC), which related in part to
9 the conduct at issue in the criminal matter, and which the Commission recently resolved by
10 taking no further action beyond admonishing Tunstall and reporting the admonishment to the
11 Department of Justice.³⁰ The available information indicates that Tunstall’s work for Support
12 American Leaders was similar to the fraudulent scheme he perpetrated in connection with those
13 groups.

14 Though Support American Leaders was not the subject of the criminal action, Reyes’s
15 Factual Basis for Plea of Guilt discusses “subsequent fraudulent activities similar in manner and

²⁸ Indictment ¶ 35, *United States v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Nov. 2, 2021)

²⁹ Tunstall pleaded guilty to one count of conspiracy to commit wire fraud and to cause false statements to the Commission and one count of money laundering. Judgment in a Criminal Case, *United States v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 24, 2023). Reyes was sentenced to seven years in prison, and Davies to five years of probation. Press Release, Dep’t of Justice, Three Individuals Sentenced for Soliciting Millions of Dollars in Contributions to Scam PACs (Apr. 25, 2023), <https://www.justice.gov/opa/pr/three-individuals-sentenced-soliciting-millions-dollars-contributions-scam-pacs>. Reyes also agreed to forfeit \$809,920.40 in connection with his plea agreement. Press Release, Dep’t of Justice, California Man Pleads Guilty to \$3.5 Million Scam-PAC Fraud (Aug. 9, 2022), <https://www.justice.gov/opa/pr/california-man-pleads-guilty-35-million-scam-pac-fraud>.

³⁰ Cert. (July 27, 2023), MUR 7468 (Progressive Priorities PAC, *et al.*); see Memorandum to the Commission re: Updated Recommendations Following Sentencing of Matthew Tunstall (July 19, 2023), MUR 7468 (Progressive Priorities PAC).

1 means to those TUNSTALL and REYES employed in the operations of Liberty Action Group
2 and Progressive Priorities” PAC.³¹ The Factual Basis states:

3 On or about September 24, 2018, TUNSTALL caused Support
4 American Leaders to be registered with the FEC. Support
5 American Leaders was a political action committee that claimed to
6 raise political contributions to support the election of [Donald
7 Trump] in 2020. . . .

8 From approximately 2018 through at least December 31, 2021,
9 TUNSTALL oversaw the operations of Support American Leaders
10 and [another of his political committees,] Campaign to Support the
11 President, and employed several other individuals, including
12 REYES, to perpetuate the fraudulent scheme. Of the
13 approximately \$3,690,249.05 million raised by Support American
14 Leaders and Campaign to Support the President, the two PACs
15 distributed a total of approximately \$1,500 to any candidate’s
16 authorized campaign committee or to any political cause. . . .

17 TUNSTALL and REYES used Support American Leaders and
18 Campaign to Support the President to obtain money based on false
19 and misleading representations about the PACs’ purported efforts,
20 activities, and spending. Specifically, through written fundraising
21 solicitations, telephone call solicitations, online solicitations, and
22 other means, TUNSTALL and REYES falsely represented to
23 donors that their donated funds would be used in support of
24 [Donald Trump].

25 Instead, TUNSTALL and REYES again used the funds they
26 acquired through the scheme to pay for additional fraudulent
27 solicitations for money on behalf of Support American Leaders
28 and Campaign to Support the President, to enrich themselves
29 directly, and to support their independent, unrelated business
30 ventures.³²

31 According to their pleas, Tunstall and his co-conspirators used the funds obtained from
32 the political committees they created for their personal benefit by transferring funds obtained

³¹ Factual Basis for Plea of Guilt ¶ 34, *United States v. Reyes*, No. 21-CR-223-2 (W.D. Tex. Aug. 5, 2022) [hereinafter *Reyes Plea*]

³² *Id.* ¶¶ 36-40; *see also* Press Release, Dep’t of Justice, California Man Pleads Guilty to \$3.5 Million Scam-PAC Fraud (Aug. 9, 2022), <https://www.justice.gov/opa/pr/california-man-pleads-guilty-35-million-scam-pac-fraud> (“Reyes admitted to operating additional fraudulent PACs beyond the 2016 election cycle, Support American Leaders and Campaign to Support the President, from which he received approximately \$95,000 generated from false and misleading solicitations to donors.”).

1 through the fraudulent solicitations to personal and business bank accounts controlled by
2 Tunstall and the co-defendants and by intentionally overpaying vendors in order to obtain
3 refunds that could be concealed from the Commission.³³ The pleas also explain that Liberty
4 Action Group and Progressive Priorities PAC's activities were misreported in filings with the
5 Commission.³⁴

6 **III. LEGAL ANALYSIS**

7 **A. Prohibited and Excessive Contributions**

8 The Act prohibits corporations from making contributions to federal candidates or their
9 authorized committees, and prohibits candidates and authorized committees from knowingly
10 receiving or accepting such contributions.³⁵ In addition to the limitations on corporate
11 contributions, the aggregate individual contribution limit to non-connected political committees
12 is \$5,000.00 per calendar year.³⁶ No committee shall knowingly accept any contribution in
13 violation of the limit.³⁷

14 Pursuant to *Carey v. FEC*, a hybrid political committee, which makes both IEs and direct
15 contributions, can accept unlimited and corporate contributions but must maintain separate
16 accounts: a non-contribution account for the purpose of making IEs and a contribution account
17 that is subject to the Act's amount and source limitations from which to make contributions to

³³ Tunstall Plea ¶¶ 15-21, 36-45; Reyes Plea ¶¶ 11-14, 26-40; Factual Basis for Plea of Guilt ¶¶ 10-14, *United States v. Davies*, No. 21-CR-223-3 (W.D. Tex. Mar. 25, 2022) [hereinafter *Davies Plea*]

³⁴ Tunstall Plea ¶¶ 23-24, 30-32; Reyes Plea ¶¶ 15-16, 20-22; *Davies Plea* ¶¶ 15-16, 20-22.

³⁵ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (b)(1).

³⁶ 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d).

³⁷ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

1 federal candidates.³⁸ The Commission has also issued guidance on the formation and operation
2 of hybrid political committees and explained that the Commission would not enforce the
3 corporate contribution ban and the limitation amounts against non-connected political
4 committees for the purpose of making contributions to candidates and political parties as long as
5 certain requirements are met.³⁹ First, that the political committee deposits such contributions in
6 a “Non-Contribution Account,” which is for “the purpose of financing independent expenditures,
7 other advertisements that refer to a Federal candidate, and generic voter drives.”⁴⁰ Second, that
8 that account is “segregated from any accounts that receive source-restricted and amount-limited
9 contributions.”⁴¹ Third, that each account pays a percentage of administrative expenses that
10 closely corresponds to the percentage of activity for that account.⁴² The guidance also provided
11 instructions for reporting the receipt of contributions deposited into a Non-Contribution Account,
12 stating that a committee: (1) should disclose such contributions on “Line 17 of Form 3X, titled
13 ‘Other Federal Receipts,’” and (2) “[w]hen itemizing on Schedule A, electronic filers should
14 identify those receipts by entering ‘Non-Contribution Account’ as memo text or in the
15 description field.”⁴³

³⁸ *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011) (granting limited preliminary injunction enjoining Commission from enforcing 52 U.S.C. § 30116(a)(1)(C) and (a)(3) with regard to contributions received for IEs by a non-connected political committee if such committee: (1) maintains a “soft money” account for use in making IEs in federal elections and a separate “hard money” account that accepts contributions subject to “statutory contribution limits” for making contributions to “candidates, candidates’ committees, or national parties”; and (2) “proportionally pays related administrative costs from those accounts”).

³⁹ See Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, FEC.GOV (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/> (requiring non-connected committees that make IEs to maintain a separate “contribution” account to be able to make contributions to federal candidates from receipts that are subject to the Act’s amount limitations and source prohibitions).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

1 Accordingly, Support American Leaders, as a hybrid committee, could not accept
2 excessive contributions unless they were designated for its non-contribution account. Though
3 the Committee subsequently amended its reports to reflect that all of the originally reported
4 \$173,240.00 in excessive or prohibited contributions were non-contribution *Carey* funds, these
5 amendments also introduced new excessive contributions totaling \$7,040.00.⁴⁴ Further, the
6 Committee did not make these amendments until January 13, 2022, more than two years after the
7 original disclosures for the majority of the contributions at issue, and three years after the
8 \$114,240.00 contribution from “Support America.”

9 Under the facts outlined above, there is sufficient information to recommend that the
10 Commission open a MUR and find reason to believe that Support American Leaders violated
11 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by accepting excessive contributions.

12 **B. Misreported Cash on Hand**

13 The Act requires committee treasurers to file reports of receipts and disbursements in
14 accordance with the provisions of 52 U.S.C. § 30104.⁴⁵ These reports must include, among other
15 things, the total amount of receipts, disbursements, and cash on hand, including the appropriate
16 itemizations, where required.⁴⁶

17 Here, there was a mathematical discrepancy of \$421,579.84 between the ending cash-on-
18 hand balance of Support American Leaders's 2019 October Quarterly Report (\$423,034.51) and

⁴⁴ It is unclear from the available information whether the funds were actually deposited into correctly organized *Carey* non-contribution accounts. Based on the circumstances of this matter, including the approximate two-year delay with amending its reports and the treasurer's prior conduct in causing false statements to be made to the Commission, it is possible that the amendments reflect an attempt to obscure any violations of the Act rather than the actual treatment of the funds at issue.

⁴⁵ 52 U.S.C. § 30104(a)(1); *accord* 11 C.F.R. § 104.1(a).

⁴⁶ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

1 the starting cash-on-hand balance of its 2019 Year-End Report (\$1,454.67).⁴⁷ While the
2 Committee subsequently amended both its 2019 October Quarterly and 2019 Year-End Reports
3 on January 13, 2022, to eliminate this discrepancy,⁴⁸ they did so more than two years after
4 receiving an RFAI regarding the discrepancy.

5 Thus, the available information is sufficient to recommend that the Commission find
6 reason to believe that Support American Leaders violated 52 U.S.C. § 30104(b) and 11 C.F.R.
7 §§ 104.1 and 104.3 by failing to file accurate reports of its cash on hand.

8 **C. Misreported Independent Expenditures**

9 An IE is an expenditure that expressly advocates the election or defeat of a clearly
10 identified federal candidate and “that is not made in concert or cooperation with or at the request
11 or suggestion of such candidate, the candidate’s authorized political committee, or their agents,
12 or a political party committee or its agents.”⁴⁹ An unauthorized political committee that makes
13 IEs must report them in its regularly scheduled disclosure reports.⁵⁰ In addition, a political
14 committee that makes IEs aggregating \$10,000.00 or more at any time up to and including the
15 20th day before the date of a given election, must file a report describing those expenditures
16 within 48 hours of dissemination of IEs;⁵¹ for such expenditures made less than 20 days, but

⁴⁷ Referral at 2-3, 5; *see* Support American Leaders, 2019 October Quarterly Report at 2 (Sept. 30, 2019), <https://docquery.fec.gov/pdf/457/201910249165293457/201910249165293457.pdf> (reporting cash on hand at close of the reporting period of \$423,034.51); Support American Leaders, 2019 Year-End Report at 2 (Jan. 21, 2020), <https://docquery.fec.gov/pdf/635/202001219167294635/202001219167294635.pdf> (reporting cash on hand at beginning of the reporting period of \$1,454.67).

⁴⁸ *See* Support American Leaders, Amended 2019 October Quarterly Report at 2 (Jan. 13, 2022), <https://docquery.fec.gov/pdf/565/202201139474982565/202201139474982565.pdf> (reporting closing cash on hand of \$309,569.45); Support American Leaders, Amended 2019 Year-End Report at 2 (Jan. 13, 2022), <https://docquery.fec.gov/pdf/712/202201139474982712/202201139474982712.pdf> (showing opening cash on hand of \$309,569.45).

⁴⁹ 52 U.S.C. § 30101(17).

⁵⁰ *See id.* § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(3)(vii).

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

1 more than 24 hours, before the date of a given election, the political committee must file a report
2 describing those expenditures within 24 hours of their dissemination.⁵²

3 To determine whether the dollar amount thresholds for filing IE reports are met, the 24-
4 and 48-hour filing requirements begin to run when the IEs aggregating to at least \$1,000.00 or
5 \$10,000.00, respectively, are “publicly distributed.”⁵³ For purposes of aggregating IEs, each
6 state’s presidential primary election is a separate election,⁵⁴ and accordingly, the report must
7 disclose the state for which primary such IEs are distributed.

8 Here, RAD referred Support American Leaders for failing to disclose the Presidential
9 Primary state for IEs totaling \$372,534.67 disseminated between December 27, 2019, and
10 February 21, 2020. Though the Committee amended its reports in January 2022 to indicate that
11 the IEs were for the 2020 General Election rather than the presidential primary, these
12 amendments were made approximately two years after the date of the expenditures at issue, and
13 the timing of the expenditures between December 2019 and February 2020 does not support the
14 amendments’ claims that the expenditures were for the general election: The first Republican
15 election in the 2020 election cycle was the Iowa caucus held on February 3, 2020,⁵⁵ and Donald
16 Trump, the candidate the IEs supported, was not nominated for the general election until August
17 2020.⁵⁶

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

⁵³ 11 C.F.R. §§ 104.4(b)(2), (c), (f); 109(c)-(d).

⁵⁴ Advisory Opinion 2003-40 at 4 (Navy Veterans).

⁵⁵ FEC, 2020 PRESIDENTIAL AND CONGRESSIONAL PRIMARY DATES IN CHRONOLOGICAL ORDER at 5 (July 17, 2020), <https://www.fec.gov/resources/cms-content/documents/2020pdates.pdf>.

⁵⁶ *Republican National Convention, 2020*, BALLOTPEdia, https://ballotpedia.org/Republican_National_Convention,_2020 (last visited August 16, 2023). Reyes’s guilty plea further suggests that the IEs the Committee reported were fraudulent: “Of the approximately \$3,690,249.05 million raised by Support American Leaders and Campaign to Support the President, the two PACs distributed a total of approximately \$1,500 to any candidate's authorized campaign committee or to any political cause.” Reyes Plea ¶ 37. As this issue was not referred by RAD, OGC makes no recommendation as to this potential violation here.

1 Accordingly, the available information is sufficient to recommend that the Commission
2 find reason to believe that Support American Leaders violated 52 U.S.C. § 30104(b)(4), (g)(2)
3 and 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(b)(2), (c) by failing to indicate the state in which it
4 disseminated its IEs in connection with a presidential primary election.

5 **IV. DISPOSITION**

6 As discussed above, there is sufficient information to justify a finding of reason to
7 believe as to all of the violations at issue in this matter. However, given the particular facts,
8 circumstances, and limitations in this matter, including the ordering of the Commission's
9 priorities on its docket, we recommend the Commission open a MUR, exercise its prosecutorial
10 discretion to dismiss the allegations, and issue an admonishment letter.⁵⁷ We also recommend
11 that the Commission direct RAD to administratively terminate the Committee.

12 Given the apparent violations and the significant amount in violation, under other
13 circumstances, OGC would recommend based on the facts presented here that the Commission
14 find reason to believe as to each of the above violations without reservation. However, a number
15 of factors indicate that further enforcement action against Tunstall would be an imprudent use of
16 Commission resources, as it would not likely vindicate the Commission's interest in disclosure,
17 extract any significant civil penalty or injunctive relief, or meaningfully deter future violations of
18 the Act by Tunstall or his associates involved in the operation of Support American Leaders.

19 First, given the available information indicating that the Committee, like Progressive
20 Priorities PAC and Liberty Action Group, was a fraudulent "scam PAC" operated primarily to
21 enrich Tunstall personally,⁵⁸ it is unlikely that accurate information is readily available that
22 would clarify the public record with respect to the Committee's activities. Second, the

⁵⁷ *Heckler*, 470 U.S. at 831.

⁵⁸ *See supra* notes 31-34 and accompanying text.

1 Committee reports a negative cash-on-hand balance of over \$267,000.00,⁵⁹ and Tunstall has
2 already forfeited nearly \$800,000.00 in connection with his criminal sentencing, which indicates
3 that neither the Committee nor Tunstall would be able to pay any additional penalty that the
4 Commission may seek to assess.⁶⁰ Third, Tunstall has already been sentenced to a ten-year term
5 of imprisonment for conduct involving the operation of fraudulent political committees,
6 including causing false statements to be filed with the Commission;⁶¹ therefore, action by the
7 Commission is unlikely to provide further deterrence against future violations of the Act.

8 Accordingly, in light of the Commission's Statement of Policy Regarding Commission
9 Action in Matters at the Initial Stage in the Enforcement Process, a dismissal pursuant to *Heckler*
10 *v. Chaney* is appropriate here.⁶² The policy indicates that dismissal pursuant to *Heckler* is
11 appropriate when matters "do not merit the additional expenditure of Commission resources,"
12 even if "the Commission concludes that a violation of the Act did or very probably did occur."⁶³
13 The Statement of Policy further notes that:

14 The Commission has previously used the finding 'reason to
15 believe, but take no further action' in cases where the Commission
16 finds that there is a basis for investigating the matter or attempting
17 conciliation, but the Commission declines to proceed for prudential
18 reasons. As discussed below, the Commission believes that
19 resolving these matters through dismissal or dismissal with
20 admonishment more clearly conveys the Commission's intentions

⁵⁹ Support American Leaders, 2020 Year-End Report at 2 (Jan. 4, 2022), <https://docquery.fec.gov/pdf/952/202201049474866952/202201049474866952.pdf>.

⁶⁰ Judgment in a Criminal Case, *United States v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 24, 2023)

⁶¹ Tunstall Plea ¶¶ 24, 32; Judgment in a Criminal Case, *United States v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 24, 2023)

⁶² *Heckler v. Chaney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 16, 2007) [hereinafter Statement of Policy Regarding Commission Action].

⁶³ Statement of Policy Regarding Commission Action at 12,545-46.

1 and avoids possible confusion about the meaning of a reason to
2 believe finding.⁶⁴

3 As such, dismissing the allegations as a matter of prosecutorial discretion is appropriate here.

4 As this is an internally generated matter, we recommend that the Commission open a
5 MUR and, consistent with the Commission's actions in MUR 7468,⁶⁵ dismiss the allegations as a
6 matter of prosecutorial discretion with admonishment. Because Tunstall likely cannot
7 meaningfully clarify the public record with respect to the Committee's activities, opening a
8 MUR represents the Commission's sole opportunity to advance its disclosure interest, as opening
9 a MUR will permit the file to become public.⁶⁶ Additionally, issuing an admonishment letter to
10 Tunstall will clarify to both the Respondent and the regulated community that the Commission
11 takes violations of the Act seriously, and that, absent the present circumstances, it would pursue

⁶⁴ *Id.* at 12,545.

⁶⁵ *See supra* note 30 and accompanying text.

⁶⁶ *See, e.g.*, Cert. ¶ 2, MUR 8013 (RR 20L-26) (Kristine Schanbacher for Congress) (opening a MUR and dismissing as a matter of prosecutorial discretion); Cert. ¶ 1, MUR 6395 (PMUR 502) (Leonard Roberto, *et al.*) (opening a MUR, dismissing as a matter of prosecutorial discretion and issuing a letter of caution as to some respondents and finding no reason to believe as to the remaining respondents). In the alternative, the Commission could open a MUR, find reason to believe that the violations occurred, take no further action, and close the file; however, because the Commission has expressed that this approach is disfavored, OGC does not recommend it here. *See supra* notes 62-64 and accompanying text.

1 similar violations through the enforcement process.⁶⁷ Further, consistent with past matters, we
 2 recommend that the Commission instruct RAD to administratively terminate the Committee.⁶⁸

3 **V. RECOMMENDATIONS**

- 4 1. Open a MUR;
- 5 2. Dismiss as a matter of prosecutorial discretion the allegation that Support
 6 American Leaders PAC and Matthew Tunstall in his official capacity as treasurer
 7 violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by accepting excessive
 8 contributions and issue an admonishment letter;
- 9 3. Dismiss as a matter of prosecutorial discretion the allegation that Support
 10 American Leaders PAC and Matthew Tunstall in his official capacity as treasurer
 11 violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.1 and 104.3 by failing to file
 12 accurate reports of its cash on hand and issue an admonishment letter;
- 13 4. Dismiss as a matter of prosecutorial discretion the allegation that Support
 14 American Leaders PAC and Matthew Tunstall in his official capacity as treasurer
 15 violated 52 U.S.C. § 30104(b)(4), (g)(2) and 11 C.F.R. §§ 104.3(b)(3)(vii),
 16 104.4(b)(2), (c) by failing to indicate the state in which its IEs were disseminated
 17 in connection with a presidential primary election and issue an admonishment
 18 letter;

⁶⁷ This is consistent with Commission precedent. *See, e.g.*, Cert. (Aug. 10, 2022), MUR 7880 (Mike Gaul); Admonishment Letter (Aug. 17, 2022), MUR 7880 (Mike Gaul) (admonishing treasurer who filed false statement of organization purporting to be a joint fundraising representative of a political committee that was neither aware of Gaul's committee nor had consented to joint fundraising with it); Amended Cert. (May 11, 2021), MUR 6997 (Ams. Socially United, *et al.*); Admonishment Letter (May 12, 2021), MUR 6997 (Carey Lee Peterson) (admonishing treasurer for failing to maintain records, failing to file accurate disclosure reports, and fraudulently soliciting contributions where treasurer had been convicted of unrelated securities fraud charges in federal court); Cert. (July 20, 2020), MURs 7011, 7092 (HC4President, *et al.*); Admonishment Letter (July 22, 2022), MURs 7011, 7092 (HC4President, *et al.*) (admonishing respondents for fraudulent misrepresentation violations in matter where treasurer had pleaded guilty to related violations in federal court); Cert. (Dec. 9, 2016), MUR 7072 (Babulal Bera, *et al.*); Admonishment Letter (Jan. 4, 2017), MUR 7072 (Babulal Bera) (admonishing respondent who had made contributions in the names of others where respondent had pleaded guilty to related charges in federal court).

⁶⁸ *See, e.g.*, Cert. ¶ 2, MUR 6997 (Ams. Socially United, *et al.*) (“Instruct the Reports Analysis Division to administratively terminate Americans Socially United.”); Cert. ¶ 2, MURs 7011, 7092 (HC4President, *et al.*) (“Instruct the Reports Analysis Division to administratively terminate HC4President and Socially Responsible Government.”).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Support American Leaders PAC and Matthew **MUR** _____
4 Tunstall in his official capacity as
5 treasurer
6

7 **I. INTRODUCTION**

8 This matter was generated based on information ascertained by the Federal Election
9 Commission in the normal course of carrying out its supervisory responsibilities.¹ The Reports
10 Analysis Division (“RAD”) referred Support American Leaders PAC and Matthew Tunstall in
11 his official capacity as treasurer (“Support American Leaders” or the “Committee”) to the Office
12 of General Counsel (“OGC”) for three apparent violations of the Federal Election Campaign Act
13 of 1971, as amended (the “Act”). The three violations include: (1) receipt of apparent excessive
14 contributions totaling \$173,240.00; (2) a mathematical discrepancy of \$421,579.84 between the
15 ending cash-on-hand balance of the Committee’s 2019 October Quarterly Report and the starting
16 cash-on-hand balance of the Committee’s 2019 Year-End Report; and (3) failing to disclose the
17 presidential primary state for independent expenditures (“IEs”) totaling \$372,534.67.

18 The Committee’s treasurer was a respondent in another matter recently resolved by the
19 Commission and was sentenced to prison in connection with a related criminal prosecution
20 earlier this year. Under these circumstances, and as discussed in further detail below, the
21 Commission (1) opens a MUR; (2) dismisses as a matter of prosecutorial discretion the
22 allegation that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by accepting
23 excessive contributions; (3) dismisses as a matter of prosecutorial discretion the allegation that
24 the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.1 and 104.3 by failing to file

¹ See 52 U.S.C. § 30109(a)(2).

1 accurate reports of its cash on hand; (4) dismisses as a matter of prosecutorial discretion the
2 allegation that the Committee violated 52 U.S.C. § 30104(b)(4), (g)(2) and 11 C.F.R.
3 §§ 104.3(b)(3)(vii), 104.4(b)(2), (c) by failing to indicate the state in which its IEs were
4 disseminated in connection with a presidential primary election; (5) issues an admonishment
5 letter to Tunstall on behalf of the Committee; and (6) directs RAD to administratively terminate
6 the Committee.

7 **II. FACTUAL BACKGROUND**

8 **A. Support American Leaders PAC and the Referral**

9 Support American Leaders is a non-connected multicandidate hybrid committee that first
10 registered with the Commission on September 24, 2018.² Other than from January 24, 2020,
11 through July 19, 2020,³ Matthew Tunstall has been the Committee's treasurer since its initial
12 registration.⁴ Between its inception and its last reported receipt on April 20, 2021, the

² Support American Leaders, Statement of Organization at 1 (Sept. 24, 2018) [hereinafter Original Statement of Organization], <https://docquery.fec.gov/pdf/240/201809249124236240/201809249124236240.pdf>; Support American Leaders, Amended Statement of Organization at 2 (Jan. 4, 2022) [hereinafter Current Statement of Organization], <https://docquery.fec.gov/pdf/959/202201049474866959/202201049474866959.pdf>; *see also* 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(e)(3).

³ Support American Leaders, Amended Statement of Organization at 1 (Jan. 24, 2020), <https://docquery.fec.gov/pdf/822/202001249167339822/202001249167339822.pdf>; Support American Leaders, Amended Statement of Organization at 1 (July 20, 2020), <https://docquery.fec.gov/pdf/125/202007209250469125/202007209250469125.pdf>.

⁴ Current Statement of Organization at 1; Original Statement of Organization at 1.

1 Committee reported raising \$1,807,552.45.⁵ Within the same time period, it reported spending a
 2 total of \$2,991,320.12,⁶ \$393,371.49 of which the Committee reported as being for IEs.⁷

3 On July 13, 2021, RAD referred Support American Leaders to OGC for three findings.⁸
 4 First, RAD referred the Committee's receipt of apparent excessive contributions totaling
 5 \$173,240.00.⁹ The Committee subsequently amended its reports in January 2022, clarifying that
 6 all of the originally reported excessive or prohibited contributions should have been reported as
 7 non-contribution *Carey* funds, but also introducing new excessive contributions totaling
 8 \$7,040.00, as shown below:

Source	Date	Amount	Aggregate Year-to-Date	Amount Excessive — Original ¹⁰	Amount Excessive — Amended ¹¹
Adams, Elmer W	Nov. 19, 2020	\$4,000.00	\$4,000.00	\$14,000.00	\$0.00
	Nov. 19, 2020	\$5,000.00	\$9,000.00		
	Nov. 19, 2020	\$5,000.00	\$14,000.00		
	Nov. 19, 2020	\$5,000.00	\$19,000.00		
Baker, Edward	Nov. 4, 2020	\$5,000.00	\$5,000.00	\$5,000	\$0.00
	Nov. 4, 2020	\$5,000.00	\$10,000.00		
Branch, Edward	Nov. 4, 2020	\$100.00	\$5,100.00	N/A	\$130.00

⁵ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00688069 (last visited August 16, 2023) (showing all receipts reported by the Committee).

⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00688069 (last visited August 16, 2023) (showing all disbursements reported by the Committee).

⁷ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00688069&is_notice=false&most_recent=true (last visited August 16, 2023) (showing all IEs reported by the Committee).

⁸ Referral at 4-5 (July 13, 2021). Though the Committee appears to have committed further violations, only those discussed herein warranted referral to OGC. *See id.* at 2-5.

⁹ *Id.* at 4.

¹⁰ Support American Leaders, 2019 February Monthly Report (Feb. 8, 2019) [hereinafter Original 2019 February Monthly Report], <https://docquery.fec.gov/pdf/776/201902089145478776/201902089145478776.pdf>; Support American Leaders, 2020 30-Day Post-General Report (Dec. 14, 2020), <https://docquery.fec.gov/pdf/553/202012159387342553/202012159387342553.pdf>.

¹¹ Support American Leaders, Amended 2019 February Monthly Report (Jan. 12, 2022) [hereinafter Amended 2019 February Monthly Report], <https://docquery.fec.gov/pdf/485/202201129474974485/202201129474974485.pdf>; Support American Leaders, Amended 2020 30-Day Post-General Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/818/202201139474976818/202201139474976818.pdf>.

MUR ____ (Support American Leaders PAC, *et al.*)

Factual and Legal Analysis

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Source	Date	Amount	Aggregate Year-to-Date	Amount Excessive — Original ¹⁰	Amount Excessive — Amended ¹¹
	Nov. 4, 2020	\$5,000.00	\$5,100.00		
	Nov. 12, 2020	\$30.00	\$5,130.00		
Chaves, Kathleen	Nov. 13, 2020	\$200.00	\$6,095.00	N/A	\$400
	Nov. 17, 2020	\$100.00	\$6,195.00		
	Nov. 17, 2020	\$100.00	\$6,195.00		
Hair, Gail	Nov. 9, 2020	\$1,000.00	\$6,000.00	N/A	\$1,000.00
Hair, Gale ¹²	Nov. 7, 2020	\$5,000.00	\$5,000.00	\$5,000.00	\$0.00
	Nov. 7, 2020	\$5,000.00	\$10,000.00		
Hair, Robert	Nov. 7, 2020	\$500.00	\$500.00	\$15,000.00	\$0.00
	Nov. 7, 2020	\$1,000.00	\$1,500.00		
	Nov. 7, 2020	\$2,000.00	\$3,500.00		
	Nov. 7, 2020	\$1,500.00	\$5,000.00		
	Nov. 7, 2020	\$5,000.00	\$10,000.00		
	Nov. 7, 2020	\$500.00	\$10,500.00		
	Nov. 7, 2020	\$1,000.00	\$11,500.00		
	Nov. 7, 2020	\$1,500.00	\$13,000.00		
	Nov. 7, 2020	\$2,000.00	\$15,000.00		
Hoelscher, Robert W	Nov. 7, 2020	\$5,000.00	\$10,000.00	N/A	\$5,310.00
	Nov. 7, 2020	\$2,000.00	\$10,000.00		
	Nov. 7, 2020	\$1,500.00	\$10,000.00		
	Nov. 7, 2020	\$1,000.00	\$10,000.00		
	Nov. 7, 2020	\$500.00	\$10,000.00		
	Nov. 10, 2020	\$100.00	\$10,135.00		
	Nov. 10, 2020	\$35.00	\$10,135.00		
	Nov. 13, 2020	\$35.00	\$10,185.00		
	Nov. 13, 2020	\$15.00	\$10,185.00		
	Nov. 17, 2020	\$100.00	\$10,285.00		
Nov. 19, 2020	\$25.00	\$10,310.00			
Maffett, James	Nov. 6, 2020	\$200.00	\$5,800.00	N/A	\$200.00
Renal, Joe	Nov. 5, 2020	\$5,000.00	\$5,000.00	\$15,000.00	\$0.00
	Nov. 5, 2020	\$5,000.00	\$10,000.00		
	Nov. 5, 2020	\$5,000.00	\$15,000.00		
	Nov. 5, 2020	\$5,000.00	\$20,000.00		

¹² Despite similar names and dates of contribution, based on the address information associated with the contributions, “Hair, Gail” and “Hair, Gale” appear to be distinct individuals.

MUR ____ (Support American Leaders PAC, *et al.*)

Factual and Legal Analysis

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Source	Date	Amount	Aggregate Year-to-Date	Amount Excessive — Original ¹⁰	Amount Excessive — Amended ¹¹
Reynal, Joe ¹³	Nov. 5, 2020	\$5,000.00	\$5,000.00	\$5,000	\$0.00
	Nov. 5, 2020	\$5,000.00	\$10,000.00		
Support America ¹⁴	Jan. 31, 2019	\$114,240.00	\$114,240.00	\$114,240.00	\$0.00
Totals:				\$173,240.00	\$7,040.00

1 Second, RAD referred Support American Leaders for a mathematical discrepancy of
2 \$421,579.84 between the ending cash-on-hand balance of the Committee’s 2019 October
3 Quarterly Report (\$423,034.51) and the starting cash-on-hand balance of the Committee’s 2019
4 Year-End Report (\$1,454.67).¹⁵ The Committee subsequently amended both its 2019 October
5 Quarterly and 2019 Year-End Reports on January 13, 2022, to eliminate this discrepancy.¹⁶

6 Third and finally, RAD referred Support American Leaders for failing to disclose the
7 Presidential Primary state for IEs totaling \$372,534.67 in the reports detailed below:¹⁷

Report	Date	# IEs	Total Amount
24-Hour Report	Dec. 27, 2019	4	\$116,184.81
24-Hour Report	Dec. 31, 2019	4	\$19,589.50
Original 2019 Year-End Report, Sched. E	Jan. 21, 2020	8	\$135,774.31 ¹⁸

¹³ Despite similar names and dates of contribution, based on the address information associated with the contributions, “Renal, Joe” and “Reynal, Joe” appear to be distinct individuals.

¹⁴ Amended 2019 February Monthly Report, sched. A at 6. The Committee originally reported this contribution as coming from “Support America” with no address information provided, but amended its report to reflect that the funds came from Support American Leaders PAC, without further explanation. *See* Original 2019 February Monthly Report, sched. A at 6.

¹⁵ Referral at 2-3, 5; *see* Support American Leaders, 2019 October Quarterly Report at 2 (Sept. 30, 2019), <https://docquery.fec.gov/pdf/457/201910249165293457/201910249165293457.pdf> (reporting cash on hand at close of the reporting period of \$423,034.51); Support American Leaders, 2019 Year-End Report at 2 (Jan. 21, 2020), <https://docquery.fec.gov/pdf/635/202001219167294635/202001219167294635.pdf> (reporting cash on hand at beginning of the reporting period of \$1,454.67).

¹⁶ *See* Support American Leaders, Amended 2019 October Quarterly Report at 2 (Jan. 13, 2022), <https://docquery.fec.gov/pdf/565/202201139474982565/202201139474982565.pdf> (reporting closing cash on hand of \$309,569.45); Support American Leaders, Amended 2019 Year-End Report at 2 (Jan. 13, 2022), <https://docquery.fec.gov/pdf/712/202201139474982712/202201139474982712.pdf> (showing opening cash on hand of \$309,569.45).

¹⁷ Referral at 3-5.

¹⁸ These IEs are the same as those disclosed on the December 27 and December 31, 2019 24-Hour Reports.

MUR ____ (Support American Leaders PAC, *et al.*)

Factual and Legal Analysis

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Report	Date	# IEs	Total Amount
24-Hour Report	Jan. 15, 2020	6	\$65,104.93
24-Hour Report	Jan. 24, 2020	4	\$33,255.43
24-Hour Report	Feb. 7, 2020	5	\$69,869.40
24-Hour Report	Feb. 21, 2020	4	\$68,519.60
			\$372,534.67¹⁹

1 The Committee subsequently amended its reports to indicate that the IEs were for the 2020
2 General Election rather than the Primary.²⁰

3 **B. RAD's Communications with Tunstall**

4 In the course of developing the Referral and in connection with separate Administrative
5 Fines matters, RAD communicated or attempted to communicate with Tunstall 76 separate
6 times, with the last successful attempt occurring on January 27, 2022. Support American
7 Leaders has been a respondent in nine Administrative Fines matters, and \$76,500.00 in fines has
8 been assessed against it. Of this amount, the Committee has paid a total of \$25.00, and four of
9 the matters have been transferred to the Treasury Department for collection.²² During his last
10 communication with RAD, Tunstall expressed that the Committee would be unable to make any

¹⁹ This total only counts the IEs disclosed on both the December 27 and December 31, 2019 24-Hour Reports and the 2019 Year-End Report once.

²⁰ Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/858/202201129474975858/202201129474975858.pdf> (amending December 27, 2019 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/671/202201129474976671/202201129474976671.pdf> (amending December 31, 2019 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/762/202201129474976762/202201129474976762.pdf> (amending January 15, 2020 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/776/202201129474976776/202201129474976776.pdf> (amending January 24, 2020 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/783/202201129474976783/202201129474976783.pdf> (amending February 7, 2020 24-Hour Report); Support American Leaders, Amended 24-Hour Report (Jan. 12, 2022), <https://docquery.fec.gov/pdf/790/202201129474976790/202201129474976790.pdf> (amending February 21, 2020 24-Hour Report).

²² *Id.*, Attach. at sheet 2 (AF List and Payments).

1 further payments, and its last-reported cash on hand was negative \$267,554.80.²³ Since its initial
2 registration with the Commission, Support American Leaders received 23 Requests for
3 Additional Information (“RFAIs”) from RAD regarding apparent errors and violations in its
4 reports and, in many cases, its failure to file them.²⁴

5 C. Tunstall and Relevant Legal Proceedings

6 Tunstall formed and led a series of other political committees, including Progressive
7 Priorities PAC and Liberty Action Group.²⁵ In November 2021, the Department of Justice
8 indicted Tunstall and his associates, Robert Reyes and Kyle Davies, on numerous criminal
9 charges including conspiracy, wire fraud, and money laundering in connection with their
10 activities conducted via Progressive Priorities PAC and Liberty Action Group, alleging that the
11 three defendants fraudulently solicited and obtained over \$3.5 million in contributions via the
12 two political committees, with only \$19.00 distributed to “any candidate’s authorized campaign
13 committee or to any political cause.”²⁶ Tunstall and each of his associates pleaded guilty to,
14 among other counts, conspiracy to cause false statements to the Commission, and on April 24,
15 2023, Tunstall was sentenced to ten years in prison and ordered to forfeit \$789,818.00 and pay a

²³ Support American Leaders, 2020 Year-End Report at 2 (Jan. 4, 2022), <https://docquery.fec.gov/pdf/952/202201049474866952/202201049474866952.pdf>.

²⁴ See *Support American Leaders PAC: Committee Filings 2017-2018*, FEC.GOV, <https://www.fec.gov/data/committee/C00688069/?tab=filings&cycle=2018> (last visited August 16, 2023) (showing one RFAI during the 2018 election cycle); See *Support American Leaders PAC: Committee Filings 2019-2020*, FEC.GOV, <https://www.fec.gov/data/committee/C00688069/?tab=filings&cycle=2020> (last visited August 16, 2023) (showing 13 RFAIs during the 2020 election cycle); See *Support American Leaders PAC: Committee Filings 2021-2022*, FEC.GOV, <https://www.fec.gov/data/committee/C00688069/?tab=filings&cycle=2022> (last visited August 16, 2023) (showing nine RFAIs during the 2022 election cycle).

²⁵ Progressive Priorities PAC, Amended Statement of Organization at 1 (Oct. 22, 2019), <https://docquery.fec.gov/pdf/671/201910229165266671/201910229165266671.pdf> (showing Tunstall as treasurer); Factual Basis for Plea of Guilt ¶ 2, *United States v. Tunstall*, No. 21-CR-223-LY (W.D. Tex. Dec. 7, 2022) [hereinafter Tunstall Plea] (“TUNSTALL . . . founded Liberty Action Group Political Action Committee . . .”).

²⁶ Indictment ¶ 35, *United States v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Nov. 2, 2021).

1 special assessment of \$200.00.²⁷ Tunstall was a respondent in his individual capacity and in his
 2 official capacity as treasurer in MUR 7468 (Progressive Priorities PAC), which related in part to
 3 the conduct at issue in the criminal matter, and which the Commission recently resolved by
 4 taking no further action beyond admonishing Tunstall.²⁸ The available information indicates that
 5 Tunstall’s work for Support American Leaders was similar to the fraudulent scheme he
 6 perpetrated in connection with those groups.

7 Though Support American Leaders was not the subject of the criminal action, Reyes’s
 8 Factual Basis for Plea of Guilt discusses “subsequent fraudulent activities similar in manner and
 9 means to those TUNSTALL and REYES employed in the operations of Liberty Action Group
 10 and Progressive Priorities” PAC.²⁹ The Factual Basis states:

11 On or about September 24, 2018, TUNSTALL caused Support
 12 American Leaders to be registered with the FEC. Support
 13 American Leaders was a political action committee that claimed to
 14 raise political contributions to support the election of [Donald
 15 Trump] in 2020. . . .

16 From approximately 2018 through at least December 31, 2021,
 17 TUNSTALL oversaw the operations of Support American Leaders
 18 and [another of his political committees,] Campaign to Support the
 19 President, and employed several other individuals, including
 20 REYES, to perpetuate the fraudulent scheme. Of the
 21 approximately \$3,690,249.05 million raised by Support American
 22 Leaders and Campaign to Support the President, the two PACs

²⁷ Tunstall pleaded guilty to one count of conspiracy to commit wire fraud and to cause false statements to the Commission and one count of money laundering. Judgment in a Criminal Case, *United States v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 24, 2023). Reyes was sentenced to seven years in prison, and Davies to five years of probation. Press Release, Dep’t of Justice, Three Individuals Sentenced for Soliciting Millions of Dollars in Contributions to Scam PACs (Apr. 25, 2023), <https://www.justice.gov/opa/pr/three-individuals-sentenced-soliciting-millions-dollars-contributions-scam-pacs>. Reyes also agreed to forfeit \$809,920.40 in connection with his plea agreement. Press Release, Dep’t of Justice, California Man Pleads Guilty to \$3.5 Million Scam-PAC Fraud (Aug. 9, 2022), <https://www.justice.gov/opa/pr/california-man-pleads-guilty-35-million-scam-pac-fraud>.

²⁸ Cert. (July 27, 2023), MUR 7468 (Progressive Priorities PAC, *et al.*); see Memorandum to the Commission re: Updated Recommendations Following Sentencing of Matthew Tunstall (July 19, 2023), MUR 7468 (Progressive Priorities PAC).

²⁹ Factual Basis for Plea of Guilt ¶ 34, *United States v. Reyes*, No. 21-CR-223-2 (W.D. Tex. Aug. 5, 2022) [hereinafter Reyes Plea].

1 distributed a total of approximately \$1,500 to any candidate's
2 authorized campaign committee or to any political cause. . . .

3 TUNSTALL and REYES used Support American Leaders and
4 Campaign to Support the President to obtain money based on false
5 and misleading representations about the PACs' purported efforts,
6 activities, and spending. Specifically, through written fundraising
7 solicitations, telephone call solicitations, online solicitations, and
8 other means, TUNSTALL and REYES falsely represented to
9 donors that their donated funds would be used in support of
10 [Donald Trump].

11 Instead, TUNSTALL and REYES again used the funds they
12 acquired through the scheme to pay for additional fraudulent
13 solicitations for money on behalf of Support American Leaders
14 and Campaign to Support the President, to enrich themselves
15 directly, and to support their independent, unrelated business
16 ventures.³⁰

17 According to their pleas, Tunstall and his co-conspirators used the funds obtained from
18 the political committees they created for their personal benefit by transferring funds obtained
19 through the fraudulent solicitations to personal and business bank accounts controlled by
20 Tunstall and the co-defendants and by intentionally overpaying vendors in order to obtain
21 refunds that could be concealed from the Commission.³¹ The pleas also explain that Liberty
22 Action Group and Progressive Priorities PAC's activities were misreported in filings with the
23 Commission.³²

³⁰ *Id.* ¶¶ 36-40; *see also* Press Release, Dep't of Justice, California Man Pleads Guilty to \$3.5 Million Scam-PAC Fraud (Aug. 9, 2022), <https://www.justice.gov/opa/pr/california-man-pleads-guilty-35-million-scam-pac-fraud> ("Reyes admitted to operating additional fraudulent PACs beyond the 2016 election cycle, Support American Leaders and Campaign to Support the President, from which he received approximately \$95,000 generated from false and misleading solicitations to donors.").

³¹ Tunstall Plea ¶¶ 15-21, 36-45; Reyes Plea ¶¶ 11-14, 26-40; Factual Basis for Plea of Guilt ¶¶ 10-14, *United States v. Davies*, No. 21-CR-223-3 (W.D. Tex. Mar. 25, 2022) [hereinafter *Davies Plea*].

³² Tunstall Plea ¶¶ 23-24, 30-32; Reyes Plea ¶¶ 15-16, 20-22; *Davies Plea* ¶¶ 15-16, 20-22.

1 **III. LEGAL ANALYSIS**

2 **A. Prohibited and Excessive Contributions**

3 The Act prohibits corporations from making contributions to federal candidates or their
4 authorized committees, and prohibits candidates and authorized committees from knowingly
5 receiving or accepting such contributions.³³ In addition to the limitations on corporate
6 contributions, the aggregate individual contribution limit to non-connected political committees
7 is \$5,000.00 per calendar year.³⁴ No committee shall knowingly accept any contribution in
8 violation of the limit.³⁵

9 Pursuant to *Carey v. FEC*, a hybrid political committee, which makes both IEs and direct
10 contributions, can accept unlimited and corporate contributions but must maintain separate
11 accounts: a non-contribution account for the purpose of making IEs and a contribution account
12 that is subject to the Act's amount and source limitations from which to make contributions to
13 federal candidates.³⁶ The Commission has also issued guidance on the formation and operation
14 of hybrid political committees and explained that the Commission would not enforce the
15 corporate contribution ban and the limitation amounts against non-connected political
16 committees for the purpose of making contributions to candidates and political parties as long as

³³ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (b)(1).

³⁴ 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d).

³⁵ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

³⁶ *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011) (granting limited preliminary injunction enjoining Commission from enforcing 52 U.S.C. § 30116(a)(1)(C) and (a)(3) with regard to contributions received for IEs by a non-connected political committee if such committee: (1) maintains a "soft money" account for use in making IEs in federal elections and a separate "hard money" account that accepts contributions subject to "statutory contribution limits" for making contributions to "candidates, candidates' committees, or national parties"; and (2) "proportionally pays related administrative costs from those accounts").

1 certain requirements are met.³⁷ First, that the political committee deposits such contributions in
2 a “Non-Contribution Account,” which is for “the purpose of financing independent expenditures,
3 other advertisements that refer to a Federal candidate, and generic voter drives.”³⁸ Second, that
4 that account is “segregated from any accounts that receive source-restricted and amount-limited
5 contributions.”³⁹ Third, that each account pays a percentage of administrative expenses that
6 closely corresponds to the percentage of activity for that account.⁴⁰ The guidance also provided
7 instructions for reporting the receipt of contributions deposited into a Non-Contribution Account,
8 stating that a committee: (1) should disclose such contributions on “Line 17 of Form 3X, titled
9 ‘Other Federal Receipts,’” and (2) “[w]hen itemizing on Schedule A, electronic filers should
10 identify those receipts by entering ‘Non-Contribution Account’ as memo text or in the
11 description field.”⁴¹

12 Accordingly, Support American Leaders, as a hybrid committee, could not accept
13 excessive contributions unless they were designated for its non-contribution account. Though
14 the Committee subsequently amended its reports to reflect that all of the originally reported
15 \$173,240.00 in excessive or prohibited contributions were non-contribution *Carey* funds, these

³⁷ See Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, FEC.GOV (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/> (requiring non-connected committees that make IEs to maintain a separate “contribution” account to be able to make contributions to federal candidates from receipts that are subject to the Act’s amount limitations and source prohibitions).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

1 amendments also introduced new excessive contributions totaling \$7,040.00.⁴² Further, the
2 Committee did not make these amendments until January 13, 2022, more than two years after the
3 original disclosures for the majority of the contributions at issue, and three years after the
4 \$114,240.00 contribution from “Support America.”

5 Under the facts outlined above, there is sufficient information for the Commission to
6 open a MUR and find reason to believe that Support American Leaders violated 52 U.S.C.
7 § 30116(f) and 11 C.F.R. § 110.9 by accepting excessive contributions.

8 **B. Misreported Cash on Hand**

9 The Act requires committee treasurers to file reports of receipts and disbursements in
10 accordance with the provisions of 52 U.S.C. § 30104.⁴³ These reports must include, among other
11 things, the total amount of receipts, disbursements, and cash on hand, including the appropriate
12 itemizations, where required.⁴⁴

13 Here, there was a mathematical discrepancy of \$421,579.84 between the ending cash-on-
14 hand balance of Support American Leaders’s 2019 October Quarterly Report (\$423,034.51) and
15 the starting cash-on-hand balance of its 2019 Year-End Report (\$1,454.67).⁴⁵ While the
16 Committee subsequently amended both its 2019 October Quarterly and 2019 Year-End Reports

⁴² It is unclear from the available information whether the funds were actually deposited into correctly organized *Carey* non-contribution accounts. Based on the circumstances of this matter, including the approximate two-year delay with amending its reports and the treasurer’s prior conduct in causing false statements to be made to the Commission, it is possible that the amendments reflect an attempt to obscure any violations of the Act rather than the actual treatment of the funds at issue.

⁴³ 52 U.S.C. § 30104(a)(1); *accord* 11 C.F.R. § 104.1(a).

⁴⁴ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

⁴⁵ Referral at 2-3, 5; *see* Support American Leaders, 2019 October Quarterly Report at 2 (Sept. 30, 2019), <https://docquery.fec.gov/pdf/457/201910249165293457/201910249165293457.pdf> (reporting cash on hand at close of the reporting period of \$423,034.51); Support American Leaders, 2019 Year-End Report at 2 (Jan. 21, 2020), <https://docquery.fec.gov/pdf/635/202001219167294635/202001219167294635.pdf> (reporting cash on hand at beginning of the reporting period of \$1,454.67).

1 on January 13, 2022, to eliminate this discrepancy,⁴⁶ they did so more than two years after
2 receiving an RFAI regarding the discrepancy.

3 Thus, the available information is sufficient for the Commission to find reason to believe
4 that Support American Leaders violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.1 and 104.3
5 by failing to file accurate reports of its cash on hand.

6 **C. Misreported Independent Expenditures**

7 An IE is an expenditure that expressly advocates the election or defeat of a clearly
8 identified federal candidate and “that is not made in concert or cooperation with or at the request
9 or suggestion of such candidate, the candidate’s authorized political committee, or their agents,
10 or a political party committee or its agents.”⁴⁷ An unauthorized political committee that makes
11 IEs must report them in its regularly scheduled disclosure reports.⁴⁸ In addition, a political
12 committee that makes IEs aggregating \$10,000.00 or more at any time up to and including the
13 20th day before the date of a given election, must file a report describing those expenditures
14 within 48 hours of dissemination of IEs;⁴⁹ for such expenditures made less than 20 days, but
15 more than 24 hours, before the date of a given election, the political committee must file a report
16 describing those expenditures within 24 hours of their dissemination.⁵⁰

17 To determine whether the dollar amount thresholds for filing IE reports are met, the 24-
18 and 48-hour filing requirements begin to run when the IEs aggregating to at least \$1,000.00 or

⁴⁶ See Support American Leaders, Amended 2019 October Quarterly Report at 2 (Jan. 13, 2022), <https://docquery.fec.gov/pdf/565/202201139474982565/202201139474982565.pdf> (reporting closing cash on hand of \$309,569.45); Support American Leaders, Amended 2019 Year-End Report at 2 (Jan. 13, 2022), <https://docquery.fec.gov/pdf/712/202201139474982712/202201139474982712.pdf> (showing opening cash on hand of \$309,569.45).

⁴⁷ 52 U.S.C. § 30101(17).

⁴⁸ See *id.* § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(3)(vii).

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

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

1 \$10,000.00, respectively, are “publicly distributed.”⁵¹ For purposes of aggregating IEs, each
2 state’s presidential primary election is a separate election,⁵² and accordingly, the report must
3 disclose the state for which primary such IEs are distributed.

4 Here, RAD referred Support American Leaders for failing to disclose the Presidential
5 Primary state for IEs totaling \$372,534.67 disseminated between December 27, 2019, and
6 February 21, 2020. Though the Committee amended its reports in January 2022 to indicate that
7 the IEs were for the 2020 General Election rather than the presidential primary, these
8 amendments were made approximately two years after the date of the expenditures at issue, and
9 the timing of the expenditures between December 2019 and February 2020 does not support the
10 amendments’ claims that the expenditures were for the general election: The first Republican
11 election in the 2020 election cycle was the Iowa caucus held on February 3, 2020,⁵³ and Donald
12 Trump, the candidate the IEs supported, was not nominated for the general election until August
13 2020.⁵⁴

14 Accordingly, the available information is sufficient for the Commission to find reason to
15 believe that Support American Leaders violated 52 U.S.C. § 30104(b)(4), (g)(2) and 11 C.F.R.
16 §§ 104.3(b)(3)(vii), 104.4(b)(2), (c) by failing to indicate the state in which it disseminated its
17 IEs in connection with a presidential primary election.

⁵¹ 11 C.F.R. §§ 104.4(b)(2), (c), (f); 109(c)-(d).

⁵² Advisory Opinion 2003-40 at 4 (Navy Veterans).

⁵³ FEC, 2020 PRESIDENTIAL AND CONGRESSIONAL PRIMARY DATES IN CHRONOLOGICAL ORDER at 5 (July 17, 2020), <https://www.fec.gov/resources/cms-content/documents/2020pdates.pdf>.

⁵⁴ *Republican National Convention, 2020*, BALLOTPEdia, https://ballotpedia.org/Republican_National_Convention_2020 (last visited August 16, 2023). Reyes’s guilty plea further suggests that the IEs the Committee reported were fraudulent: “Of the approximately \$3,690,249.05 million raised by Support American Leaders and Campaign to Support the President, the two PACs distributed a total of approximately \$1,500 to any candidate’s authorized campaign committee or to any political cause.” Reyes Plea ¶ 37. As this issue was not referred by RAD, the Commission makes no findings as to this potential violation here.

1 **IV. DISPOSITION**

2 As discussed above, there is sufficient information to justify a finding of reason to
3 believe as to all of the violations at issue in this matter. However, given the particular facts,
4 circumstances, and limitations in this matter, including the ordering of the Commission's
5 priorities on its docket, the Commission opens a MUR, exercises its prosecutorial discretion to
6 dismiss the allegations, and issues an admonishment letter.⁵⁵ The Commission further directs
7 RAD to administratively terminate the Committee.

8 Given the apparent violations and the significant amount in violation, under other
9 circumstances, based on the facts presented here the Commission would find reason to believe as
10 to each of the above violations without reservation. However, a number of factors indicate that
11 further enforcement action against Tunstall would be an imprudent use of Commission
12 resources, as it would not likely vindicate the Commission's interest in disclosure, extract any
13 significant civil penalty or injunctive relief, or meaningfully deter future violations of the Act by
14 Tunstall or his associates involved in the operation of Support American Leaders.

15 First, given the available information indicating that the Committee, like Progressive
16 Priorities PAC and Liberty Action Group, was a fraudulent "scam PAC" operated primarily to
17 enrich Tunstall personally,⁵⁶ it is unlikely that accurate information is readily available that
18 would clarify the public record with respect to the Committee's activities. Second, the
19 Committee reports a negative cash-on-hand balance of over \$267,000.00,⁵⁷ and Tunstall has
20 already forfeited nearly \$800,000.00 in connection with his criminal sentencing, which indicates

⁵⁵ *Heckler*, 470 U.S. at 831.

⁵⁶ *See supra* notes 29-32 and accompanying text.

⁵⁷ Support American Leaders, 2020 Year-End Report at 2 (Jan. 4, 2022), <https://docquery.fec.gov/pdf/952/202201049474866952/202201049474866952.pdf>.

1 that neither the Committee nor Tunstall would be able to pay any additional penalty that the
 2 Commission may seek to assess.⁵⁸ Third, Tunstall has already been sentenced to a ten-year term
 3 of imprisonment for conduct involving the operation of fraudulent political committees,
 4 including causing false statements to be filed with the Commission;⁵⁹ therefore, action by the
 5 Commission is unlikely to provide further deterrence against future violations of the Act.

6 Accordingly, in light of the Commission’s Statement of Policy Regarding Commission
 7 Action in Matters at the Initial Stage in the Enforcement Process, a dismissal pursuant to *Heckler*
 8 *v. Chaney* is appropriate here.⁶⁰ The policy indicates that dismissal pursuant to *Heckler* is
 9 appropriate when matters “do not merit the additional expenditure of Commission resources,”
 10 even if “the Commission concludes that a violation of the Act did or very probably did occur.”⁶¹

11 The Statement of Policy further notes that:

12 The Commission has previously used the finding ‘reason to
 13 believe, but take no further action’ in cases where the Commission
 14 finds that there is a basis for investigating the matter or attempting
 15 conciliation, but the Commission declines to proceed for prudential
 16 reasons. As discussed below, the Commission believes that
 17 resolving these matters through dismissal or dismissal with
 18 admonishment more clearly conveys the Commission’s intentions
 19 and avoids possible confusion about the meaning of a reason to
 20 believe finding.⁶²

21 As such, dismissing the allegations as a matter of prosecutorial discretion is appropriate here.

⁵⁸ Judgment in a Criminal Case, *United States v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 24, 2023).

⁵⁹ Tunstall Plea ¶¶ 24, 32; Judgment in a Criminal Case, *United States v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 24, 2023).

⁶⁰ *Heckler v. Chaney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 16, 2007) [hereinafter Statement of Policy Regarding Commission Action].

⁶¹ Statement of Policy Regarding Commission Action at 12,545-46.

⁶² *Id.* at 12,545.

1 The Commission therefore opens a MUR and, consistent with the Commission’s actions
2 in MUR 7468,⁶³ dismisses the allegations as a matter of prosecutorial discretion with
3 admonishment. Because Tunstall likely cannot meaningfully clarify the public record with
4 respect to the Committee’s activities, opening a MUR and issuing an admonishment letter
5 represents the Commission’s sole opportunity to advance its disclosure interest, as opening a
6 MUR will permit the file to become public.⁶⁴ Additionally, issuing an admonishment letter to
7 Tunstall will clarify to both the Respondent and the regulated community that the Commission
8 takes violations of the Act seriously, and that, absent the present circumstances, it would pursue
9 similar violations through the enforcement process.⁶⁵ In addition, consistent with past matters,
10 the Commission instructs RAD to administratively terminate the Committee.⁶⁶

⁶³ See *supra* note 30 and accompanying text.

⁶⁴ See, e.g., Cert. ¶ 2, MUR 8013 (RR 20L-26) (Kristine Schanbacher for Congress) (opening a MUR and dismissing as a matter of prosecutorial discretion); Cert. ¶ 1, MUR 6395 (PMUR 502) (Leonard Roberto, *et al.*) (opening a MUR, dismissing as a matter of prosecutorial discretion and issuing a letter of caution as to some respondents and finding no reason to believe as to the remaining respondents).

⁶⁵ This is consistent with Commission precedent. See, e.g., Cert. (Aug. 10, 2022), MUR 7880 (Mike Gaul); Admonishment Letter (Aug. 17, 2022), MUR 7880 (Mike Gaul) (admonishing treasurer who filed false statement of organization purporting to be a joint fundraising representative of a political committee that was neither aware of Gaul’s committee nor had consented to joint fundraising with it); Amended Cert. (May 11, 2021), MUR 6997 (Ams. Socially United, *et al.*); Admonishment Letter (May 12, 2021), MUR 6997 (Carey Lee Peterson) (admonishing treasurer for failing to maintain records, failing to file accurate disclosure reports, and fraudulently soliciting contributions where treasurer had been convicted of unrelated securities fraud charges in federal court); Cert. (July 20, 2020), MURs 7011, 7092 (HC4President, *et al.*); Admonishment Letter (July 22, 2022), MURs 7011, 7092 (HC4President, *et al.*) (admonishing respondents for fraudulent misrepresentation violations in matter where treasurer had pleaded guilty to related violations in federal court); Cert. (Dec. 9, 2016), MUR 7072 (Babulal Bera, *et al.*); Admonishment Letter (Jan. 4, 2017), MUR 7072 (Babulal Bera) (admonishing respondent who had made contributions in the names of others where respondent had pleaded guilty to related charges in federal court).

⁶⁶ See, e.g., Cert. ¶ 2, MUR 6997 (Ams. Socially United, *et al.*) (“Instruct the Reports Analysis Division to administratively terminate Americans Socially United.”); Cert. ¶ 2, MURs 7011, 7092 (HC4President, *et al.*) (“Instruct the Reports Analysis Division to administratively terminate HC4President and Socially Responsible Government.”).