

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 8099**

6 DATE RECEIVED: Jan. 11, 2023

7 DATES OF NOTIFICATIONS: Jan. 18, 2023,
8 Feb. 21, 2023

9 DATE OF LAST RESPONSE: Apr. 19, 2023

10 DATE ACTIVATED: Apr. 26, 2023

11 EARLIEST EXPIRATION OF SOL: Jan. 4, 2028

12 LATEST EXPIRATION OF SOL: Ongoing

13 ELECTION CYCLE: 2024

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16 **COMPLAINANTS:**

End Citizens United

Tiffany Muller

17
18
19 **RESPONDENTS:**

Kevin McCarthy

Congressional Leadership Fund and Caleb Crosby
in his official capacity as treasurer

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21
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23 **RELEVANT STATUTES
24 AND REGULATIONS:**

52 U.S.C. § 30125(e)(1)

11 C.F.R. § 111.4

11 C.F.R. § 300.2(c)(2)

11 C.F.R. § 300.61

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29 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

30
31 **FEDERAL AGENCIES CHECKED:**

None

32 **I. INTRODUCTION**

33 The Complaint in this matter alleges that Speaker of the House Kevin McCarthy and
34 Congressional Leadership Fund and Caleb Crosby in his official capacity as treasurer (“CLF”)
35 violated the “soft money” provisions of the Federal Election Campaign Act of 1971, as amended
36 (the “Act”), and Commission regulations by soliciting, receiving, directing, transferring, or
37 spending funds in connection with an election for federal office that did not comply with the
38 source prohibitions and amount limitations of the Act.

1 Specifically, the Complaint alleges that in an effort to secure enough votes from his
2 colleagues to become the next speaker of the House of Representatives, McCarthy negotiated a
3 deal whereby CLF, an independent expenditure-only political committee (“IEOPC”), agreed to
4 refuse to spend funds in open-seat primaries in districts viewed as “safe Republican” districts and
5 would also support incumbent members of his party. In response to this commitment by CLF
6 and McCarthy’s support for certain changes to the house rules, Club for Growth, a 501(c)(4),
7 announced its support for McCarthy for speaker. Two days following this endorsement by Club
8 for Growth, a number of Republican members-elect changed their votes to support McCarthy
9 and he prevailed becoming the 55th speaker of the House of Representatives. Based on
10 McCarthy’s purported role in orchestrating this deal between CLF and Club for Growth, the
11 Complaint alleges that McCarthy directed CLF’s spending, or in other words that CLF was
12 established, financed, maintained, or controlled (“EFMC’d”) by, or acting on behalf of,
13 McCarthy for purposes of 52 U.S.C. § 30125(e)(1)(A). Therefore, the Complaint concludes that
14 CLF’s raising and spending of non-federal funds amounts to a violation of the Act and
15 Commission regulations.

16 In response, McCarthy denies the news reporting that underlies these allegations and
17 states that neither he nor any member of his staff were involved in the agreement reached
18 between CLF and Club for Growth. Similarly, CLF states that McCarthy has no formal control
19 over CLF under its bylaws, and it is instead solely managed by its board of directors and its
20 president, none of whom have overlapping authority over any of McCarthy’s political
21 committees. Therefore, Respondents argue that CLF was not established, financed, maintained
22 or controlled by McCarthy nor was it acting on his behalf and so it is not prohibited from raising
23 and spending non-federal funds under 52 U.S.C. § 30125(e)(1)(A).

1 As explained below, the implication that McCarthy EFMC'd CLF or that it was acting on
2 his behalf, for purposes of 52 U.S.C. § 30125, finds insufficient support in the available record to
3 substantiate a reason to believe finding. Accordingly, we recommend that the Commission find
4 no reason to believe McCarthy or CLF violated 52 U.S.C. § 30125(e)(1)(A) by impermissibly
5 raising or spending soft money.

6 **II. FACTUAL BACKGROUND**

7 **A. Respondents**

8 Kevin McCarthy is the representative from California's 20th congressional district.¹ On
9 January 7, 2023, McCarthy, a Republican, was chosen as the 55th speaker of the House of
10 Representatives.²

11 Club for Growth is a 501(c)(4) entity that describes itself as "a national network of over
12 500,000 pro-growth, limited government Americans who share in the belief that prosperity and
13 opportunity come from economic freedom."³ Club for Growth has a separate segregated fund
14 registered with the Commission called Club for Growth PAC as well as an affiliated IEOPC
15 called Club for Growth Action.⁴

¹ See Representative Kevin McCarthy, Congress.gov, <https://www.congress.gov/member/kevin-mccarthy/M001165?q=%7B%22search%22%3A%5B%22mccarthy%22%5D%7D&s=1&r=1>.

² Question: Election of the Speaker, Roll Call Votes, Clerk of the U.S. House of Representatives (Jan. 7, 2023), <https://clerk.house.gov/Votes?Date=01/07/2023>.

³ Club for Growth, About the Club for Growth: What We Do, <https://www.clubforgrowth.org/about/what-we-do/> (last visited May 9, 2023); see Club for Growth 2021 IRS Form-990, available at https://projects.propublica.org/nonprofits/display_990/204681603/download990pdf_07_2022_prefixes_01-22%2F204681603_202106_990O_2022071820227061 (last visited June 14, 2023).

⁴ Amend. Statement of Org., Club for Growth PAC (Aug. 23, 2010); Amend. Statement of Org., Club for Growth Action (Feb. 4, 2019).

1 CLF is an IEOPC registered with the Commission.⁵ According to its website, CLF is
2 “dedicated exclusively to one goal: winning a Republican Majority in the House of
3 Representatives.”⁶ As noted in the Complaint, CLF states that it is “endorsed” by McCarthy.⁷ In
4 its Response, CLF also states that: (1) it was established 12 years ago; (2) it “is in no way
5 financed by McCarthy or his committees;” (3) “Speaker McCarthy has no formal control over
6 CLF under its corporate bylaws;” and (4) that “CLF is solely managed by its board of
7 independent directors and its President — none of whom has overlapping authority on any of
8 Speaker McCarthy’s political committees.”⁸

9 **B. McCarthy’s Bid to Become Speaker of the House of Representatives and the**
10 **Roles Played by CLF and Club for Growth**

11 McCarthy was the minority leader prior to his party taking control of the House of
12 Representatives in the 2022 general election and becoming a candidate for speaker of the House.
13 A group of members-elect in McCarthy’s party large enough to deny him the speakership sought
14 policy and political concessions in exchange for their support for McCarthy’s bid for speaker.⁹
15 As a result of this disagreement, for the first time in 100 years, the speakership was not

⁵ Amend. Statement of Org, Congressional Leadership Fund (Feb. 1, 2023).

⁶ Congressional Leadership Fund, *About the Congressional Leadership Fund*, <https://congressionalleadershipfund.org/about/> (last visited May 8, 2023).

⁷ Compl. at 2; Congressional Leadership Fund, CLF and Club for Growth Come to Key Agreement in Support of Kevin McCarthy for Speaker (Jan. 4, 2023) (“CLF & Club for Growth Agreement”), <https://congressionalleadershipfund.org/clf-club-for-growth-come-to-key-agreement-in-support-of-kevin-mccarthy-for-speaker/>; *see also* Congressional Leadership Fund, CLF President Dan Colston, <https://congressionalleadershipfund.org/dan-conston/> (last visited May 30, 2023) (referring to CLF as “the super PAC aligned with future Speaker Kevin McCarthy”) CLF (@CLFSuperPAC), Twitter (Dec. 17, 2020, 12:26 PM), <https://twitter.com/CLFSuperPAC/status/1339623022592974850> (referring to CLF as, “the super PAC affiliated with House Minority Leader Kevin McCarthy of California”).

⁸ CLF Resp. at 7 (Apr. 19, 2023).

⁹ Deidre Walsh & Dustin Jones, *House Leadership is in Limbo as McCarthy Loses 3 Rounds of Voting for Speaker*, NPR (Jan. 3, 2023), <https://www.npr.org/2023/01/03/1146600160/mccarthy-scrambles-for-votes-to-be-elected-speaker-of-the-house>.

1 determined on the first vote.¹⁰ Instead, it took until the early morning of the fifth day of voting
2 when a majority the members-elect voting selected McCarthy as speaker on the 15th vote.¹¹

3 On January 2, 2023, the day prior to the first vote to elect a speaker of the House, Club
4 for Growth issued a “Key Vote Alert” urging representatives to only back a candidate for
5 speaker who supports a series of particular reforms and noted that its “congressional scorecard”
6 would include one or more votes in the race for speaker to inform its supporters who voted as
7 Club for Growth urged.¹² The three criteria highlighted by Club for Growth to earn its support
8 were: (1) returning to the rules of the 114th Congress; (2) including “[a] true conservative
9 Representative” in party leadership; and (3) “Congressional Leadership Fund should be
10 prohibited from spending money or providing grants to any super PAC to engage in open
11 Republican primaries or against any Republican incumbent. Additionally, the Speaker shall not
12 be permitted to solicit funds or direct any other super PAC to oppose a Republican incumbent.”¹³

13 After two days and six votes for speaker showing almost no movement in the voting,¹⁴
14 McCarthy made several concessions regarding house rules, committee membership, and
15 promised a vote on a constitutional amendment regarding term limits.¹⁵ At the same time, an

¹⁰ See *id.*; Scott Wong & Alex Seitz-Wald, *House Republicans Quit for the Day After McCarthy Loses Sixth Speaker Vote*, NBC NEWS (Jan. 4, 2023), <https://www.nbcnews.com/politics/congress/mccarthy-enters-day-two-uncertainty-house-resumes-speaker-votes-rcna64154>.

¹¹ Question: Election of the Speaker, Roll Call Votes, Clerk of the U.S. House of Representatives (Jan. 7, 2023), <https://clerk.house.gov/Votes?Date=01/07/2023>.

¹² Club for Growth, *Key Vote Alert – House Speaker Vote* (Jan. 2, 2023), <https://www.clubforgrowth.org/key-vote-alert-house-speaker-vote/>.

¹³ *Id.*

¹⁴ Question: Election of the Speaker, Roll Call Votes, Clerk of the U.S. House of Representatives (Jan. 7, 2023), <https://clerk.house.gov/Votes?Date=01/03/2023>; Question: Election of the Speaker, Roll Call Votes, Clerk of the U.S. House of Representatives (Jan. 7, 2023), <https://clerk.house.gov/Votes?Date=01/04/2023>.

¹⁵ Rae Hodge, “Shameful”: Democrats Sound Alarm Over “Creepy” Dark-Money Super PAC Deal to Help McCarthy Win, SALON (Jan. 5, 2023) (“Salon Article”), <https://www.salon.com/2023/01/05/shameful-democrats-sound-alarm-over-creepy-dark-money-super-pac-deal-to-help-mccarthy-win/>; see Clare Foran, Melanie Zanova,

1 agreement between Club for Growth and CLF was also announced.¹⁶ Under this agreement,

2 CLF agreed that:

3 CLF will not spend in any open-seat primaries in safe Republican
4 districts and CLF will not grant resources to other super PAC's
5 [sic] to do so. CLF has never spent a dollar against a Republican
6 incumbent before and obviously will continue that policy in the
7 future.

8 CLF will continue to support incumbents in primaries as well as
9 challengers in districts that affect the Majority, which proved to be
10 critical to winning the Majority in 2022.¹⁷

11 In exchange, Club for Growth stated:

12 This agreement on super PAC's [sic] fulfills a major concern we
13 have pressed for. We understand that Leader McCarthy and
14 Members are working on a rules agreement that will meet the
15 principles we have set out previously. Assuming these principles
16 are met, Club for Growth will support Kevin McCarthy for
17 Speaker.¹⁸

18 The following day, January 5, 2023, the House reconvened and conducted five more
19 votes to elect a speaker and in each McCarthy held steady, but failed to gain the support of any
20 of the hold outs in his party.¹⁹ On January 6, 2023, the House once again convened and took the
21 12th, 13th, and 14th votes; McCarthy picked up the support of one additional member-elect in

Manu Raji, & Lauren Fox, *McCarthy Proposes Key Concessions After House Adjourns for Second Day Without Electing a Speaker*, CNN (Jan. 5, 2023), <https://www.cnn.com/2023/01/04/politics/kevin-mccarthy-speaker-vote/index.html>.

¹⁶ CLF & Club for Growth Agreement.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Question: Election of the Speaker, Roll Call Votes, Clerk of the U.S. House of Representatives (Jan. 7, 2023), <https://clerk.house.gov/Votes?Date=01/05/2023>.

1 each of these votes.²⁰ Finally, after a reported call from former President Trump to holdout
2 Republicans,²¹ shortly after midnight, McCarthy secured the speakership on January 7, 2023.²²

3 **III. LEGAL ANALYSIS**

4 The Act prohibits federal candidates and officeholders, their agents, and entities directly
5 or indirectly established, financed, maintained, or controlled by or acting on behalf of one or
6 more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],
7 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
8 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”²³
9 This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
10 was designed to “plug the soft-money loophole.”²⁴

11 To determine whether a candidate or his or her agent “directly or indirectly establishes,
12 finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten
13 factors set forth in 11 C.F.R. § 300.2(c)(2), including: (1) whether the candidate or his agent has
14 the authority to “direct or participate in the governance of the entity through provisions of
15 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or
16 procedures”;²⁵ (2) whether the candidate or his agent has “the authority or ability to hire,

²⁰ Question: Election of the Speaker, Roll Call Votes, Clerk of the U.S. House of Representatives (Jan. 7, 2023), <https://clerk.house.gov/Votes?Date=01/06/2023>.

²¹ Rachel Bade, *Politico Playbook: Inside the 28 minutes that saved Kevin McCarthy*, POLITICO (Jan. 7, 2023), <https://www.politico.com/newsletters/playbook/2023/01/07/inside-the-28-minutes-that-saved-kevin-mccarthy-00076893>.

²² Question: Election of the Speaker, Roll Call Votes, Clerk of the U.S. House of Representatives (Jan. 7, 2023), <https://clerk.house.gov/Votes?Date=01/07/2023>.

²³ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

²⁴ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

²⁵ 11 C.F.R. § 300.2(c)(2)(ii).

1 appoint, demote, or otherwise control the officers, or other decision-making employees or
2 members of the entity”;²⁶ (3) whether former or present “overlapping officers or employees”
3 indicate “a formal or ongoing relationship” between the candidate or his agent and the entity;²⁷
4 (4) whether directly or through its agent, the candidate had an “active or significant role in the
5 formation of the entity”;²⁸ as well as any other relevant factors, in the context of the overall
6 relationship between the federal candidate or officeholder, or his agent, and the entity.²⁹

7 While this list of factors is not an exhaustive list, the Complaint in this matter does not
8 provide information indicating that any one of the factors is met nor are we aware of such
9 information. Moreover, the CLF Response directly denies several of the most likely applicable
10 factors, stating:

11 CLF was established 12 years ago, is in no way “financed” by
12 Speaker McCarthy or his committees, and Speaker McCarthy has
13 no formal control over CLF under its corporate bylaws. To the
14 contrary, CLF is solely managed by its board of independent
15 directors and its President — none of whom has overlapping
16 authority on any of Speaker McCarthy’s political committees.³⁰

17 In MUR 7070, a previous complaint alleged that CLF was established, financed,
18 maintained, or controlled by former Speaker of the House Paul Ryan based on a *Politico* article
19 reporting a conversation Ryan allegedly had with a candidate for a seat on CLF’s board of
20 directors, encouraging him to take the position.³¹ Much like the present matter, Ryan and CLF

²⁶ *Id.* § 300.2(c)(2)(iii).

²⁷ *Id.* § 300.2(c)(2)(v), (vi).

²⁸ *Id.* § 300.2(c)(2)(ix).

²⁹ *Id.* § 300.2(c)(2); *see* Advisory Op. 2006-04 (Tancredo) at 3.

³⁰ CLF Resp. at 7; *see also* McCarthy Resp. at 2 (Feb. 8, 2023) (“Neither Respondent nor any members of his staff were involved in whatever agreement was or was not reached by these two Super PACs.”).

³¹ Factual & Legal Analysis (“F&LA”) at 1, MUR 7070 (Congressional Leadership Fund).

1 denied that he had any authority to control CLF's personnel decisions, which were instead made
2 solely by its board of directors.³² Without information beyond the suggestion in a *Politico* article
3 that Ryan approached the candidate about the board seat, and considering CLF's denial that
4 Ryan had any authority to hire on its behalf, the Commission dismissed the alleged violation.³³
5 Moreover, in MUR 6280 (Howard L. Berman), the Commission found no reason to believe a
6 violation had occurred where a candidate did not have a formal executive position and did not
7 have the ability to "hire, appoint, demote, or otherwise control the officers."³⁴ Similarly, in the
8 present matter, the Complaint presents no evidence of any formal or informal role McCarthy
9 played in the formation or operation of CLF as included in the regulation's enumerated factors,
10 and CLF directly denies any such role.³⁵

11 Instead of resting on any of the enumerated factors, it appears that the Complaint's
12 argument is premised on the idea that CLF is "acting on behalf" of McCarthy.³⁶ The Act does
13 not define the phrase "on behalf of" as used in 52 U.S.C. § 30125(e)(1) and the Commission has
14 not defined the phrase in 11 C.F.R. § 300.60(d). In such circumstances, the Commission has

³² *Id.* at 3.

³³ *Id.* at 4-5.

³⁴ F&LA at 8, MUR 6280 (Howard L. Berman).

³⁵ CLF Resp. at 7.

³⁶ *See* Compl. at 4-5; 52 U.S.C. § 30125(e)(1). The CLF Response disputes that the Complaint alleges violations based on CLF "acting on behalf of or 'directly or indirectly established, financed, maintained or controlled' by Speaker McCarthy." CLF Resp. at 7. To the contrary, the Complaint invokes the language of and cites to a relevant section of the code, 52 U.S.C. § 30125(e)(1)(A). Moreover, the failure to recite the language of 52 U.S.C. § 30125(e)(1), as CLF suggests, which is necessarily implicated by the cited subsection (A), is far from fatal to its complaint. The Act and Commission regulations do not require complainants to recite magic words or cite to exact provisions of the Act or Commission regulations, but instead to include "a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4; *see* 52 U.S.C. § 30109(a)(1).

1 looked to the plain meaning of the words used.³⁷ Courts have found the phrase “on behalf of” to
2 have both a narrower plain meaning, “as the agent or representative of,” and a broader plain
3 meaning, “in the interest of,” or “for the benefit of.”³⁸ The text of 52 U.S.C. § 30125(e)(1)
4 otherwise specifically applies to “agent[s] of a candidate,” so understanding “on behalf of” at its
5 narrowest, as only including “an agent of” the candidate, is not the best reading as it would
6 render the clause superfluous.³⁹ On the other hand, to understand “on behalf of” to encompass
7 purely independent spending that is “for the benefit of” or “in the interest of” a federal candidate
8 would raise substantial constitutional concerns.⁴⁰ Therefore, the clause “on behalf of” must
9 properly be understood to inhabit a place between the two poles of meaning, to include
10 individuals or entities that are acting for the candidate’s benefit but that are not wholly
11 independent from the candidate, regardless of whether this lack of independence is sufficient to
12 meet the test for agency.⁴¹

³⁷ See, e.g., F&LA at 12, MURs 6869R & 6942R (Commission of Presidential Debates) (plain meaning of endorse or support in the context of debate sponsorship); *Level the Playing Field v. Federal Election Commission*, 381 F. Supp. 3d 78, 98-99 (D.D.C. 2019), *aff’d* 961 F.3d 462 (D.C. Cir. 2020) (upholding Commission’s interpretation of the ordinary meaning of “endorse,” “support,” and “oppose”).

³⁸ See, e.g., *United States v. Dion*, 37 F.4th 31, 38-39 (1st Cir. 2022) (citing *Madden v. Cowen & Co.*, 576 F.3d 957, 973 (9th Cir. 2009) and *United States v. Frazier*, 53 F.3d 1105, 1112 (5th Cir. 1995)).

³⁹ See, e.g., *Colautti v. Franklin*, 439 U.S. 379, 392 (1979) (statutes should be read to avoid rendering portions superfluous) (overruled in part on other grounds); see also *Deal v. United States*, 508 U.S. 129, 132 (1993) (opining that “the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used”).

⁴⁰ See *Citizens United v. FEC*, 558 U.S. 310, 365 (2010) (holding that the prohibition against corporate independent expenditures is unconstitutional); *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (2010) (holding that limits on contributions by individuals to political committees that make only independent expenditures violates the First Amendment).

⁴¹ Under Commission regulations, an “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.” 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. See Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4975-76 (Jan. 31, 2006).

1 In support of its allegation, the Complaint states that CLF is “endorsed” by McCarthy⁴²
2 and cites reporting that speculates or implies that McCarthy or his staff may have been involved
3 in CLF’s decision to come to an agreement with Club for Growth regarding CLF’s spending in
4 primaries in order to secure support for his speakership bid.⁴³

5 The Act and Commission regulations do not define “endorse,” but the Commission has
6 used the term’s plain meaning, noting the D.C. District Court’s adoption of the meaning “to
7 declare one’s approval of” from the Oxford Dictionary.⁴⁴ Yet McCarthy’s mere approval of
8 CLF alone does not imply that he has any formal or informal role within CLF, nor any
9 coordination between the two, that would render CLF less than an independent actor.⁴⁵ While
10 McCarthy and CLF may share common goals regarding which party holds a majority in the
11 House of Representatives, information supporting the existence of such a common goal is
12 insufficient to establish that each did not seek the goal individually.⁴⁶

⁴² Compl at 7; *see* CLF & Club for Growth Agreement (noting that “Kevin McCarthy has endorsed CLF.”); *supra* note 7.

⁴³ Compl. at 3 (quoting an article in the *Salon* for the premise that the agreement “likely required sign-off” from Representative McCarthy or his team.”); Salon Article (citing a tweet by a New York Times journalist for the premise that McCarthy or his team “likely needed to sign-off” on the agreement, Kenneth P. Vogel (@kenvogel), TWITTER (Jan. 5, 2023, 11:06 AM), <https://twitter.com/kenvogel/status/1611031451989852161>); Sara Dorn, *McCarthy Agrees to These Concessions in His Quest To Become Speaker - But They May Not Be Enough*, FORBES (Jan. 5, 2023), <https://www.forbes.com/sites/saradorn/2023/01/05/mccarthy-agrees-to-these-concessions-in-his-quest-to-become-speaker-mbut-they-may-not-be-enough/> (stating that “McCarthy made the concessions during negotiations”).

⁴⁴ F&LA at 12, n. 55, MURs 6869R & 6942R (Commission of Presidential Debates) (citing *Level the Playing Field v. FEC*, 32 F.Supp.3d 130, 139, n.6 (D.D.C. Feb. 1,2017)).

⁴⁵ *See* 11 C.F.R. § 109.20 (“Coordinated means made 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.”).

⁴⁶ *See* CLF Resp. at 2 (stating that “CLF hoped that Rep. McCarthy would be elected the next Speaker of the House for CLF’s own strategic reasons, as the press release specifically highlighted: ‘Kevin McCarthy has effectively led House Republicans from the Minority to the Majority and we want to see him continue to lead the party so we can pick up seats for the third cycle in a row.’”).

1 The media reports in this instance, also serve as a poor foundation for an argument that
2 CLF worked on behalf of McCarthy. Neither of the reports cited by the Complaint include any
3 first-hand source, not even an unnamed source, to corroborate speculation that McCarthy or his
4 staff participated in, let alone directed, CLF's decisions regarding its future spending in primary
5 elections. In fact, while one report relies on a quote stating that CLF "likely needed to sign-off"
6 from McCarthy or his team, that quote was nothing more than repeating conjecture by another
7 journalist on Twitter.⁴⁷

8 Contrary to these reports, the CLF Response states that the decision regarding its
9 involvement in future primaries was made by its board at the request of CLF leadership.⁴⁸ The
10 McCarthy Response, similarly denies these reports stating that: "[n]either Respondent nor any
11 members of his staff were involved in whatever agreement was or was not reached by these two
12 Super PACs."⁴⁹

13 In light of the minimal information supporting the allegations, the speculative nature of
14 the reporting provided in support, and the denials by both CLF and McCarthy, there is
15 insufficient information to support a reason to believe finding that CLF was EFMC'd by, or
16 acting on behalf of, McCarthy. Accordingly, we recommend that the Commission find no reason
17 to believe that McCarthy or CLF violated 52 U.S.C. § 30125(e)(1)(A).

18 **IV. RECOMMENDATIONS**

- 19 1. Find no reason to believe that Kevin McCarthy or Congressional Leadership Fund
20 and Caleb Crosby in his official capacity as treasurer violated 52 U.S.C.
21 § 30125(e)(1)(A) by impermissibly raising or spending soft money;

22

⁴⁷ See *supra* note 43.

⁴⁸ CLF Resp. at 3, 7.

⁴⁹ McCarthy Resp. at 2.

- 1 2. Approve the attached Factual and Legal Analysis;
- 2 3. Approve the appropriate letters; and
- 3 4. Close the File.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement



10
11 7/25/2023
12 Date

Claudio J. Pavia
Deputy Associate General Counsel
for Enforcement



Mark Shonkwiler
Assistant General Counsel



Nicholas O. Mueller
Attorney

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