

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 6713
DATES COMPLAINT FILED: 1/8/13, 11/18/15
DATE OF NOTIFICATION: 1/15/13
DATE OF LAST RESPONSE: 3/7/13
DATE ACTIVATED: 4/17/13

ELECTION CYCLE: 2012
EXPIRATION OF SOL: 7/19/2017

COMPLAINANTS:

Citizens for Responsibility and Ethics in Washington
Noah Bookbinder

RESPONDENTS:

Sherry L. Huff
Carey Vaughn Brown
Account Pros, Inc.
Credit Protection Depot
Credit Payment Services
Energy Way Corp.
Republican Union PAC and James Harmon in his
official capacity as treasurer
James Harmon in his individual capacity

RELEVANT STATUTES:

52 U.S.C. 30122
11 C.F.R. § 110.4

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

The Complaint in this matter alleges that Carey Vaughn Brown, Account Pros, Inc., Credit Protection Depot, Credit Payment Services, Energy Way Corp., or another company owned or controlled by Brown, made a \$1 million contribution to Republican Union PAC in July 2012 in Sherry L. Huff's name in violation of 52 U.S.C. § 30122. The Complaint also alleges that Huff violated section 30122 by knowingly permitting her name to be used to make the contribution, and that Republican Union PAC and James Harmon personally and in his official capacity as treasurer violated section 30122 by knowingly accepting the illegal contribution. The Complaint further alleges that each violation was knowing and willful.

As discussed below, the available information indicates that Huff was the true source of the \$1 million contribution to Republican Union PAC. Accordingly, we recommend that the Commission find no reason to believe Respondents violated 52 U.S.C. § 30122 and close the file.

II. FACTUAL BACKGROUND

Republican Union PAC filed a Statement of Organization as an independent expenditure-only political committee with the Commission on July 30, 2012,² the same day it reported making a \$950,000 independent expenditure opposing President Obama's reelection.³ According to its regular reports filed with the Commission, Republican Union PAC received

² Statement of Organization, *available at* <http://docquery.fec.gov/pdf/297/12030863297/12030863297.pdf>.

³ 24/48 Hour Notice of Independent Expenditures, *available at* <http://docquery.fec.gov/pdf/913/12952602913/12952602913.pdf#navpanes=0> (Aug. 1, 2012).

1 only two itemized contributions during 2012: a \$500 contribution from an individual in
2 California and the \$1 million contribution from Huff that is the subject of this matter.⁴

3 At the time of the contribution at issue, Brown operated an online payday loan business
4 involving a web of corporate entities, including each of the corporate respondents in this matter.⁵
5 Sherry Huff was his first employee, and she came to serve as an employee, officer, or director
6 of several entities allegedly controlled by Brown.⁷ In addition, Huff was the sole owner of three
7 of these entities: Credit Protection Depot, Account Pros, and Envision Management.

8 In approximately 2005, Brown determined that he needed "someone independent from
9 him" to service the loan accounts initiated by one of his companies, Credit Payment Services.
10 Huff obtained a line of credit and created Credit Protection Depot in Nevada in 2005¹⁰ to
11 purchase loans from Credit Payment Services at a premium and service the accounts.
12 Although Brown may have served as an officer of Credit Protection Depot after its
13 establishment, it appears that his role was limited, and that Huff owned and controlled Credit

⁴ October 2012 Quarterly Report, *available at*
<http://docquery.fec.gov/pdf/590/13940229590/13940229590.pdf>; 2012 Post-General, *available at*
<http://docquery.fec.gov/pdf/354/12962889354/12962889354.pdf>; 2012 Year-End, *available at*
<http://docquery.fec.gov/pdf/435/13940099435/13940099435.pdf>.

⁵ Compl. at 4.

⁷ Compl. at 6, Exs. E, G, I; Huff Resp. at 2, 8 (confirming that Huff has "a role" in Account Pros, Inc, Credit Protection Depot, Credit Payment Services, and Energy Way Corp.); *id.*, Attach. D (describing Huff as an employee of both Account Pros, Inc. and Credit Protection Depot).

¹⁰ Huff Resp., Ex. 3.

1 Protection Depot.¹⁴ Credit Protection Depot reported gross receipts of \$416,702,514 and total
2 income of \$18,721,374 on its 2011 tax return.¹⁵

3 According to Respondents, on June 27, 2012, Credit Protection Depot wired \$1 million
4 into Huff's personal bank account at Regions Bank.¹⁶ Respondents state that on July 2 and July
5 3, 2012, Huff withdrew a total of \$1 million from the account in two separate transactions, and
6 on July 13, 2012, deposited the entire amount into a new account at Cornerstone Community
7 Bank.¹⁸

¹⁴ Huff Resp. at 6;

Huff Resp., Ex. 2 (showing a stock certificate issuing 75,000 Common Shares to Huff on January 21, 2010); *id.*, Ex. 3 (showing Huff as the sole owner of the corporation's voting stock on its 2011 tax return); *id.*, Ex. 1 (listing Huff as the corporation's sole director in its bylaws as of January 24, 2011).

On February 25, 2016, it dissolved. See Nevada Secretary of State, Business Entity Search, <http://nvsos.gov/sosentitysearch/corpActions.aspx?lx8nvq=n8g%252foZRC%252bXgWK6QaPQesRA%253d%253d&CorpName=CREDIT+PROTECTION+DEPOT%2c+INC> (last visited Mar. 1, 2017). Account Pros, Inc., Energy Way Corporation, and Credit Payment Services have also dissolved.

¹⁵ Huff Resp., Ex. 3.

¹⁶ Huff Resp. at 6.

¹⁸ According to the Huff, "such a large deposit" inspired Regions Bank to contact "banking regulators" (which would eventually include the Secret Service), place a hold on the funds, and refuse to wire the funds to any third party. Huff Resp. at 6. According to Huff, despite the Secret Service's conclusion that the transaction was proper, Regions Bank still would not transfer the funds to any third party. *Id.* As a result, Huff switched opened the new account at Cornerstone Community Bank. *Id.*

1 Meanwhile, Steve Steele, Huff's representative, contacted Republican Union PAC
2 sometime in "early July 2012"; mutual acquaintances introduced Steele to the PAC.¹⁹ According
3 to Republican Union PAC, Steele "indicated in a phone conversation at the time that Ms. Huff
4 wanted to make a contribution to the PAC"; Republican Union PAC then "arranged artwork for
5 the placement of several billboards that would be funded by Ms. Huff's contribution."²⁰ On July
6 19, 2012, Republican Union PAC received a wire transfer for \$1 million from Huff's personal
7 bank account.²¹

8 The Complaint alleges that Brown or one of the corporate respondents made the
9 \$1 million contribution in Huff's name and with her permission.²² The Complaint also alleges
10 that Republican Union PAC knowingly accepted the contribution in the name of another.²³ The
11 Complaint further alleges that each violation was knowing and willful.²⁴ The allegations are
12 based on Huff's professional relationship with Brown, the fact that Huff had not previously made
13 political contributions, and real estate records which purportedly demonstrate that Huff lacked
14 the assets to make a \$1 million contribution.²⁵

¹⁹ Republican Union PAC Resp. at 1, Davis Aff. ¶¶ 5-6. Steele is the director of the Covenant Values Foundation, which is a charitable organization to which many of the entities associated with Huff and Brown make contributions. Steele is also listed as the president of Kingdom Site Ministries, a charitable organization devoted to translating Christianity-based materials and resources into different languages. *See* Kingdom Site Ministries, 2011 Form 990, 1-2. Kingdom Site Ministries lists Huff as its secretary and Brown as its director and treasurer. *Id.* at 7. According to its tax return, Kingdom Site Ministries has a \$650,000 working capital line of credit from Credit Protection Depot. *Id.*, Schedule L. Kingdom Site Ministries mistakenly describes Credit Protection Depot as "owned by Carey Brown, a director" of Kingdom Site Ministries. *Id.*

²⁰ Republican Union PAC Resp. at 1.

²¹ Huff Resp. at 6; Republican Union PAC Resp. at 2.

²² Compl. at 8-9.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 4-7.

1 Huff, Brown, Account Pros, Inc., Credit Protection Depot, Credit Payment Services, and
2 Energy Way Corp. filed a joint response (the "Huff Response"). It denies that any of the
3 respondents violated section 30122, and it states that Huff made the \$1 million contribution to
4 the Republican Union PAC after she withdrew money from Credit Protection Depot, a company
5 she solely owned and controlled.²⁶

6 Republican Union PAC's response states that "Sherry Huff was and always has been
7 described to Republican Union PAC as the actual source of the July 2012 contribution," and thus
8 it did not knowingly accept a contribution made in the name of another.²⁷ According to
9 Republican Union PAC, Huff "represented herself as the donor to an accountant who monitored
10 and facilitated the contribution transaction," and Huff was continually identified as the donor
11 when Republican Union PAC sought Huff's information for purposes of disclosing her
12 contribution to the Commission.²⁸

13 III. LEGAL ANALYSIS

14 The Act prohibits a person from making a contribution in the name of another person,
15 knowingly permitting his or her name to be used to effect such a contribution, or knowingly
16 accepting such a contribution.²⁹ The Commission has included in its regulations illustrations of
17 activities that constitute making a contribution in the name of another:

- 18 (i) Giving money or anything of value, all or part of which was provided
19 to the contributor by another person (the true contributor) without
20 disclosing the source of money or the thing of value to the recipient
21 candidate or committee at the time the contribution is made; or

²⁶ Huff Resp. at 2, 4-5

²⁷ Republican Union PAC Resp. at 1-2.

²⁸ *Id.*

²⁹ 52 U.S.C. § 30122.

- 1
2 (ii) Making a contribution of money or anything of value and attributing
3 as the source of the money or thing of value another person when in
4 fact the contributor is the source.³⁰
5

6 The requirement that a contribution be made in the name of its true source promotes
7 Congress's objective of ensuring the complete and accurate disclosure by candidates and
8 committees of the political contributions they receive.³¹ Courts therefore have uniformly
9 rejected the assertion that "only the person who actually transmits funds . . . makes the
10 contribution,"³² recognizing that "it is implausible that Congress, in seeking to promote
11 transparency, would have understood the relevant contributor to be [an] intermediary who
12 merely transmitted the campaign gift."³³ Consequently, both the Act and the Commission's
13 implementing regulations provide that a person who furnishes another with funds for the purpose
14 of contributing to a candidate or committee "makes" the resulting contribution.³⁴ This is true
15 whether funds are advanced to another person to make a contribution in that person's name or
16 promised as reimbursement of a solicited contribution.³⁵ Because the concern of the law is the

³⁰ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³¹ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³² *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³³ *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

³⁴ *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-section 441f)).

³⁵ *O'Donnell*, 608 F.3d at 555. Moreover, the "key issue . . . is the *source* of the funds" and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is "irrelevant to a determination of

1 true source of the contribution, we look to the structure of the transaction itself and the
2 arrangement between the parties to determine who in fact "made" a given contribution.³⁶

3 In this case, the available information shows that Huff was the true source of the \$1
4 million contribution to Republican Union PAC. First, it appears that Huff legitimately owned
5 and controlled Credit Protection Depot during all relevant times,³⁷ contrary to the assertion in the
6 Complaint that Brown owned or controlled Credit Protection Depot.³⁸ We have no information
7 indicating that Huff was not entitled to withdraw the funds from Credit Protection Depot, or that
8 the withdrawal was in any way improper. Second, Huff appears to have reported the \$1 million
9 withdrawal to the IRS as personal income and paid appropriate taxes on it.³⁹ Third, the
10 Complaint provides no evidence that another source transferred money into Credit Protection
11 Depot for the purpose of advancing those funds to Huff in order to make a contribution. Instead,
12 the available information shows that Credit Protection Depot had more than sufficient funds to
13 make a \$1 million distribution to its sole owner. At the time of Huff's contribution, Credit
14 Protection Depot was an established business servicing loan accounts with a reported income of
15 \$18,721,374 in the year prior to Huff's withdrawal.⁴⁰ For these reasons, it appears that Huff was

who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant's "unconditional gifts" to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³⁶ As the court in *O'Donnell* acknowledged, the Commission's earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control "over the choice of the recipient candidate." 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

³⁷ See *supra* at 2-3.

³⁸ Compl. at 3.

³⁹ See *supra* at 4 at n. 15.

⁴⁰ See *supra* at 3.

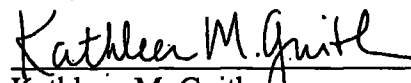
1 the true source of the contribution to Republican Union PAC. Accordingly, we recommend that
2 the Commission find no reason to believe Respondents violated 52 U.S.C. § 30122 and close the
3 file.⁴¹

4 **IV. RECOMMENDATIONS**


- 5 1. Find no reason to believe Sherry L. Huff, Credit Protection Depot, Inc., Carey
6 Vaughn Brown, Account Pros, Inc., Credit Payment Services, Energy Way Corp.,
7 and Republican Union PAC and James Harmon personally and in his official
8 capacity as treasurer violated 52 U.S.C. § 30122.
9
10 2. Approve the attached Factual and Legal Analysis.
11
12 3. Approve the appropriate letters.
13
14 4. Close the file.

15
16 Lisa J. Stevenson
17 Acting General Counsel
18

19
20 5/5/2017
21 Date

22 
23 Kathleen M. Guith
24 Associate General Counsel for
25 Enforcement

26 
27 Lynn Y. Tran
28 Assistant General Counsel

29 
30 Peter Reynolds
31 Attorney
32
33
34

⁴¹ See MUR 6190 (Kelly Bearden, *et al.*) (finding no RTB where evidence showed that contributions were made from personal funds available to the contributors).

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR: 6713

RESPONDENTS: Sherry L. Huff
Carey Vaughn Brown
Account Pros, Inc.
Credit Protection Depot
Credit Payment Services
Energy Way Corp.
Republican Union PAC and James Harmon in his official capacity as
treasurer
James Harmon in his individual capacity

I. INTRODUCTION

The Complaint in this matter alleges that Carey Vaughn Brown, Account Pros, Inc., Credit Protection Depot, Credit Payment Services, Energy Way Corp., or another company owned or controlled by Brown, made a \$1 million contribution to Republican Union PAC in July 2012 in Sherry L. Huff's name in violation of 52 U.S.C. § 30122. The Complaint also alleges that Huff violated section 30122 by knowingly permitting her name to be used to make the contribution, and that Republican Union PAC and James Harmon personally and in his official capacity as treasurer violated section 30122 by knowingly accepting the illegal contribution. The Complaint further alleges that each violation was knowing and willful.

As discussed below, the available information indicates that Huff was the true source of the \$1 million contribution to Republican Union PAC. Accordingly, the Commission finds no reason to believe Respondents violated 52 U.S.C. § 30122 and closes the file.

II. FACTUAL BACKGROUND

Republican Union PAC filed a Statement of Organization as an independent expenditure-only political committee with the Commission on July 30, 2012,¹ the same day it reported making a \$950,000 independent expenditure opposing President Obama's reelection.² According to its regular reports filed with the Commission, Republican Union PAC received only two itemized contributions during 2012: a \$500 contribution from an individual in California and the \$1 million contribution from Huff that is the subject of this matter.³

At the time of the contribution at issue, Brown operated an online payday loan business involving a web of corporate entities, including each of the corporate respondents in this matter.⁴ Sherry Huff was his first employee, and she came to serve as an employee, officer, or director of several entities allegedly controlled by Brown.⁶ In addition, Huff was the sole owner of three of these entities: Credit Protection Depot, Account Pros, and Envision Management.

¹ Statement of Organization, *available at* <http://docquery.fec.gov/pdf/297/12030863297/12030863297.pdf>.

² 24/48 Hour Notice of Independent Expenditures, *available at* <http://docquery.fec.gov/pdf/913/12952602913/12952602913.pdf#navpanes=0> (Aug. 1, 2012).

³ October 2012 Quarterly Report, *available at* <http://docquery.fec.gov/pdf/590/13940229590/13940229590.pdf>; 2012 Post-General, *available at* <http://docquery.fec.gov/pdf/354/12962889354/12962889354.pdf>; 2012 Year-End, *available at* <http://docquery.fec.gov/pdf/435/13940099435/13940099435.pdf>.

⁴ Compl. at 4.

⁶ Compl. at 6, Exs. E, G, I; Huff Resp. at 2, 8 (confirming that Huff has "a role" in Account Pros, Inc, Credit Protection Depot, Credit Payment Services, and Energy Way Corp.); *id.*, Attach. D (describing Huff as an employee of both Account Pros, Inc. and Credit Protection Depot).

1 In approximately 2005, Brown determined that he needed “someone independent from
2 him” to service the loan accounts initiated by one of his companies, Credit Payment Services.
3 Huff obtained a line of credit and created Credit Protection Depot in Nevada in 2005⁹ to
4 purchase loans from Credit Payment Services at a premium and service the accounts.
5 Although Brown may have served as an officer of Credit Protection Depot after its
6 establishment, it appears that his role was limited, and that Huff owned and controlled Credit
7 Protection Depot.¹³ Credit Protection Depot reported gross receipts of \$416,702,514 and total
8 income of \$18,721,374 on its 2011 tax return.¹⁴

9 According to Respondents, on June 27, 2012, Credit Protection Depot wired \$1 million
10 into Huff’s personal bank account at Regions Bank.¹⁵ Respondents state that on July 2 and July

⁹ Huff Resp., Ex. 3.

¹³ Huff Resp. at 6; Interview of Sherry Huff at 2 (Mar. 26, 2013);
Huff Resp., Ex. 2 (showing a stock certificate issuing 75,000 Common
Shares to Huff on January 21, 2010); *id.*, Ex. 3 (showing Huff as the sole owner of the corporation’s voting stock on
its 2011 tax return); *id.*, Ex. 1 (listing Huff as the corporation’s sole director in its bylaws as of January 24, 2011).

On February 25, 2016, it
dissolved. See Nevada Secretary of State, Business Entity Search,
<http://nvsos.gov/sosentitysearch/corpActions.aspx?lx8nvq=n8g%252foZRC%252bXgWK6QaPQesRA%253d%253d&CorpName=CREDIT+PROTECTION+DEPOT%2c+INC> (last visited Mar. 1, 2017). Account Pros, Inc., Energy
Way Corporation, and Credit Payment Services have also dissolved.

¹⁴ Huff Resp., Ex. 3.

¹⁵ Huff Resp. at 6.

1 3, 2012, Huff withdrew a total of \$1 million from the account in two separate transactions, and
2 on July 13, 2012, deposited the entire amount into a new account at Cornerstone Community
3 Bank.¹⁷

4 Meanwhile, Steve Steele, Huff's representative, contacted Republican Union PAC
5 sometime in "early July 2012"; mutual acquaintances introduced Steele to the PAC.¹⁸ According
6 to Republican Union PAC, Steele "indicated in a phone conversation at the time that Ms. Huff
7 wanted to make a contribution to the PAC"; Republican Union PAC then "arranged artwork for
8 the placement of several billboards that would be funded by Ms. Huff's contribution."¹⁹ On July
9 19, 2012, Republican Union PAC received a wire transfer for \$1 million from Huff's personal
10 bank account.²⁰

11 The Complaint alleges that Brown or one of the corporate respondents made the
12 \$1 million contribution in Huff's name and with her permission.²¹ The Complaint also alleges

¹⁷ According to the Huff, "such a large deposit" inspired Regions Bank to contact "banking regulators" (which would eventually include the Secret Service), place a hold on the funds, and refuse to wire the funds to any third party. Huff Resp. at 6. According to Huff, despite the Secret Service's conclusion that the transaction was proper, Regions Bank still would not transfer the funds to any third party. *Id.* As a result, Huff switched opened the new account at Cornerstone Community Bank. *Id.*

¹⁸ Republican Union PAC Resp. at 1, Davis Aff. ¶¶ 5-6. Steele is the director of the Covenant Values Foundation, which is a charitable organization to which many of the entities associated with Huff and Brown make contributions. Steele is also listed as the president of Kingdom Site Ministries, a charitable organization devoted to translating Christianity-based materials and resources into different languages. *See* Kingdom Site Ministries, 2011 Form 990, 1-2. Kingdom Site Ministries lists Huff as its secretary and Brown as its director and treasurer. *Id.* at 7. According to its tax return, Kingdom Site Ministries has a \$650,000 working capital line of credit from Credit Protection Depot. *Id.*, Schedule L. Kingdom Site Ministries mistakenly describes Credit Protection Depot as "owned by Carey Brown, a director" of Kingdom Site Ministries. *Id.*

¹⁹ Republican Union PAC Resp. at 1.

²⁰ Huff Resp. at 6; Republican Union PAC Resp. at 2.

²¹ Compl. at 8-9.

1 that Republican Union PAC knowingly accepted the contribution in the name of another.²² The
2 Complaint further alleges that each violation was knowing and willful.²³ The allegations are
3 based on Huff's professional relationship with Brown, the fact that Huff had not previously made
4 political contributions, and real estate records which purportedly demonstrate that Huff lacked
5 the assets to make a \$1 million contribution.²⁴

6 Huff, Brown, Account Pros, Inc., Credit Protection Depot, Credit Payment Services, and
7 Energy Way Corp. filed a joint response (the “Huff Response”). It denies that any of the
8 respondents violated section 30122, and it states that Huff made the \$1 million contribution to
9 the Republican Union PAC after she withdrew money from Credit Protection Depot, a company
10 she solely owned and controlled.²⁵

11 Republican Union PAC's response states that "Sherry Huff was and always has been
12 described to Republican Union PAC as the actual source of the July 2012 contribution," and thus
13 it did not knowingly accept a contribution made in the name of another.²⁶ According to
14 Republican Union PAC, Huff "represented herself as the donor to an accountant who monitored
15 and facilitated the contribution transaction," and Huff was continually identified as the donor
16 when Republican Union PAC sought Huff's information for purposes of disclosing her
17 contribution to the Commission.²⁷

22 *Id.*

23 *Id.*

24 *Id.* at 4-7.

25 . Huff Resp. at 2, 4-5

²⁶ Republican Union PAC Resp. at 1-2.

27 *Id.*.

1 **III. LEGAL ANALYSIS**

2 The Act prohibits a person from making a contribution in the name of another person,
3 knowingly permitting his or her name to be used to effect such a contribution, or knowingly
4 accepting such a contribution.²⁸ The Commission has included in its regulations illustrations of
5 activities that constitute making a contribution in the name of another:

- 6 (i) Giving money or anything of value, all or part of which was provided
7 to the contributor by another person (the true contributor) without
8 disclosing the source of money or the thing of value to the recipient
9 candidate or committee at the time the contribution is made; or
10
11 (ii) Making a contribution of money or anything of value and attributing
12 as the source of the money or thing of value another person when in
13 fact the contributor is the source.²⁹
14

15 The requirement that a contribution be made in the name of its true source promotes
16 Congress's objective of ensuring the complete and accurate disclosure by candidates and
17 committees of the political contributions they receive.³⁰ Courts therefore have uniformly
18 rejected the assertion that "only the person who actually transmits funds . . . makes the
19 contribution,"³¹ recognizing that "it is implausible that Congress, in seeking to promote
20 transparency, would have understood the relevant contributor to be [an] intermediary who
21 merely transmitted the campaign gift."³² Consequently, both the Act and the Commission's

²⁸ 52 U.S.C. § 30122.

²⁹ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³⁰ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³¹ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³² *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give

1 implementing regulations provide that a person who furnishes another with funds for the purpose
2 of contributing to a candidate or committee “makes” the resulting contribution.³³ This is true
3 whether funds are advanced to another person to make a contribution in that person’s name or
4 promised as reimbursement of a solicited contribution.³⁴ Because the concern of the law is the
5 true source of the contribution, we look to the structure of the transaction itself and the
6 arrangement between the parties to determine who in fact “made” a given contribution.³⁵

7 In this case, the available information shows that Huff was the true source of the \$1
8 million contribution to Republican Union PAC. First, it appears that Huff legitimately owned
9 and controlled Credit Protection Depot during all relevant times,³⁶ contrary to the assertion in the
10 Complaint that Brown owned or controlled Credit Protection Depot.³⁷ We have no information
11 indicating that Huff was not entitled to withdraw the funds from Credit Protection Depot, or that
12 the withdrawal was in any way improper. Second, Huff appears to have reported the \$1 million

proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

³³ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-section 441f)).

³⁴ *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

³⁵ As the court in *O’Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O’Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

³⁶ See *supra* at 2-3.

³⁷ Compl. at 3.

1 withdrawal to the IRS as personal income and paid appropriate taxes on it.³⁸ Third, the
2 Complaint provides no evidence that another source transferred money into Credit Protection
3 Depot for the purpose of advancing those funds to Huff in order to make a contribution. Instead,
4 the available information shows that Credit Protection Depot had more than sufficient funds to
5 make a \$1 million distribution to its sole owner. At the time of Huff's contribution, Credit
6 Protection Depot was an established business servicing loan accounts with a reported income of
7 \$18,721,374 in the year prior to Huff's withdrawal.³⁹ For these reasons, it appears that Huff was
8 the true source of the contribution to Republican Union PAC. Accordingly, the Commission
9 finds no reason to believe Respondents violated 52 U.S.C. § 30122 and closes the file.⁴⁰

³⁸ See *supra* at 3 at n. 15.

³⁹ See *supra* at 3.

⁴⁰ See MUR 6190 (Kelly Bearden, *et al.*) (finding no RTB where evidence showed that contributions were made from personal funds available to the contributors).

1/04/14 2:44:40 PM 4

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 MUR: 6713

6
7 RESPONDENTS: Sherry L. Huff

8 Carey Vaughn Brown

9 Account Pros, Inc.

10 Credit Protection Depot

11 Credit Payment Services

12 Energy Way Corp.

13 Republican Union PAC and James Harmon in his official capacity as
14 treasurer

15 James Harmon in his individual capacity

16 **I. INTRODUCTION**

17 The Complaint in this matter alleges that Carey Vaughn Brown, Account Pros, Inc.,
18 Credit Protection Depot, Credit Payment Services, Energy Way Corp., or another company
19 owned or controlled by Brown, made a \$1 million contribution to Republican Union PAC in July
20 2012 in Sherry L. Huff's name in violation of 52 U.S.C. § 30122. The Complaint also alleges
21 that Huff violated section 30122 by knowingly permitting her name to be used to make the
22 contribution, and that Republican Union PAC and James Harmon personally and in his official
23 capacity as treasurer violated section 30122 by knowingly accepting the illegal contribution. The
24 Complaint further alleges that each violation was knowing and willful.

25 As discussed below, the available information indicates that Huff was the true source of
26 the \$1 million contribution to Republican Union PAC. Accordingly, the Commission finds no
27 reason to believe Respondents violated 52 U.S.C. § 30122 and closes the file.

1 **II. FACTUAL BACKGROUND**

2 Republican Union PAC filed a Statement of Organization as an independent expenditure-
3 only political committee with the Commission on July 30, 2012,¹ the same day it reported
4 making a \$950,000 independent expenditure opposing President Obama's reelection.²
5 According to its regular reports filed with the Commission, Republican Union PAC received
6 only two itemized contributions during 2012: a \$500 contribution from an individual in
7 California and the \$1 million contribution from Huff that is the subject of this matter.³

8 At the time of the contribution at issue, Brown operated an online payday loan business
9 involving a web of corporate entities, including each of the corporate respondents in this matter.⁴
10 Sherry Huff was his first employee, and she came to serve as an employee, officer, or director
11 of several entities allegedly controlled by Brown.⁶ In addition, Huff was the sole owner of three
12 of these entities: Credit Protection Depot, Account Pros, and Envision Management.

¹ Statement of Organization, *available at* <http://docquery.fec.gov/pdf/297/12030863297/12030863297.pdf>.

² 24/48 Hour Notice of Independent Expenditures, *available at*
<http://docquery.fec.gov/pdf/913/12952602913/12952602913.pdf#navpanes=0> (Aug. 1, 2012).

³ October 2012 Quarterly Report, *available at*
<http://docquery.fec.gov/pdf/590/13940229590/13940229590.pdf>; 2012 Post-General, *available at*
<http://docquery.fec.gov/pdf/354/12962889354/12962889354.pdf>; 2012 Year-End, *available at*
<http://docquery.fec.gov/pdf/435/13940099435/13940099435.pdf>.

⁴ Compl. at 4.

⁶ Compl. at 6, Exs. E, G, I; Huff Resp. at 2, 8 (confirming that Huff has "a role" in Account Pros, Inc, Credit Protection Depot, Credit Payment Services, and Energy Way Corp.); *id.*, Attach. D (describing Huff as an employee of both Account Pros, Inc. and Credit Protection Depot).

1 In approximately 2005, Brown determined that he needed “someone independent from
2 him” to service the loan accounts initiated by one of his companies, Credit Payment Services.
3 Huff obtained a line of credit and created Credit Protection Depot in Nevada in 2005⁹ to
4 purchase loans from Credit Payment Services at a premium and service the accounts.
5 Although Brown may have served as an officer of Credit Protection Depot after its
6 establishment, it appears that his role was limited, and that Huff owned and controlled Credit
7 Protection Depot.¹³ Credit Protection Depot reported gross receipts of \$416,702,514 and total
8 income of \$18,721,374 on its 2011 tax return.¹⁴

9 According to Respondents, on June 27, 2012, Credit Protection Depot wired \$1 million
10 into Huff’s personal bank account at Regions Bank.¹⁵ Respondents state that on July 2 and July

⁹ Huff Resp., Ex. 3.

¹³ Huff Resp. at 6; Interview of Sherry Huff at 2 (Mar. 26, 2013);
Huff Resp., Ex. 2 (showing a stock certificate issuing 75,000 Common
Shares to Huff on January 21, 2010); *id.*, Ex. 3 (showing Huff as the sole owner of the corporation’s voting stock on
its 2011 tax return); *id.*, Ex. 1 (listing Huff as the corporation’s sole director in its bylaws as of January 24, 2011).

On February 25, 2016, it
dissolved. See Nevada Secretary of State, Business Entity Search,
<http://nvsos.gov/sosentitysearch/corpActions.aspx?lx8nvq=n8g%252foZRC%252bXgWK6QaPQesRA%253d%253d&CorpName=CREDIT+PROTECTION+DEPOT%2c+INC> (last visited Mar. 1, 2017). Account Pros, Inc., Energy
Way Corporation, and Credit Payment Services have also dissolved.

¹⁴ Huff Resp., Ex. 3.

¹⁵ Huff Resp. at 6.

1 3, 2012, Huff withdrew a total of \$1 million from the account in two separate transactions, and
2 on July 13, 2012, deposited the entire amount into a new account at Cornerstone Community
3 Bank.¹⁷

4 Meanwhile, Steve Steele, Huff's representative, contacted Republican Union PAC
5 sometime in "early July 2012"; mutual acquaintances introduced Steele to the PAC.¹⁸ According
6 to Republican Union PAC, Steele "indicated in a phone conversation at the time that Ms. Huff
7 wanted to make a contribution to the PAC"; Republican Union PAC then "arranged artwork for
8 the placement of several billboards that would be funded by Ms. Huff's contribution."¹⁹ On July
9 19, 2012, Republican Union PAC received a wire transfer for \$1 million from Huff's personal
10 bank account.²⁰

11 The Complaint alleges that Brown or one of the corporate respondents made the
12 \$1 million contribution in Huff's name and with her permission.²¹ The Complaint also alleges

¹⁷ According to the Huff, "such a large deposit" inspired Regions Bank to contact "banking regulators" (which would eventually include the Secret Service), place a hold on the funds, and refuse to wire the funds to any third party. Huff Resp. at 6. According to Huff, despite the Secret Service's conclusion that the transaction was proper, Regions Bank still would not transfer the funds to any third party. *Id.* As a result, Huff switched opened the new account at Cornerstone Community Bank. *Id.*

¹⁸ Republican Union PAC Resp. at 1, Davis Aff. ¶¶ 5-6. Steele is the director of the Covenant Values Foundation, which is a charitable organization to which many of the entities associated with Huff and Brown make contributions. Steele is also listed as the president of Kingdom Site Ministries, a charitable organization devoted to translating Christianity-based materials and resources into different languages. *See* Kingdom Site Ministries, 2011 Form 990, 1-2. Kingdom Site Ministries lists Huff as its secretary and Brown as its director and treasurer. *Id.* at 7. According to its tax return, Kingdom Site Ministries has a \$650,000 working capital line of credit from Credit Protection Depot. *Id.*, Schedule L. Kingdom Site Ministries mistakenly describes Credit Protection Depot as "owned by Carey Brown, a director" of Kingdom Site Ministries. *Id.*

¹⁹ Republican Union PAC Resp. at 1.

²⁰ Huff Resp. at 6; Republican Union PAC Resp. at 2.

²¹ Compl. at 8-9.

17044423478

1 that Republican Union PAC knowingly accepted the contribution in the name of another.²² The
2 Complaint further alleges that each violation was knowing and willful.²³ The allegations are
3 based on Huff's professional relationship with Brown, the fact that Huff had not previously made
4 political contributions, and real estate records which purportedly demonstrate that Huff lacked
5 the assets to make a \$1 million contribution.²⁴

6 Huff, Brown, Account Pros, Inc., Credit Protection Depot, Credit Payment Services, and
7 Energy Way Corp. filed a joint response (the "Huff Response"). It denies that any of the
8 respondents violated section 30122, and it states that Huff made the \$1 million contribution to
9 the Republican Union PAC after she withdrew money from Credit Protection Depot, a company
10 she solely owned and controlled.²⁵

11 Republican Union PAC's response states that "Sherry Huff was and always has been
12 described to Republican Union PAC as the actual source of the July 2012 contribution," and thus
13 it did not knowingly accept a contribution made in the name of another.²⁶ According to
14 Republican Union PAC, Huff "represented herself as the donor to an accountant who monitored
15 and facilitated the contribution transaction," and Huff was continually identified as the donor
16 when Republican Union PAC sought Huff's information for purposes of disclosing her
17 contribution to the Commission.²⁷

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 4-7.

²⁵ Huff Resp. at 2, 4-5.

²⁶ Republican Union PAC Resp. at 1-2.

²⁷ *Id.*

170044423479

III. LEGAL ANALYSIS

The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.²⁸ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.²⁹

In this case, the available information shows that Huff was the true source of the \$1 million contribution to Republican Union PAC. First, it appears that Huff legitimately owned and controlled Credit Protection Depot during all relevant times,³⁰ contrary to the assertion in the Complaint that Brown owned or controlled Credit Protection Depot.³¹ The record before the Commission contains no information indicating that Huff was not entitled to withdraw the funds from Credit Protection Depot, or that the withdrawal was in any way improper. Second, Huff appears to have reported the \$1 million withdrawal to the IRS as personal income and paid appropriate taxes on it.³² Third, the Complaint provides no evidence that another source

²⁸ 52 U.S.C. § 30122.

²⁹ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³⁰ *See supra* at 2-3.

³¹ Compl. at 3.

³² *See supra* at 3 at n. 15.

1 transferred money into Credit Protection Depot for the purpose of advancing those funds to Huff
2 in order to make a contribution. Instead, the available information in the record shows that
3 Credit Protection Depot had more than sufficient funds to make a \$1 million distribution to its
4 sole owner. At the time of Huff's contribution, Credit Protection Depot was an established
5 business servicing loan accounts with a reported income of \$18,721,374 in the year prior to
6 Huff's withdrawal.³³ For these reasons, it appears that Huff was the true source of the
7 contribution to Republican Union PAC. Accordingly, the Commission finds no reason to believe
8 Respondents violated 52 U.S.C. § 30122 and closes the file.³⁴

³³ See *supra* at 3.

³⁴ See MUR 6190 (Kelly Bearden, *et al.*) (finding no RTB where evidence showed that contributions were made from personal funds available to the contributors).

1704424401