**BEFORE THE UNITED STATES**
**FEDERAL ELECTION COMMISSION**

Tiffany Muller
End Citizens United
PO Box 66005
Washington, DC 20035
Complainant,

v.

Kevin McCarthy
PO Box 12667
Bakersfield, CA 93389-2667

Respondents.

## COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Representative Kevin McCarthy for violating provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission (the "FEC" or "Commission") regulations. Specifically, based on public reports, Kevin McCarthy appears to be directing the political spending decisions of a federal super PAC as part of his bid to become the next Speaker of the U.S. House of Representatives.

If the Commission "upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of the Act . . . the Commission *shall* make an investigation of such alleged violation."[1] A "reason to believe" finding is appropriate where the complaint credibly alleges a significant violation may have occurred, but further investigation is required to determine whether a violation occurred and, if so, its scope.[2] As further explained

[1] 52 U.S.C. § 30109(a)(2); *see also* 11 C.F.R. § 111.4(a).
[2] *Id.*

below, the Commission should act immediately to investigate Respondents' actions and seek the appropriate financial penalties.

## BACKGROUND

Kevin McCarthy was elected to the U.S. House of Representatives for California's 20th Congressional District in the November 8, 2022 general election. On November 30, 2022, he filed a Statement of Candidacy for reelection to the House for the 2024 election cycle.[3]

As required by Article 1, Section 2 of the Constitution, the House of Representatives of the 118th Congress must elect a new Speaker of the House.[4] Since the Republican Party won control of the House of Representatives in the 2022 midterm elections, Kevin McCarthy, a member of the Republican Party, is attempting to make a bid for the position.[5] On January 4, 2022, after multiple rounds of failing to secure enough votes to become Speaker[6], a "McCarthy endorsed" Super PAC, the Congressional Leadership Fund,[7] announced that it reached an agreement with another conservative Super PAC, Club for Growth,[8] in an apparent effort to appease Republican Members who had refused to vote for McCarthy.[9] Specifically, the Congressional Leadership Fund ("CLF") publicly agreed *not* to spend money in any "open-seat

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[3] Kevin McCarthy for Congress, Statement of Candidacy (Nov. 30, 2022), https://docquery.fec.gov/pdf/180/202211309547074180/202211309547074180.pdf.

[4] Mychael Schnell, "This week: 118th Congress kicks off with Speaker vote, lawmakers sworn in," The Hill, (Jan. 3, 2023), available at https://thehill.com/homenews/house/3795978-this-week-118th-congress-kicks-off-with-speaker-vote-lawmakers-sworn-in/.

[5] Deirdre Walsh, "House leadership is in limbo as McCarthy loses 3 rounds of voting for speaker," NPR, (Jan. 3, 2023), available at https://www.npr.org/2023/01/03/1146600160/mccarthy-scrambles-for-votes-to-be-elected-speaker-of-the-house.

[6] Scott Wong and Alex Seitz-Wald, "House Republicans quit for the day after McCarthy loses sixth speaker vote," NBC News, (Jan. 4, 2023), available at https://www.nbcnews.com/politics/congress/mccarthy-enters-day-two-uncertainty-house-resumes-speaker-votes-rcna64154.

[7] *See* Congressional Leadership Fund registered with the FEC as a hybrid PAC, with a non-contribution account. *See* Congressional Leadership Fund, Statement of Organization, https://docquery.fec.gov/pdf/734/202112319474751734/202112319474751734.pdf (Dec. 31, 2021).

[8] *See* Club for Growth Action, Statement of Organization, https://docquery.fec.gov/pdf/782/201902049145459782/201902049145459782.pdf (Feb. 4, 2019).

[9] CLF & Club for Growth Come to Key Agreement in Support of Kevin McCarthy for Speaker (Jan. 4, 2023), available at https://congressionalleadershipfund.org/clf-club-for-growth-come-to-key-agreement-in-support-of-kevin-mccarthy-for-speaker/.

primaries in safe Republican districts."[10] CLF also affirmed that it "*will* continue to support incumbents in primaries as well as challengers in districts that affect the Majority, which proved to be critical to winning the Majority in 2022."[11] Club for Growth – a different conservative Super PAC – also stated the following about the agreement:

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

Reporting on the agreement indicates that Representative McCarthy, and members of his staff, were directly involved in this decision. In particular, news articles called the agreement "a sizable concession *for McCarthy*" that was intended to "influence particular … congressional races" that "'likely required sign-off' from Representative McCarthy or his team."[13] Another source noted that "McCarthy made the concessions *during negotiations* late Wednesday after seeing his vote tally drop over six rounds that began Tuesday, when he became the first speaker candidate in 100 years to lose during the first round."[14]

## LEGAL DISCUSSION

Under Commission regulations, federal candidates and officeholders and their agents are prohibited from soliciting, receiving, directing, transferring, or spending funds in connection

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[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] Juliegrace Brufke, "McCarthy-aligned super PAC agrees not to interfere in primaries amid speaker stalemate," Washington Examiner (Jan. 4, 2023), available at https://www.washingtonexaminer.com/news/house/mccarthy-aligned-super-pac-speaker-stalemate?utm_source=gazette.com&utm_medium=referral&utm_campaign=csg_news_feed (emphasis added); Rae Hodge, "Shameful": Democrats sound alarm over "creepy" dark-money super PAC deal to help McCarthy win (Jan. 5, 2023), available at https://www.salon.com/2023/01/05/shameful-democrats-sound-alarm-over-creepy-dark-money-super-pac-deal-to-help-mccarthy-win/.
[14] Sara Dorn, McCarthy Agrees to These Concessions In His Quest To Become Speaker – But They May Not Be Enough (Jan. 5, 2023), available at 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/?utm_campaign=forbes&utm_source=twitter&utm_medium=social&utm_term=Gordie&sh=de7446c45102.

with an election for federal office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act of 1971, as amended.[15] "Federal" or "hard money" funds are subject to the Act's amount limitations, source prohibitions, and reporting requirements while "nonfederal" or "soft money" funds are not. The legislative history indicates that a "compelling purpose" for enacting these restrictions was to "deter any possibility that solicitations of large sums from corporations, unions, and wealthy private interests will corrupt or appear to corrupt our Federal Government or undermine our political system with the taint of impropriety."[16] These provisions were designed to "plug the soft-money loophole,"[17] which had "led to a meltdown of the campaign finance system that had been intended to keep corporate, union and large individual contributions from influencing the electoral process."[18]

Here, the available information supports the conclusion that McCarthy has violated the soft money provisions. Based on wide-spread news articles, McCarthy made a deal with members of his party and Congressional Leadership Fund that involves the PAC's spending on future House elections. Specifically, McCarthy negotiated a deal whereby the Congressional Leadership Fund would continue supporting incumbents in primaries and challengers in districts that affect the majority as well as not spend money in open-seat primaries in Republican safe districts. As a super PAC, Congressional Leadership Fund is not subject to the source and amount restrictions of the Act. That McCarthy would direct the spending of a federal super PAC

[15] *See* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.
[16] 148 Cong. Rec. S2139 (Daily ed. March 20, 2002) (statement of Sen. McCain); see also Advisory Op. ("AO") 2004-25 (Corzine).
[17] McConnell v. FEC, 540 U.S. 93, 133 (2003).
[18] *Id.* at 129.

to win the House Speakership constitutes a significant violation of the soft money provisions of the Act.

Further, McCarthy's conduct completely undermines Congress's purpose for enacting the soft money rules—to prevent large sums of money from corporations, unions, and wealthy private interests from corrupting our Federal Government. The instant circumstances are all the more disturbing given that McCarthy, in seeking the highest position in the House of Representatives, is apparently directing the spending decisions of a soft money group as part of a *quid pro quo* arrangement to win. Under these extraordinary circumstances, the Commission must immediately open an investigation into these potential violations.

## Requested Action

McCarthy's actions, if true, would amount to a significant violation of federal campaign finance law, undermining the Act's transparency and anti-corruption objectives. The Commission should devote the full use of its resources to ensure that the Act's interests are fully vindicated. We respectfully request that the Commission immediately investigate these allegations, fine McCarthy the maximum amount permitted by law, and enjoin him from further violations of the law.

Sincerely,

Tiffany Muller
President and Executive Director
End Citizens United
PO Box 66005
Washington, DC 20035

SUBSCRIBED AND SWORN to before me this 9th day of January 2023.

mark andrews

Notary Public

My Commission Expires:

MARK ANDREWS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2024

MARK ANDREWS
NOTARY PUBLIC
EXP.
7-14-24
DISTRICT OF COLUMBIA