



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

October 19, 2023

**BY ELECTRONIC MAIL ONLY**

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51 Louisiana Ave, NW

Washington, DC 20001

RE: MUR 8099  
Congressional Leadership Fund and  
Caleb Crosby in his official capacity as  
treasurer

Dear Ms. Newton and Mr. Crosland:

On February 21, 2023, the Federal Election Commission notified your clients, Congressional Leadership Fund and Caleb Crosby in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 17, 2023, the Commission found, on the basis of the information in the complaint, and information provided by Respondents, that there is no reason to believe that Congressional Leadership Fund and Caleb Crosby in his official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Nicholas O. Mueller, the attorney assigned to this matter, at (202) 694-1650 or [nmueller@fec.gov](mailto:nmueller@fec.gov).

Sincerely,

*Mark Shonkwiler*

Mark Shonkwiler

Assistant General Counsel

Enclosure

Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

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5 Respondents: Kevin McCarthy MUR 8099  
6 Congressional Leadership Fund and  
7 Caleb Crosby in his official  
8 capacity as treasurer  
9

**I. INTRODUCTION**

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

17 Specifically, the Complaint alleges that in an effort to secure enough votes from his  
18 colleagues to be elected Speaker of the House of Representatives, McCarthy negotiated a deal  
19 whereby CLF, an independent expenditure-only political committee (“IEOPC”), agreed to refuse  
20 to spend funds in open-seat primaries in districts viewed as “safe Republican” districts and  
21 would also support incumbent members of his party. In response to this commitment by CLF  
22 and McCarthy’s support for certain changes to the house rules, Club for Growth, a 501(c)(4)  
23 organization, announced its support for McCarthy for Speaker. Two days following this  
24 endorsement by Club for Growth, a number of Republican members-elect changed their votes to  
25 support McCarthy and he prevailed in becoming the 55th Speaker of the House of  
26 Representatives. Based on McCarthy’s purported role in orchestrating this deal between CLF  
27 and Club for Growth, the Complaint alleges that McCarthy directed CLF’s spending, or in other  
28 words that CLF was established, financed, maintained, or controlled (“EFMC’d”) by, or acting

1 on behalf of, McCarthy for purposes of 52 U.S.C. § 30125(e)(1)(A). Therefore, the Complaint  
2 concludes that CLF's raising and spending of non-federal funds amounts to a violation of the Act  
3 and Commission regulations.

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

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

## 17 **II. FACTUAL BACKGROUND**

### 18 **A. Respondents**

19 Kevin McCarthy is the Representative from California's 20th Congressional District.<sup>1</sup>  
20 On January 7, 2023, McCarthy was chosen as the 55th Speaker of the House of Representatives.<sup>2</sup>

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<sup>1</sup> 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>.

<sup>2</sup> 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>.

1 Club for Growth is a 501(c)(4) entity that describes itself as “a national network of over  
2 500,000 pro-growth, limited government Americans who share in the belief that prosperity and  
3 opportunity come from economic freedom.”<sup>3</sup> Club for Growth has a separate segregated fund  
4 registered with the Commission called Club for Growth PAC as well as an affiliated IEOPC  
5 called Club for Growth Action.<sup>4</sup>

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

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<sup>3</sup> 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](https://projects.propublica.org/nonprofits/display_990/204681603/download990pdf_07_2022_prefixes_01-22%2F204681603_202106_990O_2022071820227061) (last visited June 14, 2023).

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

<sup>5</sup> Amend. Statement of Org., Congressional Leadership Fund (Feb. 1, 2023).

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

<sup>7</sup> 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”).

<sup>8</sup> CLF Resp. at 7 (Apr. 19, 2023).

1           **B.       McCarthy’s Bid to Become Speaker of the House of Representatives and the**  
2           **Agreement by CLF and Club for Growth**

3           Following the 2022 midterm elections, members-elect of the 118th Congress gathered on  
4           January 3, 2023, to elect a new Speaker of the U.S. House of Representatives. After two days of  
5           voting, however, no nominee had received a majority of votes cast in order to become Speaker.

6           While voting was ongoing, on January 4, 2023, an agreement between Club for Growth  
7           and CLF was announced.<sup>9</sup> Under this agreement, CLF agreed that:

8                     CLF will not spend in any open-seat primaries in safe Republican  
9                     districts and CLF will not grant resources to other super PAC’s  
10                    [sic] to do so. CLF has never spent a dollar against a Republican  
11                    incumbent before and obviously will continue that policy in the  
12                    future.

13                   CLF will continue to support incumbents in primaries as well as  
14                    challengers in districts that affect the Majority, which proved to be  
15                    critical to winning the Majority in 2022.<sup>10</sup>

16           In exchange, Club for Growth stated:

17                    This agreement on super PAC’s [sic] fulfills a major concern we  
18                    have pressed for. We understand that Leader McCarthy and  
19                    Members are working on a rules agreement that will meet the  
20                    principles we have set out previously. Assuming these principles  
21                    are met, Club for Growth will support Kevin McCarthy for  
22                    Speaker.<sup>11</sup>

23           Following several further days of voting, Representative McCarthy secured a majority of  
24           votes cast to win the Speakership on January 7, 2023.<sup>12</sup>

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<sup>9</sup>       CLF & Club for Growth Agreement.

<sup>10</sup>       *Id.*

<sup>11</sup>       *Id.*

<sup>12</sup>       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>.

1 **III. LEGAL ANALYSIS**

2 The Act prohibits federal candidates and officeholders, their agents, and entities directly  
3 or indirectly established, financed, maintained, or controlled by or acting on behalf of one or  
4 more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],  
5 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the  
6 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”<sup>13</sup>

7 To determine whether a candidate or his or her agent “directly or indirectly establishes,  
8 finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten  
9 factors set forth in 11 C.F.R. § 300.2(c)(2), including: (1) whether the candidate or his agent has  
10 the authority to “direct or participate in the governance of the entity through provisions of  
11 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or  
12 procedures”;<sup>14</sup> (2) whether the candidate or his agent has “the authority or ability to hire,  
13 appoint, demote, or otherwise control the officers, or other decision-making employees or  
14 members of the entity”;<sup>15</sup> (3) whether former or present “overlapping officers or employees”  
15 indicate “a formal or ongoing relationship” between the candidate or his agent and the entity;<sup>16</sup>  
16 (4) whether directly or through its agent, the candidate had an “active or significant role in the  
17 formation of the entity”;<sup>17</sup> as well as any other relevant factors, in the context of the overall  
18 relationship between the federal candidate or officeholder, or his agent, and the entity.<sup>18</sup>

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<sup>13</sup> 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

<sup>14</sup> 11 C.F.R. § 300.2(c)(2)(ii).

<sup>15</sup> *Id.* § 300.2(c)(2)(iii).

<sup>16</sup> *Id.* § 300.2(c)(2)(v), (vi).

<sup>17</sup> *Id.* § 300.2(c)(2)(ix).

<sup>18</sup> *Id.* § 300.2(c)(2); *see* Advisory Op. 2006-04 (Tancredo) at 3.

1           While this list of factors is not an exhaustive list, the Complaint in this matter does not  
2 provide information indicating that any one of the factors is met. Moreover, the CLF Response  
3 directly denies several of the most likely applicable factors, stating:

4           CLF was established 12 years ago, is in no way “financed” by  
5 Speaker McCarthy or his committees, and Speaker McCarthy has  
6 no formal control over CLF under its corporate bylaws. To the  
7 contrary, CLF is solely managed by its board of independent  
8 directors and its President — none of whom has overlapping  
9 authority on any of Speaker McCarthy’s political committees.<sup>19</sup>

10           In MUR 7070, a previous complaint alleged that CLF was established, financed,  
11 maintained, or controlled by former Speaker of the House Paul Ryan based on a *Politico* article  
12 reporting a conversation Ryan allegedly had with a candidate for a seat on CLF’s board of  
13 directors, encouraging him to take the position.<sup>20</sup> Much like the present matter, Ryan and CLF  
14 denied that he had any authority to control CLF’s personnel decisions, which were instead made  
15 solely by its board of directors.<sup>21</sup> Without information beyond the suggestion in a *Politico* article  
16 that Ryan approached the candidate about the board seat, and considering CLF’s denial that  
17 Ryan had any authority to hire on its behalf, the Commission dismissed the alleged violation.<sup>22</sup>  
18 Moreover, in MUR 6280 (Howard L. Berman), the Commission found no reason to believe a  
19 violation had occurred where a candidate did not have a formal executive position and did not  
20 have the ability to “hire, appoint, demote, or otherwise control the officers.”<sup>23</sup> Similarly, in the  
21 present matter, the Complaint presents no evidence of any role McCarthy played in the formation

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<sup>19</sup> 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.”).

<sup>20</sup> Factual & Legal Analysis (“F&LA”) at 1, MUR 7070 (Congressional Leadership Fund).

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> F&LA at 8, MUR 6280 (Howard L. Berman).

1 or operation of CLF as included in the regulation’s enumerated factors, and CLF directly denies  
2 any such role.<sup>24</sup>

3 Instead of resting on any of the enumerated factors, it appears that the Complaint’s  
4 argument is premised on the idea that CLF is “acting on behalf” of McCarthy.<sup>25</sup> In support of its  
5 allegation, the Complaint states that CLF is “endorsed” by McCarthy<sup>26</sup> and cites reporting that  
6 speculates or implies that McCarthy or his staff may have been involved in CLF’s decision to  
7 come to an agreement with Club for Growth regarding CLF’s spending in primaries in order to  
8 secure support for his speakership bid.<sup>27</sup>

9 Yet McCarthy’s mere approval of CLF alone does not imply that he has any formal or  
10 informal role within CLF, nor any coordination between the two, that would render CLF less  
11 than an independent actor.<sup>28</sup> While McCarthy and CLF may share common goals regarding  
12 which party holds a majority in the House of Representatives, information supporting the  
13 existence of such a common goal is insufficient to establish that each did not seek the goal  
14 individually.<sup>29</sup>

15 The media reports in this instance also serve as a poor foundation for an argument that  
16 CLF worked on behalf of McCarthy. Neither of the reports cited by the Complaint include any

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<sup>24</sup> CLF Resp. at 7.

<sup>25</sup> *See* Compl. at 4-5; 52 U.S.C. § 30125(e)(1).

<sup>26</sup> Compl at 7; *see* CLF & Club for Growth Agreement (noting that “Kevin McCarthy has endorsed CLF.”); *supra* note 7.

<sup>27</sup> 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.”).

<sup>28</sup> *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.”).

<sup>29</sup> *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 first-hand source to corroborate speculation that McCarthy or his staff participated in, let alone  
2 directed, CLF's decisions regarding its future spending in primary elections.

3           Contrary to these reports, the CLF Response states that the decision regarding its  
4 involvement in future primaries was made by its board at the request of CLF leadership.<sup>30</sup> The  
5 McCarthy Response, similarly denies these reports stating that: “[n]either Respondent nor any  
6 members of his staff were involved in whatever agreement was or was not reached by these two  
7 Super PACs.”<sup>31</sup>

8           In light of the minimal and speculative information supporting the allegations and the  
9 denials by both CLF and McCarthy, there is insufficient information to support a reason to  
10 believe finding that CLF was EFMC'd by, or acting on behalf of, McCarthy. Accordingly, the  
11 Commission finds no reason to believe that McCarthy or CLF violated 52 U.S.C.  
12 § 30125(e)(1)(A).

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<sup>30</sup> CLF Resp. at 3, 7.

<sup>31</sup> McCarthy Resp. at 2.