

base so it can grow its revenues. As with any business, if Crowdpac's users were to abandon the site, there would be a corresponding decrease in revenue, and the company's ability to continue operations would be threatened.

Around the Spring of 2018, Crowdpac began facing user backlash over the company's continuing association with its co-founder Steve Hilton, a conservative political strategist, and the continued presence of Republican campaigns on the site.⁶ One article on the popular website Medium told Crowdpac users that they were "putting money into the pockets of a pro-Trump Fox News host" and that they were responsible for "ugly attacks on Democrats and progressives" because they were "paying [Hilton] a percentage when they use his platform[.]"⁷ The article urged users to boycott Crowdpac, demand that Democratic candidates remove their candidate pages from the Crowdpac site, and "spread the word" on social media that Crowdpac "does not deserve our financial support."⁸

Along with the Medium article urging a boycott of Crowdpac over its supposed support of "pro-Trump" views, the hashtag #DumpCrowdPac appeared on social media.⁹ Some Crowdpac users even posted on Twitter that they would stop using Crowdpac's services if the site did not make changes to its business.¹⁰ And Crowdpac heard directly from users and candidates that, in light of Steve Hilton's public commentary and views and the continued presence of Republican campaigns on the site, Crowdpac was seen as an endorsement of President Trump's political movement.¹¹ This created friction within Crowdpac's community and user base.

Over time, it became clear to Crowdpac that the values that are linked with President Trump and the modern Republican Party were being rejected by Crowdpac's users and community, and, in turn, those users were on the verge of rejecting Crowdpac.¹² Crowdpac therefore made the difficult business decision to suspend the ability of many Republican Party candidates to fundraise through candidate pages on Crowdpac.¹³ Importantly, Crowdpac did not suspend *all* Republican candidates from the platform; those who still adhere to the company's values and the values of its users will be allowed to continue.¹⁴ As Crowdpac fully explained in its own Medium post at the time of the decision, this decision was firmly rooted in the company's need to operate a business that reflected its own values and the values of its users, or else risk losing those users to another platform.¹⁵ The decision was based on objective, financial, values-driven

⁶ Kordestani aff. ¶ 4.

⁷ George Lakoff, *Are You Crowdfunding a Fox News Host?*, Medium.com (March 20, 2018), available at <https://medium.com/@GeorgeLakoff/are-you-crowdfunding-a-fox-news-host-5f45ce15d5f5>.

⁸ *Id.*

⁹ See <https://twitter.com/hashtag/dumpcrowdpac?f=tweets&vertical=default&src=hash>.

¹⁰ See, e.g., <https://twitter.com/MonicaDePaul4FL/status/976515273544126464>.

¹¹ Kordestani aff. ¶ 5; see also Jesse Thomas, *A Stand Against Trumpism, A Stand for Democracy*, Medium.com (May 15), available at <https://medium.com/@Crowdpac/a-stand-against-trumpism-a-stand-for-democracy-a45e95a77ed5>.

¹² Kordestani aff. ¶ 6.

¹³ *Id.* ¶ 7.

¹⁴ Thomas, *supra* note 11 ("Republican campaigns that clearly reflect the values of our community ... will also remain live on our platform..."). An example of a Republican-aligned organization that remains active on Crowdpac is available at <https://www.crowdpac.com/campaigns/215662/republican-women-for-progress>.

¹⁵ Thomas, *supra* note 11; see also <https://twitter.com/MonicaDePaul4FL/status/976515273544126464> ("I will be switching my fundraising back to @ActBlue unless [Hilton] steps down.").

business factors. It was not based in any way on partisan grounds, or for the purpose of influencing any election.¹⁶

II. DISCUSSION

A. Crowdpac is not a Political Committee

Like the complaint in the related MUR 7309, the Complaint here makes the sole, frivolous allegation that Crowdpac is a “Democratic political action committee.” This allegation has no basis in law or fact. A political committee is an organization that “receives contributions aggregating in excess of \$1,000 or ... makes expenditures aggregating in excess of \$1,000 during a calendar year.”¹⁷ Crowdpac is a business enterprise that provides services to users in an attempt to earn revenue. Crowdpac does not receive contributions, and it does not make expenditures. In short, it is not a political committee, and the Complaint offers no information indicating otherwise or suggesting a violation of the Act has occurred.

B. The Business Decision to Suspend Republican Campaigns from the Platform Does Not Make Crowdpac a Political Committee

The Commission has already concluded in Advisory Opinion 2014-07 that “neither Crowdpac’s services nor its fees are contributions to recipient political committees.”¹⁸ The Commission need not revisit that conclusion now. While the Complaint alleges that Crowdpac’s suspension of “all” Republican candidates from its site is “new evidence” in support of its claims, the Commission’s decision in Advisory Opinion 2014-07 correctly did not rest on the fact that Crowdpac featured both Democratic and Republican candidates. And the Complaint incorrectly alleges that “all” Republican candidates and Republican-aligned groups have been suspended from Crowdpac’s platform.

The Commission has consistently recognized the ability of for-profit, campaign-related businesses to exclude candidates, so long as those decisions are made in a commercially reasonable manner. As the Commission knows, many vendors in the world of politics only provide services to candidates from a single political party. These decisions are not made because of the vendors’ political beliefs, but rather are dictated by business considerations. Many candidates - and, importantly here, many users and donors - do not want to work with companies that work with campaigns and organizations whose views are antithetical to the candidates’ values. The FEC has, accordingly, long recognized that companies can choose to do business with certain candidates and not with others, as long as the companies base such a decision on commercially reasonable criteria.

The Commission most recently affirmed this long-standing position in Advisory Opinion 2017-06 (Stein & Gottlieb). In that Opinion, the Commission observed that

The Commission has previously concluded that a commercial vendor, providing services to political committees under 11 C.F.R. § 114.2(f)(1), need not make its services

¹⁶ Kordestani aff. ¶ 8.

¹⁷ 11 C.F.R. § 100.5(a).

¹⁸ Advisory Opinion 2014-07 (Crowdpac).

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available to committees representing all political ideologies, but rather may establish objective business criteria to protect the commercial viability of its business without making contributions to the committees that meet those criteria.¹⁹

Likewise, according to the Commission in Advisory Opinion 2017-06, “businesses that provide services to contributors, such as those that process payments for contributions *or provide information about candidates and elections*, may also rely on commercial considerations to target customers and limit the range of services provided, without making any contributions themselves.”²⁰

In Advisory Opinion 2017-06 the requestor concluded that featuring candidates from only one political party was the most marketable way for its business to provide a service to users and promote its commercial success in the current political environment. The Commission correctly ruled there, as it should here, that this decision making process was commercially reasonable, and that the requestor’s decision to limit the candidates featured on its platform based on objective business factors does “*not cause the services provided or the fee charged to users to constitute a contribution to recipient committees.*”²¹

Crowdpac’s situation was perhaps even more stark than the requestor in Advisory Opinion 2017-06. Crowdpac faced backlash from its users due to the company’s ongoing relationships with Republican campaigns and commentators. Users’ threats to leave the platform and take their business to one of Crowdpac’s competitors were real and immediate, as evidenced by contemporaneous blog and social media posts and supported by the sworn affidavit from Crowdpac’s CEO attached here. Consistent with its for-profit objective and commercial nature, Crowdpac made a difficult business decision to suspend many Republican campaigns based on this feedback, its commercial judgment, and its understanding of the marketplace and which messages will resonate with Crowdpac users and prospective users. Also consistent with its for-profit objective, Crowdpac did not suspend *all* Republican campaigns and Republican-aligned groups; those Republican groups that adhere to the company’s values are still permitted on the platform. Contrary to the assertions made in the Complaint, these decisions were made solely to protect Crowdpac’s business and generate revenue, and to avoid losing users to other vendors.

In short, Crowdpac made the decision to exclude certain candidates from its platform based on commercially reasonable criteria.²² The Commission has long recognized the rights of corporations to make decisions based on such criteria, including objective criteria related to excluding candidates based in part on partisan factors, without making contributions to candidates who then utilize the platform. The Complaint is totally empty of factual or legal arguments explaining why the Commission should abandon this long-held precedent.

¹⁹ Advisory Opinion 2017-06 (Stein & Gottlieb) (citing Advisory Opinions 2012-28 (CTIA), 2012-26 (Cooper for Congress), 2006-34 (Working Assets).

²⁰ *Id.* (emphasis added).

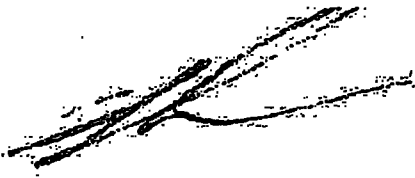
²¹ *Id.* (emphasis added).

²² See Advisory Opinion 2015-08 (Repledge) (“Repledge’s reasonable commercial decision to limit its universe of candidate recipients does not render its proposal impermissible.”)

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For the foregoing reasons, Crowdpac respectfully requests that the Commission find no reason to believe that it has violated the Act, and dismiss this matter without delay.

Very truly yours,



Marc E. Elias
Tyler J. Hagenbuch
Counsel to Crowdpac, Inc.

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BEFORE THE FEDERAL ELECTION COMMISSION

In re

Crowdpac, Inc.

MUR 7399

AFFIDAVIT OF GISEL KORDESTANI

I, Gisèl Kordestani, do depose and state as follows:

1. My name is Gisel Kordestani. I am the Chief Executive Officer of Crowdpac, Inc., ("Crowdpac"), located at 535 Mission St., 14th Floor, San Francisco, CA 94105.
2. Crowdpac is a for-profit corporation operating exclusively on a commercial basis. Crowdpac's business is promoting grassroots, small-dollar engagement in the political process through its commercial services and the tools available on its website.
3. Crowdpac earns its revenue from convenience fees and donations paid by users who make contributions and pledges on the candidate pages on the Crowdpac site.
4. Around the Spring of 2018, Crowdpac began facing user backlash over the company's continuing association with Steve Hilton, a conservative political strategist. Users posted on websites such as Medium and social media platforms like Twitter advocating that other users boycott our site because of its association with conservative viewpoints.
5. Crowdpac also received direct feedback from users and candidates that, in light of Steve Hilton's public commentary and views and the continued presence of Republican campaigns on the site, Crowdpac was seen as an endorsement of President Trump's political movement.
6. It became clear to us at Crowdpac that our users and community were rejecting the values associated with President Trump and the modern Republican Party, and that they were also rejecting Crowdpac because of the company's association with Republican Party campaigns and commentators.
7. Because of the pressure being placed on the company by its users and community, Crowdpac made the difficult decision to suspend the ability of many Republican candidates to fundraise through Crowdpac.

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8. The decision to suspend many Republican campaigns was a business decision that was made after objective observation of the feedback the company was receiving from its community. Crowdpc suspended certain Republican campaigns so that the value of the company and its users was reflected on its platform. The decision was based on objective, financial, values-oriented business criteria, and not on partisan grounds. The decision was not made for the purpose of influencing any election. In short, Crowdpc no longer believed it could successfully market its platform as a platform open to all candidates without regard to their values, policy positions, and political parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 18, 2018.



GISEL KORDESTANI

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