



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 2, 2022

**By Electronic Mail Only**  
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Michael G. Adams, Esq.  
Chalmers & Adams LLC  
1300 Pennsylvania Ave., NW, No. 190-612  
Washington, DC 20004

RE: MURs 7628, 7636  
and 7992 (formerly Pre-MUR 628)  
Kris Kobach  
Kobach for Senate and Elizabeth  
Curtis in her official capacity as  
treasurer

Dear Mr. Adams:

On August 7 and August 15, 2019, the Federal Election Commission notified your clients Kris Kobach and Kobach for Senate and Elizabeth Curtis in her official capacity as treasurer (the "Committee") of complaints alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaints were forwarded to your clients at that time. On October 2, 2019, the Commission received your clients' *sua sponte* submission.

Upon review of the available information, the Commission, on April 28, 2022, found reason to believe that Kris Kobach and the Committee violated 52 U.S.C. § 30118 by knowingly accepting a corporate contribution by renting an email list below market value from WeBuildTheWall, Inc. The Commission also found reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to report the in-kind contribution from WeBuildTheWall, Inc. The Factual and Legal Analysis, approved by the Commission on May 26, 2022, provides the basis for the Commission's findings and is enclosed for your information.

Please note that your clients have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter.<sup>1</sup>

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<sup>1</sup> See 18 U.S.C. § 1519.

If your clients are interested in engaging in pre-probable cause conciliation, or have any questions, please contact Richard Weiss, the attorney assigned to this matter, at (202) 694-1021 or [rweiss@fec.gov](mailto:rweiss@fec.gov), within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that are relevant to the Commission's consideration of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days.<sup>2</sup> Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [https://www.fec.gov/resources/cms-content/documents/respondent\\_guide.pdf](https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf).

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>3</sup>

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<sup>2</sup> See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A).

<sup>3</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* 30107(a)(9).

MURs 7628, 7636 and 7992  
Letter to Michael G. Adams, Esq.  
Page 3 of 3

We look forward to your response.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen Dickerson", is written over a horizontal line.

Allen Dickerson  
Chairman

Enclosures  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Kris Kobach **MUR 7628, 7636 & 7992**  
 4 Kobach for Senate and Elizabeth Curtis  
 5 in her official capacity as treasurer

6 **I. INTRODUCTION**

7 The Complaints in these matters involve allegations that WeBuildtheWall, Inc.  
 8 (“WBTW”), a 501(c)(4) non-profit organization, made a prohibited in-kind corporate  
 9 contribution to Kris Kobach and Kris Kobach for Senate and Elizabeth Curtis in her official  
 10 capacity as treasurer (the “Committee”) by sending an email on August 1, 2019, to the WBTW  
 11 email list, displaying the WBTW logo, and soliciting contributions for the Committee, in  
 12 violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).<sup>1</sup> The MUR  
 13 7628 Complaint also alleges that WBTW spent funds not subject to the limits, prohibitions, and  
 14 reporting requirements of the Act to disseminate the email.<sup>2</sup> The Committee denies the  
 15 allegations, asserting that it rented the WBTW email list for \$2,000, which they assert was the  
 16 fair market value for the list, and that any other violations are the result of vendor error.<sup>3</sup>

17 In Pre-MUR 628, the Committee filed a *sua sponte* Submission regarding an additional  
 18 email that was sent to the WBTW email list on July 18, 2019, soliciting contributions to the  
 19 Committee without the required disclaimer.<sup>4</sup> The Committee asserts that the omitted disclaimer  
 20 was the result of vendor error, the Committee discovered this earlier email while taking

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<sup>1</sup> MUR 7628 Compl. at 7-10 (Aug. 5, 2019); MUR 7636 Compl. at 4-5 (Aug. 13, 2019).

<sup>2</sup> MUR 7628 Compl. at 9.

<sup>3</sup> Committee Resp. at 1 (Oct. 2, 2019), MUR 7628.

<sup>4</sup> Submission at 1 (Oct. 2, 2019), Pre-MUR 628.

“investigative and remedial action” with regard to the August 1, 2019, email, and it issued a corrected email containing a disclaimer within 24 hours of discovering the error.<sup>5</sup>

As set forth below, the Commission dismisses the disclaimer allegation. Also, the Commission finds reason to believe that the \$2,000 rental for the WBTW email list was significantly below fair market value and therefore constituted an in-kind and unreported corporate contribution to the Committee.

## II. FACTUAL BACKGROUND

Kris Kobach was a candidate for U.S. Senate in Kansas in 2020.<sup>6</sup> WBTW is a 501(c)(4) non-profit organization that raises money to build portions of a wall on the USA-Mexico border.<sup>7</sup> Kobach serves as general counsel for WBTW, and it is a paid position.<sup>8</sup> Brian Kolfage is the President of WBTW.<sup>9</sup> Dustin Stockton is a director of WBTW and President of Stockton

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<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> Kris Kobach, Statement of Candidacy (July 8, 2019). Kobach lost the primary election on Aug. 4, 2020. Kobach is now a candidate for Kansas Attorney General. Kris Kobach Campaign Finance Appointment of Treasurer Report, Kansas Governmental Ethics Commission (Apr. 28, 2021), [http://ethics.ks.gov/CFAScanned/StWide/2022ElecCycle/Treasurers/SW02KK\\_AT.pdf](http://ethics.ks.gov/CFAScanned/StWide/2022ElecCycle/Treasurers/SW02KK_AT.pdf).

<sup>7</sup> WBTW Articles of Incorporation, Florida Dept. of State, Div. of Corporations. (Dec. 12, 2018). Brian Kolfage is the only listed director on the original Articles of Incorporation. *Id.* Prior to the formal incorporation of WBTW, Kolfage reportedly created a GoFundMe campaign called, “We The People Will Build the Wall” in December 2018 to raise money for the federal government to build a border wall on the USA-Mexico border. *See* Abigail Hess, *A GoFundMe Campaign Raised \$20 million For A Border Wall—Now All Of The Funds Will Be Returned*, Jan. 11, 2019, CNBC, <https://www.cnbc.com/2019/01/11/gofundme-that-raised-20-million-for-border-wall-will-return-funds.html>. However, Kolfage reportedly subsequently determined the federal government would not be able to accept the money, at which point Kolfage created WBTW and gave contributors the choice of a refund or to have their contribution transferred to WBTW. *Id.* WBTW has four directors: Brian Kolfage (President), Amanda Shea (Secretary/Treasurer), Kris Kobach (Director), and Dustin Stockton (Director). WeBuildTheWall, Inc., 2019 Florida Not For Profit Corporation Annual Report at 1 (July 15, 2019), <http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=domnp-n19000000009-98698443-58d3-4b71-ad00-e2e2f8f17ffc&transactionId=n19000000009-2a1c88f1-ff1c-4468-952f-df2fb3f3b374&formatType=PDF>.

<sup>8</sup> *See* 2019 Kobach for Senate Financial Disclosure at 7; *see also* Jonathan Shorman, *et al.*, *As Kobach Pursues U.S. Senate, Border Wall Group He Represents Leaves Anger In Its Wake*, THE WICHITA EAGLE, July 21, 2019, <https://www.kansas.com/news/politics-government/article232855972.html>.

<sup>9</sup> *See* We Build The Wall Team, WEBUILDTHEWALL, <https://webuildthewall.us/ourteam/> (last visited Aug. 2, 2021).

MUR 7628, 7636 & 7992 (Kris Kobach and Kobach for Senate)

Factual and Legal Analysis

Page 3 of 11

Strategies, LLC (“Stockton Strategies”), a digital fundraising vendor retained by both the Committee and WBTW.<sup>10</sup>

On July 10, 2019, Stockton Strategies entered into an agreement “to rent from WBTW, at a cost of \$2,000.00, use of its file of email addresses for purposes of prospecting contributions to Stockton Strategies’ candidate clients in 2019.”<sup>11</sup> The agreement between WBTW and Stockton Strategies was drafted by Kobach in his capacity as General Counsel for WBTW,<sup>12</sup> and Kobach was “asked his opinion concerning the list rental price.”<sup>13</sup> The WBTW list was only used for the Committee and not for any other Stockton clients.<sup>14</sup> The Committee reimbursed Stockton Strategies for the full \$2,000 rental price.<sup>15</sup> The Committee asserts it entered into an agreement with “Stockton’s company to perform fundraising services.”<sup>16</sup>

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<sup>10</sup> See Kobach and Committee Resp. to First Request for Information at 4 (July 27, 2020), Pre-MUR 628. Stockton Strategies, LLC is a digital fundraising vendor and Nevada corporation. Stockton Affidavit, Kobach and Committee Resp. Ex. 1 at 1-3. Stockton Strategies does not have a website.

<sup>11</sup> Stockton Affidavit ¶5. Despite Stockton’s representations that he was prospecting for multiple clients, a query of disbursements in the FEC database reveals payments to Stockton Strategies from only one federal committee client in 2019—the Committee. See FEC Contributor Database Query: [https://www.fec.gov/data/disbursements/?data\\_type=processed&recipient\\_name=stockton+strategies&two\\_year\\_transaction\\_period=2018&two\\_year\\_transaction\\_period=2020&two\\_year\\_transaction\\_period=2022](https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=stockton+strategies&two_year_transaction_period=2018&two_year_transaction_period=2020&two_year_transaction_period=2022); see also Kobach and Committee Resp. to First Request for Information at 2, Pre MUR 628 (indicating Stockton Strategies did not use the WBTW list for any other clients). Although it is possible Stockton had non-federal political committee clients, a search of state campaign finance disclosure records for Kansas, Nevada and Texas, the states Stockton was known to work in, do not reveal any payments to Stockton. See generally Kansas Secretary of State Campaign, Finance—Viewer, [https://kssos.org/elections/cfr\\_viewer/cfr\\_examiner\\_entry.aspx](https://kssos.org/elections/cfr_viewer/cfr_examiner_entry.aspx) (last visited Aug. 2, 2021); Nevada Secretary of State, Campaign Finance Disclosure, [https://www.nvsos.gov/soscandidateservices/anonymoussaccess/cbfdsearchuu/search.aspx#individual\\_search](https://www.nvsos.gov/soscandidateservices/anonymoussaccess/cbfdsearchuu/search.aspx#individual_search) (last visited Aug. 2, 2021); Texas Ethics Commission, Search Campaign Finance Reports, <https://www.ethics.state.tx.us/search/cf/> (last visited Aug. 2, 2021).

<sup>12</sup> Kobach and Committee Resp. to First Request for Information at 3, Pre-MUR 628.

<sup>13</sup> Kobach and Committee Resp. to Second Request for Information at 2, Pre-MUR 628.

<sup>14</sup> Kobach and Committee Resp. to First Request for Information at 3, Pre-MUR 628.

<sup>15</sup> *Id.*; see also *id.* at Exs. B-D.

<sup>16</sup> Kobach and Committee Resp. at 1 (referencing a July 15, 2019 fundraising agreement), MUR 7628. Stockton was also working on WBTW fundraising efforts at the same time. See Kobach and Committee Resp. to First Request for Information at 5, Pre-MUR 628.

MUR 7628, 7636 & 7992 (Kris Kobach and Kobach for Senate)

Factual and Legal Analysis

Page 4 of 11

1           Stockton sent emails to WBTW’s 295,000-person email list on July 18, 2019, and  
2   August 1, 2019, from the WBTW server. The July 18 email was sent from “Brian Kolfage —  
3   WeBuildTheWall, Inc. [info@webuildthewall.us](mailto:info@webuildthewall.us)” and included the WBTW logo, an  
4   announcement supporting Kobach’s Senate candidacy, a solicitation for campaign contributions  
5   to Kobach’s campaign, and the email was signed by Kolfage. The Committee concedes that this  
6   email should have included a disclaimer, but did not.<sup>17</sup> The August 1, 2019, email was sent from  
7   “Kris Kobach — WeBuildTheWall, Inc. [info@webuildthewall.us](mailto:info@webuildthewall.us)” and contained the WBTW  
8   logo, and a letter, signed by Kobach as general counsel for WBTW, announcing his Senate  
9   candidacy and soliciting support and contributions.<sup>18</sup>

10           The MUR 7628 Complaint alleges that WBTW made an in-kind corporate contribution to  
11   the Committee by sending the August 1, 2019, email to the WBTW list and failing to include a  
12   required disclaimer identifying who paid for the solicitation.<sup>19</sup> The MUR 7636 Complaint  
13   alleges that WBTW violated the corporate facilitation prohibition by using its logo and resources  
14   to send the email.<sup>20</sup> The Committee responds that it did not receive a contribution from WBTW,  
15   but instead paid for the use of WBTW’s email list by reimbursing Stockton Strategies for the  
16   \$2,000 list rental.<sup>21</sup> The Committee asserts that Stockton was responsible for failing to include  
17   the disclaimer and using the WBTW email server,<sup>22</sup> and Stockton admits he was at fault.<sup>23</sup> The

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<sup>17</sup>       Submission at 1-2, Pre-MUR 628.

<sup>18</sup>       MUR 7628 Compl. at Ex. 1.

<sup>19</sup>       *Id.* at 2, 7, 10.

<sup>20</sup>       MUR 7637 Compl. at 4-5.

<sup>21</sup>       Kobach and Committee Resp. at 1, MUR 7628.

<sup>22</sup>       *Id.* at 2.

<sup>23</sup>       Stockton Affidavit ¶¶ 8-9.

Committee further responds that once it became aware that the emails lacked a disclaimer, it issued corrected emails containing a disclaimer.<sup>24</sup>

### III. LEGAL ANALYSIS

#### A. Disclaimer Allegations

The MUR 7628 Complaint alleges that the August 1, 2019, email failed to include a required disclaimer identifying who paid for the solicitation.<sup>25</sup> The Committee acknowledges that its August 1 email — as well as its July 18, 2019, email — failed to include a disclaimer.<sup>26</sup> The Act and Commission regulations require a disclaimer whenever a political committee makes a disbursement for the purpose of financing any public communication through any broadcast, cable, satellite communication, newspaper, magazine, outdoor-advertising facility, mailing, or any other type of general public political advertising.<sup>27</sup> If a communication requiring a disclaimer is paid for and authorized by a candidate, a candidate’s authorized committee, or its agents, the disclaimer must clearly state that the communication was paid for by the authorized committee.<sup>28</sup>

A disclaimer was required in this case because the Committee’s July 18, 2019, and August 1, 2019, emails were “electronic mail of more than 500 substantially similar communications” sent by a political committee.<sup>29</sup> Respondents do not contest the allegation that

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<sup>24</sup> Kobach and Committee Resp. at 2, MUR 7628.

<sup>25</sup> MUR 7628 Compl. at 2, 7, 10.

<sup>26</sup> Submission at 1-2, Pre-MUR 628.

<sup>27</sup> 52 U.S.C. §§ 30101(22), 30120; *see also* 11 C.F.R. §§ 100.26, 110.11.

<sup>28</sup> 52 U.S.C. § 30120(a)(1); *see also* 11 C.F.R. § 110.11(b)(1).

<sup>29</sup> 11 C.F.R. § 110.11(a)(1).



1 the emails required a disclaimer.<sup>30</sup> Rather, Respondents blame the error on Stockton Strategies,  
 2 which they describe as a vendor.<sup>31</sup> The Commission has generally not pursued disclaimer  
 3 violations that resulted from inadvertent vendor error.<sup>32</sup> In this case, Stockton Strategies appears  
 4 to be a vendor and Stockton asserts in his sworn affidavit that it was his inadvertent error.<sup>33</sup> The  
 5 Committee also sent corrected emails including a proper disclaimer shortly after the emails  
 6 issued and before their formal notification of the MUR 7628 Complaint.<sup>34</sup> Under these  
 7 circumstances, the Commission dismisses the disclaimer allegations.

## 8 **B. Alleged In-Kind Contributions**

9 The MUR 7628 Complaint alleges that the use of the WBTW email list constituted a  
 10 prohibited in-kind corporate contribution. Corporations are prohibited from making a  
 11 contribution to a candidate's committee, and candidates are prohibited from knowingly accepting  
 12 or receiving a prohibited contribution.<sup>35</sup> A "contribution" includes "any gift, subscription, loan,  
 13 advance, or deposit of money or anything of value made by any person for the purpose of

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<sup>30</sup> Kobach and Committee Resp. at 2, MUR 7628.

<sup>31</sup> *Id.*

<sup>32</sup> See Factual & Legal Analysis at 8, MUR 6846 (DeFazio for Congress) (dismissing disclaimer violation due to vendor error, noting that the respondent took remedial action and that the Commission has declined to pursue cases based on vendor error); Factual & Legal Analysis at 7, MUR 5991 (U.S. Term Limits) (same).

<sup>33</sup> Stockton Affidavit ¶ 9.

<sup>34</sup> *Id.* ¶¶ 11-12; see also Submission at 3, Pre-MUR 628. Respondents did issue corrective emails, but only after the Common Cause Press Release regarding their Complaint in MUR 7628. See Common Cause Press Release dated Aug. 2, 2019 at 3:46 PM Eastern Standard Time, <https://www.commoncause.org/press-release/doj-fec-complaints-filed-against-kris-kobach-we-build-the-wall-inc-for-illegal-campaign-solicitation/> (last visited: Aug. 2, 2021). The corrected emails went out just minutes after the press release. See Submission at Ex. 5, Pre-MUR 628. The correction email for the August 1 email has a time stamp of Aug. 2, 2019 at 3:28 PM Central Time. Considering the time zone differences this email was sent 18 minutes after the Common Cause press release. See *id.* The correction email for the July 18 email has a time stamp of Aug. 2, 2019 at 3:09 PM. Considering the time zone differences this email was sent 23 minutes after the press release.

<sup>35</sup> See 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b)(1).

1 influencing any election for Federal office.”<sup>36</sup> “Anything of value” includes all in-kind  
 2 contributions, including the provision of goods or services without charge or at a charge that is  
 3 less than the usual and normal charge.<sup>37</sup> The Commission’s regulations define “usual and  
 4 normal charge” as “the price of those goods in the market from which they ordinarily would have  
 5 been purchased at the time of the contribution.”<sup>38</sup> Finally, the Act requires committee treasurers  
 6 to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C.  
 7 § 30104.<sup>39</sup> Political committees are required to report the name and address of each person who  
 8 makes a contribution aggregating more than \$200 per calendar year, or per election cycle for  
 9 authorized committees, as well as the date, amount, and purpose of such payments.<sup>40</sup>

10 As a corporation, WBTW is prohibited from making contributions to candidates for  
 11 federal office. If the \$2,000 list rental price is the usual and normal charge for this list, then  
 12 WBTW would have made no contribution to the Committee. As set forth below, the available  
 13 information indicates that the \$2,000 list rental price was below the usual and normal charge for

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<sup>36</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (“‘contribution or expenditure’ . . . includes any direct or indirect payment . . . gift of money, or any services, or anything of value”).

<sup>37</sup> *See* 11 C.F.R. § 100.52(d)(1); *see also* Advisory Opinion 2010-30 (Citizens United) (holding, “so long as Citizens United does not rent its list to Federal candidates, authorized committees, political party committees, or other political committees for less than the usual and normal charge, the rental of the list will not constitute a corporate expenditure by Citizens United.”); First Gen. Counsel’s Rpt. at 5 & Cert. ¶1, MUR 5682 (Bachmann for Congress) (finding the respondent assigned an appropriate valuation to a mailing list where the respondent had consulted with a “reputable list broker” regarding the “proper fair market value” of the list).

<sup>38</sup> 11 C.F.R. § 100.52(d)(2).

<sup>39</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a); *see also* 52 U.S.C. § 30104(b) (contents of the required reports).

<sup>40</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4).

1 the list's rental; therefore, WBTW appears to have made, and the Committee appears to have  
 2 accepted, an in-kind corporate contribution, and the Committee failed to report it.<sup>41</sup>

3 According to information available to the Commission, WBTW believes the market rate  
 4 for its email list containing 295,000 addresses was 1/10 of a cent per email per use (for six uses).  
 5 By contrast, the Committee states that the agreed-upon market rate was 2/3 of a cent per email  
 6 (with no number of uses stated).<sup>42</sup> The Committee asserts that the rate was a fair price since the  
 7 list did not consist of known contributors to any political campaign and had not yet been tested  
 8 as a fundraising list for any political campaign.<sup>43</sup>

9 The Committee's descriptions of the list as untested and non-political are questionable in  
 10 light of the following facts. The list consisted of "all individuals who had made any donation, of  
 11 any amount, to WBTW throughout its history" including the original "GoFundMe donors,"  
 12 whose combined donations totaled \$25 million for the border wall campaign.<sup>44</sup> Thus, the list  
 13 was not an untested roster of potentially interested persons, but a list of people who had actually  
 14 donated money for a specific cause. Further, the factual context suggests that the list is also  
 15 political in nature. The list use agreement between Stockton Strategies and WBTW stated that  
 16 the list was "to be used by Stockton Strategies in conducting fundraising on behalf of political

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<sup>41</sup> See Factual & Legal Analysis at 5-6, MUR 5939 (MoveOn.org Political Action, *et al.*) (concluding the available information suggests that the \$64,575 rate initially agreed upon by MOPA and The Times was less than the usual and normal price of \$142,083 for an advertisement guaranteed to run on a particular day; the difference between these two figures, \$77,508, would have constituted a corporate contribution from The Times to MOPA if MOPA had not paid the higher rate of \$142,083 on September 24, 2007). A candidate acts as an agent of an authorized Committee. See 52 U.S.C. § 30102(b)(2).

<sup>42</sup> Kobach and Committee Resp. to First Request for Information at 3, Pre-MUR 628.

<sup>43</sup> *Id.*; see also Kobach and Committee Resp. to Second Request for Information at 3, Pre-MUR 628 (noting that \$2,000 was an appropriate price due to the *untested nature* of the non-political list).

<sup>44</sup> *Id.*; see also *supra* note 7. WBTW also rented the list out to Ranch Property Marketing and Management to sell WBTW branded merchandise in exchange for 15% of total sales. See Kobach and Committee Resp. to Second Request for Information at 3, Pre-MUR 628.

1 candidates who support the construction of border fencing on the United States—Mexico border  
 2 by the federal government.”<sup>45</sup> The email list consisted of persons whose previous donations  
 3 indicate an interest in the same specific political issue — border security — as the candidates on  
 4 whose behalf Stockton Strategies would fundraise. Moreover, Kobach had been part of WBTW  
 5 since its formation, the solicitation emails identified candidate Kobach as WBTW’s general  
 6 counsel, and it appears that Kobach was the only candidate for which Stockton used the list.

7           The Commission has deemed transactions permissible when the price is  
 8 “determined by the market’s view of the value of the list.”<sup>46</sup> In previous matters, detailed factual  
 9 records have been provided to establish a market rate and prove that a bargained-for exchange  
 10 occurred. The Committee here has not made a similar showing.<sup>47</sup>

11           A review of publicly available information regarding list rental prices reveals a wide  
 12 range, depending on the nature of the list, but the Commission could find no price comparable to  
 13 the rate that WBTW charged the Committee. As one example, one of the least expensive rates in  
 14 the 2020 election cycle was offered by a company called Excelsior Strategies, which was renting

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<sup>45</sup> Kobach and Committee Resp. to First Request for Information, Pre-MUR 628 at Ex. B.

<sup>46</sup> *Id.*; see also Factual & Legal Analysis at 27-28, MURs 4382/4401 (Dole for President) (finding the exchange of a mailing list for Dole’s signature endorsement was not a bargained for exchange and that the committee failed to establish the signature was something of equal value); Advisory Opinion 2012-31 at 4 (AT&T) (concluding the rate structure of text messaging services to political committees “reflects commercial considerations and does not reflect considerations outside of a business relationship.”). The Commission reiterated these considerations in numerous Advisory Opinions. See Advisory Opinion 1994-10 (Franklin National Bank); Advisory Opinion 2012-28 (CTIA II); Advisory Opinion 2012-26 (m-Qube II); see also Advisory Opinion 1981-46 at 2 (Dellums) (determining whether a transaction involving the exchange of mailing lists between a candidate committee and another entity results in a contribution, is based on whether the transaction involved a “a bargained-for exchange of consideration in a commercial transaction”).

<sup>47</sup> See Factual & Legal Analysis at 7, MUR 5181 (Ashcroft 2000) (concluding that the available information failed to establish whether the exchange at issue was a bargained-for exchange of equal value based in part on the committee’s failure to provide any information regarding the value of the mailing list and the use of then-Senator Ashcroft’s signature or an explanation as to how the items can be considered items of equal value).

1 1,000 email addresses of Trump supporters for \$35.<sup>48</sup> Yet, this rate is still at least five times the  
2 WBTW rate. Moreover, the WBTW list rental was not for only one use, but for either six uses,  
3 or unlimited use over a six-month period, according to the list rental agreement.<sup>49</sup> Given this  
4 information, the \$2,000 list price appears to be significantly lower than any comparable market  
5 rate.

6 In addition, the presence of Kobach and Stockton on both sides of the transaction raises  
7 further questions about its commercial reasonableness. The Committee initially indicated that  
8 Kobach “did not participate” in the decision to rent WBTW’s email list to Stockton Strategies,  
9 although the Committee asserts that Kobach drafted the agreement in his capacity as WBTW’s  
10 general counsel.<sup>50</sup> Subsequently, the Committee indicated Kobach “was asked his opinion  
11 concerning the list rental price,” and Kobach “agreed that \$2,000 was within the market range  
12 and was appropriate, given the untested nature of the non-political list.”<sup>51</sup> Ultimately, Kobach  
13 received the rented email list for that price, as the Committee was the only entity that used the  
14 list, and the Committee reimbursed Stockton Strategies for the entire rental price.<sup>52</sup> Further,  
15 Stockton was a director of WBTW and the President of Stockton Strategies, which was retained  
16 by both WBTW and the Committee, and Stockton was involved on both sides of the transaction.

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<sup>48</sup> Kenneth Vogel and Maggie Haberman, *Now For Rent: Email Addresses And Phone Numbers For Millions Of Trump Supporters*, N.Y. TIMES, Oct. 13, 2018, <https://www.nytimes.com/2018/10/13/us/politics/trump-political-data.html>.

<sup>49</sup> Kobach and Committee Resp. to First Request for Information at Ex. B, Pre-MUR 628.

<sup>50</sup> Kobach and Committee Resp. to First Request for Information at 3, Pre-MUR 628.

<sup>51</sup> Kobach and Committee Resp. to Second Request for Information at 2, Pre-MUR 628.

<sup>52</sup> *Id.*; Kobach and Committee Resp. to First Request for Information at 3, Exs. B-D, Pre-MUR 628.

1 Additional factors cast doubt on the commercial reasonableness of the list rental  
2 agreement. Although Respondents have provided copies of the July 10 agreement between  
3 WBTW and Stockton Strategies and the July 15 agreement between Stockton Strategies and the  
4 Committee, the agreements are unsigned.<sup>53</sup> The Committee responds that although it never  
5 signed the agreement, it was the intention of the parties for the agreements to be binding.<sup>54</sup>  
6 Further, Respondents could not provide any dated documented communications regarding the list  
7 rental agreement; they state that all such communication were oral.<sup>55</sup>

8 In summary, the available information indicates that the \$2,000 rental price was  
9 significantly below market rate, the Committee has been unable to articulate how the rate was  
10 determined, and WBTW and Kobach were on both sides of the rental transaction. Therefore, the  
11 Commission finds reason to believe Kobach and the Committee knowingly received an in-kind  
12 corporate contribution from WBTW, and the Committee failed to report it.

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<sup>53</sup> Kobach and Committee Resp. to First Request for Information at 3, Ex. A-B, Pre-MUR 628.

<sup>54</sup> Kobach and Committee Resp. to Second Request for Information at 1, Pre-MUR 628.

<sup>55</sup> *Id.* at 2.