

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 7793

DATE COMPLAINT FILED: Sept. 11, 2020
DATE OF NOTIFICATION: Sept. 22-23, 2020
LAST RESPONSE RECEIVED: Dec. 14, 2020
DATE ACTIVATED: Jan. 20, 2021

EXPIRATION OF SOL: Earliest: Jan. 1, 2005
Latest: Mar. 30, 2023
ELECTION CYCLE: 2000-2018

COMPLAINANT:

Citizens for Responsibility and Ethics in
Washington

RESPONDENTS:

Louis DeJoy
XPO Logistics f/k/a New Breed Holding Corp.
Thom Tillis Committee and Colin McMichael
in his official capacity as Treasurer
Thom Tillis Victory Committee and
Colin McMichael in his official capacity as
Treasurer
David Young

MUR 7801

DATE COMPLAINT FILED: Sept. 17, 2020
DATE OF NOTIFICATION: Sept. 24-28, 2020
LAST RESPONSE RECEIVED: Jan 12, 2021
DATE ACTIVATED: Jan. 20, 2021

EXPIRATION OF SOL: Earliest: Jan. 1, 2005
Latest: Mar. 30, 2023
ELECTION CYCLE: 2000-2018

COMPLAINANTS:

Margaret Christ
Campaign Legal Center

RESPONDENTS:

Louis DeJoy
XPO Logistics f/k/a New Breed Holding Corp.
Thom Tillis Committee and Colin McMichael
in his official capacity as Treasurer
Thom Tillis Victory Committee and
Colin McMichael in his official capacity as
Treasurer

1 David Young
 2 63 Contributors

3
 4 **RELEVANT STATUTES AND**
 5 **REGULATIONS:**

6 28 U.S.C. § 2462
 7 52 U.S.C. § 30104(b)(2)
 8 52 U.S.C. § 30118
 9 52 U.S.C. § 30122
 10 11 C.F.R. § 104.3
 11 11 C.F.R. § 110.4(b)
 12 11 C.F.R. § 114.2(b) and (e)

13 **INTERNAL REPORTS CHECKED:** Disclosure Reports

14
 15 **FEDERAL AGENCIES CHECKED:** None

16 **I. INTRODUCTION**

17 The Complaints allege that Louis DeJoy, as CEO of New Breed Holding Company
 18 (“New Breed”) and then-board member and CEO of contract logistics at New Breed’s successor
 19 corporation XPO Logistics (“XPO”), directed the companies to make prohibited corporate
 20 contributions in the name of another to the Thom Tillis Committee, Thom Tillis Victory
 21 Committee, Jeb 2016, Inc., Trump Victory, and Mark Walker Victory Committee, by
 22 reimbursing employees through bonuses for contributions they made individually, in violation of
 23 the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ All of the respondents
 24 that filed a response deny the allegations.

25 As discussed below, the available information, including the lack of corroboration of the
 26 allegations and the specificity of the rebuttals, as well as the age of certain of the allegations,
 27 does not warrant a finding of reason to believe that DeJoy directed New Breed and XPO to make

¹ MUR 7793 Compl. at 1 (Sept. 11, 2020); MUR 7801 Compl. at 1 (Sept. 17, 2020).

1 prohibited corporate contributions in the names of others. Therefore, we recommend that the
2 Commission dismiss the allegations and close the files.

3 **II. FACTUAL BACKGROUND**

4 DeJoy was the CEO of New Breed from 1983 to 2014.² New Breed was a North
5 Carolina contract logistics company acquired by XPO in 2014.³ XPO is a publicly traded
6 Connecticut-based corporation incorporated in Delaware.⁴ DeJoy became the CEO of XPO's
7 contract logistics division after XPO acquired New Breed but retired from XPO shortly
8 thereafter in 2015.⁵

9 The Complaint in MUR 7793 alleges that DeJoy directed reimbursements to employees
10 in the form of bonuses for political contributions they made individually to the Thom Tillis
11 Committee, the principal campaign committee of then-Senate candidate Thom Tillis, and an
12 associated joint fundraising committee, the Thom Tillis Victory Committee (collectively, the
13 "Tillis Committees"), among other recipients, between 2013 and 2014.⁶ The basis for the
14 allegation is a September 6, 2020, Washington Post article which quotes David Young, New
15 Breed's Director of Human Resources until 2013, along with several anonymous "former
16 employees."⁷ The MUR 7793 Complaint cites the Washington Post article quoting Young:

² MUR 7801 Compl. at 2; XPO Resp. at 1 (Dec. 20, 2020).

³ XPO Resp. at 2.

⁴ *Id.*

⁵ *Id.* DeJoy later became the Post Master General of the United States Postal Service in June 2020. MUR 7801 Compl. at 3 n.4.

⁶ MUR 7793 Compl. at 1-2, 6.

⁷ *Id.* at 1, 6 (citing Aaron Davis, *et al.*, *Louis DeJoy's Rise as GOP Fundraiser Was Powered by Contributions From Company Workers Who Were Later Reimbursed, Former Employees Say*, WASHINGTON POST, Sept. 6, 2020, https://www.washingtonpost.com/investigations/louis-dejoycampaigncontributions/2020/09/06/1187bc2c-e3fe-11ea-8181-606e603bb1c4_story.html).

1 “Louis was a national fundraiser for the Republican Party. He asked employees for money. We
 2 gave him the money, and then he reciprocated by giving us big bonuses.”⁸

3 The Complaint in MUR 7801 includes the same allegations as the Complaint in MUR
 4 7793 regarding DeJoy, New Breed, and the Tillis Committees.⁹ The basis for these allegations is
 5 the same Washington Post article and a New York Times article published the same day.¹⁰ The
 6 MUR 7801 Complaint alleges a pattern of New Breed “employees contributing to the same
 7 candidate or committee, in the same period, and often in the same amount.”¹¹ Based on this
 8 alleged pattern, the MUR 7801 Complaint alleges that DeJoy directed reimbursements to
 9 employees in the form of bonuses for contributions made to Jeb 2016, Inc., Trump Victory in
 10 2016 and 2017, and then to the Mark Walker Victory Committee in 2018.¹² Both Complaints

⁸ MUR 7793 Compl. at 7.

⁹ MUR 7801 Compl. at 1-2.

¹⁰ *Id.* (citing Catie Edmondson, *et al. DeJoy Pressured Workers to Donate to GOP Candidates, Former Employees Say*, THE NEW YORK TIMES, Sept. 6, 2020, <https://www.nytimes.com/2020/09/06/us/politics/dejoy-political-donations.html>). Both Complaints allege that the straw donor scheme began in 2000, presumably based on the fact that Young worked at the Company at that time and a line in the Washington Post article that stated, “Between 2000 and 2014, 124 individuals who worked for the company together gave more than \$1 million to federal and state GOP candidates.” *See* MUR 7801 Compl. at 4; MUR 7793 Compl. at 7. However, the Complaints do not provide any additional supporting information for the 2000-2012 time period, specifying neither the names of such contributors nor the recipient committees.

¹¹ *Id.* at 2, 5.

¹² *Id.* at 5-8. Jeb 2016, Inc. is Jeb Bush’s 2016 presidential campaign committee. *See* Jeb 2016, Inc. Statement of Organization (June 15, 2015). In 2016, Trump Victory was a joint fundraising committee of Donald J. Trump for President, Inc., the Republican National Committee, and 21 state party committees. *See* Trump Victory Amended Statement of Organization (Sept. 21, 2016). In 2017 Trump Victory was a joint fundraising committee of Donald J. Trump for President, Inc. and the Republican National Committee. *See* Trump Victory Amended Statement of Organization (Mar. 31, 2017). The Mark Walker Victory Committee operated as a joint fundraising committee for Walker 4 NC, the authorized committee for Mark Walker’s congressional campaign for North Carolina’s 6th district, and the Republican National Committee. *See* Mark Walker Victory Committee Statement of Organization (Feb. 13, 2018).

The MUR 7801 Complaint also references contributions by DeJoy family members, but does not allege that those contributions were reimbursed with company or other funds. *See* MUR 7801 Compl. at 2, 5-8, 10-11.

1 argue that the statute of limitations should be tolled because Respondents fraudulently concealed
2 wrongful conduct and that the Commission should seek equitable relief.¹³

3 XPO denies the allegations, asserting that the bonuses New Breed and XPO paid out
4 were based on their company policies and that it reviewed the bonus payouts and could not find
5 any correlation to the political contributions alleged in the Complaints.¹⁴ XPO further asserts
6 that the Complaints are based on second-hand information in news reports and almost all of the
7 allegations are barred by the statute of limitations.¹⁵ Seven contributors responded individually
8 denying the allegations.¹⁶ Respondent contributor Mark Mueller provides a detailed denial of
9 the allegations based on his 20 years of employment at New Breed/XPO, interactions with
10 DeJoy, and his understanding of how his bonuses were awarded based on his performance.¹⁷
11 Respondent contributor Matthew Rogers similarly denies the allegations, providing a specific
12 accounting of his bonus award history and his own independent reasons for his political
13 contributions.¹⁸ A joint response was filed by 19 other respondent contributors denying the
14 allegations through sworn affidavits.¹⁹ The Tillis Committees filed a joint response asserting
15 that the allegations are barred by the statute of limitations and arguing that even if the allegations

¹³ MUR 7801 Compl. at 12; MUR 7793 Compl. at 2.

¹⁴ XPO Resp. at 1, 9, 12.

¹⁵ *Id.* at 1, 5.

¹⁶ In addition to notifying DeJoy, XPO, David Young, The Tom Tillis Committee, and the Thom Tillis Victory Committee, based on information in the MUR 7801 Complaint alleging their involvement, the Office of General Counsel notified 63 individual contributors to these committees who were either employed by New Breed/XPO or were relatives of DeJoy at the time of their contributions during the 2000-2018 period specified in the Complaints. Of those 63 individuals notified, 26 responded.

¹⁷ Mark Mueller Resp. at 1-2 (Oct. 20, 2020).

¹⁸ Matthew Rogers Resp. at 1-2 (Oct. 16, 2020).

¹⁹ XPO Employees Resp. at 1-41 (Dec. 29, 2020).

1 are true with respect to DeJoy, the Committees had no knowledge of the scheme and therefore
2 did not commit any wrongdoing.²⁰ DeJoy and Young did not respond to the Complaints.

3 **III. LEGAL ANALYSIS**

4 The Act prohibits a corporation from making contributions to a federal political
5 committee, other than independent-expenditure-only political committees,²¹ and further prohibits
6 any officer of a corporation from consenting to any such contribution by the corporation.²² The
7 Act and Commission regulations also prohibit any person, including a corporation, from making
8 a contribution in the name of another to a federal political committee or allowing their name to
9 be used in the making of a contribution.²³

10 **A. The Commission Should Dismiss the Allegations Regarding the** 11 **Contributions Made Prior to 2016 That Are Alleged to Have Been Made in** 12 **the Names of Others**

13 All of the alleged reimbursements referenced in the Washington Post article occurred
14 between 2000 and 2014.²⁴ The named source of the allegations, Young, left New Breed in
15 2013.²⁵ All allegations made in the MUR 7793 Complaint, and all allegations made in both
16 Complaints regarding contributions to the Tillis Committees and Jeb 2016, Inc., occurred more
17 than five years ago.²⁶ The Complaints contend that the Commission may apply the doctrine of

²⁰ The Tillis Committees Resp. at 1-2 (Dec. 11, 2020).

²¹ *See, e.g.*, Advisory Opinion 2010-11 (Commonsense Ten).

²² 52 U.S.C. § 30118(a); *see also* 11 C.F.R. § 114.2(b), (e).

²³ 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b)(1)(i).

²⁴ MUR 7793 Compl. at 6.

²⁵ MUR 7801 Compl. at 3.

²⁶ MUR 7793 Compl. at 10-13; MUR 7801 Compl. at 4-5; *see also* 28 U.S.C. § 2462 (requiring the Commission to commence enforcement of the Act within five years from the date of when the claim first accrued).

1 equitable tolling for fraudulent concealment with regard to the alleged violations outside the
2 statute of limitations.²⁷

3 The available information in this matter includes denials from all 26 responding
4 contributors, certain of which contain detailed accounts supporting the denials. For example, the
5 contributors assert specific recollections of how their bonuses were calculated based on
6 performance;²⁸ personal reasons for their contributions such as strongly held political beliefs;²⁹
7 details such as the candidate's sending of a personal letter to the contributor's son congratulating
8 him on his Eagle Scout Award;³⁰ and a desire to attend a fundraiser to meet the candidate in
9 person.³¹ Further evaluation of the Complaints' allegations and the information provided in
10 response would require an investigation. In light of the specificity of the denials, along with the
11 statute of limitations circumstances, we do not recommend that the Commission expend further
12 resources on this matter, even if the Complaints' fraudulent concealment theory were accepted.³²
13 Accordingly, we recommend that the Commission dismiss these allegations as a matter of
14 prosecutorial discretion.³³

²⁷ MUR 7793 Compl. at 9, MUR 7801 Compl. at 12-13.

²⁸ Matthew Rogers Resp. at 2.

²⁹ Paul Stankewich Resp. at 1 (Oct. 6, 2020); James Herman Resp. at 1 (Oct. 19, 2020); Mark Mueller Resp. at 1.

³⁰ Mark Mueller Resp. at 1.

³¹ James Herman Resp. at 1.

³² *See* First Gen. Counsel's Rept. at 5 n.13 and Cert. ¶ 8 (Apr. 25, 2017), MUR 7091 (Friends of Patrick Murphy) (recommending no further analysis or application of equitable tolling regarding an alleged reimbursement scheme in which the activity was beyond the statute of limitations and the available record lacked information sufficient for a reason to believe finding). The Commission has previously pursued activity and violations of the Act which were more than five years old. *See generally* Conciliation Agreement, MUR 6538R (Americans for Job Security) (addressing equitable remedies).

³³ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1 **B. The Commission Should Also Dismiss the Allegations Regarding the**
2 **Contributions Made Between 2016 and 2018 That Are Alleged to Have Been**
3 **Made in the Names of Others**
4

5 The MUR 7801 Complaint alleges that the activity alleged in the press articles continued
6 between 2016 and 2018, based on contributions from contributors employed at XPO and
7 occurring around the same time.³⁴ These newer alleged violations are within the statute of
8 limitations and comprise contributions to Trump Victory in 2016 and 2017 and to the Mark
9 Walker Victory Committee in 2018.³⁵

10 The Washington Post and New York Times articles upon which the MUR 7801
11 Complaint is based do not contain any information relating to contributions made between 2016
12 and 2018. All the individuals quoted in the articles reference activity prior to the XPO
13 acquisition of New Breed in 2014, which took place more than six years ago. The newer
14 contributions at issue in the MUR 7801 Complaint were made three years after the alleged
15 activity described in the articles, after DeJoy retired in 2015,³⁶ and allegedly were made by a
16 different corporate entity, XPO, the successor corporation to New Breed.³⁷ Nine XPO
17 employees contributed to Trump Victory in 2016, five contributed to Trump Victory in 2017,
18 and seven contributed to the Mark Walker Victory Committee in 2018.³⁸ Due to overlap
19 between those three groups of employees, only 12 distinct individuals are alleged to have

³⁴ MUR 7801 Compl. at 7-8.

³⁵ *Id.*

³⁶ Respondent contributor Matthew Rogers, former Vice President of Finance and Accounting at XPO logistics, asserted in his response that “Mr. DeJoy retired . . . on December 7, 2015 . . . from this point forward, Mr. DeJoy was no longer involved in the day-to-day operations of XPO Logistics Supply Chain and, to the best of my knowledge, had no influence on the amount or timing of my annual bonuses.” Matthew Rogers Resp. at 2.

³⁷ MUR 7801 Compl. at 6.

³⁸ *Id.* at 7-8.

1 engaged in this contribution scheme between 2016 and 2018. For context, XPO states that it
2 employed approximately 100,000 people at that time.³⁹

3 Respondents assert that the annual bonuses were awarded in accordance with established
4 formulas pursuant to company policies and employee agreements and were subject to multiple
5 levels of review.⁴⁰ They further deny any correlation between the annual bonuses of the
6 employees at issue and their federal political contributions.⁴¹

7 Under these circumstances, the available information does not appear to be sufficient to
8 support a reason to believe finding regarding the alleged corporate contributions in the names of
9 others from 2016-2018. For comparison, in another matter involving alleged contributions in the
10 name of another, MUR 5818 (Fieger, Fieger, Kennedy & Johnson, P.C.), the Commission found
11 reason to believe that the respondent reimbursed contributions where a large number of
12 maximum contributions were made on the same days by individuals associated with the firm,
13 many of whom had never previously contributed to any federal campaign.⁴² The Commission
14 also recognized that “[w]hile the making of multiple contributions on the same day is not a
15 sufficient basis in and of itself to establish reason to believe, it is relevant evidence that must
16 considered in connection with other circumstances, such as those present in this matter.”⁴³ The
17 other circumstance present in MUR 5818 were a pending criminal investigation by the

³⁹ XPO Resp. at 2.

⁴⁰ *Id.* at 1, 12.

⁴¹ *Id.* at 12. Respondent contributor James Arnold stated that the bonus program “had specific metrics that needed to be accomplished to receive a bonus.” James Arnold Resp. at 1 (Oct. 29, 2020). Matthew Rogers asserted that his “annual performance bonuses were in connection with the Company’s annual results.” Matthew Rogers Resp. at 2.

⁴² Factual & Legal Analysis at 4, MUR 5818 (Fieger, Fieger, Kennedy & Johnson, P.C.).

⁴³ *Id.*

1 Department of Justice, the absence of a denial of the allegations in the response and a tacit
2 admission, and a member of the firm made specific allegations to federal authorities.⁴⁴ In
3 contrast to circumstances of MUR 5818, in the present matters we are aware of no parallel
4 criminal proceeding, the responses contain specific denials, and the former employee whose
5 statements to the press form part of the basis for the allegations was not employed by XPO when
6 the contributions were made. In MUR 7102 (Keefe, Keefe, and Unsell, P.C., *et al.*), the
7 Commission determined that clustered giving was indicative of conduit contribution
8 arrangements when all contributors contributed the maximum amount despite being lower paid
9 administrative staff.⁴⁵ By contrast, here, the 12 distinct XPO employees that are alleged to have
10 contributed to the committees as part of the reimbursement scheme were all high-level and
11 highly paid executives of New Breed/XPO.⁴⁶

12 XPO asserts that the patterns of clustered giving are indicative of the results of successful
13 fundraising events held in the Greensboro, North Carolina area rather than a corporate
14 contribution scheme.⁴⁷ It asserts that Trump Victory held a rally in Greensboro, North Carolina
15 on June 14, 2016 and DeJoy held a private fundraiser for Trump Victory in Greensboro on

⁴⁴ *Id.*

⁴⁵ Factual & Legal Analysis at 5-7, MUR 7102 (Keefe, Keefe, and Unsell, P.C., *et al.*)

⁴⁶ A search of publicly available information reveals all 12 contributors held senior level positions at XPO. For example, Matthew Rogers was Senior Vice President of Finance and Accounting at XPO. *See* Matthew Rogers, LinkedIn profile, LINKEDIN, <https://www.linkedin.com/in/matt-rogers-96b4a7b> (last visited: Apr. 20, 2021). Richard Valitutto was Senior Vice President and General Counsel at XPO. *See* Richard Valitutto, LinkedIn profile, LINKEDIN, <https://www.linkedin.com/in/richard-valitutto-b1a368135> (last visited: April 20, 2021). William Church was Senior Vice President of Aerospace, Defense and Government Operations at XPO. *See* William Church, LinkedIn profile, LINKEDIN, <https://www.linkedin.com/in/bill-church-6754816> (last visited Apr. 20, 2021). According to GlassDoor, XPO senior vice presidents earn a salary within a range of \$198,777 - \$324,137 base pay before bonuses. *See* XPO Logistics Senior Vice President Salaries, GLASSDOOR, FEB. 21, 2021, https://www.glassdoor.com/Salary/XPO-Logistics-Senior-Vice-President-Salaries-E615153_D_KO14,35.htm (last visited: Apr. 20, 2021).

⁴⁷ XPO Resp. at 9-11.

1 October 7, 2017.⁴⁸ The dates of these two fundraisers correspond to the clusters of giving
 2 identified in the MUR 7801 Complaint.⁴⁹ In addition, Respondent contributors Paul Stankewich,
 3 James Herman, Mark Mueller, and Richard Valitutto each assert that they made contributions so
 4 that they could attend fundraising events and deny that they were ever reimbursed for their
 5 contributions.⁵⁰ Accordingly, in light of the above distinctions from prior matters and
 6 explanations and attestations provided by the responses, we recommend that the Commission
 7 dismiss the allegations and close the file in this matter.

8 **IV. RECOMMENDATIONS**

- 9 1. Dismiss the allegation that Louis DeJoy and XPO Logistics f/k/a New Breed
 10 Holding Corp. made corporate contributions in the name of another in violation of
 11 52 U.S.C. §§ 30118 and 30122;
- 12
 13 2. Dismiss the allegation that Thom Tillis Committee and Colin McMichael in his
 14 official capacity as treasurer and Thom Tillis Victory Committee and Colin
 15 McMichael in his official capacity as treasurer knowingly accepted corporate
 16 contributions in the name of another in violation of 52 U.S.C. §§ 30118 and 30122;
- 17
 18 3. Dismiss the allegation that Kelly Abney, James Arnold, Saumil Asher, Ronald
 19 Bristol, Roger Caroway, Sarah Caroway, Ashfaque Chowdhury, William Church,
 20 Blair Clarke, Heather Clarke, James Corbett, Maryann D'Antono, Andrew DeJoy,
 21 Ania DeJoy, Frances Ann DeJoy, Frances DeJoy, Michael DeJoy, Daniel Demonte,
 22 Mark Edwards, Joseph Elko, Patrick Fiorentino, Dawn Fraine, William Fraine, Peter
 23 Gagliano, Dennis Haner, Joachim Hauck, James Hendricks, Eric Henningsen, James
 24 Herman, Scott Hines, Charles Hopkins, Dennis Hunt, Thomas James, Ronnie Jarriel,
 25 Christina Jones, Stephen Mackintosh, Bradley Martin, Thomas Mcgoldrick, Michael
 26 Mehling, Penny Mehling, John Mitchell, Steve Moore, Marilyn Morse, Mark
 27 Mueller, Walter Nabozny, Frank Necci, Kenneth Pauer, Peter Reyher, David
 28 Robinson, Scott Robinson, Matthew Rogers, John Schneider, Paul Stankewich,

⁴⁸ *Id.* at 10-11 (citing various press articles supporting its assertion that the rally and fundraiser took place on those dates, *e.g.*, Lynn Bonner & Bryan Anderson, *In Greensboro, Trump Takes on Obama, Clinton, Immigrants*, THE NEWS & OBSERVER (June 14, 2016), <https://www.newsobserver.com/news/politics-government/election/article83795262.html>).

⁴⁹ *See* MUR 7801 Compl. at 7.

⁵⁰ Paul Stankewich Resp. at 1; James Herman Resp. at 1; Mark Mueller Resp. at 1; Richard Valitutto Sup. Resp. at 2 (Mar. 2, 2021).

1 Samer Tadros, Maryann Uehlein, Richard Valitutto, William Wallace, Jeffrey
 2 Wiedwald, Richard Wimmer, Aldonaz Vos, Wanda Vos, John Zimmerman, and
 3 David Young permitted their names to be used to make a contribution in the name of
 4 another in violation of 52 U.S.C. § 30122;

- 5
- 6 4. Approve the attached Factual and Legal Analysis;
- 7
- 8 5. Close the file; and
- 9
- 10 6. Approve the appropriate letters.

11
 12 Lisa J. Stevenson
 13 Acting General Counsel

14
 15
 16
 17 April 27, 2021
 18 Date

19 *Charles Kitcher*
 20 _____
 21 Charles Kitcher
 22 Acting Associate General Counsel
 23 for Enforcement

24 *Mark Allen*
 25 _____
 26 Mark Allen
 27 Assistant General Counsel

28 *Richard L. Weiss*
 29 _____
 30 Richard L. Weiss
 31 Attorney

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 33