



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 14, 2023

VIA ELECTRONIC MAIL

Charlie Spies
Katie Reynolds
Dickinson Wright PLLC
1825 Eye Street, NW, Suite 900
Washington, DC 20006
cspies@dickinsonwright.com
kreynolds@dickinsonwright.com

RE: MUR

Dear Mr. Spies and Ms. Reynolds:

On January 25, 2023, the Federal Election Commission notified Dickinson Wright PLLC of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time.

On August 10, 2023, based upon the information contained in the complaint and information provided by you, the Commission voted to find no reason to believe that Dickinson Wright PLLC violated 52 U.S.C. § 30116(a)(1) and 11 C.F.R. § 110.1(b)(1) by making an excessive contribution and closed the file in this matter. A copy of the Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

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). If you have any questions, please contact me at (202) 694-1476 or arabinowitz@fec.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron Rabinowitz".

Aaron Rabinowitz
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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6 RESPONDENTS: Kim Klacik for Congress and MUR 7990
7 Bradley T. Crate in his
8 official capacity as treasurer
9 Kimberly Klacik
10 Dickinson Wright PLLC
11

I. INTRODUCTION

12
13 This matter was generated by a complaint filed with the Federal Election Commission
14 (the “Commission”), which alleges that Kimberly Klacik and her authorized committee, Kim
15 Klacik for Congress and Bradley T. Crate in his official capacity as treasurer (the “Committee”),
16 converted campaign funds to personal use in violation of the Federal Election Campaign Act of
17 1971, as amended (the “Act”), by paying for legal expenses in connection with a defamation suit
18 brought by Klacik personally. The Response and supplemental Response on behalf of the
19 Committee and Klacik contend that the payments at issue were a valid use of campaign funds
20 because the defamation suit would not exist but for Klacik’s Congressional campaign.

21 Because the defamation suit is based on a video that primarily makes allegations based on
22 campaign spending activity and reporting by the Committee, it appears that the lawsuit would
23 not exist irrespective of Klacik’s campaign activity. Therefore, under longstanding Commission
24 precedent, the use of campaign funds to pay for legal expenses in connection with this lawsuit is
25 permissible, and the Commission finds no reason to believe that Kimberly Klacik and the
26 Committee violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.

27 A second supplemental Complaint also alleges that the Committee has improperly
28 received a loan from Dickinson Wright PLLC, the law firm that provided the legal services at
29 issue. However, the campaign simply reported debts owed to the law firm on Schedule D of its

1 reports, which specifically excludes loans. The Commission therefore finds no reason to believe
2 that the Committee received impermissible contributions in the form of a loan from Dickinson
3 Wright in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 and finds no reason to believe
4 that Dickinson Wright made an excessive contribution in violation of 52 U.S.C. § 30116(a)(1)
5 and 11 C.F.R. § 110.1(b)(1).

6 **II. FACTUAL BACKGROUND**

7 Kim Klacik for Congress was the authorized committee for Kimberly Klacik’s 2020
8 Congressional campaign; its treasurer is Bradley T. Crate.¹

9 The Complaint in this matter alleges that the Committee violated the personal use
10 prohibition by making a disbursement of \$51,526.50 to Dickinson Wright PLLC for legal
11 services that the Complaint alleges were “irrespective of her long-since-concluded congressional
12 campaign.”² The Complaint alleges that Dickinson Wright represents Klacik in a defamation
13 suit she has brought against Candace Owens, which seeks damages “to be paid to Ms. Klacik
14 personally,” and it attaches the complaint in that lawsuit.³ The Complaint asserts that this
15 payment violated the prohibition on the conversion of campaign funds to personal use.⁴ A
16 supplement to the Complaint further alleges that the Committee reported another disbursement to

¹ Committee, Amended Statement of Organization (May 7, 2021).

² Compl. at 1-3 (Apr. 26, 2022).

³ *Id.*; *see also id.*, Attach 2 (Compl., *Klacik v. Owens*, No. 21C1607 (Tenn. Cir. Ct., Davidson Cty. filed Sept. 17, 2021) (“Defamation Suit Complaint”).

⁴ *Id.* at 2-3.

1 Dickinson Wright of \$126,806.72 that the supplement alleges was for the same purpose.⁵ The
2 Committee’s reports confirm that it made payments to Dickinson Wright PLLC on December 15,
3 2021, for \$51,526.50 and on May 13, 2022 for \$126,806.72, both for the purpose of “legal
4 consulting.”⁶ In their Response, the Committee and Klacik argue that “the Commission has
5 consistently allowed campaigns to pay for legal expenses, so long as the litigation involves
6 allegations directly relating to the candidate’s campaign.”⁷

7 The civil complaint that is attached to the Complaint in this matter was filed by Klacik in
8 Tennessee state court and alleges that Owens defamed Klacik by accusing her on Twitter of
9 various crimes, some of which involved the misuse of campaign funds and others which were
10 unrelated to her prior candidacy.⁸ The civil complaint claims that Owens made these and other
11 allegedly defamatory statements in an approximately 44-minute video posted by Owens on
12 Instagram and Facebook on June 20, 2021.⁹ The civil complaint asserts that the video resulted

⁵ Supp. Compl. at 1-2 (Aug. 24, 2022).

⁶ Committee, 2021 Year-End Report at 7 (Jan. 31, 2022); Committee, July 15 Quarterly Report at 9 (July 15, 2022).

⁷ Committee & Klacik Resp. at 1 (June 21, 2022); *see also* Committee & Klacik First Supp. Resp. at 1 (Sept. 16, 2022) (“Our original response to this Complaint remains unchanged.”).

⁸ Defamation Suit Complaint ¶¶ 2-3 (listing as defamatory statements, among others, claims that Klacik “used campaign funds to purchase cocaine and scammed people” and engaged in “tax fraud, campaign fraud, money laundering, illegal drug use, and act[ed] as a ‘madame’”). To be clear, nothing in this document should be read as expressing a view on the validity or lack thereof of the underlying claims in the defamation suit.

⁹ *Id.* ¶¶ 18-29 (citing Candace Owens (@realcandaceowens), INSTAGRAM (June 22, 2021), <https://www.instagram.com/p/COcQ-oEpM-V/> (“Owens Instagram Video”).

1 from a “petty Twitter feud” and describes various social media posts by Klacik and Owens
2 leading up to the video.¹⁰

3 The video itself includes the accusations described above and discusses various aspects of
4 the Committee’s disbursement reporting and information regarding the entities that have been the
5 recipients of those disbursements, primarily regarding disbursements by the Committee to “Pearl
6 Events” and “Fox and Lion Communications LLC.”¹¹ A substantial majority of the video relates
7 to analyzing campaign activity and reporting or explaining the background circumstances that
8 led to the video.

9 In the Committee’s July and October 2022 Reports to the Commission, it disclosed debts
10 to Dickinson Wright totaling \$55,802.10.¹² A later-filed supplement to the Complaint alleges
11 that this evidences an impermissible loan from Dickinson Wright to Klacik and the Committee.¹³
12 A Response from the Committee points out that these debts were reported on Schedule D, which
13 specifically excludes loans.¹⁴

¹⁰ *Id.*

¹¹ Owens Instagram Video; *see also* *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00726117 (last visited June 22, 2023) (showing all disbursements by the Committee). The allegations in the video formed the basis for allegations in two other matters, which resulted in a finding of no reason to believe that a violation of the personal use prohibition, reporting requirements, or acceptance of excessive contribution occurred. Certification ¶¶ 1-3 (Feb. 28, 2023) MURs 7944, 7945 (Kim Klacik for Congress).

¹² Committee, 2022 July Quarterly Report at 15 (July 15, 2022); Committee, 2022 October Quarterly Report at 15 (October 15, 2022).

¹³ Second Suppl. Compl. at 2 (Nov. 1, 2022).

¹⁴ Committee & Klacik Second Suppl. Resp. at 1 (Nov. 28, 2022). Dickinson Wright filed a response that makes the same argument. Dickinson Wright Resp. at 1 (Feb. 22, 2023).

1 **III. LEGAL ANALYSIS**

2 **A. The Commission Finds No Reason to Believe that Kim Klacik for Congress**
3 **and Kim Klacik Converted Campaign Funds to Personal Use**

4 Candidates and their authorized committees are permitted to use campaign funds for a
5 variety of specific purposes, including otherwise authorized expenditures in connection with the
6 candidate's campaign for federal office, ordinary and necessary expenses incurred in connection
7 with the duties of a federal officeholder, and "any other lawful purpose," but the Act prohibits
8 any person from converting campaign funds to "personal use."¹⁵ Conversion to personal use
9 occurs when campaign funds are used to fulfill any commitment, obligation, or expense of any
10 person "that would exist irrespective of the candidate's election campaign or individual's duties
11 as a holder of Federal office."¹⁶ The Act and Commission regulations provide a non-exhaustive
12 list of uses of campaign funds that are *per se* personal use, including rent, home mortgage,
13 household food items, and tuition.¹⁷ For other uses of campaign funds, including payments for
14 legal expenses, the Commission determines on a "case-by-case basis" whether the use is a
15 prohibited personal use, that is, whether the expenses would exist irrespective of the candidate's
16 campaign or federal officeholder duties.¹⁸

¹⁵ 52 U.S.C. § 30114(a)-(b); 11 C.F.R. §§ 113.1(g), 113.2; *see also* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) ("Personal Use E&J") (explaining that "candidates have wide discretion over the use of campaign funds").

¹⁶ 52 U.S.C. § 30114(b)(2); *see* 11 C.F.R. § 113.1(g).

¹⁷ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

¹⁸ 11 C.F.R. § 113.1(g)(1)(ii)(A); Advisory Opinion 2018-09 at 2-3 (Clements) ("AO 2018-09").

1 The Commission has explained that ““campaign funds may be used to pay for legal
2 expenses incurred in proceedings that directly relate to the candidate’s campaign activities or
3 officeholder duties.””¹⁹ Legal fees and expenses, however, “will not be treated as though they
4 are campaign or officeholder[-]related merely because the underlying proceedings have some
5 impact on the campaign or the officeholder’s status.”²⁰ In a number of advisory opinions, the
6 Commission has addressed legal fees incurred in criminal and congressional investigations and
7 concluded that the use of campaign funds for such legal fees and expenses does not constitute
8 personal use when the legal proceedings involve allegations directly relating to the candidate’s
9 campaign activities or duties as a Federal officeholder.²¹

10 The facts underlying the defamation suit principally relate to Klacik’s campaign. The
11 video that forms the basis of the civil complaint makes a variety of claims regarding whether the
12 Committee properly reported various disbursements and whether the Committee and Klacik
13 converted campaign funds to personal use.²² Because these allegations are based on campaign
14 activity, the defamation suit would not exist but for Klacik’s campaign such that it is not a

¹⁹ AO 2018-09 at 3 (quoting Advisory Opinion 2013-11 at 3 (Citizens for Joe Miller) (“AO 2013-11”)).

²⁰ Personal Use E&J, 60 Fed. Reg. at 7868; *see also* *FEC v. Craig for U.S. Senate*, 816 F.3d 829, 839 (D.C. Cir. 2016) (“[The] allegations did not concern the Senator’s campaign activities or official duties, the legal fees he expended trying to withdraw his plea constituted ‘personal use.’”).

²¹ *See, e.g.*, Advisory Opinion 2009-20 (Visclosky for Congress) (“AO 2009-20”); Advisory Opinion 2009-12 (Coleman); Advisory Opinion 2009-10 (Visclosky I); Advisory Opinion 2008-07 (Vitter); Advisory Opinion 2006-35 (Kolbe); Advisory Opinion 2005-11 (Cunningham); Advisory Opinion 2003-17 (Treffinger) (“AO 2003-17”); Advisory Opinion 1997-12 (Costello); *cf.* Advisory Opinion 2000-40 at 4 (McDermott).

²² *Supra* note 11 and accompanying text. And, as noted above, these same allegations formed the basis of a complaint filed against the Committee. *Id.*

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1 violation of the prohibition on the personal use of campaign funds to pay for legal expenses
2 related to the suit.²³

3 The Complaint discusses several facts in support of its contention that the payment of
4 these legal expenses was prohibited, but they do not materially change the analysis. First, the
5 Complaint notes that the lawsuit has been brought in Klacik’s personal capacity, rather than by
6 the Committee.²⁴ But the Commission has in many prior circumstances permitted campaign
7 funds to be used to pay for legal expenses where the candidate, rather than the committee, was
8 the party in the proceeding.²⁵ Second, the Complaint points out that Klacik’s 2020 campaign
9 concluded well before the payments at issue occurred.²⁶ But the Commission has recognized
10 that legal proceedings involving political campaigns “are often litigated after the election,
11 and . . . has never barred the use of campaign funds . . . on this temporal ground.”²⁷

12 Third, the Complaint raises the fact that the defamation suit seeks to obtain compensatory
13 damages to be paid to Klacik herself, rather than seeking to recover funds that would be paid to

²³ *See, e.g.*, Advisory Opinion 2011-07 at 4 (Fleischmann for Congress) (permitting campaign to pay for legal expenses of campaign consultant who was sued for tortious interference with a contract for activity conducted on behalf of the campaign).

²⁴ Compl. at 2.

²⁵ *E.g.*, AO 2009-20 at 4 (approving the use of campaign funds to pay legal expenses of candidate and campaign staff); AO 2003-17 at 7 (approving the use of campaign funds to pay legal expenses of candidate); Factual & Legal Analysis at 7-8, MUR 7390 (Make America Great Again PAC, *et al.*) (finding that campaign committee payments for legal expenses of the candidate and campaign staff in connection with Department of Justice investigation into Russian interference with the 2016 election were not personal use).

²⁶ Compl. at 2.

²⁷ AO 2013-11 at 4.

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1 the Committee.²⁸ However, a lawsuit seeking to recover for losses that a candidate personally
2 suffered as a result of campaign activity would not exist irrespective of the candidate's
3 campaign. It is therefore not a conversion to personal use to pay for legal expenses in connection
4 with a lawsuit seeking damages that are alleged to have resulted from campaign activity. In
5 other words, if a candidate suffers losses as a result of campaign activity, a suit to recover for
6 those losses would not exist irrespective of the candidate's campaign. Indeed, the Commission
7 has previously permitted the use of campaign funds to pay for litigation seeking damages to be
8 paid directly to a candidate where the events underlying the claim arose from campaign activity.
9 In Advisory Opinion 2013-11 (Miller), the Commission determined that it would not be personal
10 use to pay the costs of litigation that would not have existed irrespective of a candidate's
11 campaign although the suit included cross claims by the candidate individually, which resulted in
12 an award of \$5,000 to him personally.²⁹

13 As explained above, the Committee may pay for legal expenses in connection with the
14 defamation suit. However, when a legal proceeding arises *in part* due to campaign activity or
15 officeholder duties and *in part* for other reasons, the campaign must limit its payments for legal
16 expenses to a percentage of the cost of the proceeding associated with the campaign activity or
17 officeholder duties, as that portion of the litigation would not exist "irrespective of" the
18 campaign.³⁰ Here, some of the allegations described in the civil complaint as a basis for the

²⁸ Compl. at 2.

²⁹ AO 2013-11 at 2, 4.

³⁰ 11 C.F.R. § 113.1(g)(1)(ii)(A); *see* AO 2009-20 at 7 (determining that nine out of twenty counts in a federal candidate's indictment "relate directly to the Federal campaign" . . . [and thus the candidate] may pay up to 45% (9/20) of the legal expenses incurred in his defense of this indictment using campaign funds").

1 defamation claims would appear to be unrelated to campaign activity, such as statements by
2 Owens that Klacik acted as a “madame” during a period of time prior to the start of her
3 campaign.³¹ The Committee would be limited to paying for only the portion of the defamation
4 suit that relates to statements connected to campaign activity.

5 This limitation on the total amount the Committee could spend on litigation costs here is
6 not, by itself, a basis to conduct an investigation, however. The gravamen of the video
7 underlying the suit regards allegations of impropriety related to the Committee’s filings and
8 Klacik’s use of campaign funds such that it would appear appropriate for the Committee to pay
9 for a substantial portion of the legal proceeding expenses.³² There is no information in the
10 record indicating whether or not the Committee has paid all of the costs of the defamation suit or
11 a portion thereof. And there is no information in the record to indicate that the portion of the
12 costs of the litigation paid for by the Committee would exceed the proportion of the suit that
13 would reasonably be viewed as related to campaign activity.

14 Accordingly, the Commission finds no reason to believe that the Committee and
15 Kimberly Klacik violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.

³¹ *Supra* notes 8-9 and accompanying text.

³² Moreover, arguably the lawsuit would not have existed at all but for Klacik’s campaign, as Owens indicates that the reasons she “look[ed] into” Klacik related to her Congressional campaign. *Supra* note 9; Owens Instagram Video; *see also* AO 2013-11 at 3 (civil litigation brought by media companies to obtain candidate’s state employment records would not have existed irrespective of candidate’s campaign because the media companies only sought the records due to the candidacy).

1 **B. The Commission Finds No Reason to Believe that Dickinson Wright PLLC**
2 **Made an Excessive Contribution to Kim Klacik for Congress in the Form of**
3 **a Loan**

4 The Act defines a contribution as “any gift, subscription, loan, advance or deposit of
5 money” made for the purpose of influencing a federal election.³³ Under Commission
6 regulations, partnerships may make contributions, which are subject to the limitations set forth in
7 the Act.³⁴ Such contributions must be attributed to both the partnership and either each partner
8 in direct proportion to each partner’s share of the partnership’s profits or to individual partners
9 by agreement of the partners.³⁵ The Act also provides that no person, including partnerships,
10 shall make contributions to any federal candidate and his or her authorized political committee,
11 which in the aggregate, exceed a \$2,900 contribution to a federal candidate per election during
12 the 2022 cycle.³⁶ The Commission has furthermore provided that a “loan (except for a loan
13 made in accordance with 11 C[.]F[.]R[.] §§ 100.82 and 100.83), . . . made by any person for the
14 purpose of influencing any election for Federal office is a contribution.”³⁷

15 With respect to the allegation that Dickinson Wright made an impermissible campaign
16 contribution in the form of a loan to the Committee, there is no information in the record
17 indicating that such a violation occurred. Klacik for Congress simply disclosed debts owed to
18 Dickinson Wright on its reports filed with the Commission, which does not indicate that the law

³³ 52 U.S.C. § 30101(8)(A).

³⁴ 11 C.F.R. § 110.1(e).

³⁵ *Id.* § 110.1(e)(1), (2).

³⁶ 52 U.S.C. § 30116(a)(1); see 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b), 110.17(e).

³⁷ 11 C.F.R. § 100.52(a).

1 firm provided a loan to the Committee. Indeed, the debt was reported on Schedule D of the
2 Committee's reports, which specifically excludes loans.³⁸

3 The Commission therefore finds no reason to believe that the Committee accepted
4 excessive contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9. And the
5 Commission finds no reason to believe that Dickinson Wright made an excessive contribution in
6 violation of 52 U.S.C. § 30116(a)(1) and 11 C.F.R. § 110.1(b)(1).

³⁸ *Supra* note 12.