



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

July 2, 2026

VIA ELECTRONIC MAIL
brian@endcitizensunited.org

Amanda Bogden
End Citizens United
P.O. Box 66005
Washington, D.C. 20035

RE: MUR 8055
Adam Laxalt, *et al.*

Dear Ms. Bogden:

This is in reference to the Complaint you filed with the Federal Election Commission on August 19, 2022, concerning alleged violations of the Federal Election Campaign Act of 1971, as amended, by Adam Laxalt, Laxalt for Senate and Cameron Philips in his official capacity as treasurer, and Morning in Nevada.

On August 26, 2024, the Commission notified you that it had voted to dismiss this matter and closed its file. It has come to our attention that the August 26, 2024 closing letter did not include a copy of the Factual and Legal Analysis setting forth the basis for the Commission's dismissal of this matter. A copy of that Factual and Legal Analysis is attached to this letter. We apologize for this error.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Mark Shonkwiler

BY: Mark Shonkwiler
Assistant General Counsel

Enclosure: Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Adam Laxalt, Laxalt for Senate and MUR 8055
4 Cameron Phillips in his official capacity
5 as treasurer, and Morning in Nevada PAC
6

7 **I. INTRODUCTION**

8 The Complaint alleges that Morning in Nevada PAC (“Morning in Nevada”), a Nevada
9 state political committee that hosts an annual fundraising event known as the “Basque Fry,”¹
10 made prohibited and excessive in-kind contributions to Adam Laxalt, a 2022 candidate for U.S.
11 Senate in Nevada,² and his principal campaign committee, Laxalt for Senate and Cameron
12 Phillips in his official capacity as treasurer (“Laxalt for Senate”),³ in connection with speeches
13 supporting Laxalt at the 6th and 7th Annual Basque Fry events, which were held on August 14,
14 2021, and August 13, 2022. The Complaint also alleges that Laxalt became a federal candidate
15 during the 6th Annual Basque Fry, while he was still serving as the president of Morning in
16 Nevada, and thus he unlawfully established, financed, maintained or controlled (“EFMC’d”) an
17 entity that raised or spent funds not subject to the limitations and prohibitions of the Federal
18 Election Campaign Act of 1971, as amended (the “Act”).⁴ Finally, the Complaint alleges that
19 Laxalt also violated the Act by continuing to control Morning in Nevada after stepping down as

¹ *Basque Fry Back for Fifth Year*, MORNING IN NEVADA PAC (May 21, 2019),
https://www.morninginnevadapac.org/basque_fry_back_for_fifth_year; see also Compl. at 2 (Aug. 19, 2022).

² Adam Laxalt, Amended Statement of Candidacy at 1 (Aug. 25, 2022),
<https://docquery.fec.gov/pdf/356/202208259528245356/202208259528245356.pdf>.

³ Laxalt for Senate, Amended Statement of Organization at 2, 4 (Aug. 25, 2022),
<https://docquery.fec.gov/pdf/252/202208259528245252/202208259528245252.pdf>.

⁴ Compl. at 7-8.

1 its president and declaring his Senate candidacy, noting that Laxalt's successor as president of
2 Morning in Nevada was employed as an advisor to his senate campaign.⁵

3 Respondents deny the allegations in their joint Response. Respondents state that the
4 purpose of the annual Basque Fry events is to raise money for Morning in Nevada, and not to
5 support any individual candidate.⁶ Respondents also argue that Laxalt was still testing the
6 waters at the time of the 2021 6th Annual Basque Fry, that the three speakers at that 2021 event
7 who voiced support for Laxalt's possible upcoming candidacy, did not indicate that Laxalt had
8 made a final decision to run for office at that time, and that the Complaint fails to provide
9 evidence that Laxalt or Morning in Nevada authorized those third-party statements.⁷ Finally,
10 Respondents argue that Laxalt resigned as president of Morning in Nevada on August 14, 2021,
11 immediately following the 6th Annual Basque Fry; that there is insufficient evidence that he
12 continued to exert control over Morning in Nevada after resigning as president; and that he did
13 not become a federal candidate prior to August 15, 2021.⁸ Respondents, however, do not
14 address the allegations regarding the use of Morning in Nevada's nonfederal funds in connection
15 with Laxalt's express advocacy of his candidacy at the 7th Annual Basque Fry in 2022.

16 Regarding the 6th Annual Basque Fry in 2021, too much speculation is needed to infer
17 that either Morning in Nevada or Laxalt had advance knowledge or coordinated with the speaker
18 engaging in express advocacy regarding the content of his statements.⁹ On balance, the available
19 evidence is insufficient to support a reasonable inference that Laxalt became a candidate during

⁵ *Id.*

⁶ Resp. at 7 (Oct. 11, 2022).

⁷ *Id.* at 3.

⁸ *Id.* at 2-5, Ex. A (reflecting Laxalt's August 14, 2021 email resignation from Morning in Nevada).

⁹ *See infra* Part III.A.

1 this event, and the value of the time at the event where individuals advocated for Laxalt's
2 election likely does not warrant the use of Commission resources.

3 At the 7th Annual Basque Fry in 2022, Laxalt used his own speaking time to expressly
4 advocate for his own election and for the defeat of his opponent. The total estimated cost of
5 providing Laxalt with the platform to advocate for his election appears to be low. Therefore,
6 regardless of whether any violation occurred, in consideration of that relatively low dollar
7 amount and Commission resources, the Commission dismisses the allegations, as a matter of
8 prosecutorial discretion.¹⁰

9 Accordingly, the Commission dismisses the allegations (1) that Morning in Nevada PAC
10 made, and Adam Laxalt and Laxalt for Senate and Cameron Phillips in his official capacity as
11 treasurer accepted, excessive in-kind contributions in violation of 52 U.S.C. § 30116(a) in
12 connection with the 6th and 7th Basque Fry events; (2) that Morning in Nevada PAC solicited
13 nonfederal funds and spent nonfederal funds in connection with a federal and nonfederal
14 elections in violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61 and 300.62; (3) that Laxalt
15 for Senate and Cameron Phillips in his official capacity as treasurer violated 52 U.S.C.
16 § 30125(e) and 11 C.F.R. § 300.61 by receiving in-kind contributions made with funds not
17 subject to the Act in connection with the 6th and 7th Annual Basque Fry events; and (4) that
18 Laxalt for Senate and Cameron Phillips in his official capacity as treasurer violated 52 U.S.C.
19 § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report the in-kind contributions from Morning
20 in Nevada PAC in connection with the 6th and 7th Annual Basque Fry events.

¹⁰ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

1 II. FACTUAL BACKGROUND

2 Adam Laxalt was a 2022 candidate for U.S. Senate in Nevada.¹¹ Prior to running for
3 U.S. Senate, Laxalt was Nevada's Attorney General from 2015 to 2019, and unsuccessfully ran
4 to become Nevada's governor in 2018.¹² Supporters of Laxalt created Morning in Nevada in
5 2015, and declared its mission as "to identify, educate, motivate and activate citizens in Nevada
6 to advance conservative causes and elect conservative candidates."¹³ In February 2019, after
7 ending his term as the Nevada Attorney General, Laxalt became the president of Morning in
8 Nevada.¹⁴ The Morning in Nevada website prominently features Laxalt and describes him as
9 follows:

10 Laxalt is a former U.S. Navy JAG officer who served in Iraq during the U.S.-led
11 surge and became Nevada's Attorney General in a tough election against a
12 statewide office holder. As the youngest state Attorney General in the country
13 when elected, Laxalt is part of a new generation of leaders who have served our
14 nation in Iraq or Afghanistan and part of a conservative movement that Morning
15 in Nevada PAC seeks to help. Many of these individuals have come home and
16 now seek ways to continue serving. For some, this includes running for an
17 elected office.¹⁵

¹¹ Adam Laxalt, Amended Statement of Candidacy at 1 (Aug. 25, 2022), <https://docquery.fec.gov/pdf/356/202208259528245356/202208259528245356.pdf>. Although Laxalt won the primary election on June 14, 2022, he subsequently lost the general election on November 8, 2022. *See United States Senate election in Nevada, 2022 (June 14 Republican primary)*, BALLOTPEAIA.ORG, [https://ballotpedia.org/United_States_Senate_election_in_Nevada,_2022_\(June_14_Republican_primary\)](https://ballotpedia.org/United_States_Senate_election_in_Nevada,_2022_(June_14_Republican_primary)) (last visited Jan. 5, 2024); 2022 Official State of Nevada General Election Returns at 3, NEV. SEC'Y OF STATE (Nov. 22, 2022), <https://www.nvsos.gov/sos/home/showpublisheddocument/11241/638059319239170000> (reflecting that Catherine Cortez Masto defeated Laxalt in the general election with 48.81% of the votes).

¹² *Adam Paul Laxalt*, BALLOTPEAIA.ORG, https://ballotpedia.org/Adam_Paul_Laxalt (last visited May 13, 2024).

¹³ Compl. at 2; Resp. at 2; *About*, MORNING IN NEVADA PAC, <https://www.morninginnevadapac.org/about> (last visited May 13, 2024).

¹⁴ Compl. at 2, Exs. A-C (Nov. 29, 2022); Resp. at 2. Laxalt has resumed serving as its president since January 2023. Morning in Nevada PAC, Amended Statement of Registration at 2 (Jan. 13, 2023), <https://www.nvsos.gov/elections/2488.pdf> (last visited May 13, 2024).

¹⁵ *About*, MORNING IN NEVADA PAC, <https://www.morninginnevadapac.org/about> (last visited Jan. 5, 2024). This webpage appears to have been unchanged since during Laxalt's candidacy. *Morning in Nevada PAC: About*, WAYBACK MACHINE (Jan. 25, 2022),

1 As a Nevada state political committee, Morning in Nevada accepts contributions from
 2 corporations and in amounts that would be excessive under the Act.¹⁶ In addition, it is not
 3 registered with the Commission, nor has it filed any reports with the Commission.¹⁷

4 Since 2015, Morning in Nevada has hosted a widely-attended annual event known as the
 5 “Basque Fry” at the Corley Ranch in South Gardnerville, Nevada.¹⁸ At the August 14, 2021 6th
 6 Annual Basque Fry, held from 10:00 AM to 2:00 PM, about 4,000 people attended in person.¹⁹
 7 Morning in Nevada promoted the event using Laxalt’s image and referred to Laxalt as its
 8 President in its promotional materials.²⁰ Laxalt, in his capacity as President of Morning in
 9 Nevada, hosted and spoke at the event.²¹ In addition, for the first and only time so far, Morning

<https://web.archive.org/web/20220125120501/https://www.morninginnevadapac.org/about> (reflecting a copy of Morning in Nevada PAC’s “About” page as of January 25, 2022).

¹⁶ Compl. at 1 & n.6 (citing Morning in Nevada PAC, 2021 Report #3 (Oct. 13, 2021), <https://www.nvsos.gov/soscandidateservices/anonymousaccess/ViewCCEReport.aspx?syn=9uDGZiGKkNYk1%252bVHCWkgijQ%253d%253d> (reflecting that the committee accepted a \$4,000 contribution from “Champion Chevrolet,” which appears to be a corporation, on July 22, 2021, and \$10,000 contribution from Tito Tiberti on July 1, 2021).

¹⁷ Resp. at 2 (“The PAC has never registered or reported to the Commission as a federal political committee because it has not engaged in any activities which would require it to do so.”).

¹⁸ *Basque Fry Back for Fifth Year*, MORNING IN NEVADA PAC (May 21, 2019), https://www.morninginnevadapac.org/basque_fry_back_for_fifth_year; *see also* Compl. at 2. The event in 2020 was cancelled. *6th Annual Basque Fry & CPAC West 2020 Canceled*, 2NEWS.COM (July 20, 2020), https://www.2news.com/townnews/politics/6th-annual-basque-fry-cpac-west-2020-canceled/article_ab758950-6070-5bf4-9f05-1213d12016ee.html.

¹⁹ *Sen. Tom Cotton: Laxalt Key to GOP Flipping the Senate*, NEWSMAX (Aug. 15, 2021), <https://www.newsmax.com/newsfront/election-2020-nevada-basque-fry/2021/08/15/id/1032408/> (“U.S. Sen. Tom Cotton told a crowd of about 4,000 Republicans that former Nevada Attorney General Adam Laxalt plans to run for the U.S. Senate against incumbent Democratic Sen. Catherine Cortez Masto.”); *6th Annual Basque Fry*, EVENTBRITE, <https://www.eventbrite.com/e/6th-annual-basque-fry-tickets-151578047019> (last visited Jan. 5, 2024) (noting that the event was held at 10:00 AM to 2:00 PM on August 14, 2021).

²⁰ Compl. at 2-3 (describing Morning in Nevada’s Facebook posts featuring Laxalt and including an image of that post); *see also* Morning in Nevada, FACEBOOK (Aug. 14, 2021), <https://www.facebook.com/MorninginNevadaPAC/photos/a.526840620808385/2156282367864194/> (displaying a picture of Adam Laxalt with the words “President of Morning in Nevada PAC Adam Laxalt Live” with a caption indicating that he is speaking at the 6th Annual Basque Fry “now”).

²¹ Resp. at 2.

1 in Nevada broadcast the event live on its own website.²² Morning in Nevada’s 2021 third
 2 quarter report to the Nevada Secretary of State indicated that it spent \$282,635.93 from July 1,
 3 2021, to September 30, 2021, on expenses related to a “special event.”²³

4 At the time of the 6th Annual Basque Fry, Laxalt had not yet filed a Statement of
 5 Candidacy or made a definitive public announcement that he would be running for U.S. Senate.²⁴
 6 Laxalt, who was one of ten speakers at the event, also did not address this topic during his speech
 7 at the event.²⁵ According to the Response, Laxalt was merely testing the waters for a potential
 8 candidacy at this time.²⁶ As discussed below, however, several speakers at the 6th Annual
 9 Basque Fry either referenced or advocated for Laxalt’s possible candidacy, with one suggesting
 10 that Laxalt would be making an announcement about his candidacy the following week.²⁷

11 Several invited speakers at the 6th Annual Basque Fry, specifically, U.S. Senator from
 12 Arkansas Tom Cotton, Florida Governor Ron DeSantis, and former acting director of national

²² Morning in Nevada PAC, FACEBOOK (Aug. 3, 2021), <https://www.facebook.com/MorninginNevadaPAC/photos/a.526840620808385/2147533598739071/> (“For the first time ever, our annual Basque Fry will be streaming live for FREE!”); *6th Annual Basque Fry – LIVE*, MORNING IN NEVADA PAC, https://www.morninginnevadapac.org/basque_fry_livestream (last visited May 13, 2024); *see also* Compl. at 2-3.

²³ Morning in Nevada PAC, 2021 Report #3 (Oct. 13, 2021), <https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/ViewCCEReport.aspx?syn=9uDGZiGKNYk1%252bVHCWkgjjQ%253d%253d>.

²⁴ *See, e.g.,* Humberto Sanchez, *Indy DC Download: Senate Democrats Lay the Groundwork to Pass \$3.5 Trillion Soft Infrastructure Spending Package*, THE NEVADA INDEPENDENT (Aug. 14, 2021), <https://thenevadaindependent.com/article/indy-dc-download-senate-democrats-lay-the-groundwork-to-pass-3-5-trillion-soft-infrastructure-spending-package> (reporting that, during an August 11, 2021 radio talk show appearance, Laxalt stated that he did not intend to announce a run for Senate during the upcoming Basque Fry).

²⁵ Tabitha Mueller, *Laxalt Files Papers to Run for U.S. Senate after Cotton Announces His Candidacy*, THE NEVADA INDEPENDENT (Aug. 14, 2021), <https://thenevadaindependent.com/article/sen-tom-cotton-announces-adam-laxalts-candidacy-for-u-s-senate> (“During the Basque Fry, Laxalt did not indicate an intention to run for office, instead, using his time at the microphone to introduce his family to the crowd and kick off the event with a call to end the ‘cancerous spread of leftist culture.’”) [hereinafter Mueller Article].

²⁶ *See* Resp. at 3.

²⁷ Mueller Article.

1 intelligence, Richard Grenell, referenced Laxalt’s candidacy in their respective speeches.²⁸
2 Cotton, who spoke at the event directly after Laxalt, made numerous statements suggesting that
3 Laxalt would be a candidate in the upcoming 2022 election against incumbent U.S. Senator from
4 Nevada, Catherine Cortez Masto.²⁹ Beginning with, “It’s great to be back in Nevada, supporting
5 our good friend, Adam Laxalt,”³⁰ Cotton’s 16-minute speech primarily focused on supporting
6 Laxalt as Cortez Masto’s replacement and criticizing Cortez Masto. Around two minutes into
7 his speech, Cotton states, “change starts right here in Nevada, when Adam Laxalt sends Cathy
8 Cortez Masto packing home for Nevada.”³¹ “Now,” Cotton says before turning away from the
9 camera and facing to the side or back of the stage, “I don’t know, am I not supposed to say
10 that?”³² He then turns to the front of the stage, facing the cameras again, “Uh oh, am I not
11 supposed to say that? Uh oh, did I violate some rule?”³³ Cotton continues, “Now, I know,
12 Adam, I guess he’s not supposed to say that he’s going to be your next United States Senator.
13 There’s some campaign finance rules against it. But what do I care about some stupid rules like
14 that? Adam Laxalt is going to the United States Senate for the Battle Born state in 2022!”³⁴

15 In addition to Cotton’s statements encouraging the crowd to elect Laxalt in the upcoming
16 election, Richard Grenell, former director of national intelligence, stated the following during his

²⁸ See *Nevada Basque Fry with Senator Tom Cotton and Adam Laxalt*, C-SPAN, <https://www.c-span.org/video/?514079-2/sen-cotton-speaks-nevada-basque-fry> (last visited May 13, 2024) [hereinafter 6th Annual Basque Fry Speeches].

²⁹ *Id.* at 39:39 to 56:11 (recording Senator Cotton’s speech at the 6th Annual Basque Fry); see Mueller Article.

³⁰ 6th Annual Basque Fry Speeches at 40:04 to 40:09.

³¹ *Id.* at 41:42 to 41:52.

³² *Id.* at 41:54 to 41:57.

³³ *Id.* at 41:57 to 41:59.

³⁴ *Id.* at 41:59 to 42:14.

1 speech at the event: “We can’t make any announcements here about Adam’s future, but as a
2 close friend of Adam’s, I’m telling you I am pushing him hard, that on Tuesday maybe he’ll
3 make an announcement.”³⁵ Florida Governor Ron DeSantis also encouraged Laxalt to run for
4 Senate during his speech at the event.³⁶ The record does not indicate that Morning in Nevada
5 paid any of these third party speakers.³⁷

6 On the evening of August 14, 2021, after the 6th Annual Basque Fry took place earlier
7 that day, Laxalt resigned from his position as president of Morning in Nevada.³⁸ The next day,
8 on August 15, 2021, Laxalt filed a Statement of Candidacy designating Laxalt for Senate and
9 Cameron Phillips in his official capacity as treasurer of his principal campaign committee.³⁹
10 Laxalt publicly declared his candidacy on Tuesday, August 17, 2021.⁴⁰ Laxalt for Senate’s 2021
11 October Quarterly Report reported its first receipt and disbursement as occurring on August 19,
12 2021, indicating that Laxalt did not spend or raise any funds prior to announcing his candidacy.⁴¹

³⁵ Mueller Article.

³⁶ Sam Metz, *Sen. Tom Cotton speaks at 6th annual Basque Fry in Gardnerville*, NEWS4 (Aug. 15, 2021), <https://mynews4.com/newsletter-daily/sen-tom-cotton-speaks-at-6th-annual-basque-fry-in-gardnerville>. Laxalt did, in fact, make such an announcement on Tuesday, August 17, 2021. Jeff Gillan & Matthew Seeman, *Republican Adam Laxalt formally launches campaign for U.S. Senate in Nevada*, NEWS3LV.COM (Aug. 17, 2021), <https://news3lv.com/news/local/republican-adam-laxalt-formally-launches-campaign-for-us-senate-in-nevada> [hereinafter Gillan/Seeman Article].

³⁷ See Morning in Nevada PAC, 2021 Report #3 (Oct. 13, 2021), <https://www.nvsos.gov/soscandidateservices/anonymousaccess/ViewCCEReport.aspx?syn=9uDGZiGKNYk1%252bVHCWkgijQ%253d%253d>.

³⁸ Resp., Ex. A (reflecting that the resignation was sent at 8:04 PM on August 14, 2021).

³⁹ Adam Laxalt, Statement of Candidacy (Aug. 15, 2021), <https://docquery.fec.gov/pdf/551/202108159466277551/202108159466277551.pdf>; Laxalt for Senate, Statement of Organization (Aug. 15, 2021), <https://docquery.fec.gov/pdf/552/202108159466277552/202108159466277552.pdf>.

⁴⁰ Gillan/Seeman Article.

⁴¹ Laxalt for Senate, 2021 October Quarterly Report at 5 (Oct. 15, 2021), <https://docquery.fec.gov/pdf/662/202110159467900662/202110159467900662.pdf>.

1 On August 30, 2021, Robert Uithoven, who “ran the successful [2014] campaign of
2 Adam P. Laxalt for Nevada Attorney General,”⁴² became the new president of Morning in
3 Nevada.⁴³ On October 29, 2021, Laxalt’s campaign paid Uithoven \$7,151.52 for “travel and
4 catering services.”⁴⁴ Subsequently, from December 2021 to November 2022, Laxalt’s campaign
5 paid Axiom Strategies, which employed Uithoven as a vice president at that time,⁴⁵ \$452,309.87
6 in total fees for various services, including strategy consulting services.⁴⁶ Citing Uithoven’s
7 history of working on Laxalt’s political campaigns and press articles that referred to Uithoven as
8 Laxalt’s political consultant or adviser, the Complaint alleges that Uithoven advised Laxalt’s
9 2022 U.S. senate campaign,⁴⁷ and that Laxalt continued to control Morning in Nevada through
10 Uithoven.⁴⁸

11 The following year, on August 13, 2022, Morning in Nevada held its 7th Annual Basque
12 Fry from 10:00 AM to 2:00 PM, which was attended by 1,500 to 2,000 people.⁴⁹ According to

⁴² Robert S. Uithoven, *Biography*, <https://robertuithoven.com/> (last visited May 13, 2024).

⁴³ Resp., Ex. B.

⁴⁴ Laxalt for Senate, Amended 2021 Year-End Report at 455-60 (Mar. 29, 2022), <https://docquery.fec.gov/pdf/928/202203299495913928/202203299495913928.pdf>.

⁴⁵ *Biography*, ROBERT S. UITHOVEN, <https://robertuithoven.com/> (last visited June 26, 2023); *The Axiom Family*, AXIOM, <https://axiomstrategies.com/about/> (last visited Jan. 5, 2024) (reflecting that Uithoven was a vice president from January 2021 and promoted to partner in December 2022).

⁴⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00787135&recipient_name=axiom (last visited June 26, 2023) (reflecting Laxalt for Senate’s disbursements to Axiom Strategies).

⁴⁷ Compl. at 4 & n. 13; see Alex Rogers & Manu Raju, *Biden Backlash in Nevada Raises Republicans’ Hopes of Taking Back Senate in 2022*, CNN (Dec. 7, 2021), <https://www.cnn.com/2021/12/07/politics/nevada-senate-race-2022-republican-hopes/index.html> (referring to Uithoven as Laxalt’s “political adviser”); Sam Metz, *Republicans Adam Laxalt Files to Run for U.S. Senate in Nevada*, RENO GAZETTE J. (Aug. 16, 2021), <https://www.rgj.com/story/news/politics/2021/08/16/republican-adam-laxalt-us-senate-candidate-nevada/8152974002/> (referring to Uithoven as Laxalt’s “political consultant”).

⁴⁸ Compl. at 7-8.

⁴⁹ *7th Annual Basque Fry*, MORNING IN NEVADA PAC, https://www.morninginnevadapac.org/7th_annual_basque_fry (last visited May 13, 2024) (“More than 1,500 great patriots attended, and we want to thank you all for helping to make this our best Basque Fry yet!”); Steve Ranson, *Noem, Cruz Energize the Crowd at the Annual Basque Fry*, NEVADA APPEAL (Aug. 15, 2022),

1 its 2022 third quarter report to the Nevada Secretary of State, Morning in Nevada spent
 2 \$205,225.39 from July 1, 2022, to September 30, 2022 on a “special event.”⁵⁰ The 7th Annual
 3 Basque Fry included speeches from Laxalt and nine other invited speakers.⁵¹ Towards the last
 4 third of Laxalt’s 14-minute speech, he began advocating for his own election and criticizing his
 5 opponent, Cortez Masto:⁵²

- 6 • “This is what we can get if we fight at this state and get me into the United States
 7 Senate, right?”⁵³
- 8 • “Senator Masto is considered the most vulnerable Senator in America. And why is
 9 she considered the most vulnerable Senator? Well first and foremost, after eight
 10 years of being Attorney General, I had to get in office and clean up after her once,
 11 right? And after thirteen years, she had nothing to show for the – for Nevada.”⁵⁴
- 12 • “She’s a rubber stamp for Joe Biden and a rubber stamp for the left. She has voted
 13 with the financial package of Joe Biden 100% of the time. We have inflation because
 14 of her vote.”⁵⁵
- 15 • “You see, literally, the tens of millions of dollars the left is pouring into this state to
 16 buy this seat for Catherine Cortez Masto. Are we going to let them buy this seat?”
 17 The crowd then chants, “No!”⁵⁶

<https://www.nevadaappeal.com/news/2022/aug/15/noem-cruz-energize-crowd-annual-basque-fry/> (“Cruz grabbed the most attention as the day’s final speaker to the crowd estimated between 1,500 to 2,000.”).

⁵⁰ Morning in Nevada PAC, 2022 Report #3 (Oct. 17, 2022), <https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/ViewCCEReport.aspx?syn=eLVyEDiFLaZLRRf691f5QA%253d%253d>.

⁵¹ Resp. at 7.

⁵² Compl., Ex. D at 2-3 (reflecting a transcript of Laxalt’s speech at the 2022 7th Annual Basque Fry); *see also Nevada U.S. Senate Candidate Adam Laxalt Speaks at 2022 Basque Fry in Nevada*, C-SPAN, <https://www.c-span.org/video/?521979-5/nevada-us-senate-candidate-adam-laxalt-speaks-2022-basque-fry-nevada> (last visited May 13, 2024) [hereinafter 2022 Laxalt Basque Fry Speech] (Laxalt begins advocating for his own election and criticizing his candidate around 8:50 of the video until the end of his speech at 14:03).

⁵³ 2022 Laxalt Basque Fry Speech at 8:50 to 8:57.

⁵⁴ *Id.* at 9:13 to 9:35. For background, Cortez Masto served eight years as Nevada’s Attorney General from 2007 to 2015 before becoming the United States Senator from Nevada in 2017. *Catherine Cortez Masto*, BALLOTPEdia.ORG, https://ballotpedia.org/Catherine_Cortez_Masto (last visited June 25, 2023). Laxalt then succeeded Cortez Masto as Nevada’s Attorney General in 2015. *Adam Paul Laxalt*, BALLOTPEdia.ORG, https://ballotpedia.org/Adam_Paul_Laxalt (last visited June 26, 2023).

⁵⁵ 2022 Laxalt Basque Fry Speech at 10:57 to 11:15.

⁵⁶ *Id.* at 11:40 to 11:55.

- 1 • “If you elect me, I’m going to be able to join Senator Cruz and others. And we’re
2 going to be the 51st seat to start reversing this madness.”⁵⁷

3 The Complaint alleges that Cotton’s speech at the 6th Annual Basque Fry made Laxalt a
4 federal candidate during the event.⁵⁸ Consequently, the Complaint argues, Laxalt EFMC’d
5 Morning in Nevada prior to his resignation as its President, Morning in Nevada made excessive
6 and prohibited in-kind contributions to Laxalt and Laxalt for Senate, and Laxalt and Laxalt for
7 Senate accepted prohibited in-kind contributions from Morning in Nevada.⁵⁹ Additionally, the
8 Complaint argues that Laxalt’s express advocacy for his own election during the 7th Annual
9 Basque Fry, coupled with the platform and audience afforded him by Morning in Nevada,
10 resulted in an additional in-kind contribution.⁶⁰

11 **III. LEGAL ANALYSIS**

12 The Commission dismisses all of the Complaint’s allegations. An investigation into this
13 potential coordination would be an imprudent use of Commission resources, and the value of any
14 in-kind contribution Laxalt may have received from these events is likely not high enough to
15 merit further use of Commission resources.

16 **A. Applicable Law**

17 The Act defines the term “contribution” to include “any gift, subscription, loan, advance,
18 or deposit of money or anything of value made by any person for the purpose of influencing any
19 election for Federal office.”⁶¹ Similarly, the term “expenditure” includes “any purchase,

⁵⁷ *Id.* at 12:02 to 12:12.

⁵⁸ Compl. at 5.

⁵⁹ *Id.* at 5-7.

⁶⁰ *Id.* at 9.

⁶¹ 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

1 payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any
2 person for the purpose of influencing any election for Federal office.”⁶² Under the
3 Commission’s regulations, expenditures that are “coordinated” with a candidate, but are not
4 made for a coordinated communication or party-coordinated communication, are in-kind
5 contributions to that candidate.⁶³ The Commission’s regulations further provide that
6 “[c]oordinated means made in cooperation, consultation or concert with, or at the request or
7 suggestion of, a candidate, [or] a candidate’s authorized committee.”⁶⁴

8 The “purpose of influencing a federal election” is also a necessary element in defining
9 whether a payment is a “contribution” or “expenditure” under the Act and Commission
10 regulations.⁶⁵ In analyzing whether a payment made by a third party is a “contribution” or
11 “expenditure,” the Commission has concluded that “the question under the Act is whether” the
12 donation, payment, or service was “provided for the purpose of influencing a federal election
13 [and] not whether [it] provided a benefit to [a federal candidate’s] campaign.”⁶⁶ The electoral
14 purpose of a payment may be clear on its face, as in payments to solicit contributions or for
15 communications that expressly advocate for the election or defeat of a specific candidate, or
16 inferred from the surrounding circumstances.⁶⁷

⁶² 52 U.S.C. § 30101(9)(A)(i); *see also* 11 C.F.R. § 100.111(a).

⁶³ 11 C.F.R. § 109.20(b); *see also* 11 C.F.R. § 100.52(d)(1) (providing that “in-kind contributions” may be a contribution under the Act); *id.* § 100.111(e)(1) (providing that “in-kind contributions” may be an expenditure under the Act).

⁶⁴ 11 C.F.R. § 109.20(a).

⁶⁵ *See* 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

⁶⁶ Factual & Legal Analysis (“F&LA”) at 6, MUR 7024 (Van Hollen for Senate).

⁶⁷ *See, e.g.*, Advisory Op. 2000-08 (Harvey) at 1, 3 (“AO 2000-08”) (concluding private individual’s \$10,000 “gift” to federal candidate would be a contribution because “the proposed gift would not be made but for the recipient’s status as a Federal candidate”); Advisory Op. 1990-05 (Mueller) at 4 (“AO 1990-05”) (explaining that solicitations and express advocacy communications are for the purpose of influencing an election and concluding, after examining circumstances of the proposed activity, that federal candidate’s company newsletter featuring discussion of campaign resulted in contributions); Advisory Op. 1988-22 (San Joaquin Valley Republican

1 In addition, the Commission has stated that “[t]he provision of costs for campaign events
 2 or rallies for a federal candidate constitutes in-kind contributions.”⁶⁸ When a candidate speaks at
 3 an event organized and paid for by a third party, the Commission “consider[s] the nature and
 4 purposes of an event to determine if it is campaign-related so as to implicate the making of
 5 contributions or expenditures by those sponsoring or financially supporting the event.”⁶⁹ “[I]f an
 6 event involves (i) the solicitation of political contributions or (ii) the express advocacy of a
 7 candidate’s election or defeat, then the event would be viewed as a campaign event for the
 8 purpose of influencing a Federal election.”⁷⁰ Express advocacy includes any communication

Associates) at 5 (concluding third party newspaper publishing comments regarding federal candidates, coordinated with those candidates or their agents, thereby made contributions because “the financing of a communication to the general public, not within the ‘press exemption,’ that discusses or mentions a candidate in an election-related context and is undertaken in coordination with the candidate or his campaign is ‘for the purpose of influencing a federal election’); F&LA at 17-20, MURs 4568, 4633, and 4634 (Triad Mgmt. Servs., Inc.) (finding reason to believe corporation and related nonprofit organizations made contributions by providing federal candidates with “uncompensated fundraising and campaign management assistance” and “advertising assistance[.]” including spending “several million dollars” on coordinated advertisements). A federal court, in the context of a criminal case, has articulated that a third party’s payment to a candidate is a “contribution” if the person behind it has the principal purpose of influencing a federal election — even if that is not the only purpose — acknowledging that “[p]eople rarely act with a single purpose in mind.” Jury Instrs., *United States v. Edwards*, No. 1:11-CR-161, 2012 WL 1856481 (M.D.N.C. May 18, 2012).

⁶⁸ F&LA at 8, MUR 7755 (Cory Gardner for Senate, *et al.*).

⁶⁹ Advisory Opinion 1988-27 at 3 (Medivision) (“AO 1988-27”) (advising that a speaking fee paid to an officeholder would be considered an honorarium, and not a contribution, where the officeholder’s speech would be related to the speaker’s officeholder duties and not related or in reference to the speaker’s federal campaign); *cf.* FGCR at 14, MURs 5550 & 5566 (Michael Moore, *et al.*) (recommending dismissal of the allegation that several universities made in-kind contributions or independent expenditures when they hosted events in which a popular filmmaker made expressive advocacy statements in light of the events being consistent with the universities’ apparent purpose of fostering the free exchange of ideas in an academic setting); Certification (“Cert.”) ¶¶ A.2, B.1 (May 19, 2006), MURs 5550 & 5566 (dismissing the allegations as to the university respondents).

⁷⁰ AO 1988-27 at 3; *see also* F&LA at 7-8, MUR 7755 (Cory Gardner for Senate, *et al.*) (finding that the event was not campaign related where there was no fundraising and no person mentioned the candidate’s attendance at the event, and stating, “if an event included express advocacy on behalf of a candidate or against the candidate’s opponent, or if the candidate is soliciting contributions at the event, the Commission may conclude the event is campaign-related”); F&LA at 2-3, 6, MUR 6552 (Ohio State Med. Ass’n) (finding that the association made an apparent corporate contribution or expenditure where it posted on the internet videos of an event it hosted where, among others, the video included two speeches given at the event by competing candidates, with the first candidate speaker repeatedly referencing the other by name and criticizing his policies, and the other candidate speaking a few minutes after the first, and dismissing the matter because the videos were inadvertently made publicly available for 10 days and only accessed by 19 persons during that time); F&LA at 7, MUR 6375 (Independence Caucus) (finding reason to believe that a corporation made prohibited in-kind contributions by hosting and promoting an event featuring a candidate speaker and stating, “if the August 2009 Fundraiser was a fundraising event hosted by the

1 that “can have no other reasonable meaning than to urge the election or defeat of one or more
 2 clearly identified candidate(s),” when taken alone or “as a whole and with limited reference to
 3 external events, such as the proximity to the election.”⁷¹ A candidate is “clearly identified”
 4 where “the name of the candidate involved appears,” “a photograph or drawing of the candidate
 5 appears,” or “the identity of the candidate is apparent by unambiguous reference.”⁷²

6 Under the Act, a candidate, their agent, or an entity EFMC’d by a candidate may only
 7 “solicit, receive, direct, transfer, or spend funds” in connection with a federal election if the
 8 funds are subject to the limitations, prohibitions, and reporting requirements of the Act, and may
 9 only do so in connection with a nonfederal election if the funds are subject to the limitations and
 10 prohibitions of the Act.⁷³ During the 2021-2022 election cycle, each person was limited to
 11 making \$2,900 in contributions to each candidate per election,⁷⁴ and candidates and their
 12 authorized committees were prohibited from knowingly accepting contributions in excess of that

Corporation, at which Chuck Devore, a federal candidate, or an agent of the Corporation solicited funds for his campaign, or if the candidate engaged in express advocacy on behalf of his own election or the defeat of his opponent, then any unreimbursed costs for the event could constitute an in-kind contribution by the Corporation”).

⁷¹ 11 C.F.R. § 100.22(a)-(b). *See, e.g.*, F&LA at 6-7, MUR 6861 (Williams, *et al.*) (yard sign saying respondent “has endorsed” candidate is express advocacy); First Gen. Counsel’s Rpt. (“First GCR”) at 6 n.5 (endorsement “by definition expressly advocates”) & Cert. at ¶ 1 (Feb. 8, 2005), MUR 5522 (Wisconsin Right to Life, Inc.).

⁷² 52 U.S.C. § 30101(18).

⁷³ 52 U.S.C. § 30125(e)(1); *see also* 11 C.F.R. §§ 300.60, 300.61, 300.62.

⁷⁴ 52 U.S.C. § 30116(a)(1); 11 C.F.R. § 110.1(b)(1); *Contribution limits for 2021-2022*, FEC.GOV (Feb. 2, 2021), <https://www.fec.gov/updates/contribution-limits-2021-2022/>.

1 amount.⁷⁵ Authorized political committees must report all received contributions aggregating
2 over \$200 in an election cycle.⁷⁶

3 **B. The Commission Dismisses the Allegations that Morning in Nevada made,**
4 **and Laxalt and Laxalt for Senate Accepted, Excessive In-Kind Contributions**
5 **in Connection with the 6th and 7th Annual Basque Fry Events**

6 1. The 2021 6th Annual Basque Fry
7

8 The Complaint alleges that Morning in Nevada made, and Laxalt received, an excessive
9 in-kind contribution in the form of Morning in Nevada providing a platform for Cotton and
10 others to speak and promote Laxalt's candidacy. There is insufficient information to adequately
11 support an inference as to such an in-kind contribution. Even if the available information were
12 sufficient to establish that the speeches advocating for Laxalt's election had been coordinated,
13 the estimated value of any in-kind contribution would be relatively low. Given that an
14 investigation would be time consuming and extensive, and given the relatively small amount of
15 time at the event devoted to the speech, the Commission dismisses the allegation that Morning in
16 Nevada made, and Laxalt received an excessive in-kind contribution in connection with the 6th
17 Annual Basque Fry.

18 2. The 2022 7th Annual Basque Fry

19 Similarly, whether or not Morning in Nevada made, and Laxalt and Laxalt for Senate
20 accepted, an excessive in-kind contribution, the Commission concludes that the amount in

⁷⁵ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

⁷⁶ 52 U.S.C. § 30104(b)(3); 11 C.F.R. § 104.3(a)(4)(i); *see also* F&LA at 10-11, MURs 7628, *et al.* (finding reason to believe that the committee failed to report its acceptance of a prohibited corporate in-kind contribution); First GCR at 11-12, MUR 5409 (Grover Norquist, *et al.*) (recommending that the Commission find reason to believe that the committee failed to report receipt of a prohibited corporate contribution and that the Commission take no further action due to the small value of the contribution); Cert. ¶¶ 2.c & g (Oct. 20, 2004), MUR 5409 (Grover Norquist, *et al.*) (finding reason to believe that the committee violated the Act and taking no further action as recommended in the FGCR).

1 violation does not warrant further Commission action. According to Morning in Nevada’s 2022
2 third quarter report to the Nevada Secretary of State, the cost of hosting the 7th Annual Basque
3 Fry was \$205,225.39.⁷⁷ Respondents represent that the primary purpose of the Basque Fry
4 events was to solicit contributions for Morning in Nevada.⁷⁸ Laxalt’s speech constituted a small
5 portion of the overall event and, thus, the alleged in-kind contribution would likewise be
6 relatively small.

7 Given this small potential amount in violation relative to the large time and expense of an
8 investigation, the Commission dismisses all allegations related to the 2022 7th Annual Basque
9 Fry as a matter of prosecutorial discretion.⁷⁹

10 **C. The Commission Dismisses the Allegation that Laxalt and Laxalt for Senate**
11 **Accepted Prohibited Soft-Money Contributions from Morning in Nevada**
12 **and Failed to Report Them**

13 The Commission dismisses the allegations that Morning in Nevada, Laxalt, and Laxalt
14 for Senate violated the Act’s soft money prohibitions. As explained above, the available
15 information is insufficient to determine whether any in-kind contribution occurred.⁸⁰ In light of
16 the ambiguity in the factual record, the Commission dismisses the allegations that Morning in
17 Nevada violated 52 U.S.C. § 30125(e) and 11 C.F.R. §§ 300.60, 300.61 by soliciting, receiving,
18 directing, or spending funds that are not subject to the Act in connection with a federal election.

⁷⁷ Morning in Nevada PAC, 2022 Report #3 (Oct. 17, 2022), <https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/ViewCCEReport.aspx?syn=eLVyEDiFLaZLRRf691f5QA%253d%253d> (reflecting \$205,225.39 spent between July 1, 2022, to September 30, 2022, on a “special event”).

⁷⁸ Resp. at 7 (stating that the annual Basque Fry event “is held not to raise money for any individual state or federal candidate, but for Morning in Nevada PAC itself”).

⁷⁹ *See Heckler*, 470 U.S. at 831.

⁸⁰ *Supra* Part III.B.

1 Although Respondents represent that the purpose of the 6th Annual Basque Fry was to
2 raise money for Morning in Nevada, a Nevada state political committee, and that Laxalt
3 personally hosted the event,⁸¹ neither Laxalt nor Morning in Nevada appear to have violated the
4 soft-money prohibitions in connection with a nonfederal election as Morning in Nevada did not
5 receive any prohibited or excessive contributions within 30 days following the August 14, 2021
6 6th Annual Basque Fry.⁸² In addition, although the Complaint alleges that Laxalt continued to
7 EFMC Morning in Nevada after stepping down as president because he hired Uithoven, his
8 successor as president, as a campaign advisor,⁸³ the Complaint does not explain how that
9 relationship indicates a formal or ongoing relationship between Laxalt and Morning in Nevada
10 such that Laxalt continued to EFMC Morning in Nevada.⁸⁴ Therefore, to the extent that the
11 Complaint raises allegations that Laxalt and Morning in Nevada also violated 11 C.F.R. § 300.62
12 by soliciting, receiving, directing, or spending funds that are not subject to the limitations and
13 prohibitions of the Act in connection with a nonfederal election, the Commission dismisses those
14 allegations.⁸⁵

15 Finally, as described above, had Laxalt and Laxalt for Senate accepted in-kind
16 contributions from Morning in Nevada in connection with the 6th or 7th Annual Basque Fry,
17 those contributions could have violated the Act's soft money prohibitions. However, given the

⁸¹ See Resp. at 2 (“In his capacity as President of the PAC, Laxalt hosted and participated in the PAC’s annual Basque Fry fundraiser on August 14, 2021.”); *id.* at 7 (stating that the annual Basque Fry event “is held not to raise money for any individual state or federal candidate, but for Morning in Nevada PAC *itself*”) (emphasis in original).

⁸² Morning in Nevada PAC, 2021 Report #3 Report (Oct. 13, 2021), <https://www.nvsos.gov/soscandidateservices/anonymousaccess/ViewCCEReport.aspx?syn=9uDGZiGKNYk1%252bVHCWkgijQ%253d%253d> (reflecting only one receipt following the August 14, 2021 6th Annual Basque Fry of \$2,000 from John Estill, which was his first contribution to Morning in Nevada in that election cycle).

⁸³ Compl. at 7-8.

⁸⁴ See 11 C.F.R. § 300.2(c)(2)(v).

⁸⁵ *Heckler*, 470 U.S. at 831.

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- 1 low dollar amount and in consideration of the Commission's resources, the Commission
- 2 dismisses those allegations as a matter of prosecutorial discretion.⁸⁶