



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

VIA ELECTRONIC MAIL

November 12, 2024

Neil Reiff  
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RE: MUR 8170

Dear Mr. Reiff:

On October 5, 2023, the Federal Election Commission notified your clients, Joshua Lafazan and Lafazan for Congress and Alex Leibson in the official capacity of treasurer (the "Committee"), of a Complaint indicating violations of the Federal Election Campaign Act of 1971, as amended. The Commission forwarded a copy of the Complaint to your clients at that time.

Upon further review of the allegations contained in the Complaint and information supplied by your clients, the Commission, on October 8, 2024, voted to (1) dismiss the allegation that the Committee made disbursements to benefit Josh Lafazan for Responsible Government in violation of 52 U.S.C. § 30125(e)(1)(b) and 11 C.F.R. § 110.3(d); and (2) dismiss the allegation that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.3(a), 104.13(a) by failing to report an in-kind contribution from Joshua Lafazan. Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter's transmittal are enclosed.

The Commission will place documents related to the case on the public record today. *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 Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa Stevenson  
Acting General Counsel

*Mark Shonkwiler*

BY: Mark Shonkwiler  
Assistant General Counsel

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Lafazan for Congress and Alex Liebson MUR 8170  
4 in his official capacity as treasurer  
5 Joshua Lafazan  
6 Josh Lafazan for Responsible Government

7 **I. INTRODUCTION**

8 This matter arises from a Complaint alleging that Joshua Lafazan, who was  
9 simultaneously a candidate for reelection to the Nassau County, New York Legislature in the  
10 18th District and for U.S. House of Representatives in New York's 3rd District; Josh Lafazan for  
11 Responsible Government (the "County Committee"), his county legislature campaign committee;  
12 and Lafazan for Congress and Alex Leibson in his official capacity as treasurer (the "Federal  
13 Committee"), his federal campaign committee, violated the Federal Election Campaign Act of  
14 1971, as amended (the "Act"). The Complaint alleges the Federal Committee impermissibly  
15 financed the County Committee; and the County Committee made a prohibited transfer to the  
16 Federal Committee via a "Josh Lafazan" Facebook account or, in the alternative, the Federal  
17 Committee failed to report an in-kind contribution from Lafazan by allowing it to use his  
18 Facebook account.

19 Because some of the facts, as alleged, would not constitute a violation of the Act, and  
20 some appear not to have occurred, the Commission dismisses the allegation that the Federal  
21 Committee made disbursements to benefit the County Committee in violation of 52 U.S.C.  
22 § 30125(e)(1)(B) and 11 C.F.R § 110.3(d). It also appears likely the Facebook account belongs  
23 to Lafazan. Accordingly, the Commission dismisses the allegation that the County Committee  
24 made a prohibited transfer to the Federal Committee of the Lafazan Facebook account in  
25 violation of 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d). The Commission further

1 exercises its prosecutorial discretion and dismisses the allegation that the Federal Committee  
2 violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.3(a), 104.13(a) by failing to report an in-  
3 kind contribution from Lafazan in the form of use of his Facebook account.

## 4 **II. FACTUAL BACKGROUND**

5 Joshua Lafazan was a county legislator in the Nassau County 18th Legislative District in  
6 New York who ran for reelection to that seat in 2023.<sup>1</sup> Simultaneously, he was also a candidate  
7 for the U.S. House in New York's 3rd Congressional District.<sup>2</sup> The County Committee is his  
8 campaign committee for the county legislature seat,<sup>3</sup> and the Federal Committee is his authorized  
9 committee for his congressional campaign.<sup>4</sup>

10 The Complaint first alleges that Lafazan's Federal Committee impermissibly financed his  
11 County Committee in two ways: (1) by paying for advertisements on Lafazan's Facebook  
12 profile to advance the County Committee;<sup>5</sup> and (2) by paying ActBlue credit card processing  
13 fees for the County Committee, as well as potentially other, unknown expenses.<sup>6</sup>

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<sup>1</sup> Compl. at 1 (Sept. 28, 2023); Lafazan & Lafazan for Congress Resp. at 1 (Nov. 29, 2023) [hereinafter Lafazan Resp.]. Lafazan lost his campaign for reelection on November 7, 2023. See Michael Malaszczyk, *Nassau County Legislature: Josh Lafazan Loses Re-Election Bid, Republicans Maintain Majority*, POLITICSNY (Nov. 7, 2023), <https://politicsny.com/2023/11/07/nassau-county-legislature-josh-lafazan-loses-re-election-bid-republicans-maintain-majority/>.

<sup>2</sup> Compl. at 1; Lafazan Resp. at 2. Lafazan withdrew from the congressional race on November 14, 2023. See Laura Lane, *Democratic Candidates Dropping Out of Race for New York's 3rd Congressional District*, LI HERALD.COM (Nov. 17, 2023), <https://www.liherald.com/stories/democratic-candidates-dropping-out-of-race-for-new-yorks-3rd-congressional-district.201567>.

<sup>3</sup> Lafazan Resp., Ex. 1 ¶ 1 (Declaration of Joshua Lafazan) [hereinafter Lafazan Decl.].

<sup>4</sup> *Id.*; see Lafazan for Congress, Statement of Organization (Dec. 13, 2021), <https://docquery.fec.gov/pdf/595/202112139469834595/202112139469834595.pdf>.

<sup>5</sup> Compl. at 1.

<sup>6</sup> *Id.* at 1-2.

1 Lafazan and the Federal Committee submitted a Joint Response (the “Lafazan  
 2 Response”) denying the allegations,<sup>7</sup> supported by sworn declarations<sup>8</sup> and copies of the County  
 3 Committee’s New York election filings from the relevant time period, and images reflecting  
 4 information about the Facebook advertisements placed on Lafazan’s page.<sup>9</sup>

5 The Lafazan Response states that, while some of the advertisements placed on Lafazan’s  
 6 Facebook page for Lafazan’s county campaign bore a disclaimer reading “Paid for by Lafazan  
 7 for Congress,” the ads were actually paid for by the nonfederal campaign but inadvertently  
 8 contained the wrong disclaimer.<sup>10</sup> The Response states that, “[a]fter recognizing the issue, new  
 9 versions of the ads were disseminated with the correct disclaimer.”<sup>11</sup> The Meta Ad Library  
 10 reflects that two ads appeared with the incorrect disclaimer.<sup>12</sup>

11 The Response states that the Lafazan Facebook page is “a personal asset of Mr.  
 12 Lafazan[’s], not an official account for either” the County Committee or the Federal Committee,  
 13 and that it “cost Mr. Lafazan no money to set up or maintain.”<sup>13</sup> It also contends that the page  
 14 “has no value under federal campaign finance law.”<sup>14</sup> Lafazan attests that he launched the

<sup>7</sup> Lafazan Resp. at 1. The County Committee did not submit a response.

<sup>8</sup> Lafazan Decl.

<sup>9</sup> Lafazan Resp., Ex. 2 (Cty. Comm. 2023 32-Day Pre-General Report); *id.*, Ex 3 (Images of Facebook Ad Library); *id.*, Ex. 4 (“Page Transparency” information of Josh Lafazan Facebook page); *id.*, Ex. 5 (Cty. Comm., 2023 11-Day Pre-General Report); *id.*, Ex. 6 (Cty. Comm., 2023 July Periodic Report); *id.*, Ex. 7 (Federal Comm., 2023 July Quarterly Report, Sched. B).

<sup>10</sup> Lafazan Resp. at 2; Lafazan Decl. ¶ 4.

<sup>11</sup> Lafazan Resp. at 2; *see* Lafazan Decl. ¶ 4; Lafazan Resp., Ex. 3 (Images of Facebook Ad Library).

<sup>12</sup> *Josh Lafazan*, META AD LIBRARY, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=319105405194898&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped&search\\_type=page&media\\_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=319105405194898&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&search_type=page&media_type=all) (last visited Oct. 8, 2024) (scroll down to “Launched in October 2023” and compare the last two advertisements; click “see summary details” for dates the advertisements were disseminated and associated cost estimates).

<sup>13</sup> Lafazan Resp. at 2.

<sup>14</sup> *Id.* at 3 (citing 11 C.F.R. §§ 100.26, 100.94, 100.155).

1 Facebook page in 2017 “at no cost to [him]self,”<sup>15</sup> and that it “is a personal asset of mine, and I  
2 have used it for my nonfederal and federal campaigns. However, the page is not owned or  
3 maintained by either campaign committee.”<sup>16</sup> The “Page transparency” information for the  
4 account states that “Josh Lafazan for Responsible Government is responsible for this Page,” and  
5 that this connection has been “authenticated using trusted documentation.”<sup>17</sup>

6 The Response states that “the federal and nonfederal campaigns each have their own,  
7 wholly separate ActBlue pages,” for which each campaign pays its own fees.<sup>18</sup> It states that the  
8 County Committee reported no disbursements to ActBlue or any other vendor because Lafazan  
9 had “not yet decided whether he would run for re-election” until after the July reporting period  
10 for New York election filings, and the County Committee had no activity to report.<sup>19</sup>

11 The Response further states that, even if any of the conduct alleged had occurred, it  
12 would not constitute a violation of the Act, as candidates simultaneously running for federal and  
13 local office may disburse unlimited funds from their federal committees for the benefit of their  
14 nonfederal committees, so long as doing so complies with state law.<sup>20</sup>

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<sup>15</sup> Lafazan Decl. ¶ 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Josh Lafazan: Page Transparency*, FACEBOOK, [https://www.facebook.com/JoshLafazan/about\\_profile\\_transparency](https://www.facebook.com/JoshLafazan/about_profile_transparency) (last visited Oct. 8, 2024) [hereinafter Lafazan Facebook Page Transparency].

<sup>18</sup> *Id.*; Lafazan Decl. ¶ 5.

<sup>19</sup> Lafazan Resp. at 3; Lafazan Decl. ¶ 6.

<sup>20</sup> Lafazan Resp. at 3 (citing 11 C.F.R. §§ 113.2(d), 300.62, 300.63).

1     **III.     LEGAL ANALYSIS**

2             **A.     The Commission Dismisses the Allegation That the Federal Committee Made**  
3                     **Disbursements to Benefit the County Committee in Violation of 52 U.S.C.**  
4                     **§ 30125(e)(1)(B) and 11 C.F.R. § 110.3(d)**

5             Under the Act, a federal candidate or officeholder, agents thereof, or an entity directly or  
6 indirectly established, financed, maintained, or controlled by or acting on behalf of one or more  
7 candidates or federal officeholders may not solicit, receive, direct, transfer, or spend non-federal  
8 funds in connection with a state election.<sup>21</sup> The Act, however, provides a limited exception to  
9 this restriction for a federal candidate or officeholder who is or was also a candidate for a state or  
10 local office, so long as the solicitation, receipt, or spending of funds: (1) is “solely in connection  
11 with such election for State or local office;” (2) “refers only” to him or her, to other candidates  
12 for that same state or local office, or both; and (3) is permitted under state law.<sup>22</sup> Further, the  
13 Act permits candidates to use campaign funds for a wide variety of enumerated purposes,  
14 including “for donations to State and local candidates subject to the provisions of State law,” or  
15 “any other lawful purpose” that does not constitute conversion of campaign funds to “personal  
16 use.”<sup>23</sup>

17             Here, because Lafazan was running for both federal and state offices, the disbursement of  
18 Federal Committee funds for the benefit of the County Committee would appear to be a  
19 permissible use of campaign funds and does not appear to violate New York law, which allows

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<sup>21</sup> 52 U.S.C. § 30125(e)(1)(B).

<sup>22</sup> *See id.* § 30125(e)(2); *see also* 11 C.F.R. § 300.63; Advisory Opinion (“AO”) 2016-25 at 2 (Mike Pence for Ind.).

<sup>23</sup> *See* 52 U.S.C. § 30114(a), (b); *see also* 11 C.F.R. §§ 113.1, 113.2; AO 2018-15 at 3 (Ron Wyden); AO 2018-06 at 2 (Liuba for Congress).

1 such transfers between the authorized committees of the same candidate.<sup>24</sup> Further, the  
2 Respondents attest that the Federal Committee did not, in fact, make any disbursements for the  
3 benefit of the County Committee, and this Office is in possession of no information contradicting  
4 those assertions. Accordingly, the Commission dismisses the allegation that the Committees  
5 violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d).

6 **B. The Commission Dismisses the Allegations Concerning the Dual Use of**  
7 **Lafazan’s Facebook Page**

8 The Act prohibits federal candidates, officeholders, agents of such candidates or  
9 officeholders, or “an entity directly or indirectly established, financed, maintained or controlled  
10 by or acting on behalf of [one] or more candidates or individuals holding Federal office” from  
11 soliciting, receiving, directing, transferring, or spending funds “in connection with an election for  
12 Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting  
13 requirements of [the] Act.”<sup>25</sup> Further, the Commission’s regulations prohibit “[t]ransfers of  
14 funds or assets from a candidate’s campaign committee or account for a nonfederal election to  
15 his or her principal campaign committee or other authorized committee for a federal election.”<sup>26</sup>

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<sup>24</sup> Under New York election law, campaign contributions are subject to limits established and annually adjusted by the state legislature. N.Y. Elec. Law § 14-114; N.Y. Comp. Codes R. & Regs. Tit. 9, § 6214.0. “Contributions” include “any funds received by a political committee from another political committee to the extent such funds do not constitute a transfer.” N.Y. Elec. Law § 14-100(9)(2). A “transfer” includes “any exchange of funds or anything of value between political committees authorized by the same candidate and taking part solely in his campaign.” *Id.* § 14-100(10). Transfers are not included in the contribution limit provided under § 14-114 of the New York Election Law. *See* Factual & Legal Analysis (“F&LA”) at 3-4, MUR 7506 (Sean Patrick Maloney for Congress, *et al.*) (“Here, because Maloney was running for both federal and state offices, the transfer of funds from the Federal Committee to the State Committee appears to be a permissible use of campaign funds and does not appear to violate New York law, which allows such transfers between the authorized committees of the same candidate.” (citing N.Y. Elec. Law §§ 14-100(9)(2), (10), 14-114; N.Y. Comp. Codes R. & Regs. Tit. 9, § 6214.0)).

<sup>25</sup> 52 U.S.C. § 30125(e)(1).

<sup>26</sup> 11 C.F.R. § 110.3(d).

1           The available information indicates that Lafazan owned the Facebook account and made  
2 it available for use by both his committees, which paid for advertisements on the page.<sup>27</sup> When  
3 the Lafazan Facebook account was created, it bore the name “Legislator Josh Lafazan,” and the  
4 name was later changed to simply “Josh Lafazan.”<sup>28</sup> Furthermore, Lafazan attests that the  
5 Facebook page is his “personal asset,” and that it is “not owned or maintained by either  
6 campaign committee.”<sup>29</sup>

7           Under these circumstances, the available information appears to indicate that Lafazan  
8 owned the Facebook account and made it available for use by both Committees. Accordingly,  
9 the County Committee could not transfer it to the Federal Committee, and therefore the  
10 Commission dismisses the allegation that the County Committee made a prohibited transfer to  
11 the Federal Committee in the form of the Lafazan Facebook account in violation of 52 U.S.C.  
12 § 30125(e)(1) and 11 C.F.R. § 110.3(d).

13           A contribution is any gift, subscription, loan, advance, or deposit of money or anything of  
14 value made by any person for the purpose of influencing any election for Federal office.<sup>30</sup>  
15 “Anything of value,” in turn, includes all “in-kind contributions,” such as “the provision of any  
16 goods or services without charge or at a charge that is less than the usual and normal charge for

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<sup>27</sup> *Josh Lafazan: About*, Meta Ad Library, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=319105405194898&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped&search\\_type=page&media\\_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=319105405194898&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&search_type=page&media_type=all) (last visited Oct. 8, 2024) (navigate to “About” near the top of the page and scroll down to the section labeled “Disclaimers”).

<sup>28</sup> See Compl. at 1; *id.*, Ex. 2 (Lafazan Facebook Account Page Transparency); Lafazan Resp. at 1-2; *id.*, Ex. 4 (Lafazan Facebook Account Page Transparency); Lafazan Facebook Page Transparency.

<sup>29</sup> Lafazan Decl. ¶ 3.

<sup>30</sup> 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52.

1 such goods or services.”<sup>31</sup> Under the Act, an individual may not make a contribution to a  
2 candidate with respect to any election in excess of the legal limit.<sup>32</sup> However, “candidates for  
3 Federal office may make unlimited expenditures from personal funds,” which include in-kind  
4 contributions to their principal campaign committees.<sup>33</sup> A candidate committee must report the  
5 identity of any person who makes a contribution to the committee during the reporting period,  
6 whose contributions have an aggregate value in excess of \$200 per election cycle.<sup>34</sup>

7 Here, while the Federal Committee did not report an in-kind contribution for the use of  
8 Lafazan’s social media accounts, the informational harm associated with the lack of disclosure is  
9 low: Lafazan’s relationship with the account is apparent, since it bears his name, and the  
10 “About” page states that Josh Lafazan for Responsible Government is responsible for the page.  
11 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the allegation  
12 that the Federal Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.3(a), 104.13(a)  
13 by failing to report an in-kind contribution.<sup>35</sup>

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<sup>31</sup> 52 U.S.C. § 30101(8); 11 C.F.R. § 100.52(d)(1); *see also* 52 U.S.C. § 30101(8)(B)(i) (excluding from the definition of contribution “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee”); 11 C.F.R. § 100.74 (same).

<sup>32</sup> 52 U.S.C. § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b)(1).

<sup>33</sup> 11 C.F.R. §§ 110.10, 100.33. “Personal funds” include all assets in which a candidate has legal title or an equitable interest, as well as salary and other earned income from *bona fide* employment; dividends and proceeds from the sale of the candidate’s stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; and proceeds from lotteries and similar legal games of chance. 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

<sup>34</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

<sup>35</sup> *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).