

APRIL 18, 2024 11:49 AM

BEFORE THE FEDERAL ELECTION COMMISSION

OFFICE OF GENERAL COUNSEL

Monica Rojas

[REDACTED]
San Antonio Texas 78247**MUR 8243**

v.

Brandon Herrera,
Brandon Herrera for Congress,
Because Real Americans Never Doubt Our Nation ("BRANDON PAC"),
Brandon Herrera Victory Committee,
and Thomas Datwyler, in his official capacity as Treasurer.
17503 La Cantera Parkway, 104 - 432
San Antonio, TX 78257

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against: (a) Brandon Herrera (FEC ID H4TX23120); (b) his principal campaign committee Brandon Herrera for Congress (FEC ID C00844324); (c) his leadership PAC "BRANDON PAC" (FEC ID C00850917); and (d) his joint fundraising committee (the "JFC") Brandon Herrera Victory Committee (FEC ID C00850925), in which (b) and (c) are the participating committees.

2. Mr. Herrera is a candidate for the upcoming Republican primary runoff in Texas' 23rd Congressional District.

3. This complaint focuses on the expenses the JFC has reported to the FEC in the first quarter of 2024.¹ Specifically, the JFC has reported a total of \$267,000 in payments for:

- "Campaign Consulting";
- "Media Placement"; and
- "Texting."

4. Aside from credit card fees and administrative expenses, the JFC has reported *no other expenses*. Notably, the JFC has reported *no expenses related specifically to fundraising*.

5. It beggars belief that all of these reported expenses were legitimate fundraising expenses for the JFC. Rather, the reported purposes for the expenses correspond to traditional campaign activities. On their face, the "Campaign Consulting" expenses pertain to services provided to the campaign and not to the JFC. The expenses for "Media Placement" and "Texting" also pertain to activities typically conducted on behalf of a campaign in the form of mass media advertising and voter outreach – not fundraising.

¹ <https://docquery.fec.gov/cgi-bin/forms/C00850925/1774008/sb/ALL>

6. Additionally, all of these expenses have been paid to the “Texas Strategy Group,” with a purported address at 499 South Capitol Street, SW #405, Washington, DC 20003. FEC records² associate this address with 9Seven Consulting, which is the former compliance firm of Mr. Herrera’s campaign treasurer Thomas Datwyler.³ Mr. Datwyler is not known to be in the business of providing fundraising services.⁴

7. Moreover, FEC records⁵ show the JFC is the only FEC filer to have ever reported any payments to the “Texas Strategy Group.”

8. This circumstantial evidence provides clear reason to believe that Mr. Herrera and the JFC have been misreporting payments to the purported “Texas Strategy Group” in an effort to obfuscate the true nature of these payments.

9. More fundamentally, there is clear reason to believe that Mr. Herrera is illegally using his joint fundraising committee to pay directly for his campaign expenses instead of using his principal campaign committee to do so.

10. The FEC’s rules at 11 C.F.R. § 102.17 allow JFCs to act only as a fundraising vehicle. As the FEC has explained, “Specifically, the [JFC] is responsible for collecting contributions, paying the costs of the fundraising effort, and disbursing the net proceeds to each participant.”⁶

11. The purpose of the joint fundraising rules is to ensure that each participating committee in a joint fundraising effort pays for its appropriate share of the fundraising and administrative expenses based on the proportion of funds raised for each participant, and no participating committee is subsidizing any of the other participating committees.⁷

12. The FEC rules do not allow JFCs to supplant a candidate’s campaign committee altogether by undertaking traditional campaign functions like paying for campaign consulting, mass media advertising, and voter outreach, as Mr. Herrera has done. By doing so, Mr. Herrera is effectively having his leadership PAC (the only other participating committee in his JFC) impermissibly subsidize the costs of his campaign. Relatedly, while his leadership PAC may contribute up to \$5,000 per election to his campaign committee, his campaign committee has not reported any in-kind contributions from his leadership PAC in the form of the PAC’s subsidization of his campaign costs through the JFC.⁸

² <https://docquery.fec.gov/cgi-bin/forms/C00693663/1511676/sb/ALL>

³ <https://9sevenfec.com/>

⁴ *See id.*

⁵ <https://docquery.fec.gov/cgi-bin/forms/C00850925/1774008/sb/ALL>

⁶ FEC, Explanation and Justification for Final Rules for Transfer of Funds; Collecting Agents, Joint Fundraising, 48 Fed. Reg. 26296, 26298 (Jun. 7, 1983).

⁷ *See id.*

⁸ *See* FEC, Brandon Herrera for Congress, 2023-2024 Receipts, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00844324&two_year_transaction_period=2024.

13. For the reasons discussed above, the FEC should impose appropriate penalties for Mr. Herrera's clear violation of the joint fundraising rules by illegally using his JFC to pay for his campaign expenses.

Sincerely,

Monica Rojas

Monica Rojas

April 17, 2024

VERIFICATION

The complainant listed below hereby verifies that the statements made in the attached Complaint are, upon his information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

Monica Rojas
Monica Rojas

Sworn to and subscribed before me this 17 day of April, 2024.

Marian K Stanko
Notary Public

