

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 8243

DATE COMPLAINT FILED: April 18, 2024

DATE OF NOTIFICATIONS: April 24, 2024

LAST RESPONSE RECEIVED: June 7

DATE ACTIVATED: August 23, 2024

EXPIRATION OF SOL: April 15, 2029

ELECTION CYCLE: 2024

11 COMPLAINANT:

Monica Rojas

12 RESPONDENTS:

Brandon Herrera
Brandon Herrera for Congress and Thomas
Datwyler in his official capacity as treasurer
BASED PAC and Thomas Datwyler in his official
capacity as treasurer, formerly known as Because
Real Americans Never Doubt Our Nation
("BRANDON PAC")
Brandon Herrera Victory Committee and
Thomas Datwyler in his official capacity as
treasurer

23 RELEVANT STATUTES 24 AND REGULATIONS:

- 52 U.S.C. § 30101(8)(A)(i), (11)
- 52 U.S.C. § 30102(e)(3)
- 52 U.S.C. § 30104(a), (b)(5), (b)(6)
- 52 U.S.C. § 30116(a)(1)(A), (f)
- 11 C.F.R. § 100.5(g)
- 11 C.F.R. § 100.10
- 11 C.F.R. § 100.12
- 11 C.F.R. § 100.52(a), (d)(1)
- 11 C.F.R. § 102.17(a), (b), (c)
- 11 C.F.R. § 104.3(b)(3), (b)(4)(i)
- 11 C.F.R. § 110.9

36 INTERNAL REPORTS CHECKED: Disclosure Reports

37 FEDERAL AGENCIES CHECKED: None

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1 **I. INTRODUCTION**

2 The Complaint in this matter alleges that Brandon Herrera, a 2024 candidate in Texas's
3 23rd congressional district; his principal campaign committee, Brandon Herrera for Congress
4 and Thomas Datwyler in his official capacity as treasurer (the "Herrera Committee"); his
5 leadership PAC, BASED PAC and Thomas Datwyler in his official capacity as treasurer (the
6 "Leadership PAC"); and a joint fundraising committee in which the Herrera Committee and the
7 Leadership PAC participate, Brandon Herrera Victory Committee and Thomas Datwyler in his
8 official capacity as treasurer (the "Joint Fundraising Committee"), violated the Federal Election
9 Campaign Act of 1971, as amended (the "Act"), by using the Joint Fundraising Committee's
10 funds that were attributable to the Leadership PAC to pay for campaign-related activities that
11 should have been paid for by the Herrera Committee, causing the Leadership PAC to make and
12 the Herrera Committee to receive excessive, unreported in-kind contributions as well as the Joint
13 Fundraising Committee to violate the rules on joint fundraising. The Complaint also alleges that
14 the Joint Fundraising Committee misreported the purpose of disbursements in order to obfuscate
15 their true nature.

16 Respondents deny the allegations, arguing that the Joint Fundraising Committee's
17 disbursements were permissible for activities beyond fundraising itself, such as advertising,
18 administrative, and personnel. Respondents refute the specific allegation that any funds
19 attributable through the joint fundraising agreement to the Leadership PAC were used to pay for
20 any expenses of the Herrera Committee, and therefore deny that the Leadership PAC made an
21 excessive in-kind contribution. Respondents also assert that, in the alternative, because the
22 Herrera Committee and the Leadership PAC are affiliated, they were not required to allocate
23 costs relating to joint fundraising, *i.e.*, assuming arguendo that if the Joint Fundraising

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1 Committee made a payment for the Herrera Committee's benefit, it was permissible for it to use
2 funds from the Leadership PAC without resulting in an in-kind contribution from the Leadership
3 PAC to the Herrera Committee.

4 As explained below, the Response asserts, and we have no factual basis to dispute, that
5 the disbursements made by the Joint Fundraising Committee were to the benefit of both the
6 Leadership PAC and the Herrera Committee and for joint fundraising purposes, rather than to
7 fund the Herrera Committee's campaign expenses. Therefore, the Complaint's allegation
8 regarding the true nature of the disbursements is speculative, and we recommend that the
9 Commission dismiss the allegations: that the Joint Fundraising Committee violated 52 U.S.C.
10 § 30102(e)(3) and 11 C.F.R. § 102.17(b)(1) by using Joint Fundraising Committee funds
11 attributable to the Leadership PAC to pay for campaign-related activities on behalf of the Herrera
12 Committee; that the Leadership PAC violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R.
13 § 110.1(b) by making excessive contributions to the Herrera Committee, and that the Leadership
14 PAC violated 52 U.S.C. § 30104(b)(5) and 11 C.F.R. § 104.3(b)(3)(i) by failing to report the
15 expenditures; that Herrera and the Herrera Committee violated 52 U.S.C. § 30116(f) and
16 11 C.F.R. § 110.9 by knowingly accepting the in-kind contributions and that the Herrera
17 Committee violated 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b)(4) by failing to report the
18 in-kind contributions; and that the Herrera Committee and the Joint Fundraising Committee
19 violated 52 U.S.C. § 30104(b)(5)-(6) and 11 C.F.R. 104.3(b)(4) by misreporting the purpose of
20 those disbursements.

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1 **II. FACTUAL BACKGROUND**

2 Brandon Herrera ran in the 2024 primary election for Texas's 23rd Congressional
 3 District,¹ and qualified for a subsequent runoff election, which he lost.² Brandon Herrera for
 4 Congress is Herrera's principal campaign committee.³ BASED PAC is a leadership PAC
 5 controlled by Herrera.⁴ Brandon Herrera Victory Committee is a joint fundraising committee of
 6 which the Herrera Committee and Leadership PAC are participants.⁵ Herrera disclosed the Joint
 7 Fundraising Committee on his Statement of Candidacy as an authorized committee.⁶

8 The Complaint alleges that the Joint Fundraising Committee used funds allocated to the
 9 Leadership PAC to pay the Herrera Committee's campaign expenses, and therefore that the Joint
 10 Fundraising Committee violated the rules on joint fundraising, and the Leadership PAC made,
 11 and the Herrera Committee knowingly accepted, excessive in-kind contributions.⁷ Focusing on

¹ Texas Secretary of State, Official Canvass Report, 2024 March 5th Republican Primary (Mar. 5, 2024) at 5, <https://results.texas-election.com/static/data/Reports/49666/OfficialCanvassReport.pdf?v=1726000006446>.

² Texas Secretary of State, Official Canvass Report, 2024 May 28th Republican Primary Runoff (May 28, 2024) at 1, <https://results.texas-election.com/static/data/Reports/50027/OfficialCanvassReport.pdf?v=1725652331438>.

³ Brandon Herrera for Congress, Amended 2023 Statement of Organization at 3 (Sept. 18, 2023), <https://docquery.fec.gov/pdf/796/202309189597071796/202309189597071796.pdf>.

⁴ Because Real Americans Never Doubt Our Nation PAC, Amended 2024 Statement of Organization at 3 (Mar. 26, 2024) <https://docquery.fec.gov/pdf/991/202403269627407991/202403269627407991.pdf>; Brandon Herrera Victory Committee, Amended 2023 Statement of Organization at 2 (Sept. 18, 2023), <https://docquery.fec.gov/pdf/778/202309189597071778/202309189597071778.pdf> (Statement of Organization at time of Complaint).

⁵ Brandon Herrera Victory Committee, 2023 Statement of Organization at 2 (Sept. 18, 2023), <https://docquery.fec.gov/pdf/778/202309189597071778/202309189597071778.pdf>; Resp. at 3 (June 7, 2024). The Republican Party of Texas is listed as a participant in an amended Statement of Organization filed after the date of this Complaint, however, relevant disclosure reports do not show activity pertaining to this entity prior to the primary runoff election. *See* Amended 2023 Statement of Organization at 2, 5 (May 8, 2024), <https://docquery.fec.gov/pdf/570/202405089645562570/202405089645562570.pdf>.

⁶ Brandon Herrera, Amended 2023 Statement of Candidacy at 1 (Sept. 18, 2023), <https://docquery.fec.gov/pdf/801/202309189597071801/202309189597071801.pdf>.

⁷ Compl. at 2 (Apr. 18, 2024).

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1 the Joint Fundraising Committee's 2024 April Quarterly Report, the Complaint alleges that
 2 \$267,000 in payments for "Campaign Consulting," "Media Placement," and "Texting," are all
 3 "activities typically conducted on behalf of a campaign in the form of mass media advertising
 4 and voter outreach – not fundraising."⁸ The Complaint further alleges that all of the expenses in
 5 question were paid to "Texas Strategy Group," an entity that shares the same address as the
 6 current treasurer's former compliance firm.⁹ The Complaint asserts that "[t]his circumstantial
 7 evidence provides clear reason to believe that Herrera and the Joint Fundraising Committee have
 8 been misreporting payments" and that "Herrera is illegally using his joint fundraising committee
 9 to pay directly for his campaign expenses" that should be paid by his principal campaign
 10 committee in violation of 11 C.F.R. § 102.17(b)(1).¹⁰

11 The Response asserts that the Complaint's charges are "purely speculative,"¹¹ "not
 12 supported by any actual facts or evidence that the Respondents acted in violation of the Act,"¹²
 13 and that the Commission has recognized that "a joint fundraising committee can serve as a
 14 vehicle for the payment of fundraising, advertising, administrative and/or personnel costs"¹³ and

⁸ *Id.* at 1; *see* Brandon Herrera Victory Committee, 2024 April Quarterly Report at 96-99 (Apr. 15, 2024), <https://docquery.fec.gov/pdf/368/202404159627878368/202404159627878368.pdf>.

⁹ Compl. at 2. FEC disclosure reports show that, in addition to the Joint Fundraising Committee, the Herrera Committee and the Leadership PAC both disclosed disbursements to Texas Strategy Group. *FEC Disbursements: Filtered Results*, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=texas+Strategy+Group&two_year_transaction_period=2024&min_date=01%2F01%2F2023&max_date=12%2F31%2F2024 (last visited Oct. 31, 2024) (showing all disbursements by Respondent committees to "Texas Strategy Group" during the 2024 election cycle).

¹⁰ Compl. at 2. The Complaint also quotes Transfer of Funds; Collecting Agents, Joint Fundraising, 48 Fed. Reg. 26296, 26298 (June 7, 1983) ("Specifically the [JFC] is responsible for collecting contributions, paying the costs of the fundraising effort, and disbursing the net proceeds to each participant").

¹¹ Resp. at 1 (June 7, 2024).

¹² *Id.* at 2.

¹³ *Id.* (citing Advisory Opinion 2007-24 (Burkee/Walz) ("AO 2007-24")).

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1 therefore “can do more than just serve as a ‘fundraising vehicle.’”¹⁴ The Response also argues
 2 the participants here were not required to allocate their expenses, asserting that participants in a
 3 fundraising agreement are only required to allocate costs for campaign expenses if they are not
 4 affiliated.¹⁵ The Response states that the two participating committees here were affiliated
 5 because they are “maintained and controlled by the same person, namely Brandon Herrera.”¹⁶
 6 The Response also asserts that the terms of the joint fundraising agreement were followed as to
 7 allocation between the participants, and that none of the disbursements at issue “were improperly
 8 spent . . . for the principal campaign committee – Brandon Herrera for Congress.”¹⁷ Finally, the
 9 Response also asserts that “to ensure there is 100% clarity on that issue, there were no funds
 10 allocated or attributable to the leadership PAC . . . that were used to pay for any expenses of the
 11 principal campaign committee.”¹⁸

12 **III. LEGAL ANALYSIS**

13 **A. The Commission Should Dismiss the Allegation that Respondents Violated**
 14 **52 U.S.C. §§ 30102(e)(3), 30116(a)(1)(A), 30116(f) and 11 C.F.R.**
 15 **§§ 102.17(b)(1), 110.1(b), 110.9 by Using Funds Attributable to the**
 16 **Leadership PAC for the Herrera Committee’s Campaign Expenses,**
 17 **Resulting in an Excessive, In-Kind Contribution**

18 The Act and Commission regulations allow candidates and political committees to
 19 engage in joint fundraising by either establishing a separate political committee or selecting a
 20 participating committee to serve as their joint fundraising representative.¹⁹ The joint fundraising

14 *Id.* (quoting Compl. at 2).

15 *See id.* at 2-3.

16 *Id.* at 3.

17 *Id.*

18 *Id.*

19 52 U.S.C. § 30102(e)(3)(A)(ii); 11 C.F.R. § 102.17(a).

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1 representative “shall collect contributions, pay fundraising costs from gross proceeds and from
 2 funds advanced by participants, and disburse net proceeds to each participant,”²⁰ and also
 3 comply with applicable recordkeeping and reporting requirements.²¹ Joint fundraising
 4 participants also must enter into a written agreement that identifies the fundraising representative
 5 and states a formula for allocating the fundraising proceeds.²² A participant may pay for another
 6 unaffiliated participant’s expenses, though it is treated as a contribution and subject to
 7 contribution limits.²³ While affiliated committees may make unlimited contributions to one
 8 another, an authorized committee cannot be affiliated with an unauthorized committee, such as a
 9 leadership PAC.²⁴ Consequently, when not all participants are affiliated, each participant must
 10 pay its own allocated amount of joint fundraising expenses, and no participant may make a
 11 contribution to any other participant in excess of the contribution limits, unless the participants
 12 are affiliated.²⁵ Additionally, with the exception of a committee established and maintained by a
 13 political party, an unauthorized committee, such as a leadership PAC, that does not meet the
 14 requirements of a multicandidate committee is limited to an aggregate of \$3,300 per election in
 15 contributions to any candidate or authorized committee for the 2024 election cycle.²⁶ No

²⁰ 11 C.F.R. § 102.17(b)(1).

²¹ *Id.* § 102.17(c)(4), (c)(8).

²² *Id.* § 102.17(c)(1).

²³ *Id.* § 102.17(c)(7)(i)(B). Affiliated committees may make unlimited contributions to one another. *Id.* § 102.17(c)(7)(ii); *see id.* §§ 100.5(g)(2), 110.3. An authorized committee, however, cannot be affiliated with an unauthorized committee, such as a leadership PAC. *Id.* § 100.5(e)(6), (g)(5).

²⁴ 11 C.F.R. § 100.5(e)(6), (g)(5), 102.17(c)(7)(i)-(ii); *see id.* §§ 100.5(g)(2), 110.3.

²⁵ 11 C.F.R. § 102.17(c)(7)(i)-(ii); *see id.* Part 110.

²⁶ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b).

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1 candidate or political committee may knowingly accept a contribution in excess of the
2 limitations.²⁷

3 The Act defines the term “contribution” to include “any gift, subscription, loan, advance,
4 or deposit, or anything of value made by any person for the purpose of influencing any election
5 for Federal office.”²⁸ The term “anything of value” includes all in-kind contributions, which
6 generally involve “the provision of any goods or services without charge or at a charge that is
7 less than the usual and normal charge for such goods or services.”²⁹ Political committees are
8 required to report the contributions they receive and disbursements made on a periodic basis.³⁰

9 In addition to the amount of each contribution, authorized committees in particular are required
10 to report certain identifying information about the contributor if the amount of the contribution or
11 contributions in aggregate exceeds \$200 in a calendar year, including the contributor’s name,
12 address, occupation and name of employer.³¹

13 Additionally, the Act and Commission regulations require political committees to report
14 the name and address of each person that makes a contribution aggregating more than \$200 per
15 calendar year.³² The Act and Commission regulations also require political committees to report
16 the name and address of each person to whom they make expenditures or other disbursements

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

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

²⁹ 11 C.F.R. § 100.52(d)(1).

³⁰ 52 U.S.C. § 30104(a), (b); *see also* 11 C.F.R. §§ 104.3, 104.5.

³¹ 11 C.F.R. §§ 100.12, 104.3(b).

³² 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

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1 aggregating more than \$200 per calendar year, as well as the date, amount, and purpose of such
 2 disbursements.³³

3 The Commission previously has permitted activities that included both a fundraising and
 4 a campaigning or advertising component to be conducted by participants in a joint fundraising
 5 agreement so long as the funds and associated costs were allocated appropriately between the
 6 two participant committees.³⁴ However, in that case, the participating authorized committees
 7 proposed to pay such allocated costs directly or through personal advances; they did not ask, and
 8 the Commission did not decide, whether such costs could be paid by the joint fundraising
 9 committee.

10 The Complaint alleges that Respondents violated the Act by using the Joint Fundraising
 11 Committee's funds that were attributable to the Leadership PAC to pay for campaign-related
 12 activities that should have been paid for by the Herrera Committee, causing the Leadership PAC
 13 to make excessive, unreported in-kind contributions to the Herrera Committee. The Complaint
 14 also alleges that the Joint Fundraising Committee misreported the purpose of disbursements in
 15 order to obfuscate their true nature.

³³ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (b)(4)(i).

³⁴ See AO 2007-24 at 4-5, 7-8. “Expenses for joint advertising efforts that *include solicitations* must be allocated to [the two committees] under the joint fundraising agreement based on each candidate’s allocation of receipts from the joint advertising” and “joint campaign events and advertising activities that *do not include solicitations*, expenditures made on behalf of more than one clearly identified candidate must be “attributed to each such candidate according to the benefit reasonably expected to be derived.” *Id.* (emphasis added) (citing 11 C.F.R. § 106.1(a)(1)). Additionally, the Commission recently considered, but was unable to render an advisory opinion in a request that posed the question of whether the payment of costs for television advertisements that included both campaigning for a specific candidate and a solicitation (accessed via a QR code) for the applicable joint fundraising committee, could be paid for by the applicable joint fundraising committee in accordance with the allocation formula, and alternatively, whether these expenses could be paid only for the portion of the ad that contained a solicitation, based on the allocation of the time/space of the portion of the ad dedicated to the solicitation, in accordance with the allocation formula established in the joint fundraising agreement. See Letter to Jacquelyn Lopez, *et al.*, counsel for Requestor (Oct. 10, 2024), Advisory Opinion Request 2024-13 (DSCC, Montanans for Tester, and Gallego for Arizona); *DCCC v. FEC*, No. 24-cv-2935-RDM (D.C. Cir. 2024).

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1 Here, disbursements made by the Joint Fundraising Committee on behalf of the Herrera
 2 Committee would only comprise an excessive and unreported in-kind contribution from the
 3 Leadership PAC to the Herrera Committee if any portion of the funds were allocable to the
 4 Leadership PAC, above the contribution limits.³⁵ In such a scenario, the Joint Fundraising
 5 Committee would be making disbursements to the benefit of the Herrera Committee with funds
 6 that are attributable to the Leadership PAC and which should only have been transferred to or
 7 used to benefit the Leadership PAC. However, the Respondents assert that no funds attributable
 8 to the Leadership PAC were used by the Joint Fundraising Committee to pay for the Herrera
 9 Committee's expenses and we have no information to the contrary.³⁶

10 The Complaint assumes, without providing supporting evidence, that funds attributable to
 11 the Leadership PAC were used to fund activities that benefited the Herrera Committee. On their
 12 face, the reported disbursements at issue — for “Campaign Consulting,” Media Placement,” and
 13 “Texting” — do not appear, as the Complaint suggests, to have been for activities unrelated to
 14 joint fundraising that must have been for the specific benefit of the Herrera Committee.³⁷ The
 15 Complaint also asserts, without any supporting evidence, that the Joint Fundraising Committee
 16 may have misreported the purpose of the disbursements to hide their true purpose. They were
 17 made to “Texas Strategy Group,” an entity that shares the same address as the Herrera
 18 Committee’s treasurer’s former compliance firm, which the Complaint takes as a suggestion that
 19 the payments were really to benefit the Herrera Committee and thus misreported. However, it is

³⁵ See 11 C.F.R. § 102.17(c)(6), (7). Additionally, the Leadership PAC has not made contributions to five or more candidates and therefore is not a multicandidate committee. See *id.* § 100.5(e)(3)(iii). Thus, it was limited to \$3,300 per election in contributions to any candidate or candidate’s authorized committee in the 2024 election cycle. 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b).

³⁶ See Resp. at 2.

³⁷ See Compl. at 1-2.

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1 speculative to take the connection between the Texas Strategy Group and the Herrera Committee
2 to conclude that any payments to the Texas Strategy Group by the Joint Fundraising Committee
3 were to benefit the Herrera Committee. To the contrary, the Response explains that “no funds
4 allocated or attributable to the leadership PAC that were used to pay for any expenses of the
5 principal campaign committee.”³⁸

6 Accordingly, the Commission should dismiss the allegations that the Joint Fundraising
7 Committee violated 52 U.S.C. § 30102(e)(3) and 11 C.F.R. § 102.17(b)(1) by using Joint
8 Fundraising Committee funds to pay for campaign-related activities on behalf of the Herrera
9 Committee; that the Leadership PAC violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R.
10 § 110.1(b) by making excessive contributions through the Joint Fundraising Committee, and that
11 the Leadership PAC violated § 52 U.S.C. § 30104(b)(5) and 11 C.F.R. § 104.3(b)(3)(i), by
12 failing to report the expenditures; and that Herrera and the Herrera Committee violated 52 U.S.C.
13 § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting the in-kind contribution and that the
14 Herrera Committee violated 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b)(4) by failing to
15 report the in-kind contributions.

16 **B. The Commission Should Dismiss the Allegation that the Joint Fundraising
17 Committee violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R.
18 § 104.3(b)(4) by Misreporting the Purpose of Disbursements**

19 The Act and Commission regulations require political committees to report the name and
20 address of each person to whom they make expenditures or other disbursements aggregating
21 more than \$200 per calendar year, as well as the date, amount, and purpose of such

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Resp. at 3.

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1 disbursements.³⁹ Commission regulations define “purpose” as a “brief statement or description
 2 of why the disbursement was made.”⁴⁰ “The ‘purpose of disbursement’ entry, when considered
 3 along with the identity of the disbursement recipient, must be sufficiently specific to make the
 4 purpose of the disbursement clear.”⁴¹ The Commission has determined that the description of
 5 purpose should be sufficient to allow “a person not associated with the committee [to] easily
 6 discern why the disbursement was made when reading the name of the recipient and the
 7 purpose.”⁴² Examples of sufficient statements of purpose include, but are not limited to, dinner
 8 expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense
 9 reimbursement, and catering costs.⁴³

10 Although committees may not simply label a disbursement as “consulting,” they may
 11 specify a type of consulting service to ensure that the purpose provided in their reports is
 12 considered “adequate” by the Commission, including descriptions such as “campaign
 13 consulting” or “fundraising consulting.”⁴⁴ For example, the Commission has provided guidance

³⁹ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (b)(4)(i); *see also FEC-Purposes of Disbursements*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last visited Oct. 17, 2024) (providing a non-exhaustive list of inadequate and adequate purposes).

⁴⁰ 11 C.F.R. § 104.3(b)(3)(i)(A)-(B), (b)(4)(i)(A).

⁴¹ See Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007) (“Purpose Statement of Policy”) (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (b)(4)(i)(A)).

⁴² Purpose Statement of Policy, 72 Fed. Reg. at 888; *see* Factual & Legal Analysis (“F&LA”) at 11-14, MUR 7923 (Friends of David Schweikert *et al.*) (discussion of adequacy of purpose of disbursement).

⁴³ 11 C.F.R. § 104.3(b)(3)(i)(B), (b)(4)(i)(A).

⁴⁴ *FEC-Purposes of Disbursements*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last visited Oct. 31, 2024) (noting that the lists of inadequate and adequate purposes are not exhaustive and were revised on August 21, 2018).

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1 that a description of purpose such as “Consultant-Legal” is sufficient for a disbursement to a
 2 consultant; the sufficiency of the description is read in context with the name of the payee.⁴⁵

3 The Complaint asserts that the Joint Fundraising Committee misreported \$267,000 in
 4 payments to “Texas Strategy Group” “to obfuscate the true nature of these payments,” *i.e.*, that
 5 Herrera impermissibly used the Joint Fundraising Committee to pay campaign expenses for the
 6 Herrera Committee.⁴⁶ As explained above, there is no factual basis to conclude that any of the
 7 Joint Fundraising Committee’s payments were impermissible and thus no grounds to conclude
 8 that the reported purposes were inaccurate. The only remaining question is whether the purposes
 9 of the disbursements — for “Campaign Consulting,” “Media Placement,” and “Texting” — were
 10 sufficiently descriptive.

11 These purposes are sufficiently descriptive because they are consistent with the
 12 requirements and the Commission’s guidance on adequate purposes. “Campaign consulting” is
 13 specifically recognized by the Commission as an adequate purpose.⁴⁷ Moreover, “media
 14 placement” and “texting” are even more specific and discernible than “media,” which is also an
 15 adequate purpose.⁴⁸

16 Accordingly, we recommend that the Commission dismiss the allegation that the Joint
 17 Fundraising Committee violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R. 104.3(b)(4)
 18 by misreporting the purpose of disbursements.

⁴⁵ Purpose Statement of Policy, 72 Fed. Reg. at 888; *see also* FEC Campaign Guide for Congressional Candidates at 103 (June 2014) (the description of purpose must be sufficiently specific such that it makes clear the reason for the disbursement when considered in conjunction with the payee’s identity).

⁴⁶ *See* Compl. at 2.

⁴⁷ *See FEC-Purposes of Disbursements*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last visited Oct. 31, 2024) (providing a non-exhaustive list of inadequate and adequate purposes).

⁴⁸ 11 C.F.R. § 104.3(b)(3)(i)(B); *see id.*; Purpose Statement of Policy, 72 Fed. Reg. at 888.

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1 IV. RECOMMENDATIONS

1. Dismiss the allegation that Brandon Herrera Victory Committee and Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C. § 30102(e)(3) and 11 C.F.R. § 102.17(b)(1) by using Brandon Herrera Victory Committee funds to pay for campaign-related activities on behalf of Brandon Herrera for Congress;
2. Dismiss the allegation that that the BASED PAC, formerly known as Because Real Americans Never Doubt Our Nation (“BRANDON PAC”) and Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b) by making excessive contributions through the Brandon Herrera Victory Committee, and violated § 52 U.S.C. § 30104(b)(5) and 11 C.F.R. § 104.3(b)(3)(i) by failing to report the associated expenditures;
3. Dismiss the allegation that that Brandon Herrera and Brandon Herrera for Congress and Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting in-kind contributions and that Brandon Herrera for Congress and Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b)(4) by failing to report the in-kind contributions;
4. Dismiss the allegation that Brandon Herrera for Congress and Thomas Datwyler in his official capacity as treasurer and Brandon Herrera Victory Committee and Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R. 104.3(b)(4) by misreporting the purpose of disbursements;
5. Approve the attached Factual and Legal Analysis;
6. Approve the appropriate letter(s); and

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First General Counsel's Report

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1 7. Close the file effective 30 days from the date the certification of this vote is
2 signed (or on the next business day after the 30th day, if the 30th day falls on a
3 weekend or holiday).

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5 Lisa J. Stevenson
6 Acting General Counsel
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8 Lisa J. Stevenson
9 Acting General Counsel
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8 December 19, 2024

9 Date

10

11 Claudio J. Pavia
12 Deputy Associate General Counsel for Enforcement



11 Claudio J. Pavia
12 Deputy Associate General Counsel for Enforcement
13

14 Mark Shonkwiler
15 Assistant General Counsel
16



17 Mark Shonkwiler
18 Assistant General Counsel

14 Margaret J. Forman
15 Margaret J. Forman
16 Attorney

