FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 8251
DATE COMPLAINT FILED: Apr. 24, 2024
DATE OF NOTIFICATIONS: May 1, 2024
LAST RESPONSE RECEIVED: June 17, 2024
DATE ACTIVATED: Nov. 1, 2024
[redacted]
STATUTE OF LIMITATIONS: Dec. 7, 2027-Oct. 9, 2029
ELECTION CYCLE: 2024

COMPLAINANTS: Sophia Gonsalves-Brown
Campaign Legal Center

RESPONDENTS: Red Curve Solutions, LLC
Never Surrender, Inc., f/k/a Donald J. Trump for President 2024, Inc., and Bradley T. Crate in his official capacity as treasurer
Trump Save America Joint Fundraising Committee and Bradley T. Crate in his official capacity as treasurer
Save America and Bradley T. Crate in his official capacity as treasurer
Trump Make America Great Again Committee and Bradley T. Crate in his official capacity as treasurer
Make America Great Again PAC and Bradley T. Crate in his official capacity as treasurer

MUR 8260
DATE COMPLAINT FILED: May 13, 2024
DATE OF NOTIFICATIONS: May 15, 2024
LAST RESPONSE RECEIVED: June 18, 2024
DATE ACTIVATED: Nov. 1, 2024
[redacted]
STATUTE OF LIMITATIONS: July 31, 2021-Oct. 9, 2029
ELECTION CYCLE: 2022, 2024

COMPLAINANTS: Noah Bookbinder
Citizens for Responsibility and Ethics in Washington

RESPONDENTS: Make America Great Again PAC and Bradley T. Crate in his official capacity as treasurer

RELEVANT STATUTES AND REGULATIONS: 52 U.S.C. § 30104(b)(5), (6)
52 U.S.C. § 30116(a)(1)(A), (f)
52 U.S.C. § 30118(a)
11 C.F.R. § 104.3(b)(4)
11 C.F.R. § 104.9
11 C.F.R. § 110.1(b)(1)
11 C.F.R. § 110.9
11 C.F.R. § 114.2(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter arises from two Complaints alleging that Never Surrender, Inc., f/k/a Donald J. Trump for President 2024, Inc., and Bradley T. Crate in his official capacity as treasurer ("Trump for President 2024"); Trump Save America Joint Fundraising Committee and Bradley T. Crate in his official capacity as treasurer ("Trump Save America JFC"); Save America and Bradley T. Crate in his official capacity as treasurer ("Save America"); Trump Make America Great Again Committee and Bradley T. Crate in his official capacity as treasurer ("TMAGA"); and Make America Great Again PAC and Bradley T. Crate in his official capacity as treasurer ("MAGA PAC;" collectively, the "Committees") failed to accurately report payments in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaints allege that payments, aggregating approximately $8.9 million, that the Committees reported making to Red Curve Solutions ("Red Curve") were in truth made to other, unnamed legal services providers or other recipients, and that the disbursements may indicate that Red Curve made advances on the Committees' behalf that the Committees should have reported as contributions. The Complaint in MUR 8260 further alleges that payments MAGA PAC reported as having been made to Kasowitz Benson Torres LLP (the "Kasowitz firm") were, in fact, payments made pursuant to settlement agreements with a former employee and other women who raised complaints of gender and pregnancy discrimination and sexual harassment against MAGA PAC.

Because it appears that Red Curve incurred legal costs in connection with the performance of its services for the Committees, which the Committees reimbursed pursuant to a contractual indemnification clause, and there is no available information to contradict those claims, we recommend the Commission dismiss the allegation that the Committees misreported disbursements to Red Curve in violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9. As explained further below, because it is unclear whether an indemnification agreement could result in contributions, we also recommend the Commission dismiss the allegation that Red Curve made, and the Committees knowingly accepted, prohibited and excessive contributions in violation of 52 U.S.C. §§ 30116(a)(1)(A), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2(b). Finally, because there is no information indicating that any settlement payments actually occurred, nor that MAGA PAC's payments to the Kasowitz firm were comprised in whole or part of such payments, we recommend the Commission dismiss the allegation that MAGA PAC misreported disbursements to the Kasowitz firm in violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9.

II. FACTUAL BACKGROUND

A. Respondents

Trump for President 2024 was the authorized committee of Donald J. Trump during the 2024 election cycle.[1] Trump Save America JFC is a joint fundraising representative; its joint

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[1] Trump for President 2024, Amended Statement of Organization at 2 (Aug.20, 2024), https://docquery.fec.gov/pdf/680/202408209674127680/202408209674127680.pdf. It first registered with the Commission on November 15, 2022. Trump for President 2024, Statement of Organization at 1 (Nov. 15, 2022), https://docquery.fec.gov/pdf/243/202211159546802243/202211159546802243.pdf. After the election, it converted to a leadership PAC under the name Never Surrender, Inc. Never Surrender, Inc., Amended Statement of Organization at 1-2 (Nov. 12, 2024), https://docquery.fec.gov/pdf/551/202411129719967551/202411129719967551.pdf.

fundraising participants are Trump for President 2024 and Save America.[2] Save America is a leadership PAC currently sponsored by the Trump-Graham Majority Fund.[3] TMAGA is a joint fundraising representative; its joint fundraising participants are Save America, MAGA PAC, and the Republican National Committee.[4] MAGA PAC is an unauthorized, multicandidate political committee that first registered with the Commission in 2015 as the principle campaign committee of Donald J. Trump under the name Donald J. Trump for President, Inc.[5]

Red Curve is a consulting firm that provides "comprehensive treasury, budgeting, and FEC compliance services for political campaigns, party organizations, and PACS."[6] It was founded in 2009 by its president, Bradley T. Crate, and is a Massachusetts limited liability company that elects to be taxed as a corporation by the Internal Revenue Service.[7] Since 2015, it

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[2] Trump Save America JFC, Amended Statement of Organization at 2 (Apr. 22, 2024), https://docquery.fec.gov/pdf/419/202404229636706419/202404229636706419.pdf. It first registered with the Commission on February 27, 2021, at which time its joint fundraising participants were MAGA PAC and Save America. Trump Save America JFC, Statement of Organization at 2 (Feb. 27, 2021), https://docquery.fec.gov/pdf/111/202102279429078111/202102279429078111.pdf.

[3] Save America, Amended Statement of Organization at 3 (Apr. 22, 2024), https://docquery.fec.gov/pdf/423/202404229636706423/202404229636706423.pdf. It first registered with the Commission on November 9, 2020, at which time TMAGA sponsored it. Save America, Statement of Organization at 3 (Nov. 9, 2020), https://docquery.fec.gov/pdf/422/202011099336977422/202011099336977422.pdf.

[4] TMAGA, Amended Statement of Organization at 2, 5 (Oct. 15, 2022), https://docquery.fec.gov/pdf/755/202210159533171755/202210159533171755.pdf. It first registered with the Commission on May 25, 2016, at which time its joint fundraising participants were MAGA PAC (then-Donald J. Trump for President, Inc.) and the Republican National Committee. *See* note 5, *infra*; TMAGA, Statement of Organization at 2 (May 25, 2016), https://docquery.fec.gov/pdf/030/201605259017296030/201605259017296030.pdf.

[5] MAGA PAC, Amended Statement of Organization (Nov. 17, 2022), https://docquery.fec.gov/pdf/784/202211179546823784/202211179546823784.pdf (reflecting FEC ID number of C00580100); Donald J. Trump for President, Inc., Statement of Organization at 2 (June 29, 2015), https://docquery.fec.gov/pdf/501/201506299000000501/201506299000000501.pdf (registering the committee as the principal campaign committee of Donald J. Trump and reflecting FEC ID number of C00580100). On February 27, 2021, MAGA PAC converted to an unauthorized, multicandidate committee and adopted its current name. MAGA PAC, Amended Statement of Organization (Feb. 27, 2021), https://docquery.fec.gov/pdf/093/202102279429078093/202102279429078093.pdf.

[6] Red Curve Resp. at 1 (June 17, 2024), MUR 8251 [hereinafter Red Curve Resp.] (quoting Compl. ¶ 4 (Apr. 24, 2024), MUR 8251 [hereinafter MUR 8251 Compl.] (citing Red Curve Sols., LLC, 2023 Annual Report (Aug. 3, 2023))).

[7] Red Curve Resp. at 1.

has received $59,053,831.99 from the Committees.[8] Of this amount, the Committees reported $8,223,596.48 with purposes referencing "legal fees" or "legal expenses."[9] Disbursements for these purposes began in December 2022.[10]

The Kasowitz firm is law firm specializing in commercial litigation.[11] Since 2016, MAGA PAC has reported $4.49 million in disbursements to the Kasowitz firm for "legal consulting," "recount: legal consulting" and "general: legal consulting."[12] Of these payments, $4.10 million remains within the five-year statute of limitations.[13]

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8 *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00580100&committee_id=C00618371&committee_id=C00762591&committee_id=C00770941&committee_id=C00828541&recipient_name=red+curve (last visited Feb. 27, 2025) [hereinafter Disbursements to Red Curve] (reflecting all disbursements made to Red Curve by the Committees). Of this total, Trump for President 2024 disbursed $4.18 million, Trump Save America JFC $8.35 million, Save America $6.85 million, TMAGA, $23.17 million, and MAGA PAC $16.5 million under both its current and previous name and committee designation. *Id.*

9 *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00580100&committee_id=C00618371&committee_id=C00762591&committee_id=C00770941&committee_id=C00828541&recipient_name=red+curve&disbursement_description=law&disbursement_description=legal (last visited Feb. 27, 2025) [hereinafter Disbursements for Legal Costs] (reflecting all disbursements made to Red Curve by the Committees with the words "legal" or "law" in the purpose of the disbursement). Of this amount, Trump for President 2024 disbursed $34,737.50, Trump Save America JFC $232,210.61, Save America $3.16 million, TMAGA $284,180.18, and MAGA PAC $4.51 million (all under its current committee name and designation). *Id.*

10 *Id.* Since the disbursements for legal purposes began on December 7, 2022, they have comprised 38.5% of the Committees' $21,346,586.88 total disbursements to Red Curve. *Compare* Disbursements for Legal Costs, *with* Disbursements to Red Curve.

11 *At a Glance*, KASOWITZ BENSON TORRES, https://www.kasowitz.com/at-a-glance/ (last visited Feb. 27, 2025).

12 *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00580100&recipient_name=kasowitz (last visited Feb. 27, 2025) (reflecting all disbursements by MAGA PAC to Kasowitz Benson Torres LLP).

13 *Id.*

B. Allegations

1. Payments to Red Curve

Both Complaints allege that the Committees' reported disbursements to Red Curve do not reflect the ultimate payee or payees of those disbursements.[14] The Complaints state that, despite the Committees' disbursements to Red Curve for purposes indicating legal fees and legal expenses, Red Curve does not appear to provide legal services.[15] The MUR 8251 Complaint alleges that the $8.2 million in disbursements to Red Curve were not for legal services provided by Red Curve to the Committees, but rather for legal services provided by other vendors to the Committees for which Red Curve either (1) served as a conduit or (2) had paid on the Committees' behalf and then sought reimbursement.[16] The MUR 8260 Complaint similarly alleges that Red Curve served as an intermediary and as "merely a conduit for the intended recipient of funds" disbursed to it.[17] In addition to publicly available information concerning Red Curve's services, the MUR 8260 Complaint relies on a sworn declaration by a former employee of Trump's campaign, Arlene J. Delgado. That declaration, which was submitted in connection with civil litigation in which Delgado attests that payments made to Red Curve "reflect legal services related to, and monetary settlements paid to, women who raised complaints of gender discrimination, pregnancy discrimination, and sexual harassment."[18]

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[14] The MUR 8251 Complaint makes this allegation as to all the Committees; the MUR 8260 Complaint makes it solely as to MAGA PAC. *See* MUR 8251 Compl. at 1 (identifying Trump for President 2024, Trump Save America JFC, Save America, TMAGA, and MAGA PAC as respondents); MUR 8260 Compl. at 1 (identifying MAGA PAC as a respondent).

[15] MUR 8251 Compl. ¶ 25 ("As indicated both by publicly available information and its own corporate documents, Red Curve offers budgeting, compliance, and FEC reporting services, but does not appear to offer any sort of legal services."); Compl. ¶¶ 15 (May 13, 2024), MUR 8260 [hereinafter MUR 8260 Compl.] ("Red Curve does not appear to be a law firm or otherwise capable of providing legal services.").

[16] MUR 8251 Compl. ¶¶ 26-32.

[17] MUR 8260 Compl. ¶¶ 18-19.

[18] MUR 8260 Compl., Ex. A at 1 (Declaration of Arlene J. Delgado) [hereinafter Delgado Decl.]. The MUR 8260 Complaint also relies on an article in *The Daily Beast* questioning MAGA PAC's disbursements to Red

Delgado does not state that she received any payments in this manner, nor does she provide the basis of her belief that other such payments were made in this way. Accordingly, both Complaints allege that the Committees violated 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b)(4) by failing to accurately report disbursements.

The MUR 8251 Complaint further alleges that Red Curve made excessive or prohibited contributions to the Committees, which the Committees knowingly accepted, in violation of 52 U.S.C. §§ 30116(a)(1)(A), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2(b).[19] It alleges that Red Curve's "apparent role in advancing, paying, or facilitating the payment of funds to cover the costs associated with legal services provided by other vendors" constituted making contributions to the Committees either in excess of the applicable contributions or in the form of a prohibited corporate contribution, depending on Red Curve's corporate status.[20]

The Respondents generally deny the allegations. The Responses state that the Committees' payments to Red Curve were "pursuant to a contractual indemnity obligation under the Committees' services agreements with Red Curve," covering "legal costs arising directly from [Red Curve and Bradley Crate's] services to the Committees."[21] According to the MUR 8251 Joint Response submitted by four of the five Committees:

Curve, stating that the reported disbursements "suggest that since December 2022, when the arrangement seemed to begin, Red Curve has been fronting legal costs out of its corporate account, with Trump's committees repaying the company later." Roger Sollenberger, *Trump's New Legal Bills Are Hiding an $8 Million Mystery*, DAILY BEAST (Apr. 24, 2024), https://www.thedailybeast.com/trumps-new-legal-bills-are-hiding-an-dollar8-million-mystery/ (cited in MUR 8260 Compl. ¶ 15; [redacted]

[19] MUR 8251 Compl. ¶¶ 33-40.

[20] *Id.*

[21] Trump Save America JFC, Save America, TMAGA, & MAGA PAC Resp. at 1 (June 17, 2024), MUR 8251 [hereinafter MUR 8251 Joint Resp.]; *see also* Trump for President 2024 Resp. at 1-2 (June 17, 2024), MUR 8251 [hereinafter Trump for President Resp.] ("Red Curve sought these reimbursements pursuant to an indemnity provision in its services contract with the Committee, which provides that the Committee will 'indemnify . . . Red Curve . . . against any and all claims, suits, proceedings, investigations, costs and expenses including reasonable attorney's fees and court costs arising out of th[e] [service agreement with Trump for President 2024].'"); MAGA PAC Resp. at 1 (June 18, 2024), MUR 8260 [hereinafter MUR 8260 MAGA PAC Resp.] ("With respect to the allegations regarding payments to Red Curve, those allegations have already been addressed in the

> [A]s a result of [Bradley] Crate's designation as the FEC treasurer and custodian of records for the [respondent committees], Mr. Crate and Red Curve have received numerous subpoenas and other requests for documents and information. In responding to those various requests, Red Curve and Mr. Crate have retained outside legal counsel to assist the response. Red Curve then requested indemnification of the costs it incurred, billing the Committees for the amounts claimed. The Committees remitted payments directly to Red Curve after assessing the indemnity requests.[22]

The Committees' Responses state that the Committees reported the disbursements properly. Neither the Joint Response nor the Trump for President 2024 Response explicitly denies that Red Curve made excessive or prohibited contributions to the Committees but instead describe the structure of the agreement that led to the reported disbursements whereby Red Curve incurred legal expenses as a result of providing services to the Committees, which the Committees reimbursed through payments to Red Curve.[23]

The Red Curve Response further states that the MUR 8251 Complaint's allegations are "purely speculative charges" that "cannot withstand even the most basic of scrutiny."[24] It denies that its initial payment for legal services arising from its relationship with the Committees constituted contributions to the Committees because "it is customary for an indemnitee to pay an incurred cost first, then seek compensation from the indemnitor when the amount of the loss is known," and because considering this arrangement to be an advance constituting a contribution under the Act would "impose an absurd obligation on committees to pay for the legal costs of any current or former vendors and staff arising from work done for committees."[25] Regarding

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response filed in MUR 8251, and the Committee adopts and reasserts its response to MUR 8251 herein."); Red Curve Resp. at 2-3; *id.*, Ex. A ¶ 6 (Aff. of Bradley T. Crate) [hereinafter Crate Aff.].

[22] MUR 8251 Joint Resp. at 1; *see* Red Curve Resp. at 3; Crate Aff. ¶ 8.

[23] *See generally* MUR 8251 Joint Resp.; Trump for President Resp.

[24] Red Curve Resp. at 5.

[25] *Id.* at 8.

the Committees' reporting obligations, the Red Curve Response argues that reporting the indemnification payments as disbursed to Red Curve, rather than to the attorneys Red Curve had hired, was permissible under the Act, as "the very nature of Red Curve's business necessarily demands it seek independent legal counsel . . . in carrying out its duties to clients, . . . and it is thus appropriate to view any payments made to such counsel as being 'services . . . used in the performance of' Red Curve's work for a committee."[26] Finally, the Red Curve Response also argues that the reported purposes of the disbursements were sufficient under the act, as "anyone reading the Committees' FEC reports would 'easily discern' exactly why the Committees made to Red Curve the disbursements at issue: to reimburse legal costs Red Curve paid."[27]

2. Payments to the Kasowitz Firm

The MUR 8260 Complaint further alleges that some of or all MAGA PAC's payments to the Kasowitz firm were not, in fact, for legal expenses.[28] The MUR 8260 Complaint bases this allegation on the Delgado declaration mentioned *supra*[29] in which Delgado attests that Marc Kasowitz, a named partner of the Kasowitz firm, told her that any settlement with Delgado would be kept confidential: According to Delgado, Kasowitz stated that "[w]hat we would do is the Campaign pays me and then I cut a check to you guys."[30]

MAGA PAC's Response argues that the Complaint's allegations against it are insufficient basis on which to find reason to believe a violation occurred.[31] It states that the Complaint is speculative and does not allege that any settlement payments made via the

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26 *Id.* at 10 (quoting Factual & Legal Analysis ("F&LA") at 12, MUR 6510 (Kirk for Senate)); Crate Aff. ¶¶ 7, 9.

27 Red Curve Resp. at 12.

28 *See generally* MUR 8260 Compl.

29 *See id.* ¶¶ 3, 11; Delgado Decl.

30 Delgado Decl. at 1.

31 MUR 8260 MAGA PAC Resp. at 1-2.

Kasowitz firm actually took place; rather, it argues that the MUR 8260 Complaint's suggestion that the alleged statement regarding how such a payment would be structured if it occurred is an insufficient basis for Commission action and requests that the Commission dismiss the MUR 8260 Complaint.[32]

III. LEGAL ANALYSIS

A. The Commission Should Dismiss the Allegations That the Committees Misreported Disbursements to Red Curve for Legal Fees in Violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9

The Act and Commission regulations require authorized political committees to report the name and address of each person to whom they make disbursements aggregating more than $200 per election cycle, as well as the date, amount, and purpose of such payments.[33] Congress enacted the reporting requirements to ensure public disclosure of "where political campaign money comes from and how it is spent."[34]

The Act and Commission regulations "are silent with respect to any definition or description of the person to whom an expenditure is made. Moreover, they do not address the concepts of ultimate payees, vendors, agents, contractors, or subcontractors in this context."[35] Ordinarily, the Commission has found it sufficient for a committee to report payments to its primary vendors and not those made to subvendors where the subvendor's services were used "in

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[32] *Id.* at 1-2.

[33] 52 U.S.C. § 30104(b)(6); 11 C.F.R. § 104.3(b)(4).

[34] F&LA at 8, MUR 6724 (Bachmann for President, *et al.*) (quoting *Buckley v. Valeo*, 424 U.S. 1, 66 (1976)).

[35] Advisory Opinion ("AO") 1983-25 at 2 (Mondale). The Commission has also addressed the issue of reporting ultimate payees of political committee disbursements in situations not applicable to the facts of the instant matter, relating to reimbursements to non-vendor individuals for out-of-pocket expenses, payments to credit card companies, and unreimbursed disbursements by candidates. *See* Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013).

performance of" the primary vendor's contract with the committee.[36] However, the Commission has determined that reporting the immediate recipient of a disbursement will not satisfy the Act's reporting requirements when the facts indicate that the recipient is "merely a conduit for the intended recipient of the funds."[37] For instance, in MUR 4872 (Jenkins for Senate), a committee "did not want . . . to be associated" with a vendor it had hired to perform phone-banking services and arranged to pay the vendor through a third party, which it reported on its disclosure reports in place of the true vendor.[38] The Commission found reason to believe that the committee knowingly and willfully filed false disclosure reports in that matter.[39] Similarly, in MUR 6724 (Bachmann for President, *et al.*), the Commission found reason to believe that a committee had violated the Act's reporting obligations by routing payments to an individual for his personal services to the committee through a vendor that exercised no control over that person and did not itself contract with him for any services.[40] And more recently, in MUR 7923 (Friends of David Schweikert, *et al.*), the Commission found reason to believe that a committee had violated the Act where it had purposely funneled payments for certain services through a consulting firm in

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[36] AO 1983-25 at 2; *see also* F&LA at 12, MUR 6510 (Kirk for Senate, *et al.*) (holding that "a committee need not separately report its consultant's payments to other persons — such as those payments for services or goods used in the performance of the consultant's contract with the committee").

[37] F&LA at 9, MUR 6724 (Bachmann for President, *et al.*).

[38] Conciliation Agreement ¶ IV.6, MUR 4872 (Jenkins for Senate).

[39] *Id.* ¶¶ V-VI.

[40] F&LA at 3-4, 10-11, MUR 6724 (Bachmann for President, *et al.*); *see also United States v. Benton*, 890 F.3d 697, 709 (8th Cir. 2018), *cert. denied*, 2019 WL 1231756, 2019 WL 1231758, 2019 WL 1231759 (Mar. 18, 2019) (finding that defendants violated the Act by reporting a false purpose of a committee's disbursement to conceal a payment routed through the purported vendor made to secure an individual's endorsement, and noting that the situation was unlike the facts presented in AO 1983-25 and MUR 6510, where "the vendors and subvendors had provided the services described by the campaign").

order "both to obscure that [its campaign manager] was making large outlays on behalf of the campaign and to hide 'the true nature, date, and underlying recipient of the disbursements.'"[41]

The Responses indicate that the Committee's disbursements to Red Curve for legal services were associated not with services provided to the Committees, but rather services provided to Red Curve in furtherance of the performance of its obligations to the Committees.[42] While the Delgado Declaration states that Delgado "ha[s] information and reason to believe that payments made to . . . Red Curve . . . reflect legal services related to, and monetary settlements paid to, women who raised complaints of gender discrimination, pregnancy discrimination, and sexual harassment," the declaration does not elaborate on what that information and reason to believe entails.[43] Rather, the only factual assertion in the declaration is that an individual associated with the Kasowitz firm told Delgado that settlement payments, if they occurred, would be routed through that firm, not Red Curve.[44]

Given the absence of any information contradicting the Responses and Crate's Declaration stating that the payments were for legal costs incurred by Red Curve, not by the Committees, it appears that the legal services at issue were rendered "in performance of" Red Curve's contracts with the Committees, and therefore, that it was sufficient for the Committees to report payments to Red Curve as the primary vendor.[45] Accordingly, we recommend the

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41 F&LA at 15, MUR 7923 (Friends of David Schweikert) (quoting INVESTIGATIVE SUBCOMM., U.S. HOUSE OF REPRESENTATIVES, COMM. ON ETHICS, IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE DAVID SCHWEIKERT at 40 (June 20, 2020), https://ethics.house.gov/sites/ethics.house.gov/files/documents/ISC%20Report%20-%20Schweikert%20-%20final.pdf).

42 MUR 8251 Joint Resp. at 1; Trump for President Resp. at 1-2; Red Curve Resp. at 2-3, 8, 10; Crate Aff. ¶¶ 6-9.

43 Delgado Decl.

44 *Id.*

45 *See* AO 1983-25 at 2; *see also* F&LA at 12, MUR 6510 (Kirk for Senate, *et al.*). While the volume of the payments for legal services ($8.2 million) raises questions as to whether all of the disbursements were solely for legal services provided to Red Curve rather than to the Committees themselves, given that the expenses were related

Commission dismiss the allegation that the Committees misreported disbursements to Red Curve for legal fees in violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9.[redacted]

B. The Commission Should Dismiss the Allegation That Red Curve Made and the Committees Knowingly Accepted Excessive and Prohibited Contributions in Violation of 52 U.S.C. §§ 30116(a)(1)(A), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2(b)

The Act defines the term "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."[47] The extension of credit to a political committee by a commercial vendor is a contribution, "unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation."[48] While the Act does not define "extension of credit," in other contexts, the term generally applies to advances of funds or deferral of monetary obligations.[49] A "commercial vendor" is any person who provides goods or services to a

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to work for five separate political committees and the high profile nature of those entities, in the absence of any information to the contrary, this factor alone is insufficient to refute the Respondents' assertions about the nature of the expenses.

[redacted]

47 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

48 11 C.F.R. § 100.55 (explaining that a contribution will also result if a creditor fails to make a commercially reasonable attempt to collect the debt); *see also* 11 C.F.R. § 116.3(b).

49 In the context of national banks, "loans and extensions of credit" includes, *inter alia*, "all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds." 12 U.S.C. § 84(b)(1). In the context of criminal law, "To extend credit means to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred." 18 U.S.C. § 891.

candidate or political committee, and whose usual and normal business involves the sale, rental, lease, or provision of those goods and services.[50]

Commission regulations state that, in determining whether credit was extended in a commercial vendor's ordinary course of business, the Commission will consider whether: (1) the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) the commercial vendor received prompt payment in full for prior extensions of credit to the same committee; and (3) the extension of credit conformed to the usual and normal practice in the vendor's trade or industry.[51] The Commission has explained that "[t]hese factors are intended to provide guidance . . . . The factors need not be accorded equal weight and in some cases a single factor may not be dispositive."[52]

The Act prohibits corporations from contributing to a federal candidate or candidate's committee and further prohibits any candidate or candidate's committee from knowingly accepting such a contribution.[53]

The Commission has not addressed whether a vendor who pays its own legal fees while under an indemnification agreement contributes to the political committee indemnifying it. It is possible that an indemnification agreement is an extension of credit that only falls outside the definition of contribution if it satisfies the test described above. However, an indemnification provision does not constitute credit in traditional sense, as it is not a loan of funds or a deferral of obligations other than to the extent that time necessarily passes between when the indemnitee

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50 11 C.F.R. § 116.1(c).

51 *Id.*

52 Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26378, 26281 (June 27, 1990); *see* AO 1991-20 (Call Interactive) at 4.

53 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d), (e).

incurs the fees and when the indemnitee bills the indemnitor. Analyzing such agreements by analogy, the Commission could instead consider indemnification payments as akin to an outlay of funds by a campaign volunteer for campaign materials who subsequently seeks reimbursement; in those circumstances, the Commission's guidance is that the committee is only required to report the advance as a contribution if it is unrepaid at the end of the reporting period and the amount of the advancer's prior contributions is greater than $200.[54] In the further alternative, however, the Commission could determine that Red Curve's legal expenses are its own obligations incurred in connection with the services provided to the committees, and remain so even when billed to the Committees: Given that it appears that the legal expenses at issue in this matter are provided in furtherance of the performance of Red Curve's services to the committees, discussed *supra*, the Commission could consider the reimbursement of those costs no different than that for any other expense incurred in a vendor's performance of its contractual duties, which are not contributions.[55]

Red Curve states that indemnification provisions are "usual and customary terms in commercial services agreements,"[56] and that "[t]o find the making of an advance under these

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[54] *How to Report Staff Reimbursements*, FEC.GOV, https://www.fec.gov/help-candidates-and-committees/filing-reports/staff-reimbursements/ (last visited Feb. 27, 2025). If an advance is outstanding at the end of the reporting period and either exceeds $500 or has been outstanding for more than 60 days, the committee must report it as a debt on Schedule D. *Id.*; *see also* Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626 (July 8, 2013) ("When an individual who is not acting as a vendor advances his or her personal funds, including a personal credit card, to pay costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a political committee, the political committee must treat the individual's payment as a contribution." (citing 11 CFR 116.5(a), (b))).

[55] *See* Part III.A, *supra*.

[56] Red Curve Resp. at 6 (citing *Indemnification Clauses in Commercial Contracts*, THOMPSON REUTERS (Mar. 15, 2024), https://legal.thomsonreuters.com/en/insights/articles/indemnification-clauses-in-commercial-contracts [https://web.archive.org/web/20240315081045/https://legal.thomsonreuters.com/en/insights/articles/indemnification-clauses-in-commercial-contracts]. Thompson Reuters updated the article since Red Curve cited it and it no longer contains the quoted material. *See Reduce the Risk of Claims with Indemnification Clauses in Contracts*, THOMPSON REUTERS (Oct. 20, 2024), https://legal.thomsonreuters.com/en/insights/articles/indemnification-clauses-in-commercial-contracts).

facts indeed would impose an absurd obligation on committees to pay for the legal costs of any current or former vendors and staff arising from work done for committees."[57]

Here, both the applicable law and the relevant facts are unclear. The Commission is not in possession of any information regarding the period between Red Curve incurring legal expenses and when it billed them to the Committees, nor can it confirm or deny the prevalence of indemnification agreements in political committee vendor contracts. According to the Commission's database, during the 2022 and 2024 election cycles, excluding payments made to Red Curve, 31 political committees reported 46 disbursements totaling $164,179.49 for reimbursement of legal costs, many of which were paid to entities that do not appear to provide legal services.[58] While the volume of legal services reimbursed to Red Curve significantly exceeds the amount reimbursed to all other recipients, this fact alone does not necessarily refute Red Curve's assertion that indemnification agreements are standard even among vendors to political committees. Further, the Commission has not yet spoken on the correct framework under which to analyze indemnification agreements.[59]

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[57] Red Curve Resp. at 8.

[58] *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=-Red+Curve&two_year_transaction_period=2022&two_year_transaction_period=2024&disbursement_description=reimbursement+legal (last visited Feb. 27, 2025) (reflecting all disbursements for purposes including "reimbursement legal" in the 2022 and 2024 election cycles, excluding payments made to Red Curve). Recipients appear to include entities affiliated with the political committees making the reimbursements; individuals; and other political committees in addition to consulting firms and law firms. *Id.* There were no results for payments with the purpose "indemnity" or "indemnification." *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2024&two_year_transaction_period=2022&disbursement_description=indemnity&disbursement_description=indemnification (last visited Feb. 27, 2025) (reflecting all disbursements for purposes including "indemnity" or "indemnification" in the 2022 and 2024 election cycles).

[59] Though the Commission has addressed reporting issues in the context of legal services, it has done so in the context of additional, non-legal services routed through payments to legal services providers. *See, e.g.*, Conciliation Agreement ¶¶ IV-VII, MURs 7291, 7449 (DNC Servs. Corp, *et al.*) (conciliating matter in which the Commission found probable cause to believe that the respondent committee had misreported the purpose of disbursements to a law firm as "legal and compliance consulting" when the payments were in fact for opposition research done by a third-party consultant firm routed through that law firm).

Under these circumstances and absent any salient regulation or any other guidance from the Commission regarding the implications of indemnification agreements between a committee and its vendors, there is insufficient legal justification on which to find reason to believe that such agreements necessarily result in contributions. Therefore, we recommend the Commission dismiss the allegation that Red Curve made, and the committees knowingly accepted, excessive and prohibited contributions in violation of 52 U.S.C. §§ 30116(a)(1)(A), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2(b).

C. The Commission Should Dismiss the Allegation That MAGA PAC Misreported Disbursements to the Kasowitz Firm in Violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9

As discussed in Part III.A, above, the Act and Commission regulations require authorized political committees to report the name and address of each person to whom they make disbursements aggregating more than $200 per election cycle.[60] The MUR 8260 Complaint alleges that some of or all MAGA PAC's payments to the Kasowitz firm were not, in fact, for legal expenses, but instead for settlement payments routed through the Kasowitz firm to obscure the nature of the disbursements.[61]

MAGA PAC does not deny that it made payments via the Kasowitz firm but instead states that the Complaint is speculative and does not present information that settlement payments made via the Kasowitz firm actually took place.[62] Indeed, the Complaint does not allege any facts indicating that the payments discussed in the Delgado declaration actually occurred. Rather, Delgado attests only that she was told by Kasowitz that the Trump campaign would make any settlement payment to her to the Kasowitz firm, and that the Kasowitz firm

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[60] 52 U.S.C. § 30104(b)(6); 11 C.F.R. § 104.3(b)(4).

[61] *See* MUR 8260 Compl. ¶¶ 3, 11; Delgado Decl.

[62] MUR 8260 MAGA PAC Resp. at 1.

would then pay Delgado.[63] Delgado does not state that she received any payments in this manner, nor does she expand on any other information leading her to believe that other such payments were made in this way. The Complaint and the Delgado declaration instead point to the large amounts MAGA PAC disbursed to the Kasowitz firm, and the fact that public information indicates that Trump and his businesses have used similar payment arrangements in other circumstances.[64] While these facts raise questions about MAGA PAC's payments to the Kasowitz firm, without more, they do not adequately support a finding of reason to believe.[65]

Accordingly, we recommend the Commission dismiss the allegation that MAGA PAC misreported disbursements to the Kasowitz firm in violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9.

IV. RECOMMENDATIONS

MUR 8251:

1. Dismiss the allegation that Never Surrender, Inc., f/k/a Donald J. Trump for President 2024, Inc., and Bradley T. Crate in his official capacity as treasurer; Trump Save America Joint Fundraising Committee and Bradley T. Crate in his official capacity as treasurer; Save America and Bradley T. Crate in his official capacity as treasurer; Trump Make America Great Again Committee and Bradley T. Crate in his official capacity as treasurer; and Make America Great Again PAC and Bradley T. Crate in his official capacity as treasurer misreported disbursements to Red Curve Solutions, LLC, in violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9;

2. Dismiss the allegation that Red Curve Solutions, LLC, made, and Never Surrender, Inc., f/k/a Donald J. Trump for President 2024, Inc., and Bradley T. Crate in his official capacity as treasurer; Trump Save America Joint Fundraising Committee and Bradley T. Crate in his official capacity as treasurer; Save

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[63] Delgado Decl.

[64] MUR 8260 Compl. ¶¶ 3-4 (citing Brett Neely & Domenico Montanaro, *Trump Admits to Authorizing Stormy Daniels Payoff, Denies Sexual Encounter*, NPR (May 2, 2018), https://www.npr.org/2018/05/02/607943366/giuliani-says-trump-did-know-about-stormy-daniels-payment); Delgado Decl.

[65] *See* Statement of Reasons, Comm'rs Mason, Sandstrom, Smith & Thomas at 1-2, MUR 4960 (Hillary Rodham Clinton for US Senate Expl. Comm., Inc., *et al.*) ("The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts which, if proven true, would constitute a violation of the FECA. . . . [M]ere speculation . . . will not be accepted as true.").

America and Bradley T. Crate in his official capacity as treasurer; Trump Make America Great Again Committee and Bradley T. Crate in his official capacity as treasurer; and Make America Great Again PAC and Bradley T. Crate in his official capacity as treasurer knowingly accepted, prohibited and excessive contributions in violation of 52 U.S.C. §§ 30116(a)(1)(A), (f), 30118(a) and 11 C.F.R. §§ 110.1(b)(1), 110.9, 114.2(b);

MUR 8260:

3. Dismiss the allegation that Make America Great Again PAC and Bradley T. Crate in his official capacity as treasurer misreported disbursements to Red Curve Solutions, LLC, in violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9;

4. Dismiss the allegation that Make America Great Again PAC and Bradley T. Crate in his official capacity as treasurer misreported disbursements to Kasowitz Benson Torres LLP in violation of 52 U.S.C. § 30104(b)(5), (6) and 11 C.F.R. §§ 104.3(b)(4), 104.9;

* * *

5. Approve the attached proposed Factual and Legal Analysis;

6. Approve the appropriate letters; and

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

Lisa J. Stevenson
Acting General Counsel

February 27, 2025
Date

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