



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

November 1, 2023

**Via Electronic Mail**

[bmorgan@capdale.com](mailto:bmorgan@capdale.com)

Bryson B. Morgan, Esq.  
Caplin & Drysdale  
One Thomas Circle NW  
Suite 1100  
Washington, DC 20005

RE: MUR 7982 (LUPE PAC)

Dear Mr. Morgan:

On April 25, 2022, the Federal Election Commission (the "Commission") notified your clients, LUPE PAC and Daniel Diaz in his official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, as well as information supplied by you on behalf of your clients, the Commission, on October 17, 2023, voted to dismiss the allegations as they pertain to the Committee. Accordingly, the Commission closed its file in this matter as it pertains to the Committee. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Wanda Brown, the attorney assigned to this matter, at (202) 694-1513.

Sincerely,

*Mark Allen*

Mark Allen  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis



1 **II. FACTUAL BACKGROUND**

2 LUPE PAC is a hybrid PAC that filed its Statement of Organization with the Commission  
3 on December 9, 2021, and Daniel Diaz is its treasurer.<sup>1</sup> Since its inception, the PAC has raised  
4 \$25,000.<sup>2</sup>

5 As alleged in the Complaint, LUPE PAC acknowledge that it split the cost for a research  
6 poll with the Vallejo Committee.<sup>3</sup> In March 2022, each committee paid \$15,037.50 to Lake  
7 Research Partners.<sup>4</sup> After LUPE PAC received notice of this Complaint, it requested a refund  
8 from Lake Research Partners.<sup>5</sup> LUPE PAC disclosed the refund on its 2022 Post-General  
9 Election Report.<sup>6</sup>

10 **II. LEGAL ANALYSIS**

11  
12 The Act provides that no person shall make contributions to any candidate or authorized  
13 committee in excess of the Act's limits.<sup>7</sup> For the 2022 election cycle, the Act limits  
14 contributions by persons to any candidate and his or her authorized political committees to

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<sup>1</sup> LUPE PAC, Statement of Organization (Dec. 9, 2021),  
<https://docquery.fec.gov/pdf/956/202112099469827956/202112099469827956.pdf>.

<sup>2</sup> LUPE PAC, 2022 Year-End Report (Jan. 31, 2023),  
<https://docquery.fec.gov/pdf/752/202301319575619752/202301319575619752.pdf>.

<sup>3</sup> LUPE PAC Resp. at 2 (Aug. 30, 2022).

<sup>4</sup> LUPE PAC, Amended 2022 April Quarterly Report at 7 (May 5, 2022),  
<https://docquery.fec.gov/pdf/956/202205059502585956/202205059502585956.pdf>; Vallejo Committee, 2022 April  
Quarterly Report at 106 (Apr. 15, 2022),  
<https://docquery.fec.gov/pdf/354/202204159496904354/202204159496904354.pdf>.

<sup>5</sup> LUPE PAC Resp. at 2.

<sup>6</sup> LUPE PAC, 2022 Post-General Election Report at 6 (Dec. 7, 2022),  
<https://docquery.fec.gov/pdf/204/202212079547290204/202212079547290204.pdf>.

<sup>7</sup> 52 U.S.C. § 30116(a).

1 \$2,900 per election.<sup>8</sup> No candidate or committee shall knowingly accept excessive  
2 contributions.<sup>9</sup>

3 A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or  
4 anything of value made by any person for the purpose of influencing any election for Federal  
5 office.”<sup>10</sup> “Anything of value” includes all in-kind contributions, such as the provision of goods  
6 or services without charge or at a charge less than the usual and normal charge.<sup>11</sup> The  
7 Commission’s regulations define “usual and normal charge” as “the price of those goods in the  
8 market from which they ordinarily would have been purchased at the time of the contribution.”<sup>12</sup>  
9 In the polling context, the Commission’s regulations permit political committees to split polling  
10 results with campaign committees by choosing an allocation method that reasonably reflects the  
11 use and benefit each committee derives.<sup>13</sup> This allows the benefitting committees to share the  
12 cost of the poll without resulting in an in-kind contribution.

13 LUPE PAC made an excessive in-kind contribution on March 31, 2022, when it paid  
14 \$15,037.50 to a vendor for half of the cost of a poll that benefited Vallejo’s campaign.<sup>14</sup> The  
15 remaining cost of the poll was paid by the Vallejo Committee.<sup>15</sup> The partial payment for the poll

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<sup>8</sup> *Id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021).

<sup>9</sup> 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

<sup>10</sup> 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (adding that “contribution” includes “any direct or indirect payment, . . . gift of money, or any services, or anything of value”).

<sup>11</sup> 11 C.F.R. § 100.52(d)(1).

<sup>12</sup> *Id.* § 100.52(d)(2).

<sup>13</sup> *Id.* § 106.4(e).

<sup>14</sup> LUPE PAC, 2022 Amended April Quarterly Report at 7 (May 5, 2022), <https://docquery.fec.gov/pdf/956/202205059502585956/202205059502585956.pdf>.

<sup>15</sup> Vallejo Committee, 2022 April Quarterly Report at 106 (Apr. 15, 2022), <https://docquery.fec.gov/pdf/354/202204159496904354/202204159496904354.pdf>.

1 exceeded the \$2,900 per candidate per election contribution limit because LUPE PAC never used  
2 nor intended to use the poll for its own benefit.<sup>16</sup> LUPE PAC states it has remedied the in-kind  
3 contribution by requesting a refund for the partial payment for the poll.<sup>17</sup> LUPE PAC disclosed  
4 the refund for the poll in its 2022 Post-General Election Report.<sup>18</sup> Although LUPE PAC made  
5 an excessive contribution, its overall activity was limited to its partial payment of \$15,037.50 for  
6 the poll. In addition, LUPE PAC remedied the excessive contribution when it asked the vendor  
7 to refund its payment and disclosed the refund.<sup>19</sup> Under these circumstances, the Commission  
8 exercises its prosecutorial discretion and dismisses the allegation that LUPE PAC made an  
9 excessive in-kind contribution in violation of 52 U.S.C. § 30116(a).<sup>20</sup>

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<sup>16</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>17</sup> LUPE PAC Resp. at 2.

<sup>18</sup> LUPE PAC, 2022 Post-General Election Report at 6 (Dec. 7, 2022),  
<https://docquery.fec.gov/pdf/204/202212079547290204/202212079547290204.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).