



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

VIA EMAIL

July 8, 2024

sgast@compaslegal.org

Scott Gast, Esq.
Compass Legal Group
300 Independence Ave. SE
Washington, DC 20003

RE: MUR 8090
Donald J. Trump

Dear Mr. Gast:

On November 21, 2022 and July 24, 2023 respectively, the Federal Election Commission notified your client, Donald J. Trump, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971 and a supplement to that complaint. Copies of the complaint and supplemental complaint were forwarded to your client at those times.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on June 6, 2024, voted to dismiss this matter effective July 8, 2024. Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter's transmittal are enclosed.

Documents related to the case will be placed 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 Nick Mueller, the attorney assigned to this matter, at (202) 694-1577 or nmueller@fec.gov.

Sincerely,

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
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5
6 Respondents: Save America and Bradley T. Crate
7 in his official capacity as treasurer
8 Donald J. Trump
9

MUR 8090

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11 **I. INTRODUCTION**

12 The Complaint in this matter alleges that Donald J. Trump and his leadership PAC, Save
13 America and Bradley T. Crate in his official capacity as treasurer (“Save America”), violated the
14 Act’s soft money provisions by directing or transferring \$60 million from Save America to Make
15 America Great Again, Inc. (“MAGA, Inc.”), an independent expenditure-only political
16 committee (“IEOPC”). Specifically, the Complaint alleges that though Trump had not yet filed a
17 statement of candidacy at the time of the transactions at issue, he was by law a candidate and that
18 Save America, as Trump’s leadership PAC, is by definition an organization established,
19 financed, maintained, or controlled (“EFMC’d”) by Trump. Therefore, the Complaint reasons
20 that, any contribution by Save America to another political committee in excess of \$5,000,
21 including specifically Save America’s contribution of \$60 million to MAGA, Inc., violates
22 52 U.S.C. § 30125(e)(1)(A).

23 Respondents dispute these conclusions on two grounds. First, Respondents argue that
24 Trump was not a candidate (or officeholder) at the time that Save America made the
25 contributions to MAGA, Inc. (October 3, 2022 through November 6, 2022) and therefore the
26 prohibitions in 52 U.S.C. § 30125(e)(1)(A) do not apply. Second, Respondents argue that, as a
27 matter of law, even if Trump was a candidate at the relevant time, the contributions were
28 permissible because the funds contributed by Save America were “hard money,” raised

1 consistent with the Act’s limits, prohibitions, and reporting requirements, and MAGA, Inc., as an
2 IEOPC, can accept contributions without regard to the Act’s limits pursuant to *Citizens United v.*
3 *FEC* and *Spechnow.org v. FEC*.

4 The question of whether Trump had become a candidate for purposes of the Act prior to
5 filing his statement of candidacy — and thus was a candidate at the time of the contributions in
6 question — has been considered by the Commission previously in MURs 7968 and 7969. The
7 Commission was equally divided on that question in those matters.¹ Nevertheless, in accordance
8 with Commission precedent, even assuming that Trump was a candidate at the time of the
9 contributions, the context here of otherwise excessive contributions made by Trump’s leadership
10 PAC — from funds raised subject to the limits, prohibitions and reporting requirements of the
11 Act — to an IEOPC does not appear to violate the Act or Commission regulations.

12 Accordingly, the Commission dismisses the allegation that Donald J. Trump and Save
13 America and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C.
14 § 30125(e)(1)(A) via contributions to MAGA, Inc.

15 **II. FACTUAL BACKGROUND**

16 Donald J. Trump is a former President of the United States, holding the office from 2017-
17 2021. On November 15, 2022, he filed his statement of candidacy indicating his intention to run
18 for president again in 2024.² The information the Complaint relies upon in support of its
19 contention that Trump triggered candidacy status under the Act prior to filing his statement of
20 candidacy³ was previously considered in MURs 7968 and 7969. Following the Commission’s

¹ Certification (“Cert.”), MURs 7968, 7969 ¶¶ 1-2, (Oct. 5, 2023).

² Donald J. Trump, Statement of Candidacy (Nov. 15, 2022).

³ *See* Compl. at 3-5 (Nov. 14, 2022); Supp. Compl. at 4, 6 (May 17, 2023).

1 split vote on the candidacy question,⁴ the group of Commissioners that voted not to find reason
 2 to believe issued Statements of Reasons explaining their votes.⁵

3 Save America is a leadership PAC that is sponsored by Trump and Bradley T. Crate is
 4 the committee's treasurer.⁶ Between October 3, 2022 and November 6, 2022, Save America
 5 made 13 contributions to MAGA, Inc. totaling \$60,007,750.⁷ Since May 5, 2023, MAGA, Inc.
 6 has issued \$52,250,000 in refunds to Save America.⁸

7 MAGA, Inc. is registered with the Commission as an IEOPC and its treasurer is Charles
 8 Gantt.⁹ Based on its reports filed with the Commission, MAGA, Inc. spent \$15,030,850 in 2022
 9 on independent expenditures supporting or opposing candidates for the U.S. Senate, after
 10 receiving the above referenced contributions from Save America, and an additional \$50,506,565

⁴ See First Gen. Counsel's Rpt., MURs 7968 & 7969 (Donald J. Trump, *et al.*); Cert. ¶¶ 1-2 (Oct. 6, 2023), MURs 7968 & 7969 (Donald J. Trump, *et al.*).

⁵ Statement of Reasons of Vice Chairman Sean J. Cooksey, and Comm'rs Allen J. Dickerson and James E. "Trey" Trainor, III, MURs 7968 & 7969 (Donald J. Trump, *et al.*).

⁶ Save America, Amend. Statement of Organization (Nov. 15, 2022).

⁷ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00825851&contributor_name=save+america&two_year_transaction_period=2022 (last visited May. 1, 2024) (reflecting \$60,000,000 in monetary contributions and \$7,750 in in-kind contributions from Save America to MAGA, Inc.). From the point of Save America's transfer to MAGA, Inc. until the present Save America's other major disbursements have included: \$12,650,000 in transfers to affiliated committee Make America Great Again! PAC, \$2,177,635 in consulting disbursements, \$64,002,794 in legal expenses, and \$2,708,214 in payroll related disbursements. *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00762591&two_year_transaction_period=2022&two_year_transaction_period=2024&min_date=10%2F03%2F2022&max_date=03%2F28%2F2024 (last visited Mar. 30, 2024).

⁸ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00825851&recipient_name=save+america&two_year_transaction_period=2022&two_year_transaction_period=2024 (last visited Mar. 28, 2024) (reflecting \$52,250,000 in refunds paid by MAGA, Inc. to Save America, including payments of \$5,000,000 each month from July, 2023 to February, 2024).

⁹ Make America Great Again Inc., Amend. Statement of Organization (Apr. 18, 2023).

1 so far in the 2024 election cycle on independent expenditures supporting Trump’s candidacy or
2 opposing other presidential candidates.¹⁰

3 **III. LEGAL ANALYSIS**

4 The Act prohibits federal candidates and officeholders, their agents, and entities directly
5 or indirectly EFMC’d by or acting on behalf of one or more candidates or individuals holding
6 federal office, from “solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing] funds in
7 connection with an election for Federal office . . . unless the funds are subject to the limitations,
8 prohibitions, and reporting requirements of [the] Act.”¹¹ This provision, among others enacted
9 as part of the Bipartisan Campaign Reform Act of 2002, was designed to “plug the soft-money
10 loophole.”¹² A leadership PAC is a political committee that is, by definition, EFMC’d by a
11 candidate or officeholder.¹³

12 The Act limits contributions to non-authorized, non-party committees, including
13 leadership PACs, to \$5,000 in any calendar year; these committees are also subject to the Act’s
14 source limitations — including the prohibition on corporate contributions — and reporting
15 requirements.¹⁴ But, following the decisions in *Citizens United v. FEC*¹⁵ and *SpeechNow.org*
16 *v. FEC*,¹⁶ the Commission concluded in Advisory Opinion 2010-11 (Commonsense Ten) that

¹⁰ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00825851&cycle=2022&is_notice=false&most_recent=true (last visited Apr. 15, 2024) (reflecting \$15,030,850 in independent expenditures by MAGA, Inc. in 2022); *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00825851&cycle=2024&is_notice=false&most_recent=true (last visited Apr. 15, 2024) (reflecting \$50,506,565 in independent expenditures made by MAGA, Inc. through February, 2024).

¹¹ 52 U.S.C. § 30125(e)(1)(A); *see* 11 C.F.R. § 300.61.

¹² *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

¹³ *See* 11 C.F.R. § 100.5(e)(6).

¹⁴ 52 U.S.C. § 30116(a)(1)(C); 52 U.S.C. §§ 30104(a)(4), 30118.

¹⁵ 558 U.S. 310 (2010).

¹⁶ 599 F.3d 686 (D.C. Cir. 2010).

1 individuals, political committees, corporations, and labor organizations may make unlimited
2 contributions to independent expenditure-only political committees and that such committees
3 may solicit unlimited contributions from such persons.¹⁷

4 As a preliminary matter, Respondents do not dispute either that Trump EFMC'd Save
5 America or that Save America made over \$60 million (more than \$52 million of which has since
6 been refunded) in contributions to MAGA, Inc. between October 3, 2022 and November 6,
7 2022.¹⁸ Indeed, the source of that information is Save America's own reports filed with the
8 Commission.¹⁹ However, Respondents do dispute the Complaint's assertions that Trump was a
9 candidate for purposes of the Act at the time the contributions were made, which was prior to the
10 filing of his statement of candidacy.²⁰

11 The Complaint alleges that Trump became a candidate prior to Save America's initial
12 contributions to MAGA, Inc. on October 3, 2022, invoking public statements by Trump
13 suggesting he had decided to run again²¹ and an assertion that Trump "has spent far more than
14 \$5,000, through Save America, to advance his 2024 presidential candidacy."²² But regardless of

¹⁷ Advisory Opinion 2020-11 (Commonsense Ten).

¹⁸ Save America Resp. (Jan. 9, 2023); Trump Resp. (Jan. 9, 2023) (incorporating by reference Save America's Response).

¹⁹ Save America, 2022 Amend. Pre-General Report at 65 (July 31, 2023); Save America, 2022 Amend. Post-General Report at 176-178 (July 31, 2023).

²⁰ Save America Resp.; Trump Resp.; Save America Supplemental Resp. (Aug. 1, 2023). *See* 52 U.S.C. § 30125(e)(1)(A) (applying only to federal candidates and officeholders, their agents, and entities directly or indirectly EFMC'd by or acting on behalf of one or more candidates or individuals holding federal office).

²¹ Compl.; Supp. Compl. (The Supplemental Complaint mirrors the substance of the original Complaint and notes that since the filing of the original Complaint additional contributions were made by Save America to MAGA, Inc. The Supplemental Complaint also lists an additional complainant, NRDC Action Votes, an IEOPC, and states NRDC Action Vote is injured by a competing IEOPC being allowed to raise funds, as it alleges, that are not in compliance with the Act.).

²² *See* Compl. at 6. The Complaint makes this assertion regarding spending in furtherance of Trump's candidacy, in general terms, and provides as support reference to a *Politico* article stating that Save America hosted several dinners for supporters of Trump for the purpose of discussing Trump's 2024 election plans. *Id.*, n.9 (citing

1 whether Trump became a candidate prior to his November 15, 2022 filing of a statement of
2 candidacy, as discussed below, the contributions at issue in this matter do not appear to violate
3 the Act or Commission regulations. This conclusion follows from Commission precedent in a
4 prior enforcement matter as well as the principles that the Supreme Court set forth when
5 interpreting the soft money provisions in *McConnell v. FEC*.²³

6 Invoking the language of 52 U.S.C. § 30125(e)(1)(A), the Complaint alleges that Trump,
7 through his leadership PAC, Save America, “direct[ed] or transfer[ed]” tens of millions of
8 dollars to MAGA, Inc., which then spent that money to influence federal elections.²⁴ This
9 statement is factually supported by the available information. But, the legal conclusion that the
10 contributions violated the Act is inconsistent with Commission and Court precedent.

11 The condition that section 30125(e) puts on candidates, officeholders, and entities
12 EFMC’d by such individuals directing or transferring funds is that the funds must be “subject to
13 the limitations, prohibitions, and reporting requirements of this Act.”²⁵ The question the
14 Complaint raises is at what point must the funds at issue be “subject to the limitations” imposed
15 by the Act: at the point they are received by the candidate or at the time they are directed or
16 transferred by that candidate? By comparing the size of Save America’s contribution to MAGA,
17 Inc. (\$60 million prior to refunds or more than \$7 million after refunds) to the Act’s
18 contributions limits applicable to contributions to non-authorized committees (\$5,000), the
19 Complaint appears to argue that the relevant point is when the funds were transferred or

Alex Isenstadt, *Trump Discussing 2024 Plans at Secret Donor Dinners*, POLITICO (July 13, 2022), <https://www.politico.com/news/2022/07/13/trump-2024-secret-donor-dinners-00045665>).

²³ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

²⁴ Compl. at 1-2; Supp. Compl. at 1-2; *see* 52 U.S.C. § 30125(e)(1)(A).

²⁵ 52 U.S.C. § 30125(e)(1)(A).

1 contributed by the candidate.²⁶ That analysis, however, is contrary to the reasoning set forth by
2 *McConnell v. FEC* and MURs 6563 & 6733 (Rep. Aaron Schock, *et al.*), which clarify that the
3 relevant concern under the Act is whether the funds underlying Save America’s \$60 million
4 contribution were previously raised subject to the Act’s limitations, prohibitions, and reporting
5 requirements at the time they were received by the candidate.

6 In *McConnell v. FEC*, the Court heard numerous challenges to the Bipartisan Campaign
7 Finance Reform Act of 2002 (“BCRA”) and its regulation of “soft money,” including a challenge
8 to the prohibition on party committees making contributions to certain tax-exempt
9 organizations.²⁷ In considering that particular challenge, the Court construed the provision
10 narrowly to apply only to funds not *raised* in compliance with the Act’s “source, amount, and
11 disclosure limitations,” stating that the prohibition “raise[s] overbreadth concerns if read to
12 restrict donations from a party’s federal account — *i.e.*, funds that have already been raised in
13 compliance with FECA’s source, amount, and disclosure limitations.”²⁸ Explaining its rationale,
14 the Court noted that, in that context, “prohibiting parties from donating funds already raised in
15 compliance with [the Act] does little to further Congress’ goal of preventing corruption or the
16 appearance of corruption of federal candidates and officeholders.”²⁹

²⁶ See Compl. at 13 (“Based on the foregoing, there is reason to believe that Trump and Save America violated 52 U.S.C. § 30125(e)(1)(A) when Trump directed or transferred \$20 million, far in excess of FECA’s aggregate contribution limit of \$5,000 per year, from Save America to MAGA, Inc.”); Supp. Compl. at 7 (“Based on the foregoing, there is reason to believe that Trump, a federal candidate, and Save America, an entity established, financed, maintained, or controlled by Trump, violated 52 U.S.C. § 30125(e)(1)(A) when they directed or transferred \$60 million from Save America to MAGA, Inc., far exceeding the applicable contribution limit.”).

²⁷ 540 U.S. 93, 178-181 (2003); *see* 52 U.S.C. § 30125(d).

²⁸ 540 U.S. at 179.

²⁹ *Id.*

1 In the present matter, the funds Save America contributed to MAGA, Inc. were raised by
2 a leadership PAC and thus subject to the Act’s “source, amount, and disclosure limitations.” No
3 allegation has been made that Save America has not complied with these requirements. Thus,
4 the funds that Save America contributed to MAGA, Inc. were “hard money.”

5 In support of its contention that Save America’s contributions violate 52 U.S.C.
6 § 30125(e)(1)(A), the Complaint argues that *Citizens United v. FEC* and *Speechnow v. FEC* had
7 a limited effect on the application of 52 U.S.C. § 30125 in this context. The Complaint relies on
8 Advisory Opinion 2011-12 (Majority PAC) for the premise that section 30125 was “not
9 disturbed by either *Citizens United* or *SpeechNow*,” and concludes that section 30125 prohibits
10 Trump and Save America “from directing or transferring contributions aggregating more than
11 \$5,000 per year to an IEOPC.”³⁰ But the Commission did not address the application of section
12 30125 to transfers or contributions made to IEOPCs by candidates, officeholders, or entities
13 EFMC’d by such individuals in AO 2011-12. Instead, the Commission was asked specifically
14 about covered individuals *soliciting* for IEOPCs, concluding that: “It is clear that under *Citizens*
15 *United*, [IEOPCs] may *accept* unlimited contributions from individuals, corporations, and labor
16 organizations; however, the Act’s solicitation restrictions remain applicable to *contributions*
17 *solicited by* Federal candidates, officeholders, and national party committees and their agents.”³¹

18 The Complaint’s argument that section 30125’s continued application to *solicitations* by
19 relevant parties applies similarly to such parties’ *direction* or *transfer* of funds is inconsistent
20 with the Commission’s resolution of similar allegations in MURs 6563 & 6733 (Rep. Aaron

³⁰ Compl. at 9 (quoting Advisory Opinion 2011-12 at 4 (Majority PAC) (“AO 2011-12”)).

³¹ AO 2011-12 at 4 (emphasis in original).

1 Schock, *et al.*).³² In that matter, the Commission considered several related alleged violations of
2 section 30125, including federal candidate Rep. Aaron Schock’s solicitation of contributions to
3 an IEOPC and, importantly, contributions made in response to Schock’s solicitations, including a
4 \$25,000 contribution by then-Congressman Eric Cantor through his leadership PAC, Every
5 Republican is Crucial PAC (“ERICPAC”).³³ Following the reasoning of AO 2011-12, the
6 Commission determined that 52 U.S.C. § 30125(e)(1)(A)’s prohibition against soliciting soft
7 money applied and found that there was reason to believe that Schock unlawfully solicited
8 contributions to the IEOPC. But the Commission also found that the contribution Cantor
9 allegedly directed — through ERICPAC — was permissible because there was no dispute that
10 the leadership PAC funds were hard dollars and, in light of the decisions in *Citizens United v.*
11 *FEC* and *Speechnow.org v. FEC*, the IEOPC was permitted to accept such a contribution even
12 though it was otherwise in excess of the Act’s \$5,000 limit.³⁴

13 Although it considered a much smaller contribution amount, the Commission’s analysis
14 in MURs 6563 & 6733 is instructive. The Commission stated: “[p]olitical committees . . . that
15 make only independent expenditures, and do not make any contributions, may accept unlimited
16 contributions from individuals and from other political committees” and that a political
17 committee “in making a \$25,000 contribution to [the IEOPC], has not made an excessive
18 contribution.”³⁵ Assuming *arguendo* that Trump was a candidate at the time of the

³² See Factual & Legal Analysis., MURs 6563, 6733 (Rep. Aaron Schock); Factual & Legal Analysis, MURs 6563, 6733 (Rep. Eric Cantor and ERICPAC).

³³ *Supra* note 32.

³⁴ Factual & Legal Analysis at 12-15, MURs 6563, 6733 (Rep. Aaron Schock); Factual & Legal Analysis at 5-6, MURs 6563, 6733 (Rep. Eric Cantor, *et al.*).

³⁵ Factual & Legal Analysis at 5-6, MURs 6563, 6733 (Rep. Eric Cantor, *et al.*) (internal citations omitted). See also Advisory Opinion 2012-34 at 2-3 (Friends of Mike H) (Friends of Mike H had in excess of \$1 million in cash on hand when the candidate withdrew from the race prior to the primary election, and the former candidate

1 contributions, he is similarly situated to Cantor and Save America is similarly situated to
2 ERICPAC. Unlike the Schock fact pattern, there is no allegation or information suggesting that
3 Trump or that Save America solicited contributions to MAGA, Inc. Therefore, consistent with
4 the Commission's treatment of Cantor and ERICPAC in MURs 6563 & 6733, the contribution of
5 funds — raised subject to the limitations, prohibitions, and reporting requirements of the Act —
6 by Save America to MAGA, Inc., do not appear to violate the Act or Commission regulations.

7 Accordingly, the Commission dismisses the allegation that Donald J. Trump or Save
8 America and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C.
9 § 30125(e)(1)(A).

asked the Commission whether it would be permissible for his principal campaign committee to contribute from these funds to an IEOPC in an amount in excess of the limits. The Commission stated that because the funds would be used to fund independent activity, and no information suggested that the contribution would result in a conversion to personal use, the contribution was permissible.).