BEFORE THE FEDERAL ELECTION COMMISSION

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)	**MUR 8090**
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SUPPLEMENTAL RESPONSE OF
SAVE AMERICA AND BRADLEY T. CRATE, AS TREASURER

By and through undersigned counsel, Save America and its Treasurer Bradley T. Crate (collectively, "Save America") hereby respond to the complaint in the above-captioned Matter Under Review. For the reasons set forth below, we respectfully request that the Federal Election Commission ("FEC" or "Commission") find that there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act") or FEC regulations has occurred, dismiss the complaint, and close the file in this MUR.

BACKGROUND

This matter arises from a complaint alleging that former president Donald Trump and Save America, President Trump's federally registered leadership PAC, violated the so-called "soft money" prohibitions on federal candidates under the Bipartisan Campaign Reform Act of 2002 ("BCRA"), 52 U.S.C. § 30125(e)(1)(A). The complaint contends that President Trump and Save America did so "by directing or transferring" soft money, in the form of donations Save America made to an unaffiliated Super PAC, Make America Great Again, Inc. ("MAGA, Inc."), in connection with the 2022 midterm elections.[1] Compl. ¶¶ 1, 24, 33–35. The complaint asserts that President Trump had become a federal "candidate" by the time Save America made these donations, *id.* ¶¶ 1, 6–12, 25–31, and that as "a federal committee established, financed, maintained, or controlled by a federal candidate or officeholder," Save America could not "transfer

[1] According to FEC reports, MAGA, Inc. spent over $15 million on independent expenditures in connection with the 2022 midterms.

more than $5,000 to another federal committee," including a Super PAC, "as doing so would exceed FECA's limit on contributions to a PAC." *Id.* ¶ 20.[2]

ARGUMENT

The complaint flagrantly misrepresents the state of the law under BCRA. Indeed, this is a straightforward matter involving a question that has been asked and answered by the Commission many times over. Because Save America's donations to MAGA, Inc. consisted entirely of federal funds, or "hard money," raised by Save America consistent with FECA's contribution limitations, source prohibitions, and reporting requirements, there could not have been a BCRA violation. The complaint thus fails to assert a viable legal theory under all circumstances, and it must be dismissed. While the complaint also fails to establish reason to believe that President Trump was a federal "candidate" at the time Save America made its donations to MAGA, Inc.,[3] that question is ultimately irrelevant to the Commission's adjudication of this MUR.

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[2] The complaint does not—and indeed could not—allege that MAGA, Inc. was an entity "established, financed, maintained, or controlled" by a federal candidate, officeholder, or agent of either.

[3] To be a federal "candidate," an individual must not only have the subjective intention to run for federal office, but must also have objectively raised or spent "contributions" or "expenditures" for the purpose of influencing that individual's federal candidacy in amounts exceeding $5,000. 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3. The complaint, choosing to ignore President Trump's well-known flair for showmanship, points to some stray, off-the-cuff comments President Trump made to the media, which the complaint contends prove he had made up his mind to run for President in 2024 before Save America made the donations to MAGA, Inc. Assuming, for the sake of argument, that the complaint's mind-reading exercise is accurate, the complaint does not identify any expenditures made by Save America in furtherance of a 2024 Trump presidential candidacy, let alone more than $5,000 in such expenditures. Save America's spending at the time had been entirely in connection with the 2022 midterm elections, when President Trump clearly was not on the ballot. The best the complaint can muster to support its "campaign" spending allegations is a selective quotation from a *Politico* article reporting, based primarily on unnamed sources and the reporter's own second-hand characterizations, that Save America had hosted private dinner gatherings with prominent donors and supporters in locations where Save America held rallies in support of 2022 candidates. Compl. ¶ 30. Yet the complaint ignores that the same article also makes clear that those dinners were for Save America's benefit, focusing on President Trump's endorsements in the 2022 midterms and "his plans for the [2022] fall election.' Moreover, according to the article, it was the invitees who were interested in discussing 2024, not President Trump or anyone associated with Save America. In fact, the article states specifically that *"when talk turned to 2024, Trump … kept his cards close," and "[a]fter [one supporter] told the former president to launch his campaign . . . Trump offered little by way of response.*" This article hardly describes 2024 presidential campaign activities, as the complaint contends, and in any event, is an insufficient basis for "reason to believe"—which "must be based on specific facts from reliable sources." MUR 6002 (Freedom's Watch, Inc.), Statement of Reasons of Comm'rs Petersen, Hunter & McGahn at 6, n.31 (citing MURs).

BCRA's soft-money ban was upheld in *McConnell v. FEC*, 540 U.S. 93 (2003), as an appropriate means to further Congress's interest in preventing corruption through large, secretive, unreported donations. Yet there is no corruption concern at stake when a committee donates funds that have already been limited and reported under FECA. *McConnell v. FEC*, 540 U.S. 93, 179 (2003) ("Prohibiting parties from donating funds already raised in compliance with FECA does little to further Congress' goal of preventing corruption or the appearance of corruption of federal candidates and officeholders."). Therefore, "the Commission has routinely found [that] candidates' authorized committees and leadership PACs may make unlimited contributions to independent expenditure committees and other political organizations without implicating the restrictions of 52 U.S.C. § 30125(e)(1) (formerly 2 U.S.C. § 441i(e)(1))." MUR 6753 (People for Pearce), Concurring Statement of Comm'r Goodman at 1, n.2; *see generally* MUR 6753, First General Counsel's Report (raising no concerns or recommendation that a $10,000 donation from campaign committee to a Super PAC violated 52 U.S.C. § 30125(e)(1) by exceeding $5,000 contribution limitation).[4]

For example, in Advisory Opinion 2012-34 (Freedom PAC and Friends of Mike H), the Commission acknowledged that while "[c]ontributions to nonconnected political committees are limited under the Act to $5,000 per year . . . [c]ourts have held . . . that the Act's amount limitations

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Indeed, allegations "based upon unsworn news reports, anonymous sources, and an author's summary conclusions and paraphrases provide questionable legal basis to substantiate a reason to believe finding." MUR 6661 (Robert E. Murray), Statement of Reasons of Comm'rs Petersen, Goodman & Hunter at 8; *accord* MUR 6002 (Freedom's Watch, Inc.), Statement of Reasons of Comm'rs Petersen, Hunter & McGahn at 6; (Conrad Burns – 2006), Factual & Legal Analysis, MUR 5866 at 5.

[4] The complaint's hypothetical of "a state officeholder running for federal office" who unlawfully transfers non-federal "funds held in a state PAC," Compl. ¶ 20, is a false (and disingenuous) analogy to Save America's hard-money donations. That scenario is a clear violation of BCRA's tenets; even if such a hypothetical state PAC held funds compliant with FECA's amount limitations and source prohibitions, those funds still would constitute soft money, as they could not satisfy FECA's reporting requirements. *See, e.g.*, MURs 7327, 7337 & 7344 (Debbie Lesko), First General Counsel's Report at 11, n.38. The funds raised by Save America, however, were fully compliant with all of FECA's mandates.

are generally unconstitutional as applied to contributions that will be used to finance independent activity." *Id.* at 3 (citing *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*)). The Commission expressly rejected a proposed alternate draft that would have adopted the complaint's view of the law, deeming donations of campaign funds to Super PACs in excess of $5,000 subject to 52 U.S.C. § 30125(e)(1)(A).

Notably, in a comment opposing the ultimately rejected draft opinion in 2012-34, attorneys Marc Elias and Brian Svoboda of Perkins Coie noted that it needed to be rejected as a matter of law, because, like here, "[*a*]*ll* of the funds involved '[were] subject to the limitations, prohibitions, and reporting requirements' of FECA. . . . The candidate presumably raised all of these funds in $2,500 or $5,000 increments, from federally permissible sources that were fully disclosed on his FEC reports." Comment of Marc E. Elias & Brian G. Svoboda, Agenda Document No. 12-78-A, at 2 (Nov. 15, 2012). Elias and Svoboda stressed further that "[n]ot even BCRA's strongest proponents have claimed that a candidate is 'corrupted' when his campaign issues a check to someone else in excess of $5,000." *Id.*

Advisory Opinion 2007-29 (Jesse Jackson Jr.) further confirms this principle. A member of Congress asked the Commission whether his federal campaign committee could donate funds to his wife's local campaign without limit under BCRA. *Id.* at 1–2, 4. The Commission determined that, because the funds in the Member's federal campaign committee presumably already "compl[ied] with the amount and source restrictions of the Act and Commission regulations," the amount of money that could be donated from the campaign was "not restricted by [52 U.S.C. § 30125(e)(1)(A)]." *Id.* at 4.

And in MURs 6563 and 6733, the voting commissioners unanimously agreed that a $25,000 donation from Eric Cantor's leadership PAC to a Super PAC was permissible. *See* MURs

6565 & 6733 (Eric Cantor), Factual & Legal Analysis at 5–6. In those MURs, the Commission did conclude that former Member Aaron Schock had violated 52 U.S.C. § 30125(e)(1)(A) by *solicitating* Cantor's $25,000 donation in contravention of 52 U.S.C. § 30125(e)(1)(A) and Advisory Opinion 2011-12 (House Majority PAC). But a solicitation of soft money is very different from a committee using its federally compliant funds to support an unaffiliated Super PAC without restriction, consistent with its rights under the First Amendment. In other words, as Elias and Svoboda summarized it, "the law [is] clear: [52 U.S.C. § 30125(e)(1)(A)] restricts what a candidate, his campaign and his leadership PAC may raise from *others*. It does not affect how they may spend the federal funds they have already raised and disclosed themselves." Comment of Elias & Svoboda, *supra* (emphasis in original).

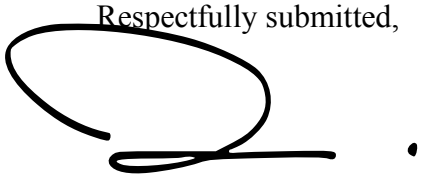
Campaign committees and leadership PACs have relied on these Commission precedents and routinely make large donations of their hard money to unaffiliated Super PACs. For example, at the same time Save America was making its donations to MAGA, Inc. in the lead up to the 2022 midterm elections, Rep. Nancy Pelosi's leadership PAC (PAC to the Future) was donating $1.75 million to House Majority PAC's non-contribution account, and Rep. Stenny Hoyer's leadership PAC (AMERIPAC) was donating another $1.1 million to same committee. As a matter of well-settled law, the use of committee hard money to make such donations to unaffiliated Super PACs—including Save America's donations to MAGA, Inc.—does not violate BCRA.

CONCLUSION

Simply put, even if the allegations in the complaint are all taken as true, the complaint fails to "describe a violation of statute or regulation over which the Commission has jurisdiction" and thus must be dismissed. 11 C.F.R. § 111.4(d)(3); *see also, e.g.*, MUR 6554 (Friends of Weiner), Factual & Legal Analysis at 5 ("The Complaint and other available information in the record do

not provide information sufficient to establish" a violation of the Act); MUR 5845 (Citizens for Truth), Factual & Legal Analysis at 6, n.8 ("The Commission may find reason to believe if a complaint sets forth sufficient specific facts which, if proven true, would constitute a violation of the Act."). Accordingly, the Commission should find no reason to believe, dismiss the complaint, and close the file in this MUR.

Respectfully submitted,



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