



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Susan B. Anthony List Inc.)
Candidate Fund, *et al.*) MUR 7632
)

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR, III**

In this matter, we voted to approve the Office of General Counsel's recommendations to dismiss the allegations that that Susan B. Anthony List Inc. Candidate Fund and Jennifer Gross in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and 30118(a), that The Lukens Company violated 52 U.S.C. § 30118(a), and find no reason to believe that Robert J. Kania II violated the Act. We opposed, however, the issuance of caution letters to the Respondents.

For the purposes of 52 U.S.C. § 30109(a)(8), we attach our proposed Factual and Legal Analysis in this matter.

Allen Dickerson
Vice Chair

December 3, 2021

Date

Sean J. Cooksey
Commissioner

December 3, 2021

Date

James E. "Trey" Trainor, III
Commissioner

December 3, 2021

Date

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Susan B. Anthony List Inc. Candidate Fund and
Jennifer Gross in her official capacity as treasurer
Robert J. Kania II
The Lukens Company

MUR 7632

I. INTRODUCTION

The Complaint in this matter alleges that Susan B. Anthony List Inc. Candidate Fund (“Committee”), a separate segregated fund of Susan B. Anthony List Inc.,¹ filed disclosure reports falsely disclosing disbursements to a vendor, The Lukens Company (“Lukens”), at a time when the Committee had not yet paid the vendor, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).² As a result, the Complaint alleges, the Committee overstated its total disbursements and understated its cash-on-hand on its disclosure reports, and, because the Committee disclosed the unpaid amount as an unsecured loan from Lukens, the Committee accepted an impermissible corporate contribution from Lukens. Respondents acknowledge the reporting errors but state that the Committee promptly corrected the errors by amending disclosure reports after the Commission brought the errors to the Committee’s attention.³ As set forth below, the Commission dismisses the allegations.

¹ See Committee Amended Statement of Organization at 2, 3 (May 7, 2019).

² Compl. at 3, 4 (Aug. 5, 2019).

³ All Respondents filed a joint response to the Complaint (“Joint Resp.”).

II. DISCUSSION

The Committee filed 24-hour independent expenditure reports for mailers supporting federal candidates, and also reported them on Schedule E of the Committee's 2018 September and October Monthly Reports, disclosing expenditures of \$17,326.62 on August 17, 2018, and \$24,154.26 on September 10, 2018.⁴ The Committee then disclosed the receipt of a no-interest unsecured loan of \$68,988.94 from Lukens on October 15, 2018, which included the Committee's independent expenditures of \$41,480.88 in August and September 2018.⁵ The Committee's 2018 Year-End Report disclosed the loan twice on Schedule C, reflecting it once as a positive figure and then as a negative figure.⁶ Robert J. Kania, II, was the Committee treasurer at the time of the reports mentioned above.⁷

On April 4, 2019, the Commission's Reports Analysis Division ("RAD") sent the Committee a Request for Additional Information ("RFAI") stating that the loan disclosed on the Committee's 2018 Pre-General Report appeared to be a corporate contribution. On May 7, 2019, RAD sent the Committee an RFAI concerning the 2018 Year-End Report's disclosure of this loan. On June 10, 2019, the Committee filed an amended 2018 Pre-General Report disclosing a \$68,988.94 debt to Lukens and an amended 2018 Year-End Report disclosing the Committee's

⁴ See Committee 2018 September Monthly Report at 114, 115 (Sept. 20, 2018); Committee 2018 October Monthly Report at 480, 481 (Oct. 19, 2018).

⁵ See Committee 2018 Pre-General Report at 373 (Oct. 25, 2018); Compl. at 5; Joint Resp. at 3. The remaining amount of \$27,508 included in this loan comprises other independent expenditures disclosed on the Committee's 2018 Pre-General Report. See Committee 2018 Pre-General Report at 377-79.

⁶ Committee 2018 Year-End Report at 13, 14 (Jan. 31, 2019). The Committee also reported this loan on Schedule A as a negative figure with the memo notation "paid bill." *Id.* at 8.

⁷ See Committee Statement of Organization (Jan. 31, 2013). The Committee named Jennifer Gross as treasurer on May 7, 2019. See Committee Amended Statement of Organization (May 7, 2019).

payment of the debt on November 29, 2018.⁸ On the same date, the Committee also filed amended 2018 September and October Monthly Reports adjusting the independent expenditure disbursements and cash-on-hand to reflect the debt.⁹ RAD reviewed the amended reports, which they deemed satisfactory, and did not refer the Committee's reporting errors to the Office of General Counsel. On August 5, 2019, the Complainant filed the Complaint in this matter.

Respondents acknowledge that the Committee failed to disclose that it owed Lukens for services provided and that the Committee misidentified the debt owed to Lukens as a loan.¹⁰ Respondents assert that the Committee did not knowingly file false reports, and it immediately corrected its reports after RAD notified it of the reporting problems.¹¹ Respondents also assert that Lukens extended credit to the Committee for the production and distribution of its mailers consistent with Lukens' standard business practice and Lukens' customary payment period is within the normal industry practice.¹² Thus, Respondents assert that Lukens' extension of credit does not constitute an illegal in-kind corporate contribution.¹³

The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁴ Each disclosure report shall disclose the

⁸ See Committee Amended 2018 Pre-General Report at 372 (June 10, 2019) and Committee Amended 2018 Year-End Report at 12 (June 10, 2019).

⁹ See Committee Amended 2018 September Monthly Report at 2, 4 (June 10, 2019); Committee Amended 2018 October Monthly Report at 2, 4 (June 10, 2019) (for each report, disclosing disbursements decreased and cash-on-hand increased by the amount of the independent expenditures not yet paid).

¹⁰ Joint Resp. at 1, 2.

¹¹ *Id.* at 1.

¹² *Id.* at 1, 2.

¹³ *Id.* at 2.

¹⁴ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

amount and nature of outstanding debts and obligations owed by or to such political committee.¹⁵ A debt or obligation, including a loan, written contract, written promise or written agreement, to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which it is incurred.¹⁶

Corporations are prohibited from making contributions to a separate segregated fund, and it is also unlawful for a separate segregated fund to knowingly accept or receive a contribution prohibited by section 30118(a).¹⁷ A corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extension of credit to nonpolitical debtors that are of similar risk and size of obligation.¹⁸

Although the Committee disclosed disbursements that had not yet been paid and disclosed debt to a vendor as a loan, the Commission dismisses the reporting allegations. The activity was disclosed, albeit incorrectly, the Committee corrected its reports in response to RFAs, the Complaint was filed after the Committee amended its reports, and RAD has not referred the Committee to the Office of General Counsel for potential enforcement action. As to the potential corporate contribution, Respondents assert that it is standard practice in Lukens' industry to be paid up to three months after services have been provided, supported by sworn

¹⁵ 52 U.S.C. § 30104(b)(8).

¹⁶ 11 C.F.R. § 104.11(b).

¹⁷ 52 U.S.C. § 30118(a).

¹⁸ 11 C.F.R. § 116.3(b). *See* 11 C.F.R. § 116.3(c) (criteria used to determine whether credit is extended in the ordinary course of business).

statements regarding the “factual statements” in the response.¹⁹ Respondents also assert that Lukens was a longtime vendor of the Committee, which is supported by a Committee disclosure report from an earlier election cycle and by disclosure reports by the Committee’s connected organization over several election cycles.²⁰ The Commission is aware of no information contradicting Respondents’ assertions. Under these particular circumstances, the Commission does not believe it is worth the expenditure of additional Commission resources to investigate this matter.²¹ Accordingly, the Commission exercises its prosecutorial discretion and dismisses the allegations that the Committee violated 52 U.S.C. §§ 30104(b) and 30118(a) and that Lukens violated 52 U.S.C. § 30118(a).²²

¹⁹ Joint Resp. at 2-3. The sworn declarations are from Jennifer Gross, the current Committee treasurer, Robert J. Kania II, treasurer at the time of the activity, and Seth Colton, a Lukens representative, consisting of one sentence stating that the factual statements in the Response regarding the Committee, Kania, and Lukens, respectively, are true and correct. *Id.* at 5-7.

²⁰ The Committee disclosed payments to Lukens for independent expenditures regarding several federal candidates in 2008. *See* Committee 2008 Post-General Report at 867-71 (Dec. 4, 2008). Susan B. Anthony List, Inc., the Committee’s connected organization, made payments to Lukens for independent expenditures for federal candidates during the 2012, 2014 and 2016 election cycles. *See, e.g.*, Susan B. Anthony List, Inc. (Form 5 Filer) Amended 2012 Year-End Report at 116-18 (May 1, 2013), 2014 Year-End Report at 6-7 (Jan. 30, 2015).

²¹ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

²² As to Robert J. Kania II, the Complaint designates him as a respondent in his individual capacity and as former treasurer of the Committee. Compl. at 1. The available information does not warrant an enforcement action against Robert Kania II in his individual capacity. *See* Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 1 (Jan. 3, 2005). The Commission generally designates the current treasurer as a respondent in their official capacity, and Jennifer Gross, the current Committee treasurer, has been so designated here. Thus, the Commission finds that there is no reason to believe that Kania violated the Act.