



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 24, 2023

VIA ELECTRONIC MAIL

Chris K. Gober, Esq.
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RE: MUR 8107
Mike Braun for Indiana and Thomas
Datwyler in his official capacity as
treasurer

Dear Messrs. Gober and Wang:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting your client, Mike Braun for Indiana and Thomas Datwyler in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On January 24, 2023, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d)(4). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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probable cause conciliation is not mandated by the Act or the Commission's regulations but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or epaoli@fec.gov within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Dara Lindenbaum", written over a horizontal line.

Dara Lindenbaum
Chair

Enclosures: Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Mike Braun for Indiana and Thomas Datwyler MUR 8107
in his official capacity as treasurer¹

I. INTRODUCTION

This matter arises from an audit of the 2017-2018 election cycle activity of Mike Braun for Indiana and Thomas Datwyler in his official capacity as treasurer (the “Committee”).² On June 8, 2022, the Commission approved the Final Audit Report (the “FAR”), which includes Finding 5b, a finding referred by the Audit Division to the Office of General Counsel (“OGC”) for possible enforcement action.³ Finding 5b relates to the inaccurate disclosure of candidate loans, totaling \$11,569,963.⁴ The FAR identified nine of the Committee’s original 2017-2018 election cycle disclosure reports that contained errors related to candidate loans.⁵ With respect to Finding 5b, the Committee does not appear to contest the finding.⁶

As discussed below, the Committee’s original reporting of loans and lines of credit on almost all of its 2017-2018 election cycle reports was inaccurate. Accordingly, the Commission

¹ Thomas Datwyler became treasurer on January 29, 2019. Mike Braun for Indiana, Amended Statement of Organization (Jan. 29, 2019), <https://docquery.fec.gov/pdf/468/201901299144144468/201901299144144468.pdf>. During the 2017-2018 election cycle, the treasurer was Travis Kabrick. Mike Braun for Indiana, Statement of Organization (Aug. 14, 2017), <https://docquery.fec.gov/pdf/271/201708140200246271/201708140200246271.pdf>.

² See Referral 22-02 at 1 (June 22, 2022).

³ Certification (“Cert.”) ¶ 3 (June 9, 2022), A19-02, Agenda Document No. 22-22-A (Proposed Final Audit Report on Mike Braun for Indiana), https://www.fec.gov/resources/cms-content/documents/MikeBraun_VotePFAR_2018.pdf; Final Audit Report of the Commission on Mike Braun for Indiana (Aug. 7, 2017 – Dec. 31, 2018), https://www.fec.gov/resources/cms-content/documents/MikeBraun_FARC_2018.pdf (“FAR”); Referral (excerpt from the FAR).

⁴ Finding 5a described improperly disclosed joint fundraising memo entries and was not referred. See Referral at 1; FAR at 5, 30-31 (Finding 5a).

⁵ Those reports are the 2017 October Quarterly, 2017 Year-End, 2018 April Quarterly, 2018 12-Day Pre-Primary, 2018 July Quarterly, 2018 October Quarterly, 2018 Pre-General, 2018 Post-General, and 2018 Year-End.

⁶ Resp. at 5 (Aug. 15, 2022).

1 finds reason to believe that the Committee failed to accurately disclose loans in violation of
2 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d)(4).

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Legal Standard**

5 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee
6 treasurers to file reports of receipts and disbursements in accordance with the provisions of
7 52 U.S.C. § 30104.⁷ These reports must include, *inter alia*, cash on hand at the beginning of the
8 reporting period and the total amount of receipts, certain contributor information, total amount of
9 disbursements, and certain information about to whom disbursements are made.⁸

10 Political committees must also disclose the amount and nature of outstanding debts and
11 obligations until those debts are extinguished.⁹ A committee must file separate schedules for
12 debts owed by and to the committee with a statement explaining the circumstances and
13 conditions under which each debt and obligation was incurred or extinguished.¹⁰ The Act also
14 requires accurate reporting of the total amount of loans made or guaranteed by the candidate and
15 the repayment of those loans.¹¹

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

⁸ 52 U.S.C. § 30104(b)(1)-(5); 11 C.F.R. § 104.3(a).

⁹ See 52 U.S.C. § 30104(b)(8); see also 11 C.F.R. § 104.3(a)(4)(iv) (setting forth information required to be disclosed, including the identification of any endorser or guarantor of the loan, the date the loan was made, and the amount of the loan).

¹⁰ See 11 C.F.R. § 104.11(a).

¹¹ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(b)(2)(iii)(A), (d).

1 **B. The Commission Finds Reason to Believe that the Committee Violated**
2 **52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d)(4) by Failing to Accurately**
3 **Disclose Loans**
4

5 From July 2017 through the end of 2018, the Committee failed to correctly disclose loan
6 balances and loan terms for 29 transactions totaling \$11,569,963.¹² Those loans included three
7 bank loans, 13 lines of credit, and 13 candidate loans.¹³ The FAR states that the errors, made on
8 Schedules C and C-1, included disclosing incorrect or missing loan terms and dates, repayment
9 amounts, loan forgiveness, outstanding balances, and an incorrect guarantor.¹⁴ The Audit
10 Division formed its conclusions in the draft FAR after reconciling the Committee's bank records
11 and loan documentation with its disclosure reports.¹⁵

12 In its response to the Referral, the Committee does not dispute the errors it made.
13 Further, the Committee has yet to amend its disclosure reports to correct the errors in Finding 5b.
14 Therefore, the Commission finds reason to believe that the Committee failed to accurately
15 disclose loans in violation of 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d)(4).

12 FAR at 32.

13 *Id.* In addition, the misstatement of activity described above includes two loans totaling \$96,520 that were
not reported.

14 *Id.*

15 *Id.*