

RECEIVED

By Office of the Commission Secretary at 4:56 pm, Jun 29, 2021

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463**SENSITIVE**

June 29, 2021

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer AP by *KAH*
Staff Director

FROM: Patricia C. Orrock *PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: Kristin D. Roser *KDR*
Compliance Branch

SUBJECT: Reason to Believe Recommendation -
Failure to File 48-Hour Notices under the Administrative Fine Program

Attached is the name of a principal campaign committee that has failed to file 48-hour notices with the Commission for contributions of \$1,000.00 or more received from the close of books for Florida 12 Day Pre-Primary Report up to 48 hours before the August 18, 2020 Primary Election in accordance with 52 U.S.C. § 30104(a) and 11 CFR. § 104.5(f). The committee, Casey Askar for Congress, represents a candidate who lost the Primary Election. The committee is being referred for failing to file 48-hour notices for contributions totaling \$209,800.00.

A 48-hour notice is required to report all contributions of a \$1,000.00 or more, to any authorized committee of a candidate, including contributions from the candidate, loans from the candidate and other non-bank sources and endorsements or guarantees of loans from banks, as per 11 CFR § 104.5(f).

We have attached an information sheet which includes the contributor name, date of receipt and amount of the contributions for which a 48-hour notice was not filed.

In accordance with the schedule of civil money penalties outlined within 11 CFR § 111.44, this committee should be assessed the civil money penalty so indicated.

Recommendation

1. Find reason to believe that Casey Askar for Congress and Robert Phillips III, in his official capacity as treasurer, violated 52 U.S.C. § 30104(a) and make a preliminary determination that a civil money penalty of \$21,433 be assessed.
2. Send the appropriate letter.

Attachment

Contributions for Which a 48-Hour Notice Was Not Received**AF 4221****Committee ID: C00742528****Committee Name: Casey Askar for Congress****Report Type: 2020 October Quarterly Report (7/30/2020 – 9/30/2020)****48-Hour Reporting Period: 7/30/2020 – 8/15/2020**

CONTRIBUTOR NAME	DATE	AMOUNT
ELIAS MUAWAD	8/1/2020	\$2,200.00
ELIAS MUAWAD	8/1/2020	\$2,800.00
		
PAUL LUFTY	8/7/2020	\$1,000.00
CHRIS THOMAS	8/7/2020	\$1,000.00
MONTY KAMPOSH	8/8/2020	\$2,800.00
CASEY ASKAR	8/9/2020	\$100,000.00
		
CASEY ASKAR	8/10/2020	\$100,000.00
	TOTAL	\$209,800.00

Proposed Civil Money Penalty: \$21,433 ((3 Notices Not Filed at \$151 each) + (10% of the Overall Contributions Not Reported))

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) AF 4221
 Reason to Believe Recommendation –)
 Failure to File 48-Hour Notices under the)
 Administrative Fine Program: Casey)
 Askar for Congress and Robert Phillips)
 III, in his official capacity as treasurer)

CERTIFICATION

I, Laura E. Sinram, Acting Secretary and Clerk of the Federal Election Commission, do hereby certify that on July 14, 2021, the Commission decided by a vote of 5-0 to take the following actions in AF 4221:

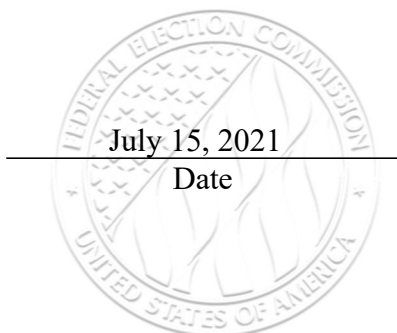
1. Find reason to believe that Casey Askar for Congress and Robert Phillips III, in his official capacity as treasurer, violated 52 U.S.C. § 30104(a) and make a preliminary determination that a civil money penalty of \$21,433 be assessed.
2. Send the appropriate letter.

Commissioners Broussard, Cooksey, Dickerson, Trainor, and Walther voted affirmatively for the decision. Commissioner Weintraub did not vote.

Attest:

**Laura
Sinram**

Digitally signed by
 Laura Sinram
 Date: 2021.07.15
 14:15:16 -04'00'



 Laura E. Sinram
 Acting Secretary and Clerk of the
 Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AF

July 16, 2021

Robert Phillips III, in official capacity as Treasurer
Casey Askar for Congress
P.O. Box 651
Naples, FL 34106

C00742528

AF#: 4221

Dear Mr. Phillips,

The Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101, et seq. ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing the Federal Election Commission ("FEC") and the Secretary of State, as appropriate, of any contribution of \$1,000 or more, received by any authorized committee of the candidate after the 20th day, but more than 48 hours before, any election. 52 U.S.C. § 30104(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. *Id.* These notification requirements are in addition to all other reporting requirements. 52 U.S.C. § 30104(a). Our records indicate that Casey Askar for Congress did not submit 48-Hour Notices for contributions of \$1,000 or more, received between July 30, 2020 and August 15, 2020, totaling \$209,800, as required by 52 U.S.C. § 30104(a)(6)(A). Attachment 1.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109(a)(4). On July 14, 2021, the FEC found that there is Reason to Believe ("RTB") that Casey Askar for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file the 48-Hour Notices. Based on the FEC's schedule of civil money penalties at 11 CFR § 111.44, the amount of your civil money penalty calculated at the RTB stage is \$21,433. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 2. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. The amount of the civil money penalty is \$151 for each non-filed notice plus 10 percent of the dollar amount of the contributions not timely reported. The civil money penalty increases by 25 percent for each prior violation. Send your payment of \$21,433 within forty (40) days of the finding, or by August 24, 2021.

CASEY ASKAR FOR CONGRESS

Page 2 of 5

At this juncture, the following courses of action are available to you:

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response to the FEC's Office of Administrative Review. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or August 24, 2021. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

Please note, the Federal Election Commission's office remains closed to visitors and most of its employees are continuing to telework in an effort to limit the spread of coronavirus (COVID-19). The Commission is processing some documents submitted by mail, though processing will not occur daily until the agency resumes normal mail operations. Nevertheless, a challenge to an RTB finding and/or calculated civil money penalty must be received on time. Thus, all written responses and supporting documentation should be converted to PDF (Portable Document Format) and must be emailed to administrativefines@fec.gov. The Commission encourages the use of electronic signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted challenges will be deemed received on the date it is electronically received by staff.

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). For a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee

CASEY ASKAR FOR CONGRESS

Page 3 of 5

computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. District Court under 52 U.S.C. § 30109. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Casey Askar For Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq. The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. Upon receipt of your payment, the FEC will send you a final determination letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assesses upon making a final determination.

5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in

CASEY ASKAR FOR CONGRESS

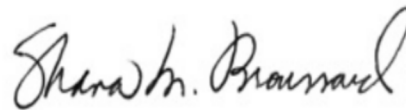
Page 4 of 5

correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 CFR § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Jacqueline Gausepohl in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

On behalf of the Commission,



Shana M. Broussard
Chair

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.44, the amount of your civil money penalty calculated at RTB is \$21,433 for the 2020 Florida Primary Election 48-Hour Notification Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative

CASEY ASKAR FOR CONGRESS

Page 5 of 5

Fine Program Payment form. Please use the details below to complete the required fields. For additional payment options, please contact Jacqueline Gausepohl in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

COMMITTEE NAME: Casey Askar for Congress

FEC ID#: C00742528

AF#: 4221

PAYMENT DUE DATE: August 24, 2021

PAYMENT AMOUNT DUE: \$21,433



Paul E. Brothers
Direct Dial: (816) 285-3884
Fax: (816) 256-5959
pbrothers@gravesgarrett.com

August 23, 2021

Via Electronic Mail

Shana M. Broussard
Federal Election Commission
1050 First St NE
Washington D.C. 20463

**Re: Robert Phillips III, in his official capacity as Treasurer for Casey Askar for Congress,
AF#: 4221, Challenge to Reason to Believe Finding and Proposed Civil Penalty**

Dear Ms. Broussard,

On behalf of our client, Robert Phillips III, in his official capacity as Treasurer for Casey Askar for Congress, we provide the following challenge to the Reason to Believe (RTB) finding and proposed civil penalty outlined in your letter dated July 16, 2021.

I. The Administrative Fine Program Violates Phillips' Procedural Due Process Rights

The Administrative Fine Program's narrow procedures deprive Phillips of a meaningful opportunity to be heard and violate his procedural due process rights. The Administrative Fine Program severely restricts a person's ability to challenge the Commission's proposed fine. The Commission will only consider a challenge of a RTB finding and proposed fine if the challenge alleges the RTB finding is premised on a factual error, the proposed fine was miscalculated, or reasonably unforeseen circumstances prevented the treasurer from reporting in a timely manner despite their best efforts.¹ Any challenge to the RTB finding or proposed fine that does not fall into one of these three arguments does not even receive consideration from the Commission.

This severely curtails a treasurer's ability to challenge the Commission's actions, especially the proposed fine. The Administrative Fine Program only takes into consideration two factors to determine the proposed fine: the amount of the contribution and the number of past reporting violations by the treasurer or committee. If the Commission applies these two factors correctly, the treasurer loses the ability to request a reduction of the proposed fine for any reason. This loss extinguishes many legitimate and valid arguments a treasurer may wish to make to support reduction of the proposed fine.

¹ 11 CFR § 111.35(b)



For example, many treasurers or committees may have evidence of attendant circumstances that mitigates the severity of the violation, even though it does not fit within the Commission’s narrow “reasonably unforeseen circumstances” criterion. While this evidence would not dispute the amount of the contribution or the number of past reporting violations, it would be relevant to determining whether the proposed fine is appropriate and proportionate to the specific facts giving rise to the violation. Such mitigating circumstances could include how quickly the treasurer reported the contribution after the missed deadline, the unique nature of the contribution, or circumstances surrounding the operation of the committee which contributed to the violation. These circumstances may warrant a reduction in the proposed fine; however, the Commission’s arbitrary position to refuse to even consider them deprives treasurers and committees of any opportunity to raise these arguments.

The guarantees of procedural due process require a person receive a meaningful opportunity to be heard before they are deprived of a protected property interest.² The Commission’s refusal to hear any mitigating circumstances which may warrant a reduction of the proposed fine deprives Phillips of a meaningful opportunity to be heard.

If it were not for the Commission’s refusal to consider such arguments, Phillips would present significant mitigating circumstances. He presents those circumstances here in the event the Commission is now prepared to modify its program, or at least its application to his situation.

First, the violation did not significantly impair the public interest that the 48-hour notice requirement is meant to protect, and certainly does not show a pattern of intentionally failing to report contributions for strategic or other advantage. The violation applies to only 7 of the 23 contributions or loans Askar’s committee received during the 20-day window in which 48-hour reports were required (from July 29 through August 18), and they involve only four unique contributors other than the candidate himself. Each of those contributors was voluntarily disclosed by the committee in its next report, its October quarterly report. None of them made “max-out” contributions totaling \$5,600. There is no evidence that any of the contributors was a person of political significance, the quick disclosure of which might have informed voters’ choices. Indeed, the identity of donors was not a substantial issue in Askar’s primary race. It is also significant that ninety-five percent of the total amount at issue, \$200,000 of the \$209,800, was from the candidate’s two \$100,000 loans to his own campaign. While no one disputes that voters have some general interest in knowing the extent to which a candidate is supporting his or her own campaign, that is not nearly as important as learning the identity of outside financial supporters—other contributors—who could at least in theory engage in quid pro quo corruption, the core danger against which disclosure is supposed to protect. It would not have been a major revelation to learn that the candidate was supporting his own race. And finally, when one broadens the context to include the entirety of this multimillion dollar campaign, the amount at issue here is even less significant.

² *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).



Second, while the treasurer cannot represent that reasonably unforeseen efforts prevented the reporting of this handful of contributors despite the treasurer's best efforts, it is true that an internal office failure, and not any intentional misstep or even reckless or negligent act, led to these receipts being missed within the 48-hour period. It has been difficult to operate committees through remote means in the midst of the COVID-19 Pandemic, and occasionally, internal controls fail. Further, the contributions were reported soon after the period ended.

It is fundamentally unfair to extract 10% of the contributions' face value as a fine, ignoring the differences between intentional, reckless, negligent, or simply unfortunate mistakes, and further ignoring the differences between reporting that is simply late and reporting that never happens at all. Other factors, such as the actual utility of the report within the context of a particular race are also ignored. The Commission's refusal to even hear and consider these arguments deprives Phillips of a meaningful opportunity to be heard before the Commission imposes the proposed fine and violates his procedural due process rights.

II. The Administrative Fine Program Violates Phillips' Eighth Amendment Rights

The Administrative Fine Program's procedures also violate Phillips' Eighth Amendment right to not be subject to excessive fines. The Eighth Amendment requires fines be proportionate to the conduct they penalize.³ The Commission's procedures deprive it of the ability to determine whether the proposed fines are proportionate to the reporting violation because, aside from the "reasonably unforeseen circumstances" exception, the circumstances surrounding the violation do not matter to the Commission. Instead, the Commission bases the proposed fine solely on the amount of the contribution and the past violation history of the treasurer or committee. While this provides some context to the violation, it does not provide sufficient context for the Commission to determine if the proposed fine is proportionate to the violation. The Commission's rigid approach to setting fine amounts violates the Eighth Amendment.

If the Administrative Fine Program were brought into compliance with the Eighth Amendment, Phillips would take the opportunity to show that a fine of \$21,433 is grossly excessive. Less than \$10,000 of the late-reported amounts came from any person other than the candidate, yet the penalty wipes out those contributions twice-over. The public interest in 48-hour notice of late contributions and loans is real, but a penalty that is this high bears no relationship to the public's actual loss of relevant information (if any true loss occurred here) in the 20 days before Mr. Askar's primary. Additionally, penalties this disproportionate over-deter, causing candidates and campaigns to over-spend on compliance, diverting those resources from the candidates' core political speech, and reducing the amount and quality of First Amendment-protected speech in elections. In short, the amount levied in this case violates the Eighth Amendment.

Mr. Phillips respectfully challenges the Reason to Believe finding and proposed fine because the procedure used by the Commission violates his procedural due process and Eighth Amendment rights.

³ *United States v.ajakjian*, 524 U.S. 321, 335 (1998).



Graves Garrett LLC

Mr. Phillips requests the Commission provide him with a meaningful opportunity to be heard prior to the imposition of any fine in this manner where he may offer arguments in mitigation of the proposed fine. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Paul E. Brothers



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL to administrativefines@fec.gov

AF# 4221

Name of Counsel: Paul Brothers

Firm: Graves Garrett LLC

Address: 1100 Main Street, Suite 2700
Kansas City, MO 64105

Office#: 816-285-3884 Fax#: 816-256-5958

Mobile#: _____

E-mail: pbrothers@gravesgarrett.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12/9/21

Date

(Signature - Respondent/Agent/Treasurer)

Treasurer

Title

Robert Phillips

(Name - Please Print)

RESPONDENT:

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: _____
(Please Print)

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 9, 2021

REVIEWING OFFICER RECOMMENDATION OFFICE OF ADMINISTRATIVE REVIEW (“OAR”)

AF# 4221 – Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer (C00742528)

Summary of Recommendation

Make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$21,433 civil money penalty.

Reason-to-Believe Background

In connection with the 2020 Florida Primary Election held on August 18, 2020, the respondents were required to file 48-Hour Notices for contributions of \$1,000 or more received between July 30, 2020 and August 15, 2020. On July 14, 2021, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for seven (7) contributions totaling \$209,800 and made a preliminary determination that the civil money penalty was \$21,433 based on the schedule of penalties at 11 C.F.R. § 111.44. A letter was e-mailed to the respondents’ e-mail address of record from the Reports Analysis Division (“RAD”) on July 16, 2021 to notify them of the Commission’s RTB finding and civil money penalty.

Legal Requirements

The Federal Election Campaign Act (“Act”) requires that the principal campaign committee of a candidate must notify the Commission, in writing, of any contribution of \$1,000 or more received after the 20th day but more than 48 hours before an election. The principal campaign committee must notify the Commission within 48 hours of receipt of the contribution. The 48-hour notification shall be in addition to all other reporting requirements under the Act. 52 U.S.C. § 30104(a)(6)(A) and 11 C.F.R. § 104.5(f). Reports electronically filed must be received and validated at or before 11:59 pm Eastern Standard/Daylight Time on the filing deadline to be timely filed. 11 C.F.R. §§ 100.19(c) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

Summary of Respondents' Challenge

On August 24, 2021, the Commission received a written response (“challenge”) from respondents’ counsel challenging the Commission’s RTB finding and proposed civil money penalty. Counsel states that the Administrative Fine Program violates procedural due process rights by narrowly restricting the acceptable defenses to those outlined at 11 C.F.R. § 111.35(b). Counsel notes that respondents may have mitigating circumstances which do not fit within these acceptable defenses but may be relevant in determining an appropriate or proportionate penalty. However, respondents do not have the opportunity to raise these arguments and are deprived a meaningful opportunity to be heard.

Counsel further explains the mitigating circumstances relevant to this matter, stating in part:

First, the violation did not significantly impair the public interest that the 48-hour notice requirement is meant to protect, and certainly does not show a pattern of intentionally failing to report contributions for strategic or other advantage. The violation applies to only 7 of the 23 contributions or loans Askar’s committee received during the 20-day window in which 48-hour reports were required (from July 29 through August 18), and they involve only four unique contributors other than the candidate himself. Each of those contributors was voluntarily disclosed by the committee in its next report, its October quarterly report. None of them made “max-out” contributions totaling \$5,600. There is no evidence that any of the contributors was a person of political significance, the quick disclosure of which might have informed voters’ choices. Indeed, the identity of donors was not a substantial issue in Askar’s primary race. It is also significant that ninety-five percent of the total amount at issue, \$200,000 of the \$209,800, was from the candidate’s two \$100,000 loans to his own campaign. While no one disputes that voters have some general interest in knowing the extent to which a candidate is supporting his or her own campaign, that is not nearly as important as learning the identity of outside financial supporters—other contributors—who could at least in theory engage in quid pro quo corruption, the core danger against which disclosure is supposed to protect. It would not have been a major revelation to learn that the candidate was supporting his own race. And finally, when one broadens the context to include the entirety of this multimillion dollar campaign, the amount at issue here is even less significant.

Second, while the treasurer cannot represent that reasonably unforeseen efforts prevented the reporting of this handful of contributors despite the treasurer’s best efforts, it is true that an internal office failure, and not any intentional misstep or even reckless or negligent act, led to these receipts being missed within the 48-hour period. It has been difficult to operate committees through remote means in the midst of the COVID-19 Pandemic, and occasionally, internal controls fail. Further, the contributions were reported soon after the period ended.

Counsel also asserts that the Commission’s calculation of penalties does not account for specific situational circumstances or timeliness of filing, and the Commission’s refusal to consider

such arguments before arriving at a civil money penalty violates respondents' due process rights. Counsel states:

It is fundamentally unfair to extract 10% of the contributions' face value as a fine, ignoring the differences between intentional, reckless, negligent, or simply unfortunate mistakes, and further ignoring the differences between reporting that is simply late and reporting that never happens at all. Other factors, such as the actual utility of the report within the context of a particular race are also ignored. The Commission's refusal to even hear and consider these arguments deprives Phillips of a meaningful opportunity to be heard before the Commission imposes the proposed fine and violates his procedural due process rights.

In addition, counsel states the Administrative Fine Program violates the respondents' Eighth Amendment rights by assessing a grossly excessive fine. Counsel notes that the rigid approach to calculating civil penalties does not allow the Commission to determine if a penalty is proportionate to the violation. Further, counsel explains that disproportionate penalties reduce the amount and quality of First Amendment-protected speech in elections as campaigns divert resources from core political speech to compliance. With respect to the calculation of the penalty in this matter, counsel states in part:

Less than \$10,000 of the late-reported amounts came from any person other than the candidate, yet the penalty wipes out those contributions twice-over. The public interest in 48-hour notice of late contributions and loans is real, but a penalty that is this high bears no relationship to the public's actual loss of relevant information (if any true loss occurred here) in the 20 days before Mr. Askar's primary.

Analysis

OAR requested guidance from the Commission's Office of the General Counsel ("OGC") related to the respondents' contention that the Administrative Fine Program violates procedural due process rights and Eighth Amendment rights. In response, OGC recommended that OAR not consider the respondents' constitutional arguments because they are not one of the three defenses that may be asserted in a challenge to an RTB finding. *See* Attachment 2. In accordance with 11 C.F.R § 111.35(b), these are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control and they filed the report no later than 24 hours after the end of these circumstances.

In addition to the constitutional arguments presented, counsel further explained the respondents' circumstances surrounding the violation in question. Counsel stated that the respondents were unable to present any reasonably unforeseen circumstances which prevented them from timely filing the 48-Hour Notices in question. Counsel explained the violation was an unintentional office error and noted difficulties associated with managing a remote campaign during the COVID-19 pandemic and failure of internal controls.¹

¹ While the respondents did not indicate they misunderstood or were unaware of the 48-Hour Notice reporting requirements leading up to the 2020 Florida Primary Election, the Reviewing Officer confirms that the Commission appropriately notified the Committee of its requirement to file such 48-Hour Notices. *See* Attachment 3.

Counsel also highlighted the respondents' position that the civil money penalty calculated at RTB, in accordance with 11 C.F.R. § 111.44, is excessive and disproportionate to the violation. Counsel indicated that \$200,000 of the \$209,800 in violation is connected to the Committee's receipt of loans from the Candidate. Further, the penalty is more than double the amount of the remaining contributions in question.

The Reviewing Officer recognizes that most of the amount in violation is connected to the Committee's receipt of loans from the Candidate. However, the Reviewing Officer confirms that 48-Hour Notice requirements do apply to a committee's receipt of candidate loans.² Therefore, as acknowledged by counsel, the Reviewing Officer confirms that the civil money penalty was correctly calculated at RTB in accordance with 11 C.F.R. § 111.44. The calculation is \$151 plus 10% of the amount of the contributions not reported on *each* 48-Hour Notice, plus 25% for each previous violation. The number of missing notices should be calculated by determining the minimum number of notices the Committee could have filed to cover the contributions in question. The minimum number of 48-Hour Notices the Committee could have filed to cover the contributions in question equals 3. Thus, the amount of the civil money penalty is $[(\$151 \times 3 \text{ missing notices}) + (.10 \times \$209,800 \text{ in total contributions})]$ or \$21,433.

The respondents' challenge, including constitutional arguments and other circumstances presented, fails to adequately address any of the three valid grounds at 11 C.F.R. § 111.35(b). These are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control and they filed the report no later than 24 hours after the end of these circumstances. Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$21,433 civil money penalty.

OAR Recommendations

1. Adopt the Reviewing Officer recommendation for AF# 4221 involving Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 4221 that Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$21,433 civil money penalty; and
3. Send the appropriate letter.

² The Commission's regulations, publications, and website explain 48-Hour Notice reporting requirements. Candidate loans are specifically included in the definition of a contribution at 11 C.F.R. § 100.52. In addition, page 81 of the *Campaign Guide for Congressional Candidates and Committees* explains that 48-Hour Notice requirements "[apply] to all types of contributions to any authorized committee of the candidate, including...loans from the candidate..."

Attachments

Attachment 1 –

Attachment 2 –

Attachment 3 –

Attachment 4 – Declaration from RAD

Attachment 5 – Declaration from OAR

DECLARATION OF KRISTIN D. ROSER

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission (“Commission”). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
3. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Casey Askar for Congress:
 - A) Request for Additional Information for the 2020 October Quarterly Report, dated April 29, 2021, referencing the missing 48-Hour Notices (sent via electronic mail to: rp3@henryalan.com);
 - B) Reason-to-Believe Letter, dated July 16, 2021, referencing the missing 48-Hour Notices (sent via electronic mail to: rp3@henryalan.com).
4. I hereby certify that I have searched the Commission’s public records and find that Casey Askar for Congress has not yet filed the missing 48-Hour Notices with the Commission.
5. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed on the 2nd day of September, 2021.

Kristin D. Roser

Kristin D. Roser
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

April 29, 2021

ROBERT PHILLIPS, III, TREASURER
CASEY ASKAR FOR CONGRESS
PO BOX 651
NAPLES, FL 34106

Response Due Date

06/03/2021

IDENTIFICATION NUMBER: C00742528

REFERENCE: OCTOBER QUARTERLY REPORT (07/30/2020 - 09/30/2020)

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 6 item(s):

1. Schedule A of your report discloses one or more contributions that appear to exceed the limits set forth in the Act (see attached).

An individual or a political committee other than an authorized committee or qualified multi-candidate committee may not make a contribution(s) to a candidate for federal office in excess of \$2,800 per election. An authorized committee may not make a contribution(s) to a candidate for federal office in excess of \$2,000 per election. A qualified multi-candidate committee and all affiliated committees may not make a contribution(s) to a candidate for federal office in excess of \$5,000 per election. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. (52 U.S.C. § 30116(a) and (f) (formerly 2 U.S.C. § 441a(a) and (f)); 11 CFR § 110.1(b), (e) and (k))

If any apparently excessive contribution in question was incompletely or incorrectly disclosed, you must amend your original report with the clarifying information. If any contribution you received exceeds the limits, you may have to refund the excessive amount.

Excessive contributions may be retained if, within 60 days of receipt, the excessive portions are properly redesignated or reattributed. Guidelines for each option are provided below.

CASEY ASKAR FOR CONGRESS

Page 2 of 5

For reattributions, excessive contributions from individuals can be retained if, within 60 days of receipt, the excessive amount is properly reattributed to another person. Please note that reattributions only apply to excessive contributions from individuals. An excessive contribution is considered properly reattributed if (1) the contributors provide the committee with written documentation, signed by each contributor, authorizing a reattribution and indicating the amount of the contribution to be attributed to each contributor; or (2) the committee reattributes by presumption the excessive portion of the contribution if the contribution was made on a written instrument from a joint account and was signed by only one of the account holders. In this case, the treasurer must notify the contributors in writing within 60 days of receiving the contribution that the committee intends to reattribute the excessive portion and must give the contributor an opportunity to request a refund. (11 CFR § 110.1(k)(3)(ii)(B))

For redesignations, the funds can be retained if, within 60 days of receipt, the excessive amount is properly redesignated for a different election. An excessive contribution is considered properly redesignated if (1) the committee obtains signed written documentation from the contributor(s) authorizing the redesignation of the contribution for another election, provided that the new designation does not exceed the limitations on contributions made with respect to that election; or (2) your committee redesignates by presumption the excessive portion of the contribution for another election provided that the new designation does not exceed the limitations on contributions made with respect to that election. In this case, the treasurer must notify the contributor of the redesignation in writing within 60 days of the treasurer's receipt of the contribution. The notification must give the contributor an opportunity to request a refund. (11 CFR § 110.1(b)(5)(ii)(B)) Please note that you cannot presumptively redesignate an excessive contribution from a multi-candidate committee. Also, a contribution can only be redesignated to a previous election to the extent that the contribution does not exceed the committee's net debts outstanding for that election. (11 CFR § 110.1(b)(3)(i))

If the foregoing conditions for reattributions or redesignations are not met within 60 days of receipt of the contribution, the excessive amount must be refunded. See 11 CFR § 103.3(b)(1).

If you have not already done so, please inform the Commission of your corrective action immediately in writing and provide photocopies of any refund checks and/or letters reattributing or redesignating the contributions in question.

CASEY ASKAR FOR CONGRESS

Page 3 of 5

Refunds are reported on Line 20(a), (b), or (c), as applicable, of the Detailed Summary Page and on a supporting Schedule B of the report covering the period in which they are made. Redesignations and reattributions are reported as memo entries on Schedule A of the report covering the period in which the authorization for the redesignation and/or reattribution is received. (11 CFR § 104.8(d)(2), (3) and (4))

Although the Commission may take further legal action concerning the acceptance of excessive contributions, your prompt action to refund, redesignate, and/or reattribute the excessive amount will be taken into consideration.

2. While it is permissible for a person to make a contribution for the general election prior to the primary election, the recipient committee must employ an acceptable accounting method to distinguish between primary and general election contributions. (11 CFR § 102.9(e)) This general election amount must be maintained in the committee's account.

Since the candidate will not participate in the general election, any contribution received for the general election must be returned to the donors or redesignated to the primary if your committee has net debts outstanding for the primary election. The Commission notes your additional explanation regarding the committee's corrective action taken for some of these contributions. To redesignate a contribution the committee must either (1) obtain signed written documentation from the contributor(s) authorizing the redesignation of the contribution for another election provided that the new designation does not exceed the limitations on contributions made with respect to that election, or (2) redesignate the contribution by presumption to the primary election, for undesignated contributions made after the primary but before the general election, provided that the new designation does not exceed the limitations on contributions made with respect to that election. In this case, the treasurer must notify the contributor of the redesignation in writing. The notification must give the contributor an opportunity to request a refund. A contribution can only be redesignated to a previous election to the extent that the contribution does not exceed net debts outstanding for that election. (11 CFR § 110.1(b)(3)(i) and (5) (ii)(C))

The attached general election contributions do not appear to have been remedied. Any subsequent report(s) filed with the Commission must disclose the refund or redesignation of any general election contribution. Refunds or redesignations must be done within 60 days after the 2020 Primary Election.

CASEY ASKAR FOR CONGRESS

Page 4 of 5

Although the Commission may take further legal action, your prompt action to refund these contributions will be taken into consideration.

3. The beginning cash balance of this report does not equal the ending balance of your 2020 12 Day Pre-Primary Report. Please correct this discrepancy and amend all subsequent reports that may be affected by the correction. (52 U.S.C. § 30104(b)(1) (formerly 2 U.S.C. § 434(b)(1)) and 11 CFR § 104.3(a)(1))

4. Schedule B supporting Line 20(a) discloses refunds of contributions that do not appear to have been previously reported by your committee (see attached). Please amend the appropriate report(s) to disclose the original contribution or provide clarifying information. (52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) and 11 CFR § 104.3(a) & (b))

5. Schedule A of your report discloses contributions through a conduit but fails to disclose the original earmarked contributions. Please be advised that when a committee receives an earmarked contribution(s) through an allowable conduit, each individual contribution should be itemized when the individual's total contributions to your committee aggregate over \$200 per election cycle. This itemization must include the full name, address, occupation, and employer of the individual contributor along with the date the contribution was received by the conduit. Any un-itemized contributions from individuals received through the conduit should be included in your totals on Line 11(a)(ii) of the Detailed Summary Page. Contributions from political party committees, PACs, authorized committees, or any political committee must be itemized, regardless of the amount contributed.

In addition, the total contribution(s) received through the conduit should be itemized on Schedule A as a memo entry. The conduit's full name and address (and occupation and employer if the conduit is an individual) must also be provided, along with the date the contribution(s) was received by your committee and the total amount of earmarked contributions received from the conduit. Please amend your report to include the missing information. If itemization is not necessary, please indicate so in an amendment to this report. (11 CFR §§ 110.6(c)(2) and 104.3(a)(3))

6. Schedule A of your report indicates that your committee may have failed to file one or more of the required 48-hour notices regarding "last minute" contributions (to include loans, in-kind contributions, and advances) received by your committee after the close of books for the **12 Day Pre-Primary Report** (see attached). A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more

CASEY ASKAR FOR CONGRESS

Page 5 of 5

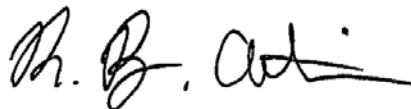
received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. The failure to file 48-hour notices may result in civil money penalties or legal enforcement action. (11 CFR § 104.5(f))

If any contribution of \$1,000 or more was incorrectly reported, you must amend your original report with the clarifying information.

Please note, you will not receive an additional notice from the Commission on this matter. Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. **Requests for extensions of time in which to respond will not be considered.**

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended. For information about the report review process or specific filing information for your committee type, please visit www.fec.gov/help-candidates-and-committees. For more information about Requests for Additional Information (RFAI), why you received a letter, and how to respond, please visit www.fec.gov/help-candidates-and-committees/request-additional-information. Should you have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1196.

Sincerely,



Bradley Austin

Sr. Campaign Finance & Reviewing Analyst

436

Apparent Excessive, Prohibited, and Impermissible Contributions
Casey Askar for Congress (C00742528)

Apparent Excessive Contributions from Individuals

Contributor Name	Date	Amount	Election
Kamposh, Monty	7/1/20	\$300.00	P2020
Kamposh, Monty	8/8/20	\$2,800.00	P2020
Locker, Joseph	3/30/20	\$500.00	P2020
Locker, Joseph	6/30/20	\$500.00	P2020
Locker, Joseph	8/18/20	\$2,000.00	P2020

**Apparent General Election Contributions
Casey Askar for Congress (C00742528)**

2020 April Quarterly Report

Contributor Name	Date	Amount	Election
Abood, Richard	3/27/20	\$200.00	G2020
Abood, Silvia	3/26/20	\$200.00	G2020
Askar, Alexandra	3/24/20	\$2,800.00	G2020
E, Mary	3/27/20	\$2,800.00	G2020
Schwartz, Tim	3/27/20	\$200.00	G2020
Schuchman, Gabriel	3/31/20	\$2,800.00	G2020

2020 July Quarterly Report

Contributor Name	Date	Amount	Election
Barry, Michael	4/5/20	\$100.00	G2020
Kendall, Laura	6/29/20	\$200.00	G2020

2020 October Quarterly Report

Contributor Name	Date	Amount	Election
Konja, Bianca	8/7/20	\$2,800.00	G2020

Refunds Itemized, No Original Contributions Disclosed
Casey Askar for Congress (C00742528)

Contributor Name	Date	Amount	Election
Carlo, Alonso	9/21/20	-\$2,800.00	G2020
Carr, Nick	9/21/20	-\$1,725.00	G2020
Coons, Mary	9/21/20	-\$2,800.00	G2020
Coons, William	9/21/20	-\$4,800.00	G2020
Fulham, Grayson	8/21/20	-\$500.00	G2020
Humble, Gavin	7/30/20	-\$2,000.00	G2020
Humble, Gavin	8/21/20	-\$3,000.00	G2020
Kempton, Sean	7/30/20	-\$4,500.00	G2020
Kempton, Sean	8/21/20	-\$4,500.00	G2020
Konja, Carl	9/21/20	-\$2,775.00	G2020
Omtvedt, Dawn	9/21/20	-\$2,500.00	G2020
Schuchman, Kara	9/21/20	-\$1,950.00	G2020
Sipre, Kevin	8/21/20	-\$500.00	G2020

Missing 48-Hour Notices
Casey Askar for Congress (C00742528)

Contributor Name	Date	Amount	Election
Askar, Casey	8/9/20	\$100,000.00	P2020
Askar, Casey	8/10/20	\$100,000.00	P2020
Kamposh, Monty	8/8/20	\$2,800.00	P2020
Lufty, Paul	8/7/20	\$1,000.00	P2020
Muawad, Elias	8/1/20	\$2,800.00	P2020
Muawad, Elias	8/1/20	\$2,200.00	G2020
Thomas, Chris	8/7/20	\$1,000.00	P2020

Contributions for Which a 48-Hour Notice Was Not Received**AF 4221****Committee ID: C00742528****Committee Name: Casey Askar for Congress****Report Type: 2020 October Quarterly Report (7/30/2020 – 9/30/2020)****48-Hour Reporting Period: 7/30/2020 – 8/15/2020**

CONTRIBUTOR NAME	DATE	AMOUNT
ELIAS MUAWAD	8/1/2020	\$2,200.00
ELIAS MUAWAD	8/1/2020	\$2,800.00
PAUL LUFTY	8/7/2020	\$1,000.00
CHRIS THOMAS	8/7/2020	\$1,000.00
MONTY KAMPOSH	8/8/2020	\$2,800.00
CASEY ASKAR	8/9/2020	\$100,000.00
CASEY ASKAR	8/10/2020	\$100,000.00
	TOTAL	\$209,800.00

Proposed Civil Money Penalty: \$21,433 ((3 Notices Not Filed at \$151 each) + (10% of the Overall Contributions Not Reported))

DECLARATION OF RHIANNON MAGRUDER

- 1) I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission (“Commission”). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) The principal campaign committee of a candidate must file notifications disclosing contributions of \$1,000 or more which are received after the 20th day but more than 48 hours before an election. These notifications (also called 48-Hour Notices) must be filed with the Commission within 48 hours of the committee’s receipt of the contribution(s).
- 3) I hereby certify that I have searched the Commission’s public records and find that Casey Askar for Congress did not file the 48-Hour Notices for the contributions in question.
- 4) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 9th day of December, 2021.

Rhiannon Magruder

Rhiannon Magruder
Reviewing Officer
Office of Administrative Review
Federal Election Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 9, 2021

Paul Brothers
Graves Garrett LLC
1100 Main Street, Suite 2700
Kansas City, MO 64105

Casey Askar for Congress
C00742528
AF#: 4221

Dear Mr. Brothers:

On July 14, 2021, the Commission found reason to believe (“RTB”) that Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for seven (7) contributions totaling \$209,800. The Commission also made a preliminary determination that the civil money penalty was \$21,433 based on the schedule of penalties at 11 C.F.R. § 111.44.

After reviewing your written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination and assess a civil money penalty. A copy of the Reviewing Officer’s recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Please note, the agency's offices remain closed to visitors and most of its employees will continue to telework in an effort to limit the spread of coronavirus (COVID-19). The Commission is processing some documents submitted by mail, though processing will not occur on a daily basis until the agency resumes normal mail operations. Nevertheless, if you choose to submit a response to the recommendation, it must be received on time. Thus, all written responses and supporting documentation should be converted to PDF (Portable Document Format) and must be emailed to the Commission Secretary at secretary@fec.gov. The Commission encourages the use of electronic signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted responses will be deemed received on the date it is electronically received by staff. Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer’s recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1158 if you have any questions.

Sincerely,

Rhiannon Magruder
Reviewing Officer
Office of Administrative Review

RECEIVED

By Office of the Commission Secretary at 12:50 pm, Dec 20, 2021

Paul E. Brothers
Direct Dial: (816) 285-3884
Fax: (816) 256-5959
pbrothers@gravesgarrett.com

December 17, 2021

Via Electronic Mail

Federal Election Commission
c/o Commission Secretary
1050 First St NE
Washington D.C. 20463

Re: Robert Phillips III, in his official capacity as Treasurer for Casey Askar for Congress, AF#: 4221, Written Response to Recommendation for Final Determination and Assessment of Civil Penalty

To Whom it May Concern,

On behalf of our client, Robert Phillips III, in his official capacity as Treasurer for Casey Askar for Congress, we provide the following written response to the recommendation for final determination and assessment of civil penalty outlined in the Commission's letter dated December 9, 2021. We reassert and preserve all the arguments previously raised in response to the reason to believe (RTB) finding. In addition, we raise the following argument in response to the recommendation for final determination and assessment of civil penalty.

The recommendation for final determination and assessment of civil penalty itself is a further violation of Phillips' procedural due process rights. As previously asserted, the guarantees of procedural due process require a person receive a meaningful opportunity to be heard before they are deprived of a protected property interest.¹ In the recommendation for final determination, the Commission refuses to even *consider* Phillips' constitutional arguments before imposing a six-figure fine. It is hard to imagine a more extreme denial of a person's right to have a meaningful opportunity to be heard than refusing to consider a person's constitutional arguments before imposing a significant six-figure fine. The Commission's refusal to consider Phillips' constitutional arguments is itself a violation of Phillips' procedural due process rights.

Mr. Phillips respectfully challenges the Reason to Believe finding as well as the recommendation for final determination and assessment of civil penalty because the procedure used by the Commission violates his procedural due process and Eighth Amendment rights. Mr. Phillips continues to request the

¹ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Commission provide him with a meaningful opportunity to be heard prior to the imposition of any fine in this manner where he may offer arguments in mitigation of the proposed fine. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Paul E. Brothers". The signature is written in a cursive style with a long, sweeping horizontal stroke at the end.

Paul E. Brothers

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 8, 2022

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Rhiannon Magruder *RM*
Reviewing Officer
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 4221 – Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer (C00742528)

On July 14, 2021, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for seven (7) contributions totaling \$209,800 and made a preliminary determination that the civil money penalty was \$21,433 based on the schedule of penalties at 11 C.F.R. § 111.44. On August 24, 2021, the Commission received their written response (“challenge”). After reviewing the challenge and supplemental information, the Reviewing Officer Recommendation (“ROR”) dated December 9, 2021 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer concluded that the respondents’ challenge, including constitutional arguments and other circumstances presented, failed to adequately address any of the three valid grounds at 11 C.F.R. § 111.35(b). *See* ROR. Therefore, the Reviewing Officer recommended that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$21,433 civil money penalty.

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). On December 20, 2021, the Commission received a response from respondents’ counsel. *See* Attachment 1. Counsel reasserts and preserves the points made in the original challenge. In addition, counsel states that the recommendation further violates procedural due process rights.

The Reviewing Officer considered the response, and the analysis and recommendations are unchanged. *See* ROR. The challenge and response to the ROR fail to adequately address any of the three valid grounds at 11 C.F.R § 111.35(b). Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$21,433 civil money penalty.

OAR Recommendations

1. Adopt the Reviewing Officer recommendation for AF# 4221 involving Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 4221 that Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$21,433 civil money penalty; and
3. Send the appropriate letter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) AF 4221
 Final Determination Recommendation:)
 Casey Askar for Congress and Robert)
 Phillips, III, in their official capacity as)
 Treasurer (C00742528))

CERTIFICATION

I, Laura E. Sinram, Acting Secretary and Clerk of the Federal Election Commission, do hereby certify that on February 16, 2022, the Commission decided by a vote of 4-0 to take the following actions in AF 4221:

1. Adopt the Reviewing Officer recommendation for AF# 4221 involving Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, in making the final determination.
2. Make a final determination in AF# 4221 that Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$21,433 civil money penalty.
3. Send the appropriate letter.

Commissioners Broussard, Cooksey, Trainor, and Weintraub voted affirmatively for the decision. Commissioners Dickerson and Walther did not vote.



Attest:

**Laura e
Sinram**

Digitally signed by
 Laura e Sinram
 Date: 2022.02.18
 14:56:07 -05'00'

 Laura E. Sinram
 Acting Secretary and Clerk of the
 Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 25, 2022

Paul Brothers
Graves Garrett LLC
1100 Main Street, Suite 2700
Kansas City, MO 64105

Casey Askar for Congress
C00742528
AF# 4221

Dear Mr. Brothers:

On July 14, 2021, the Federal Election Commission (“the Commission”) found reason to believe (“RTB”) that Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for seven (7) contributions totaling \$209,800. By letter dated July 16, 2021, the Commission sent notification of the RTB finding that included a civil money penalty calculated at \$21,433 in accordance with the schedule of penalties at 11 C.F.R. § 111.44. On August 24, 2021, the Office of Administrative Review received your written response challenging the RTB finding.

The Reviewing Officer reviewed the Commission’s RTB finding with its supporting documentation and your written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assess a civil money penalty in the amount of \$21,433 in accordance with 11 C.F.R. § 111.44. The Reviewing Officer Recommendation was sent to you on December 9, 2021. On December 17, 2021, the Commission received your written response to the ROR.

On February 16, 2022, the Commission adopted the Reviewing Officer’s recommendation and made a final determination that Casey Askar for Congress and Robert Phillips, III, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assessed a civil money penalty in the amount of \$21,433. A copy of the Final Determination Recommendation is attached.

At this juncture, the following courses of action are available to you:

1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the U.S. District Court for the district in which the committee

or you reside, or transact business, requesting that the final determination be modified or set aside. See 52 U.S.C. § 30109(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 52 U.S.C. § 30109. 11 CFR § 111.38.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Appeal

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, *et seq.* If you do not pay this debt within 30 days (or file a written petition to a federal district court - see below), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Within 5 days of the transfer to Treasury, Treasury will contact you to request payment. Treasury currently charges a fee of 30% of the civil money penalty amount for its collection services. If the age of the debt is greater than or equal to two years old, Treasury will charge a fee of 32% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency ("PCA"). If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken to enforce recovery of a delinquent debt by Treasury may also include: (1) offset of any payments that the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the civil money penalty, follow the payment instructions on page 4 of this letter. You should make payment within thirty (30) days of receipt of this letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assessed upon making a final determination.

5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money

order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 111.42(b) and 111.20(c), the file will be placed on the public record within 30 days from the date of this notification.

If you have any questions regarding the payment of the civil money penalty, please contact Rhiannon Magruder on our toll-free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen Dickerson", written over a horizontal line.

Allen Dickerson
Chairman

Attachment

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.44, the amount of your civil money penalty calculated at final determination is \$21,433 for the 2020 Primary Election 48-Hour Notification Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative Fine Program Payment form. Please use the details below to complete the required fields. For additional payment options, please contact Rhiannon Magruder on our toll-free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

COMMITTEE NAME: Casey Askar for Congress

FEC ID#: C00742528

AF#: 4221

PAYMENT AMOUNT DUE: \$21,433