

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 8151
DATE COMPLAINT FILED: Aug. 1, 2023
DATE OF NOTIFICATION: Aug. 3, 2023
LAST RESPONSE RECEIVED: Sept. 27, 2023
DATE ACTIVATED: Dec. 12, 2023


ELECTION CYCLE: 2024
EXPIRATION OF SOL: May 1, 2028

COMPLAINANT:

Rhode Island Republican State Central Committee

RESPONDENTS:

Marvin Abney for Congress, and Michael J.
Tsandilas, in his official capacity as treasurer
John Brooks

RAD REFERRAL: 24L-03
DATE OF REFERRAL: Jan. 10, 2024
DATE OF NOTIFICATION: Jan. 17, 2024
LAST RESPONSE RECEIVED: Feb. 5, 2024
ELECTION CYCLE: 2024
EXPIRATION OF SOL: May 1, 2028

SOURCE:

Internally Generated

RESPONDENTS:

Marvin Abney for Congress, and Michael J.
Tsandilas, in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)(2) and (4)
52 U.S.C. § 30116(a) and (f)
11 C.F.R. § 100.52
11 C.F.R. § 100.82
11 C.F.R. § 102.5(b)
11 C.F.R. § 103.3(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter arises from a \$50,000 loan that Marvin Abney for Congress (the “Committee”) and Michael J. Tsandilas in his official capacity as treasurer reported receiving from John Brooks, a friend of the candidate, at the start of Abney’s campaign for the Rhode Island 1st Congressional District. The Complaint in MUR 8151 alleges that the loan exceeded the contribution limit in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The Reports Analysis Division (“RAD”) also referred the Committee based on its reporting of the acceptance of the loan as well as the failure to timely refund contributions from unregistered political organizations. Both the Committee and Brooks assert that they were unaware that a loan from an individual is a contribution. The Committee and Brooks contend that the error occurred due to a lack of time to plan for the campaign due to the unexpected opening of a congressional seat. The Committee responds that they refunded all contributions cited in the referral once they were aware of the violation.

The \$50,000 loan caused Brooks to make an excessive contribution to the Committee. We therefore recommend that the Commission open a Matter Under Review in connection with RR 24L-03 and merge it into MUR 8151. Additionally, we recommend the Commission exercise its prosecutorial discretion with respect to the allegation that Brooks made an excessive contribution. With respect to the receipt of contributions from unregistered organizations, the corrective action performed by the Committee was outside of the 30-day period during which a committee may cure an excessive contribution. We therefore recommend that the Commission transfer MUR 8151 to the Alternative Dispute Resolution Office (“ADRO”) for further action based on the available information, and consistent with RAD Review and Referral Procedures for the 2023-2024 election cycle approved by the Commission.

II. FACTUAL BACKGROUND

The Committee is the principal campaign committee for Marvin Abney; Michael J. Tsandilas is its treasurer.¹ On March 29, 2023, the Governor of Rhode Island announced a special election for the 1st Congressional District.² The date for the special primary election was September 5, 2023, and the special general election was November 7, 2023. Marvin Abney filed a Statement of Candidacy with the Commission to be a candidate for this election.³

On July 11, 2023, the Committee filed its 2023 July Quarterly Report disclosing \$77,050 in receipts.⁴ The report disclosed a \$3,300 contribution and a \$50,000 loan from John Brooks.⁵

On July 19, 2023, a local newspaper published an article on the Abney campaign which identified and questioned the legality of the loan made by Brooks to the Committee.⁶ The article noted Brooks's employer is listed as Engineered Textile Solutions, which is not a bank, and his donations to several Rhode Island politicians in recent years.⁷

¹ Marving Abney for Congress, Statement of Organization at 2-3 (Apr. 27, 2023).

² State of Rhode Island, Governor Dan McKee, *Governor McKee Announces Dates for Special Election in First Congressional District*, GOVERNOR.RI.GOV, <https://governor.ri.gov/press-releases/governor-mckee-announces-dates-special-election-first-congressional-district> (last visited May 16, 2024).

³ Marvin Abney, Statement of Candidacy at 1 (Apr. 27, 2023).

⁴ Marvin Abney for Congress, 2023 July Quarterly Report at 2 (July 11, 2023), <https://docquery.fec.gov/cgi-bin/fecimg/?202307119582481594>.

⁵ *Id.* at 6, 14.

⁶ Patrick Anderson, *CD1 candidate fell 42 signatures short of qualifying. But did a loan violate FEC campaign laws?*, PROVIDENCE JOURNAL (July 19, 2023), <https://www.providencejournal.com/story/news/politics/2023/07/19/marvin-abneys-cd1-campaign-finance-law/70426954007/> (cited in MUR 8151 Compl., Ex. B) (hereinafter “CD1 candidate loan article”).

⁷ *Id.*

1 RAD sent a Request for Additional Information (“RFAI”) to the Committee on
 2 August 20, 2023.⁸ The RFAI asked that the Committee explain the apparent excessive
 3 contribution from Brooks, clarifying that a loan from an individual for the purpose of influencing
 4 a federal election is considered a contribution, as well as three contributions from possible
 5 unregistered organizations.⁹ In response, the Committee clarified that it was not aware that a
 6 loan from an individual would be considered a contribution and had issued a refund.¹⁰
 7 Additionally, the Committee represented that it could confirm one contribution was made using
 8 permissible funds, but could not confirm whether the other contributions from unregistered
 9 organizations were made with permissible funds and that it would refund the contributions.¹¹

10 The Committee filed its 2023 October Quarterly Report, disclosing \$58,381.11 in
 11 disbursements.¹² The report disclosed the loan payment to Brooks with interest.¹³ Additionally,
 12 the report disclosed refunds to Rhode Island NAGE and RI Brotherhood of Correctional
 13 Officers.¹⁴ The Committee refunded the excessive contribution, in the form of the loan, 92 days

⁸ Marvin Abney for Congress, Request for Additional Info. (“RFAI”) (Aug 20, 2023), <https://docquery.fec.gov/pdf/208/202308200300191208/202308200300191208.pdf> (referencing 2023 July Quarterly Report).

⁹ *Id.*

¹⁰ Marvin Abney for Congress, Misc. Electronic Submission (FEC Form 99) (Sept. 25, 2023), <https://docquery.fec.gov/pdf/708/202309259597310708/202309259597310708.pdf>.

¹¹ *Id.*

¹² Marvin Abney for Congress, 2023 October Quarterly Report at 4 (Oct. 9, 2023), <https://docquery.fec.gov/cgi-bin/fecimg/?202310039597394308>.

¹³ *Id.* at 6, 9.

¹⁴ *Id.* at 10.

after receipt.¹⁵ The Committee refunded contributions from the unregistered organizations 119
 days after receipt.¹⁶

In RR 24L-03, RAD referred the Committee to the Office of General Counsel (“OGC”) 120
 for failure to timely refund an excessive contribution of \$50,000 in the form of a loan from an
 individual and apparent prohibited contributions totaling \$550 from unregistered organizations.¹⁷

The Complaint in this matter, filed August 1, 2023, alleged violations of the Act based on 121
 the acceptance of the loan as publicly reported and included the article questioning the legality of
 the loan as an exhibit.¹⁸ The Committee’s Response to the Complaint states that the candidate
 made a rush decision to announce his candidacy for the special election.¹⁹ Abney avers that he
 was busy working on the state budget as the chair of the Finance Committee in the state
 assembly and did not have as much time to plan for the campaign.²⁰ The Committee’s Response
 states that its treasurer had not previously served as a treasurer for a federal political
 committee.²¹ Additionally, the Committee’s Response states that it did not have a compliance
 firm to assist the treasurer.²² Tsandilas avers that he researched whether the loan would be
 considered a contribution after being contacted by a reporter regarding the loan.²³ The

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 10.

¹⁷ Referral at 1 (Jan. 10, 2024).

¹⁸ Compl. at 1, Ex. B (Aug. 1, 2023).

¹⁹ Marvin Abney for Congress Resp. to Compl. at 2 (Sept. 18, 2023).

²⁰ Marvin Abney Aff. ¶ 3 (Sept. 18, 2023).

²¹ Marvin Abney for Congress Resp. to Compl. at 2.

²² *Id.*

²³ Michael J. Tsandilas Aff. ¶ 6 (Sept. 15, 2023).

1 Committee's Response asks that the Commission dismiss the Complaint as an exercise of
2 prosecutorial discretion because it refunded the contribution 16 days after realizing that the loan
3 was a contribution.²⁴

4 An affidavit from Brooks attached to his Response represents that he loaned the
5 Committee money to assist in the startup of the Committee without realizing the loan would be
6 treated as a contribution and without any intention to violate the law.²⁵

7 The Committee's Response to the Referral from RAD argues that the Commission should
8 exercise its prosecutorial discretion to dismiss the allegations.²⁶ The Committee's Response
9 states that "[t]his was a good-faith mistake and was not an intentional violation of the law."²⁷

10 The Response asserts that Abney loaned the Committee funds in order to make corrective action
11 to repay the loan to Brooks.²⁸ Additionally, the Committee contacted the unregistered
12 organizations to determine if the contributions were made with permissible funds.²⁹ One
13 organization did confirm that the contribution was made with permissible funds, while the other
14 two organizations did not.³⁰ The Response contends that the Committee decided to refund the
15 contributions to the unregistered organizations in order to ensure its response by the RFAI due

²⁴ Marvin Abney for Congress Resp. to Compl. at 4.

²⁵ John Brooks Aff. (Sept. 27, 2023).

²⁶ Marvin Abney for Congress Resp. to Referral at 5 (Feb. 1, 2024).

²⁷ *Id.* at 4.

²⁸ *Id.* at 2.

²⁹ *Id.* at 3.

³⁰ *Id.*

date.³¹ Finally, the Response asserts that it intends to terminate once these matters are resolved, and it retires its remaining debt.³²

The Committee filed its 2024 April Quarterly Report disclosing an ending cash on hand balance of \$1,452.44 and \$96,995.99 in debts and obligations owed by the Committee.³³ A loan by Abney to the Committee accounts for \$50,541.67 of those debts and obligations to the Committee.³⁴

III. LEGAL ANALYSIS

A. Excessive Contribution in the Form of a Loan

A loan made by any person for the purpose of influencing any election for Federal office, including any loan to a federal campaign, is a contribution.³⁵ A loan that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is unlawful.³⁶ A loan will not be considered a contribution if made in the ordinary course of business by a state bank or federally chartered depository institution.³⁷

For the 2023-2024 election cycle, a principal candidate committee may accept \$3,300 per election from an individual.³⁸ When a committee receives a contribution that on its face exceeds

³¹ *Id.*

³² *Id.*

³³ Marvin Abney for Congress, 2024 April Quarterly Report at 2 (Apr. 15, 2024), <https://docquery.fec.gov/cgi-bin/fecimg/?202404159627840244>.

³⁴ *Id.* at 5.

³⁵ 11 C.F.R. § 100.52(a).

³⁶ *Id.* § 100.52(b).

³⁷ *Id.* § 100.82.

³⁸ 52 USC § 30116(a)(1)(A); 11 C.F.R. §§ 110.1(a)-(b); 110.9; see also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 88 Fed Reg. 7088, 7090 (Feb. 2, 2023).

the limits or which exceeds the limits when aggregated with other contributions from the same contributor, the Commission's regulations require the committee to refund, redesignate, or reattribute the excessive amount within 60 days from the date of receipt.³⁹

In this matter, the Committee accepted a \$50,000 loan from Brooks, an individual. The loan is considered a contribution because it was not from a federally chartered depository institution.⁴⁰ Brooks contributed \$3,300 to the Committee on the same day, meaning that the entire \$50,000 loan exceeded the contribution limit.⁴¹

The Commission recently considered a similar matter when a first-time federal candidate accepted loans from individuals in MUR 7692 (Spano, *et al.*).⁴² Two friends of the candidate provided a total of \$180,000 in loans to the candidate after discussion with the candidate revealed personal financial problems and campaign fundraising issues.⁴³ The candidate transferred \$164,500 to his campaign and disclosed the loan as personal funds on his campaign finance reports.⁴⁴ As with this current matter, the Committee became aware of a violation after newspaper articles questioned the permissibility of the loans.⁴⁵ The Commission found reason to believe the candidate and his political committee received excessive contributions and

³⁹ 11 C.F.R. § 103.3(b)(3).

⁴⁰ See 11 C.F.R. §§ 100.52(a), 110.10, 100.33.

⁴¹ 52 USC § 30116(a)(1)(A); 11 C.F.R. §§ 110.1(a)-(b); Referral, Attach.1 (Excessive and Prohibited Contributions Refunded Outside Permissible Timeframe, Listed by Contributor).

⁴² Factual & Legal Analysis ("F&LA") at 1, MUR 7629 (Spano, *et. al.*).

⁴³ *Id.* at 2.

⁴⁴ *Id.* at 3.

⁴⁵ *Id.* at 6; Michael J. Tsandilas Aff. ¶ 6 (Sept. 15, 2023).

misreported the loans and entered into conciliation with the candidate and committee.⁴⁶ The Commission decided to dismiss the allegations against the contributors, but issued letters of admonishment.⁴⁷

The Response from the Committee argues that the Commission should exercise its prosecutorial discretion to dismiss this matter on the basis that the Committee refunded the contribution 16 days after being contacted by the reporter regarding its illegality.⁴⁸ However, the Committee refunded the excessive contribution 92 days after receipt, which is greater than the 60 day timeframe for refunding excessive contributions as required by Commission regulations.⁴⁹ The Commission has exercised its prosecutorial discretion to dismiss matters regarding excessive contributions, but the amount in violation in those matters were significantly smaller than the \$50,000 loan in this matter.⁵⁰ The Commission found reason to believe in matters where a candidate and their political committee violating the Act and Commission regulations due to

⁴⁶ Certification ("Cert.") ¶ 2d, e (Feb. 14, 2023), MUR 7629 (Spano, *et al.*); Conciliation Agreement ("CA"), MUR 7629 (Spano, *et al.*); Cert. ¶ 1 (Apr. 12, 2023), MUR 7629 (Spano, *et al.*).

⁴⁷ Cert. ¶ 2.b, c (Feb. 14, 2023), MUR 7629 (Spano, *et al.*).

⁴⁸ Marvin Abney for Congress Resp. to Compl. at 4.

⁴⁹ Referral, Attach.1 (Excessive and Prohibited Contributions Refunded Outside Permissible Timeframe, Listed by Contributor); 11 C.F.R. § 103.3(b)(3).

⁵⁰ The Response by the Committee on Sept. 18, 2023, cites as *see also* three past matters to justify its position for dismissing as an exercise of prosecutorial discretion, but the matters involved smaller dollar amounts of excessive contributions. *See* Gen. Counsel's Rpt. ("GCR") at 1, MUR 7985 (Lee Watts for Congress, *et al.*) (regarding a complaint where a candidate committee made a \$2,900 contribution to another candidate committee causing a \$900 excessive contribution); Cert. ¶1 (Jan. 12, 2023), MUR 7985 (Lee Watts for Congress, *et al.*) (matter involving complaint of \$900 excessive contribution); First Gen. Counsel's Rpt. ("First GCR") at 2-3, MUR 8013 (Kristine Schanbacher for Congress) (regarding a committee failing to refund \$36,250 in contributions to the general election after the candidate failed to advance past the primary); Cert. ¶ 2.b (June 10, 2023), MUR 8013 (Kristine Schanbacher for Congress) (dismissing as an exercise of prosecutorial discretion); GCR at 1, MUR 8035 (Jim Banks for Congress, Inc., *et al.*) (regarding a complaint where individual made and political committee accepted a \$2,500 contribution for the primary election after the individual had already made the maximum \$2,900 for the election); Cert. ¶ 1 (Jan. 12, 2023), MUR 8035 (Jim Banks for Congress, Inc., *et al.*) (dismissing as an exercise of prosecutorial discretion).

excessive contributions in the form of a loan resulting in respondents admitting to violations and paying a civil penalty.⁵¹

Brooks avers that he was unaware the loan would be treated as a contribution.⁵²

However, it is a contribution since a loan made by any person for the purpose of influencing any election for Federal office, including any loan to a federal campaign, is a contribution.⁵³ Brooks made the \$50,000 loan and a \$3,300 contribution on the same day, resulting in Brooks making a \$50,000 excessive contribution to the Committee.⁵⁴ Brooks avers that he was unaware the loan would be treated as a contribution and received the excessive portion of the loan back from the Committee, but a loan that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is unlawful.⁵⁵

We recommend the Committee be transferred to the Alternative Dispute Resolution Office (“ADRO”) based on the timing of when the refund was made. The Committee made the loan payment with interest and provided clarification prior to the due date of the RFAI.⁵⁶ When a refund is made within 60 days of the date of the RFAI, such violations will not be counted

⁵¹ Cert. ¶ 2d, e (Feb. 14, 2023), MUR 7629 (Spano, *et al.*); CA, MUR 7629 (Spano, *et al.*); Cert. ¶ 1 (Apr. 12, 2023), MUR 7629 (Spano, *et al.*) (approving the conciliation agreement with candidate admitting to accepting excessive contributions and the political committee accepting excessive contributions and misreporting loans with the candidate agreeing to a \$30,000 civil penalty); F&LA at 8-9, 11, MUR 5496 (Huffman for Congress) (finding the candidate and committee accepted an excessive contribution from a contributor providing a \$100,000 loan to the candidate for use of the committee and reported it a loan from the candidate); CA, MUR 5496 (Huffman, *et al.*); Cert. ¶ 1 (Aug. 2, 2007), MUR 5496 (Huffman *et al.*) (approving the conciliation agreement with respondents admitting to accepting excessive contributions and agreeing to a \$30,000 civil penalty).

⁵² John Brooks Aff. ¶ 5.

⁵³ 11 C.F.R. § 100.52(a).

⁵⁴ Marvin Abney for Congress, 2023 July Quarterly Report at 6, 14 (July 11, 2023); Referral, Attach.1 (Excessive and Prohibited Contributions Refunded Outside Permissible Timeframe, Listed by Contributor).

⁵⁵ Brooks Aff. ¶ 5; 11 C.F.R. § 100.52(b).

⁵⁶ Marvin Abney for Congress, RFAI (Aug. 20, 2023) (referencing 2023 July Quarterly Report with a due date of Sept. 25, 2023); Marvin Abney for Congress, Misc. Electronic Submission (FEC Form 99) (Sept. 25, 2023).

1 toward the threshold for a possible referral to OGC, but are eligible for referral to ADRO.⁵⁷
 2 Additionally, we recommend the Commission exercise its prosecutorial discretion⁵⁸ to dismiss
 3 the allegations against John Brooks on the basis of proper ordering of its priorities and agency
 4 resources based on criteria including apparent impact on the electoral process and the gravity of
 5 the violation.⁵⁹ Brooks's affidavit provides that he was unaware his loan would be considered a
 6 contribution causing him to exceed the contribution limit.⁶⁰ The Committee disclosed the loan
 7 from Brooks on its campaign finance reports and Brooks received the entire loan payment from
 8 the Committee with interest.⁶¹ Commission regulations require political committees to take
 9 corrective action when receiving an excessive contribution from a contributor and Abney, in his
 10 affidavit, avers that he took full responsibility for the mistake in an interview.⁶² Finally, the

⁵⁷ *RAD Review and Referral Procedures For the 2023-2024 election cycle* at 65-67 (noting in Standard 5 regarding excessive and prohibited contributions that referral to ADRO is appropriate when the aggregate amount of impermissible contributions received and not timely remedied exceeds \$26,250 [REDACTED])

⁵⁸ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

⁵⁹ This approach is consistent with prior Commission action. *See* F&LA at 9-10, MUR 7629 (Spano, *et. al*) (finding two individuals made excessive contributions to a political committee by providing loans to the candidate); Cert. ¶ 2.b, c (Feb. 14, 2023), MUR 7629 (Spano, *et. al*) (dismissing, with an admonishment letter, where two contributors made excessive contributions in the form of loans); First GCR at 13, MUR 7949 (Crown Products & Services, Inc., *et al.*) (recommending dismissal as an exercise of prosecutorial discretion with an admonishment letter for a manager at company, who at the direction of the CEO, attended fundraising events while submitting \$2,000 in contributions for reimbursement from the company); Cert. ¶ 2.d (Dec. 19, 2021), MUR 7949 (Crown Products & Services, Inc., *et al.*). (approving an admonishment letter and closing the file for the individual who sought reimbursements from his company for political contributions). While in prior similar cases the Commission has sent letters of admonishment, the Commission's recently adopted Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process has removed the recommendation of dismissal with admonishment as an option the Commission intends to apply in the ordinary case. We therefore are not recommending admonishment here.

⁶⁰ Brooks Aff. ¶ 5.

⁶¹ Marvin Abney for Congress, 2023 July Quarterly Report at 2 (July 11, 2023); Marvin Abney for Congress, 2023 October Quarterly Report at 6, 9 (Oct. 9, 2023).

⁶² 11 C.F.R. § 103.3(b)(3); Abney Aff. ¶ 11 (Sept. 18, 2023).

candidate did not qualify for the ballot, thus Brooks's contribution had limited impact on the electoral process.⁶³

B. Prohibited Contributions

An unregistered organization cannot contribute to a political committee unless such organization demonstrates through reasonable accounting methods that the underlying funds are subject to the limitations and prohibitions of the Act.⁶⁴ The treasurer of a political committee shall be responsible for examining all contributions received from unregistered organizations for evidence of illegality and for ascertaining whether contributions received are excessive of the contribution limit.⁶⁵ If the treasurer cannot determine if the contribution complies with the Act, the treasurer must refund the contribution to the contributor within 30 days of receiving the contribution.⁶⁶

The Committee refunded \$550 from unregistered organizations, on the basis that it could not confirm whether permissible funds were used to make the contributions.⁶⁷ The treasurer was required to refund Rhode Island NAGE and RI Brotherhood of Correctional Officers within 30

⁶³ CD1 candidate loan article.

⁶⁴ 52 U.S.C. § 30116(f); 11 C.F.R. § 102.5(b) (providing that any organization that makes contributions, expenditures, and exempted payments but that does not qualify as a political committee "must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission").

⁶⁵ 11 C.F.R. § 103.3(b); *see* Advisory Opinion ("AO") 1982-38 (Moynihan) (recipients of "contributions from unregistered organizations which are not political committees under the Act must assume responsibility for determining that the contributions originally came from permissible sources"); AO 1988-33 (Republican Party of Florida) ("[T]he Act and Commission regulations impose certain affirmative duties on the various participants in the Federal election process," such as recipient committees, "to prevent the infusion, directly or indirectly, of prohibited funds into the Federal election process.").

⁶⁶ 11 C.F.R. § 103.3(b).

⁶⁷ Marvin Abney for Congress, Misc. Electronic Submission (FEC Form 99) (Sept. 25, 2023), <https://docquery.fec.gov/pdf/708/202309259597310708/202309259597310708.pdf>.

1 days of receiving the contribution if he could not determine if the contribution complied with the
 2 Act.⁶⁸ The refunds were made 119 days after receipt, which is outside the permissible
 3 timeframe.⁶⁹

4 The available information indicates that the Committee accepted these unregistered
 5 organization contributions without ascertaining whether the underlying funds complied with the
 6 limitations and prohibitions of the Act.⁷⁰ The Committees contend that they contacted the
 7 unregistered organizations as soon as they received the RFAI.⁷¹ However, the treasurer of a
 8 political committee is required to determine if the contribution complies with the Act within 30
 9 days of receipt.⁷² Additionally, the Committee states that they were unable to confirm the
 10 contributions complied with the Act after contacting the unregistered organizations.⁷³

11 As discussed above, these refunds were not made within the permissible timeframe, but
 12 were made within the due date of the RFAI.⁷⁴ Where a refund is made within 60 days of the date
 13 of the RFAI, such violations count towards the threshold for possible referral to ADRO, rather

⁶⁸ 11 C.F.R. § 103.3(b).

⁶⁹ See 11 C.F.R. § 103.3(b); Referral, Attach.1 (Excessive and Prohibited Contributions Refunded Outside Permissible Timeframe, Listed by Contributor).

⁷⁰ Referral, Attach.1 (Excessive and Prohibited Contributions Refunded Outside Permissible Timeframe, Listed by Contributor); Marvin Abney for Congress, 2023 July Quarterly Report at 13 (July 11, 2023), <https://docquery.fec.gov/cgi-bin/fecimg/?202307119582481605>.

⁷¹ Marvin Abney for Congress Resp. to Referral at 3.

⁷² 11 C.F.R. § 103.3(b).

⁷³ Marvin Abney for Congress Resp. to Referral at 3.

⁷⁴ Marvin Abney for Congress, RFAI (Aug 20, 2023) (referencing 2023 July Quarterly Report with a due date of Sept. 25, 2023); Marvin Abney for Congress, Misc. Electronic Submission (FEC Form 99) (Sept. 25, 2023).

than OGC.⁷⁵ Here, these violations, combined with the excessive contribution received by the Committee as discussed above, meet the threshold to be referred to ADRO for further action.⁷⁶

IV. RECOMMENDATIONS

1. Open a Matter Under Review in connection with RR 24L-03 and merge it into MUR 8151;
2. Dismiss the allegation that John Brooks violated 52 USC § 30116(a) by making an excessive contribution and close the file as to him;
3. Transfer MUR 8151 to the Office of Alternative Dispute Resolution;
4. Approve the attached Factual and Legal Analysis; and

⁷⁵ RAD will ordinarily refer a political committee to ADRO, rather than OGC, if the political committee makes corrective action on prohibited or excessive contributions within 60 days of the RFAI date. In this matter, the Committee refunded the prohibited and excessive contribution within the due date of the RFAI. *RAD Review and Referral Procedures For the 2023-2024 election cycle* at 65-67 (noting in Standard 5 regarding excessive and prohibited contributions that referral to ADRO is appropriate when the aggregate amount of impermissible contributions received and not timely remedied exceeds \$26,250 [REDACTED])

⁷⁶ *Id.*

1 5. Approve the appropriate letters.

2 Lisa J. Stevenson
3 Acting General Counsel

4 Charles Kitcher
5 Associate General Counsel for
6 Enforcement

7
8
9 Date: 5/16/2024

Adrienne C. Baranowicz
Adrienne Baranowicz
Deputy Associate General Counsel
for Enforcement

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11
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13
14
15 *Aaron Rabinowitz*
16 Aaron Rabinowitz
17 Assistant General Counsel

18
19 *Kevin Fortkiewicz*
20 Kevin Fortkiewicz
21 Attorney

22
23
24 Attachment:

25 1) Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** John Brooks**MUR:** 8151**I. INTRODUCTION**

This matter arises from a \$50,000 loan that Marvin Abney for Congress (the “Committee”) and Michael J. Tsandilas in his official capacity as treasurer reported receiving from John Brooks, a friend of the candidate, at the start of Abney’s campaign for the Rhode Island 1st Congressional District. The Complaint in MUR 8151 alleges that the loan exceeded the contribution limit in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations. Brooks asserts that he was unaware that a loan from an individual is a contribution. Brooks contends that the error occurred due to a lack of time to plan for the campaign due to the unexpected opening of a congressional seat.

The \$50,000 loan caused Brooks to make an excessive contribution to the Committee. The Commission exercises its prosecutorial discretion to the allegation that Brooks made an excessive contribution.

II. FACTUAL BACKGROUND

The Committee is the principal campaign committee for Marvin Abney; Michael J. Tsandilas is its treasurer.¹ On March 29, 2023, the Governor of Rhode Island announced a special election for the 1st Congressional District.² The date for the special primary election was

¹ Marving Abney for Congress, Statement of Organization at 2-3 (Apr. 27, 2023).

² State of Rhode Island, Governor Dan McKee, *Governor McKee Announces Dates for Special Election in First Congressional District*, GOVERNOR.RI.GOV, <https://governor.ri.gov/press-releases/governor-mckee-announces-dates-special-election-first-congressional-district> (last visited May 16, 2024).

September 5, 2023, and the special general election was November 7, 2023. Marvin Abney filed a Statement of Candidacy with the Commission to be a candidate for this election.³

On July 11, 2023, the Committee filed its 2023 July Quarterly Report disclosing \$77,050 in receipts.⁴ The report disclosed a \$3,300 contribution and a \$50,000 loan from John Brooks.⁵

On July 19, 2023, a local newspaper published an article on the Abney campaign which identified and questioned the legality of the loan made by Brooks to the Committee.⁶ The article noted Brooks's employer is listed as Engineered Textile Solutions, which is not a bank, and his donations to several Rhode Island politicians in recent years.⁷

The Reports Analysis Division ("RAD") sent a Request for Additional Information ("RFAI") to the Committee on August 20, 2023.⁸ The RFAI asked that the Committee explain the apparent excessive contribution from Brooks, clarifying that a loan from an individual for the purpose of influencing a federal election is considered a contribution.⁹

³ Marvin Abney, Statement of Candidacy at 1 (Apr. 27, 2023).

⁴ Marvin Abney for Congress, 2023 July Quarterly Report at 2 (July 11, 2023), <https://docquery.fec.gov/cgi-bin/fecimg/?202307119582481594>.

⁵ *Id.* at 6, 14.

⁶ Patrick Anderson, *CD1 candidate fell 42 signatures short of qualifying. But did a loan violate FEC campaign laws?*, PROVIDENCE JOURNAL (July 19, 2023), <https://www.providencejournal.com/story/news/politics/2023/07/19/marvin-abneys-cd1-campaign-finance-law/70426954007/> (cited in MUR 8151 Compl., Ex. B) (hereinafter "CD1 candidate loan article").

⁷ *Id.*

⁸ Marvin Abney for Congress, Request for Additional Info. ("RFAI") (Aug 20, 2023), <https://docquery.fec.gov/pdf/208/202308200300191208/202308200300191208.pdf> (referencing 2023 July Quarterly Report).

⁹ *Id.*

The Committee filed its 2023 October Quarterly Report, disclosing \$58,381.11 in disbursements.¹⁰ The report disclosed the loan payment to Brooks with interest.¹¹ The Committee refunded the excessive contribution, in the form of the loan, 92 days after receipt.¹²

The Complaint in this matter, filed August 1, 2023, alleged violations of the Act based on the acceptance of the loan as publicly reported and included the article questioning the legality of the loan as an exhibit.¹³

An affidavit from Brooks attached to his Response represents that he loaned the Committee money to assist in the startup of the Committee without realizing the loan would be treated as a contribution and without any intention to violate the law.¹⁴

The Committee filed its 2024 April Quarterly Report disclosing an ending cash on hand balance of \$1,452.44 and \$96,995.99 in debts and obligations owed by the Committee.¹⁵ A loan by Abney to the Committee accounts for \$50,541.67 of those debts and obligations to the Committee.¹⁶

III. LEGAL ANALYSIS

A loan made by any person for the purpose of influencing any election for Federal office, including any loan to a federal campaign, is a contribution.¹⁷ A loan that exceeds the

¹⁰ Marvin Abney for Congress, 2023 October Quarterly Report at 4 (Oct. 9, 2023), <https://docquery.fec.gov/cgi-bin/fecimg/?202310039597394308>.

¹¹ *Id.* at 6, 9.

¹² *Id.* at 9.

¹³ Compl. at 1, Ex. B (Aug. 1, 2023).

¹⁴ John Brooks Aff. (Sept. 27, 2023).

¹⁵ Marvin Abney for Congress, 2024 April Quarterly Report at 2 (Apr. 15, 2024), <https://docquery.fec.gov/cgi-bin/fecimg/?202404159627840244>.

¹⁶ *Id.* at 5.

¹⁷ 11 C.F.R. § 100.52(a).

contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is unlawful.¹⁸ A loan will not be considered a contribution if made in the ordinary course of business by a state bank or federally chartered depository institution.¹⁹

For the 2023-2024 election cycle, a principal candidate committee may accept \$3,300 per election from an individual.²⁰ When a committee receives a contribution that on its face exceeds the limits or which exceeds the limits when aggregated with other contributions from the same contributor, the Commission's regulations require the committee to refund, redesignate, or reattribute the excessive amount within 60 days from the date of receipt.²¹

In this matter, the Committee accepted a \$50,000 loan from Brooks, an individual. The loan is considered a contribution because it was not from a federally chartered depository institution.²² Brooks contributed \$3,300 to the Committee on the same day, meaning that the entire \$50,000 loan exceeded the contribution limit.²³

The Commission recently considered a similar matter when a first-time federal candidate accepted loans from individuals in MUR 7692 (Spano, *et al.*).²⁴ Two friends of the candidate provided a total of \$180,000 in loans to the candidate after discussion with the candidate revealed personal financial problems and campaign fundraising issues.²⁵ The candidate

¹⁸ *Id.* § 100.52(b).

¹⁹ *Id.* § 100.82.

²⁰ 52 USC § 30116(a)(1)(A); 11 C.F.R. §§ 110.1(a)-(b); 110.9; see also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 88 Fed Reg. 7088, 7090 (Feb. 2, 2023).

²¹ 11 C.F.R. § 103.3(b)(3).

²² *See* 11 C.F.R. §§ 100.52(a), 110.10, 100.33.

²³ 52 USC § 30116(a)(1)(A); 11 C.F.R. §§ 110.1(a)-(b).

²⁴ Factual & Legal Analysis ("F&LA") at 1, MUR 7629 (Spano, *et al.*).

²⁵ *Id.* at 2.

transferred \$164,500 to his campaign and disclosed the loan as personal funds on his campaign finance reports.²⁶ As with this current matter, the Committee became aware of a violation after newspaper articles questioned the permissibility of the loans.²⁷ The Commission found reason to believe the candidate and his political committee received excessive contributions and misreported the loans and entered into conciliation with the candidate and committee.²⁸ The Commission decided to dismiss the allegations against the contributors, but issued letters of admonishment.²⁹

Brooks avers that he was unaware the loan would be treated as a contribution.³⁰ However, it is a contribution since a loan made by any person for the purpose of influencing any election for Federal office, including any loan to a federal campaign, is a contribution.³¹ Brooks made the \$50,000 loan and a \$3,300 contribution on the same day, resulting in Brooks making a \$50,000 excessive contribution to the Committee.³² Brooks avers that he was unaware the loan would be treated as a contribution and received the excessive portion of the loan back from the Committee, but a loan that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is unlawful.³³

²⁶ *Id.* at 3.

²⁷ *Id.* at 6; Michael J. Tsandilas Aff. ¶ 6 (Sept. 15, 2023).

²⁸ Certification (“Cert.”) ¶ 2d, e (Feb. 14, 2023), MUR 7629 (Spano, *et. al.*); Conciliation Agreement (“CA”), MUR 7629 (Spano, *et al.*); Cert. ¶ 1 (Apr. 12, 2023), MUR 7629 (Spano, *et. al.*).

²⁹ Cert. ¶ 2.b, c (Feb. 14, 2023), MUR 7629 (Spano, *et. al.*).

³⁰ John Brooks Aff. ¶ 5.

³¹ 11 C.F.R. § 100.52(a).

³² Marvin Abney for Congress, 2023 July Quarterly Report at 6, 14 (July 11, 2023).

³³ Brooks Aff. ¶ 5; 11 C.F.R. § 100.52(b).

1 The Commission exercises its prosecutorial discretion³⁴ to dismiss the allegations against
 2 John Brooks on the basis of proper ordering of its priorities and agency resources based on
 3 criteria including apparent impact on the electoral process and the gravity of the violation.³⁵
 4 Brooks's affidavit provides that he was unaware his loan would be considered a contribution
 5 causing him to exceed the contribution limit.³⁶ The Committee disclosed the loan from Brooks
 6 on its campaign finance reports and Brooks received the entire loan payment from the
 7 Committee with interest.³⁷ Commission regulations require political committees to take
 8 corrective action when receiving an excessive contribution from a contributor and Abney, in his
 9 affidavit, avers that he took full responsibility for the mistake in an interview.³⁸ Finally, the
 10 candidate did not qualify for the ballot, thus Brooks's contribution had limited impact on the
 11 electoral process.³⁹

³⁴ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

³⁵ This approach is consistent with prior Commission action. *See* F&LA at 9-10, MUR 7629 (Spano, *et. al*) (finding two individuals made excessive contributions to a political committee by providing loans to the candidate); Cert. ¶ 2.b, c (Feb. 14, 2023), MUR 7629 (Spano, *et. al*) (dismissing, with an admonishment letter, where two contributors made excessive contributions in the form of loans); First GCR at 13, MUR 7949 (Crown Products & Services, Inc., *et al.*) (recommending dismissal as an exercise of prosecutorial discretion with an admonishment letter for a manager at company, who at the direction of the CEO, attended fundraising events while submitting \$2,000 in contributions for reimbursement from the company); Cert. ¶ 2.d (Dec. 19, 2021), MUR 7949 (Crown Products & Services, Inc., *et al.*). (approving an admonishment letter and closing the file for the individual who sought reimbursements from his company for political contributions). While in prior similar cases the Commission has sent letters of admonishment, the Commission's recently adopted Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process has removed the recommendation of dismissal with admonishment as an option the Commission intends to apply in the ordinary case. We therefore are not recommending admonishment here.

³⁶ Brooks Aff. ¶ 5.

³⁷ Marvin Abney for Congress, 2023 July Quarterly Report at 2 (July 11, 2023); Marvin Abney for Congress, 2023 October Quarterly Report at 6, 9 (Oct. 9, 2023).

³⁸ 11 C.F.R. § 103.3(b)(3); Abney Aff. ¶ 11 (Sept. 18, 2023).

³⁹ CD1 candidate loan article.