



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

July 16, 2024

VIA ELECTRONIC MAIL

John Brooks
32 Division Street
Newport, RI 02840

John.brooks@entexsol.com

RE: MUR 8151

Dear Mr. Brooks,

On July 11, 2024, the Commission considered the complaint and voted to close the file to you, but not to other respondents in this matter. Accordingly, the Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information. Any applicable Statements of Reasons will be forthcoming when the entire file in this matter closes. This matter will become part of the public record when the entire file is closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Kevin Fortkiewicz, the attorney assigned to this matter, at (202) 694-1169.

Sincerely,

A handwritten signature in dark ink, appearing to read "Aaron Rabinowitz".

Aaron Rabinowitz
Assistant General Counsel

Enclosure
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.