

1 personal funds based on the financial disclosure form Yu filed with the Clerk of the House of
2 Representatives.² The Commission found reason to believe that the Committee violated
3 52 U.S.C. § 30104(b) by misreporting the source of funds of Yu's loans as personal funds.³ The
4 Commission took no action at that time as to whether the Committee and Yu accepted excessive
5 contributions in violation of 52 U.S.C. § 30116(f).⁴

6 As discussed below, the investigation indicates that Yu did not have sufficient personal
7 funds to make the total reported loans to the Committee. Instead, Yu obtained a majority of
8 funds from Wayne Brown, the Committee's campaign chairman, Brown's company,
9 WayneWorks, LLC, and from his wife, Jonie Yu. Brown made payments to Yu using a
10 combination of cashier's, personal, and company checks purportedly for the partial sale of a
11 commercial property but the evidence indicates the payments actually constituted a loan. The
12 majority of Brown's payments financed campaign expenses.⁵ Ms. Yu drew on funds from a
13 home equity line of credit ("HELOC") held solely in her name that were transferred into the
14 Yus' joint bank account whereupon Yu immediately wrote a check to the Committee in the

² Compl. at 1. Yu's total reported loans to the Committee during the 2014 election cycle was \$790,704, somewhat higher than the amount alleged in the Complaint. Committee Factual and Legal Analysis, MUR 6824 ("F&LA") at 2. In addition to the House financial disclosure report, the F&LA also relied on original and amended financial disclosure forms Yu filed with the Secretary of the U.S. Senate because Yu initially ran for a U.S. Senate seat from Georgia before withdrawing from that race to run for a seat in the House. F&LA at 2-5.

³ Certification at 2, MUR 6824 (Eugene Yu for Congress, *et al.*) (Dec. 16, 2015) ("Dec. 16, 2015 Cert."). Yu had disclosed in his financial disclosure form ownership of real properties of sufficient value from which he could have borrowed against. *See* F&LA at 8-9.

⁴ Dec. 16, 2015 Cert.

⁵ For the Commission's convenience, Attachment 1 to this report draws from and adds new information to the chart of Yu's reported loans that was attached to the First General Counsel's Report and the Committee's Factual and Legal Analysis as Exhibit A. It shows the actual sources of the reported loans, and identifies unreported credit card advances from Jonie Yu in addition to those originally reported by the Committee as loans from Yu. The chart also reflects instances where a reported loan from Yu either could not be documented or was in fact a payment by the Committee toward the total owed for the credit card advances.

1 amount of the draw. Ms. Yu also made advances to the Committee in the form of campaign
2 expenses that Yu and the Committee charged on her personal credit card.

3 Based on the findings in the investigation, we recommend that the Commission find
4 reason to believe that Wayne B. Brown and Jonie H. Yu made excessive contributions in
5 violation of 52 U.S.C. § 30116(a)(1)(A) and Eugene Yu and the Committee received excessive
6 contributions in violation of 52 U.S.C. § 30116(f). We also recommend that the Commission
7 authorize pre-probable conciliation with the Respondents. In addition to violations for accepting
8 excessive contributions, the Committee's conciliation agreement will include reporting violations
9 for misreporting the source of many of the loans Yu made to the Committee, for failing to report
10 some of Ms. Yu's credit card advances and the outstanding debts arising from the advances, and
11 for failing to report or misreporting payments the Committee made to the credit card company.
12 As discussed below, we recommend statutory penalties for Eugene and Jonie Yu, for Wayne
13 Brown, and for the Committee,

14

15 **III. SUMMARY OF INVESTIGATION**

16 During the investigation we interviewed witnesses; we analyzed property records, the
17 Committee's and the Yus' bank and credit card records, and documents that Yu provided to us;
18 and we reviewed written responses and affidavits, including responses received from Jonie Yu,
19 and Brown and his company, WayneWorks, LLC, in response to notification letters.⁶ We
20 conducted much of the early investigation through informal means. We continued to seek

⁶ Memorandum to Commission from Kathleen M. Guith, Assoc. Gen. Cnsl., Intent to Name and Notify Additional Respondents, MUR 6824 (Apr. 4, 2018); Letter to Jonie H. Yu from Dawn M. Odrowski, FEC Attorney, MUR 6824 (Apr. 20, 2018) ("April 2018 Notif. Letter to Jonie Yu"); Letter to Wayne B. Brown from Dawn M. Odrowski, FEC Attorney, MUR 6824 (Apr. 20, 2018).

1 information informally directly with Yu after his counsel withdrew, taking care to explain the
2 information needed, the relevant law, and the enforcement process. Although Yu was
3 cooperative in many respects — agreeing to be interviewed, responding by phone to written
4 requests for information, and eventually producing some documents — he did not provide
5 critical documents we repeatedly requested, such as copies of all of the checks he received from
6 Brown and credit card statements, which required us to use subpoenas to obtain those materials.

7 **IV. FACTUAL AND LEGAL ANALYSIS**

8 Yu sought the Republican nomination for U.S. Senate in Georgia for the 2014 primary
9 election, filing his statement of candidacy on July 11, 2013, but later dropped out of that race and
10 announced on February 22, 2014, he would instead seek the Republican nomination for the U.S.
11 House seat in Georgia's 12th Congressional District.⁷ He lost the 2014 primary election. Yu
12 established a new principal campaign committee when he unsuccessfully sought the Republican
13 nomination for the same House seat again in 2016 and 2018.⁸

14 The Committee's fundraising was minimal from the beginning. As a result, Yu used
15 funds from a variety of sources to pay for the Committee's expenses. Yu paid for some
16 Committee expenses during the campaign's exploratory phase beginning in mid-May 2013, from
17 a joint bank account he held with Ms. Yu. From May 27, 2013 through January 19, 2014, Yu
18 also charged many Committee expenses on his wife's personal credit card account. On July 17,
19 2013, days after filing his Statement of Candidacy, Yu transferred funds to the Committee's bank

⁷ Statement of Organization, Eugene Yu for Senate (July 11, 2013); Walter C. Jones, *Augusta Businessman Yu Switches Senate Campaign to House*, THE AUGUSTA CHRONICLE (Feb. 23, 2014); amended Statement of Organization, Eugene Yu for Congress (Mar. 4, 2014). Despite the Committee's amended Statement of Organization, the Committee's name continues to appear as "Eugene Yu for Senate" in the searchable committee database on the FEC website.

⁸ Statement of Organization, Eugene for Congress (Jan. 26, 2016).

1 account from a personal bank account he held jointly with Ms. Yu into which Ms. Yu had just
2 transferred funds from a draw on her individually-held HELOC. Beginning in August 2013,
3 Brown soon became the source of most of the campaign's funds through payments made to Yu
4 pursuant to a real estate transaction involving a commercial property jointly owned by the Yus in
5 Augusta, Georgia. Brown's payments and Ms. Yu's HELOC loan and credit card advances
6 comprised most of the Committee's funding.

7 **A. Contributions from Wayne B. Brown & WayneWorks, LLC**

8 **1. Wayne Brown's Role in the Yu's Campaign**

9 Wayne Brown is the owner and sole member of WayneWorks, LLC, a limited liability
10 company, which manages and operates Brown's residential and commercial real estate business
11 ventures.⁹ Brown, a long-standing professional associate and friend of Yu, had a significant role
12 in Yu's 2014 campaign, serving as the Committee's campaign chairman and handling its
13 finances after mid-October 2013.¹⁰ The Committee treasurer of record, Donnie Miller, set up the
14 Committee's bank account and initially performed bookkeeping duties — depositing
15 contributions and signing checks, reviewing banks statements, and tracking the finances in a
16 register — but Brown and a committee staffer prepared the Committee's FEC reports beginning
17 with the Committee's first report, the 2013 October Quarterly.¹¹ Miller turned over
18 responsibility for the Committee's finances and gave records in his possession to Brown after

⁹ Response from Wayne Brown at 2 (June 7, 2018) ("Brown Resp."). Brown states WayneWorks is not taxed as a corporation. *Id.*

¹⁰ Committee/Yu Resp. to Compl. at 2 and Ex. C at 1 (June 5, 2014); Report of Investigation of Eugene Yu at 1 (Dec. 22, 2016) ("Yu ROI #1").

¹¹ Report of Investigation of Donnie Miller at 1-2 (May 17, 2016) ("Miller ROI"). *See also* Yu ROI #1 at 1. Although Miller did not prepare the Committee's reports or other documents such as Requests for Additional Information from the Commission, he acknowledges signing them at the request of Yu and Brown. Miller ROI at 1, 3. The Committee's reports continued to bear Miller's electronic signature long after the campaign ended.

1 Brown became a signatory on the Committee's bank account on October 17, 2013.¹² Thereafter,
2 Brown signed most of the Committee's checks.¹³

3 In the early months of the campaign, Brown, Miller, and Yu, and a changing group of
4 consultants participated in weekly campaign meetings held in a conference room at Brown's
5 business office.¹⁴ Brown rented space in his business office to the Committee, and some
6 Committee operating expenses, such as office supplies and postage, were apparently charged
7 through a business account of another of Brown's companies and billed to the campaign.¹⁵
8 Brown also served as the point of contact for some Committee vendors and had a campaign e-
9 mail address.¹⁶

10 2. The Real Estate Contract

11 Starting in August 2013, Brown made payments to Yu pursuant to a real estate
12 transaction involving a commercial property on Bertram Road in Augusta, Georgia (the
13 "Property") that was jointly owned by the Yus. The transaction was documented in a "Contract
14 for Partial Sale" (the "Contract" or the "transaction") dated July 1, 2013, between Brown,
15 through WayneWorks, LLC, and Ms. Yu with Yu's consent.¹⁷ The Contract gave Brown the

¹² See Miller ROI at 2; Wells Fargo Subp. Resp. at WF0590-WF 0593 (Oct. 3, 2016) ("2016 WF Subp. Resp.").

¹³ See 2016 WF Subp. Resp. at WF0409-WF-0576).

¹⁴ Miller ROI at 2-3; see also Yu ROI #1 at 1.

¹⁵ See Documents Produced by Eugene Yu at EY758-EY760 (Mar. 23, 2017) ("March 2017 Yu Documents").

¹⁶ See, e.g., March 2017 Yu Documents at EY715, EY746, EY756, EY763, EY788-789, EY-792; Amended Statement of Org., Eugene Yu for Congress at 2 (Mar. 4, 2014).

¹⁷ The Contract is between WayneWorks, LLC, and Jonie Yu, and Brown's checks are payable to Yu, even though the real property records filed with the Superior Court of Richmond County show that the Yus have jointly owned the Property since May 12, 2004. See Letter from D. Backer and C. Sirois, second Committee counsel, to Dawn Odrowski, FEC Attorney at 2 and Ex B (Quitclaim Deed) (Apr. 22, 2016) ("Sirois Letter"). We have independently verified through state and local records that the Property remains titled in both of the Yus' names. Moreover, Yu, the Committee, and Brown state that the Yus jointly own the Property (Committee/Yu RTB Resp.

1 option to purchase up to a 50% ownership interest in the Property for \$650,000 over the next
2 year, and his ownership interest would increase as payments were made.¹⁸ Bank records show
3 that Brown made fifteen payments to Yu totaling \$645,000 under the Contract from August 19,
4 2013, through September 14, 2014. Four of Brown's earliest payments, totaling \$50,000, were
5 deposited directly into the Committee's account and refunded to him, as discussed further below.
6 Yu deposited the rest of Brown's payments into the Yus' joint bank account, and then wrote
7 checks to the Committee, or otherwise transferred funds or made deposits into the Committee's
8 account. The majority of Yu's checks to the Committee were in the same amount as Brown's
9 payments.

10 Of the \$645,000 paid by Brown under the Contract, \$555,000 can be traced to the
11 campaign.¹⁹ The \$555,000 figure excludes the aforementioned earliest payments from Brown
12 totaling \$50,000 that were directly deposited into the Committee's account, three of which were
13 payable to the Committee. These four payments were refunded to Brown on November 5, 2013,
14 in connection with a *sua sponte* submission ("*Sua Sponte* Submission" or "Submission") filed

at 1, Yu Affidavit ¶ 1 (Feb. 1, 2016); Sirois Letter at 2; Brown Resp. at 1-2) and that Yu consented to the Contract (Committee/Yu RTB Resp. at 1; Yu Affidavit ¶ 1).

In clarifying why Jonie Yu was the only signatory on the Contract, Yu has stated that he and his wife own 35% and 65% of the Property, respectively, through Y&JE, Inc., a company they owned. Report of Investigation of Eugene Yu at 2 (March 23, 2017) ("Yu ROI #2"). That may have once been true, but YJ&E, Inc., has not existed as a legal entity since it was administratively dissolved on May 16, 2008. See State of Georgia Secretary of State, Certificate of Administrative Dissolution/Revocation for YJ&E, Inc. (May 16, 2008). The company's name has never appeared in the Property ownership records or in the Richmond County Board of Tax Assessor's records, and rental checks from the Property's tenant during the relevant period are payable to Yu and not YJ&E.

¹⁸ Committee/Yu RTB Resp. at 6-7 ("Contract"). Because WayneWorks is a single member LLC wholly owned by Brown, our reference to Brown when discussing the Contract and payments encompasses WayneWorks.

¹⁹ We have taken a more conservative approach in calculating this figure by only including those funds that can be most directly traced to the campaign. The Committee and Yu admit that payments made by Brown to Yu under the Contract were the source of most of the funds Yu loaned the Committee. Committee/Yu RTB Resp. at 2, see also Yu ROI #1 at 2.

1 with the Commission in January 2014 on behalf of Yu, the Committee, and Brown by Yu's first
2 counsel. That Submission characterized the \$50,000 in payments as "excessive contributions."²⁰
3 The Submission stated that the payments were made in connection with a real estate agreement
4 between Yu and Brown, later identified as the Contract in the Committee's response to the
5 Commission's reason-to-believe finding in this matter, and the Committee mistakenly believed
6 those payments could be treated as Yu's personal funds and paid directly to the Committee,
7 instead of being first deposited into Yu's personal account.

8 Yu and Brown agree that sometime around the summer of 2013, Yu and Brown discussed
9 a transaction involving the Property.²¹ In an interview, Yu stated that when Brown asked him
10 near the beginning of the campaign why Yu was not fundraising, Yu told Brown that he did not
11 know how and asked if Brown could loan him money.²² Brown asked what Yu had as collateral,
12 and Yu identified the Property. Yu said he and Brown worked out an agreement that Yu
13 described as a "loan" and the Property as "collateral," and said that they agreed Brown would
14 provide funds to the campaign as needed.²³ Yu viewed the arrangement as a "line of credit"
15 guaranteed by the value of the Property, stating "he'd just write a check to me and I'd write a
16 check to the campaign."²⁴ Indeed, Brown wrote the word "loan" on the memo line of Brown's

²⁰ *Sua Sponte* Submission of Eugene Yu for Senate, Inc., *et al.* at 2-3, Pre-MUR 569 (Dec. 6, 2013) at Committee/Yu Resp. to Compl. Ex. C. Brown used the refund to make subsequent payments to Yu. Committee/Yu RTB Resp. at 2. Though the Submission is dated December 6, 2013, it was not received by the Commission until January 23, 2014. The Submission was transferred to ADR before this matter was activated and is designated as Pre-MUR 569/ADR 701.

²¹ Brown Resp.; Declaration of Wayne B. Brown ¶ 4 ("2nd Brown Aff."); Yu ROI #1 at 1-2 (stating the discussion occurred early on in the campaign).

²² Yu ROI #1 at 1-2.

²³ Yu ROI #1 at 2; Yu ROI #2 at 2.

²⁴ Yu ROI #1 at 2.

1 October 23, 2013 payment, a personal check to Yu in the amount of \$5,000; two months later,
2 Brown's name and the word "loan" were typed above the words "Purchaser/Purchased for" on
3 Brown's December 18, 2013, payment of \$50,000 that he made to Yu using a cashier's check.²⁵
4 On certain later payments made after the Committee's Submission, Brown wrote "Bertram Road
5 Purchase" on the memo line.²⁶ Yu says they agreed that Brown would be repaid with interest
6 after the Property was sold and Brown agreed to wait until then to be repaid. Yu volunteered
7 that the Committee's first counsel, retained during the campaign, advised them to draw up an
8 agreement.²⁷

9 The Contract, apparently drafted by Brown,²⁸ provides Brown with "the right to
10 purchase" within twelve months up to 50% of the Property's "total value of \$1.3 million dollars"
11 for \$650,000.²⁹ It simultaneously conveys ownership to Brown during the option period, stating
12 that Brown will "earn ownership" as monies are paid under the Contract; it makes no reference
13 to the timing of any payment. The Contract further provides that the Yus will "convey the
14 percentage purchased" and record a marketable title and limited warranty deed with the county
15 "at time of [Brown's] choosing." It further gives the Yus the right of first refusal to repurchase

²⁵ 2016 WF Subp. Resp. at WF0190 and Committee/Yu Resp. to Compl., Ex. C at 4 (Submission); Wells Fargo Subp. Resp. at WF0667 (Aug. 30, 2017) ("2017 WF Subp. Resp.").

²⁶ 2017 WF Subp. Resp. at WF0721, WF0723.

²⁷ Yu ROI #2 at 2. Yu made the statement to us during a meeting that he requested to provide documents he had located.

²⁸ Yu ROI #2 at 2 (stating Brown probably wrote the agreement); *see also* 2nd Brown Aff. ¶ 9 (stating Brown wanted to structure the agreement to give him an option to record ownership interest).

²⁹ Committee/Yu RTB Resp. at 5-6 (Contract).

1 Brown's ownership interest for the amounts he paid plus 8% interest. Another provision states
2 that if the Yus are unable to convey marketable title, they will not be required to expend funds to
3 correct any title defects but need only cancel the agreement and return to Brown all payments he
4 made and reimburse him for the costs of any surveys and title examination. The Contract places
5 responsibility for all property taxes and utility costs on the Yus and permits them to continue to
6 collect rental income unless the Property is developed, in which case Brown shares in the income
7 but not the expenses.

8 Brown disagrees with Yu that the real estate agreement was a loan, maintaining that the
9 transaction was a sale of 50% interest in the Property pursuant to the Contract, a position in
10 accord with the position in Yu and the Committee's RTB response, that Brown's payments were
11 Yu's personal funds from a partial sale of the Property; Brown provided an affidavit with that
12 response.³⁰ Brown states that the transaction involving the Property was a *bona fide* sale for
13 which he paid "the usual and normal charge," and he views it as unrelated to the campaign.³¹ In
14 a second affidavit submitted with his response to a post-investigative notification letter, Brown
15 states that Yu approached him about purchasing, rather than loaning, a 50% interest in the
16 Property for \$650,000 in the summer of 2013.³² Although he was "aware" Yu was considering a
17 U.S. Senate run when he entered the Contract, Brown states that "from my perspective, Mr. Yu's

³⁰ Committee/Yu RTB Resp. at 2-3. A copy of the Contract was first provided with the RTB response. In affidavits filed with that Response, Yu and Brown state that Brown made payments in accordance with the Contract "in exchange for the ownership interest in the Property" and "acquired such ownership interest as payments were made" and state that each "believed that [Yu] had a legal right to the funds of each payment" once Brown made them and acquired a proportionate ownership interest. *Id.* at 4 and ¶¶ 2, 5 (Affidavit of Eugene Yu) and 5 and ¶¶ 2, 4 (Affidavit of Wayne B. Brown).

³¹ Brown Resp. at 9-10.

³² 2nd Brown Aff. ¶¶ 4, 6.

1 potential candidacy was irrelevant to the transaction.”³³ Brown attributes the periodic nature,
2 variable amounts, and timing of the payments to the Contract’s structure and his business cash
3 flow and not the campaign’s needs, as Yu states. Brown avers that he structured the Contract as
4 a one-year option to purchase because he did not want to tie up \$650,000 in cash at once and
5 made payments as cash became available to him.³⁴

6 Although Yu’s interview statements differ from the position in his and the Committee’s
7 RTB response, his statements are supported by other evidence uncovered during the
8 investigation and the contractual language itself, all of which show that the transaction between
9 Brown and Yu was intended to as a loan to provide Yu with funds for his campaign rather than a
10 *bona fide*, arms-length sale.³⁵

11 First, the Contract itself contains unusual provisions for a real estate transaction. Though
12 styled as a partial sale, it also purports to be an option to purchase that provides Brown with “the

³³ *Id.* ¶ 10.

³⁴ *Id.* ¶¶ 8, 10.

³⁵ To aid in determining whether a violation took place in connection with a financial transaction, the Commission typically examines the facts and circumstances involved, including in matters involving financial transactions between a candidate and an individual or entity. *See, e.g.*, PC Br. at 4-10 and Conciliation Agreement, MURs 4128 and 4362 (Grant Lally/Lally for Congress, *et al.*) (Commission accepted a probable cause conciliation agreement where Respondents admitted, *inter alia*, knowingly and willfully accepting excessive contributions from candidate’s father in the form of proceeds from a purported sale of the candidate’s interest in real property reported as a personal loan to the Committee); Conciliation Agreement ¶¶ 22, 30-35, MURs 4818 and 4933 (Walter L. Roberts and Walt Roberts for Congress) (Commission accepted a probable cause conciliation agreement in which Respondents admitted knowingly and willfully accepting excessive contributions from a former state senator involved in the campaign disguised as legitimate transactions, including consulting work never performed, a cattle sale that never occurred, and an option contract for partial interest in candidate’s artwork that, in fact, financed campaign media buys); Gen. Counsel’s Rept. #3 and Certification (Mar. 20, 2002), MUR 4825 (Gex Williams) (Commission closed the file after finding RTB that proceeds from a sale of ten acres of a candidate’s farm were excessive contributions based on a Commission-financed appraisal and title search establishing the purchaser had not paid more than the land’s fair market value); Factual and Legal Analysis at 7-12, MUR 7025 (Senator Mike Lee) (Commission found that no excessive contributions resulted from a bank’s waiver of the deficiency balance on a candidate’s home mortgage as part of a short sale or from the individual who purchased the home in the short sale and rented another home to the candidate because the factual circumstances indicated the transactions were not for campaign purposes.

1 right to purchase” within twelve months up to 50% of the Property’s value while simultaneously
2 conveying proportionate ownership to Brown during the option period as monies are paid.
3 Notably, the Contract provides that the Yus will “convey the percentage purchased” and record a
4 marketable title and limited warranty deed with the county “at the time of [Brown’s] choosing,”
5 a provision Yu’s second counsel characterized as “unconventional.”³⁶ And, despite Brown’s
6 accruing ownership interest, the Contract places responsibility for all property taxes and utility
7 costs on the Yus and permits them to continue to collect rental income unless the Property is
8 developed, in which case Brown shares in the income but not the expenses. Finally, the Contract
9 permits the Yus to cancel the Contract and return *all payments* to Brown plus the costs, if any,
10 Brown made for surveys and title examination without requiring them to clear the title.³⁷

11 Second, despite Brown’s payments and asserted ownership interest, the Yus have not
12 conveyed to Brown or recorded with the clerk of the superior court a marketable title and limited
13 warranty deed evidencing Brown’s ownership interest.³⁸ According to Yu and the Committee,
14 Brown had not yet exercised the “unconventional” contractual provision permitting him to
15 choose when the Yus would convey and record his ownership interest because Brown preferred
16 to remain a “silent owner” for personal and professional reasons due to the nature of the business

³⁶ Sirois Letter at 2.

³⁷ This provision appears to be modified boilerplate language used in form real estate purchase and sale agreements that allow a *buyer* to terminate an agreement without penalty *prior to the payment of the purchase price* at closing if a seller fails to correct any title defect affecting marketability. *See, e.g., Georgia Realtors Purchase and Sale Agreement at Pars. B1 and B3 available at http://images.kw.com/docs/2/6/0/260467/1457366655434_2016SSOfferPackage.pdf.* As written in this Contract, which contemplates Brown making periodic payments during the option year and allows him to choose when to request marketable title and a limited warranty deed, the Yus can simply cancel the agreement and return Brown’s payments.

³⁸ Sirois Letter at 2; Yu ROI #2 at 2; a recent check of county records confirms that a new deed still has not been recorded.

1 operating on the Property.³⁹ Yu identified the business operating on the Property as a nightclub
2 and stated that Brown did not want to deal with the possible tax and liability issues associated
3 with ownership.⁴⁰ Brown stated that he had included the option so as not to “expos[e] [him]self
4 to the liability of a potentially uninsurable vacant building.”⁴¹ He confirms he has not elected to
5 exercise the option and remains a “passive investor.”⁴² From the July 1, 2013, date of the
6 Contract through December 2014, however, the Property was *not* vacant. Bank records and
7 publicly available information show that a nightclub, XS Live, occupied the building from at
8 least April 2013 through December 2014 and paid rent from beginning in April 2013 through
9 mid-January 2015.⁴³

10 Third, Yu and Brown acknowledge that Brown did not obtain an independent appraisal of
11 the Property's value before executing the Contract.⁴⁴ Rather, Yu maintains they relied on the
12 fair market value of comparable surrounding properties and his and Brown's experience in the
13 commercial property market.⁴⁵ According to the Committee and Yu, the \$1.3 million figure was
14 based on the fair market value of comparable surrounding properties and its “desirable location”

³⁹ Sirois Letter at 2.

⁴⁰ Yu ROI #2 at 2; *see also* 2nd Brown Aff. ¶ 9.

⁴¹ 2nd Brown Aff. ¶ 9. Brown stated that the Property contains a vacant building and parking lot, and, based on his commercial real estate experience, insuring property with a vacant building is expensive and often impossible. *Id.*

⁴² Brown Resp. at 4-5; 2nd Brown Aff. ¶ 9.

⁴³ *See e.g.*, 2017 WF Subp. Resp. at WF0619, WF0650, WF677, WF0719, WF0733, WF0766 and WF0772; *see also* XS Live Business License (showing XS Live had a liquor license through December 31, 2014).

Following a renovation, a second nightclub, Mitty's, occupied the property from April 2015 through approximately May 2016. *See* Jenna Martin, *New Dance Club Aims at Appealing to Broader Audience*, THE AUGUST CHRONICLE (Apr. 22, 2015) and Mitty's Business License (showing Mitty's had an active liquor license through May 12, 2016),

⁴⁴ Sirois Letter at 3; Brown Resp., 2nd Brown Aff. ¶ 6.

⁴⁵ Sirois Letter at 3.

1 near Augusta National Golf Club.⁴⁶ Both Yu and Brown say they relied on their knowledge of
2 local real estate market conditions, and Brown emphasized that Augusta National Golf Club's
3 then-widely reported above-market purchases of nearby property influenced his view that the
4 \$650,000 price was reasonable without need for an appraisal.⁴⁷ Brown states he did not request
5 an appraisal because he considered the transaction as an opportunity to make a "speculative real
6 estate investment with a potentially high return" in light of reported above-market property
7 purchases by Augusta National of nearby properties that could drive up commercial real estate
8 property prices if Augusta National continued with its purchases.⁴⁸

9 However, since the date of the Contract, the Yus have listed the Property for sale at a
10 much lower price than the \$1.3 million figure listed on the Contract and have taken actions
11 seeking to further lower the Richmond County Board of Assessors' determination of the
12 Property's fair market value. During the period Brown was making payments to Yu, Yu filed a
13 property tax return on February 3, 2014, which attested that the total value of the Property was
14 \$500,000, an action that triggered a review by the Richmond County Board of Assessors.⁴⁹ As a
15 result, the Assessor's office decreased its determination of the Property's fair market value to
16 \$1,027,925 on April 3, 2014, based on a recalculation of the relevant square footage and acreage

⁴⁶ *Id.*

⁴⁷ 2nd Brown Aff. ¶ 5; *see also id.* ¶ 6.

⁴⁸ *Id.* ¶¶ 5-6. Brown's response details Augusta National's nearby purchases in the months before the Contract date, but those purchases were of residential properties abutting Augusta National that was turned into a parking lot. Brown Resp. at 2-3; *see* Cork Gaines, *A Family Keeps Turning Down Millions for Its House Next to the Masters Golf Course*, BUSINESS INSIDER (Apr. 7, 2018). The response also discusses sales of specific nearby commercial properties as support for Brown's belief that the \$1.3 million was a reasonable fair market valuation, but Brown does not attest in his affidavit that these particular sales influenced his view of the Property's value. *See* Brown Resp. at 10.

⁴⁹ *See* Documents Produced by Richmond County Board of Assessors at RCBA028 (June 1, 2018) ("2018 Richmond Co. Bd. of Assessors Docs").

1 on which the land value is based.⁵⁰ Subsequently, on February 15, 2017, the Yus listed the
2 Property for sale for \$890,000, which elicited only two offers before they decided to take it off
3 the market in early 2018: a \$400,000 cash purchase offer and a letter of intent proposing to
4 purchase the property for \$700,000.⁵¹ Yu filed an appeal with the Richmond County Board of
5 Assessors on May 2, 2018, seeking to lower the county's fair market value determination further,
6 from \$1,027,925 to \$850,000.⁵² The appeal was denied.⁵³

7 **3. Wayne B. Brown Made and the Committee and Yu Accepted**
8 **Excessive Contributions**
9

10 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
11 value made by any person for the purpose of influencing any election for Federal office.⁵⁴
12 During the 2014 election cycle, the Federal Election Campaign Act of 1971, as amended (the
13 "Act") prohibited any person from making contributions to any candidate and the candidate's
14 authorized political committee with respect to any election for Federal office which, in the
15 aggregate, exceeded \$2,600.⁵⁵ In addition, the Act prohibits any candidate or political
16 committee from knowingly accepting any contribution or making any expenditure in violation of
17 the provisions of Section 30116.⁵⁶

⁵⁰ 2018 Richmond Co. Bd. of Assessors Docs. at RCBA019-022. Prior to that, the fair market value of the Property as determined by the Richmond County Board of Assessors was \$1,043,175, below the Contract's stated value of \$1.3 million. *Id.* at RCBA031, RCBA033.

⁵¹ *See* Documents Produced by Chris Farrow, Sherman and Hemstreet at SH003-SH021 (June 6, 2018).

⁵² 2018 Richmond Co. Bd. of Assessors Documents at RCBA009.

⁵³ *Id.* at RCBA 044 (forwarding September 25, 2018 Richmond County Board of Equalization decision).

⁵⁴ 52 U.S.C. § 30101(8)(A)(i).

⁵⁵ *See* 52 U.S.C. § 30116(a)(1)(A); Contribution Limits for 2013-2014, <https://www.fec.gov/updates/contribution-limits-2013-2014>.

⁵⁶ 52 U.S.C. § 30116(f).

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1 Federal candidates may make unlimited contributions from their own “personal funds” to
2 their authorized campaign committees.⁵⁷ The Act and Commission regulations provide that
3 “personal funds” are (a) amounts derived from any asset that, under applicable State law, at the
4 time the individual became a candidate, the candidate had legal right of access to or control over,
5 and with respect to which the candidate had legal and rightful title or an equitable interest; and
6 (b) income received during the current election cycle of the candidate, including proceeds from
7 the sale of the candidate’s investments.⁵⁸

8 The Act also provides that “any candidate . . . who receives a contribution, or any loan in
9 connection with the campaign of such candidate for election . . . shall be considered, for purposes
10 of [the] Act, as having received the contribution or loan . . . as an agent of his or her authorized
11 committee.”⁵⁹ Here, the evidence obtained during the investigation shows that Brown’s
12 payments under the Contract were intended to provide funds for Yu’s campaign, and the weight
13 of the evidence indicates the payments were effectively a loan to Yu, rather than the proceeds
14 from a *bona fide*, arms-length real estate sale. The evidence we obtained is similar to evidence
15 gathered in prior enforcement matters where the Commission reviewed the facts and
16 circumstances surrounding specific financial transactions to determine whether they were
17 contributions.⁶⁰ Based on the evidence here, the \$555,000 in payments that Brown made to Yu,
18 which were then used for campaign expenses, were not Yu’s personal funds and constitute
19 excessive contributions by Brown.

⁵⁷ 11 C.F.R. § 110.10.

⁵⁸ 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

⁵⁹ See 52 U.S.C. § 30102(e)(2); see also 11 C.F.R. § 101.2(a).

⁶⁰ See *supra* note 35.

1 Bank records corroborate Yu's statement that Brown's payments were to provide funds to
2 the Committee as needed, and the Contract was structured to provide Yu with the means to do
3 so. They show that most of Brown's payments under the Contract were made when the
4 Committee needed funds to cover its expenses or when its account was overdrawn.
5 Significantly, 90% of Brown's payments to Yu on or after October 1, 2013, were made when he
6 was in a position to know the Committee's finances because he signed most of the Committee's
7 checks after becoming an account signatory, effectively acting in the manner of a treasurer. For
8 example:

- 9 • Yu deposited Brown's November 25, 2013, check for \$50,000 into his joint
10 account, withdrew \$20,000 from the account the next day and immediately
11 deposited those funds into the Committee account when its balance was only
12 \$1,005.21.⁶¹ The deposit ensured sufficient funds were available to cover four
13 Committee checks dated November 26 and 27, 2013, and signed by Brown,
14 including a \$10,712.50 check to one of the Committee's major vendors;
15
- 16 • Yu deposited Brown's December 10, 2013, check for \$25,000 into his joint
17 account, and the next day, he withdrew \$25,000 from the account and deposited
18 it into the Committee account when the Committee's account balance was only
19 \$2,371.38. Those funds were needed to cover a \$21,744.70 check to the
20 Committee's lawyer dated December 10, 2013, that Brown had signed;
21
- 22 • Following Yu's decision to run for a House seat instead of the U.S. Senate seat,
23 Yu deposited into his joint account a \$20,000 check dated March 12, 2014, and
24 a \$250,000 check dated March 24, 2014, both from Brown. Yu then wrote two
25 checks to the Committee in the amounts of \$20,000 and \$240,000 that were
26 deposited into that account on March 13, and March 27, 2014, when the account
27 balances were \$3,704 and \$5,142.20, respectively. These two checks comprised
28 95% of the funds deposited into the Committee's account in March and April
29 2014 and were sufficient to cover the \$206,066 in Committee disbursements
30 made during those months; and
31
- 32 • Yu deposited into his joint account two checks from Brown dated May 14 and
33 May 15, 2014 in the amounts of \$30,000 and \$40,000, respectively. On the

⁶¹ The Yus also made a \$5,000 phone payment from the joint account to Bank of America following the deposit of Brown's \$50,000 check. The payment was applied to the balance on Ms. Yu's credit card that was used to pay campaign expenses.

1 same day, he then wrote and deposited two checks to the Committee in the same
2 amounts. At the time the \$30,000 check was deposited into the Committee
3 account, the account was overdrawn by \$1,361.45. Brown's checks comprised
4 95% of the receipts deposited into the Committee's account in May 2014, the
5 month of the primary election.
6

7 Brown's sworn statements that he made the payments "as cash became available to me"
8 may be true, but they also do not conflict with the conclusion that the payments were most often
9 made when the Committee's bank balance was especially low or overdrawn, or in at least once
10 instance, when checks would not otherwise have been covered. And Brown's explanation that
11 his payments under the Contract "had nothing to do with Mr. Yu's candidacy" is not credible in
12 light of Brown's dual role as Yu's campaign chairman and his effectively acting as the
13 Committee's treasurer, which put him in a position to be fully familiar with the campaign's
14 financial needs. His explanation is also contradicted by Yu's statements against his own
15 interests that the transaction was a loan.

16 The record also supports Yu's statements to us that the transaction involving the Property
17 was in effect a loan. First, Brown's early, contemporaneous notations of the word "loan" on the
18 memo lines on two of Brown's early checks to Yu are consistent with Yu's interview account.
19 Brown's "Bertram Road Purchase" notations on his May 2014 checks to Yu carry less weight
20 because they were made after the Committee's first counsel filed the January 23, 2014, *Sua*
21 *Sponte* Submission in which the Committee represented that Brown's payments were "collateral
22 payments" from Brown to Yu under "what they have represented to us as a *bona fide* business
23 agreement" to purchase real estate.⁶²

⁶² *Sua Sponte* Submission at 1-2 at Committee/Yu Resp. to Compl. Ex. C.

1 Importantly, Yu and the Committee admit, and land records confirm, that the Yus have
2 never conveyed or recorded title to the Property to Brown for his purported ownership interest, a
3 fact inconsistent with one of the hallmarks of a real estate sale. In his affidavit, Brown averred
4 that he wanted to structure the Contract to give him the option of recording his ownership
5 interest so he could choose to remain a “passive investor,” but the relevant Contract provision
6 envisions conveyance *and* recording, stating, “Seller agrees to *convey the percentage purchased*
7 *at time of purchaser’s choosing and update the ownership information with the county* for a
8 marketable title and limited warranty deed (emphasis added).”⁶³ Notably, Brown has not
9 provided a copy of an unrecorded deed to support his assertion that he holds a partial ownership
10 interest and remains “a passive investor.”⁶⁴ Moreover, Richmond County property records
11 confirm that no deed has been conveyed and recorded more than four years after Brown’s last
12 payment under the Contract.⁶⁵

13 Additionally, Brown’s explanation for including an “unconventional” option to choose
14 the time of conveyance and recording — that he did not want to expose himself to the liability of
15 insuring a vacant building — is inconsistent with publicly available information that the Property

⁶³ Committee/Yu RTB Resp. at 5 (Contract). *See also* Sirois Letter at 2 (stating the provision is an agreement that marketable title and a limited warranty deed would be provided “at time of purchaser’s choosing”).

⁶⁴ Brown Resp. at 7; 2nd Brown Aff. ¶ 9.

⁶⁵ In addition to the fact that the Yus’ have not conveyed to Brown his ownership interest or recorded a deed evidencing it, a search of Richmond County real estate records reveals no record that a real estate transfer tax was paid in connection with the purported sale, which is required under Georgia law. Georgia law imposes a real estate transfer tax “on each deed, instrument or other writing by which any lands . . . or other realty sold is . . . transferred or otherwise conveyed to the purchaser” when the value of the interest or property conveyed exceeds \$100. Ga. Code Ann. § 48-6-1. Payment of a transfer tax is a prerequisite to recording a deed, and it is a misdemeanor to willfully evade or defeat “in any manner” the payment of the transfer tax. *See* Ga. Code Ann. §§ 48-6-4; 48-6-10. A contractual provision that permits an indefinite delay in conveying an ownership interest and recording a deed therefore appears problematic.

1 was not vacant as of the date of the Contract or indeed during the entire period when Brown
2 made all the payments under the Contract.

3 Finally, the fact that the Brown did not obtain an independent appraisal prior to entering
4 into the Contract, a customary step in purchasing real estate to determine its fair market value,⁶⁶
5 the Yus' actions with the Richmond County Board of Assessors to lower the Property's fair
6 market value, and the Yus' unsuccessful listing of the property for \$890,000, substantially less
7 than the \$1.3 million value on placed on the Property in the Contract, cast doubt as to whether
8 the Contract was a *bona fide* sale for a 50% ownership interest of \$650,000.⁶⁷

9 In sum, the campaign purpose of the Contract is supported by the timing of Brown's
10 payments, virtually all of which were made when the campaign account balance was very low,
11 and most of which were made when Brown was the campaign chairman and acting in the manner
12 of a treasurer, handling the Committee's finances and signing its checks. The evidence,
13 including the "loan" memo notations, the failure to obtain an independent appraisal of the

⁶⁶ The Commission has recognized the importance of an independent appraisal in determining the fair market value of property when deciding whether a candidate sold it for more than the fair market value, thus resulting in an excessive contribution. For instance, in MUR 4825, discussed at note 35, the Commission authorized the Office of General Counsel to expend funds to obtain an independent appraisal of the fair market value of the respondent's property in evaluating whether its sale was a contribution. See Certification ¶ 2 (July 24, 2001) and General Counsel's Report #3 at 2-3, MUR 4825 (Gex Williams) (describing Commission's instructions to OGC and results of the appraisal and title examination). See also Adv. Op. 1984-60 (Mulloy) at n.5 (Jan. 11, 1985) (noting that the Commission would view an appraisal by an expert using an acceptable appraisal methods as *prima facie* evidence of the property's usual and normal market price but would not rule out "the use of other valuation methods that would reliably establish such price or value.").

⁶⁷ To the extent the transaction between Brown and the Yus could be considered a *bona fide* sale, Brown appears to have paid more than the fair market value, resulting in an excessive contribution. The Commission has considered when the sale of a candidate's interest in real property constitutes a contribution in the context of a proposed plan by a candidate to retire campaign debt by selling his interest in real estate held in a family-owned partnership to either an outside party or a family member, noting that a candidate's personal funds include proceeds from the sale of a candidate's investments. AO 1984-60 at 2. The Commission determined that a contribution would occur where (1) a candidate sells a property to use the proceeds to pay campaign expenses and debts and (2) the property is sold for price greater than the property's "normal and usual market price." *Id.* As Brown observes in his response, the Commission has equated the term "fair market value" as used to refer to real property with the "usual and normal cost" standard in 11 C.F.R. § 100.52(d)(1). Commission regulations define "the usual and normal" cost as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution. *Id.*

1 Property or convey marketable title and a limited warranty deed, and the Yus' attempts to
2 decrease the value of the Property on a real estate sale listing and by seeking a lower property
3 assessment, further cast doubt that the transaction between Brown and the Yus was a *bona fide*
4 sale of property rather than a loan.

5 Under the Commission's regulations, a contribution by an LLC with a single natural
6 person member that does not elect to be treated as a corporation by the Internal Revenue Service
7 shall be attributed only to that single member.⁶⁸ Accordingly, there is reason to believe that the
8 \$555,000 Yu received from Brown and WayneWorks and transferred to the Committee or
9 otherwise used to pay Committee expenses were not Yu's personal funds but instead proceeds of
10 a loan from Brown, and thus, a contribution. Brown had made a direct \$3,500 contribution to Yu
11 on July 3, 2013, \$900 more than the 2014 per-election contribution limit, which was not
12 refunded after Yu lost the primary election. Therefore, we recommend that the Commission find
13 reason to believe that Brown made and the Committee and Yu accepted excessive contributions.
14 We also recommend the Commission take no action as to WayneWorks, LLC. The Committee's
15 misreporting of Brown's payments as loans from Yu's personal funds is encompassed by the
16 Commission's prior finding that there is reason to believe that the Committee violated 52 U.S.C.
17 § 30104(b) by misreporting the source of funds reported as loans from Yu's personal funds.

18 **B. Jonie Yu's Contributions**

19 The Committee and Yu used funds provided by Jonie Yu by paying for campaign
20 expenses using her personal credit card account and by transferring funds originating from a
21 draw on Ms. Yu's individually-owned HELOC to the Committee through the Yus' personal

⁶⁸ See 11 C.F.R. § 110.1(g)(4); *supra* note 9.

1 account. As discussed below, both the credit advances and HELOC funds constitute
2 contributions to Yu's campaign.

3 **1. Credit Card Advances**

4
5 Early in his bid for U.S. Senate, Yu carried with him and began using Ms. Yu's personal
6 Bank of America credit card, held solely in her name, to pay for campaign expenses.⁶⁹ Yu gave
7 the credit card bills to campaign staff to track campaign expenses for which he intended to be
8 reimbursed, and staff later used the card to pay on-line campaign expenses since they had access
9 to the credit card number.⁷⁰ Yu says the card was used solely for campaign expenses during this
10 period.⁷¹

11 Bank records and Committee reports show that Yu and the Committee charged
12 \$91,085.81 in total campaign expenses on Ms. Yu's personal credit card account between
13 May 27, 2013, and January 19, 2014, when its \$55,000 credit limit had been exceeded. The
14 credit card was used to pay travel expenses, such as transportation, meals, and lodging, as well as
15 social media advertising, direct mail, television advertising, and campaign signs.⁷²

16 The Committee paid off \$30,365 of the total credit card charges and the Yus eventually
17 repaid the remainder using personal funds from their joint account, mostly with checks written

⁶⁹ Yu initially said that the credit card was his (*see* Yu ROI #1 at 4) before clarifying that it was in Ms. Yu's name. Yu ROI #2 at 1-2; Bank of America ("BoA") Subp. Resp. at BA009-B010 (Aug. 17, 2017). In an interview with our Office he said that he was an authorized user on the account. *See* Yu ROI #2 at 1-2. However, the bank records produced do not indicate that an additional card was issued or that Yu was listed as an authorized user on Ms. Yu's account. The Bank confirmed in a phone conversation that Ms. Yu was the only person associated with the account. E-mail from Anne Spivey, FEC Investigator, to Dawn Odrowski, FEC Attorney (Apr. 3, 2018).

⁷⁰ Yu ROI #2 at 1-2.

⁷¹ Yu ROI #2 at 1-2.

⁷² *See, e.g.*, BoA Suppl. Subp. Resp at BA 044-045, BA052, BA066 (Aug. 30, 2017) ("BoA Suppl. Subp. Resp").

1 by Ms. Yu. Ms. Yu fully paid the first two credit card bills shortly after the statement dates,
2 using money from the Yus' joint account.⁷³ Beginning after the September 25, 2013, credit card
3 bill, however, the Committee made small, occasional payments toward the outstanding balance,
4 and it missed some monthly payments altogether, causing finance charges and late fees to accrue.
5 The balance due on Ms. Yu's credit card fluctuated between \$69,374.66 and \$60,104.77 for
6 more than ten months between the January 27, 2014, bill, when Yu and the Committee stopped
7 using the credit card, and December 4, 2014, when the Yus made the first of two substantial
8 payments to pay off the outstanding balance. To make these payments — \$45,000 on
9 December 4, 2014, and \$15,671 on January 7, 2015 — the Yus used the proceeds of life
10 insurance policies they cashed in.⁷⁴ The latter payment was made by Ms. Yu using proceeds
11 from a check payable solely to her. The total charges made on Ms. Yu's credit card that are
12 attributable to Committee expenses, including interest and late fees, are \$105,385.51.⁷⁵

13 Payments by an individual from her personal funds, including a personal credit card to
14 provide or obtain goods and services used by or for a political committee is considered a
15 contribution unless certain exemptions apply.⁷⁶ These exemptions apply to certain travel and

⁷³ Ms. Yu used the proceeds from a \$10,194.13 Committee reimbursement check payable to her and deposited into the Yus' joint bank account to pay the balance due on the second credit card bill. The reimbursement check appears to be in significant part for charges made on Ms. Yu's credit card for campaign expense incurred in the June 27-July 26, 2013 billing period for Mr. Yu's travel, food, and lodging; meals for campaign events; and a conference sponsorship fee. See Amended 2013 October Quarterly Report at 20, 25 (Aug. 29, 2014) and BoA Suppl. Subp. Resp. at BA038.

⁷⁴ Yu stated the credit card balance was paid off with proceeds from a life insurance policy he cashed in. Yu ROI #2 at 1. His statement is corroborated by bank records, which appear to show that both Yus cashed in life insurance policies. Two checks from Ohio National Financial Services, Ohio National Life Assurance Co. were deposited into the Yus' personal account prior to the Yus' final credit card payments: a \$45,886.22 check payable to Yu dated November 25, 2014 and an \$18,907.38 check payable to Jonie Yu dated December 14, 2014. 2017 WF Subp. Resp. at WF0762, WF0764.

⁷⁵ Finance charges of \$13,959.67 and \$340 in late fees had accrued before the credit card balance was paid.

⁷⁶ 11 C.F.R. § 116.5(a).

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1 subsistence expenses incurred by individuals traveling or conducting volunteer campaign activity
2 on behalf of a campaign, including a \$1,000 per election travel expense exemption;
3 unreimbursed subsistence payments incurred in connection with a volunteer's campaign activity;
4 and non-volunteer transportation and subsistence expenses paid with an individual's credit card
5 if reimbursed within 60 days.⁷⁷

6 As the account holder of the personal credit card that Yu used to pay for goods and
7 services for the Committee, Ms. Yu made contributions in the form of credit card advances that
8 the Committee accepted. The Commission's regulatory exemptions do not apply to any of the
9 credit card charges for the Committee's advertising. Additionally, none of the exemptions
10 appear to apply to any of the travel-related charges. According to Yu, Ms. Yu did not work for
11 and was not a volunteer for the campaign so it appears that none of the credit card charges for
12 transportation, food and lodging were for Ms. Yu's own travel and subsistence expenses.⁷⁸
13 Because Ms. Yu did not previously make a direct contribution to the Committee, the total

⁷⁷ See 11 C.F.R. §§ 100.79(a) (\$1,000 per election travel exemption), 100.79(b) (unreimbursed volunteer subsistence payments), and 116.5(b) (non-volunteer transportation and subsistence expenses paid by credit card and timely reimbursed within 60 days).

⁷⁸ See Memo to File from Dawn M. Odrowski, April 26, 2018 Phone Call with Eugene Yu. Yu's statement is corroborated in part by the absence of any salary payments to Ms. Yu in the Committee's bank records and a single \$10,194 reimbursement check from the Committee to Ms. Yu in August 2013 that appears to have been in substantial part for credit charges made on Ms. Yu's credit card for Committee expenses. See *supra* note 73. Moreover, Ms. Yu does not state in her response to our April 20, 2018, notification letter that any of the credit card charges were incurred for her own travel and subsistence expenses even though the letter summarizes and cites to the exemptions and included copies of the credit card statements. See Response of Jonie Yu (June 1, 2018) ("Jonie Yu Resp.") (referring only to an "on demand loan," an apparent reference to the HELOC draw).

1 amount of her contributions would be reduced by \$2,600.⁷⁹ Subtracting that amount from the
2 total amount Ms. Yu advanced to the Committee, the evidence shows that she made and the
3 Committee accepted, \$102,785.51 in excessive contributions in the form of credit card advances.
4 Of those excessive contributions, \$15,671, the amount of the last credit card payment made by
5 Ms. Yu using proceeds from her cashed-out life insurance policy, remains unreimbursed or
6 unrefunded.

7 **2. HELOC Draw**

8 On July 17, 2013, six days after Yu filed his Statement of Candidacy for the Senate
9 election, a \$50,000 draw on a HELOC in Jonie Yu's name was transferred to the Yus' joint bank
10 account. On the same day, Yu wrote a \$50,000 check to the Committee drawn on the joint
11 account and deposited it into the Committee's account.⁸⁰ The HELOC was a pre-existing
12 \$128,000 line of credit established in 2004 and secured by the Yus' personal residence, which is
13 100% owned by Jonie Yu.⁸¹

14 Yu acknowledged that he accessed funds from his wife's HELOC to fund his campaign.⁸²
15 Jonie Yu acknowledges that she made an "on demand" loan to the Committee and expected it to

⁷⁹ See 52 U.S.C. §§ 30116(a)(1)(A) (contribution limit), 30116(f) (prohibition on knowing receipt of contributions in excess of limits); Contribution Limits for 2013-2014, <https://www.fec.gov/updates/contribution-limits-2013-2014>. This limit applies to a candidate's family members. See *Buckley v. Valeo*, 424 U.S. 1, 51 n.57, 53 n.59 (upholding the constitutionality of contribution limits as to family members, reasoning that, "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors").

⁸⁰ See 2017 WF Subp. Resp. at WF0861; March 2017 Yu Documents at EY047; 2016 WF Subp. Resp. at WF104-015.

⁸¹ See Warranty Deed between Eugene Chin Yu and Jonie Hung Yu (Nov. 12, 1998) (whereby Yu transfers to Ms. Yu his one half-interest in their residence, 4349 Miller Dr.); Security Deed between Ms. Yu and SouthTrust Bank (Feb. 12, 2004) (showing the Yu residence secures a revolving line of credit not to exceed \$128,000). As a result of a series of bank mergers, the HELOC is now with Wells Fargo Bank.

⁸² Yu ROI #2 at 1.

1 be repaid after the election, but the Committee had no funds to repay it when Yu lost the 2014
2 election.⁸³ As the funds Yu transferred to the Committee were not his personal funds,⁸⁴ they
3 constitute an excessive contribution from Ms. Yu to Yu and the Committee.

4 In light of the excessive contributions arising from the credit card advances and the
5 HELOC draw, this Office recommends that the Commission find that Jonie H. Yu made, and the
6 Committee knowingly accepted, excessive contributions in violation of 52 U.S.C. § 30116(a) and
7 (f), respectively.

8 **3. Committee Reporting Violations in Connection with Contributions**
9 **from Jonie Yu**

10
11 As noted, the Commission has already found reason to believe that the Committee
12 violated 52 U.S.C. § 30104(b) by misreporting the source of funds of Yu's loans to the
13 Committee as from his personal funds. The investigation revealed additional details regarding
14 the Committee's reporting violations as they relate to Jonie Yu's credit card advances and
15 HELOC funds. First, the Committee misreported the total amount of the credit card purchases in
16 all but two months as loans from Yu's personal funds rather than as contributions in the form of
17 credit card advances from Ms. Yu; it similarly reported the funds obtained from Ms. Yu's
18 HELOC as a loan from Yu's personal funds rather than a contribution from Ms. Yu. Second, the
19 Committee failed to disclose a total of \$17,893 in credit card charges made in the credit card
20 billing periods of July 27, 2013 to August 23, 2013, and December 28, 2013, to January 27,
21 2014, as well as the associated interest and late charges. Finally, the Committee either failed to
22 disclose or incorrectly disclosed most of the payments it made to the credit card company and

⁸³ Jonie Yu Resp.

⁸⁴ 52 U.S.C. § 30101(26); 11 C.F.R. § 101.2(a).

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1 failed to disclose as a debt the outstanding credit card balance, which exceeded \$60,000 for more
2 than ten months.⁸⁵

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⁸⁵ See 11 C.F.R. § 116.5(c) (a political committee obligation arising from an advance made by an individual for campaign expenses is an outstanding debt until reimbursed).

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1 **VI. RECOMMENDATIONS**

- 2
- 3 1. Find reason to believe that Eugene Chin Yu and Eugene Yu for Congress, Inc., and
- 4 Donnie Miller in his official capacity as treasurer violated 52 U.S.C. § 30116(f) for
- 5 accepting excessive contributions.
- 6
- 7 2. Find reason to believe that Wayne B. Brown violated 52 U.S.C. § 30116(a)(1)(A) for
- 8 making excessive contributions.
- 9
- 10 3. Find reason to believe that Jonie H. Yu violated 52 U.S.C. § 30116(a)(1)(A) for
- 11 making excessive contributions.
- 12
- 13 4. Take no action as to WayneWorks, LLC.
- 14
- 15 5. Authorize pre-probable cause conciliation with Eugene Chin Yu, Eugene Yu for
- 16 Congress, Inc., and Donnie Miller in his official capacity as treasurer, Jonie H. Yu,
- 17 and Wayne B. Brown, prior to a finding of probable cause to believe.
- 18
- 19 6. Approve the attached Factual and Legal Analyses to Eugene Yu for Congress, Inc.,
- 20 and Donnie Miller in his official capacity as treasurer, Eugene Chin Yu and Jonie H.
- 21 Yu and to Wayne B. Brown.
- 22
- 23 7. Approve the attached proposed joint conciliation agreement with Eugene Chin Yu,
- 24 Eugene Yu for Congress and Donnie Miller in his official capacity as treasurer and
- 25 Jonie H. Yu.
- 26
- 27 8. Approve the attached proposed conciliation agreement with Wayne B. Brown.
- 28
- 29 9. Approve the appropriate letters.
- 30

31 Lisa J. Stevenson
32 Acting General Counsel

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35 March 12, 2019

36 Date

Charles Kitcher

Charles Kitcher
Acting Associate General Counsel for
Enforcement

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41 *Mark Allen*

Mark Allen
Assistant General Counsel

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Dawn M. Odrowski
Dawn M. Odrowski
Attorney

Allen
Ana Peña-Wallace
Attorney

Attachments:

1. Chart showing Sources of Reported Loans & Unreported Loans/Advances
2. Factual and Legal Analysis for Eugene Yu for Congress, Eugene C. Yu and Jonie H. Yu
3. Factual and Legal Analysis for Wayne B. Brown

UNIVERSITY MICROFILMS

**MUR 6824 –Sources of Loans Reported as from Yu’s Personal Funds
 and Unreported or Misreported Loans/Credit Card Advances**

Date Loan Incurred (as Reported by Committee or Unreported)	Amount	Source of Loan Based on Bank Records	Use of Funds	Comments
5/15/2013 Reported on Schedule C	\$ 10,000.00	Apparent personal funds in Yus’ joint account	5/15/13 wire transfer to Purdue Group, Inc. from joint account reported as for “campaign consulting” (Schedule B)	
5/24/2013 Reported on Schedule C	\$ 40,000.00	Apparent personal funds in Yus’ joint account	5/24/13 wire transfer to Ameripublic Partners from joint account reported as for “campaign consulting” (Schedule B)	
6/12/2013 Reported on Schedule C	\$ 1,500.00	Apparent personal funds in Yus’ joint account	6/6/13 personal check from Yus’ joint account to Gabriel Mendez, campaign driver	
6/26/2013 Reported on Schedule C	\$ 6,308.24	J. Yu personal credit card charges in 5/25-6/23/13 billing period	Travel, lodging, food, gas	Balance paid within 10 days of billing statement from Yus’ personal account
6/29/2013 Reported on Schedule C	\$ 500.00	Apparent personal funds in Yus’ joint account-	6/29/13 check from Yus’ joint account to Gabriel Mendez, campaign driver	

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Date Loan Incurred (as Reported by Committee or unreported)	Amount	Source of Loan Based on Bank Records	Use of Funds	Comments
7/13/2013 Reported on Schedule C	\$ 5,160.00	Double-reporting of a campaign expense charged on J. Yu credit card in 6/27-7/26/13 billing period (see 7/26/13 loan below)	7/13/13 charge reported as event sponsor fee to Georgia Federation of Republican Women (Schedule B)	
7/17/2013 Reported on Schedule C	\$ 50,000.00	Draw on J. Yu HELOC transferred to Yus' joint account on 7/17/13	\$50,000 check from Yus' joint account to Committee dated 7/17/13	
7/26/2013 Reported on Schedule C	\$ 10,877.36	Campaign expenses charged on J. Yu personal credit card during 6/27-7/26/13 billing period (includes \$5,160 charge to Ga. Fed. of Rep. Women as a separate loan on 7/13/13)	Travel, lodging, food, gas	Balance paid in full within 18 days of billing statement date partially using from \$10,194 reimbursement check from Committee to Jonie Yu
8/19/13 Reported as contribution from WayneWorks-refunded	\$ 15,000.00	\$15,000 personal check to Eugene Yu for Senate from Waynetworks, LLC dated 8/19/13	Check deposited into Committee account on 8/19/13	Refunded to Brown on 11/15/13 by Committee in connection with <i>Sua Sponte</i> Submission
8/30/13 Reported as contribution from Wayne Brown-refunded	\$ 25,000.00	\$25,000 personal check to Eugene Yu for Senate dated 8/30/13	Check deposited into Committee account on 8/30/13	Refunded to Brown on 11/15/13 in connection with <i>Sua Sponte</i> Submission

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Date Loan Incurred (as Reported by Committee or Unreported)	Amount	Source of Loan Based on Bank Records	Use of Funds	Comments
8/27/13 Not reported as loan or advance	\$ 5,289.42	Campaign expenses charged on J. Yu personal credit card during 7/27-8/27/13 billing period	Travel, food, gas	
9/17/13 Reported as 9/30/13 contribution from Wayne Brown-refunded	\$ 5,000.00	\$5,000 personal check to Eugene Yu for Senate from Wayne Brown dated 9/17/13	Check deposited into Committee account on 9/17/13	
9/25/2013 Reported on Schedule C	\$ 3,209.50	Campaign expenses charged on J. Yu personal credit card during 8/28-9/25/13 billing period.	Travel, food, gas	
10/1/2013 Reported on Schedule C	\$ 55,000.00	\$55,000 cashier's check to Yu from Wayne Brown dated 10/1/13	\$55,000 check from Yus' joint account to Committee dated October 2013 deposited into Committee account on 10/1/13	
10/15/2013 Reported on Schedule C	\$ 29,829.71	Campaign expenses charged on J. Yu personal credit card during 9/26-10/26/13 billing period	Travel, lodging, food, gas, marketing	
10/23/13 Reported as a refunded contribution to Wayne Brown	\$ 5,000.00	\$5,000 personal check from Wayne Brown to Yu dated 10/23/13: Memo line notation "Loan"	Check deposited directly into Committee account on 10/25/13	Refunded to Brown on 11/15/13 in connection with <i>Sua Sponte</i> Submission

61588714448001

Date Loan Incurred (as Reported by Committee or Unreported)	Amount	Source of Loan Based on Bank Records	Use of Funds	Comments
10/31/2013 Reported on Schedule C	\$ 3,522.50	Unable to document in Committee or personal bank records		
11/15/2013 Reported on Schedule C	\$ 8,451.38	Campaign expenses charged on J. Yu personal credit card during 10/27-11/26/13 billing period	Travel, lodging, food, gas	
11/18/2013 Reported on Schedule C	\$ 80,000.00	-- \$60,000 cashier's check to Yu from Wayne Brown dated 11/15/13 deposited into Yu personal account on same date --\$20,000 apparent personal funds in Yus' joint account	\$80,000 check from Yus' joint account to Committee dated 11/16/13 and deposited into Committee account on 11/18/13	
11/26/2013 Reported on Schedule C	\$ 20,000.00	\$50,000 cashier's check to Yu from Brown dated 11/25/13 deposited into Yus' personal account on same day	\$20,000 withdrawal from Yus' joint account and deposited into Committee account on 11/26/13	Also \$5,000 phone payment made on 11/29/13 from Yus' joint account to Bank of America toward J. Yu credit card advances
12/11/2013	\$ 25,000.00	\$25,000 cashier's check to Yu from Brown dated 12/10/13 deposited into Yu's joint account on same day	\$25,000 withdrawal from Yus' joint account and deposit of same amount into Committee account on 12/11/13	

10024142000

Date Loan Incurred (as reported by Committee or Unreported)	Amount	Source of Loan Based on Bank Records	Use of Funds	Comments
12/15/2013 Reported on Schedule C	\$ 14,986.55	Campaign expenses charged on J. Yu personal credit card during 11/27-12/27/13 (total charges for the period were \$15,035.55)	Advertising, travel, lodging, food, gas	
12/18/2013 Reported on Schedule C	\$ 1,000.00	Apparent personal funds in Yus' joint account.	\$1,000 withdrawal from Yus' joint account and deposit into Committee account on 12/18/13	
12/19/2013 Reported on Schedule C	\$ 50,000.00	\$50,000 cashier's check to Yu from Brown dated 12/18/13 with notation "loan" above line noting "Purchased for" deposited into Yus' joint account on same day	\$50,000 wire transfer on 12/19/13 from Yus' joint account to Committee account	
12/27/2013 Reported on Schedule C	\$ 3,000.00	Apparent misreporting--this appears to be a 12/23/13 check from the Committee to Bank of America applied to the outstanding balance on the credit card advances (payment was posted on 12/27/13)		

10044742001

Date Loan Incurred (as Reported by Committee or Unreported)	Amount	Source of Loan Based on Bank Records	Use of Funds	Comments
1/27/2014 Not reported as loan or advance	\$ 12,604.04	Campaign expenses charged on J. Yu personal credit card during 12/28/13-1/27/14 billing period	Advertising, travel, food, gas	
1/30/2014 Reported as Loan on Schedule C	\$ 1,138.97	Unable to document		
2/3/2014 Reported on Schedule C	\$ 1,500.00	Apparent personal funds in Yus' joint account	\$1,150 check from Yus' joint account to Committee dated 2/2/14 and deposited on 2/3/14	
2/7/2014 Reported on Schedule C	\$ 5,000.00	Undetermined-\$5,000 cash deposit into Committee account on 2/7/14		\$2,000 of this \$5,000 cash deposit may be a withdrawal from Yus' personal account
2/10/2014 Reported on Schedule C	\$ 3,000.00	Apparent personal funds in Yus' joint account	\$3,000 check from Yus' joint account to Committee dated and deposited on 2/10/14	
2/26/2014 Reported on Schedule C	\$ 4,000.00	Apparent personal funds in Yus' joint account.	Two \$2,000 checks from Yus' joint account to Committee dated 2/25/14 and 2/26/14 and deposited 2/26/14	
2/27/2014 Reported on Schedule C	\$ 5,220.00	Apparent personal funds in Yus' joint account.	\$5,200 cashier's check purchased by Yus' joint account to Georgia Republican Party dated 2/27/14	Amount of ballot qualifying fee in Georgia for U.S. House seat

Date Loan Incurred (as Reported by Committee or Unreported)	Amount	Source of Loan Based on Bank Records	Use of Funds	Comments
3/5/2014 Reported on Schedule C	\$ 5,000.00	Apparent personal funds in Yus' joint account	Wire transfer from Yus' joint account to pay Committee vendor Ameripublic Partners	
3/10/2014 Reported on Schedule C	\$ 3,500.00	Apparent personal funds in Yus' joint account	\$3,500 check from Yus' joint account to Committee dated 3/10/14 and deposited 3/11/14	
3/13/2014 Reported on Schedule C	\$ 20,000.00	\$2,000 personal check to Yu from Brown dated 3/12/14 and deposited into Yus' joint account same day	\$20,000 check from Yus' joint account to Committee dated and deposited 3/13/14	
3/25/2014 Reported on Schedule C	\$240,000.00	\$250,000 cashier's check to Yu from Brown dated 3/25/14 and deposited into Yus' joint account on same day	\$240,000 check from Yus' joint account to Committee dated 3/27/14 and deposited on same day	
5/14/2014 Reported on Schedule C	\$ 30,000.00	\$30,000 personal check from Yu to Brown dated 5/14/14 with "Bertram Rd Purchase" written on memo line and deposited into Yus' joint account on same day	\$30,000 check from Yus' joint account to Committee dated and deposited on 5/14/14	

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Date Loan Incurred (as Reported by Committee or Unreported)	Amount	Source of Loan Based on Bank Records	Use of Funds	Comment
5/16/2014 Reported on Schedule C	\$ 40,000.00	\$40,000 personal check to Yu from Brown dated 5/15/14 with "Bertram Rd purchase" written on memo line and deposited 5/16/14	\$40,000 check from Yus' joint account to Committee dated and deposited 5/16/14	
8/4/2014 Reported on Schedule B as Contribution from Yu	\$ 4,000.00	Apparent misreporting--this appears to be a 8/4/14 check from the Committee to Bank of America applied to the outstanding balance on J. Yu's credit card advances		Committee check to Bank of America signed by Wayne Brown
8/4/2014 Reported on Schedule B as Contribution from Yu	\$ 10,000.00	\$10,000 check from WayneWorks to Yu dated 8/4/14 with "Bertram Rd" written on memo line and deposited in Yus' joint account on same day	\$10,000 check from Yus' joint account to Committee dated and deposited 8/4/14	

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Eugene Yu for Congress, Inc. MUR: 6824
5 and Donnie Miller in his
6 official capacity as treasurer
7 Eugene Chin Yu
8 Jonie H. Yu
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 (the "Commission") concerning an allegation that federal candidate Eugene Yu lacked sufficient
13 liquid assets to make more than \$730,000 in loans to his 2014 Congressional campaign from his
14 personal funds.¹ See 52 U.S.C. § 30109(a)(1). The Commission previously found reason to
15 believe that Eugene Yu for Congress, Inc., and Donnie Miller in his official capacity as treasurer
16 (the "Committee") violated 52 U.S.C. § 30104(b) by misreporting the source of funds of Yu's
17 loans as personal funds.² The Commission took no action at that time as to whether the
18 Committee and Yu accepted excessive contributions in violation of 52 U.S.C. § 30116(f).

19 The Commission's investigation indicates that Yu did not have sufficient personal funds
20 to make the total reported loans to the Committee. Instead, Yu obtained a majority of funds from
21 Wayne Brown, the Committee's campaign chairman, Brown's company, WayneWorks, LLC,

¹ Compl. at 1. Yu's total reported loans to the Committee during the 2014 election cycle was \$790,704, somewhat higher than the amount alleged in the Complaint. Eugene Yu for Congress Factual and Legal Analysis, MUR 6824 ("F&LA") at 2. In addition to the House financial disclosure report, the F&LA also relied on original and amended financial disclosure forms Yu filed with the Secretary of the U.S. Senate because Yu initially ran for a U.S. Senate seat from Georgia before withdrawing from that race to run for a seat in the House. F&LA at 2-5.

² Yu had disclosed in his financial disclosure form ownership of real properties of sufficient value from which he could have borrowed against. See F&LA at 8-9.

1 and from his wife, Jonie Yu. Brown made payments to Yu using a combination of cashier's,
2 personal, and company checks purportedly for the partial sale of a commercial property but the
3 evidence indicates the payments actually constituted a loan. The majority of Brown's payments
4 financed campaign expenses. Ms. Yu drew on funds from a home equity line of credit
5 ("HELOC") held solely in her name that were transferred into the Yus' joint bank account
6 whereupon Yu immediately wrote a check to the Committee in the amount of the draw. Ms. Yu
7 also made advances to the Committee in the form of campaign expenses that Yu and the
8 Committee charged on her personal credit card.

9 Accordingly, the Commission found reason to believe that Jonie H. Yu made excessive
10 contributions in violation of 52 U.S.C. § 30116(a)(1)(A) and that Eugene Yu and the Committee
11 received excessive contributions in violation of 52 U.S.C. § 30116(f).

12 II. FACTUAL AND LEGAL ANALYSIS

13 Yu sought the Republican nomination for U.S. Senate in Georgia for the 2014 primary
14 election, filing his statement of candidacy on July 11, 2013, but later dropped out of that race and
15 announced on February 22, 2014, he would instead seek the Republican nomination for the U.S.
16 House seat in Georgia's 12th Congressional District.³ He lost the 2014 primary election. Yu
17 established a new principal campaign committee when he unsuccessfully sought the Republican
18 nomination for the same House seat again in 2016 and 2018.⁴

³ Statement of Organization, Eugene Yu for Senate (July 11, 2013); Walter C. Jones, *Augusta Businessman Yu Switches Senate Campaign to House*, THE AUGUSTA CHRONICLE (Feb. 23, 2014); amended Statement of Organization, Eugene Yu for Congress (Mar. 4, 2014). Despite the Committee's amended Statement of Organization, the Committee's name continues to appear as "Eugene Yu for Senate" in the searchable committee database on the FEC website.

⁴ Statement of Organization, Eugene for Congress (Jan. 26, 2016).

1 The Committee's fundraising was minimal from the beginning. As a result, Yu used
2 funds from a variety of sources to pay for the Committee's expenses. Yu paid for some
3 Committee expenses during the campaign's exploratory phase beginning in mid-May 2013, from
4 a joint bank account he held with Ms. Yu. From May 27, 2013, through January 19, 2014, Yu
5 also charged many Committee expenses on his wife's personal credit card account. On July 17,
6 2013, days after filing his Statement of Candidacy, Yu transferred funds to the Committee's bank
7 account from a personal bank account he held jointly with Ms. Yu into which Ms. Yu had just
8 transferred funds from a draw on her individually-held HELOC. Beginning in August 2013,
9 Brown soon became the source of most of the campaign's funds through payments made to Yu
10 pursuant to a real estate transaction involving a commercial property jointly owned by the Yus in
11 Augusta, Georgia. Brown's payments and Ms. Yu's HELOC loan and credit card advances
12 comprised most of the Committee's funding.

13 **A. Contributions from Wayne B. Brown & WayneWorks, LLC**

14 **1. Wayne Brown's Role in Yu's Campaign**

15 Wayne Brown is the owner and sole member of WayneWorks, LLC, a limited liability
16 company, which manages and operates Brown's residential and commercial real estate business
17 ventures. Brown, a long-standing professional associate and friend of Yu, had a significant role
18 in Yu's 2014 campaign, serving as the Committee's campaign chairman and handling its
19 finances after mid-October 2013.⁵ The Committee treasurer of record, Donnie Miller, set up the
20 Committee's bank account and initially performed bookkeeping duties — depositing
21 contributions and signing checks, reviewing banks statements, and tracking the finances in a

⁵ Committee/Yu Resp. to Compl. at 2 and Ex. C at 1 (June 5, 2014).

1 register — but Brown and a committee staffer prepared the Committee’s disclosure reports filed
2 with the Commission beginning with its first report, the 2013 October Quarterly.⁶ Miller turned
3 over responsibility for the Committee’s finances and gave records in his possession to Brown
4 after Brown became a signatory on the Committee’s bank account on October 17, 2013.
5 Thereafter, Brown signed most of the Committee’s checks.

6 In the early months of the campaign, Brown, Miller, and Yu, and a changing group of
7 consultants participated in weekly campaign meetings held in a conference room at Brown’s
8 business office. Brown rented space in his business office to the Committee, and some
9 Committee operating expenses, such as office supplies and postage, were apparently charged
10 through a business account of another of Brown’s companies and billed to the campaign. Brown
11 also served as the point of contact for some Committee vendors and had a campaign e-mail
12 address.⁷

13 2. The Real Estate Contract

14 Starting in August 2013, Brown made payments to Yu pursuant to a real estate
15 transaction involving a commercial property on Bertram Road in Augusta, Georgia (the
16 “Property”) that was jointly owned by the Yus. The transaction was documented in a “Contract
17 for Partial Sale” (the “Contract” or the “transaction”) dated July 1, 2013, between Brown,

⁶ Although Miller did not prepare the Committee’s reports or other documents such as Requests for Additional Information from the Commission, he acknowledges signing them at the request of Yu and Brown. The Committee’s reports continued to bear Miller’s electronic signature long after the campaign ended.

⁷ See, e.g., Amended Statement of Org., Eugene Yu for Congress at 2 (Mar. 4, 2014).

1 through WayneWorks, LLC, and Ms. Yu with Yu's consent.⁸ The Contract gave Brown the
2 option to purchase up to a 50% ownership interest in the Property for \$650,000 over the next
3 year, and his ownership interest would increase as payments were made.⁹ Bank records show
4 that Brown made fifteen payments to Yu totaling \$645,000 under the Contract from August 19,
5 2013, through September 14, 2014. Four of Brown's earliest payments, totaling \$50,000, were
6 deposited directly into the Committee's account and refunded to him, as discussed further below.
7 Yu deposited the rest of Brown's payments into the Yus' joint bank account, and then wrote
8 checks to the Committee, or otherwise transferred funds or made deposits into the Committee's
9 account. The majority of Yu's checks to the Committee were in the same amount as Brown's
10 payments.

11 Of the \$645,000 paid by Brown under the Contract, \$555,000 can be traced to the
12 campaign. The \$555,000 figure excludes the aforementioned earliest payments from Brown
13 totaling \$50,000 that were directly deposited into the Committee's account, three of which were
14 payable to the Committee. These four payments were refunded to Brown on November 5, 2013,
15 in connection with a *sua sponte* submission ("*Sua Sponte* Submission" or "Submission") filed

⁸ The Contract is between WayneWorks, LLC, and Jonie Yu, and Brown's checks are payable to Yu, even though the real property records filed with the Superior Court of Richmond County show that the Yus have jointly owned the Property since May 12, 2004. The Commission has independently verified through state and local records that the Property remains titled in both of the Yus' names. Moreover, Yu, the Committee, and Brown state that the Yus jointly own the Property (Committee/Yu RTB Resp. at 1, Yu Affidavit ¶ 1 (Feb. 1, 2016) and that Yu consented to the Contract (Committee/Yu RTB Resp. at 1; Yu Affidavit ¶ 1).

In clarifying why Jonie Yu was the only signatory on the Contract, Yu has stated that he and his wife own 35% and 65% of the Property, respectively, through Y&JE, Inc., a company they owned. That may have once been true, but YJ&E, Inc., has not existed as a legal entity since it was administratively dissolved on May 16, 2008. See State of Georgia Secretary of State, Certificate of Administrative Dissolution/Revocation for YJ&E, Inc. (May 16, 2008). The company's name has never appeared in the Property ownership records or in the Richmond County Board of Tax Assessor's records, and rental checks from the Property's tenant during the relevant period are payable to Yu and not YJ&E.

⁹ Committee/Yu RTB Resp. at 6-7 ("Contract"). Because WayneWorks is a single member LLC wholly owned by Brown, the reference to Brown when discussing the Contract and payments encompasses WayneWorks.

1 with the Commission in January 2014 on behalf of Yu, the Committee, and others by Yu's first
2 counsel. That Submission characterized the \$50,000 in payments as "excessive contributions."¹⁰
3 The Submission stated that the payments were made in connection with a real estate agreement
4 between Yu and Brown, later identified as the Contract in the Committee's response to the
5 Commission's reason-to-believe finding in this matter, and the Committee mistakenly believed
6 those payments could be treated as Yu's personal funds and paid directly to the Committee,
7 instead of being first deposited into Yu's personal account.

8 Yu has stated that sometime around the summer of 2013, Yu and Brown discussed a
9 transaction involving the Property. In an interview, Yu stated that when Brown asked him near
10 the beginning of the campaign why Yu was not fundraising, Yu told Brown that he did not know
11 how and asked if Brown could loan him money. Brown asked what Yu had as collateral, and Yu
12 identified the Property. Yu said he and Brown worked out an agreement that Yu described as a
13 "loan" and the Property as "collateral," and said that they agreed Brown would provide funds to
14 the campaign as needed." Yu viewed the arrangement as a "line of credit" guaranteed by the
15 value of the Property, stating "he'd just write a check to me and I'd write a check to the
16 campaign." Indeed, Brown wrote the word "loan" on the memo line of Brown's October 23,
17 2013 payment, a personal check to Yu in the amount of \$5,000; two months later, Brown's name
18 and the word "loan" were typed above the words "Purchaser/Purchased for" on Brown's
19 December 18, 2013, payment of \$50,000 that he made to Yu using a cashier's check. On certain
20 later payments made after the Committee's Submission, Brown wrote "Bertram Road Purchase"

¹⁰ *Sua Sponte* Submission of Eugene Yu for Senate, Inc., *et al.* at 2-3, Pre-MUR 569 (Dec. 6, 2013) at Committee/Yu Resp. to Compl. Ex. C. Brown used the refund to make subsequent payments to Yu. Committee/Yu RTB Resp. at 2. Though the Submission is dated December 6, 2013, it was not received by the Commission until January 23, 2014.

1 on the memo line. Yu says they agreed that Brown would be repaid with interest after the
2 Property was sold and Brown agreed to wait until then to be repaid. Yu volunteered that the
3 Committee's first counsel, retained during the campaign, advised them to draw up an agreement.

4 The Contract, apparently drafted by Brown, provides Brown with "the right to purchase"
5 within twelve months up to 50% of the Property's "total value of \$1.3 million dollars" for
6 \$650,000.¹¹ It simultaneously conveys ownership to Brown during the option period, stating that
7 Brown will "earn ownership" as monies are paid under the Contract; it makes no reference to the
8 timing of any payment. The Contract further provides that the Yus will "convey the percentage
9 purchased" and record a marketable title and limited warranty deed with the county "at time of
10 [Brown's] choosing." It further gives the Yus the right of first refusal to repurchase Brown's
11 ownership interest for the amounts he paid plus 8% interest. Another provision states that if the
12 Yus are unable to convey marketable title, they will not be required to expend funds to correct
13 any title defects but need only cancel the agreement and return to Brown all payments he made
14 and reimburse him for the costs of any surveys and title examination. The Contract places
15 responsibility for all property taxes and utility costs on the Yus and permits them to continue to
16 collect rental income unless the Property is developed, in which case Brown shares in the income
17 but not the expenses.

18 Although Yu's interview statements differ from the position in his and the Committee's
19 RTB response, his statements are supported by other evidence uncovered during the investigation
20 and the contractual language itself, all of which show that the transaction between Brown and Yu

¹¹ Committee/Yu RTB Resp. at 5-6 (Contract).

1 was intended to as a loan to provide Yu with funds for his campaign rather than a *bona fide*,
2 arms-length sale.¹²

3 First, the Contract itself contains unusual provisions for a real estate transaction. Though
4 styled as a partial sale, it also purports to be an option to purchase that provides Brown with “the
5 right to purchase” within twelve months up to 50% of the Property’s value while simultaneously
6 conveying proportionate ownership to Brown during the option period as monies are paid.
7 Notably, the Contract provides that the Yus will “convey the percentage purchased” and record a
8 marketable title and limited warranty deed with the county “at the time of [Brown’s] choosing,” a
9 provision Yu’s second counsel characterized as “unconventional.” And, despite Brown’s
10 accruing ownership interest, the Contract places responsibility for all property taxes and utility
11 costs on the Yus and permits them to continue to collect rental income unless the Property is
12 developed, in which case Brown shares in the income but not the expenses. Finally, the Contract

¹² To aid in determining whether a violation took place in connection with a financial transaction, the Commission typically examines the facts and circumstances involved, including in matters involving financial transactions between a candidate and an individual or entity. *See, e.g.*, PC Br. at 4-10 and Conciliation Agreement, MURs 4128 and 4362 (Grant Lally/Lally for Congress, *et al.*) (Commission accepted a probable cause conciliation agreement where Respondents admitted, *inter alia*, knowingly and willfully accepting excessive contributions from candidate’s father in the form of proceeds from a purported sale of the candidate’s interest in real property reported as a personal loan to the Committee); Conciliation Agreement ¶¶ 22, 30-35, MURs 4818 and 4933 (Walter L. Roberts and Walt Roberts for Congress) (Commission accepted a probable cause conciliation agreement in which Respondents admitted knowingly and willfully accepting excessive contributions from a former state senator involved in the campaign disguised as legitimate transactions, including consulting work never performed, a cattle sale that never occurred, and an option contract for partial interest in candidate’s artwork that, in fact, financed campaign media buys); Gen. Counsel’s Rept. #3 and Certification (Mar. 20, 2002), MUR 4825 (Gex Williams) (Commission closed the file after finding RTB that proceeds from a sale of ten acres of a candidate’s farm were excessive contributions based on a Commission-financed appraisal and title search establishing the purchaser had not paid more than the land’s fair market value); Factual and Legal Analysis at 7-12, MUR 7025 (Senator Mike Lee) (Commission found that no excessive contributions resulted from a bank’s waiver of the deficiency balance on a candidate’s home mortgage as part of a short sale or from the individual who purchased the home in the short sale and rented another home to the candidate because the factual circumstances indicated the transactions were not for campaign purposes).

1 permits the Yus to cancel the Contract and return *all payments* to Brown plus the costs, if any,
2 Brown made for surveys and title examination without requiring them to clear the title.¹³

3 Second, despite Brown's payments and asserted ownership interest, the Yus have not
4 conveyed to Brown or recorded with the clerk of the superior court a marketable title and limited
5 warranty deed evidencing Brown's ownership interest.¹⁴ According to Yu and the Committee,
6 Brown had not yet exercised the "unconventional" contractual provision permitting him to
7 choose when the Yus would convey and record his ownership interest because Brown preferred
8 to remain a "silent owner" for personal and professional reasons due to the nature of the business
9 operating on the Property. Yu identified the business operating on the Property as a nightclub
10 and stated that Brown did not want to deal with the possible tax and liability issues associated
11 with ownership. Bank records and publicly available information show that a nightclub, XS
12 Live, occupied the building from at least April 2013 through December 2014 and paid rent from
13 beginning in April 2013 through mid-January 2015.¹⁵

14 Third, Yu acknowledges that Brown did not obtain an independent appraisal of the
15 Property's value before executing the Contract. Rather, Yu maintains they relied on the fair
16 market value of comparable surrounding properties and his and Brown's experience in the

¹³ This provision appears to be modified boilerplate language used in form real estate purchase and sale agreements that allow a *buyer* to terminate an agreement without penalty *prior to the payment of the purchase price* at closing if a seller fails to correct any title defect affecting marketability. *See, e.g., Georgia Realtors Purchase and Sale Agreement at Pars. B1 and B3 available at http://images.kw.com/docs/2/6/0/260467/1457366655434_2016SSOfferPackage.pdf.* As written in this Contract, which contemplates Brown making periodic payments during the option year and allows him to choose when to request marketable title and a limited warranty deed, the Yus can simply cancel the agreement and return Brown's payments.

¹⁴ A recent check of county records confirms that a new deed still has not been recorded.

¹⁵ *See XS Live Business License (showing XS Live had a liquor license through December 31, 2014). Following a renovation, a second nightclub, Mitty's, occupied the property from April 2015 through approximately May 2016. See Jenna Martin, New Dance Club Aims at Appealing to Broader Audience, THE AUGUST CHRONICLE (Apr. 22, 2015) and Mitty's Business License (showing Mitty's had an active liquor license through May 12, 2016).*

1 commercial property market. According to the Committee and Yu, the \$1.3 million figure was
2 based on the fair market value of comparable surrounding properties and its “desirable location”
3 near Augusta National Golf Club. Yu says he relied on his knowledge of local real estate market
4 conditions.

5 However, since the date of the Contract, the Yus have listed the Property for sale at a
6 much lower price than the \$1.3 million figure listed on the Contract and have taken actions
7 seeking to further lower the Richmond County Board of Assessors’ determination of the
8 Property’s fair market value. During the period Brown was making payments to Yu, Yu filed a
9 property tax return on February 3, 2014, which attested that the total value of the Property was
10 \$500,000, an action that triggered a review by the Richmond County Board of Assessors.¹⁶ As a
11 result, the Assessor’s office decreased its determination of the Property’s fair market value to
12 \$1,027,925 on April 3, 2014, based on a recalculation of the relevant square footage and acreage
13 on which the land value is based.¹⁷ Subsequently, on February 15, 2017, the Yus listed the
14 Property for sale for \$890,000, which elicited only two offers before they decided to take it off
15 the market in early 2018: a \$400,000 cash purchase offer and a letter of intent proposing to
16 purchase the property for \$700,000. Yu filed an appeal with the Richmond County Board of
17 Assessors on May 2, 2018, seeking to lower the county’s fair market value determination further,
18 from \$1,027,925 to \$850,000.¹⁸ The appeal was denied.¹⁹

¹⁶ See Richmond County Board of Assessors Documents at RCBA028 (June 4, 2018) (“2018 Richmond Co. Assessors Docs.”).

¹⁷ 2018 Richmond Co. Assessors Docs. at RCBA019-022. Prior to that, the fair market value of the Property as determined by the Richmond County Board of Assessors was \$1,043,175, below the Contract’s stated value of \$1.3 million.

¹⁸ See 2018 Richmond County Assessors Documents at RCBA009.

¹⁹ Richmond County Board of Equalization Decision (Sept. 25, 2018).

1 **3. The Committee and Yu Accepted Excessive Contributions from**
2 **Wayne B. Brown**

3
4 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
5 value made by any person for the purpose of influencing any election for Federal office.²⁰

6 During the 2014 election cycle, the Federal Election Campaign Act of 1971, as amended (the
7 “Act”) prohibited any person from making contributions to any candidate and the candidate’s
8 authorized political committee with respect to any election for Federal office which, in the
9 aggregate, exceeded \$2,600.²¹ In addition, the Act prohibits any candidate or political committee
10 from knowingly accepting any contribution or making any expenditure in violation of the
11 provisions of Section 30116.²²

12 Federal candidates may make unlimited contributions from their own “personal funds” to
13 their authorized campaign committees.²³ The Act and Commission regulations provide that
14 “personal funds” are (a) amounts derived from any asset that, under applicable State law, at the
15 time the individual became a candidate, the candidate had legal right of access to or control over,
16 and with respect to which the candidate had legal and rightful title or an equitable interest; and
17 (b) income received during the current election cycle of the candidate, including proceeds from
18 the sale of the candidate’s investments.²⁴

²⁰ 52 U.S.C. § 30101(8)(A)(i).

²¹ See 52 U.S.C. § 30116(a)(1)(A); Contribution Limits for 2013-2014, <https://www.fec.gov/updates/contribution-limits-2013-2014>.

²² 52 U.S.C. § 30116(f).

²³ 11 C.F.R. § 110.10.

²⁴ 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

1 The Act also provides that “any candidate . . . who receives a contribution, or any loan in
2 connection with the campaign of such candidate for election . . . shall be considered, for purposes
3 of [the] Act, as having received the contribution or loan . . . as an agent of his or her authorized
4 committee.”²⁵ Here, the evidence obtained during the investigation shows that Brown’s
5 payments under the Contract were intended to provide funds for Yu’s campaign, and the weight
6 of the evidence indicates the payments were effectively a loan to Yu, rather than the proceeds
7 from a *bona fide*, arms-length real estate sale. The evidence the Commission obtained is similar
8 to evidence gathered in prior enforcement matters where the Commission reviewed the facts and
9 circumstances surrounding specific financial transactions to determine whether they were
10 contributions.²⁶ Based on the evidence here, the \$555,000 in payments that Brown made to Yu,
11 which were then used for campaign expenses, were not Yu’s personal funds and constitute
12 excessive contributions by Brown.

13 Bank records corroborate Yu’s statement that Brown’s payments were to provide funds to
14 the Committee as needed, and the Contract was structured to provide Yu with the means to do so.
15 They show that most of Brown’s payments under the Contract were made when the Committee
16 needed funds to cover its expenses or when its account was overdrawn. Significantly, 90% of
17 Brown’s payments to Yu on or after October 1, 2013, were made when he was in a position to
18 know the Committee’s finances because he signed most of the Committee’s checks after
19 becoming an account signatory, effectively acting in the manner of a treasurer. For example:

- 20 • Yu deposited Brown’s November 25, 2013, check for \$50,000 into his joint
21 account, withdrew \$20,000 from the account the next day and immediately
22 deposited those funds into the Committee account when its balance was only

²⁵ See 52 U.S.C. § 30102(e)(2); see also 11 C.F.R. § 101.2(a).

²⁶ See *supra* note 12.

1 \$1,005.21.²⁷ The deposit ensured sufficient funds were available to cover four
2 Committee checks dated November 26 and 27, 2013, and signed by Brown,
3 including a \$10,712.50 check to one of the Committee's major vendors;
4

- 5 • Yu deposited Brown's December 10, 2013, check for \$25,000 into his joint
6 account, and the next day, he withdrew \$25,000 from the account and deposited
7 it into the Committee account when the Committee's account balance was only
8 \$2,371.38. Those funds were needed to cover a \$21,744.70 check to the
9 Committee's lawyer dated December 10, 2013, that Brown had signed;
10
- 11 • Following Yu's decision to run for a House seat instead of the U.S. Senate seat,
12 Yu deposited into his joint account a \$20,000 check dated March 12, 2014, and
13 a \$250,000 check dated March 24, 2014, both from Brown. Yu then wrote two
14 checks to the Committee in the amounts of \$20,000 and \$240,000 that were
15 deposited into that account on March 13, and March 27, 2014, when the account
16 balances were \$3,704 and \$5,142.20, respectively. These two checks comprised
17 95% of the funds deposited into the Committee's account in March and April
18 2014 and were sufficient to cover the \$206,066 in Committee disbursements
19 made during those months; and
20
- 21 • Yu deposited into his joint account two checks from Brown dated May 14 and
22 May 15, 2014 in the amounts of \$30,000 and \$40,000, respectively. On the
23 same day, he then wrote and deposited two checks to the Committee in the same
24 amounts. At the time the \$30,000 check was deposited into the Committee
25 account, the account was overdrawn by \$1,361.45. Brown's checks comprised
26 95% of the receipts deposited into the Committee's account in May 2014, the
27 month of the primary election.
28

29 The record also supports Yu's statements to us that the transaction involving the Property
30 was in effect a loan. First, Brown's early, contemporaneous notations of the word "loan" on the
31 memo lines on two of Brown's early checks to Yu are consistent with Yu's interview account.
32 Brown's "Bertram Road Purchase" notations on his May 2014 checks to Yu carry less weight
33 because they were made after the Committee's first counsel filed the January 23, 2014, *Sua*
34 *Sponte* Submission in which the Committee represented that Brown's payments were "collateral

²⁷ The Yus also made a \$5,000 phone payment from the joint account to Bank of America following the deposit of Brown's \$50,000 check. The payment was applied to the balance on Ms. Yu's credit card that was used to pay campaign expenses.

1 payments” from Brown to Yu under “what they have represented to us as a *bona fide* business
2 agreement” to purchase real estate.²⁸

3 Importantly, Yu and the Committee admit, and land records confirm, that the Yus have
4 never conveyed or recorded title to the Property to Brown for his purported ownership interest, a
5 fact inconsistent with one of the hallmarks of a real estate sale. Moreover, Richmond County
6 property records confirm that no deed has been conveyed and recorded more than four years after
7 Brown’s last payment under the Contract.²⁹

8 Finally, the fact that the Brown did not obtain an independent appraisal prior to entering
9 into the Contract, a customary step in purchasing real estate to determine its fair market value,³⁰
10 the Yus’ actions with the Richmond County Board of Assessors to lower the Property’s fair
11 market value, and the Yus’ unsuccessful listing of the property for \$890,000, substantially less

²⁸ *Sua Sponte* Submission at 1-2.

²⁹ In addition to the fact that the Yus’ have not conveyed to Brown his ownership interest or recorded a deed evidencing it, a search of Richmond County real estate records reveals no record that a real estate transfer tax was paid in connection with the purported sale, which is required under Georgia law. Georgia law imposes a real estate transfer tax “on each deed, instrument or other writing by which any lands . . . or other realty sold is . . . transferred or otherwise conveyed to the purchaser” when the value of the interest or property conveyed exceeds \$100. Ga. Code Ann. § 48-6-1. Payment of a transfer tax is a prerequisite to recording a deed, and it is a misdemeanor to willfully evade or defeat “in any manner” the payment of the transfer tax. *See* Ga. Code Ann. §§ 48-6-4; 48-6-10. A contractual provision that permits an indefinite delay in conveying an ownership interest and recording a deed therefore appears problematic.

³⁰ The Commission has recognized the importance of an independent appraisal in determining the fair market value of property when deciding whether a candidate sold it for more than the fair market value, thus resulting in an excessive contribution. For instance, in MUR 4825, discussed at note 12, the Commission authorized the Office of General Counsel to expend funds to obtain an independent appraisal of the fair market value of the respondent’s property in evaluating whether its sale was a contribution. *See* Certification ¶ 2 (July 24, 2001) and General Counsel’s Report #3 at 2-3, MUR 4825 (Gex Williams) (describing Commission’s instructions to OGC and results of the appraisal and title examination). *See also* Adv. Op. 1984-60 (Mulloy) at n.5 (Jan. 11, 1985) (noting that the Commission would view an appraisal by an expert using an acceptable appraisal methods as *prima facie* evidence of the property’s usual and normal market price but would not rule out “the use of other valuation methods that would reliably establish such price or value.”).

1 than the \$1.3 million value on placed on the Property in the Contract, cast doubt as to whether
2 the Contract was a *bona fide* sale for a 50% ownership interest of \$650,000.³¹

3 In sum, the campaign purpose of the Contract is supported by the timing of Brown's
4 payments, virtually all of which were made when the campaign account balance was very low,
5 and most of which were made when Brown was the campaign chairman and acting in the manner
6 of a treasurer, handling the Committee's finances and signing its checks. The evidence,
7 including the "loan" memo notations, the failure to obtain an independent appraisal of the
8 Property or convey marketable title and a limited warranty deed, and the Yus' attempts to
9 decrease the value of the Property on a real estate sale listing and by seeking a lower property
10 assessment, further cast doubt that the transaction between Brown and the Yus was a *bona fide*
11 sale of property rather than a loan.

12 Under the Commission's regulations, a contribution by an LLC with a single natural
13 person member that does not elect to be treated as a corporation by the Internal Revenue Service
14 shall be attributed only to that single member.³² Accordingly, there is reason to believe that the
15 \$555,000 Yu received from Brown and WayneWorks and transferred to the Committee or
16 otherwise used to pay Committee expenses were not Yu's personal funds but instead proceeds of

³¹ To the extent the transaction between Brown and the Yus could be considered a *bona fide* sale, Brown appears to have paid more than the fair market value, resulting in an excessive contribution. The Commission has considered when the sale of a candidate's interest in real property constitutes a contribution in the context of a proposed plan by a candidate to retire campaign debt by selling his interest in real estate held in a family-owned partnership to either an outside party or a family member, noting that a candidate's personal funds include proceeds from the sale of a candidate's investments. AO 1984-60 at 2. The Commission determined that a contribution would occur where (1) a candidate sells a property to use the proceeds to pay campaign expenses and debts and (2) the property is sold for price greater than the property's "normal and usual market price." *Id.* As Brown observes in his response, the Commission has equated the term "fair market value" as used to refer to real property with the "usual and normal cost" standard in 11 C.F.R. § 100.52(d)(1). Commission regulations define "the usual and normal" cost as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution. *Id.*

³² See 11 C.F.R. § 110.1(g)(4).

1 a loan from Brown, and thus, a contribution. Brown had made a direct \$3,500 contribution to Yu
2 on July 3, 2013, \$900 more than the 2014 per-election contribution limit, which was not refunded
3 after Yu lost the primary election. Therefore, the Commission finds reason to believe that the
4 Committee and Yu accepted excessive contributions.

5 **B. Jonie Yu's Contributions**

6 The Committee and Yu used funds provided by Jonie Yu by paying for campaign
7 expenses using her personal credit card account and by transferring funds originating from a
8 draw on Ms. Yu's individually-owned HELOC to the Committee through the Yus' personal
9 account. As discussed below, both the credit advances and HELOC funds constitute
10 contributions to Yu's campaign.

11 **1. Credit Card Advances**

12
13 Early in his bid for U.S. Senate, Yu carried with him and began using Ms. Yu's personal
14 Bank of America credit card, held solely in her name, to pay for campaign expenses.³³ Yu gave
15 the credit card bills to campaign staff to track campaign expenses for which he intended to be
16 reimbursed, and staff later used the card to pay on-line campaign expenses since they had access
17 to the credit card number. Yu says the card was used solely for campaign expenses during this
18 period.

19 Bank records and Committee reports show that Yu and the Committee charged
20 \$91,085.81 in total campaign expenses on Ms. Yu's personal credit card account between
21 May 27, 2013, and January 19, 2014, when its \$55,000 credit limit had been exceeded. The

³³ Yu initially said that the credit card was his before clarifying that it was in Ms. Yu's name. In an interview, Yu said that he was an authorized user on the account. However, bank records do not indicate that an additional card was issued or that Yu was listed as an authorized user on Ms. Yu's account.

1 credit card was used to pay travel expenses, such as transportation, meals, and lodging, as well as
2 social media advertising, direct mail, television advertising, and campaign signs.

3 The Committee paid off \$30,365 of the total credit card charges and the Yus eventually
4 repaid the remainder using personal funds from their joint account, mostly with checks written by
5 Ms. Yu. Ms. Yu fully paid the first two credit card bills shortly after the statement dates, using
6 money from the Yus' joint account.³⁴ Beginning after the September 25, 2013, credit card bill,
7 however, the Committee made small, occasional payments toward the outstanding balance, and it
8 missed some monthly payments altogether, causing finance charges and late fees to accrue. The
9 balance due on Ms. Yu's credit card fluctuated between \$69,374.66 and \$60,104.77 for more
10 than ten months between the January 27, 2014, bill, when Yu and the Committee stopped using
11 the credit card, and December 4, 2014, when the Yus made the first of two substantial payments
12 to pay off the outstanding balance. To make these payments — \$45,000 on December 4, 2014,
13 and \$15,671 on January 7, 2015 — the Yus used the proceeds of life insurance policies they
14 cashed in.³⁵ The latter payment was made by Ms. Yu using proceeds from a check payable solely
15 to her. The total charges made on Ms. Yu's credit card that are attributable to Committee
16 expenses, including interest and late fees, are \$105,385.51.³⁶

³⁴ Ms. Yu used the proceeds from a \$10,194.13 Committee reimbursement check payable to her and deposited into the Yus' joint bank account to pay the balance due on the second credit card bill. The reimbursement check appears to be in significant part for charges made on Ms. Yu's credit card for campaign expense incurred in the June 27-July 26, 2013 billing period for Mr. Yu's travel, food, and lodging; meals for campaign events; and a conference sponsorship fee. See Amended 2013 October Quarterly Report at 20, 25 (Aug. 29, 2014).

³⁵ Yu stated the credit card balance was paid off with proceeds from a life insurance policy he cashed in. His statement is corroborated by bank records, which appear to show that both Yus cashed in life insurance policies. Two checks from Ohio National Financial Services, Ohio National Life Assurance Co. were deposited into the Yus' personal account prior to the Yus' final credit card payments: a \$45,886.22 check payable to Yu dated November 25, 2014 and an \$18,907.38 check payable to Jonie Yu dated December 14, 2014.

³⁶ Finance charges of \$13,959.67 and \$340 in late fees had accrued before the credit card balance was paid.

1 Payments by an individual from her personal funds, including a personal credit card to
2 provide or obtain goods and services used by or for a political committee is considered a
3 contribution unless certain exemptions apply.³⁷ These exemptions apply to certain travel and
4 subsistence expenses incurred by individuals traveling or conducting volunteer campaign activity
5 on behalf of a campaign, including a \$1,000 per election travel expense exemption;
6 unreimbursed subsistence payments incurred in connection with a volunteer's campaign activity;
7 and non-volunteer transportation and subsistence expenses paid with an individual's credit card if
8 reimbursed within 60 days.³⁸

9 As the account holder of the personal credit card that Yu used to pay for goods and
10 services for the Committee, Ms. Yu made contributions in the form of credit card advances that
11 the Committee accepted. The Commission's regulatory exemptions do not apply to any of the
12 credit card charges for the Committee's advertising. Additionally, none of the exemptions
13 appear to apply to any of the travel-related charges. According to Yu, Ms. Yu did not work for
14 and was not a volunteer for the campaign so it appears that none of the credit card charges for
15 transportation, food and lodging were for Ms. Yu's own travel and subsistence expenses.³⁹
16 Because Ms. Yu did not previously make a direct contribution to the Committee, the total

³⁷ 11 C.F.R. § 116.5(a).

³⁸ See 11 C.F.R. §§ 100.79(a) (\$1,000 per election travel exemption), 100.79(b) (unreimbursed volunteer subsistence payments), and 116.5(b) (non-volunteer transportation and subsistence expenses paid by credit card and timely reimbursed within 60 days).

³⁹ Yu's statement is corroborated in part by the absence of any salary payments to Ms. Yu in the Committee's bank records and a single \$10,194 reimbursement check from the Committee to Ms. Yu in August 2013 that appears to have been in substantial part for credit charges made on Ms. Yu's credit card for Committee expenses. Moreover, Ms. Yu does not state in her response to our April 20, 2018, notification letter that any of the credit card charges were incurred for her own travel and subsistence expenses even though the letter summarizes and cites to the exemptions and included copies of the credit card statements. See Response of Jonie Yu (June 1, 2018) ("Jonie Yu Resp.") (referring only to an "on demand loan," an apparent reference to the HELOC draw).

1 amount of her contributions would be reduced by \$2,600.⁴⁰ Subtracting that amount from the
2 total amount Ms. Yu advanced to the Committee, the evidence shows that she made and the
3 Committee accepted, \$102,785.51 in excessive contributions in the form of credit card advances.
4 Of those excessive contributions, \$15,671, the amount of the last credit card payment made by
5 Ms. Yu using proceeds from her cashed-out life insurance policy, remains unreimbursed or
6 unrefunded.

7 **2. HELOC Draw**

8 On July 17, 2013, six days after Yu filed his Statement of Candidacy for the Senate
9 election, a \$50,000 draw on a HELOC in Jonie Yu's name was transferred to the Yus' joint bank
10 account. On the same day, Yu wrote a \$50,000 check to the Committee drawn on the joint
11 account and deposited it into the Committee's account. The HELOC was a pre-existing
12 \$128,000 line of credit established in 2004 and secured by the Yus' personal residence, which is
13 100% owned by Jonie Yu.⁴¹

14 Yu acknowledged that he accessed funds from his wife's HELOC to fund his campaign.
15 Jonie Yu acknowledges that she made an "on demand" loan to the Committee and expected it to
16 be repaid after the election, but the Committee had no funds to repay it when Yu lost the 2014

⁴⁰ See 52 U.S.C. §§ 30116(a)(1)(A) (contribution limit), 30116(f) (prohibition on knowing receipt of contributions in excess of limits); Contribution Limits for 2013-2014, <https://www.fec.gov/updates/contribution-limits-2013-2014>. This limit applies to a candidate's family members. See *Buckley v. Valeo*, 424 U.S. 1, 51 n.57, 53 n.59 (upholding the constitutionality of contribution limits as to family members, reasoning that, "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors").

⁴¹ See Warranty Deed between Eugene Chin Yu and Jonie Hung Yu (Nov. 12, 1998) (whereby Yu transfers to Ms. Yu his one half-interest in their residence, 4349 Miller Dr.); Security Deed between Ms. Yu and SouthTrust Bank (Feb. 12, 2004) (showing the Yu residence secures a revolving line of credit not to exceed \$128,000). As a result of a series of bank mergers, the HELOC is now with Wells Fargo Bank.

1 election.⁴² As the funds Yu transferred to the Committee were not his personal funds,⁴³ they
2 constitute an excessive contribution from Ms. Yu to Yu and the Committee.

3 In light of the excessive contributions arising from the credit card advances and the
4 HELOC draw, the Commission finds that Jonie H. Yu made, and the Committee knowingly
5 accepted, excessive contributions in violation of 52 U.S.C. § 30116(a) and (f), respectively.

⁴² Jonie Yu Resp.

⁴³ 52 U.S.C. § 30101(26); 11 C.F.R. § 101.2(a).

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Wayne B. Brown

MUR: 6824

5
6 **I. INTRODUCTION**

7
8 This matter was generated by a complaint filed with the Federal Election Commission
9 (the "Commission") concerning an allegation that federal candidate Eugene Yu lacked sufficient
10 liquid assets to make more than \$730,000 in loans to his 2014 Congressional campaign from his
11 personal funds.¹ See 52 U.S.C. § 30109(a)(1). The Commission's investigation indicates that
12 Yu did not have sufficient personal funds to make the total reported loans to the Committee.
13 Instead, Yu obtained a majority of funds from Wayne Brown, the Committee's campaign
14 chairman, Brown's company, WayneWorks, LLC. Brown made payments to Yu using a
15 combination of cashier's, personal, and company checks purportedly for the partial sale of a
16 commercial property but the evidence indicates the payments actually constituted a loan. The
17 majority of Brown's payments financed campaign expenses.

18 Accordingly, the Commission found reason to believe that Wayne B. Brown made
19 excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A).

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 Yu sought the Republican nomination for U.S. Senate in Georgia for the 2014 primary
22 election, filing his statement of candidacy on July 11, 2013, but later dropped out of that race and
23 announced on February 22, 2014, he would instead seek the Republican nomination for the U.S.

¹ Compl. at 1. Yu's total reported loans to the Committee during the 2014 election cycle was \$790,704, somewhat higher than the amount alleged in the Complaint.

1 House seat in Georgia's 12th Congressional District.² He lost the 2014 primary election. Yu
2 established a new principal campaign committee when he unsuccessfully sought the Republican
3 nomination for the same House seat again in 2016 and 2018.³

4 The Committee's fundraising was minimal from the beginning. As a result, Yu used
5 funds from a variety of sources to pay for the Committee's expenses. Yu paid for some
6 Committee expenses during the campaign's exploratory phase beginning in mid-May 2013, from
7 a joint bank account he held with Ms. Yu. From May 27, 2013 through January 19, 2014, Yu
8 also charged many Committee expenses on his wife's personal credit card account. On July 17,
9 2013, days after filing his Statement of Candidacy, Yu transferred funds to the Committee's bank
10 account from a personal bank account he held jointly with Ms. Yu into which Ms. Yu had just
11 transferred funds from a draw on her individually-held HELOC. Beginning in August 2013,
12 Brown soon became the source of most of the campaign's funds through payments made to Yu
13 pursuant to a real estate transaction involving a commercial property jointly owned by the Yus in
14 Augusta, Georgia. Brown's payments and Ms. Yu's HELOC loan and credit card advances
15 comprised most of the Committee's funding.

16 **A. Contributions from Wayne B. Brown & WayneWorks, LLC**

17 **1. Wayne Brown's Role in the Yu's Campaign**

18 Wayne Brown is the owner and sole member of WayneWorks, LLC, a limited liability
19 company, which manages and operates Brown's residential and commercial real estate business

² Statement of Organization, Eugene Yu for Senate (July 11, 2013); Walter C. Jones, *Augusta Businessman Yu Switches Senate Campaign to House*, THE AUGUSTA CHRONICLE (Feb. 23, 2014); amended Statement of Organization, Eugene Yu for Congress (Mar. 4, 2014). Despite the Committee's amended Statement of Organization, the Committee's name continues to appear as "Eugene Yu for Senate" in the searchable committee database on the FEC website.

³ Statement of Organization, Eugene for Congress (Jan. 26, 2016).

1 ventures.⁴ Brown, a long-standing professional associate and friend of Yu, had a significant role
2 in Yu's 2014 campaign, serving as the Committee's campaign chairman and handling its
3 finances after mid-October 2013. The Committee treasurer of record, Donnie Miller, set up the
4 Committee's bank account and initially performed bookkeeping duties — depositing
5 contributions and signing checks, reviewing banks statements, and tracking the finances in a
6 register — but Brown and a committee staffer prepared the Committee's FEC reports beginning
7 with the Committee's first report, the 2013 October Quarterly.⁵ Miller turned over responsibility
8 for the Committee's finances and gave records in his possession to Brown after Brown became a
9 signatory on the Committee's bank account on October 17, 2013. Thereafter, Brown signed most
10 of the Committee's checks.

11 In the early months of the campaign, Brown, Miller, and Yu, and a changing group of
12 consultants participated in weekly campaign meetings held in a conference room at Brown's
13 business office. Brown rented space in his business office to the Committee, and some
14 Committee operating expenses, such as office supplies and postage, were apparently charged
15 through a business account of another of Brown's companies and billed to the campaign. Brown
16 also served as the point of contact for some Committee vendors and had a campaign e-mail
17 address.⁶

⁴ Response from Wayne Brown at 2 (June 7, 2018) ("Brown Resp."). Brown states WayneWorks is not taxed as a corporation. *Id.*

⁵ Information in the Commission's possession indicates that although Miller did not prepare the Committee's reports or other documents such as Requests for Additional Information from the Commission, he signed them at the request of Yu and Brown. The Committee's reports continued to bear Miller's electronic signature long after the campaign ended.

⁶ *See, e.g.,* Amended Statement of Org., Eugene Yu for Congress at 2 (Mar. 4, 2014).

1 **2. The Real Estate Contract**

2 Starting in August 2013, Brown made payments to Yu pursuant to a real estate
3 transaction involving a commercial property on Bertram Road in Augusta, Georgia (the
4 “Property”) that was jointly owned by the Yus. The transaction was documented in a “Contract
5 for Partial Sale” (the “Contract” or the “transaction”) dated July 1, 2013, between Brown,
6 through WayneWorks, LLC, and Ms. Yu with Yu’s consent.⁷ The Contract gave Brown the
7 option to purchase up to a 50% ownership interest in the Property for \$650,000 over the next
8 year, and his ownership interest would increase as payments were made. Bank records show that
9 Brown made fifteen payments to Yu totaling \$645,000 under the Contract from August 19, 2013,
10 through September 14, 2014. Four of Brown’s earliest payments, totaling \$50,000, were
11 deposited directly into the Committee’s account and refunded to him, as discussed further below.
12 Yu deposited the rest of Brown’s payments into the Yus’ joint bank account, and then wrote
13 checks to the Committee, or otherwise transferred funds or made deposits into the Committee’s
14 account. The majority of Yu’s checks to the Committee were in the same amount as Brown’s
15 payments.

16 Of the \$645,000 paid by Brown under the Contract, \$555,000 can be traced to the
17 campaign. The \$555,000 figure excludes the aforementioned earliest payments from Brown
18 totaling \$50,000 that were directly deposited into the Committee’s account, three of which were
19 payable to the Committee. These four payments were refunded to Brown on November 5, 2013,

⁷ The Contract is between WayneWorks, LLC, and Jonie Yu, and Brown’s checks are payable to Yu, even though the real property records filed with the Superior Court of Richmond County show that the Yus have jointly owned the Property since May 12, 2004. The Commission has independently verified through state and local records that the Property remains titled in both of the Yus’ names. Moreover, Brown states that the Yus jointly own the Property (Brown Resp. at 1-2) and that Yu consented to the Contract.

1 in connection with a *sua sponte* submission (“*Sua Sponte* Submission” or “Submission”) filed
2 with the Commission in January 2014 on behalf of Brown and others by Yu’s first counsel. That
3 Submission characterized the \$50,000 in payments as “excessive contributions.”⁸ The
4 Submission stated that the payments were made in connection with a real estate agreement
5 between Yu and Brown, later identified as the Contract, and the mistaken belief those payments
6 could be treated as Yu’s personal funds and paid directly to the Committee, instead of being first
7 deposited into Yu’s personal account.

8 Brown states that sometime around the summer of 2013, Yu and Brown discussed a
9 transaction involving the Property.⁹ Information in the Commission’s possession indicates that
10 when Brown asked Yu near the beginning of the campaign why Yu was not fundraising, Yu told
11 Brown that he did not know how and asked if Brown could loan him money. Brown asked what
12 Yu had as collateral, and Yu identified the Property. Information indicates that Yu and Brown
13 worked out an agreement that Yu described as a “loan” and the Property as “collateral,” and said
14 that they agreed Brown would provide funds to the campaign as needed.” Information indicates
15 that Yu viewed the arrangement as a “line of credit” guaranteed by the value of the Property, and
16 that Brown would write a check to Yu and Yu would write a check to the campaign. Indeed,
17 Brown wrote the word “loan” on the memo line of Brown’s October 23, 2013 payment, a
18 personal check to Yu in the amount of \$5,000; two months later, Brown’s name and the word
19 “loan” were typed above the words “Purchaser/Purchased for” on Brown’s December 18, 2013,
20 payment of \$50,000 that he made to Yu using a cashier’s check. On certain later payments made

⁸ *Sua Sponte* Submission at 2-3, Pre-MUR 569 (Dec. 6, 2013). Brown used the refund to make subsequent payments to Yu. Though the Submission is dated December 6, 2013, it was not received by the Commission until January 23, 2014. The Submission designated as Pre-MUR 569/ADR 701.

⁹ Brown Resp.; Declaration of Wayne B. Brown ¶ 4 (“2nd Brown Aff.”).

1 after the Committee's Submission, Brown wrote "Bertram Road Purchase" on the memo line.
2 Information indicates that Yu and Brown agreed that Brown would be repaid with interest after
3 the Property was sold and Brown agreed to wait until then to be repaid, and that the Committee's
4 first counsel, retained during the campaign, advised them to draw up an agreement.

5 The Contract, apparently drafted by Brown,¹⁰ provides Brown with "the right to
6 purchase" within twelve months up to 50% of the Property's "total value of \$1.3 million dollars"
7 for \$650,000. It simultaneously conveys ownership to Brown during the option period, stating
8 that Brown will "earn ownership" as monies are paid under the Contract; it makes no reference to
9 the timing of any payment. The Contract further provides that the Yus will "convey the
10 percentage purchased" and record a marketable title and limited warranty deed with the county
11 "at time of [Brown's] choosing." It further gives the Yus the right of first refusal to repurchase
12 Brown's ownership interest for the amounts he paid plus 8% interest. Another provision states
13 that if the Yus are unable to convey marketable title, they will not be required to expend funds to
14 correct any title defects but need only cancel the agreement and return to Brown all payments he
15 made and reimburse him for the costs of any surveys and title examination. The Contract places
16 responsibility for all property taxes and utility costs on the Yus and permits them to continue to
17 collect rental income unless the Property is developed, in which case Brown shares in the income
18 but not the expenses.

¹⁰ See 2nd Brown Aff. ¶ 9 (stating Brown wanted to structure the agreement to give him an option to record ownership interest).

1 Brown disagrees that the real estate agreement was a loan, maintaining that the
2 transaction was a sale of 50% interest in the Property pursuant to the Contract.¹¹ Brown states
3 that the transaction involving the Property was a *bona fide* sale for which he paid “the usual and
4 normal charge,” and he views it as unrelated to the campaign.¹² In an affidavit submitted with
5 his response to a post-investigative notification letter, Brown states that Yu approached him
6 about purchasing, rather than loaning, a 50% interest in the Property for \$650,000 in the summer
7 of 2013.¹³ Although he was “aware” Yu was considering a U.S. Senate run when he entered the
8 Contract, Brown states that “from my perspective, Mr. Yu’s potential candidacy was irrelevant to
9 the transaction.”¹⁴ Brown attributes the periodic nature, variable amounts, and timing of the
10 payments to the Contract’s structure and his business cash flow and not the campaign’s needs.
11 Brown avers that he structured the Contract as a one-year option to purchase because he did not
12 want to tie up \$650,000 in cash at once and made payments as cash became available to him.¹⁵

¹¹ Brown states he made payments in accordance with the Contract “in exchange for the ownership interest in the Property” and “acquired such ownership interest as payments were made” and states that he “believed that [Yu] had a legal right to the funds of each payment” once Brown made them and acquired a proportionate ownership interest. Affidavit of Wayne B. Brown ¶¶ 2, 4 (“1st Brown Affidavit”) (Attached to Notification letter to Wayne B. Brown (Apr. 20, 2018)).

¹² Brown Resp. at 9-10.

¹³ 2nd Brown Aff. ¶¶ 4, 6.

¹⁴ *Id.* ¶ 10.

¹⁵ *Id.* ¶¶ 8, 10.

1 Other evidence uncovered during the investigation and the contractual language itself,
2 however, show that the transaction between Brown and Yu was intended to as a loan to provide
3 Yu with funds for his campaign rather than a *bona fide*, arms-length sale.¹⁶

4 First, the Contract itself contains unusual provisions for a real estate transaction. Though
5 styled as a partial sale, it also purports to be an option to purchase that provides Brown with “the
6 right to purchase” within twelve months up to 50% of the Property’s value while simultaneously
7 conveying proportionate ownership to Brown during the option period as monies are paid.
8 Notably, the Contract provides that the Yus will “convey the percentage purchased” and record a
9 marketable title and limited warranty deed with the county “at the time of [Brown’s] choosing,” a
10 provision Yu’s second counsel characterized as “unconventional.” And, despite Brown’s
11 accruing ownership interest, the Contract places responsibility for all property taxes and utility
12 costs on the Yus and permits them to continue to collect rental income unless the Property is
13 developed, in which case Brown shares in the income but not the expenses. Finally, the Contract

¹⁶ To aid in determining whether a violation took place in connection with a financial transaction, the Commission typically examines the facts and circumstances involved, including in matters involving financial transactions between a candidate and an individual or entity. *See, e.g.*, PC Br. at 4-10 and Conciliation Agreement, MURs 4128 and 4362 (Grant Lally/Lally for Congress, *et al.*) (Commission accepted a probable cause conciliation agreement where Respondents admitted, *inter alia*, knowingly and willfully accepting excessive contributions from candidate’s father in the form of proceeds from a purported sale of the candidate’s interest in real property reported as a personal loan to the Committee); Conciliation Agreement ¶¶ 22, 30-35, MURs 4818 and 4933 (Walter L. Roberts and Walt Roberts for Congress) (Commission accepted a probable cause conciliation agreement in which Respondents admitted knowingly and willfully accepting excessive contributions from a former state senator involved in the campaign disguised as legitimate transactions, including consulting work never performed, a cattle sale that never occurred, and an option contract for partial interest in candidate’s artwork that, in fact, financed campaign media buys); Gen. Counsel’s Rept. #3 and Certification (Mar. 20, 2002), MUR 4825 (Gex Williams) (Commission closed the file after finding RTB that proceeds from a sale of ten acres of a candidate’s farm were excessive contributions based on a Commission-financed appraisal and title search establishing the purchaser had not paid more than the land’s fair market value); Factual and Legal Analysis at 7-12, MUR 7025 (Senator Mike Lee) (Commission found that no excessive contributions resulted from a bank’s waiver of the deficiency balance on a candidate’s home mortgage as part of a short sale or from the individual who purchased the home in the short sale and rented another home to the candidate because the factual circumstances indicated the transactions were not for campaign purposes).

1 permits the Yus to cancel the Contract and return *all payments* to Brown plus the costs, if any,
2 Brown made for surveys and title examination without requiring them to clear the title.¹⁷

3 Second, despite Brown's payments and asserted ownership interest, the Yus have not
4 conveyed to Brown or recorded with the clerk of the superior court a marketable title and limited
5 warranty deed evidencing Brown's ownership interest.¹⁸ The available information indicates that
6 Brown had not yet exercised the "unconventional" contractual provision permitting him to
7 choose when the Yus would convey and record his ownership interest because Brown preferred
8 to remain a "silent owner" for personal and professional reasons due to the nature of the business
9 operating on the Property. The business operating on the Property was identified as a nightclub,
10 although Brown stated that he had included the option so as not to "expos[e] [him]self to the
11 liability of a potentially uninsurable vacant building."¹⁹ He confirms he has not elected to
12 exercise the option and remains a "passive investor."²⁰ From the July 1, 2013 date of the
13 Contract through December 2014, however, the Property was *not* vacant. Bank records and
14 publicly available information show that a nightclub, XS Live, occupied the building from at

¹⁷ This provision appears to be modified boilerplate language used in form real estate purchase and sale agreements that allow a *buyer* to terminate an agreement without penalty *prior to the payment of the purchase price* at closing if a seller fails to correct any title defect affecting marketability. *See, e.g., Georgia Realtors Purchase and Sale Agreement at Pars. B1 and B3 available at http://images.kw.com/docs/2/6/0/260467/1457366655434_2016SSOfferPackage.pdf.* As written in this Contract, which contemplates Brown making periodic payments during the option year and allows him to choose when to request marketable title and a limited warranty deed, the Yus can simply cancel the agreement and return Brown's payments.

¹⁸ A recent check of county records confirms that a new deed still has not been recorded.

¹⁹ 2nd Brown Aff. ¶ 9. Brown stated that the Property contains a vacant building and parking lot, and, based on his commercial real estate experience, insuring property with a vacant building is expensive and often impossible. *Id.*

²⁰ Brown Resp. at 4-5; 2nd Brown Aff. ¶ 9.

1 least April 2013 through December 2014 and paid rent from beginning in April 2013 through
2 mid-January 2015.²¹

3 Third, Brown acknowledges that he did not obtain an independent appraisal of the
4 Property's value before executing the Contract.²² Brown says he and Yu relied on their
5 knowledge of local real estate market conditions, and Brown emphasized that Augusta National
6 Golf Club's then-widely reported above-market purchases of nearby property influenced his view
7 that the \$650,000 price was reasonable without need for an appraisal.²³ Brown states he did not
8 request an appraisal because he considered the transaction as an opportunity to make a
9 "speculative real estate investment with a potentially high return" in light of reported above-
10 market property purchases by Augusta National of nearby properties that could drive up
11 commercial real estate property prices if Augusta National continued with its purchases.²⁴

12 However, since the date of the Contract, the Yuses have listed the Property for sale at a
13 much lower price than the \$1.3 million figure listed on the Contract and have taken actions
14 seeking to further lower the Richmond County Board of Assessors' determination of the
15 Property's fair market value. During the period Brown was making payments to Yu, Yu filed a

²¹ See XS Live Business License (showing XS Live had a liquor license through December 31, 2014). Following a renovation, a second nightclub, Mitty's, occupied the property from April 2015 through approximately May 2016. See Jenna Martin, *New Dance Club Aims at Appealing to Broader Audience*, THE AUGUST CHRONICLE (Apr. 22, 2015) and Mitty's Business License (showing Mitty's had an active liquor license through May 12, 2016).

²² Brown Resp., 2nd Brown Aff. ¶ 6.

²³ 2nd Brown Aff. ¶ 5; see also *id.* ¶ 6.

²⁴ *Id.* ¶¶ 5-6. Brown's response details Augusta National's nearby purchases in the months before the Contract date, but those purchases were of residential properties abutting Augusta National that was turned into a parking lot. Brown Resp. at 2-3; see Cork Gaines, *A Family Keeps Turning Down Millions for Its House Next to the Masters Golf Course*, BUSINESS INSIDER (Apr. 7, 2018). The response also discusses sales of specific nearby commercial properties as support for Brown's belief that the \$1.3 million was a reasonable fair market valuation, but Brown does not attest in his affidavit that these particular sales influenced his view of the Property's value. See Brown Resp. at 10.

1 property tax return on February 3, 2014, which attested that the total value of the Property was
2 \$500,000, an action that triggered a review by the Richmond County Board of Assessors.²⁵ As a
3 result, the Assessor's office decreased its determination of the Property's fair market value to
4 \$1,027,925 on April 3, 2014, based on a recalculation of the relevant square footage and acreage
5 on which the land value is based.²⁶ Subsequently, on February 15, 2017, the Yus listed the
6 Property for sale for \$890,000, which elicited only two offers before they decided to take it off
7 the market in early 2018: a \$400,000 cash purchase offer and a letter of intent proposing to
8 purchase the property for \$700,000.²⁷ Yu filed an appeal with the Richmond County Board of
9 Assessors on May 2, 2018, seeking to lower the county's fair market value determination further,
10 from \$1,027,925 to \$850,000.²⁸ The appeal was denied.²⁹

11 3. Wayne B. Brown Made Excessive Contributions

12 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
13 value made by any person for the purpose of influencing any election for Federal office.³⁰
14 During the 2014 election cycle, the Federal Election Campaign Act of 1971, as amended (the
15 "Act") prohibited any person from making contributions to any candidate and the candidate's
16 authorized political committee with respect to any election for Federal office which, in the
17

²⁵ See Richmond County Board of Assessors Documents at RCBA028 (June 4, 2018) ("2018 Richmond Co. Assessors Docs.").

²⁶ 2018 Richmond Co. Assessors Docs. At RCBA019-022. Prior to that, the fair market value of the Property as determined by the Richmond County Board of Assessors was \$1,043,175, below the Contract's stated value of \$1.3 million.

²⁷ See Documents Produced by Chris Farrow, Sherman and Hemstreet at SHO003-SHO21 (June 7, 2018).

²⁸ See 2018 Richmond County Assessors Documents at RCBA009.

²⁹ Richmond County Board of Equalization Decision (Sept. 25, 2018):

³⁰ 52 U.S.C. § 30101(8)(A)(i).

1 aggregate, exceeded \$2,600.³¹ In addition, the Act prohibits any candidate or political committee
2 from knowingly accepting any contribution or making any expenditure in violation of the
3 provisions of Section 30116.³²

4 Federal candidates may make unlimited contributions from their own “personal funds” to
5 their authorized campaign committees.³³ The Act and Commission regulations provide that
6 “personal funds” are (a) amounts derived from any asset that, under applicable State law, at the
7 time the individual became a candidate, the candidate had legal right of access to or control over,
8 and with respect to which the candidate had legal and rightful title or an equitable interest; and
9 (b) income received during the current election cycle of the candidate, including proceeds from
10 the sale of the candidate’s investments.³⁴

11 The Act also provides that “any candidate . . . who receives a contribution, or any loan in
12 connection with the campaign of such candidate for election . . . shall be considered, for purposes
13 of [the] Act, as having received the contribution or loan . . . as an agent of his or her authorized
14 committee.”³⁵ Here, the evidence obtained during the investigation shows that Brown’s
15 payments under the Contract were intended to provide funds for Yu’s campaign, and the weight
16 of the evidence indicates the payments were effectively a loan to Yu, rather than the proceeds
17 from a *bona fide*, arms-length real estate sale. The evidence the Commission obtained is similar
18 to evidence gathered in prior enforcement matters where the Commission reviewed the facts and

³¹ See 52 U.S.C. § 30116(a)(1)(A); Contribution Limits for 2013-2014, <https://www.fec.gov/updates/contribution-limits-2013-2014>.

³² 52 U.S.C. § 30116(f).

³³ 11 C.F.R. § 110.10.

³⁴ 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

³⁵ See 52 U.S.C. § 30102(e)(2); see also 11 C.F.R. § 101.2(a).

1 circumstances surrounding specific financial transactions to determine whether they were
2 contributions.³⁶ Based on the evidence here, the \$555,000 in payments that Brown made to Yu,
3 which were then used for campaign expenses, were not Yu's personal funds and constitute
4 excessive contributions by Brown.

5 Bank records support a finding that Brown's payments were to provide funds to the
6 Committee as needed, and the Contract was structured to provide Yu with the means to do so.
7 They show that most of Brown's payments under the Contract were made when the Committee
8 needed funds to cover its expenses or when its account was overdrawn. Significantly, 90% of
9 Brown's payments to Yu on or after October 1, 2013, were made when he was in a position to
10 know the Committee's finances because he signed most of the Committee's checks after
11 becoming an account signatory, effectively acting in the manner of a treasurer. For example:

- 12 • Yu deposited Brown's November 25, 2013, check for \$50,000 into his joint
13 account, withdrew \$20,000 from the account the next day and immediately
14 deposited those funds into the Committee account when its balance was only
15 \$1,005.21.³⁷ The deposit ensured sufficient funds were available to cover four
16 Committee checks dated November 26 and 27, 2013, and signed by Brown,
17 including a \$10,712.50 check to one of the Committee's major vendors;
18
- 19 • Yu deposited Brown's December 10, 2013, check for \$25,000 into his joint
20 account, and the next day, he withdrew \$25,000 from the account and deposited
21 it into the Committee account when the Committee's account balance was only
22 \$2,371.38. Those funds were needed to cover a \$21,744.70 check to the
23 Committee's lawyer dated December 10, 2013, that Brown had signed;
24
- 25 • Following Yu's decision to run for a House seat instead of the U.S. Senate seat,
26 Yu deposited into his joint account a \$20,000 check dated March 12, 2014, and
27 a \$250,000 check dated March 24, 2014, both from Brown. Yu then wrote two
28 checks to the Committee in the amounts of \$20,000 and \$240,000 that were

³⁶ See *supra* note 16.

³⁷ The Yus also made a \$5,000 phone payment from the joint account to Bank of America following the deposit of Brown's \$50,000 check. The payment was applied to the balance on Ms. Yu's credit card that was used to pay campaign expenses.

1 deposited into that account on March 13 and March 27, 2014, when the account
2 balances were \$3,704 and \$5,142.20, respectively. These two checks comprised
3 95% of the funds deposited into the Committee's account in March and April
4 2014 and were sufficient to cover the \$206,066 in Committee disbursements
5 made during those months; and
6

- 7 • Yu deposited into his joint account two checks from Brown dated May 14 and
8 May 15, 2014 in the amounts of \$30,000 and \$40,000, respectively. On the
9 same day, he then wrote and deposited two checks to the Committee in the same
10 amounts. At the time the \$30,000 check was deposited into the Committee
11 account, the account was overdrawn by \$1,361.45. Brown's checks comprised
12 95% of the receipts deposited into the Committee's account in May 2014, the
13 month of the primary election.
14

15 Brown's sworn statements that he made the payments "as cash became available to me"
16 may be true, but they also do not conflict with the conclusion that the payments were most often
17 made when the Committee's bank balance was especially low or overdrawn, or in at least once
18 instance, when checks would not otherwise have been covered. And Brown's explanation that
19 his payments under the Contract "had nothing to do with Mr. Yu's candidacy" is not credible in
20 light of Brown's dual role as Yu's campaign chairman and his effectively acting as the
21 Committee's treasurer, which put him in a position to be fully familiar with the campaign's
22 financial needs.

23 Further aspects of the record also support a conclusion that the transaction involving the
24 Property was in effect a loan. Brown's early, contemporaneous notations of the word "loan" on
25 the memo lines on two of Brown's early checks to Yu are significant. Brown's "Bertram Road
26 Purchase" notations on his May 2014 checks to Yu carry less weight because they were made
27 after the filing of the January 23, 2014, *Sua Sponte* Submission in which Brown and others

1 represented that Brown's payments were "collateral payments" from Brown to Yu under "what
2 they have represented to us as a *bona fide* business agreement" to purchase real estate.³⁸

3 Importantly, land records confirm that the Yus have never conveyed or recorded title to
4 the Property to Brown for his purported ownership interest, a fact inconsistent with one of the
5 hallmarks of a real estate sale. In his affidavit, Brown averred that he wanted to structure the
6 Contract to give him the option of recording his ownership interest so he could choose to remain
7 a "passive investor," but the relevant Contract provision envisions conveyance *and* recording,
8 stating, "Seller agrees to *convey the percentage purchased at time of purchaser's choosing and*
9 *update the ownership information with the county* for a marketable title and limited warranty
10 deed (emphasis added)." Notably, Brown has not provided a copy of an unrecorded deed to
11 support his assertion that he holds a partial ownership interest and remains "a passive investor."³⁹
12 Moreover, Richmond County property records confirm that no deed has been conveyed and
13 recorded more than four years after Brown's last payment under the Contract.⁴⁰

14 Additionally, Brown's explanation for including an "unconventional" option to choose
15 the time of conveyance and recording — that he did not want to expose himself to the liability of
16 insuring a vacant building — is inconsistent with publicly available information that the Property

³⁸ *Sua Sponte* Submission at 1-2.

³⁹ Brown Resp. at 7; 2nd Brown Aff. ¶ 9.

⁴⁰ In addition to the fact that the Yus' have not conveyed to Brown his ownership interest or recorded a deed evidencing it, a search of Richmond County real estate records reveals no record that a real estate transfer tax was paid in connection with the purported sale, which is required under Georgia law. Georgia law imposes a real estate transfer tax "on each deed, instrument or other writing by which any lands . . . or other realty sold is . . . transferred or otherwise conveyed to the purchaser" when the value of the interest or property conveyed exceeds \$100. Ga. Code Ann. § 48-6-1. Payment of a transfer tax is a prerequisite to recording a deed, and it is a misdemeanor to willfully evade or defeat "in any manner" the payment of the transfer tax. *See* Ga. Code Ann. §§ 48-6-4; 48-6-10. A contractual provision that permits an indefinite delay in conveying an ownership interest and recording a deed therefore appears problematic.

1 was not vacant as of the date of the Contract or indeed during the entire period when Brown
2 made all the payments under the Contract.

3 Finally, the fact that the Brown did not obtain an independent appraisal prior to entering
4 into the Contract, a customary step in purchasing real estate to determine its fair market value,⁴¹
5 the Yus' actions with the Richmond County Board of Assessors to lower the Property's fair
6 market value; and the Yus' unsuccessful listing of the property for \$890,000, substantially less
7 than the \$1.3 million value on placed on the Property in the Contract, cast doubt as to whether
8 the Contract was a *bona fide* sale for a 50% ownership interest of \$650,000.⁴²

9 In sum, the campaign purpose of the Contract is supported by the timing of Brown's
10 payments, virtually all of which were made when the campaign account balance was very low,
11 and most of which were made when Brown was the campaign chairman and acting in the manner
12 of a treasurer, handling the Committee's finances and signing its checks. The evidence,

⁴¹ The Commission has recognized the importance of an independent appraisal in determining the fair market value of property when deciding whether a candidate sold it for more than the fair market value, thus resulting in an excessive contribution. For instance, in MUR 4825, discussed at note 35, the Commission authorized the Office of General Counsel to expend funds to obtain an independent appraisal of the fair market value of the respondent's property in evaluating whether its sale was a contribution. See Certification ¶ 2 (July 24, 2001) and General Counsel's Report #3 at 2-3, MUR 4825 (Gex Williams) (describing Commission's instructions to OGC and results of the appraisal and title examination). See also Adv. Op. 1984-60 (Mulloy) at n.5 (Jan. 11, 1985) (noting that the Commission would view an appraisal by an expert using an acceptable appraisal methods as *prima facie* evidence of the property's usual and normal market price but would not rule out "the use of other valuation methods that would reliably establish such price or value.").

⁴² To the extent the transaction between Brown and the Yus could be considered a *bona fide* sale, Brown appears to have paid more than the fair market value, resulting in an excessive contribution. The Commission has considered when the sale of a candidate's interest in real property constitutes a contribution in the context of a proposed plan by a candidate to retire campaign debt by selling his interest in real estate held in a family-owned partnership to either an outside party or a family member, noting that a candidate's personal funds include proceeds from the sale of a candidate's investments. AO 1984-60 at 2. The Commission determined that a contribution would occur where (1) a candidate sells a property to use the proceeds to pay campaign expenses and debts and (2) the property is sold for price greater than the property's "normal and usual market price." *Id.* As Brown observes in his response, the Commission has equated the term "fair market value" as used to refer to real property with the "usual and normal cost" standard in 11 C.F.R. § 100.52(d)(1). Commission regulations define "the usual and normal" cost as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution. *Id.*

1 including the “loan” memo notations, the failure to obtain an independent appraisal of the
2 Property or convey marketable title and a limited warranty deed, and the Yus’ attempts to
3 decrease the value of the Property on a real estate sale listing and by seeking a lower property
4 assessment, further cast doubt that the transaction between Brown and the Yus was a *bona fide*
5 sale of property rather than a loan.

6 Under the Commission’s regulations, a contribution by an LLC with a single natural
7 person member that does not elect to be treated as a corporation by the Internal Revenue Service
8 shall be attributed only to that single member.⁴³ Accordingly, there is reason to believe that the
9 \$555,000 Yu received from Brown and WayneWorks and transferred to the Committee or
10 otherwise used to pay Committee expenses were not Yu’s personal funds but instead proceeds of
11 a loan from Brown, and thus, a contribution. Brown had made a direct \$3,500 contribution to Yu
12 on July 3, 2013, \$900 more than the 2014 per-election contribution limit, which was not refunded
13 after Yu lost the primary election. Therefore, there is reason to believe that Brown made
14 excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A).

⁴³ See 11 C.F.R. § 110.1(g)(4).