

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 MUR: 7111
6 COMPLAINT DATE: 7/21/16
7 NOTIFICATION DATE: 7/27/16
8 LAST RESPONSE DATE: 9/20/16
9 ACTIVATION DATE: 11/29/16

10
11 STATUTE OF LIMITATIONS: 7/1/21
12 ELECTION CYCLE: 2016

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14 **COMPLAINANT:** Keep America Great

15
16 **RESPONDENTS:** Donald J. Trump

17
18 Donald J. Trump for President, Inc. and Timothy Jost in
19 his capacity as treasurer

20
21 The Trump Organization

22
23 Meredith McIver

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25 **RELEVANT STATUTES** 52 U.S.C. § 30118(a)
26 **AND REGULATIONS:** 11 C.F.R. § 100.74
27 11 C.F.R. § 100.79(a)
28 11 C.F.R. § 114.2(d)
29 11 C.F.R. § 114.2(f)
30 11 C.F.R. § 114.9(a)
31 11 C.F.R. § 114.9(b)

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33 **INTERNAL REPORTS CHECKED:** Disclosure Reports

34
35 **FEDERAL AGENCIES CHECKED:** None

36
37 **I. INTRODUCTION**

38 This matter involves allegations that the Trump Organization made a prohibited corporate
39 contribution to 2016 Presidential candidate Donald J. Trump and his principal campaign
40 committee when Trump Organization employee Meredith McIver provided speechwriting
41 services for Melania Trump's July 2016 speech at the Republican National Convention. The
42 complaint further alleges that Respondents may have violated the Act by engaging in corporate

1 facilitation of contributions by using of Trump Organization letterhead, and that McIver's
2 unreimbursed expenses for alleged travel to the Republican National Convention exceeded the
3 allowable amount for campaign volunteers.

4 As discussed below, Respondents contend that the speechwriting services were a personal
5 in-kind contribution from Trump to his campaign, and that they were reported as such in the
6 Committee's disclosure reports. It appears, however, based on the Committee's disclosure
7 reports, that the payments for the services were not paid in advance, as required by the Act. As a
8 result, a corporate contribution to the Committee may have resulted. Because the value of such
9 services appears to be *de minimis*, however, we recommend that the Commission dismiss the
10 allegation in an exercise of prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821
11 (1985). We further recommend that the Commission find no reason to believe that the Trump
12 Organization violated the Act by engaging in corporate facilitation of contributions, no reason to
13 believe that McIver, the Committee, or the Trump Organization violated the Act by making or
14 accepting excessive contributions in connection with McIver's alleged travel to the Republican
15 National Convention, and close the file.

16 II. FACTS

17 Donald J. Trump was a candidate for president in 2016, and Donald J. Trump for
18 President, Inc. and Timothy Jost in his capacity as treasurer (the "Committee") is his principal
19 campaign committee. The Trump Organization is an LLC wholly owned by Donald J. Trump.¹
20 Meredith McIver is an employee of the Trump Organization.²

¹ Resp. at 4, n.1. It is not clear from the available information whether Trump Organization is taxed as a corporation or a partnership.

² *Id.* at 1.

1 On July 18, 2016, Melania Trump gave a speech at the Republican National Convention.
2 McIver acknowledged, in a letter printed on Trump Organization letterhead, that she worked
3 with Melania Trump on her convention speech.³ The Committee also concedes the McIver
4 worked on the speech, characterizing the services as “isolated” and asserting that McIver spent
5 “minimal time—a portion of one day” in connection with the speech.⁴

6 Trump asserts that he paid for McIver's services with personal funds and then contributed
7 those services to the Committee as an in-kind candidate contribution.⁵ The Committee, in its
8 August monthly disclosure report, reported receiving a \$23,775.50 contribution from Donald J.
9 Trump on July 23, 2016, in the form of “IN-KIND: PAYROLL.”⁶ Memo entries in the report
10 show that this amount included \$356.01 for “PAYROLL” for Meredith McIver.⁷

11 III. LEGAL ANALYSIS

12 A. Allegation of Corporate Contributions

13 The complaint alleges that the Trump Organization made, and the Committee accepted,
14 corporate in-kind contributions consisting of McIver's speechwriting services and McIver's use
15 of Trump Organization office space while providing those services.⁸ The response states that
16 Trump Organization funds were not used to pay for McIver's services because Trump first

³ McIver's acknowledgement came on July 20, 2016, following public criticism that the speech contained unattributed excerpts from Michelle Obama's 2008 Democratic National Convention speech. McIver issued a public statement on Trump Organization letterhead accepting responsibility for the excerpted portions and offering to resign her position with the Trump organization. Compl. ¶¶ 7-9.

⁴ Resp. at 3.

⁵ *Id.*

⁶ August 2016 Monthly Report of the Committee at 9,619 (amended).

⁷ *Id.*, Schedule B at 98,869 (amended). The McIver amount appears to be included with those of eight other Trump Organization employees for whom Trump reports personally paying for services.

⁸ Compl. ¶¶ 15-16, 18 (“Counts” 1-2, 4).

1 "prepaid" for the services using personal funds, then made an in-kind personal contribution in
2 that amount to the Committee.⁹ The response also asserts that McIver's services required only a
3 portion of one day and argues that the value was *de minimis*.¹⁰

4 The Act and Commission regulations prohibit any corporation from making contributions
5 to a candidate's principal campaign committee, and further prohibit any candidate or political
6 committee from knowingly accepting or receiving such a contribution.¹¹ A "contribution" is
7 "any gift, subscription, loan, advance, or deposit of money or anything of value made by any
8 person for the purpose of influencing any election for Federal office."¹² "Anything of value"
9 covers all in-kind contributions,¹³ including payments to another person for the provision of
10 services.¹⁴ Commission regulations permit a candidate to use his or her personal funds to make
11 unlimited contributions to his campaign.¹⁵

12 The Commission has concluded that no corporate contribution results where a
13 corporation provides services of its employees to a committee and is compensated by a
14 permissible contributor "*prior* to the rendering of those services and *prior* to compensating the
15 employees for such services."¹⁶ Under such an "advance payment" method, the recipient

⁹ Resp. at 3.

¹⁰ *Id.* at 3, 5.

¹¹ 52 U.S.C. § 30118(a).

¹² *Id.* § 30101(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (defining "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section.").

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54.

¹⁵ 11 C.F.R. § 110.10; *see also* Advisory Op. 1988-7 (Bakal).

¹⁶ *See* Advisory Op. 1984-37 (American Medical Association and American Medical Association Political Action Committee) at 3-4 (emphasis added).

1 committee should report as the date of the contribution “the date or dates on which the services
2 are performed for that candidate.”¹⁷ If, however, the method of payment involves an initial
3 provision of something of value by the corporation, then the services may constitute a
4 contribution from the corporation.¹⁸

5 Here, the Committee reported that the contribution of payroll for McIver’s speechwriting
6 services occurred on July 23, 2016.¹⁹ The speech for which McIver’s speechwriting services
7 were provided, however, occurred on July 18, 2016, and any such services necessarily would
8 have been provided on or before that date. Therefore, if Trump did not pay for McIver’s services
9 until July 23, it appears that the Trump Organization may have made a corporate contribution by
10 initially providing the services.²⁰ Regardless, the alleged amount in violation in this case —
11 \$356.01 for McIver’s services and any prorated share of the value of the corporate office space
12 in which she worked — is *de minimis* and does not justify the use of further Commission
13 resources. Accordingly, based on the available information, we recommend that the
14 Commission dismiss the allegation that the Trump Organization, and Donald J. Trump and the
15 Committee, violated 52 U.S.C. § 30118(a) by making and accepting, respectively, corporate
16 contributions in connection with the speechwriting services provided by McIver.²¹

17 *Id.* at 4.

18 See Advisory Op. 1984-24 (Sierra Club and Sierra Club Committee on Political Education) (the proposed “advance payment” and “reimbursement” methods were impermissible because initial disbursement of corporate treasury funds to compensate employees for services to federal candidates constituted a loan, advance, or something of value).

19 See *supra* at 3.

20 See Advisory Op. at 1984-24 (Sierra Club and Sierra Club Committee on Political Education).

21 *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 **B. Allegation of Corporate Facilitation**

2 The complaint further alleges that McIver's use of Trump Organization letterhead for her
3 letter regarding the speechwriting services provides "reason to believe that the Trump
4 Organization is using its corporate name in other ways, and potentially is using its corporate
5 name to facilitate contributions to [the Committee]." Respondents reply that "the complaint
6 provides absolutely no explanation of this conclusion—no factual allegation or assertion to the
7 effect—and nothing in the complaint has anything to do with fundraising."²² The response
8 therefore concludes "that there is no information provided from which to determine a violation
9 has occurred."²³

10 Corporations are prohibited from facilitating the making of contributions to candidates.²⁴
11 Facilitation means using corporate resources or facilities to engage in fundraising activities in
12 connection with any federal election.²⁵ Here, the complaint provides no facts indicating that the
13 Trump Organization used its resources or facilities to engage in any fundraising activities. The
14 one piece of information presented by the complaint — McIver's use of the Trump Organization
15 letterhead to issue her letter accepting responsibility for providing the speechwriting services —
16 fails to implicate any fundraising activity; we cannot, therefore make a reasonable inference from
17 that letter alone that the Trump Organization engaged in impermissible corporate facilitation.
18 Therefore, we recommend that the Commission find no reason to believe that the Trump

²² Resp. at 4.

²³ *Id.* (citing 11 C.F.R. § 111.4(d)(3) (requiring a complaint to include a clear and concise recitation of facts which describe a violation)).

²⁴ 11 C.F.R. § 114.2(f)(1).

²⁵ *Id.*

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1 Organization violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(f)(1) by engaging in corporate
2 facilitation of contributions.

3 **C. Allegation that McIver Exceeded Limits on Unreimbursed Travel**

4 The complaint further alleges that McIver travelled to the Republican National
5 Convention and that her travel expenses exceeded the limits placed on unreimbursed travel for
6 campaign volunteers set forth in 11 C.F.R. § 100.79(a) and, presumably, resulted in a violation
7 of the Act.²⁶ The complaint does not specify any particular provision of the Act that may have
8 been violated or which respondent may have violated the Act. Nor does it provide any factual
9 evidence to support its general allegation. It is therefore unclear whether the complaint is
10 alleging a potential excessive contribution by McIver or an impermissible corporate contribution
11 by the Trump Organization.

12 The response states that McIver did not travel to the Republican National Convention.²⁷
13 In light of this denial, and because there is no evidence to support the complaint's allegation that
14 McIver traveled to the Republican National Convention, we recommend that the Commission
15 find no reason to believe that McIver violated 52 U.S.C. § 30116(a)(1)(A) by making an
16 excessive contribution to the Committee, and no reason to believe that the Trump Organization
17 violated 52 U.S.C. § 30118(a) by making an impermissible corporate contribution to the
18 Committee, or that the Committee violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting such
19 an excessive or prohibited contribution, in connection with McIver's alleged travel to the
20 Republican National Convention.

21

²⁶ Compl. ¶19 ("Count 5").

²⁷ Resp. at 3-4, 6.

1 **IV. RECOMMENDATIONS**

- 2 1. Dismiss the allegation that the Trump Organization, and Donald J. Trump and the
3 Committee, violated 52 U.S.C. § 30118(a) by making and accepting, respectively,
4 corporate contributions in connection with the speechwriting services provided by
5 McIver.
- 6 2. Find no reason to believe that the Trump Organization violated 52 U.S.C. § 30118(a)
7 and 11 C.F.R. § 114.2(f)(1) by engaging in corporate facilitation of contributions.
8
- 9 3. Find no reason to believe that McIver personally violated 52 U.S.C. § 30116(a)(1)(A)
10 by making an excessive contribution to the Trump Organization, or that the Trump
11 Organization violated 52 U.S.C. § 30118(a) by making an impermissible corporate
12 contribution to the Committee, or that the Committee violated 52 U.S.C. §§ 30116(f)
13 or 30118(a) by accepting an excessive or prohibited contribution, in connection with
14 McIver's alleged travel to the Republican National Convention.
- 15 4. Approve the appropriate letters.
- 16 5. Close the file.

17 Lisa J. Stevenson
18 Acting General Counsel
19

20 4/13/17
21 Date

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