

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2

3 In the Matter of)

4)

5 MUR 7325) DISMISSAL AND

6 Matlock for Congress and Mark J. Hackney) CASE CLOSURE UNDER THE

7 in his official capacity as treasurer,) ENFORCEMENT PRIORITY

8 Lange Animal Hospital,) SYSTEM

9 Lenoir City Animal Clinic,)

10 Loope Builders,)

11 McKinnon Construction Company, and)

12 Topside Wine and Spirits LLC)

13)

14 **GENERAL COUNSEL'S REPORT**

15

16 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a

17 basis to allocate its resources and decide which matters to pursue. These criteria include, without

18 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into

19 account both the type of activity and the amount in violation; (2) the apparent impact the alleged

20 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the

21 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as

22 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing

23 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial

24 discretion to dismiss cases under certain circumstances and where appropriate, to find no reason to

25 believe that a violation occurred.

26 The Office of General Counsel has scored MUR 7325 as a low-rated matter and has

27 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the

28 reasons set forth below, we recommend that the Commission dismiss the allegations that Matlock for

¹ The EPS rating information is as follows: Complaint Filed: February 20, 2018. Committee Response Filed: February 27, 2018. Lange Animal Hospital Response Filed: February 28, 2018. McKinnon Construction Response Filed: February 27, 2018. Loope Builders Response Filed: March 15, 2018. No responses were received from Lenoir Animal Clinic and Topside Wine and Spirits LLC.

1 Congress and Mark J. Hackney, in his official capacity as treasurer (the "Committee"),² Lange
2 Animal Hospital, and Lenoir City Animal Clinic violated the Act or Commission regulations and find
3 no reason to believe that Loope Builders, McKinnon Construction Company, and Topside Wine and
4 Spirits LLC violated the Act or Commission regulations.

5 The Complaint alleges that the Committee accepted two \$500 corporate contributions during
6 the fourth quarter of 2017 from Lange Animal Hospital and Lenoir City Animal Clinic.³ The
7 Committee admits it accepted the corporate contributions in error, and it states that it refunded them
8 both and amended its report.⁴ The Committee's Amended 2017 Year-End Report reflects those
9 refunds.⁵

10 In addition, the Complaint alleges that the Committee's 2017 Year-End report failed to
11 properly disclose the individuals associated with contributions from five businesses: the two
12 contributions just mentioned, two \$500 contributions from Loope Builders, a \$1,500 contribution
13 from McKinnon Construction, and a \$250 contribution from Topside Wine and Spirits.⁶

14 The Act prohibits a political committee (other than an independent-expenditure-only
15 committee) from accepting corporate contributions, and prohibits a corporation from making a
16 contribution to a candidate's principal campaign committee.⁷ The Act further requires a political

² Matlock for Congress registered on August 3, 2017 as James Lloyd Matlock's principal campaign committee.

³ Compl. at 1 (Feb. 20, 2018). The Complaint includes information from the Tennessee Secretary of State showing that both Lange Animal Hospital and Lenoir City Animal Clinic are corporations. *Id.* at 2.

⁴ Committee Resp. at 1 (Feb. 27, 2018). Lange Animal Hospital's agent states he mistakenly wrote the contribution check from his business account, not his personal account. Lange Animal Hosp. Resp. at 1 (Feb. 28, 2018). He states that he has since substituted a personal check for the corporate check. *Id.*

⁵ Matlock for Congress, Amended 2017 Year-End Report (filed Mar. 19, 2018), <http://docquery.fec.gov/pdf/522/201803199096590522/201803199096590522.pdf>, at 46.

⁶ Compl. at 3.

⁷ 52 U.S.C. § 30118(a).

1 committee to report the identification of each person who makes a contribution or contributions
2 having an aggregate amount or value in excess of \$200 within an election cycle.⁸ A contribution by a
3 partnership shall be attributed to the partnership and to each contributing partner.⁹

4 The available information shows that Lange Animal Hospital and Lenoir City Animal Clinic
5 made prohibited corporate contributions, and the Committee accepted them. In addition, as the
6 Committee indicates, it violated the Act by failing to properly attribute the contributions from Loope
7 Builders, McKinnon Construction, and Topside Wine and Spirits to the contributing partners in its
8 2017 Year-End Report.¹⁰

9 Given the specific facts, the relatively modest amounts at issue, and remedial actions taken by
10 the Committee, we recommend that the Commission dismiss the allegations against Matlock for
11 Congress and Mark J. Hackney, in his official capacity as treasurer, Lange Animal Hospital, and
12 Lenoir City Animal Clinic consistent with the Commission's prosecutorial discretion to determine
13 the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821,
14 831-32 (1985). We also recommend that the Commission find no reason to believe that Loope
15 Builders, McKinnon Construction, and Topside Wine and Spirits LLC violated the Act or

⁸ 52 U.S.C. § 30104(b)(3). Under the Act, the term "person" includes a partnership. 52 U.S.C. § 30101(11).

⁹ 11 C.F.R. § 110.1(e). The contribution shall be attributed to each partner either in direct proportion to his or her share of the partnership profits or by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and those partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them. *Id.*

¹⁰ The Committee's Amended 2017 Year-End Report (filed Feb. 13, 2018) identifies McKinnon Construction as a single-member LLC, attributing the entire contribution to Mark McKinnon, and identifies Topside Wine and Spirits as a single-member LLC, attributing the entire contribution to Darrell Tipton. The Tennessee Secretary of State indicates that McKinnon Construction has three members and that Topside Wine and Spirits has two members. *See* Tennessee Secretary of State Business Entity Detail for McKinnon Construction, <https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=072232198142237032044186164155192154003121119004> (last visited Apr. 9, 2018); Tennessee Secretary of State Business Entity Detail for Topside Wine and Spirits, <https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=170104047038218018030103032209141039009158050006> (last visited Apr. 9, 2018). Without additional information, we are unable to determine whether the Committee's amendments properly attributed the contributions among the respective members. *See* 11 C.F.R. 110.1(e).

1 Commission regulations because there is no available information to suggest that any of these entities
2 is a corporation or that any individual exceeded the per election contribution limit once the
3 partnership contributions are attributed to the individuals and aggregated with any individual
4 contributions.¹¹

5 **RECOMMENDATIONS**

- 6 1. Dismiss the allegations that Matlock for Congress and Mark J. Hackney, in his official
7 capacity as treasurer, Lange Animal Hospital, and Lenoir City Animal Clinic violated the
8 Act and Commission regulations, pursuant to the Commission's prosecutorial discretion
9 under *Heckler v. Chaney*, 470 U.S. 821 (1985);
10
11 2. Find no reason to believe that Loope Builders, McKinnon Construction, and Topside
12 Wine and Spirits LLC violated the Act or Commission regulations;
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14 3. Approve the attached Factual and Legal Analysis and the appropriate letters; and
15
16 4. Close the file as to all Respondents.

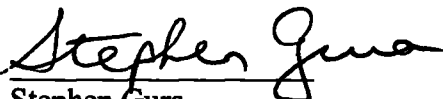
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19 Lisa J. Stevenson
20 Acting General Counsel

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23 Kathleen M. Guith
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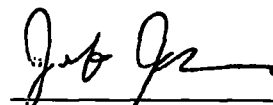
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28 April 27, 2018

29 Date

30 BY:



31 Stephen Gura
32 Deputy Associate General Counsel



33 Jeff S. Jordan
34 Assistant General Counsel
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¹¹ Loope Builders states that it is a sole proprietorship. Loope Builders Resp. at 1 (Mar. 15, 2018). McKinnon Construction states that it is treated as a partnership for tax purposes. McKinnon Construction Resp. at 1 (Feb. 27, 2018). There is no indication on the public record that Topside Wine and Spirits has chosen corporate tax treatment.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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2
3 RESPONDENTS: Matlock for Congress and MUR 7325
4 Mark J. Hackney in his official capacity as treasurer,
5 Lange Animal Hospital,
6 Lenoir City Animal Clinic,
7 Loope Builders,
8 McKinnon Construction Company, and
9 Topside Wine and Spirits LLC
10

11 This matter was generated by a complaint alleging violations of the Federal Election
12 Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Matlock for
13 Congress and Mark J. Hackney, in his official capacity as treasurer (the “Committee”), Lange
14 Animal Hospital, Lenoir City Animal Clinic, Loope Builders, McKinnon Construction
15 Company, and Topside Wine and Spirits LLC. It was scored as a low-rated matter under the
16 Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to
17 allocate its resources and decide which matters to pursue.

18 The Complaint alleges that the Committee accepted two \$500 corporate contributions
19 during the fourth quarter of 2017 from Lange Animal Hospital and Lenoir City Animal Clinic.¹
20 The Committee admits it accepted the corporate contributions in error, and it states that it
21 refunded them both and amended its report.² The Committee’s Amended 2017 Year-End Report
22 reflects those refunds.³

¹ Compl. at 1 (Feb. 20, 2018). The Complaint includes information from the Tennessee Secretary of State showing that both Lange Animal Hospital and Lenoir City Animal Clinic are corporations. *Id.* at 2.

² Committee Resp. at 1 (Feb. 27, 2018). Lange Animal Hospital’s agent states he mistakenly wrote the contribution check from his business account, not his personal account. Lange Animal Hosp. Resp. at 1 (Feb. 28, 2018). He states that he has since substituted a personal check for the corporate check. *Id.*

³ Matlock for Congress, Amended 2017 Year-End Report (filed Mar. 19, 2018), <http://docquery.fec.gov/pdf/522/201803199096590522/201803199096590522.pdf>, at 46.

1 In addition, the Complaint alleges that the Committee's 2017 Year-End report failed to
2 properly disclose the individuals associated with contributions from five businesses: the two
3 contributions just mentioned, two \$500 contributions from Loope Builders, a \$1,500 contribution
4 from McKinnon Construction, and a \$250 contribution from Topside Wine and Spirits.⁴

5 The Act prohibits a political committee (other than an independent-expenditure-only
6 committee) from accepting corporate contributions, and prohibits a corporation from making a
7 contribution to a candidate's principal campaign committee.⁵ The Act further requires a political
8 committee to report the identification of each person who makes a contribution or contributions
9 having an aggregate amount or value in excess of \$200 within an election cycle.⁶ A contribution
10 by a partnership shall be attributed to the partnership and to each contributing partner.⁷

11 The available information shows that Lange Animal Hospital and Lenoir City Animal
12 Clinic made prohibited corporate contributions, and the Committee accepted them. In addition,
13 as the Committee indicates, it violated the Act by failing to properly attribute the contributions
14 from Loope Builders, McKinnon Construction, and Topside Wine and Spirits to the contributing
15 partners in its 2017 Year-End Report.⁸

⁴ Compl. at 3.

⁵ 52 U.S.C. § 30118(a).

⁶ 52 U.S.C. § 30104(b)(3). Under the Act, the term "person" includes a partnership. 52 U.S.C. § 30101(11).

⁷ 11 C.F.R. § 110.1(e). The contribution shall be attributed to each partner either in direct proportion to his or her share of the partnership profits or by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and those partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them. *Id.*

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1 In furtherance of the Commission’s priorities relative to other matters pending on the
2 Enforcement docket, the relatively modest amounts at issue, and remedial actions taken by the
3 Committee, the Commission exercises its prosecutorial discretion and dismisses the allegations
4 as to Matlock for Congress and Mark J. Hackney, in his official capacity as treasurer, Lange
5 Animal Hospital, and Lenoir City Animal Clinic. *Heckler v. Chaney*, 470 U.S. 821, 831-32
6 (1985). Further, the Commission finds no reason to believe that Loope Builders, McKinnon
7 Construction, and Topside Wine and Spirits LLC violated the Act or Commission regulations
8 because there is no available information to suggest that any of these entities is a corporation or
9 that any individual exceeded the per election contribution limit once the partnership
10 contributions are attributed to the individuals and aggregated with any individual contributions.⁹

(last visited Apr. 9, 2018). Without additional information, we are unable to determine whether the Committee’s amendments properly attributed the contributions among the respective members. *See* 11 C.F.R. 110.1(e).

⁹ Loope Builders states that it is a sole proprietorship. Loope Builders Resp. at 1 (Mar. 15, 2018). McKinnon Construction states that it is treated as a partnership for tax purposes. McKinnon Construction Resp. at 1 (Feb. 27, 2018). There is no indication on the public record that Topside Wine and Spirits has chosen corporate tax treatment.