

1 **FEDERAL ELECTION COMMISSION**

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

4  
5 MUR: 7383

6 DATE COMPLAINT FILED: May 10, 2018

7 SUPPLEMENTAL COMPLAINT: June 21, 2018

8 DATE OF NOTIFICATION: May 16, 2018, and  
9 June 26, 2018

10 LAST RESPONSE RECEIVED: Sept. 11, 2018

11 DATE ACTIVATED: April 16, 2019

12  
13 EXPIRATION OF SOL: April 15, 2023

14 ELECTION CYCLE: 2018

15  
16 **COMPLAINANT:**

Michael Marquardt

17  
18 **RESPONDENTS:**

Dave Hughes

19 Hughes for Congress and Thomas Datwyler  
20 in his official capacity as treasurer

21  
22 **RELEVANT STATUTES AND**  
23 **REGULATIONS:**

52 U.S.C. § 30102(b)

52 U.S.C. § 30104(a) and (b)

52 U.S.C. § 30114(b)

11 C.F.R. § 100.33(a) and (b)

11 C.F.R. § 100.111

11 C.F.R. § 102.9(b)

11 C.F.R. § 104.3(a) and (b)

11 C.F.R. § 104.14(d)

11 C.F.R. § 110.10

11 C.F.R. § 113.1(g)

11 C.F.R. § 116.11

11 C.F.R. § 116.12

35  
36 **INTERNAL REPORTS CHECKED:**

FEC Disclosure Reports

37  
38 **FEDERAL AGENCIES CHECKED:**

None

39  
40 **I. INTRODUCTION**

41 The Complainant, a former treasurer for Dave Hughes's principal campaign committee,  
42 Hughes for Congress and Thomas Datwyler in his official capacity as treasurer (the  
43 "Committee"), alleges that the Committee misreported disbursements and cash on hand; failed to

1 accurately report a \$40,000 commercial loan; and used campaign funds for Hughes's personal  
2 expenses.<sup>1</sup> The Response describes the Complainant as a disgruntled former employee, and it  
3 states that the Committee did not intentionally misreport transactions and it amended its  
4 disclosure reports to correct minor errors. The Response, however, does not address the alleged  
5 failure to accurately report the \$40,000 commercial loan, or the alleged personal use of campaign  
6 funds.

7 Based on the available information, we recommend that the Commission dismiss the  
8 allegations that the Committee failed to accurately report disbursements, its cash-on-hand  
9 balance, and a \$40,000 commercial loan. We also recommend that the Commission find reason  
10 to believe that the Committee and Hughes converted campaign funds to Hughes's personal use.

## 11 **II. FACTUAL AND LEGAL ANALYSIS**

### 12 **A. Background**

13 Dave Hughes was a 2018 general election candidate for Minnesota's Seventh  
14 Congressional District.<sup>2</sup> Hughes for Congress was his principal campaign committee.<sup>3</sup>

15 The Complainant, Michael Marquardt, began volunteering with the Committee in  
16 October 2017, was named treasurer on December 27, 2017 [he avers that the appointment was  
17

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<sup>1</sup> A supplement to the Complaint, filed on June 21, 2018, alleges that representatives of the Committee threatened the Complainant at a Minnesota Congressional District convention in relation to this complaint. That allegation is not within the Commission's jurisdiction, so we do not address it in this report.

<sup>2</sup> See Dave R. Hughes, FEC Form 2, *Statement of Candidacy*, (Nov. 28, 2016). Hughes, who also ran in 2016, has declared his 2020 candidacy for U.S. Representative from Minnesota's seventh Congressional District. See Dave R. Hughes, FEC Form 2, *Statement of Candidacy*, (Feb. 19, 2019).

<sup>3</sup> Hughes for Congress, FEC Form 1, *Statement of Organization*, (amend. Jan. 13, 2019).

1 initially without his knowledge or consent], and resigned as treasurer on March 22, 2018.<sup>4</sup>  
2 Marquardt states that he never had access to the Committee's checkbook and he never signed  
3 Committee reports filed with the Commission.<sup>5</sup> In April 2018, the Committee filed its 2018  
4 April Quarterly Report, which Hughes signed.<sup>6</sup>

5 The Complaint states that the Committee's April 2018 Quarterly Report, which was filed  
6 shortly after Marquardt's resignation as treasurer, did not accurately disclose the Committee's  
7 disbursements or cash on hand.<sup>7</sup> Relying on records from his tenure as treasurer, Marquardt lists  
8 transactions totaling over \$30,000 purportedly drawn from the Committee's bank account from  
9 December 18, 2017, to March 20, 2018, but notes that the Committee's 2018 April Quarterly  
10 Report only disclosed \$8,357.75 in disbursements.<sup>8</sup> The Committee states that it amended its  
11 2018 April Quarterly Report to correct reporting errors, and it again amended its report after it

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<sup>4</sup> Compl. at 2 (May 10, 2018). *See* Hughes for Congress, FEC Form 1, *Statement of Organization*, (amend. Dec. 27, 2018). Marquardt states that he initially learned the Committee named him as treasurer after the fact, in January 2018, and that he did not authorize the Committee to name him as treasurer. Compl. at 2. In an email from Marquardt to Hughes, dated January 29, 2018, and attached to the Complaint, Marquardt replies to Hughes that he did not know he had been named as treasurer but thanked Hughes "for your confidence." *See* Compl. at Attach. (Email from Marquardt to Hughes (Jan. 29, 2018)). Marquardt held the position until March 22, 2018, when he emailed his resignation to Hughes. *See* Compl. at Attach. (Email from Marquardt to Hughes (Mar. 22, 2018)). Marquardt also notified the Commission of his resignation. *See* Miscellaneous Report to FEC, (May 11, 2018).

<sup>5</sup> Compl. at 2.

<sup>6</sup> Hughes for Congress, FEC Form 3, 2018 April Quarterly Report of Receipts and Disbursements, (Apr. 15, 2018).

<sup>7</sup> Compl. at 2.

<sup>8</sup> Compl. at 1, attachs. *See also* Hughes for Congress, FEC Form 3, *Report of Receipts and Disbursements*. (Apr. 15, 2018). The Complaint speculates that the Committee failed to disclose transactions to artificially inflate its reported cash on hand.

1 named its new treasurer.<sup>9</sup> The amendments disclosed additional disbursements, but did not  
2 include all of the specific transactions listed in the Complaint.<sup>10</sup>

3 The Complaint also alleges that the Committee misreported a \$40,000 loan as having  
4 been made from Hughes's personal funds, rather than from a loan Hughes obtained from a  
5 financial institution.<sup>11</sup> Complainant states that he brought these issues to Hughes's attention in a  
6 February 2018 meeting, and he memorialized these warnings in February 22 and March 16,  
7 2018, letters to Hughes.<sup>12</sup> These letters advise Hughes that the Committee must disclose the loan  
8 as having come from Service Credit Union, and disclose the loan repayments as having been  
9 made to Service Credit Union.<sup>13</sup> The Committee's disclosure report describes the loan as being  
10 from the candidate's personal funds, and describes repayments for the loan as being made to the  
11 candidate.<sup>14</sup>

12

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<sup>9</sup> Although the Committee claims to have amended its report prior to becoming aware of the Complaint, the May 4, 2019 amendment was made several days after the Complainant sent a copy of the Complaint directly to the Committee on April 30, 2019. Compl. at 1. The Committee's Response was submitted by Travis Kabrick, Committee treasurer. Hughes for Congress, FEC Form 1, *Statement of Organization*, (amend. July 15, 2018). Since then, the Committee has named Thomas Datwyler as its treasurer. Hughes for Congress, FEC Form 1, *Statement of Organization*, (amend. Jan. 13, 2019).

<sup>10</sup> See Hughes for Congress, FEC Form 3, *Report of Receipts and Disbursements*, (amend. May 4, May 11, and Aug. 16, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> Compl. at Attach. (Letter from Marquardt to Hughes (Feb. 22, 2018)). The letter also states that the loan was unsecured, with a 9.9% interest rate and 60 months of repayment at \$851.70 per month.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

1           Finally, the Complaint alleges that Hughes may have used Committee funds to pay for  
2 personal expenses.<sup>15</sup> The Complaint includes copies of emails cautioning the candidate that the  
3 failure to keep accurate records, such as mileage logs, and to disclose the purpose for all  
4 expenditures might suggest that Hughes was using campaign funds for his personal use.<sup>16</sup>  
5 Specifically, the Complaint states that Hughes commutes from Minnesota to North Dakota for  
6 work, and that it was not clear that all of the disbursements made for fuel, food, and lodging  
7 were made for campaign purposes rather personal use.<sup>17</sup> The Complaint also questions whether  
8 a February 13, 2018, check for \$668.42 to Dahlsrom Motors was for campaign expenses.<sup>18</sup>

9           The Committee generally responds that the Complainant is a disgruntled worker who  
10 seeks to damage Hughes's credibility.<sup>19</sup> The Response also states that although Hughes was a  
11 political newcomer who may have made mistakes with his initial reporting, he has retained  
12 professionals to help the Committee comply with reporting requirements.<sup>20</sup> The Committee  
13 avers that it has put in place financial procedures that will allow it to accurately track the  
14 Committee's disbursements.<sup>21</sup> The Response does not address the allegations regarding  
15 disclosure of the \$40,000 loan or the candidate's alleged personal use of campaign funds.<sup>22</sup>

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<sup>15</sup> Compl. at 3.

<sup>16</sup> Compl. Attach. 4.

<sup>17</sup> *Id.*

<sup>18</sup> Compl. at 3.

<sup>19</sup> Resp. at 1 (Sept. 11, 2018).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Resp. (Sept. 11, 2018); *see also* 2018 April Quarterly Report, amend. 1 and 2. The Committee now discloses just over \$18,000 in disbursements for the period in question. The Committee has not amended its reporting related to the candidate's bank loan.

1           **B.     Legal Analysis**

2                   1. Alleged Misreporting of Disbursements and Cash on Hand

3           Political committees and their treasurers are required by the Federal Election Campaign  
4 Act of 1971, as amended (“Act”) to file disclosure reports of receipts and disbursements with the  
5 Commission in accordance with 52 U.S.C. § 30104(a) and (b). The Act requires a committee,  
6 through its treasurer, to keep an accurate account of receipts, disbursements, and cash on hand  
7 balances.<sup>23</sup> To accomplish this, the Act imposes on committees a series of recordkeeping and  
8 reporting requirements to be executed by the committee’s treasurer. The Act provides that  
9 committees must record the name and address of every person to whom a disbursement is made,  
10 and the date, amount, and purpose of the disbursement, and retain records (*e.g.*, receipt,  
11 cancelled check, invoice) related to each disbursement in excess of \$200.<sup>24</sup>

12           The Complaint alleges reporting errors related to disbursements made during the period  
13 applicable to the 2018 April Quarterly reporting period. In support of the allegation, the  
14 Complaint includes what purports to be a list of expenditures made from the Committee’s bank  
15 account for that reporting period. That list totals over \$30,000, while the Committee’s original  
16 2018 April Quarterly Report disclosed just over \$8,000 in disbursements.

17           However, since the Committee filed its report with the Commission, it amended that  
18 report to disclose additional disbursements totaling over \$18,000 made by the Committee.<sup>25</sup> In  
19 addition, the Commission has information that the Committee continues to work with RAD to

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<sup>23</sup> 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

<sup>24</sup> 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

<sup>25</sup> *See* Hughes for Congress, FEC Form 3, *Report of Receipts and Disbursements*, (amend. May 4, May 11, and Aug. 16, 2018).

1 correct its reporting deficiencies. Although the disbursements do not equal the precise amount  
2 of the undisclosed disbursements alleged by the Complaint, the remaining difference is relatively  
3 small, and does not warrant the additional use of Commission resources.<sup>26</sup> Accordingly, we  
4 recommend that the Commission dismiss the allegation that Hughes and the Committee violated  
5 52 U.S.C. § 30104(b) by misreporting disbursements and cash on hand.

6           2. Alleged Failure to Accurately Disclose Information about Candidate Loans

7           The candidate's principal campaign committee must report all loans derived from an  
8 advance on the candidate's brokerage account, credit card, home equity line of credit, or other  
9 line of credit available to the candidate.<sup>27</sup> The disclosure report must identify the person who  
10 makes a loan to the committee during the reporting period, together with the identification of any  
11 endorser or guarantor of such loan, and the date and amount or value of such loans.<sup>28</sup>  
12 Commission regulations provide that a committee must disclose information about loans from  
13 the candidate to the campaign on Schedules C and C-1.<sup>29</sup> If the candidate finances a loan to the  
14 campaign with an underlying loan or line of credit, section 104.3(d)(4) of the Commission's  
15 regulations requires the committee to disclose on Schedule C-1, among other things: (1) date,  
16 amount, and interest rate of the loan or line of credit; (2) name and address of the lending  
17 institution; and (3) types and value of collateral or other sources of repayment that secured the  
18 loan.<sup>30</sup>

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<sup>27</sup> 11 C.F.R. § 100.83(e).

<sup>28</sup> *See* 52 U.S.C. § 30104(b)(3)(E). 11 C.F.R. § 104.3(a)(4)(iv).

<sup>29</sup> 11 C.F.R. § 104.3(d).

<sup>30</sup> *Id.* § 104.3(d)(4).

1           Although it appears that the Candidate used funds borrowed from a credit union to make  
2           loans totaling \$40,000 to his campaign, the Committee inaccurately reported on Schedule C that  
3           he made the loans to the Committee with his “personal funds,” and it failed to file a Schedule C-  
4           1 to properly disclose the details of the margin loan and line of credit. Thus, the Committee did  
5           not comply with the reporting requirements of the Act or the Commission’s regulations.

6           Even so, because the loan and disbursements for the repayment of the loan were  
7           disclosed in the Committee’s reports and the amount of the loan is somewhat modest, we  
8           recommend that the Commission dismiss the allegation that the Hughes and the Committee  
9           violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to accurately disclose  
10          the \$40,000 loan, and instruct the Committee to amend its disclosure reports to accurately reflect  
11          the loan’s origin and repayments for the loan.<sup>31</sup>

### 12                           3. Personal Use of Campaign Funds

13          Campaign funds may not be converted for personal use.<sup>32</sup> Conversion to personal use  
14          occurs when funds in a campaign account are used “to fulfill any commitment, obligation, or  
15          expense of a person that would exist irrespective of the candidate’s election campaign or  
16          individual’s duties as a holder of Federal office.”<sup>33</sup> The Act and Commission regulations further  
17          set forth certain uses of campaign funds that constitute *per se* conversion to personal use,  
18          including utility payments, non-campaign-related automobile expenses, and dues and fees for  
19          health clubs, recreational facilities or other nonpolitical organizations unless they are part of the

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<sup>32</sup>        See 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

<sup>33</sup>        *Id.*



1 costs of a specific fundraising event taking place on those premises.<sup>34</sup> For all other  
2 disbursements, the Commission determines on a case-by-case basis whether a given campaign  
3 fund disbursement is personal use by applying the “irrespective test,” that is, whether the  
4 payment fulfills a commitment, obligation, or expense that would exist irrespective of the  
5 candidate’s campaign or duties as a federal officeholder.<sup>35</sup> The Commission has stated,  
6 however, that “[i]f the candidate can reasonably show that the expenses at issue resulted from  
7 campaign or officeholder activities, the Commission will not consider the use to be personal  
8 use.”<sup>36</sup>

9       The Complaint alleges that Hughes failed to accurately keep records related to the  
10 purposes of disbursements made with Committee funds, and it attached copies of the  
11 Committee’s bank records and other related documents.<sup>37</sup> A review of these records suggests  
12 that Hughes may have converted campaign funds to personal use, and the response does not  
13 explain the transactions. Most notably, there are two checks made payable to Hughes, one for  
14 \$4,500 on February 2, 2018, and another for \$1,000 on February 21, 2018, that are  
15 unexplained.<sup>38</sup> The one transaction specified by the complaint—a check to Dahlstrom Motors  
16 for \$668.42 on February 13, 2018—is not disclosed, and the Response does not address that

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<sup>34</sup> 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i); *see also* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995) (“Personal Use E&J”).

<sup>35</sup> 11 C.F.R. § 113.1(g)(1)(ii).

<sup>36</sup> *See* Personal Use E&J, 60 Fed. Reg. at 7863-64.

<sup>37</sup> Compl. at 3.

<sup>38</sup> *See* Hughes for Congress, FEC Form 3, *Report of Receipts and Disbursements*, (Apr. 15, 2018). These payments are disclosed as loan repayments. However, there are also transfers to Service Credit Union listed on the transaction list included with the Complaint that are consistent with the amount necessary for loan repayments. *See* Compl. attach. We have no further information regarding the purpose for these checks made payable to the candidate.

1 allegation. There are also numerous disbursements made for fuel, food, and lodging that may  
2 not have been for campaign use, including several in North Dakota, where Hughes allegedly  
3 worked, but not where he was running for office.<sup>39</sup>

4 Based on the foregoing, we recommend that the Commission find reason to believe that  
5 Dave Hughes and Hughes for Congress and Thomas Datwyler in his official capacity as treasurer  
6 violated 52 U.S.C. § 30114(b).

### 7 **III. PROPOSED INVESTIGATION**

8 The investigation would seek details about the unexplained and unreported transactions  
9 that appear to be personal use. We intend to ask Hughes and the Committee to explain these  
10 transactions and provide documents supporting any such explanations. We intend to seek this  
11 information informally, but recommend the Commission approve compulsory process if such  
12 efforts are unsuccessful.

### 13 **IV. RECOMMENDATIONS**

- 14 1. Dismiss the allegations that Dave Hughes and Hughes for Congress and Thomas  
15 Datwyler in his official capacity as treasurer, violated 52 U.S.C. § 30104(b) by  
16 misreporting the amounts of disbursements and cash-on-hand;  
17
- 18 2. Dismiss the allegation that Dave Hughes and Hughes for Congress and Thomas  
19 Datwyler in his official capacity as treasurer and Dave Hughes violated 52 U.S.C.  
20 § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to accurately disclose a  
21 \$40,000 commercial loan;  
22
- 23 3. Find reason to believe that Dave Hughes and Hughes for Congress and Thomas  
24 Datwyler in his official capacity as treasurer violated 52 U.S.C. § § 30114(b) by  
25 spending campaign funds for the candidate's personal use;  
26
- 27 4. Approve the attached Factual and Legal Analysis;  
28
- 29 5. Authorize the use of compulsory process in this matter; and  
30

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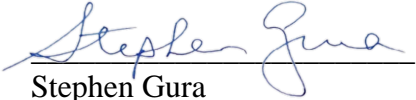
<sup>39</sup> In addition, the unreported disbursements include several small payments for groceries and food.

1           6.     Approve the appropriate letters.  
2

3                           Lisa J. Stevenson  
4                           Acting General Counsel

5  
6                           Charles Kitcher  
7                           Acting Associate General Counsel  
8                           for Enforcement  
9

10  
11  
12           8.15.19  
13   Date

  
14                           Stephen Gura  
15                           Deputy Associate General Counsel  
16                           For Enforcement  
17

18   Mark Shonkwiler  
19  
20                           Mark Shonkwiler  
21                           Assistant General Counsel  
22

23  
24   Wanda D. Brown  
25                           Wanda D. Brown  
26                           Attorney  
27

28  
29   Attachment:  
30       Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Dave Hughes **MUR:** 7383  
Hughes for Congress and Thomas Datwyler  
in his official capacity as treasurer

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) by Michael Marquardt.<sup>1</sup> The Complaint alleges that Dave Hughes and Hughes for Congress and Thomas Datwyler in his official capacity as treasurer misreported disbursements and cash on hand; failed to accurately report a \$40,000 commercial loan; and used campaign funds for Hughes’s personal expenses.<sup>2</sup>

The Response describes the Complainant as a disgruntled former employee, and it states that the Committee did not intentionally misreport transactions and it amended its disclosure reports to correct minor errors. The Response, however, does not address the alleged failure to accurately report the \$40,000 commercial loan, or the alleged personal use of campaign funds.

Based on the available information, the Commission dismisses the allegations that the Committee failed to accurately report disbursements, its cash-on-hand balance, and a \$40,000 commercial loan. The Commission also finds reason to believe that the Committee and Hughes converted campaign funds to Hughes’s personal use.

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<sup>1</sup> See 52 U.S.C. § 30109(a)(1).

<sup>2</sup> A supplement to the Complaint, filed on June 21, 2018, alleges that representatives of the Committee threatened the Complainant at a Minnesota Congressional District convention in relation to this complaint. That allegation is not within the Commission’s jurisdiction, so we do not address it in this report.

1 **I. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 Dave Hughes was a 2018 general election candidate for Minnesota's Seventh  
4 Congressional District.<sup>3</sup> Hughes for Congress was his principal campaign committee.<sup>4</sup>

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6 October 2017, was named treasurer on December 27, 2017 [he avers that the appointment was  
7 initially without his knowledge or consent], and resigned as treasurer on March 22, 2018.<sup>5</sup>  
8 Marquardt states that he never had access to the Committee's checkbook and he never signed  
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10 April Quarterly Report, which Hughes signed.<sup>7</sup>

11 The Complaint states that the Committee's April 2018 Quarterly Report, which was filed  
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<sup>6</sup> Compl. at 2.

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<sup>11</sup> *See* Hughes for Congress, FEC Form 3, *Report of Receipts and Disbursements*, (amend. May 4, May 11, and Aug. 16, 2018).

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<sup>15</sup> *Id.*

<sup>16</sup> Compl. at 3.

<sup>17</sup> Compl. Attach. 4.

<sup>18</sup> *Id.*

<sup>19</sup> Compl. at 3.

<sup>20</sup> Resp. at 1 (Sept. 11, 2018).

<sup>21</sup> *Id.*

1 Committee's disbursements.<sup>22</sup> The Response does not address the allegations regarding  
2 disclosure of the \$40,000 loan or the candidate's alleged personal use of campaign funds.<sup>23</sup>

3 **B. Legal Analysis**

4 1. Alleged Misreporting of Disbursements and Cash on Hand

5 Political committees and their treasurers are required by the Federal Election Campaign  
6 Act of 1971, as amended ("Act") to file disclosure reports of receipts and disbursements with the  
7 Commission in accordance with 52 U.S.C. § 30104(a) and (b). The Act requires a committee,  
8 through its treasurer, to keep an accurate account of receipts, disbursements, and cash on hand  
9 balances.<sup>24</sup> To accomplish this, the Act imposes<sup>24</sup> on committees a series of recordkeeping and  
10 reporting requirements to be executed by the committee's treasurer. The Act provides that  
11 committees must record the name and address of every person to whom a disbursement is made,  
12 and the date, amount, and purpose of the disbursement, and retain records (*e.g.*, receipt,  
13 cancelled check, invoice) related to each disbursement in excess of \$200.<sup>25</sup>

14 The Complaint alleges reporting errors related to disbursements made during the period  
15 applicable to the 2018 April Quarterly reporting period. In support of the allegation, the  
16 Complaint includes what purports to be a list of expenditures made from the Committee's bank  
17 account for that reporting period. That list totals over \$30,000, while the Committee's original  
18 2018 April Quarterly Report disclosed just over \$8,000 in disbursements.

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<sup>22</sup> *Id.*

<sup>23</sup> Resp. (Sept. 11, 2018); *see also* 2018 April Quarterly report, amend. 1 and 2. The Committee now discloses just over \$18,000 in disbursements for the period in question. The Committee has not amended its reporting related to the candidate's bank loan.

<sup>24</sup> 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

<sup>25</sup> 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).



1           However, since the Committee filed its report with the Commission, it amended that  
2 report to disclose additional disbursements totaling over \$18,000 made by the Committee.<sup>26</sup> In  
3 addition, the Commission has information that the Committee continues to work with RAD to  
4 correct its reporting deficiencies. Although the disbursements do not equal the precise amount of  
5 the undisclosed disbursements alleged by the Complaint, the remaining difference is relatively  
6 small, and does not warrant the additional use of Commission resources.<sup>27</sup> Accordingly, the  
7 Commission dismisses the allegation that Hughes and the Committee violated 52 U.S.C.  
8 § 30104(b) by misreporting disbursements and cash on hand.

9           2. Alleged Failure to Accurately Disclose Information about Candidate Loans

10           The candidate's principal campaign committee must report all loans derived from an  
11 advance on the candidate's brokerage account, credit card, home equity line of credit, or other  
12 line of credit available to the candidate.<sup>28</sup> The disclosure report must identify the person who  
13 makes a loan to the committee during the reporting period, together with the identification of any  
14 endorser or guarantor of such loan, and the date and amount or value of such loans.<sup>29</sup>  
15 Commission regulations provide that a committee must disclose information about loans from  
16 the candidate to the campaign on Schedules C and C-1.<sup>30</sup> If the candidate finances a loan to the  
17 campaign with an underlying loan or line of credit, section 104.3(d)(4) of the Commission's

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<sup>26</sup> See Hughes for Congress, FEC Form 3, *Report of Receipts and Disbursements*, (amend. May 4, May 11, and Aug. 16, 2018).

<sup>28</sup> 11 C.F.R. § 100.83(e).

<sup>29</sup> See 52 U.S.C. § 30104(b)(3)(E). 11 C.F.R. § 104.3(a)(4)(iv).

<sup>30</sup> 11 C.F.R. § 104.3(d).

1 regulations requires the committee to disclose on Schedule C-1, among other things: (1) date,  
2 amount, and interest rate of the loan or line of credit; (2) name and address of the lending  
3 institution; and (3) types and value of collateral or other sources of repayment that secured the  
4 loan.<sup>31</sup>

5 Although it appears that the Candidate used funds borrowed from a credit union to make  
6 loans totaling \$40,000 to his campaign, the Committee inaccurately reported on Schedule C that  
7 he made the loans to the Committee with his “personal funds,” and it failed to file a Schedule C-  
8 1 to properly disclose the details of the margin loan and line of credit. Thus, the Committee did  
9 not comply with the reporting requirements of the Act or the Commission’s regulations.

10 Even so, because the loan and disbursements for the repayment of the loan were  
11 disclosed in the Committee’s reports and the amount of the loan is somewhat modest, the  
12 Commission dismisses the allegation that the Hughes and the Committee violated 52 U.S.C.  
13 § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to accurately disclose the \$40,000 loan,  
14 and instruct the Committee to amend its disclosure reports to accurately reflect the loan’s origin  
15 and repayments for the loan.<sup>32</sup>

### 16 3. Personal Use of Campaign Funds

17 Campaign funds may not be converted for personal use.<sup>33</sup> Conversion to personal use  
18 occurs when funds in a campaign account are used “to fulfill any commitment, obligation, or  
19 expense of a person that would exist irrespective of the candidate’s election campaign or

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<sup>31</sup> *Id.* § 104.3(d)(4).

<sup>33</sup> *See* 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

1 individual's duties as a holder of Federal office."<sup>34</sup> The Act and Commission regulations further  
2 set forth certain uses of campaign funds that constitute *per se* conversion to personal use,  
3 including utility payments, non-campaign-related automobile expenses, and dues and fees for  
4 health clubs, recreational facilities or other nonpolitical organizations unless they are part of the  
5 costs of a specific fundraising event taking place on those premises.<sup>35</sup> For all other  
6 disbursements, the Commission determines on a case-by-case basis whether a given campaign  
7 fund disbursement is personal use by applying the "irrespective test," that is, whether the  
8 payment fulfills a commitment, obligation, or expense that would exist irrespective of the  
9 candidate's campaign or duties as a federal officeholder.<sup>36</sup> The Commission has stated,  
10 however, that "[i]f the candidate can reasonably show that the expenses at issue resulted from  
11 campaign or officeholder activities, the Commission will not consider the use to be personal  
12 use."<sup>37</sup>

13         The Complaint alleges that Hughes failed to accurately keep records related to the  
14 purposes of disbursements made with Committee funds, and it attached copies of the  
15 Committee's bank records and other related documents.<sup>38</sup> A review of these records suggests  
16 that Hughes may have converted campaign funds to personal use, and the response does not  
17 explain the transactions. Most notably, there are two checks made payable to Hughes, one for  
18 \$4,500 on February 2, 2018, and another for \$1,000 on February 21, 2018, that are

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<sup>34</sup> *Id.*

<sup>35</sup> 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i); *see also* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995) ("Personal Use E&J").

<sup>36</sup> 11 C.F.R. § 113.1(g)(1)(ii).

<sup>37</sup> *See* Personal Use E&J, 60 Fed. Reg. at 7863-64.

<sup>38</sup> Compl. at 3.

1 unexplained.<sup>39</sup> The one transaction specified by the complaint—a check to Dahlstrom Motors  
2 for \$668.42 on February 13, 2018—is not disclosed, and the Response does not address that  
3 allegation. There are also numerous disbursements made for fuel, food, and lodging that may not  
4 have been for campaign use, including several in North Dakota, where Hughes allegedly worked,  
5 but not where he was running for office.<sup>40</sup>

6           Based on the foregoing, the Commission finds reason to believe that Dave Hughes and  
7 Hughes for Congress and Thomas Datwyler in his official capacity as treasurer violated  
8 52 U.S.C. § 30114(b).

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<sup>39</sup> See Hughes for Congress, FEC Form 3, *Report of Receipts and Disbursements*, (Apr. 15, 2018). These payments are disclosed as loan repayments. However, there are also transfers to Service Credit Union listed on the transaction list included with the Complaint that are consistent with the amount necessary for loan repayments. See Compl. attach. We have no further information regarding the purpose for these checks made payable to the candidate.

<sup>40</sup> In addition, the unreported disbursements include several small payments for groceries and food.