

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL’S REPORT**

3 **MUR 7395**

4 COMPLAINT FILED: May 24, 2018

5 NOTIFICATION DATE: May 31, 2018

6 LAST RESPONSE FILED: July 6, 2018

7 ACTIVATION DATE: Aug. 16, 2018

8

9 STATUTE OF LIMITATIONS: July 6, 2021

10 ELECTION CYCLE: 2016, 2018

11 COMPLAINANT: Nevada State Democratic Party

12 RESPONDENTS: Heller for Senate and Chrissie Hastie, as Treasurer
13 Sen. Dean Heller
14 Heller Enterprises, LLC

15 RELEVANT AUTHORITY: 52 U.S.C. § 30104(b)
16 52 U.S.C. § 30116(a)(1)(A), (f)
17 52 U.S.C. § 30118(a)
18 11 C.F.R. § 100.52(d)
19 11 C.F.R. § 110.1(g)

20 INTERNAL REPORTS CHECKED: Disclosure Reports

21 FEDERAL AGENCIES CHECKED: None

22 **I. INTRODUCTION**

23 The Complaint alleges that Heller Enterprises, LLC (the “Heller Company”) made, and
24 Sen. Dean Heller and his authorized campaign committee, Heller for Senate and Chrissie Hastie
25 in her official capacity as treasurer (the “Committee”), knowingly accepted and failed to report,
26 excessive or prohibited in-kind contributions in the form of discounted social media consulting
27 services. Respondents deny the allegations and contend that the Heller Company provided
28 services to the Committee at a rate that was the usual and normal charge for such services. For
29 the reasons explained fully below, we recommend that the Commission find reason to believe
30 that the Heller Company made, and the Committee knowingly received and failed to report,
31 excessive or prohibited in-kind contributions.

1 **II. FACTUAL BACKGROUND**

2 Heller Enterprises, LLC is a limited liability company that registered in Utah on
 3 November 8, 2013, and its registered agent is Harrison Clark Heller, the son of U.S. Senator for
 4 Nevada Dean Heller.¹ The Heller Company's tax election status is not known. According to the
 5 news article cited in the Complaint, the Heller Company is a music production company started
 6 by Harrison Heller, and it has no other employees.² Beginning in July 2016, the Committee has
 7 made monthly payments of \$2,500 to the Heller Company for "social media consulting"
 8 services.³ As of August 2018, the Committee has reported disbursements to the Heller Company
 9 totaling \$60,175; the Heller Company has not been reported as a vendor for any other federal
 10 political committee.⁴ The Complaint also compared the Committee's payments to the Heller
 11 Company to its payment of \$51,000 to a digital advertising vendor for one month's work.⁵

12 The news article cited in the Complaint reports that "[i]n an email, Harrison Heller said
 13 he was being paid below market rate for his work on the campaign, though he said he wasn't
 14 doing it for the money."⁶ Harrison Heller indicates in the article that his campaign duties

¹ "Heller Enterprises, LLC," Utah Div. of Corps. and Commercial Code, <https://secure.utah.gov/bes/details.html?entity=8851207-0160#>.

² Compl. at 1-2, 4 (May 24, 2018) (citing James DeHaven, *Sen. Dean Heller Paid Son At Least \$52,500 in Campaign Cash for Social Media Consulting*, RENO GAZETTE JOURNAL (May 18, 2018) ("DeHaven Article")).

³ *Id.* at 2-3. *See, e.g.*, Heller for Senate 2016 Oct. Quarterly Report at 40, 60 (Oct. 15, 2016); Heller for Senate 2016 Year-End Report at 63 (Jan. 31, 2017). The Committee hired two other vendors to provide social or digital media consulting services: Tagged Digital ("Tagged") and Bask Digital Media, LLC ("Bask"). The Committee hired Tagged in July 2016, around the same time as it hired the Heller Company, and has paid Tagged a total of \$19,193 for "social media consulting services," and it hired Bask in May 2017, paying Bask a total of \$97,894 for "digital consulting services." FEC Report Summaries, Heller for Senate, Disbursements, 2015-2016, 2017-2018.

⁴ DeHaven Article at 1; FEC Report Summaries, Heller for Senate, Disbursements, 2015-2016, 2017-2018; FEC Report Summaries, All Disbursements, 2013-2014, 2015-2016, 2017-2018.

⁵ Compl. at 3.

⁶ DeHaven Article at 2.

1 included “driving content” for Instagram, taking hundreds of photos and shooting hundreds of
 2 hours of video.⁷ Heller reportedly provided examples of his work for the Committee, which
 3 included “video interviews of constituents” and “recording B-roll from the campaign trail.”⁸
 4 Although he acknowledged his only prior campaign experience was based on campaigning with
 5 his father as a child, he cited Gap, Coca-Cola, and Marriott among his non-campaign clients.⁹
 6 For its part, the Committee issued a statement indicating that “Harris Heller produces quality
 7 content at a cheap discount to the campaign[.] . . . He creates social and digital media for Fortune
 8 500 companies. He is an important part of our team and we are lucky to have him.”¹⁰

9 **III. FACTUAL AND LEGAL ANALYSIS**

10 **A. Legal Standard**

11 Under the Federal Election Campaign Act of 1971, as amended (the “Act”), a
 12 contribution includes “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.”¹¹
 14 “Anything of value” includes “all in-kind contributions,” such as “the provision of any goods or
 15 services without charge or at a charge that is less than the usual and normal charge for such
 16 goods or services[.]”¹² The “usual and normal charge” for services is “the hourly or piecework

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* Harrison Heller also appears to go by “Harris.”

¹¹ 52 U.S.C. § 30101(8)(A)(i).

¹² 11 C.F.R. § 100.52(d)(1). The Commission has determined that a discounted price or rate offered in the ordinary course of business, which is also available to non-political clients, would still be the “usual and normal charge” and therefore would not be an in-kind contribution. *See* Advisory Op. 2006-01 at 2 (Pac for a Change); Advisory Op. 2004-18 at 3 (Friends of Joe Lieberman); *see also* Factual and Legal Analysis at 4-5, MUR 5942 (Rudy Giuliani Presidential Committee, Inc., *et al.*).

1 charge for the services at a commercially reasonable rate prevailing at the time the services were
2 rendered.”¹³ By implication, a person providing services to a political committee for the usual
3 and normal charge, *i.e.*, a commercially reasonable rate, does not thereby make a contribution.¹⁴
4 In situations where “goods or services are provided at less than the usual and normal charge,” the
5 amount of the in-kind contribution is the difference between the usual and normal charge and the
6 amount charged to the political committee.¹⁵

7 The Commission has previously determined that where a political committee receives
8 goods or services from a company partly owned by a candidate, it must avoid paying more or
9 less than the fair market rate to avoid converting the funds to personal use or receiving an in-kind
10 contribution, respectively. In Advisory Opinion 1995-08 (Stupak), a federal candidate proposed
11 to lease space in a building that he and his wife jointly owned to his authorized committee,
12 noting that the committee would, like any other lessee, be responsible for paying rent and
13 applicable utilities, and acknowledging that the proposed rent of \$500 a month was “at or just
14 below the fair market rental value of the building.”¹⁶ The Commission determined that
15 “[a]lthough [the \$500 monthly rental charge] avoids the payment of excessive rent and, hence,
16 personal use of campaign funds, the undercharging for rent would constitute something of value

¹³ 11 C.F.R. § 100.52(d)(2); *see* Advisory Op. 2010-30 at 3 (Citizens United).

¹⁴ *See* 11 C.F.R. § 100.52(d); *see also* 11 C.F.R. § 114.2(f) (a corporation does not facilitate a contribution by providing goods or services in the ordinary course of its business as a commercial vendor and at the usual and normal charge).

¹⁵ 11 C.F.R. § 100.52(d)(1).

¹⁶ Advisory Op. 1995-08 at 1 (Stupak). The candidate acknowledged that a previous tenant, his own law practice, had paid a monthly rent of \$650 per month before utilities, and that a 1992 survey of local realtors indicated that the fair market rental value was \$750 per month, excluding utilities. *Id.* at 4 n.1.

1 to the committee and would thus be an in-kind contribution from your spouse and you.”¹⁷ The
 2 same principle would apply here to the company of a candidate’s family member.¹⁸

3 Under the Act, political committees must file regular reports with the Commission that
 4 disclose all contributions received, including in-kind contributions.¹⁹ During the 2016 and 2018
 5 election cycles, the Act prohibited any person from making aggregate contributions to an
 6 authorized political committee exceeding \$2,700 per election.²⁰ The Act also prohibits corporate
 7 contributions, including in-kind contributions, to authorized political committees, and this
 8 prohibition applies to limited liability companies that elect to be treated as corporations for
 9 federal tax purposes.²¹ Candidates and political committees are prohibited from knowingly
 10 accepting excessive or prohibited corporate contributions.²²

11 **B. The Available Information Supports a Reasonable Inference that the Heller**
 12 **Company Provided Discounted Services to the Committee**

13 The available information supports a reasonable inference that the Heller Company
 14 provided discounted services to the Committee, resulting in excessive or prohibited corporate in-
 15 kind contributions. According to a news article cited in the Complaint, Harrison Heller, the

¹⁷ *Id.* at 3; *see* Advisory Op. 2000-02 at 4 n.3 (Rick Hubbard for U.S. Senate).

¹⁸ *See* Advisory Op. 1994-22 at 2 n.1 (Patrick Combs for United States Congress) (“[I]f the Committee pays more than usual and normal charge for the rental, it would unduly augment the earnings of an asset owned by the candidate and thereby violate [the personal use provisions now at 52 U.S.C. § 30114]. If, on the other hand, the Committee pays less than fair market value, this would constitute a contribution by Woody Combs Auto Sales and Leasing[, a partnership between the candidate and his father,] to the campaign[.]”) (citations omitted).

¹⁹ 52 U.S.C. § 30104(a), (b).

²⁰ 52 U.S.C. § 30116(a)(1)(A); Contribution Limits for 2015-2016 Federal Elections, <https://transition.fec.gov/info/contriblimitschart1516.pdf>; Contribution Limits for 2017-2018 Federal Elections, <https://transition.fec.gov/info/contriblimitschart1718.pdf>.

²¹ 52 U.S.C. § 30118(a); 11 C.F.R. §§ 110.1(g), 114.2.

²² 52 U.S.C. §§ 30116(f), 30118(a).

1 apparent owner and sole employee of the Heller Company, wrote in an email that he was being
2 paid below market rate for the social media consulting services provided to the Committee.²³
3 The Committee also stated that Harrison Heller “produces quality content at a cheap discount to
4 the campaign[.]”²⁴ These statements indicate that the Heller Company’s monthly rate for
5 services to the Committee was below the prevailing commercially reasonable rate and therefore
6 resulted in contributions to the Committee.

7 Respondents contend that these “impromptu public statements to the media . . . should be
8 recognized as hyperbole[.]”²⁵ but the statements do not appear to be impromptu or unconsidered.
9 These were written statements intended to dispel the implication that Sen. Dean Heller may have
10 converted campaign funds to personal use by hiring a family member for services at a rate *above*
11 the usual and normal charge.²⁶ The news article noted that the payments to the Heller Company
12 “raised eyebrows among good-government watchdogs” because “federal law bars candidates
13 from overpaying family members for campaign services.”²⁷ While Harrison Heller’s and the
14 Committee’s statements deny that the Committee’s payments to the Heller Company were
15 excessive and thus amounted to personal use of campaign funds by the candidate, they
16 simultaneously appear to confirm that the payments resulted in contributions to the Committee
17 because the Heller Company’s rate was below the prevailing commercially reasonable rate.

²³ DeHaven Article at 2.

²⁴ *Id.*

²⁵ Resp. of the Committee and Heller Company at 1 (July 6, 2018).

²⁶ *See* 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g)(1)(i)(H); Advisory Op. 2001-10 at 2 (Jesse L. Jackson, Jr. for Congress).

²⁷ DeHaven Article at 1.

1 Respondents dispute that the Heller Company actually provided a discount for its
2 services, but they have not provided sufficient information to refute the substance of the
3 allegation. Respondents assert that they agreed to the \$2,500 monthly rate after an arm's length,
4 written negotiation, and that "the rate agreed to was neither below nor greater than the value of
5 services [the Heller Company] has received for similar services."²⁸ Harrison Heller avers in a
6 sworn statement that he did not discuss with the Committee any "special rate, either at a discount
7 or otherwise[.]" and claims that the Committee proposed, and he accepted, the monthly rate
8 through an exchange of emails with a Committee representative.²⁹ But Respondents have not
9 provided these emails to substantiate their account of the agreement or provided any other basis
10 to infer that the agreed-upon rate was commercially reasonable, such as information about the
11 rates that Harrison Heller charged his other clients for similar work, or what other social media
12 consultants were then charging committees for similar work.³⁰

13 Respondents also contend that the Heller Company's charges should not be compared to
14 those of other vendors working for the Committee because the Heller Company "provided
15 completely distinct services" and "should not be arbitrarily compared" to another vendor.³¹ The
16 available information does not indicate what kind of services the Committee's other vendors
17 provided, and the descriptions in the Committee's disclosure reports provide little insight.³²
18 However, even if we assume that the Heller Company provided a distinct service, that does not

²⁸ Resp. at 3.

²⁹ Resp., Ex. ¶¶ 4-6, 8.

³⁰ Cf. Factual and Legal Analysis at 14-19, MUR 6414 (Carnahan in Congress Committee, *et al.*).

³¹ Resp. at 3.

³² See *supra* note 3.

1 indicate that the Heller Company was paid a commercially reasonable rate for its work, and the
2 prior statements by Harrison Heller and the Committee suggest that the rate was below the usual
3 and normal rate. As such, we recommend that the Commission find reason to believe that the
4 Heller Company violated 52 U.S.C. § 30116(a)(1)(A) or § 30118(a); and that the Committee
5 violated 52 U.S.C. § 30116(f) or § 30118(a), and 52 U.S.C. § 30104(b).

6 The available information does not indicate that Sen. Heller was personally involved in
7 knowingly accepting in-kind contributions in the form of discounted services, but additional
8 relevant information may be uncovered in an investigation. We therefore recommend that the
9 Commission take no action at this time as to Sen. Dean Heller.

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18 **V. RECOMMENDATIONS**

- 19 1. Find reason to believe that Heller Enterprises, LLC violated 52 U.S.C.
20 § 30116(a)(1)(A) or § 30118(a);
- 21 2. Find reason to believe that Heller for Senate and Chrissie Hastie in her official
22 capacity as treasurer violated 52 U.S.C. § 30116(f) or § 30118(a), and 52 U.S.C.
23 § 30104(b);
- 24 3. Take no action at this time as to Sen. Dean Heller;
- 25 4. Approve the attached Factual and Legal Analyses;

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1 5. Authorize the use of compulsory process; and

2 6. Approve the appropriate letters.

3 Lisa J. Stevenson
4 Acting General Counsel

5 Kathleen M. Guith
6 Associate General Counsel
7

8 10/16/18
9 Date

Stephen Gura

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