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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Heller for Senate;	)	MUR 7406
Chrissie Hastie,	)	
in her official capacity as Treasurer;	)	
	)	

RESPONSE

Through counsel, Heller for Senate and Chrissie Hastie, in her official capacity as Treasurer, (collectively, "Respondents") provide the following response to the complaint filed by the Nevada State Democratic Party ("Complainant") and designated by the Commission as MUR 7406.

Respondents have conformed their conduct to the prescriptions and prohibitions of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). Respondents acknowledge that FECA and Commission regulations generally prohibit Respondents from receiving contributions from corporations and require Respondents, and all such committees, to refund, or otherwise disgorge these contributions. As discussed herein, Respondents are practically unable to refund the contributions detailed by this complaint due to Respondents' reliance on FEC approved reasonable operating and accounting procedures that have left Respondents without the specific funds necessary to satisfy the required refunds.

I. BACKGROUND

This complaint arises out of an investigation unrelated to the conduct of Respondents and focusing exclusively on the operations of the Cancer Treatment Centers of America ("CTCA"), a corporation not affiliated with Respondents. In 2017, the FEC investigated CTCA and concluded that CTCA had made a series of illegal corporate contributions to many federal candidates by reimbursing its employees for their personal contributions to these federal candidates. Respondents were one of many federal candidate committees to receive the contributions captured by the FEC's investigation. The contributions received by respondents appeared on their face to comply with the limits and prohibitions of FECA, and

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Respondents followed the requirements of the Act in depositing and expending those same funds.

Respondents did not learn of the impermissible conduct of CTCA, which was wholly internal to the operations of CTCA and not conveyed to Respondents, until the EC concluded its investigation into CTCA. Notably, the FEC concluded its investigation into CTCA nearly five years after Respondents received the impermissible contributions from CTCA. The impermissible contributions were part of a previous election cycle and were validly expended during that election cycle and are no longer in the accounts maintained by Respondents. As a result, Respondents are now practically unable to refund the impermissible contributions from CTCA and therefore have not failed to satisfy their obligations under ECA.

II. LEGAL ANALYSIS

Respondents have not violated the FEC's thirty-day refund or disgorgement requirement because Respondents do not have the specific CTCA funds to refund or disgorge.

A. Respondents validly deposited and expended the funds received from CTCA under FECA.

ECA and Commission regulations prohibit candidate committees from receiving corporate contributions in any form. This prohibition means that, pursuant to ECA, federal candidate campaign committees may not accept contributions from the general treasury funds of incorporated organizations including corporations and trade associations.[1] ECA and Commission regulations define a contribution broadly to not only include traditional cash gifts, but also "anything of value" given to the candidate's campaign committee to influence the outcome of a federal election.[2]

To avoid circumvention of this prohibition by corporations, EC regulations allow corporations to create and administer separate segregated funds comprised of contributions received from permissible sources but prohibit corporations from reimbursing their employees for contributions to these funds.[3] To aid the enforcement of these prohibitions, EC regulations also require candidate committees to take certain actions when they learn an impermissible contribution has been made. As Complainant notes, if a candidate committee learns that it has received corporate contributions, it must refund or disgorge those contributions within thirty days; however, this thirty-day requirement does not apply if candidate committee no longer has the funds necessary to satisfy this refund and disgorgement requirement.[4]

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[1] 52 U.S.C. § 30118; 11 C.F.R. § 114.2(b).
[2] 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 100.52(a); 11 C.F.R. § 100.54.
[3] 11 C.F.R. § 114.5.
[4] 11 C.F.R. § 103.3.

A different set of procedures governs the receipt of contributions that facially satisfy the requirements of FECA. Under EC regulations, when a candidate committee receives any contribution, that committee must determine whether the contribution presents genuine issues of legality regarding whether they were made by a corporation. Any contributions received by a candidate committee that, upon review, do not present these genuine questions of legality must be deposited into the candidate campaign's general funds within ten days and no further restrictions require the candidate to maintain those funds prior to expending those funds on valid campaign expenditures.[5]

Respondents received the contributions discussed by Complainant as personal contributions from individuals employed by CTCA. As noted, Respondents were not provided with any information about the internal operations of CTCA until nearly five years after receiving those contributions; therefore, Respondents had no information that would suggest genuine questions about the legality of the contributions received. ive years is certainly beyond the ten-day holding requirement of FECA, and Respondents therefore had no reason not to deposit and utilize the contributions discussed by Complainant. Simply put, Respondents followed all FEC mandated procedures in the receipt of these contributions, and they already legally expended the funds in their regular operations.

B. Respondents validly expended the contributions now in question subject to a reasonable and approved accounting method and are now practically unable to refund or disgorge those specific CTCA funds.

Respondents readily acknowledge that, upon learning of impermissible corporate contributions, candidate committees must refund or disgorge those contributions. As noted, however, a candidate committee must only refund those contributions within thirty days when the candidate committee has the contributions to refund. f, under the reasonable accounting method employed by a candidate committee, the candidate committee no longer has the contributions, then the thirty-day requirement does not apply.[6]

When considering the question of whether a candidate committee has sufficient federal funds in its accounts to make a transfer of funds out of those accounts governed by FECA, the FEC has consistently deferred to the candidate committee's determinations about funding availability if the candidate committee can show that it has relied on a reasonable accounting method.[7] n its regulations, the EC provides certain examples of what constitutes a reasonable accounting method, such as in the case of transfers between state and federal accounts, but has not specifically enumerated by regulation the accounting

[5] 11 C.F.R. § 103.3(a).
[6] *See* supra at Footnote 4.
[7] 11 C.F.R. § 110.3(c)(4); *see also* 11 C.F.R. § 104.12

practices the FEC considers reasonable. nstead, the FEC has left this work to its enforcement processes and concluded that there is no common answer.[8]

One option available under the FEC's precedent is for a candidate committee to follow the generally accepted accounting practice of classifying funds received and later expended according to a "first in, first out" accounting model " O" . This accounting practice logically considers the oldest funds held in an account to be the first funds expended from that same account. The use of this O accounting method has been considered and approved by the FEC in the context of state party activity, whereby the state party was permitted to use this method to determine which funds held in its account constituted federal funds because they could be attributed to federally permissible donors.[9]

The EC's treatment and approval of the O accounting method is not limited to the advisory opinion process. As here, in matter under review actions, the FEC has permitted respondents to rely on IFO accounting practices. n one such instance, the EC issued a no action letter when it determined that the respondent could identify contributions from federally permissible sources.[10] The EC has also employed its own O accounting practices in reviewing respondent procedures during its enforcement matters. In MUR 5575, for example, the FEC's Office of eneral Counsel employed its own O analysis to a respondent's activity to determine if it could identify federally permissible funds.[11]

Regardless of the factual circumstances and the committees involved, the FEC has permitted committees to use FIFO accounting practices to identify whether the committee has federal funds that can be attributed to specific federally permissible sources. Respondents are no different from these prior committees. During its general operations, including the internal review of the federal permissibility of contributions, Respondents employed a O accounting practice to identify the source of federal funds expended. Pursuant to, and consistent with, the accepted practices of this acceptable accounting method, Respondents are practically unable to refund or disgorge the specific contributions identified by Complainant because these funds were validly deposited and expended in the regular operations of Respondents. Consistent with accepted FEC accounting procedures, Respondents no longer have the specific funds in question and therefore cannot refund or disgorge them.

This interpretation of FEC precedent is consistent with other possible actions under ECA and EC regulations. Pursuant to this authority, Respondents could have simply chosen to transfer all previously accepted funds to a newly created campaign committee and

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[8] *See* Advisory Opinion 2007-26 Schock) Noting that nothing in the EC rules would "preclude the Schock Committee from using a different reasonable accounting method that employs generally accepted accounting principles when identifying remaining donations in its campaign account and determining what funds are ederally permissible."); *see also* Advisory Opinion 2014-01 Solano County United Democratic Central Committee).

[9] *See generally* Advisory Opinion 2010-18 (Minnesota Democratic-Farmer-Labor Party).

[10] *See* MUR 5761 at footnote 3.

[11] See MUR 5575 at 13.

terminated the current campaign committee. n this scenario, the funds accepted by the original campaign committee (i.e., the recipient of the CTCA contributions) would be attributable to the newly created campaign committee on the same FIFO analysis. Therefore, the newly created campaign committee would not be required to refund or disgorge funds received by a terminated committee. t certainly seems illogical to treat the instant scenario any differently.

III. CONCLUSION

As described above, Respondents have been fully compliant with ECA and Commission regulations. Thus, the Commission should find no reason to believe that a violation has occurred in relation to the facts presented.

Sincerely,

Chris K. Gober
Counsel to eller for Senate and Chrissie Hastie, in her official capacity as Treasurer